

Ref: TIGO IOR 10/2023.3845

1 March 2023

AMNESTY INTERNATIONAL SUBMISSION TO THE SIXTH MONITORING CYCLE OF THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI): SERBIA

Serbia's Social Card Law: A Tool for Discrimination

INTRODUCTION

This submission was prepared in the context of the European Commission against Racism and Intolerance (ECRI)'s sixth-cycle country monitoring work. In the submission, Amnesty International raises concerns that the new Law on Social Cards and an accompanying social card information system in Serbia were implemented without due consideration to their impact on human rights, including the right to social security and the right to equality and non-discrimination. The organisation considers that the law weakens an already inadequate social security system and, due to its disproportionate impact on the members of the Roma community, further exacerbates social and economic exclusion.

In November 2022, Amnesty International and seven other civil society organisations filed a legal opinion to support the A11 - Initiative for Economic and Social Rights-led challenge to the Social Cards Law before Serbia's constitutional court.¹ Amnesty International et al., argued that the Law violated data protection guidelines and the right to privacy due to the extensive amount of data collected and processed; that the use of algorithmic systems and automated decision-making by the Social Card system lacked transparency and the necessary safeguards and protection against possible personal data breaches and arbitrary and unfair decisions on access to social security; and raised concerns about its disproportionate and potentially discriminatory impact on Roma communities.

While this submission focuses specifically on the implications of the Law on Social Card on the right to social security and its disproportionate impact on Roma, Amnesty International's concerns about other human rights gaps of the law are detailed in the Legal Opinion on International and Comparative Human Rights Law Concerning the Matter of the Social Card Law,² which can be found in the annex.

BACKGROUND

The Law on Social Card in Serbia was adopted in February 2021 in the context of Serbia's Program of Economic Reforms 2020-2022 and was reportedly meant to ensure fairer distribution of social assistance, encourage greater social inclusion, and reduce fraud.³ It entered into force on 1 March 2022 and was originally piloted in two municipalities, Leskovac and

¹ Amnesty International, "Serbia: Social Card law could harm marginalized members of society – legal opinion", 28 November 2022, available at: <https://www.amnesty.org/en/latest/news/2022/11/serbia-social-card-law-could-harm-marginalized-members-of-society-legal-opinion/>

² Amnesty International, "Serbia: Social Card law could harm marginalized members of society – legal opinion", 28 November 2022, available at: <https://www.amnesty.org/en/latest/news/2022/11/serbia-social-card-law-could-harm-marginalized-members-of-society-legal-opinion/>

³ Serbia's Program of Economic Reforms 2020-2022, available at: https://www.mfin.gov.rs/upload/media/U1fkFH_6016ce668bd9d.pdf

Kraljevo. At the time of this submission, the Law has been rolled out in more than 150 cities and towns for use in over 80% of Centres for Social Work across the country.⁴

The Social Card Law provided for the creation of a centralised database that processes an estimated 130 personal data, including sensitive data, of individuals who are recipients or are applying for social security and for automated decision-making on applicants' eligibility for social support based on the collection and analysis of this data. The law also allowed for the processing of data of persons *related* to applicants or recipients of social security benefits to determine the latter's eligibility, further expanding the scope of the data collected and processed. Related persons who were having their data processed were not informed that this was happening nor was their consent sought for gathering and processing their information.

The Social Card information system consolidates personal data from multiple data registries, including those managed by the Ministry of Interior, Tax Administration, Pension and Insurance Fund, Employment Service, and Geodetic Institute (housing records), into a network that can be accessed by the 1,400 employees in the social protection sector, such as Centres for Social Work, Child Protection Service and Service for Protection of Veterans Affairs.⁵

While the authorities presented the Law on Social Card as a measure designed to improve access to benefits and reduce poverty, a closer analysis of the Law and the findings of local organisations assisting beneficiaries indicate that the Law on Social Card, and in particular the automated data processing system that it relies on, has had the opposite effect. In one year of implementation, thousands of people lost access to social security assistance. By excluding some of the most vulnerable beneficiaries, the law unduly restricted the right to social security and potentially undermined the right to equality and non-discrimination by having a disproportionate effect on Roma communities.

