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Incorporation of the Differential Approach to Rights in Information and Research Systems



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Incorporation of the Differential Approach to Rights in Information and Research Systems

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Result 1: Strengthening of the National Drug Observatories

AUTHOR: Mauricio Sepúlveda Galeas

WITH THE COLLABORATION OF: Diego Escobar Riffo

GUIDANCE AND REVIEW: Diego Ruiz (Argentina), **Esteban Pizarro Muñoz** (Chile) and **Graciela Ahumada** (Task Force responsible for coordinating the Strengthening of National Drug Observatories. COPOLAD III).

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Introduction

The latest reports from international organisations show the need to integrate a Human Rights framework and a Differential Approach to Rights in the design, implementation and evaluation of Drug Policies in CELAC countries. In particular, when these approaches are integrated into the work of the National Drugs Observatories, a series of new practices related to the drug phenomenon will become visible to the gaze of information producers and of those who, ultimately, have the task of defining fast, timely and effective responses. In addition, a series of specific populations and groups gain visibility that, until now, for different reasons or motives, have not acquired the necessary visibility or careful analysis that their complex and generally disadvantaged situations in social, economic and political terms place them in a situation of vulnerability, risk and damage of greater magnitude than the general population. This is the primary concern that guides this document.

Within this framework, this guide advocates well-situated, strategic and relational knowledge with the conviction that the responses to the drug problem must place special emphasis on its impact on poverty and marginalisation, implementing policies and actions that promote social inclusion and the reduction of vulnerabilities, risks and harm. Regarding this outlook, this document addresses five different levels, which in the opinion of those responsible for its preparation, are essential for robustness in any process related to the production of knowledge. We refer to the epistemological level that will be related to *the 'for what' or the 'for whom'* of knowledge, the methodological level that, consistent with the above, outlines a format to obtain said knowledge in its particularity, the technological level that operationalises the specification of the investigative work, the ethical level which will entail sustaining a continuous process of epistemological surveillance that confronts the act of knowledge with another subject together with whom we build knowledge, and finally the political level that places us in relation to public responsibility as social actors of knowledge and to the transforming effects of our action.

Given this outlook, the document was organised into four main sections or chapters, each one with its specific subsections. The first two chapters delve into the historical, epistemological, theoretical and conceptual foundations of the Human Rights-Based Approach and the Differential Approach to Rights, respectively. For their part, the following chapters three and four, respectively, emphasise a series of methodological, technical and procedural aspects that the different National Drugs Observatories should



consider and keep in mind when integrating and applying a Differential Approach to Rights in the drug field.



1. The Human Rights-Based Approach: Origin, Definition and General Aspects

1.1.- Human Rights and their characteristics

From its formulation after the Second World War to the present day, human rights (HR) constitute a historical and social achievement by humanity, recognising our freedom and dignity as people, and protecting our value as human beings: they correspond to minimum conditions that we all need to be able to live with dignity. Thus, according to the Universal Declaration of Human Rights of the United Nations in 1948, these can be understood as:

“Rights inherent to all human beings, regardless of race, sex, nationality, ethnic origin, language, religion or any other condition. Human rights include the right to life and liberty; not to be subjected to slavery or torture; to freedom of opinion and expression; to education and work, among many others. These rights correspond to all people, without any discrimination.”

Although in its initial formulation it was of a purely declarative nature, throughout time a legal body made up of standards, principles, norms, conventions and other instruments was developed, which makes up public international law and gives rise to **international human rights law**, which, progressively, will be recognised by many of the systems in the national States of the world as a framework and limits the exercise of power by the State. It could be said, without fear of exaggeration, that most modern democracies are inspired by the respect for and protection of these rights.



Human rights are founded on three basic principles:

-
1. Human dignity is related to the need of every person to be respected in terms of their physical, moral and emotional integrity, establishing the full development of each person as the aim. Human dignity also implies the guarantee that no person may be subjected to insults, humiliation or any other physical, moral and emotional harm.

 2. Freedom refers to both physical freedom (including free transit) and the possibility for each person to live their life in accordance with their values and personal desires, without this implying harm or detriment to third parties. This principle includes both adherence to an ideology and the development of opinion about the events that surround and affect it, the profession of a religion, etc.

 3. Equality, understood as the equal right of everyone to affirm and protect their own identity, by virtue of the equal value associated with all the differences that make each person an individual who is different from all others and each individual a person just like all others.
-

The conception of human rights as a limit was widely received and deeply rooted in Latin America. In fact, as some experts in the field have rightly noted (Abramovich, 2006), as a political instrument this conception of human rights was incorporated into the repertoires of struggle and defence of civil society to set limits to abusive practices of power by the state and authoritarian governments. In the context of the civil-military dictatorships in the Southern Cone, in the 1970s, and in Central America, in the 1980s, this sort of ten commandments of what states and respective governments must not do, such as *not torture, not arbitrarily deprive anyone of life*, refrain from violating rights, **the conception of Human Rights as limits**, became deep-rooted in the region.

