

The Tool For The Introduction Of The 'Leave No One Behind' Principle Into Legislative And Strategic Acts Of The Republic Of Serbia



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Republic of Serbia
MINISTRY FOR
HUMAN, MINORITY
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DIALOGUE



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01

The relevance and purpose of the tool

The relevance of this tool is manifested in its provision of guidelines to decision makers in understanding and applying the human rights-based approach (HRBA) and the 'leave no one behind' (LNOB) principle in the forthcoming and future legislative and strategic acts of the Republic of Serbia. It provides clear guidelines for the implementation of the LNOB (Leaving No One Behind) principle in all stages through which legislative and strategic acts pass, thereby ensuring that the most marginalized and excluded groups are recognized and involved,¹ including disadvantaged women and girls, who are usually among the most disenfranchised groups due to intersecting deprivations and multiple discrimination. The purpose of the Tool is to serve various stakeholders in the processes of developing, adop-

ting, implementing, monitoring, and evaluating fairer legislative and strategic acts, targeting the perceived issues, and securing substantive equality in Serbia.

The Tool is primarily intended for those developing and adopting legislative and strategic acts at all levels, as well as for all other stakeholders who are involved in their development in any way:

- independent institutions;²
- the civil sector;
- experts and the academic community.³

- 1 The Tool is intended to serve in the application of the LNOB principle, to which Serbia committed when it voted to adopt the 2030 Agenda for Sustainable Development. This primarily implies: the National Assembly, the Government, and line Ministries; public administration bodies and government services; autonomous province bodies; local self-government unit bodies; and working groups for the development of laws and strategy papers. Thereby, a proponent of a law or strategy should ensure active participation and meaningful consultation of all those whose lives will be affected by the proposed policy paper. Also, the Tool is intended for all stakeholders involved in the development of documents for the implementation of the 2030 Agenda for Sustainable Development, whose goals should primarily contribute to the reduction of poverty, inequality, and injustice and which closely reflect standards in the fields of human rights, labour, and employment.
- 2 e.g., independent human rights institutions can monitor the enforcement of laws and other regulations, initiate their adoption or amendment, and provide opinions on the provisions of draft laws and other regulations.
- 3 CSOs and experts can take part in, among other things, working groups for the development of laws and strategies, while expert groups can, among other relevant activities, participate in public consultations and document evaluation processes.

The leave no one behind principle and its relevance

The 2030 Agenda for Sustainable Development⁴ recognises five underpinning principles, with 'leaving no one behind' (LNOB) serving as the primary principle and prioritising 'those who are most excluded.'⁵ It is envisaged that the relevance of this twofold principle shall be reflected in the creation of a society that is more cohesive, equitable, and based on solidarity, through the promotion of an inclusive development model leading to a sustainable future for all countries and all peoples.⁶ In practice, the LNOB principle requires a deeper assessment than the more typically used average and general summary progress assessments, with the explicit purpose of identifying all those who have been left behind or are at risk of being left behind, as well as issues and challenges that have kept them, or are keeping them, in such a position. It analyses relevant measures and stakeholder accountability, with a view to achieving progress for all groups in a society. Therefore, it should contribute to reducing inequality, eradicating discrimination, countering social exclusion, and reducing vulne-

rabilities undermining individuals' potential, all the while increasing the focus on and prioritising those who are most in need.

The LNOB principle applies to all parts of the Sustainable Development Agenda, including the sustainable development goals (SDGs) and targets, with the aim of achieving the Agenda's transformative ambition,⁷ which goes well beyond its 17 SDGs.

It is especially important to underline that the Republic of Serbia is obligated to adhere to these principles and meet the associated goals based on several reasons. Firstly, the Republic of Serbia officially took on the obligation to harmonise its policies and actions with the 2030 Agenda, including implementation of the LNOB principle, as one of its guiding principles.⁸ Secondly, the 2030 Agenda is based on international human rights instruments that the Republic of Serbia has ratified and that are therefore legally binding.⁹ Finally, the implementation of the 2030 Agenda is in alignment with the

4 The 2030 Agenda for Sustainable Development: <http://www.ciljeviodzrivograzvoja.net>.

5 The remaining four principles are: universality, interconnectedness and indivisibility, inclusiveness, and multi-stakeholder partnerships. See: The 2030 Agenda for Sustainable Development, United Nations System Staff College.

6 Social Development Division, Policy Paper, Classification and Regression Trees (CART), ESCAP, p. 3

7 In their essential character, the 2030 Agenda and its sustainable development goals are universal, transformative, comprehensive, and inclusive. See OHCHR, Sustainable Development Goals, Human Rights and the 2030 Agenda for Sustainable Development. The new Agenda is based on goals and principles established within the Charter of the United Nations, including full respect of international law, and on principles defined within the Rio Declaration on Environment and Development, including, among others, the principles of joint and differentiated responsibility.

8 Serbia and the 2030 Agenda, Government of the Republic of Serbia, GIZ, p. 4, <https://rsjp.gov.rs/wp-content/uploads/Agenda-UN-2030.pdf>.

9 Article 16, para 2 of the Constitution of the Republic of Serbia sets out clearly that ratified international treaties and generally accepted rules of international law shall be an integral part of the internal legal system and be applied directly.

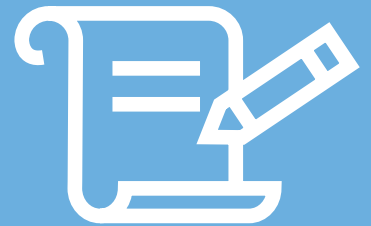
conditions for Serbia's entry into the EU, for which it is currently a candidate and in which its aims to join through achieving full-fledged membership.

The LNOB principle places the primary focus on the most vulnerable, multiply discriminated groups in society that are excluded or at risk of exclusion and for whom there are frequently no relevant data on their numbers or situation. This impedes their access to and exercise of their human rights and results in their inability to equally benefit from social development.

Any strategic document that aspires to improve the position of Roma men and women in Serbia should take into account that the Roma are not a homogeneous group and should identify and include those groups that are exposed to multiple discrimination and exclusion, e.g., Roma women and girls, persons with disabilities, LGBTI, older persons, and those living in substandard settlements.

The LNOB principle establishes a step-by-step process, containing tools which can help identify all groups that are left behind and the causes of their exclusion, which should then be adequately addressed in the laws and strategic documents that shall thereby follow the LNOB methodology.

Hence, the application of this principle entails that when planning, developing, and implementing laws and policy papers special attention be paid precisely to groups that often remain invisible, a situation which results in these acts not contributing to improving their position or addressing and removing causes which lead to their exclusion. Therefore, its implementation ensures prioritising those who are most excluded and who are in most standard cases not encompassed by, and/or consulted when developing and implementing, legal and strategic acts.



The LNOB approach is focused on improving and safeguarding the human rights of all.¹⁰ It relies on **five crucial principles**: 1. participation;¹¹ 2. accountability;¹² 3. non-discrimination;¹³ 4. empowerment;¹⁴ and 5. legality.¹⁵

10 LNOB supplements and supports a human rights-based approach (HRBA) and is focused on their improvement and protection. See more on the similarities and differences between LNOB and HRBA in **Annex I**.

11 It is necessary to ensure participation of those who are left behind or are at risk of being left behind.

12 The Government is obligated to ensure that each person under its jurisdiction enjoys all guaranteed rights and freedoms.

13 The underlying principle behind human rights and LNOB is to prohibit discrimination and achieve full equality of all persons in a society.

14 Simply prohibiting discrimination is not enough; groups should be empowered to identify their position, strengthen their capacities, and undertake all mechanisms available to them in order to improve their position.

15 All measures and activities must be based on the law, which must possess certain qualities and stipulate the conditions and the manner of the exercise of certain rights, as well as the conditions under which a right may be limited, in line with relevant international standards.

The LNOB model comprises several steps:

1



**Who is left behind?
Gathering evidence/data to identify groups.**

Crucial steps within this principle that must be undertaken first involve identifying those who are vulnerable, since frequently data on them are lacking.¹⁶ However, no group is homogeneous, and therefore it is necessary to identify those who are facing multiple and intersectional discrimination, which is why they are generally either unidentified or left behind.¹⁷ In this sense, special attention must be devoted to gathering relevant data disaggregated by sex, age, geographical location, gender, and other relevant characteristics, an approach which is also aligned with the SDG indicators.

2



**Why is someone left behind?
Setting priorities and analysis.**

The second step implies the identification and analysis of the root causes behind exclusion, deprivation, and inequality. This indicates recognizing and understanding not only those immediately evident causes, but also those that may be structural and may bring about the marginalisation of groups over a protracted period. This step also identifies the main duty-bearers and gaps in their capacities to fulfil their duties, as well as the right-holders and gaps in their capacities to exercise their rights. This step is very important for the LNOB principle to be fully achieved and for policy-making to be as effective as possible for the entire population.

¹⁶ For example, undocumented persons, residents of substandard settlements, persons in the process of gender confirmation, etc.

¹⁷ For example, older women living in rural areas, children with disabilities living in substandard settlements, etc.

3



**What needs to be done?
Which measures should be taken?**

The actions and interventions required to actively solve the challenges, obstacles, and lack of capacities identified in the previous stages need to be determined within this step. Possible modes of engagement include: advocacy, creating a supportive environment, capacity development and support to CSOs, empowering communities, improving service quality, accessibility, and availability, and partnering with civil society organisations. Priorities need to be set in this stage, considering above all those who have been left behind. Furthermore, different marginalised groups require different approaches. It is imperative to identify the most suitable and priority actions and interventions for each of the groups left behind.

4

How? How can progress be measured and monitored?

This stage implies that LNOB indicators are identified and contextualised. Quantitative and qualitative indicators should be aimed at measuring obligations, processes, and outcomes; hence all three types of indicators should be used in analysis and evaluation. Monitoring also entails building various stakeholders' capacities to supervise the indicators' development and monitoring.

5



Enhancing accountability for the implementation of the LNOB principle.

The final stage implies the integration of the LNOB principle into national strategies, policies, and legislation, including the processes of monitoring its adherence to, and engaging in follow-up and other relevant actions towards realizing, the 2030 Agenda, including the national report on the implementation of the SDGs. It must be emphasized that the Government is mandated with guaranteeing that all groups can equally exercise their human rights and with ensuring dedication to this goal at the national level. When it comes to those who are left behind, equal exercise of human rights also entails the existence of comprehensive and often long-ranging measures to achieve their full equality within society.

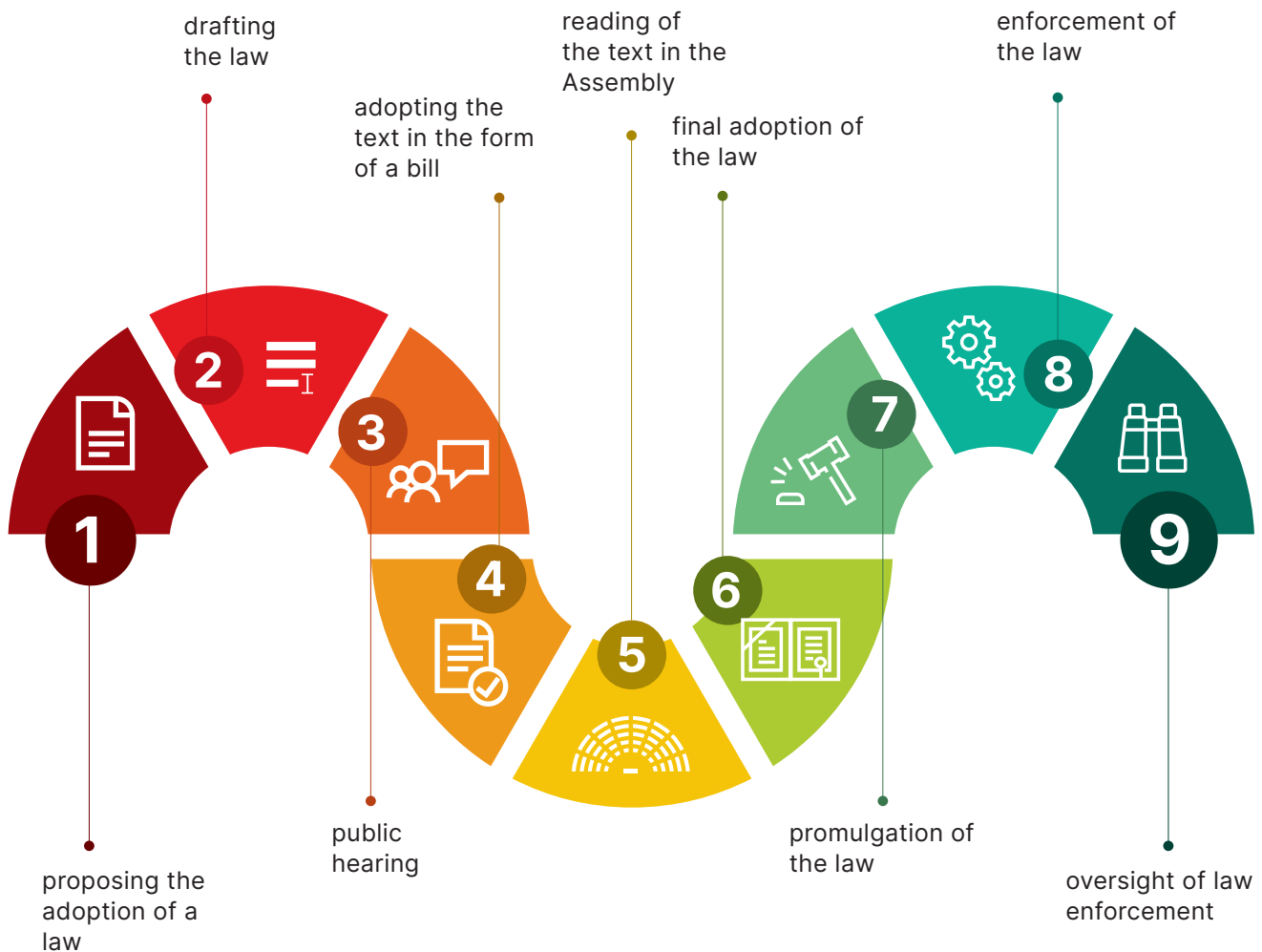
Active participation of groups at risk of being left behind needs to be ensured throughout all of the stages listed above, so that their voices can be heard, which shall contribute to adopting more sensible, comprehensive, tailored, and fair documents with the ultimate goals of diminishing differences and discrimination.