SOCIAL CARD LAW FURTHER UNDERMINES THE INADEQUATE SOCIAL SUPPORT SYSTEM

After one year of implementation, the Social Cards Law has left a significant number of existing beneficiaries without access to critical assistance in the form of social security. According to local organizations, during the pilot phase of the project between February and September 2022, around 22,000 or more than 10% of the beneficiaries were removed from the social protection system.⁶ Roma, who are among the most marginalized communities and are overrepresented in Serbia's social care system,⁷ experienced the impact of the law more severely.

The reduction in the number of beneficiaries took place in the context of increasing inflation in Serbia, which reached 15% in December 2022, and soaring cost of living, particularly affecting food and energy prices.⁸ According to the government's most recent data, over 21% people in Serbia were at risk of poverty,⁹ while 28% were at risk of poverty and social exclusion, with people living in rural areas and minorities, such as Roma, most affected.¹⁰ The 2019 Multiple Indicator

⁴ Novosti, "Socijalna pomoć i za – mrtve," 12 January 2023, available at: <https://www.novosti.rs/drustvo/vesti/1191002/socijalna-pomoc-mrtve-podizali-novac-1-134-pokojnika-budzet-srbije-ostecen-desetine-miliona-evra>

⁵ Novosti, "Socijalna pomoć i za – mrtve," 12 January 2023, available at: <https://www.novosti.rs/drustvo/vesti/1191002/socijalna-pomoc-mrtve-podizali-novac-1-134-pokojnika-budzet-srbije-ostecen-desetine-miliona-evra>

⁶ In the pilot phase of the implementation, between February and August 2022, around 22,000 or more than 10% of the beneficiaries were removed from the social protection system, most of whom were Roma. See A11 Initiative for Social and Economic Rights, (Anti)social cards), 14 October 2022, available at: <https://www.a11initiative.org/en/antisocial-cards/>

⁷ According to the 2011 census data, there were 147,604 ethnic Roma registered in Serbia, composing 2.1% of the total population on the territory of Serbia (excluding Kosovo and Metohija). According to the research by the Statistical Office of Serbia carried out in 2019, 84% of households in Roma settlements receive some type of cash benefits, such as social assistance, child allowance or one-off financial assistance. See Survey Findings Report: 2019 Serbia Multiple Indicator Cluster Survey (MICS) and 2019 Serbia Roma Settlements Multiple Indicator Cluster Survey, Statistical Office of the Republic of Serbia (October 2020), pp. xxxv, available at <https://www.unicef.org/serbia/media/16076/file/MICS%206%20Multiple%20Indicator%20Cluster%20Survey.pdf>.

⁸ Informativno poslovni centar, Statistički podaci za 2022. godinu, Inflacija merena indeksom potrošačkih cena u 2022. godini, available at: https://www.ipc.rs/statisticki_podaci/2022/inflacija-merena-indeksom-potrosackih-cena-u-2022-godini

⁹ The relative poverty line in Serbia is 24,064 Serbian Dinars (212 EURO) a month.

¹⁰ Republic of Serbia, Household budget Survey, Income and living conditions Survey - Income and living conditions (Poverty and Social Inequality 2021), 14 October, 2022, available at: <https://publikacije.stat.gov.rs/G2022/HtmIE/G20221287.html>

Cluster Survey (MICS) for Serbia found that five out of six Roma households, or 83%, live in conditions of pronounced material deprivation.¹¹

Rather than expanding the reach of social programs to include the increasing number of people affected by poverty, the Law on Social Card therefore seems to further narrow down the pool of recipients and, due to disproportionate impact on Roma, threatens to reinforce inequality and structural discrimination.