Subsequently, mainly in recent years, the body of principles, rules and standards that make up international law on human rights, has established with greater clarity, not only the negative obligations of the State, but also a host of positive obligations in different fields and spheres of society. However, the discourse and narratives regarding the situation of human rights in the region continue to revolve strongly around a restrictive conception of the exercise of State power and its negative obligations. As we can see in more detail in the third section, the presence of this discourse in the specific field of drugs can be seen in a series of documents in public circulation that address the impacts of drug policy on Human Rights¹. In general and with good reason, referring to the prohibitionist paradigm and the war on drugs in these documents, their discursive order is structured around and focused **on the repressive nature of the exercise of power, emphasising the transgression of limits by the action of States and their respective**

1. See for example the document The impact of drug policies on human rights. Centre for Legal and Social Studies CELS, Argentina, 2015.



National Policies, plans and programmes regarding drugs as the central point. The fragment of the textual quote that is offered below serves as a sample.

“Repressive policies tend to directly violate the human rights of thousands of people, especially those who are prosecuted and sent to prisons, spaces that are usually characterised by overcrowding and inhumane conditions. Numerous studies have shown that these policies tend to have a disproportionate impact on certain vulnerable groups, and in this way, reproduce discrimination and social exclusion.”

**(The Impact of Drug Policies on Human Rights. Centre for Legal and Social Studies
(CELS), 2015: 7)**

This type of narrative of human rights based on a legal and repressive conception of the exercise of power has begun to coexist with a conception aimed at achieving greater precision and visibility, not only of what the State should not do, but also of what it must do to achieve the full realisation of Civil and Political Rights as well as Economic, Social and Cultural Rights.

In purely conjectural terms, particularly in the field of drugs, the coexistence of both conceptions seems to be enhanced by appearing and including the language of public health in their narrative and public action. This is even more the case when the latter acquires a function of a common thread, which we can observe with crystal clarity in a series of technical and political documents prepared, for example, by UNAIDS, regarding the 2030 goals, or prepared by scientific societies such as the report on the Global State of Harm Reduction 2022, produced by Harm Reduction International. The same applies to the case of the Global Drug Policy Index prepared by the International Drug Policy Consortium (IDPC). In these documents cited as examples, Human Rights are no longer considered only as a limit to oppression and authoritarianism but are also considered from the productive dimension of power. In other words, while it serves as a normative legal framework, it guides public action in terms of what must, or should, be done in terms of public policy in accordance with certain standards agreed by the international community in the framework of the commitments made by states. In this way, it contributes to the strengthening of democratic institutions, particularly in transition processes and in cases of deficient or weak democracies (Abramovich, 2006).

As has been duly stressed by different authors and experts from international organisations, this change in perspective has not been made without difficulties. The diversity of theoretical frameworks, political and philosophical foundations not only differ in the definitions of objects, fields or specific situations, such as the definition of vulnerability or poverty, but also often seems to travel along parallel tracks to the field of public and political policies regarding development, since it is not easy to recognise the points of connection or convergence between both fields and their languages. Despite the foregoing, being clear that the traditional task of denouncing massive or systematic violations of rights must be accompanied by preventive and promotional action capable of avoiding such violations.



Table 1: Human Rights according to the international legal system

1. **Universal:** human rights apply to all people in all parts of the world.

2. **Inalienable:** since they are intrinsic to every human being, human rights cannot and must not be separated from the person, so by definition they cannot be transferred or renounced.

3. **Inviolable:** no person, and certainly no authority, may act in detriment of human rights.

4. **Imprescriptible:** human rights do not expire with time nor can they be lost for not having been exercised.

5. **Interdependent:** human rights are part of an inseparable whole and must be exercised in their entirety, as they affect each other.

6. **Indivisible:** human rights do not have a hierarchy among themselves, therefore, they cannot be prioritised, nor can one of them be sacrificed to the detriment of another.

7. **Irreversible:** every right formally recognised as inherent to the human person is irrevocably integrated into the category of human rights, which implies that it cannot be repealed or eliminated in the future.

8. **Progressive:** this refers to the evolutionary nature of human rights and implies the possibility that in the future the category will be extended to other rights that currently do not enjoy these statuses, but they can never regress to the detriment of the current state of said statuses.

In this sense, based on the HRBA, Human Rights international supervisory bodies have sought to establish a body of principles and standards with the purpose of influencing the quality of democratic processes and efforts to achieve more egalitarian and integrated societies.