How legislative and strategic acts are adopted in the Republic Of Serbia (road map)

In this section the map of stages in law and policymaking will be outlined in brief, the most important stages of which, in regard to the LNOB perspective, will be presented in Point 4.

I The Law-making Path

The law-making procedure is regulated in line with the relevant legal framework¹⁸ and is carried out in stages according to the road map shown below.

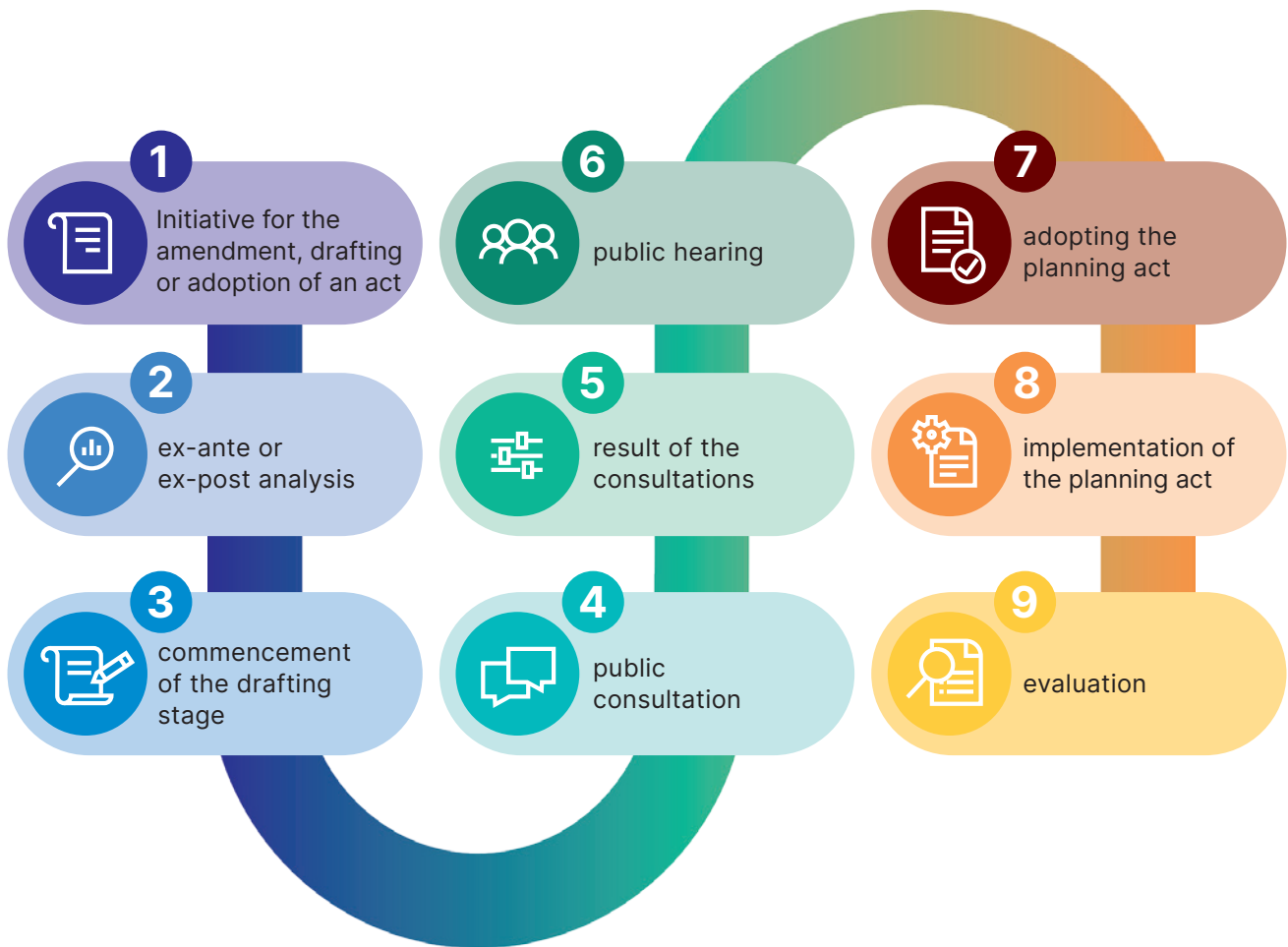


¹⁸ Constitution of the Republic of Serbia, the Law on the National Assembly, the Law on the Planning System (Article 41 of the Law stipulates the duty to conduct an assessment of impacts on other regulations, including laws, during the legislative process), the National Assembly Rules of Procedure, and the Government Rules of Procedure.

II The Path of Passing Strategic Acts

The Law on the Planning System regulates the procedure of passing strategic acts, which is accomplished in stages according to the road map shown below. In the drafting and adopting of strategic acts, care must be taken relative to their

harmonisation with the Constitution, ratified international treaties, and laws and obligations taken on in the EU integration process, as well as to obligations taken on by the state pursuant to the 2030 Agenda.



More details concerning the paths of law-making and adopting policies are shown in **Annex II**. More details on the types of policy acts in Serbia are featured in **Annex III**.

Integrating the LNOB principle into the planning and implementation stages of legislative and strategic acts

Stages that are crucial for the integration of the LNOB principle are primarily: 1) carrying out a needs assessment for passing a legislative or policy act; 2) forming a working group; 3) drafting a legislative or planning act; 4) holding consultations and a public debate; and 5) engaging in evaluation and oversight. It should be noted here that collecting data and inclusive and meaningful participation are important for all the listed stages and represent the key to successfully incorporating the LNOB principle in the adoption, implementation, and evaluation of strategic acts.

Also presented in this section are:

- how to identify groups at risk of discrimination and exclusion, including the level of their exclusion, and their causes;
- actions to be taken in the case of the existence of relevant data (or lack thereof) which reflects their current position;
- the identification of methods that should - by implementing the stages listed above - lead to measures that will ensure compliance with the 'leave no one behind' principle most efficiently;
- the manner by which the progress in implementing these methods and how much they reflect the actual situation of the groups should be measured, which ultimately also entails an evaluation process.

Therefore, integrating the LNOB principle represents a comprehensive and multi-stage process that results in no one being left behind throughout all the stages pertaining to documents that should improve the position of the most underprivileged and marginalised groups. This is precisely the path for attaining a just, equitable, tolerant, open, and inclusive society, where the needs of the most vulnerable groups are met, as stated in the 2030 Agenda, but also for ensuring an approach that is based completely on full respect for human rights.

4.1. Needs Assessment for Passing a Legislative or Policy Act

Before embarking on a process of drafting a law or policy act, it is necessary to launch an initiative to pass the document in question. Although various stakeholders may appear as proponents,¹⁹ most often the decision will be made at the Government level in response to the pressure of certain groups to enforce some legislative solutions in practice, and/or the need to comply with EU law, the jurisprudence of the European Court of Human Rights, the recommendations of UN human rights mechanisms, and other relevant international standards. Regardless of the area of law or policy act, it could - directly or implicitly - impact the most underprivileged and excluded members of society, which is why it is so critical to apply the LNOB principle.

¹⁹ Proponents of a law can include any Member of the Parliament, the Government, the Autonomous Province Assembly, and not less than 30,000 voters, as well as the Commissioner for the Protection of Equality, the Protector of Citizens (Ombudsman), and the National Bank of Serbia in the fields under their jurisdiction. In terms of strategic acts, an initiative for the amendment, drafting, and adopting of documents can come from government bodies and organisations, local government bodies and organisations, citizens, economic operators, citizens' associations and other civil society organisations, scientific, research, and other organisations affected by the policy, or the competent proponent itself, which adopts the respective initiative or initiates it on its own and drafts a strategic act within its legal scope.

The initial stage requires conducting a baseline study that should contain a brief identification of the groups whose position needs improvement and the identification of challenges (direct and structural causes) that may lead to limitations in the exercise of certain rights or in achieving sustainable development goals.

The LNOB principle means that the initial assessment moves beyond assessing the average and overall progress. Rather it implies that assessments be carried out towards ensuring progress for all groups, using disaggregated data to identify who is excluded or discriminated against, and how, why, and on what grounds. The data should then guide the discussion on what should be done to establish and address the position of these groups and which stakeholders should take a leading role.

Hence, in the early stages, the proponent should use any existing (disaggregated) data that can be obtained from the Statistical Office of the Republic of Serbia, reports made by competent international bodies dealing with human rights protection, and reports from relevant CSOs, independent bodies, and experts.

The National Secretariat for Legislation and the National Secretariat for Public Policies should be responsible for incorporating the LNOB principle, both as institutions that should be engaged in drafting and submitting initiatives for the development of relevant legislative and/or strategy acts, as well as in supporting the Government to determine priorities in the implementation of strategic goals. Considering the importance of also including the gender perspective, the gender equality body should also play an important role in this early stage.

Finally, if an initiative to amend inefficient legislation or develop a public policy is submitted by citizens and/or other recognized private entities through the e-government portal, the portion containing the description and elaboration of the

problem that originally prompted the proponents to create the initiative to amend the relevant act(s) should also include how it affected certain groups and list the specific groups in question. Should the initiative be accepted thusly, it should then serve as a solid base for the development of a baseline study.

4.2. Forming a Working Group

The drafting of laws and strategic acts is prepared in the relevant line Ministries. The competent line minister forms a working group made up of lawyers and other staff, who should be assisted in their work by scientists, experts, and all others who could enhance the quality of the draft text. Any decision should contain a rationale pointing out the necessity of adopting the regulation or policy document. The rationale should consider the LNOB principle and include a section identifying groups that have had difficulty exercising their rights or who have been completely deprived of their rights due to poverty, social exclusion, or other causes in the given field.

The findings from the baseline study are to be included in the rationale of the corresponding text. Members of the working group shall be selected based on these findings whose expertise can contribute to drafting regulations from the perspective of improving the position of the most marginalised groups.

The working group should have at least one expert in the fields of human rights and non-discrimination actively engaged in analysing the legislative and/or constitutional framework in Serbia and the international/comparative law framework.²⁰ Propositions for the appointment of specific independent expert(s) may come from academic institutions, state institutions, e.g., the Commissioner for the Protection of Equality, and CSOs. Normally, CSO participation in working groups is ensured through the Ministry of Human Rights and Social Dialogue

²⁰ The same principle stands if the Government forms a temporary working body to consider individual questions in its scope of competence and to give suggestions, opinions, and expert clarifications.

and the Ministry's Sector for the Cooperation with Civil Society, which - when requested by line Ministries - issues a public call for CSO participation in a working group and proposes specific CSOs to the respective Ministries in accordance with the results of the call.²¹

The working group should also incorporate representatives of relevant CSOs that have previous experience in working with the targeted group(s) affected by the regulation. Moreover, it is desirable to include representatives of the relevant marginalized groups in the working group.

Furthermore, the composition of the group should also reflect an equitable representation by gender. Moreover, the participation of representatives of leading women's rights organisations needs to be ensured, including those that represent women from marginalized groups.

It is particularly important to avoid the application of only the semblance of CSO participation by engaging CSOs that are not relevant to the field regulated by the legislation, since CSO participation should - in good faith - ensure the most pertinent and balanced comments that aim to improve the respective document and should not be merely a token gesture indicating that civil society was engaged in the process (only as a formality). It is also important to ensure civil society pluralism in terms of enabling the participation of multiple representatives of relevant CSOs and experts. As CSOs working with targeted groups sometimes lack experience in drafting legislation, they should be allowed to supplement their experience with knowledge from experts who they may propose.

If CSO participation in the working group is not ensured for any reason, the working group must ensure communication and inclusion of CSOs in the consultation process.

4.3. Drafting a Legislative or Planning Act

4.3.1 Analysis of future effects of laws and strategies

The drafting of laws and strategic acts should be based on an analysis of the law's future impact, which should also be contained in its rationale. In other words, although the legislative framework does not stipulate a duty to conduct analyses, it is necessary to do so to thoroughly consider and enable the best possible legislative solutions and actively counter further exclusion of certain groups. Also, assessing the law from the gender perspective is fundamentally important to securing the integration of the LNOB principle.

This stems from the obligation that the elaboration of the draft law should - among other things - contain an analysis of the anticipated impacts of the law, i.e., who will be impacted by the legislative solutions, how it will affect such impacts, and whether the positive consequences of the legislation are such that they justify the costs it will create. In terms of policy acts, the legislative framework provides for ex-ante and ex-post analyses to be conducted. When a policy document is first passed, an ex-ante analysis must be undertaken before reaching a decision to proceed to the drafting of the public policy act.²²

- 21 This mechanism works independently of the mechanism for CSO inclusion, in consultations under the Law on the Planning System.
- 22 The analysis consists of the following steps: 1) an overview of the current situation; 2) identifying the change that is intended to be achieved by implementing policy measures, its elements, and their cause-and-effect relation; 3) affixing the public policy goals and objectives, as well as performance indicators, that shall be used to gauge the level of accomplishment of the goals; 4) identifying options - possible measures or groups of measures - to achieve the goals; 5) analysing the impacts of these options - possible measures or groups of measures - and the risks attached to their implementation; 6) selecting the best option or an optimum combination of the considered options; and 7) identifying the resources and activities required to implement the public policy measures, monitor the implementation, and evaluate policy performance and the potential risks in policy implementation.