SOCIAL CARD LAW LEAVES PEOPLE LIVING IN POVERTY WITHOUT ASSISTANCE

The Social Cards Law and information system seem to penalize families already living in poverty for trying to fill the gap between the inadequate social assistance they receive and the actual cost of living by seeking additional employment. The system automatically triggers processes that could exclude people who appear to have exceeded the threshold income to be eligible for social benefits. According to A11 Initiative for Economic and Social Rights who supported beneficiaries in appeals of negative decisions, majority of applicants were “flagged” by the system and subsequently lost their benefits because their recorded earnings put them above the minimum threshold for assistance.¹² Dozens of people, mostly from Roma communities, said that the “earnings” referenced in the rejection letters issued by the Centers for Social Work referred to the meagre amounts that they made by collecting and selling secondary raw materials, such as plastic bottles, cardboard and scrap metal.

The monthly social assistance available as social security in Serbia is around 10,000 Serbian Dinars (88 EURO) per person or 18,694 Serbian Dinars (132 EURO) for a family of three. This is particularly low given that it is less than a half of the cost of the average consumer basket (323 EURO) and well below the poverty threshold of 43,315 Serbian Dinars (270 EURO) for a family of this size.¹³ The inadequacy of the assistance is even more obvious when compared to minimum wage which is fixed at 53,000 Serbian Dinars (460 EURO) for 2023.

As a result, Roma families have no choice but to supplement their social assistance benefits with other income which is usually earned through engaging in the informal economy by collecting and selling secondary raw materials.

In its 2021 Conclusions on Serbia, the European Committee for Social Rights reiterated that the level of social assistance paid to persons without resources continued to be well below the threshold of absolute poverty.¹⁴

The UN Committee on Economic, Social and Cultural Rights (CESCR) and the European Union have repeatedly urged Serbia to increase the amount of social security benefits to ensure that recipients can enjoy an adequate standard of living. States have responsibility to ensure that social support is adequate in amount and duration so that everyone may realize their rights to family protection and assistance, an adequate standard of living and adequate access to health care.¹⁵

While the minimum threshold for eligibility for social assistance is prescribed by Serbia’s Law on Social Assistance, the social cards system’s reliance on an automated processing of applicant’s data from a single far-reaching registry without considering people’s life circumstances or providing opportunity for individuals to contribute context or additional information to determine eligibility, is completely dehumanized and arbitrarily deprives people who live in poverty of life-saving support. The Social Card Law was meant to address some of the existing gaps in Serbia’s social security system. Yet, in one year of implementation, it has further weakened the position of some of the most vulnerable groups.

¹¹ Survey Findings Report: 2019 Serbia Multiple Indicator Cluster Survey (MICS) and 2019 Serbia Roma Settlements Multiple Indicator Cluster Survey, Statistical Office of the Republic of Serbia (October 2020), pp. xxxv, available at <https://www.unicef.org/serbia/media/16076/file/MICS%206%20Multiple%20Indicator%20Cluster%20Survey.pdf>.

¹² A11 Initiative for Economic and Social Rights, *(Anti) Social Cards*, 14 October 2022, available at: <https://www.a11initiative.org/en/antisocial-cards/>. See also: Radio Slobodna Evropa, “Digitalizacija bede u Srbiji: Skinuti s pomoći jer prodaju sekundarne sirovine,” 29 November 2022, available at: <https://www.slobodnaevropa.org/a/srbija-socialne-karte-algoritam/32153869.html>. Amnesty International has seen several letters issued by various Centres for Social Work.

¹³ EU Serbia Report 2022, available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>

¹⁴ European Committee of Social Rights, Conclusions 2021, Article 13, Para. 1, available at: <https://rm.coe.int/conclusions-2021-serbia-en/1680a5da16>. See also: European Committee of Social Rights, Conclusions 2017 – Serbia, Article 13, Para.1

¹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 19, 4 February 2008, Para.22

LACK OF TRANSPARENCY ABOUT DECISION-MAKING AND INEFFECTIVE ACCESS TO REMEDY

Digital technologies related to social protection often rely on the mass scale extraction and processing of data to operate, with many datasets including highly personal information such as race, ethnic identity, as well as biometric and genetic data. The way that data is collected, the types of data used, and how it is analysed are not neutral decisions and can have significant impacts on the right to social security. Marginalised people often face higher levels of data collection and analysis from the state and, as found by leading experts, “their data acts to reinforce their marginality when it is used to target them for suspicion and extra scrutiny”.¹⁶

The processing of a vast amount of personal data and automated decision-making under the Law on Social Card increases the risk of technical, administrative and operational errors, including the potential for inaccurate entry-level data which are extracted from other registries. At the same time, the law does not provide room for applicants to properly engage with social workers, nor to review or correct information about their own situation in case of discrepancy.

Due to the inability to amend the data once in the system, the complexity of bringing together data across wide range categories (such as income, housing, family status), and the scale of the data mining, there is a heightened possibility of data being out of date or inaccurate and of the automated system making decisions based on erroneous data when assessing eligibility for social assistance. This is especially problematic because there is no transparency about how the algorithmic system behind the Social Card information system works. The system generates notifications that relate to the applicant’s eligibility or ineligibility based on the available data, but the applicant does not know which particular indicator or data triggered the notifications or how the data used in decision-making was weighted or ranked in the system. It is, therefore, very difficult for the applicant to challenge the decisions. Beneficiaries do not fully understand why they were excluded due to the opacity of the decision-making, as well as the failure of the authorities to provide them with information explaining how and why they have been removed from the system. The letters issued by local Centres for Social Work that notify people that they were no longer eligible for social assistance make general reference to the “data from electronic data base” which pointed to the earnings that put the applicant above the threshold for social assistance.¹⁷ The letters do not include any further information, nor offer the applicant an opportunity to clarify or correct the information captured by the data registry.

Although social workers have access to the system and, in theory, are able to make decisions on individual applicants, they seem to rely on the notifications and information derived from the system to make determinations about social assistance claims. Social workers who spoke with Amnesty International and other organizations said that they were often not be able to understand or explain how the system worked and what were the limitations to making informed, critical decisions based on data and notifications generated by the system.¹⁸ While the Social Cards system itself does not automatically exclude people from receiving benefits, it sends social workers notifications on possibly fraudulent cases, including cases where it identifies people who may have earned income that makes them ineligible for benefits. In practice, however, social workers are not able to adequately verify the information received within the required timeframe and tend to defer to what the system “suggests”, i.e., suspension of benefits, rather than investigate the case.¹⁹ Social workers are, therefore, not placed in a position to make decisions independently of the system.

Automation in the context of social protection often serves to perpetuate exclusions, conditioning access in this way may pose an additional barrier to the exercise of this right.²⁰ Even when there is a human verification of the output of an automated decision-making process, the so-called automation bias is an observable trend, i.e., people tend to trust the automated system so much that they ignore other sources of information, including their own senses, which can lead to errors within decision-making not being detected or challenged.²¹

¹⁶ Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*, St. Martin’s Press (2018) pg. 7

¹⁷ Amnesty International has seen several letters issued by local Centres for Social Work. Available on file with the organization.

¹⁸ Conversations with Centre for Social Protection workers, Belgrade, 30 November 2022.

¹⁹ Conversations with Centre for Social Protection workers, Belgrade, 30 November 2022.

²⁰ Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*, St. Martin’s Press (2018) p. 12.

²¹ Pazouki et al. 2018, p. 299 cited in Zerilli, J., Knott, A., Maclaurin, J. et al. *Algorithmic Decision-Making and the Control Problem*. *Minds & Machines* 29, 555–578 (2019). <https://doi.org/10.1007/s11023-019-09513-7>

The EU's Ethical Guidelines for Trustworthy Artificial Intelligence (AI) list seven key requirements that AI systems should meet, including: human agency and oversight; transparency; diversity, non-discrimination and fairness; and accountability. The requirement of human agency and oversight entails undertaking impact assessments prior to the development of the system; it also involves data users making "informed, autonomous decisions" on AI systems, to avoid "unfair manipulation, deception, herding and conditioning."²² As to human oversight, the guidelines suggest different possible approaches to ensure that an AI system "does not undermine human autonomy or causes other adverse effects."²³

The General Data Protection Regulation (GDPR) further states that "data subjects shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her."²⁴ Exceptions to this right include if the data controller is authorized by a law that "lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests."²⁵ These safeguards "include as a minimum a way for the data subject to obtain human intervention, express their point of view, and contest the decision."²⁶

Although Serbia is not yet a member of the European Union, as a candidate country, it is expected to harmonize its legislation with the EU Acquis.