Conducting a situational analysis is necessary in this stage, which should consist of consultations with stakeholders and target groups, as well as collecting and processing data with a view to identifying and then proposing the best option(s) or an optimum combination of the considered options for those who are excluded or at risk of exclusion.

More on collecting data is presented in **Annex V**.

The Government regulates which public policy acts do not have to include such an analysis, but it is desirable that all such documents be based on analysis. All analyses should be conducted by applying the LNOB principle, based on data that is reliable, comprehensive, and disaggregated.

The application of this concept should have a special place in the preparation of the Economic Reform Program (ERP) prepared by the Ministry of Finance as a document that provides an overview of macroeconomic, fiscal, and monetary policy. These policies have a significant impact on society and on sensitive groups, and it is necessary to assess whether they are in accordance with the principle of LNOB. The application of the LNOB principle, both in the preparation process and in consultations with interested parties, would also be important in the context of the recommendations of the European Commission for measuring the impact of certain policies on gender equality, as well as for better targeting and support of the needs of beneficiaries of social programs, bearing in mind that the ERP represents an important process in the preparations of the Republic of Serbia for EU accession and membership.

Since the analysis of any proposed legislation also entails the identification of those resources necessary for the implementation of measures contained in the respective public policy and/or law, it

is important to emphasize here that the LNOB principle implies that the state must prioritize the provision of funds for those who are at risk of being excluded or are excluded from society. Serbia has affirmed its international obligation to dedicate 'the maximum of its available resources' to this end.²³ In other words, the country must allocate budget funds for their achievement without withdrawing money allocated for another marginalized group. It is particularly important to identify and account for any potential lack of funds for certain envisaged activities in a timely manner, which implies the establishment of both gender and human rights responsive budgeting. Also, alternative funds can be identified at this stage to secure funding for the necessary measures.

An ex-post analysis, in contrast, is conducted when the timeline for a particular policy document has expired, with the aim of obtaining results regarding the impact assessment so that the proponent has relevant data to form further decision(s) on the matter.

The key terms in both of these situations are data collecting and data processing, as well as consultations with stakeholders and relevant target groups that demand free, active, and meaningful participation. Only through this approach can unfair and extreme inequalities in outcomes and possibilities, as well as discrimination in the law, policy, and practice be adequately identified.

This approach enables the solving of patterns of exclusion, structural limitations, and the uneven balance of power that produce and perpetuate inequalities across generations, the solutions of which signify a crucial transition from merely formal to truly essential equality for all groups in a society.

23 Article 2 of the International Covenant on Economic, Social, and Cultural Rights requires states to earmark as much funds as possible to progressively provide these rights. This duty prioritises activities related to economic, social, and cultural rights in the context of the allocation of resources, such as the national budget. The maximum amount of available resources for the exercising of these rights needs to be allocated in Serbia in combination with the LNOB principle to ensure nobody gets left behind in relevant interventions while prioritising those who are at the highest risk of being left behind.

4.3.2 How to identify groups at risk of exclusion

In order for the 2030 Agenda vision for a 'just, equitable, tolerant, open, and inclusive society in which the needs of the most vulnerable are met' to be realized, groups which are at risk of being left behind need to be identified first.

Hence the following questions need to be answered in the analysis:



Who has been left behind?



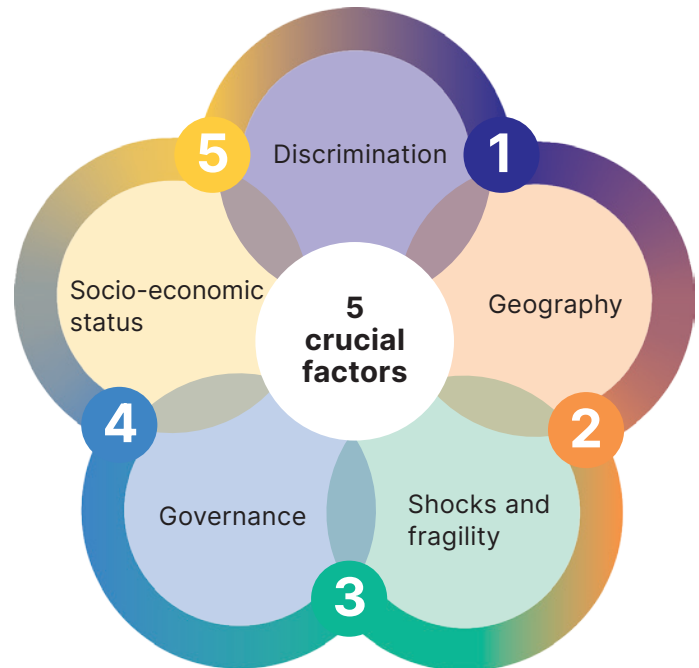
Which of the groups left behind is facing serious and/or intersectional deprivations?



Why have they been left behind?

In practice, most people being discriminated against face more than one form of deprivation of rights and freedoms and/or discrimination. For example, women from rural areas often experience various forms of discrimination, but to an even greater degree if they are older women, Roma women, or persons with disabilities. It is thus essential to know and understand their everyday experiences. For example, in this context it is essential to know that women in these categories often have low levels of educational and restricted or no access to justice and/or adequate health care. What leads to this? In most cases they are exposed to discrimination, poverty, remoteness from schools and various health and social care services, etc. Hence, the next level of research should be to identify the consequences of this situation on their ability to exercise their rights and what the government has done to ensure the respect, protection, and exercising of their rights.

The following 5 key factors should be considered in identifying the most marginalised groups: 1. discrimination; 2. geography; 3. shocks and fragility; 4. governance; and 5. socio-economic status.²⁴



Discrimination of certain groups can be direct or indirect and can be based on one or several grounds. Geography is important because it can point to risk of exclusion due to place of residence; it includes environmental degradation, transport and infrastructure, technology, and adequate access to rights and services. Shock and fragility examine groups that are exposed to natural hazards, violence, crime, external and internal economic shocks, etc.,

24 What does it mean to Leave No One Behind? A UNDP discussion paper and framework for implementation, July 2018, UNDP, p. 9; <https://unsdg.un.org/resources/leaving-no-one-behind-unsdg-operational-guide-un-country-teams>.

more frequently and to a greater extent than the general population. The issue of governance examines the impact of laws, policies, taxes, institutions, the formal and traditional practices of subpopulations and localities, and the groups' ability to participate in these processes. Finally, socio-economic status considers the inequality and poverty of certain groups based on indices, their employability and activity in the labour market, etc.

In the practice of and in research conducted by The Commissioner for the Protection of Equality, it has been shown that discrimination in the fields of labour and employment is one of the most pronounced forms of discrimination in Serbia. Women are at a disadvantaged position compared to men due to their sex and marital status, while all persons from vulnerable groups are at a higher risk of facing discrimination, primarily persons with disabilities, the youth and the elderly, Roma men and women, and members of the LGBTI population. It is precisely these groups that represent some of those who are at the highest risk of exclusion and applying the LNOB principle should result in improving both their immediate situation and their fundamental position in society.

4.3.3 Collecting relevant data

Collecting data is critically important. It can be an involving, complex process, especially considering that high-quality, accessible, timely, and reliable disaggregated data is needed to gauge progress and ensure that nobody is left behind.

Illustrative is an example regarding the aim to reduce the number of women developing and dying of breast cancer. To realize such a goal, it is necessary to reinforce prevention and incentivise more frequent check-ups to increase treatment effectiveness and the likelihood of recovery.

However, the precise number, availability, and functionality of mammograms is not known in Serbia. In other words, their geographical distribution is completely unknown, as is the effect this may have on women living and working in rural areas (especially regarding situations in which free check-ups are being provided, but only during working hours, and/or when going for a check-up requires sizable funds and an entire day off). These grave shortcomings inhibit the creation of adequate policies for the advancement of these women's right to health and their needs.

Data is crucial to effective decision making²⁵ and relevant data must possess certain qualities:

- it must be as recent as possible, i.e., it must not be based on research conducted too long ago, especially in fields that involve rapid changes (such as a pandemic);
- it must be obtained and analysed by applying a human rights-based approach (HRBA);²⁶
- when data obtained from a national census are used, it is necessary to ensure that the questions employed have applied the LNOB principle and enabled the most detailed disaggregation possible.

²⁵ Agenda 2030, para 48.

²⁶ See **Annex I** for more detail on the similarities and differences between HRBA and LNOB.

Usually, the data published by the Statistical Office of the Republic of Serbia (SO) is regarded as official and reliable. However, the SO's collection of data is limited to certain fields and these are often only disaggregated by sex, age, geography, financial situation, and education.

Therefore, many grounds for discrimination, contained in Article 2, para 1 of the Law on the Prohibition of Discrimination, remain outside of the decision makers' view,²⁷ making it difficult to identify and comprehensively understand multiple discrimination and that within a single discriminated group there are many subgroups that are in an even more difficult situation (e.g., an elderly Roma woman with a disability). Also, there is often a lack of data on the homeless, irregular migrants, stateless persons, LGBTI persons, the criminalised population (e.g., drug users, sex workers), etc. It is especially important to understand that when a society does not accept or adequately understand members of groups that are frequently exposed to discrimination, violence, or persecution, they will almost surely not be identified or counted, making adopted laws and policies blind to their situation, which may lead to further aggravation of their situation rather than the improvement of it.

Relevant working groups and/or line Ministries could take a proactive role and ask the Statistical Office to conduct a survey to help with decision-making and prioritization. If this is not possible, the data can be obtained in other ways, by partnering with institutions and stakeholders who can conduct surveys. Additionally, available data from surveys conducted by various international stakeholders should also be considered.²⁸

It is vital to ensure that any situational analysis contains feedback information coming directly from those that the regulation or measure is envisaged to affect (e.g., if a regulation is being adopted in the field of the legal recognition of the consequences of gender confirmation, attention should be paid to the main obstacles and issues listed by the persons who have gone through or are going through this process, with the aim of adopting a regulation that will truly achieve the relevant goal and purpose).

It is also necessary to identify and prioritise gaps in the data, capacities, and processes to be supported. In this context, the crucial question is:

What do we not know and what are the groups we have inadequate or no information about?

Data can enable the answering of this question only if it is inclusive and disaggregated.

Today, data gathering and disaggregation should not inherently entail very long, complex, and burdensome process, as there are often many available relevant sources (national census data, surveys, citizens' engagements, etc.). If no pertinent data is available, a working group could engage institutions (institutes, universities, independent experts) and/or CSOs to conduct research, using the most appropriate methods in each situation (investigating citizens' perceptions, interviewing, focus groups, etc.).

Since each law and policymaking process is limited in scope, it would be desirable to map marginalised groups for whom data is most lacking, both in terms of the groups themselves (e.g., refugees and youth) and groups within groups (e.g., intersex persons in the LGBTI population, women with disa-

27 The grounds of discrimination are as follows: race, skin colour, ancestry, citizenship, ethnic affiliation or ethnic background, language, religious or political beliefs, gender, gender identity, sexual orientation, sex characteristics, birth, genetic features, health status, disability, marital and family status, conviction, appearance, membership in political, trade union, and other organisations.

28 e.g., UNICEF MICS (Multiple Indicator Cluster Survey) and similar surveys that contain disaggregated data. See: <https://mics.unicef.org/surveys>.

bilities in remote areas, or youth in the Roma population), which should facilitate the establishment of a certain base of relevant data. While engaging in such mapping, it is also necessary to consider the existence of groups that could be at risk of being marginalized in the future (potentially vulnerable marginalized groups), like those living in areas where environment pollution is on the rise due to new factories, those in areas prone to landslides, earthquakes, etc., and workers employed in declining sectors.

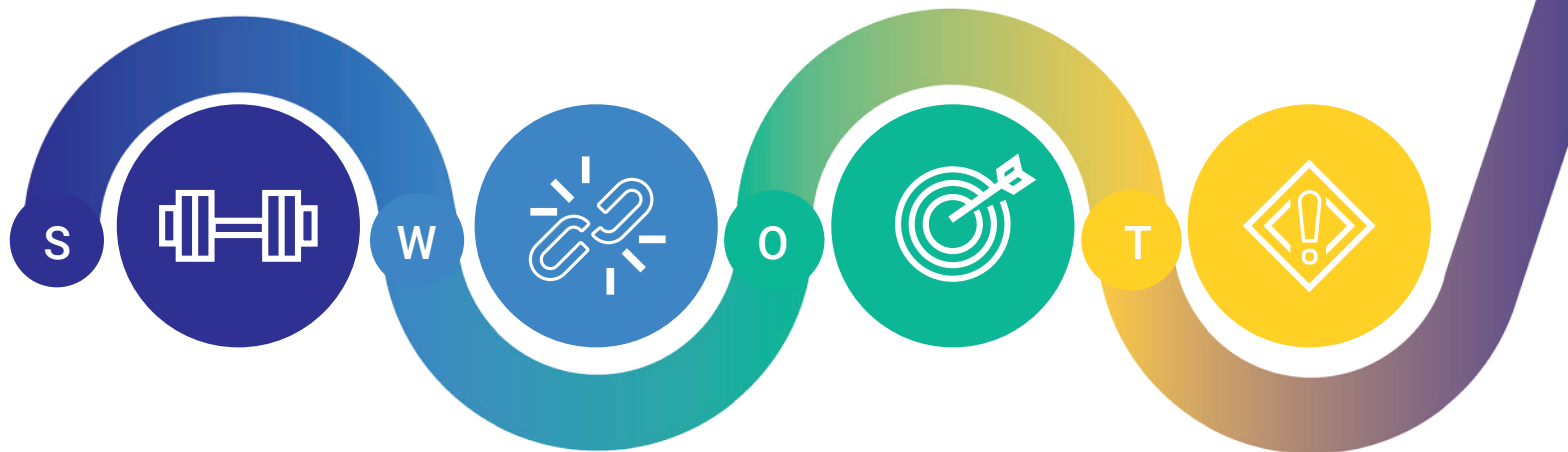
Another potentially useful way to source relevant data - especially in case of a short deadline to pass a regulation, could be considering and drawing upon comparative analyses and best practice examples from other countries in the region that have similar legal, political, social, and cultural patterns and EU experience, bearing in mind the legislation pertinent to harmonising regulations with EU *acquis*.

4.4. Methodology and Data

The types of data that are relevant will depend on the analysis that needs to be conducted.

Usually, it will be necessary to start from a situational analysis prior to making individual decisions or making specific plans. This is often based on role pattern analysis and the so-called SWOT analysis – an analysis of strengths, weaknesses, opportunities, and threats in specific areas of social life.

The importance of the SWOT analysis is that it helps define the nature and reach of a problem and identify existing strategies and activities through which the problem can be overcome, as well as legal gaps.



For example, if the analysis concerns health, it should aim to:



conducting a situational analysis throughout the sector is important because it represents a critical step in the planning cycle;



It gives a choice and a platform to all stakeholders in the health care sector, including the population;



it increases accountability and transparency;



it contributes to specifying roles and responsibilities; and



and it helps to establish a consensus on the status of health care in the respective country/state.²⁹

Role pattern analysis is valuable in that it helps identify rights holders and their rights and goals, as well as duty-bearers and their duties. For example, in the field of education, the rights holders can be children with disabilities who have the right to access quality primary and secondary education without discrimination. On the other hand, the duty-bearers are: the school administration, which should provide physical access to the building and mobility inside the building, as well as provide the presence of teachers and ensure their adequate work with children; the local government, which is responsible, among other things, for organising

transportation and personal assistants; and the Ministry of Health, which is accountable for promoting policies for inclusive education, teacher training, adapting textbooks, etc.

It is also necessary to implement other analysis techniques, particularly causal analysis. Such analysis should point to causes and effects, i.e., the reasons for the exclusion of and discrimination against certain groups, through addressing direct, underlying, and structural causes, as well as through identifying and recognising negative effects on these groups. Only after understanding the reasons for exclusion can appropriate analysis be carried out on how these situations can be resolved and by which stakeholders.

In cases involving groups that are left behind in multiple ways, the problem can be framed in broader terms or linked to a certain sector, all the while bearing in mind the deep interrelation between sustainable development goals and human rights. Whether they are framed in a broader sense or connected to a specific SDG goal or target, many problems people face are likely manifestations of similar, if not identical, causes. These problems can be separated from more general evaluation findings, taking into consideration:

- Recommendations of various international human rights mechanisms;
- Recommendations of relevant national institutions, bodies, and stakeholders, including CSOs;
- The results of consultations with affected groups, including at the local level;

²⁹ For example, there are several key characteristics of a good situational analysis in the health care sector. It should be: 1) participatory and inclusive – this implies the inclusion of all relevant interested parties in the health care sector, including representatives of the most marginalised groups; 2) analytical – the analysis should be based on a cause-and-effect framework and the interdependence of multiple factors; 3) critical – the analysis does not rely too heavily on easily generated descriptions or generic descriptors, but also involves analysis that brings about an understanding of the current situation based on previous decisions, choices, and plans; 4) relevant – it focuses on the issues that ultimately affect the health status of the population, with special emphasis on particularly vulnerable groups, and considers solutions to all existing challenges in this context; 5) comprehensive – it covers all aspects related to the health care sector, including health care systems, the entire range of health care services, intersectoral activities etc.; 6) evidence-based – the analysis employs a wide spectrum of information and data, both quantitative and qualitative, as well as draws on experiences from other countries, where applicable.

- The level to which people or households experience overlapping deprivation and causes of discrimination;
- The scope of inequality, including gender inequality, between and within populations and groups;
- The degree to which inequalities are expressed in spatial terms.

For example, where discriminatory behaviour can rarely be directly observed, researchers are faced with the challenge of ascertaining whether, and to what degree, ethnic discrimination is occurring in practice. Those who are attempting to identify the presence or absence of discrimination usually observe an individual's (or particular group's) ethnic background (e.g., Roma) and a specific outcome (e.g., profit) and try to ascertain whether the outcome would have been any different if the individual/group was of another ethnic background (e.g., Serbian). To put it differently, to

ascertain discrimination researchers must answer, in this example here, the counter-factual question: What would have happened to a person of Romani descent if they were Serbian? The answer to this question is essential for concluding that there is indeed a cause-and-effect relationship between ethnic background and discrimination, which is - in turn - necessary to reach the conclusion that ethnically based discriminatory behaviours or processes contributed to the perceived differential outcome.

Some of the additional tests are analysis of interested parties³⁰ and external factors analysis (PESTLE).³¹

These methods should lead to the application of a holistic approach in planning a legislative or strategic act and may identify the most vulnerable and least visible groups, the causes of their 'invisibility,' and the consequences for the exercising of their rights in certain areas of social life, thereby facilitating the adequate design of goals to be achieved, and/or measures and activities to be implemented to achieve the respective goal(s).

30 Analysis of interested parties involves creating a comprehensive picture of interest groups, individuals, and institutions whose interests and expectations should be analyzed so that goals reflect the needs of society, not just the needs of institutions. Therefore, it is important to make a list of all parties whose views are important to explore in order to understand the problem, as well as the impact of the measures on them (positive and negative). It is especially important to understand that different groups have different concerns, capacities, and interests, which must be understood and recognized in the process of problem identification, goal setting, and strategy selection. The key questions in this analysis are whose problems, obstacles or opportunities are being analyzed and who will benefit or be harmed by the proposed measure or legal solution, and in what way. The ultimate goal of this analysis is to maximize the social, economic, and institutional benefit that the measure or legal solution brings to certain groups. Here, one should always think primarily of the most vulnerable groups and the problems and obstacles they face in a certain area of social life.

31 External factors analysis (PESTLE) involves the study of the environment through the analysis of political-legal, economic, sociocultural, and technological factors. Political-legal factors refer to the study of the existing legislative framework and political factors in a society, which should be examined especially in relation to the most marginalized groups in society. Economic factors include the analysis of inflation, employment, available resources, etc., which should be viewed precisely in relation to those groups that are most vulnerable to these economic trends and processes in society. Sociocultural factors refer to the demographic structure of the population, social mobility, lifestyle changes, entrenched attitudes, level of education, special customs and beliefs, etc. Their study can greatly influence the analysis of the applicability of certain measures and planned activities. Finally, technological factors may indicate the need to change appropriate technologies, especially for the most marginalized groups that often do not have access to the Internet and technological development, and it would be desirable to identify this problem and find other ways to reach members of that group.

Participation from those in the focus of legislative and strategic acts

5.1. Consultations

Consultations imply a participatory approach in reaching the best possible solutions when planning, thereby: (1) facilitating the implementation of measures outlined in the law or policy act; and (2) ensuring that they are adequately targeted and efficient. It is a continuous process that can be formal or informal. Article 77, paragraph 1 of the Law on Public Administration and Local Self-Government prescribes that public administration bodies have a duty to provide conditions for public participation in the course of the drafting stage of laws, other regulations, and acts. The process must be open and must ensure effective public participation. A baseline study is published as the initial document, containing the overview of issues in a field, their causes and consequences, the goals and expected effects of adopting the regulation, and the fundamental principles for the regulation of social relations in this field, including the rights and duties of subjects to be affected by the regulation. These starting premises should always be based on the principle of equality and non-discrimination, with special emphasis on the most vulnerable groups.

In the case of strategic acts, it is necessary to hold public consultations to secure the participation of all interested parties and target groups.³² The proponent has the duty to review suggestions presented during consultations by interested parties and target groups, and to update the text accordingly. If certain comments are not applied, the proponent

has the duty to explain why. Also, the proponent has the duty to conduct a public debate on the public policy act and prepare a report concerning the conducted public debate session before submitting the document for consideration and adoption.

The information must be accessible to everyone, including ethnic minorities, persons with disabilities, persons of various education levels, the elderly, etc. Also, it is not adequate for the proponent to post the invitation for consultations only on the relevant website; it should be also sent out in other relevant forms directly to representatives of certain groups, including CSOs and activists. This should particularly be kept in mind when the matter at hand is, for example, access to electricity and internet (i.e., the lack of it) in the most underprivileged strata of society.

The establishment of the e-consultation portal³³ has led to the publication of all public policy acts that are subject to consultation, apart from those that were designated, via a special Government decision, as not required to be subjected to public consultation. Furthermore, no documents that have not been subjected to public consultation shall be considered at the competent Government committees, except for those that were excluded from the obligation of public consultation. Bearing this in mind, questions stemming from and adhering to the LNOB principle should be included in the questionnaires for comments when posting documents on the e-consultation website, such as:

32 The following qualify as eligible groups from the ranks of citizens and economic operators: citizens' or business associations and other civil society organisations; scientific research, professional, and other organisations, as well as representatives of public bodies, local authorities, and other participants in the planning system that are involved in implementing the respective policy or that represent those parties upon which the policy is being implemented in the consultation process.

33 See: ekonsultacije.gov.rs.

Was the preparation of the document based on the LNOB principle?

- a. Was a baseline study conducted before the initiative for the adoption of the law or policy was submitted?
- b. Do the Members of the Working group possess the necessary expertise?
- c. Were disaggregated data obtained - how?
- d. What groups are identified as the furthest left behind?
- e. What are the root causes for this situation?
- f. Who/what are identified as key responsible actors?
- g. What measures have been designed to prevent the exclusion of groups that have been identified as left behind?

Electronic communication is only one of the ways to communicate and obtain relevant data, and for data gathered by such means it is always important to consider whether it enables the meaningful participation of marginalized groups and CSOs engaged in safeguarding their rights. Therefore, it is important to consider other possibilities for communication, such as conducting consultation rounds through

the organising of focus groups, on-site visits to representatives of marginalized groups, etc.

5.2. Public Debate

In Serbia, alongside consultations, a public debate is conducted within a clearly set framework prior to adopting policy and legislative acts. It is not and should not be a replacement for public consultation. It is mandated that this be conducted in the drafting of laws that quickly change the regulation on a matter, or those regulating an issue of special interest for the public, while in all other situations is regarded as desirable but not mandatory.³⁴ However, even when not mandatory, a public debate should be held as this forum enables and likely ensures the participation of interested stakeholders, as well as allows for the testing of public approval on the planned solutions.³⁵

The decision to conduct a public debate, its programme, and its deadline is passed by the competent committee, at the proponent's proposal. The competent committee should always consider the importance of the act from a human rights perspective and provide a reasonable deadline to set up and conduct a meaningful and participatory public debate.

The public debate procedure is initiated by issuing a Public Call for participation in a public debate with the public debate agenda posted on the proponent's website and the e-Government portal.

The public debate programme contains information on the planned activities, such as holding round tables,

34 Pursuant to Article 41 of the Government Rules of Procedure, a public debate is mandatory in the following situations: 1) when drafting new systemic legislation; 2) when drafting new legislation, except if the competent committee does not rule otherwise, to the proponent's elaborated legislative proposal; 3) when drafting amending legislation, if it changes the solutions from existing legislation to a significant degree, whereby the competent committee decides on a case-to-case basis; 4) when applying the Law on the Ratification of International Treaties, if the competent committee decides to conduct a public debate at an elaborated proposal of the Ministry of Foreign Affairs or a public administration body whose competence includes issues regulated by international treaties.

35 This is important because pursuant to Article 42 of the Government Rules of Procedure, when conducting a public debate is not mandatory, the material is to be provided to the public no later than when the competent committee passes a conclusion proposing to the Government the adoption of a legislative act or the approval of the proposal for a legislative act.

panel discussions etc., including logistical information; here it is crucial that the location and time of all planned activities be accessible to all and carefully planned so as to enable the most vulnerable groups to participate and let their voices be heard.

The setting of restrictive deadlines for the submission of initiatives, proposals, suggestions, and comments to the text (e.g., a minimum deadline of 15 days prior to the engagement of the public debate) or of minimum deadlines for the duration of the public debate (i.e., a period of 20 days) should be avoided so as to provide an opportunity for everybody, and particularly those most affected by the measures, to participate.

The goal behind the public debate and consultation is the same - to have legislative solutions and public policy acts serving the citizens' best interests, especially those at risk of social exclusion or who are socially excluded. Therefore, both processes must be participatory throughout all stages, including in regard to their format and/or the manner of their implementation.

A decentralised public debate should also ensure that the participatory process is available to everyone geographically. For example, if the legislation deals with poverty prevention for persons who are at risk of poverty in Serbia, then it should especially be organised in local self-government units marked as the most underprivileged. If the process deals with asylum seekers, local self-government units hosting asylum centres should be involved in particular. This will enable interested parties' and members of vulnerable groups' voices to be heard.