Finally, the mechanism for appeals and a review of cases under the Law on Social Card and Law on Social Assistance does not provide for a meaningful and effective remedy. People who lose social assistance due to the implementation of the Law on Social Cards have 15 days to file an appeal, but in practice most find it difficult to challenge negative decisions. Without having information on how decisions were made and based on what data, beneficiaries are reluctant to engage in an uncertain administrative process to try to reinstate the assistance. Because of the opacity of the system and decision-making, many rejected applicants were advised by social workers to re-start their application, rather than challenge negative decisions.²⁷ This meant that people who are already marginalized and live in poverty had little choice but to go without critical support for several months in order to secure another chance to get on to the social security system.

The appeals process is further complicated by the effective lack of free legal aid in Serbia, with applicants having to rely on a few local civil society organisations who provide such assistance.

A state's obligation to notify rights holders in the case of changes or non-realisation of their right to social security has been established in courts including in ANCEJUB-SUNAT v. Perú, where the Inter-American Court of Human Rights found that the Peruvian State had violated pension-holders' right to be "informed, in an opportune, clear, transparent and complete manner" of the risk of losing their full pension benefits after enrolling in an early retirement program."²⁸

The right to an effective remedy is enshrined in multiple international human rights documents. Under the ICESCR, the CESCR has explained that "Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place".²⁹ Furthermore, "[a]ny persons or groups who have experienced violations of their right ... should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudspersons, human rights

²² High-Level Expert Group on Artificial Intelligence, Ethics Guidelines for Trustworthy AI, European Commission, (2019), available at: <https://futurium.ec.europa.eu/en/european-ai-alliance/blog/ethics-guidelines-trustworthy-artificialintelligence-piloting-assessment-list>.

²³ High-Level Expert Group on Artificial Intelligence, Ethics Guidelines for Trustworthy AI, European Commission, (2019), available at: <https://futurium.ec.europa.eu/en/european-ai-alliance/blog/ethics-guidelines-trustworthy-artificialintelligence-piloting-assessment-list>.

²⁴ General Data Protection Regulation (GDPR), Article 22, paragraph 1

²⁵ European Commission, Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, available at <https://ec.europa.eu/newsroom/article29/items/612053/en>.

²⁶ European Commission, Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, Pg. 27, available at <https://ec.europa.eu/newsroom/article29/items/612053/en>.

²⁷ Conversation with A11 Initiative for Economic and Social Rights, 17 February 2022.

²⁸ ANCEJUB-SUNAT v. Perú, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 394, ¶182 (Nov. 21, 2019).

²⁹ UN Committee on Economic, Social, and Cultural Rights, General Comment No. 9, 3 December 1998, E/C.12/1998/24, ¶12.

commissions, and similar national human rights institutions should be permitted to address violations of the right. Legal assistance for obtaining remedies should be provided within maximum available resources.”³⁰

The Council of Europe has also developed guidance for member states, including Serbia, to ensure that AI systems are aligned with the right to remedy and human rights more broadly.³¹ This guidance puts forward obligations of States with respect to the protection and promotion of human rights and fundamental freedoms in the context of algorithmic systems. The Council of Europe’s Human Rights Commissioner has elaborated recommendations for states to, inter alia, conduct human rights assessments before the adoption of automated systems, and ensure independent oversight including through “a combination of administrative, judicial or quasi-judicial” mechanisms.³² Both the CoE³³ and the EU³⁴ are currently developing legally binding regulation on the use of algorithms.

The inability to trace and explain how decisions on eligibility are made does not only increase the potential of wrongful exclusion of beneficiaries, but also undermines people’s right to information and right to remedy, which are guaranteed under international law.