Mediation by CSOs should be enabled in cases when access to certain underrepresented groups at risk of exclusion is limited (e.g., in cases of stateless persons living in substandard Roma settlements). This may happen when the parties in question are difficult to reach, when they are not interested in participating in the process or are exposed to stigmatisation because they do not wish to identify as

members of a certain group, or when the group is so marginalised that they do not have access, capacities, and/or resources to effectively engage in the participatory process.

In cases with limited access to such groups, it is important to ensure that relevant CSOs nurture an inclusive process in their organisational structure and have direct contact with representatives of marginalised groups. Various forms of communication can be set up with them, like online consultations (when applicable), meetings or focus groups on locations accessible to them, or in the form of visits to the community. Finally, their opinion must be adequately considered.

The Rulebook on positive practice guidelines to achieve public participation in drafting legislation and other regulations and acts provides several methods of consultation:



web applications and e-consultations



round tables



focus groups



semi-structured interviews



panels



the collection of written comments by sending invitations to a relevant circle of people



participation by representatives of the concerned public in the operation of the working groups for the enforcement of the draft legislation

Exceptional circumstances - such as a pandemic - can also impact the selection of the most favourable method of consultation and these may require that additional steps be taken to ensure the participation of those who are at risk of being excluded or are excluded.

*More on the methods listed above is presented in **Annex VI**.*

The opinion of the National Public Policy Secretariat can be obtained in case of doubts regarding the best method to be used. The selected method should enable and ensure the most appropriate manner of communication with the most vulnerable groups, with the mandatory application of human rights and constructive dialogue rights and respecting diversity, self-identification, the sensitivity of certain issues, the need to protect personal data, etc. CSOs working directly with the most vulnerable groups can also be consulted regarding the selection of the most appropriate method.

The proponent is obligated to publish the report on the respective public consultation(s) and debate on its webpage and the e-government portal not later than 15 days after the culmination of the public debate and it should contain proposals and suggestions provided by the relevant marginalised groups and representatives of CSOs.

The evaluation sheet must contain a clear and elaborated answer as to why any solution which has not been accepted has been regarded thusly, with a reflection on relevant research and practices. This practice should ensure that relevant comments and recommendations for the enhancement of the text, received in the course of the consultation process, are integrated into the document.

It should also be taken into consideration that Members of Parliament and competent committees can organise public hearings on proposed new legislation to obtain necessary information, professional opinions, and comments from interested parties regarding the draft. The public hearing procedure is regulated in Articles 83-84 of the National Assembly Rules of Procedure. The application of the principles stated above is necessary when establishing the public hearing topic and drafting the list of invitees in order to achieve full participation of the most marginalised groups or CSOs who are fit to serve as mediators between these groups and the National Assembly. Persons in such groups fall into the category of persons "whose presence is of significance for the topic of the public hearing." However, it is not only important that they are invited to the public hearing session, but also that adequate time for participation in the debate is allotted to them so that their participation can be meaningful.

*More on participation is presented in **Annex IV**.*

After the public hearing has been conducted, the Committee Chair then sends information regarding the public hearing to the Speaker of the National Assembly, committee members, and public hearing participants. Here it is essential that such information contains an overview of the presentations, positions, and proposals put forth at the public hearing session by representatives of the most marginalised groups. It is also necessary to make this information available in a timely and adequate manner in the context of an appropriate timeframe, so that public hearing participants would be able to submit written complaints against it.

Evaluation and oversight

Once an adequate law has been passed, it is important that accompanying bylaws apply the LNOB principle, as the aim of such documents is to further detail solutions contained in the respective Law. Among other things, the National Assembly also performs an oversight function, i.e., the monitoring of the performance of legislative solutions and policies. Hence, National Assembly Committees can set up a public debate in order to monitor and enforce laws. Doing so would enable the further inclusion of all interested parties in the debate on individual issues. Any such public debate should be set up in a manner that enables the full participation of representatives of the most marginalised groups, as explained previously in point 4.

In regard to public policy acts, their enforcement is monitored in accordance with the mechanism set forth in the public policy act itself or by another relevant planning document subject to monitoring.

Special attention must be paid to measuring the performance of measures focused on improving the position of members of groups that are at the highest levels of risk of exclusion, or have who have already been excluded from mainstream society. This monitoring should be undertaken through the integration of quantitative and qualitative policy performance indicators.

In the context of the evaluation and oversight of laws, the competent proponent conducts an *ex-post* policy impact assessment, referred to in point 4.3.1., that should be presented to representatives of the

targeted group while enabling dialogue on its actual performance.

Identifying, understanding, and employing indicators measuring the level of the exercising of human rights in a country is necessary for the preparation and evaluation processes to succeed. Here, it is particularly necessary to pay attention to sustainable development indicators relevant to the respective strategic or legislative act(s).³⁶ There are three types of such indicators:

1 Structural Indicators - measure the level of commitment to human rights and non-discrimination. These indicators not only address whether a country has ratified a certain international document, but also whether it has passed any further necessary legal hurdles and is being enforced by the necessary laws.³⁷

2 Process Indicators - measure a country's investment in achieving human rights, reflected in whether the country has allocated adequate funding so that results can be achieved in regard to its commitments, whether it has established relevant institutions and social care services, and whether it has provided adequate training to its civil servants.³⁸

3 Result Indicators - measure specific results and the extent to which a country's efforts, in terms of concrete measures, have led to improving the actual exercising of human rights; e.g., whether access to clean potable water has been provided to specific

36 Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development.

37 Example: the structural indicator in a situation involving Roma women/girls would be whether the International Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of Racial Discrimination, and other relevant international agreements have been ratified.

38 Example: the process indicator in the analysis of a situation involving Roma women/girls would be, for example, the level of budget funds or the existence, and degree, of cooperation with Roma mediators.

vulnerable groups in a country, or a specific part of the country, where this problem has been documented as most pronounced.³⁹

For example, the ratification of the Convention for the Elimination of All Forms of Discrimination Against Women, as an international document focusing on fighting discrimination against women, should include: the relevant legal and political framework introducing provisions in this field; the allocation of adequate budget funds; the integration of the gender responsive approach; and the ensuring of access to relevant legislative acts safeguarding against discrimination against women and warranting effective protection for women who need it, etc.

All of the above indicators should be included in a situational analysis and the evaluation of legislative and policy acts.⁴⁰

The actual reporting and publishing of the evaluation must be participatory and must include the most vulnerable groups and those at the highest risk of poverty and exclusion, in order to facilitate actual dialogue and hear from the affected parties regarding which measures have proven efficient and which not, and in which areas existing and further specific measures and activities need to be focused.

This above comment relates both to interim reports on implementing strategic acts and the final evaluation, and is particularly important considering that experts working on setting the vision and the desired change in a society are frequently not adequately connected to the targeted social group, which can lead to proposed solutions that do not adequately correspond to the actual situation in which a certain group lives, which can therefore result in the further aggravation of their position. Thus, it is important to verify the true extent of the adequacy of the proposed measures and - if they are deemed adequate - the extent of their implementation and of the desired change. This process must also be decentralised and delegated to the levels most accessible to those it affects, especially as many vulnerable groups often lack mechanisms to directly address authorities who issue public policies and legislation. As persons at risk of poverty and exclusion are on the margins of society, applying the principle of LNOB should inherently result in far greater accessibility of decision makers to targeted groups.



39 Example: the result indicator in the analysis of a situation involving Roma women/girls would be, for example, the employment rate, school dropout rate, etc., of Roma women.

40 See more on indicators in Human Rights Indicators: A Guide to Measurement and Implementation, OHCHR, 2021; A Human Rights Based Approach to Data, available at: <https://www.ohchr.org/en/instruments-and-mechanisms/human-rights-indicators/documents-and-publications>.

07

Checklists

When mapping marginalized groups and considering their situation in the framework of adopting a new piece of legislation or public policy act, the following factors must be considered:

Existence of discrimination/barriers:

A) Personal characteristics that can be the basis for discrimination:⁴¹

- | | |
|---|---|
| ✓ Race | ✓ Genetic specificities; |
| ✓ Skin colour | ✓ Health status; |
| ✓ Ancestry | ✓ Disability; |
| ✓ Citizenship | ✓ Marital and family status; |
| ✓ National affiliation or ethnic background | ✓ Criminal record; |
| ✓ Language | ✓ Age; |
| ✓ Religious or political beliefs | ✓ Appearance; |
| ✓ Sex | ✓ Membership in political, trade union, and other organisations; |
| ✓ Gender | ✓ Other real and/or perceived personal characteristics; |
| ✓ Gender identity | ✓ Discrimination against individuals based on two or more personal characteristics when the impact of individual personal characteristics can be differentiated (multiple discrimination); |
| ✓ Sexual orientation; | ✓ Discrimination against individuals based on two or more personal characteristics when the impact of individual personal characteristics cannot be differentiated (intersecting discrimination); |
| ✓ Sexual characteristics; | |
| ✓ Level of income; | |
| ✓ Financial situation; | |
| ✓ Birth; | |

⁴¹ These are personal characteristics identified in the Law on the Prohibition of Discrimination.

B) Possible severe forms of discrimination:

- ✔ Discrimination that is committed a number of times (repeated discrimination) or is committed over an extended period (extended discrimination) against one and the same individual or a group of persons;

- ✔ Discrimination that results in severe consequences for the individual discriminated against;

C) Possible barriers these groups face resulting in their disenfranchisement:

- ✔ Certain groups that have been excluded or marginalised, or hindered from exercising a certain right due to, e.g., a bylaw containing a complex procedure by which a certain number of people who do not belong to any marginalised groups relinquish the exercise of said right;

D) Special cases of discrimination, such as:

- ✔ Discrimination in the course of proceedings conducted before public authorities;

- ✔ Discrimination in the sphere of labour;

- ✔ Discrimination in the provision of public services and in the use of premises and spaces;

- ✔ Discrimination in the sphere of education and professional training;

- ✔ Discrimination on the grounds of health status;

- ✔ Discrimination in the sphere of housing;

In addition to the mapping, an impact assessment related to special measures introduced to achieve full equality can be conducted through:

- ✔ A comprehensive situational analysis in the sphere subject to regulation with a special reflection on socio-economically vulnerable persons;

- ✔ A necessity and proportionality assessment of the intended amendments to the regulation from the standpoint of respect for the principle of equality and the rights of socio-economically vulnerable persons;

- ✔ A risk assessment of the rights, duties, and legally based interests of persons;

Initiating a proposal for the adoption of a new law or public policy document:

- ✔ The proponent prepares a baseline study and while considering the motion in regard to including groups at risk of being left behind;

- ✔ The Public Policy Secretariat of the Republic of Serbia and the Legislative Secretariat undertake to ensure that the LNOB principle is incorporated in priority-setting and the achievement of the Government's strategic goals;

- ✔ The Government Annual plan considers the LNOB principle from the standpoint of adopting appropriate acts and their prioritization;

- ✔ The initial needs assessment for passing or amending new legislative or strategic acts is based on five key factors: discrimination, geography, shock and fragility, governance, and socio-economic status, in order to identify groups exposed to severe and multiple discrimination and those who are at risk of being left behind, based on which the field of focus, in terms of planning, can be determined; it should also be incorporated in the rationale of the decision for appointing and building a working group;

Inclusion of the LNOB principles during the formation of the working group:

- ✔ The working group contains human rights and non-discrimination experts actively engaged in analysing the legislative and/or constitutional framework in Serbia and the international/comparative law framework;
- ✔ The working group has equal gender representation;
- ✔ The working group includes representatives of CSOs that have previous experience in working with the targeted group(s) covered by the law or policy;
- ✔ Pluralism is present in the composition of the CSOs and the academia included in the working group;
- ✔ The expert group includes experts in non-discrimination and poverty reduction;

Inclusion of the LNOB principles when selecting a CSO that participates in the work of the working group and the consultative process:

- ✔ A policy on the participation of the members of groups they represent (women, children, the elderly, LGBTI persons, persons with disabilities, etc.);

- ✔ A code of ethics prohibiting discrimination and harassment, including sexism and sexual harassment;
- ✔ Adequate gender equality in the CSO;
- ✔ Members of relevant vulnerable groups included in the Management Board and participating in the decision-making mechanism of the CSO;
- ✔ Members of vulnerable groups represented in the administration of the CSO (director, manager, officer, coordinator, etc.);
- ✔ Representatives of vulnerable groups equally represented among the staff;
- ✔ Developed internal training mechanisms on discrimination and gender equality and/or concerning gender equality issues in the training programmes implemented by the CSO;
- ✔ Sufficient qualified staff for the implementation of project activities in the fields of human rights and gender equality;
- ✔ Staff training in the fields of human rights and gender equality that is regular and updated;
- ✔ Promotion and advancement that empower women and support gender equality in the programmes, policies, structures, and employment practices of the CSO, thus creating opportunities for women and girls;
- ✔ Openness for and in communication with group members (consultations, meetings, visits to the community, etc.);
- ✔ Consultation/cooperation with organisations specialising in various relevant thematic areas, depending on the organisational strategy (such as CSOs specialising in gender equality/ children's rights/rights of persons with disabilities/refugees, etc.), during the development of projects/activities and the coordination of the activities of the CSO;

- ✔ The capacity to collect and analyse disaggregated data;

- ✔ The ability to conduct regular and participatory systemic surveys/gender analyses;

- ✔ The capacity to collect quantitative and/or qualitative gender sensitive data;

- ✔ A structured and regular monitoring and evaluation mechanism, distinct from project-specific monitoring and evaluation;

Situational analysis / Analysis of the overview of the situation

Applying the LNOB principle when collecting existing data implies:

- ✔ The initial situational analysis takes the LNOB principle into consideration, answering questions as to which groups have been left behind and/or which are facing intersectional deprivation;

- ✔ Adequate method selection is employed in regard to situational analysis, causal analysis, stakeholder analysis, environment analysis, etc.;

- ✔ The analysis is based on the data from the following sources and/or entities:

- ✔ [The Statistical Office of the Republic of Serbia](#);

- ✔ [Sources from other public authorities \(e.g., relevant line Ministries\)](#);

- ✔ Reports from national independent bodies (the [Commissioner for the Protection of Equality](#), the [Protector of Citizens - Ombudsman](#));

- ✔ Reports from respected, relevant national CSOs and academic institutions;

- ✔ Reports from respected, relevant international CSOs;

- ✔ Reports from international monitoring bodies, such as:

- [UN treaty bodies](#) (committees);
- The Committee on the Elimination of Racial Discrimination;
- The Human Rights Committee;
- The Committee on the Elimination of Discrimination Against Women;
- The Committee on Economic, Social and Cultural Rights;
- The Committee Against Torture;
- The Committee on the Rights of the Child;
- The Committee on the Rights of Persons with Disabilities;
- The Committee on Enforced Disappearances;
- The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Mechanisms of the UN Human Rights Council (universal periodic review and special procedures);
- Voluntary National Reports (VNR);
- Reports from the [International Labour Organization](#);
- Jurisprudence of the European Court of Human Rights;
- Case law of the [European Committee of Social Rights](#) (monitoring the Revised European Social Charter);
- Reports from the [Committee of Experts](#) (monitoring the European Charter for Regional or Minority Languages);
- Reports from the [Advisory Committee](#) (monitoring the Framework Convention for the Protection of National Minorities);
- Reports from [GREVIO](#) (monitoring the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence);
- Reports from [GRETA](#) (monitoring the Convention on Action against Trafficking in Human Beings);

- Reports from [CPT](#) (monitoring the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment);
- Reports from [ECRI](#) (European Commission against Racism and Intolerance (monitoring its general policy recommendations));
- Report of ENNHRI (European Network of National Human Rights Institutions);
- Data published by [FRA](#) – the EU Agency for Fundamental Rights;
- Available data from [UNECE](#) – the UN Economic Commission for Europe, especially the sustainable development goals (SDG) dashboard;
- All relevant disaggregated international surveys, such as MICS (UNICEF), DHS, Eurostat;

Inclusion of LNOB principles in the collection of relevant data:

- ✔ Establishing the need for data when data is lacking entirely or to a problematic degree (either no or limited data or no or limited disaggregated data, which would enable data users to compare population groups and understand the situations that certain groups are in, can be obtained);
- ✔ Conducting research by a relevant work/expert group or a selection of relevant stakeholders;
- ✔ The research is based on the following principles:
 - The research is based on the systematic HRBA to data in all research stages: participation, data disaggregation, self-identification, transparency, privacy, accountability;
 - Selected methods of collecting data take into consideration stereotypes and social and cultural factors that cause discrimina-

tion and deprivation;

- The researcher(s) has the resources to undertake data collecting;
- The researcher(s) has the knowledge and capacity to collect data;
- ✔ Data collecting includes free, active, and essential participation of relevant stakeholders, especially groups that are at risk of being left behind;
- ✔ Adequate methods of collecting data have been selected (face-to-face interview, telephone call, online surveys, focus groups, etc., combined methods, etc.);
- ✔ The possibility of directly contacting certain groups has been considered, as has the method by which this is to be carried out (meetings, online consultations, visits to the community, etc.);
- ✔ The participation of relevant groups is proactive and on-going (there are advisory groups that provide regular engagement with vulnerable persons, contact persons accountable for information collecting, etc.);
- ✔ If establishing communication with certain groups is not possible (for example, if the social stigma and negative stereotypes create negative consequences for public identification with the group or if the group is so marginalised and/or in such a disadvantaged position that there is a lack of access, possibility, or resources for their active engagement in participatory processes), then the researcher(s) should find other ways to collect information about the group at risk, which should be based on the principles listed below:
 - ✔ Participant selection and the group engagement process and decisions are clear and transparent;
 - ✔ Data quality is ensured bearing in mind the following elements:

- Data relevance: capacity of the collected data to satisfy the demands and needs of data users and their relevance to the implemented analysed intervention;
- Disaggregating data to the greatest possible extent;
- Data accuracy: the level of the collected data should be precise to the situation being examined;
- Data timeliness: the time between the moment of data collecting and the phenomena recorded by the data should be appropriate, while deadlines for analysis should be respected and the collected data published in a timely manner;
- Data clarity: collected data is presented in an easily understandable way for all users and followed up by appropriate explanations;
- Data comparability: the data enables the comparison of results or efficiency over time and in different contexts;
- Data curation: the data analytics employed is accurate in terms of form and content;
- Data access: the presence of a facility to determine the existence of certain information and the appropriateness of forms or media through which the information can be accessed;
- The choice of respondents is appropriate;
- Respondents define themselves and have the ability to reveal or withhold information Regarding their personal characteristics;
- Data collecting activities are conducted in line with the 'do no harm' principle;
- Characteristics relevant to personal identities are required only when this is needed and appropriate;
- Any reply from respondents is taken seriously;
- The data are protected and private, maintaining the confidentiality of personal data and individuals' replies;

- The data collecting process is transparent and the obtained data is shared with groups participating in the process in an appropriate manner;
- The data is transferred and shared as quickly as possible after being collected;
- Data analysis is carried out according to the purpose of the process of their collection and interpretation;

Applying the LNOB principle in data preparation entails identifying and/or analysing:

- ✔ The reasons and causes for the exclusion of certain groups (relying on various sources of credible information);

- ✔ Relevant fields where deprivation occurs;

- ✔ Specific legal, economic, and social inequalities in the relevant field;

- ✔ The situation from the viewpoint of exercising various rights;

- ✔ Measures to improve the position of groups at risk of exclusion;

- ✔ The interrelated nature of human rights;

- ✔ Progress monitoring indicators (these need to be realistic and properly monitor achieved progress);

- ✔ The characteristics, interests, and expectations of groups or individuals interested in maintaining the status quo;

- ✔ Those responsible for solving a given problem in terms of rights and duties;

- ✔ The funding necessary for the implementation of the proposed measures with a particular emphasis on identifying the sources of funding;

Conducting consultations and public hearings with full application of the LNOB principles:

- ✔ Organizing consultations and/or a public debate even when it is not mandatory;

- ✔ E-consultations and e-government portals are organized in a manner that secures meaningful participation and inclusion of the LNOB principle;

- ✔ The consultative process is open and enables effective public participation;

- ✔ The proponent reviews suggestions presented by interested parties and target groups during consultation rounds and updates the text according to the comments offered in order to enable meaningful participation;

- ✔ A reasonable deadline is set for organising and conducting a meaningful and participatory public debate;

- ✔ Posting a public call for participation in a public debate with its agenda on the proponent's website and e-government and e-consultations websites which makes it accessible to all, including persons with disabilities and vision-impaired persons;

- ✔ The invitation to participate in a public debate is sent out directly to representatives of relevant groups at risk of being left behind or to credible CSOs dealing with their rights;

- ✔ Reasonable deadlines are established for the sending of initiatives, proposals, suggestions, and comments on the text, as well as regarding the duration of the public debate when it is about fields of exceptional importance from the human rights standpoint;

- ✔ The manner and method of conducting a public debate is such that it enables the full participation of groups at risk of being left behind and/or credible CSOs and individuals advocating for their interests;

- ✔ Adequate time is designated at the debate for a specific dialogue on whether certain relevant proposed solutions should or should not be adopted and what are the respective reasons for any comments offered from the standpoint of groups at risk of being left behind;

- ✔ The report on the conducted debate contains proposals and suggestions from groups at risk of being left behind and representatives of credible CSOs advocating for them;

Evaluation and supervision:

- ✔ Ensuring that all subsequent and corresponding bylaws respect and adhere to the LNOB principle;

- ✔ Ensuring that the legislative or public policy act monitoring mechanisms respect and adhere to the LNOB principle;

- ✔ Measuring the impact of measures focused on improving the position of members of groups at the highest risk of exclusion, assisted by quantitative and qualitative indicators for public policy performance measurement;

- ✔ Identifying relevant baselines, benchmarks, and indicators for measuring progress and enabling comparisons in the progress of equality over time, with data used to measure the progress of particular vulnerable groups (rather than just progress averages);

- ✔ Paying special attention to intersecting grounds (gender, income, age, disability, etc.);
- ✔ Reporting and publishing the results of the implementation of public policy acts (evaluation) in a participatory manner, including involving the most vulnerable groups and those most at risk of poverty and exclusion, to enable actual and constructive dialogue;
- ✔ Providing oversight or an objective assessment of the goals, achieved outputs, activities planned for implementation, and results;

✔ **Assessing relevance:** Did the implementation of the law or public policy act efficiently contribute to creating favourable conditions for equality and non-discrimination? Did it answer practical and strategic needs? Was the treatment of the issues of equality, non-discrimination, and deprivation logical and coherent during the implementation stage? Were adjustments made to offset external factors (e.g., an economic crisis, the election of a new government, crises in society, etc.) that impacted social relations?

✔ **Assessing efficiency:** Was implementation efficient in terms of equality and non-discrimination? Have funds and resources been used effi-

ciently to achieve results in terms of increased benefits for groups at risk of discrimination? Did the results prove efficient in achieving substantive equality? Did the outputs contribute to achieving planned results and outcomes? Did stakeholders benefit from the interventions in terms of building institutional capacities and developing competencies among civil servants?

✔ **Assessing impact:** What is the impact on wider policies and processes for improving equality and non-discrimination? For example, did it succeed in reducing violence against certain groups?

✔ **Assessing sustainability:** Will the achievements in equality levels outlive the end of the funding of activities with the expiration of the public policy act? Did a sustainable improvement of equality occur? To what extent were government capacities built and institutionalized?

✔ **Assessing the accountability of duty-bearers:** Did the duty-bearers become more aware of their duties and more capable to fulfil them?

✔ **Assessing the empowerment of rights-holders:** Did members of groups at risk of exclusion become more aware of their rights, better organised, and/or more able to demand their rights effectively?



ANEX I.

Similarities and differences between the HRBA and LNOB principles

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.

It is based upon the following key principles:



participation – everyone is entitled to actively participate in decision-making processes affecting the exercise of their rights;



accountability – duty-bearers are held accountable for nonfulfillment of their obligations towards rights holders, and when human rights are violated, there should be efficient legal remedies in place;



non-discrimination and equality – all individuals have a right to exercise their rights without any discrimination, which should be prohibited, prevented, and eliminated;



empowerment – everyone has a right to claim and exercise their rights; individuals and communities need to understand their rights and participate in the development of policies which affect their lives; and



legality – approaches should be in line with the legal rights set out in national and international instruments.

Closely linked to HRBA, the LNOB principle is the central mission of the 2030 Agenda, designed to tackle inequalities and discrimination. Since the 2030 Agenda is explicitly based on international law, it also includes human rights and is based on the same principles.

HRBA is based on the legal commitments of countries in the field of human rights that must be fulfilled. Hence, through its application, all development plans, policies, and processes should be accountable to a system of rights and should correspond to duties enshrined in international law, including civil, cultural, economic, political, social rights, labour rights, and the right to development. In contrast, LNOB represents a political commitment of countries that have adopted the 2030 Agenda.

While HRBA entails a clear three-part process for the analysis and assessment stages in programming to identify who has been left behind and why (based on a causality analysis, role analysis, and capacity gap analysis), the LNOB principle focuses even more deeply on inequalities, including multiple forms of deprivation, disadvantage, and discrimination. It also invokes and involves priority-setting through the pledge to 'reach the furthest behind first.' Hence, the LNOB principle represents a methodology that goes hand in hand with HRBA and looks to identify those who are left behind and the reasons for their exclusion, including identifying the root causes.

HRBA focuses on the empowerment of rights holders to exercise their rights and become active

partners, ensure their own voice in the process, mobilize, etc. HRBA also focuses on the capacity development of duty-bearers to meet their obligations and on empowering rights-holders to claim their rights. Therefore, HRBA methodology brings to the LNOB approach a focus on rights, empowerment, meaningful participation, and capacity development. Based on HRBA, the international human rights protection mechanisms should serve as an invaluable tool for strengthening the accountability of governments to address marginalization and inequality in society.

HRBA and LNOB reinforce each other as they build on common characteristics, such as the need for

disaggregated data to identify who is left behind and why, and to determine whether development interventions are reaching these groups and resolving the essential issues, i.e., addressing the gap(s). For HRBA and LNOB, their central principles are equality and non-discrimination, implying the need to design and adopt proactive measures to address existing inequalities. Also, both recognize dealing with gender inequalities as a matter of priority. Finally, both principles postulate that the free, active, and meaningful participation of groups at risk of being left behind is necessary throughout the entire planning and programming process.

Differences between the HRBA and LNOB principles⁴²

HRBA

- programming tool, pointing to development challenges in the exercise of human rights
- based on legal obligations contained in international law
- a three-step process for the analysis and assessment of who is left behind and why: causality analysis, role analysis, and capacity gap analysis, focused on rights holders and duty-bearers

LNOB

- highlight the causes of discrimination, marginalized groups, and those furthest behind
 - require disaggregated data
 - focus on the principles of human rights, non-discrimination, equality, and gender equality
 - call for free, active, and meaningful participation
- leading principle of the 2030 Agenda
 - represents political commitment to the fulfilment of the 2030 Agenda
 - focuses on inequalities and prioritizing those furthest behind. The steps are:
 1. Who is being left behind? Gathering the evidence;
 2. Why? Prioritization and analysis;
 3. What? What should be done;
 4. How? How to measure and monitor progress;
 5. Advancing accountability for LNOB;
 - focused on the most vulnerable and marginalized and the interventions needed to address their situation

42 Leave No One Behind, UNSDG Operational Guide for UN Country Teams, available at: <https://unsdg.un.org/sites/default/files/Interim-Draft-Operational-Guide-on-LNOB-for-UNCTs.pdf>.