RISK OF BIASED DECISION-MAKING

The automation of decision-making and over-reliance on administrative data in the benefits system carry the risk of biased and under-representative datasets, in particular when they pertain to the most marginalized groups. While the Law on Social Cards collects vast amounts of data relating to potential applicants, it seems to exclude indicators that could point to marginalization and social deprivation, such as living conditions and precarious housing, as many Roma dwellings are located in informal settlements. In the context where five out of six Roma households live in conditions of pronounced material deprivation³⁵ with 38% of Roma settlements not connected to the water supply grid, and 32% not connected to electricity,³⁶ the information on living conditions could be vital for assessing one’s socio-economic status and need for social assistance.

Choices around data, including what data is collected, by whom and how, are therefore not neutral and can have discriminatory outcomes. Gaps and imbalances existing in the data that algorithmic systems process to reach a conclusion can lead to discrimination. There is no evidence that the Serbian government took measures to ensure that the new law passed the equality test, considered its impact on the enjoyment of economic, social and cultural rights by disadvantaged individuals and groups, or ensured that there is no bias in the way data is collected or processed.

³⁰ United Nations Committee on Economic, Social and Cultural Rights, General Comment 3, The Nature of States Parties’ Obligations (Art. 2, ¶. 1, of the Covenant), 1990, ¶¶3, 5. Committee for Economic, Social and Cultural Rights further provided that any interference with the right of individual to social security, the authorities must “ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) an opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies.” See United Nations Committee on Economic, Social and Cultural Rights, General Comment 19, Para. 78

³¹ Council of Europe, Recommendation CM/Rec (2020)1 of the Committee of Ministers to Member States on the human rights impacts of algorithmic systems, 8 April 2020, available at: https://search.coe.int/cm/pages/result_details.aspx?objectId=09000016809e1154 and Unboxing Artificial Intelligence: 10 Steps to Protect Human Rights, Council of Europe Commissioner for Human Rights (2019), available at <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rightsreco/1680946e64>.

³² Council of Europe: Unboxing Artificial Intelligence: 10 Steps to Protect Human Rights, Council of Europe Commissioner for Human Rights (2019), available at <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rightsreco/1680946e64>.

³³ Council of Europe is working on developing a Convention on the design, development, and application of artificial intelligence systems based on the Council of Europe’s standards on human rights, democracy and the rule of law, and conducive to innovation, in accordance with the relevant decisions of the Committee of Ministers – CAI. See more at: <https://www.coe.int/en/web/artificial-intelligence/work-in-progress#01EN>

³⁴ In EU, algorithmic regulation and accountability is included in the Digital Services Act (DSA), which will enter into force on 1 January 2024. DSA requires platforms to provide transparency around algorithmic content curation efforts. The EU Artificial Intelligence Act (AI ACT) is under negotiation and development and is expected to propose robust safeguards against high-risk AI systems.

³⁵ Survey Findings Report: 2019 Serbia Multiple Indicator Cluster Survey (MICS) and 2019 Serbia Roma Settlements Multiple Indicator Cluster Survey, Statistical Office of the Republic of Serbia (October 2020), pp. xxxv, available at <https://www.unicef.org/serbia/media/16076/file/MICS%206%20Multiple%20Indicator%20Cluster%20Survey.pdf>.

³⁶ Strategy for the Roma inclusion in the Republic of Serbia for the period 2020-2030, Official Gazette of the Rep. of Serbia No. 23/2022 (17 Feb. 2022), pp. 50

The authorities have a responsibility to conduct a human rights impact assessment for digital systems used in public sector prior to rolling out such systems, but also put in place independent oversight to fully understand their impact over time and adopt meaningful safeguards to mitigate risks.³⁷

BARRIERS TO ACCESS

People who are most vulnerable to discrimination including in accessing economic, social, and cultural rights are the most likely to be excluded from data and monitoring processes.³⁸ Digitalization of public services and requirements for people to access services through e-Government portals do not consider that many welfare beneficiaries may face challenges due to poverty-based digital exclusion and lack of digital literacy.