ANEX II.

The path of passing legislative and strategic acts

I. THE LAWMAKING PATH

The law-making procedure is regulated in the Constitution of the Republic of Serbia, the Law on the National Assembly, the National Assembly Rules of Procedure, and the Government Rules of Procedure. Bills can be proposed by any Member of the Parliament, the Government, the Autonomous Province Assembly, and not less than 30,000 voters, as well as the Protector of Citizens (Ombudsman) and the National Bank of Serbia, in their spheres of competence.

1. Standard procedure

A bill is a working legislative document drafted by the Government and includes a rationale. A bill is primarily drafted in the relevant line Ministry, through the formation a working group comprising lawyers and other competent staff, assisted in their work by scientists, experts, and all others who can impact the quality of the text of the draft.

A public debate about the bill is normally organized to enable interested parties an opportunity to provide their objections to the draft act. The public debate is mandatory when drafting a law that will significantly change the regulation of an issue or regulate an issue of particular interest to the public.

The Government accepts the draft law by establishing a proposal for legislation, which is then submitted to the National Assembly. The bill consists of two parts - the text of the proposal and the rationale. The bill is proposed in the form in which it was submitted, in accordance with the National Assembly Rules of Procedure and the Unified Drafting Methodological Rules.

The rationale of a bill must contain the following: the constitutional, i.e., legal basis, for the adoption of the

bill; the reasons for the adoption of the bill; an explanation of basic legal institutes and individual solutions; the estimate of financial resources necessary for the implementation of the act, including sources of said resources; the general interest for which retroactivity has been suggested if the proposed bill includes retroactive provisions; reasons for the adoption of the bill in an urgent procedure if this has been suggested for the adoption of the law; reasons, if applicable, for the stipulation that the law should come into force earlier than eight days after its publication in the *Official Gazette of the Republic of Serbia*; and a review of the provisions of the law currently in force that is being amended, if applicable. The proponent submits a statement with the bill which declares one of the following: that the proposed legislation has been harmonized with European Union regulations, as well as a table outlining the proposed legislation's harmonization with EU regulation; that there was no obligation to harmonise it; or that it was not possible to harmonize the bill with European Union regulations. The rationale of a bill can also contain a regulatory impact analysis, containing appropriate explanations set out in the Rules of the Procedure, such as: who will be affected by the solutions in the regulation and how; whether the positive effects of passing the legislation are such as to justify the costs it will create; whether the law supports the creation of new economic operators on the market and boosts competition, etc.

The Committee on Constitutional and Legislative Issues considers every bill in terms of its harmonization with the Constitution and the legislative system of the Republic of Serbia. The European Integration Committee considers the bill in terms of its harmonization with European Union and Council of Europe legislation. Other Committees consider the bill in accordance with their scope as set out in the Rules of Procedure.

The purpose of conducting public hearings is to enable all committee members and other MPs (Deputies in the National Assembly) to obtain all relevant and necessary information, expert opinions, and stakeholders' comments regarding the bill in the Assembly procedure, the enforcement of adopted laws, and issues from the competent committee's scope.

The National Assembly procedure of considering and adopting the bill begins with the debate in principle (first reading). During the debate in principle, MPs discuss the bill from the standpoint of the need and reasons for its adoption, as well as the principles that the proposed solutions were based on. A debate in principle on a bill is held at a session of the competent committee prior to being considered at a National Assembly sitting. If the competent committee and the Government - provided it is not the proponent - propose to the National Assembly that they accept the bill in principle, they have a duty to state whether the bill is to be accepted as a whole or with certain changes proposed in the form of amendments. Following a proposal from an MP, the National Assembly may decide to undertake a joint debate in principle on several bills that are on the agenda of a sitting and are interconnected or if the proposed solutions are mutually linked.

After finishing the debate in principle on all bills on the agenda, the National Assembly moves to debate the details of the bills. The debate in detail (second reading) is a discussion on each of the articles in the bill to which amendments have been submitted and on amendments proposing the inclusion of new provisions. The detailed consideration of the bill is conducted in the same way, in the session of the competent committee. A minimum of 24 hours must elapse between the closing of the debate in principle and the commencement of the debate in detail on a bill. Only the competent committee may submit amendments to the bill within the interim period. The proponent reserves the right to withdraw the bill from procedure until the end of the bill reading procedure in a National Assembly sitting.

The National Assembly decides on the bill in principle, in detail, and as a whole on the same voting day. If the bill is endorsed in principle, the National Assembly moves to decide on individual amen-

dments. Finally, the Members of Parliament vote on the bill as a whole.

The National Assembly makes decisions by the majority vote of the Members of Parliament in a setting where the majority of all Members of Parliament are present. Any such decision must be approved by a majority vote of the total number of Members of Parliament (126 MPs).

II. THE PATH OF PASSING STRATEGIC ACTS

The procedure for the adoption of strategic acts is regulated by the Law on the Planning System.

Public authorities and organizations, local government bodies and organizations, citizens, economic operators, citizens' associations and other civil society organizations, research organizations, and other relevant organizations may submit an initiative for the amendment, development, and adoption of a public policy act if respective the public policy is deemed pertinent to them. The initiative should contain a brief overview of the change that should be achieved through developing, adopting, and implementing a public policy act, its elements and their cause-and-effect connections, and the goals that intended to be achieved. If the authorized proponent determines that an initiative is valid and decides to undertake further action on its account, then the proponent is obligated to post it on its website no later than 30 days from the date of receiving it and update the public on any actions taken accordingly. If the authorized proponent estimates that an initiative is not valid, the proponent is to inform the submitters of the initiative. An initiative can be submitted to the Government or a public administration competent authority through a public administration authority competent for the coordination of public policies, which then processes the initiative and forwards it to the public administration competent authority for further action, with a duty to inform the submitter of the initiative on the actions taken.

Public policy acts are developed in accordance with the results of an *ex ante* impact analysis and an *ex post* impact analysis of standing public policy

acts and regulations in the relevant field. An *ex ante* impact analysis must be conducted prior to issuing a decision to develop a public policy act and consists of the following steps:

1. an overview of the current situation;

2. identifying the change that should be achieved by implementing policy measures, its elements, and their cause-and-effect relation;

3. affixing the public policy goals and objectives, as well as performance indicators that are to be used to gauge the level of accomplishment of the goals;

4. identifying options - possible measures or groups of measures - to achieve the stated goals;

5. analysing the impacts of these options - possible measures or groups of measures - and the risks attached to their implementation;

6. selecting the best option or an optimum combination of the considered options;

7. identifying the resources necessary to implement the public policy measures, monitor its implementation, and evaluate the policy's performance and the potential risks in policy implementation.

In the course of the *ex ante* public policy impact assessment, proponents of public policy acts conduct consultation rounds with stakeholders and target groups, collecting and processing data with the aim

of proposing the most suitable option or the most suitable combination of considered options. During public policy act development, the Government closely regulates the scope, process, and monitoring of the impact assessment implementation and, in certain cases where applicable, stipulates that the analysis of a public policy act is not necessary.

The authorized proponent has a duty to inform the public on the commencement of the public policy act drafting stage by posting it on its website, and if the authorized proponent is a public authority, the notice shall also be posted on the e-government portal, seven working days prior to the date of commencement. The authorized proponent shall present the findings and data on the scope and methods of the *ex-post* public policy impact assessment for previously implemented policies covered by the public policy act, providing the competent legislator with relevant data so that it may form a decision on the matter, as well as so that the public would be familiarised with the reasons behind adopting such a document.

The authorized proponent has a duty to post the findings of the implemented impact assessment, together with the draft public policy act, on its website, in integral form, no later than the date of the public debate. After the public debate is complete, the authorized proponent has a duty to update the public policy act and the findings of the implemented impact assessment in accordance with the results of the debate and to post the updated version of the act and findings on its website; if the authorized proponent is a public authority, the act and findings shall also be posted on the e-government portal no later than seven working days before submitting them to the competent legislator for consideration and adoption.

The authorized proponent has a duty to enable the participation of all stakeholders and target groups in the consultation process implemented in the course of public policy act development. Depending on the scope of the public policy act, the following stakeholders and target groups from the ranks of citizens and economic operators may be involved in the consultation process: citizens or business associations and other civil society organizations; research, professional, and other relevant organiza-

tions; representatives of public bodies, local authorities, and other participants involved in the planning system for the implementation of the policy or on whom the policy is being implemented. The authorized proponent considers suggestions presented by stakeholders and target groups during consultation rounds. The authorized proponent informs the participants of consultations regarding the results of the implemented consultations, and particularly regarding the reasons why certain suggestions have not been included in the public policy act. The authorized proponent presents information on the results of the implemented consultation rounds, especially including data on the consulted parties, the scope, and the methods of the consultations, the issues discussed during the consultations, and objections, suggestions, and comments that were considered and those that were not accepted, as well as reasons for their non-acceptance within the public policy act. If an impact assessment is not conducted during public policy act development, information regarding the results of any conducted consultation rounds is attached to the public policy act draft as a separate annex. The authorized proponent has a duty to post information regarding the conducted consultation rounds on its website no later than 15 days after closing the consultation rounds. Bearing in mind the results of the consultations conducted during the public policy act development stage, the authorized proponent may decide to include representatives of stakeholders and target groups in the working group assembled for the developing of the document. The detailed procedure and methods of conducting consultations shall be regulated by the Government.

The public authority competent for public policy coordination may indicate to the public authority which is the authorized proponent that it implement a certain method of consultations during consultation rounds and to include certain stakeholders and target groups in the working group developing the public policy act. Any stakeholder or target group can submit an initiative for the submission of a motion to the public authority competent for public policy coordination. If

the public policy act is being adopted in connection with the Republic of Serbia's accession negotiations with the European Union, the public authority shall conduct consultation rounds in accordance with the legal framework for conducting negotiations for the Republic of Serbia's accession to the European Union.

The authorized proponent has the duty to conduct a public debate on the public policy act and prepare a report concerning the conducted public debate session before submitting the document for consideration and adoption. The report must specify the stakeholders and target groups that participated in the public debate, the suggestions presented during the public debate, whether and how those suggestions were incorporated into the draft public policy act and, if they were not, the reasons for why this was not done. A report on the implemented public debate shall be attached to the draft public policy act. The authorized proponent shall post a report on the implemented public debate on its website, and if the authorized proponent is a public authority, the report is also to be posted on the e-government portal no later than 15 days after the closing of the public debate. The manner of conducting public debates on public policy acts and their duration, and those cases in which the public debates for a public policy act are not held, as well as the template report on implementing the public debate, shall be closely regulated by the Government.

Any authorized proponent that is a public authority has the duty to submit the findings of the impact analysis of the implemented public policy act and the opinion of the public authority competent for public policy coordination regarding the comprehensiveness and quality of the conducted impact analysis within the proposed public policy act submitted to the Government for adoption and within deadlines set out in the Government Rules of Procedure.

The Government closely regulates the manner of public policy implementation monitoring, ex-post analysis, and performance evaluation.

ANEX III.

Types of strategic acts in the Republic Of Serbia

I. Development planning documents

1

Development Plan – is the top-tier long-term development planning document adopted for a period of not less than 10 years and is adopted by the National Assembly. The analysis of Serbia's development potential is conducted during the plan's development, and a report on the impacts of the implementation of the Plan is prepared in three-year intervals.

2

Investment Plan – is a development planning document adopted by the Government for a period not shorter than 7 years. This document is accompanied by an annual report on the implementation of the Plan and a report on the impacts of its implementation in three-year intervals.

3

Autonomous Province Development Plan – is a long-term development planning document adopted by the AP Assembly for a period not shorter than 7 years. The Plan contains an overview and analysis of the existing situation, a mission (i.e., the desired situation), priority development goals that should be achieved, an overview, and a short description of appropriate measures which are further elaborated in relevant public policy acts. Impact reports are prepared in three-year intervals.

4

Local Self-Government Development Plan – is a long-term development planning document adopted by local self-government assemblies for a period not shorter than 7 years. Impact reports on the implementation of the Plan are prepared in three-year intervals, while reports on the implementation of the Plan are conducted annually.

II. Public policy acts



III. Other planning documents

Other planning documents include: a Government Programme, an Action Plan for the Implementation of a Government Programme, a Government Annual Programme of Action, and a National Programme for the Adoption of EU Acquis.

ANEX IV.

Participation in data collection and use of data

The participation of those groups at the highest risk of social exclusion and discrimination must be guaranteed in the data collecting process, including in its planning, sending, and analysis.

I. Including groups at risk of exclusion in all data collecting activities

All data collecting activities should involve the most vulnerable groups, i.e., should ensure their free, active, and meaningful participation. This duty applies to the entire data collecting process and to all data producers: from strategic planning to identifying data needs; the selection and testing of appropriate data collecting methodologies (e.g., hiring pollsters who are members of certain communities to enhance the response rate); data storage; and the distribution, analysis, and interpretation of the data. Other ways to communicate need to be found when engaging certain groups is not possible or appropriate, as in cases when it is difficult to establish communication with them, they do not trust institutions, or there is a desire on the part of group members not to publicly identify with a respective group. Where appropriate, CSOs, independent institutions, and other relevant stakeholders can participate on behalf of certain groups and provide relevant perspectives and information, provided these representative participants are competent to advocate for the interests of these groups.

II. Decision-making about participation should be transparent and fair

The processes and decisions regarding the selection of groups that are to participate in data collection should be clear and transparent. Relevant groups that express a wish to be involved in participatory processes should have access to the process. Participation is most effective when members of the most marginalised

groups have the possibility to be engaged in the actual research and data collecting and see the possibilities for their application in their own context. If needed, capacity building should be undertaken to empower vulnerable or marginalized groups participating in the process to increase their statistical literacy and understanding of the purpose and process of collecting data. Marginalized groups should be empowered not only in terms of understanding the data collecting process, but also in the use of obtained data.

Results of consultative processes should be made public. Information received from members of the public through participatory processes should be retained and properly archived to create knowledge funds to inform future policymaking. Collected information obtained in previous consultations should be reviewed and used when appropriate to avoid overly burdening data collectors, including vulnerable groups.

If groups have participated in the data collecting process, data collectors should ensure that received results are shared with these groups in a manner that is appropriate. This data 'return' should be meaningful for groups and delivered in a culturally appropriate manner, since it indicates the impact of their inputs and incentivizes their consistent use of data and engagement in data collecting activities.

III. Data collectors should proactively consider participation options and which groups to involve

In order to facilitate the participation of groups at risk of being left behind, it is necessary to first identify vulnerable groups and/or groups at the highest risk of not fully exercising their human rights. This should be done proactively, through discussion with independent human rights institutions, the Ministry for Human Rights and Social Dialogue, and relevant CSOs and experts.

The form of their participation should be decided on a case-to-case basis. Pertinent options include:

a.

Online consultations, with the provision of access to the most vulnerable groups;

b.

Public meetings, in locations that are easily accessible to vulnerable groups and with appropriate engagement to boost participation;

c.

Community visits, which can involve public meetings, meetings with key stakeholders and representatives, and discussions with community members on issues that are relevant for data collecting;

d.

Submitting motions, containing clear and transparent information on how the obtained information is intended to be used and on the decision-making process;

e.

Constant engagement and relationship building with communities, so they would be incentivized to participate, alongside establishing a dialogue, and incorporating the perspectives of relevant groups in the data collecting process;

f.

Involving relevant CSOs in thematic or advisory committees or commissions, organised by the data collector;

g.

Forming advisory groups for facilitating vulnerable groups, including regular engagement with and frequent data inputs from these groups in the process of data collecting;

h.

Setting up contact points within the organisations carrying out data collecting, and which are accountable for seeking information from, and considering and incorporating the perspectives of, marginalized groups;

i.

A formal memorandum of understanding between organisations or departments, including between national statistical services and human rights institutions, to facilitate information exchange and cooperation.

The participatory approach should improve the relevance and reliability of collected data and composed indicators. Also, it should help in addressing expressed concerns by marginalized groups, and enable the inclusion of a gender-based perspective throughout the entire process. Additionally, statistical work and work done on data collecting

should consider relationships between the sexes, their rootedness in socially-defined or culturally-defined identities, and the status, roles, and responsibilities that might be assigned to either of the sexes. Similar approaches should also be applied to other population groups, where necessary.

ANEX V.

Collecting and disaggregating data

Collecting and disaggregating data to enable group comparison in a society is part of countries' duties in achieving human rights and adequately measuring the impacts (including the unintended negative impacts that can occur) of all adopted policy and legislation, since this data can provide information on the forms of possible inequalities and discrimination, and the degree of their severity.

In order to assess a measure or activity, it is necessary to have high-quality, accessible, reliable, timely, adequate, and disaggregated data. Disaggregating data enables data users to compare population groups and better understand situations that members of certain groups find themselves in. It implies collecting data on relevant characteristics, inherently signifying that data which is more detailed than national averages are essential in identifying and understanding inequalities that exist in society.

Disaggregated statistics are crucial in formulating tailor-made and evidence-based policies, as well as in monitoring the implementation of policies, laws, the 2030 Agenda, and the national and international human rights agendas. However, a higher level of disaggregation often presents a challenge in calculating and formulating official statistics. For example, disaggregating data which can be disaggregated on two grounds - sex and financial situation, may be relatively simple to accomplish, but disaggregating data on several grounds represents a very complex exercise. It calls for large samples, which frequently leads to increased costs of research, and it can also give rise to questions regarding data quality and the timeframe required to conduct research. It also typically calls for new or strengthened partnerships in data collection, including with civil society and vulnerable groups themselves.

Therefore, discussions on this topic are timely and correspond to the contemporary discussion on 'data revolution.' Data should be disaggregated according to crucial characteristics and/or prohibited grounds

of discrimination, contained in sources from the field of international human rights law. Data collecting to enable disaggregation may require alternative approaches to sampling and data collecting.

When collecting data, it is important to apply the key principles to safeguard every person's human rights. Hence, for data collecting purposes, individuals should have the opportunity to reveal or deny data regarding their personal characteristics. Data on personal characteristics should be given by individuals to whom the data relates (at the individual's discretion). Data collecting activities should be undertaken in accordance with the human rights principle 'do no harm' - which means that existing discrimination, prejudices, or stereotypes against members of certain groups should not be created or reinforced, including not denying the existence of their identity.

Any objection coming from a person whose data is being collected should seriously be considered. Data should be collected only when and where it is necessary and appropriate. Questions about personal identity characteristics should be voluntary and provide an opportunity to persons to withhold their comments. This is particularly relevant where personal characteristics can be sensitive, such as belonging to the LGBTI community, or when they refer to medical conditions, such as a person's HIV status.

The principles that proper data collecting should be based on are the following:

1. Data disaggregation enables more detailed analysis of data to identify inequalities in society

It is very important to emphasize that traditional data collecting and analysis, which focus on national averages and run the risk of hiding fundamental disparities in society, are fundamentally lacking.

This is why it is paramount to place the disadvantaged position of marginalized groups at the centre of data collecting. Doing so should provide data that both identifies and measures inequalities among population groups. Capacities and partnerships should be developed so that countries can fulfil their duty to collect and publish data that are disaggregated according to recognized grounds of discrimination. Key grounds include discrimination based on sex, age, ethnic background, migration status or displacement status, disability, religious beliefs, civil status, income level, sexual orientation, and gender identity, among others.

Whenever possible data should be published in a format that enables the identification and analysis of multiple and intersecting inequality and discrimination. Individuals may experience discrimination and inequality due to multiple grounds (e.g., sex and disability). Data analysis based on subgroups enables a deeper understanding of discrimination. Qualitative indicators and contextual information, including the legal, institutional, or cultural status of the affected population(s), are also necessary to contextualize and enhance the understanding of the collected data. Making anonymized data publicly available represents good practice, as all stakeholders interested in a certain issue can use it for their strategies, interventions, etc.

2. Disaggregating requires collecting data more intensively

Data disaggregation relies on collecting data on personal characteristics (e.g., religion, sex) and other relevant information (e.g., location). For the data to be disaggregated properly, relevant information must be sought from all individuals within a data set (whether it be through survey samples or administrative data). Where collecting and recording information is inconsistent or incomplete, properly disaggregating the entire data set is not possible, which can lead to bias and inherently brings into question the quality and legitimacy of such data. The self-identification principle must be considered where the situation calls for it, as disaggregation often implies that data be obtained directly from indi-

viduals, and the application of this principal enables the preservation of human dignity and respect for human rights. Actual data collecting must not create or reinforce existing discrimination, stereotypes, and/or prejudices against certain groups, including the denial of their identity. Therefore, answers in surveys must be direct and they must ensure the possibility of expressing multiple identities.

The possibility to use official survey questionnaires in data collecting conducted by relevant CSOs or local mechanisms and their inclusion in official statistics should also be explored. However, the accountability of all partners should be clearly defined in this situation, especially in regard to privacy and data management. This is necessary both for the data collecting process and for the purpose of protecting respondents' interests. Applying the participatory approach and the self-identification principle can assist in enhancing the response rate among 'hard to count' or marginalized populations. This is particularly relevant for those who may experience multiple discrimination or simply be excluded from surveys, including those missing from households (e.g., people in institutions) or administrative records (e.g., undocumented migrants). In some situations, CSOs and service providers can be in a more advantageous position than the national statistical office in terms of reaching this population and collecting relevant data. Relatedly, CSOs may also be able to advise the national statistical office and other relevant authorities on engagement, participation, and data collecting methods for hard-to-reach groups.

Decisions about data collecting on especially vulnerable or marginalized groups, including 'legally invisible' groups, should be made in close partnership and/or in consultation with these groups, and with those who are credibly interested in mitigating identified risks for the group.

Collecting detailed data that enables their disaggregation also depends on the effectiveness of the data collecting and the data management systems. Disaggregation also entails that data recording systems can incorporate new items if needed. Finally, the data processing software must enable adequate data storage and diverse cross-reference tables and data analysis.

3. Disaggregation rests on the foundations of administrative systems for vital processes and statistics, and especially the population census, and may require new methodologies

The basic step in data disaggregation is the registration of birth, which is a crucial component in the legal recognition of persons before the law. A thorough and accurate system of vital statistics (birth, death, marriage, and divorce) is necessary to provide a strong and updated assessment of a population at the national and subnational levels and to maintain accurate and efficient frameworks for survey sampling. It is also frequently necessary for the enabling of the exercising of other human rights, such as the rights to education, health, and participation in public affairs.

Specific needs for data disaggregation at the country level must be considered in the planning and designing stages of a data collecting programme. Alternative sampling and approaches to data collecting should be considered when the standard sample design does not yield sufficient contributions in terms of representing the interests of a specific population.

The following methods may be used to conduct appropriate random sampling:

a.

Oversampling – increasing the number of units within a fixed sample to increase the probability of including the population of interest.

b.

Targeted sampling – projecting the sample using existing information on the geographical distribution of the group of interest. Targeted sampling can be based on census data, administrative records, information on patterns perceived by CSOs dealing with rights of certain groups, or from other sources.

c.

Comparative research of a certain group with other groups living in the area.

The following methods may be used to conduct adequate **non-random sampling**, where populations of interest cannot reliably be identified within the existing sample framework:

a.

Random route sampling – applies a relatively random selection within known geographical areas where there is a high percentage of the specific group.

b.

Respondent driven sampling, which relies on knowledge at community level and networks to develop survey samples.

c.

Individual questionnaire modules, which contrast with standard household level questionnaire modules and enable disaggregation within households.

These and other methodological approaches should be considered on a case-to-case basis, based on the participatory approach described above.

Used data cannot be abused, and may be used only for the benefit of the group they relate to and of the society as a whole, and they must ensure the right to privacy of every individual person.

ANEX VI.

Consultation methods in the rulebook on good practice guidelines to achieve public participation in drafting legislation and other regulations and acts



Focus group (Article 6)

Focus groups are formed of respondents belonging to the same interest or target group, of regulated subjects, or of law enforcers. The goal of this type of consultation is for respondents to be incentivized to present their attitudes on problems and possible measures for solving them. As a rule, focus groups have six to eight participants and a moderator, who focuses the flow of the discussion, so that all participants can have an opportunity to present both the data at their disposal and their positions. Focus group results should be presented in the form of a report on the results of the discussion, i.e., the conclusions related to the considered problems and possible measures for solving them. This consultation method provides for a detailed approach to issues and is relatively easy and quick to implement, but it cannot involve a larger number of participants. Through focus groups, subjects regulated and affected by legislation and other regulations and public acts are enabled participation in the early stages of legislative drafting.



Round table (Article 7)

A round table is a method of consultation that involves the professional public and is employed with the purpose of determining a position regarding key messages related to the preparation of the draft law. This consultation method is particularly suitable for the initial drafting stage of legislation, which implies systemic reform, with the aim of determining the reform's principles and key issues.



Semi-structured interview (Article 8)

A semi-structured interview is a method of consultation that enables individual access to respondents and a discussion on confidential and sensitive topics relevant for data collecting and facilitates the presenting of attitudes that are seldomly presented in public. The topic is broadly defined beforehand, with specific relevant questions generated during the actual, natural progression of the interview – such questions are not prepared in advance, but rather stem from the interview itself.



Panel (Article 9)

A panel is a method of consultation that implies forming groups of subjects who are periodically consulted with the use of a questionnaire. Questionnaires can be semi-structured, for those containing a section with close-ended questions and another one with open-ended questions, or they can be closed, for those comprising a fixed number of questions and possible answers. Panels are suitable for monitoring the impacts of laws.



Survey (Article 10)

Survey (Article 10)

Surveys are a method of consultation based on structured, closed questionnaires used to interview representative samples of respondents. Surveys are conducted to gauge the present situation as reliably as possible and collect the views of the greatest possible number of respondents, with the aim of obtaining quantitative data required for the analysis of individual measures. Considering that they do not enable two-way communication or direct contact, surveys are not a method of consultation used to collect reliable information on complicated and delicate matters. Surveys can be conducted online, by telephone, by mail, or through direct interviews.



Collecting comments (Article 11)

Collecting comments (Article 11)

Collecting comments is a frequently implemented method of consultation with and/or on subjects that the law directly applies to. This method implies the publication of draft legislation and/or accompanying resources to collect written comments of interested parties within set deadlines. This method is cost-effective and enables detailed opinions to be collected. The fundamental shortcoming of this method is its lack of representativeness, considering that large legal entities and associations are often the only ones with sufficient capacities for the development of comprehensive professional opinions. Also, this method typically requires a significant amount of time for the analysis of the collected comments.