Digitalized welfare systems are often not well-suited to the needs of the communities who rely on them most. Such communities are not likely to have access to digitalized systems or be able to interact with them easily, meaning the systems themselves become barriers to access social services and can lead to indirect discrimination.

As examples of similar systems across the world have shown, from the United Kingdom to Uganda, automatization and digitalization of large public sector systems often lead to mass-scale exclusion of most marginalized groups, including ethnic minorities, older people, persons with disabilities, and women.³⁹ Former UN Special Rapporteur on extreme poverty and human rights concluded that “[s]ystems of social protection and assistance are increasingly driven by digital data and technologies that are used to automate, predict, identify, surveil, detect, target and punish”.⁴⁰ The Social Card Law throws yet another obstacle before Roma and other marginalized applicants who are forced to rely on civil society groups to navigate the increasingly more restrictive and complex social welfare system.

CONCLUSION AND RECOMMENDATIONS

The case of Serbia’s Social Card Law draws attention to how technologies are being deployed without sufficient scrutiny and accountability thus exacerbating inequality in their deployment. When welfare systems use large amounts of data to support vital decisions on who requires social protection, governments must put in place stronger measures to ensure accountability, transparency and access to an effective remedy in case of unfair or arbitrary decisions. Processing vast amounts of personal data drawn from multiple registries managed by third parties - without providing applicants an opportunity to provide context or additional information - increases the risk of errors. In such cases, people should not be penalized for inconsistencies found in their data. Governments have a responsibility to keep people’s records accurate and up to date and applicants should have an opportunity to contribute to that effort.

To the authorities in Serbia:

- Conduct an independent human rights impact assessment of the Law on Social Card and its application to determine any gaps, including potentially discriminatory effects on specific groups;
- Conduct an assessment of how the system has worked since the start of its implementation to determine whether the system of data collection, data processing, decision-making and appeals are in line with international human rights standards;

³⁷ Council of Europe, Unboxing AI, available at: <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rights-reco/1680946e64>

³⁸ Monitoring Working Group, Collective Position: Data for Economic, Social and Cultural Rights, International Network for Economic, Social and Cultural Rights (2022), pp. 42.

³⁹ See Amnesty International et al., Legal Opinion on International and Comparative Human Rights Law Concerning the Matter of Social Card Law Pending before the Constitutional Court of Serbia, November 2022 (see Annex).

⁴⁰ Report of the Special Rapporteur on extreme poverty and human rights, 11 October 2019, A/74/493, p2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/312/13/PDF/N1931213.pdf?OpenElement>.

- Assess the role of social workers to determine whether they fully understand how the system works and are able to maintain meaningful control over the system throughout the lifecycle of the application process; Provide additional training and capacity building where necessary;
- Put in place measures, safeguards and mechanisms to prevent and mitigate any potential human rights risks;
- Make public the information on how the Social Card Information System works to ensure full transparency and access to information;
- Conduct public consultations with key stakeholders on the Social Card Information System to facilitate a proper understanding of its operation, function and potential impact and receive feedback from existing users;
- Ensure that the applicants receive information in clear and accessible terms about how the decisions in their cases are made and how they can challenge such decisions;
- Ensure that applicants who are affected by the Social Card Information System are provided access to an effective remedy, including prompt and adequate reparation for any harm suffered in the process;
- Put in place an independent monitoring and oversight over the Social Card Information System;
- Increase the amount of social security support provided to ensure that it is sufficient to guarantee the right to an adequate standard of living per 2021 Conclusions from the European Committee for Social Rights;
- Amend the Law on Social Security and adopt necessary measures to ensure that the threshold for eligibility for social security support is raised in a manner that it is accessible to everyone who needs it;
- Ensure that the data that is stored in the centralized database is secure as centralized databases can lead to a higher risk of data breaches.

ANNEX – Amnesty International and the International Network for Economic, Social and Cultural Rights (ESCR-Net), Legal Opinion on International and Comparative Human Rights Law Concerning the Matter of the Social Card Law Pending before the Constitutional Court of Serbia (28 November 2022) – [link](#).