1.2. The Human Rights-Based Approach (HRBA)²

The Human Rights-Based Approach (HRBA) – or simply the Rights-Based Approach – originated, it is estimated, in 1997 from a series of reforms and initiatives that took place within the United Nations, which called all the entities and agencies that make up the United Nations system to actively integrate Human Rights as guiding principles in the various activities and programmes of their respective mandates (see Table no. 2).

Table No. 2 Main international instruments on rights ³

Title	Year
International Convention on the Elimination of all Forms of Racial Discrimination	1965
International Covenant on Civil and Political Rights	1966
International Covenant on Economic, Social and Cultural Rights	1966
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	1979
Convention on the Rights of the Child	1989
Convention No. 169 of the ILO on Indigenous and Tribal Peoples	1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	1990
Convention on the Rights of Persons with Disabilities (CDPD)	2006
United Nations Declaration on the Rights of Indigenous Peoples	2007

2. For expository reasons, the text’s timeline follows a sequence that goes from Human Rights, through the Human Rights-Based Approach (HRBA), before getting to the Differential Approach to Rights. This timeline means and implies that the theoretical and conceptual dimensions and the political scope of each approach that precedes the other, will generally always be incorporated, adapted and improved in the one that follows it.

3. In the table, as an input, some of the main international treaties, agreements and conventions on human rights are listed. These legal bodies constitute the framework or field of reference that the human rights-based approach (HRBA) ensures compliance with and seeks to promote in the design of public policies.



Before the incorporation of the HRBA, development agencies adopted what is known as the “basic needs approach”⁴, which meant that their actions were mainly oriented towards the identification and evaluation of the basic requirements of “beneficiaries” (individual and collective), and support for improvement measures in the provision of goods and services. In this regard, the rights approach emerged as an alternative, both ethical and technical, to the “needs” paradigm by seeking to emphasise the application of human rights principles as a guideline for human development over other criteria. As we will see below, this point is of vital importance to understand and evaluate the transformative potential that the HRBA has: needs are not satisfied, rights are violated; and the latter is, legally, deserving of reparation and compensation.

The Human Rights-Based Approach (HRBA) **is a conceptual framework that seeks to contribute to the process of human development from a holistic perspective, guiding the necessary actions to comply with the rights of people.** In this regard, the HRBA can be seen from two perspectives or points of view.

-
- From a regulatory point of view, this approach finds its bases in the provisions and standards contained in the various international Human Rights instruments, this being a mechanism for the realisation of and compliance with these norms (United Nations Group for Sustainable Development, 2003).
-
- On the other hand, from an operational point of view, it is oriented towards the promotion and protection of Human Rights through specific public policy actions, mainly focusing on population groups that are victims of forms of violation, discrimination, inequality and social exclusion.

4. The basic needs approach is a current of development thought that emerged in the 1970s as a response to the development theory associated with economic growth, which emphasised that the benefits of economic growth did not extend by themselves to all social strata and that, on the contrary, human development meant the satisfaction of certain minimum human needs. Its main promoters were the International Labor Organization (ILO), the World Bank and researchers associated with the Institute of Development Studies (IDS) such as Paul Streeten, Shahid Javed Burki, Norman Hicks or Frances Stewart. For a more exhaustive explanation of the approach see the documents “Employment growth and basic needs: a one world problem”, ILO, Geneva, 1976 and “Meeting basic needs: strategies for eradicating mass poverty and unemployment”, ILO, Geneva, 1977.



In this way, the rights approach has as its ultimate goal the materialisation or realisation of Human Rights, with public policies being the most suitable instrument or means to carry out said work.

“The rights approach emerges as a novel perspective that facilitates the process of operationalising rights in the form of public policies based on state obligations that put the emphasis on people and their relationships, not as individuals but as social subjects linked simultaneously to the personal, family and social levels.

(Ludwig Güendel, 2010, p. 69).

The [international human rights] instruments make explicit the rights approach as an international agreement for the formulation of public policies that guarantee the defence of individual and collective rights without exception and [guide] all interventions in the name of development and peace building.

(Montealegre and Urrego, 2010, p. 61).

As the following diagram shows, to carry out its work, the HRBA differentiates and identifies two types of actors: holders of rights and holders of duties. Regarding the former, the rights approach recognises that people in situations of vulnerability and social exclusion are not passive or subsidiary subjects of benefits, but rather active agents of their own development, bearers of knowledge, skills, experiences, etc. By virtue of this, the main objective of recognising rights holders is to enable their agency, that is, to promote their autonomy, participation and their native capacity to exercise and claim their rights. On the part of the guarantor subjects, the approach identifies the institutions and entities that have a certain degree of responsibility in terms of human rights and fosters their capacity to monitor and sanction such protection and compliance.

Diagram 1: HRBA architecture

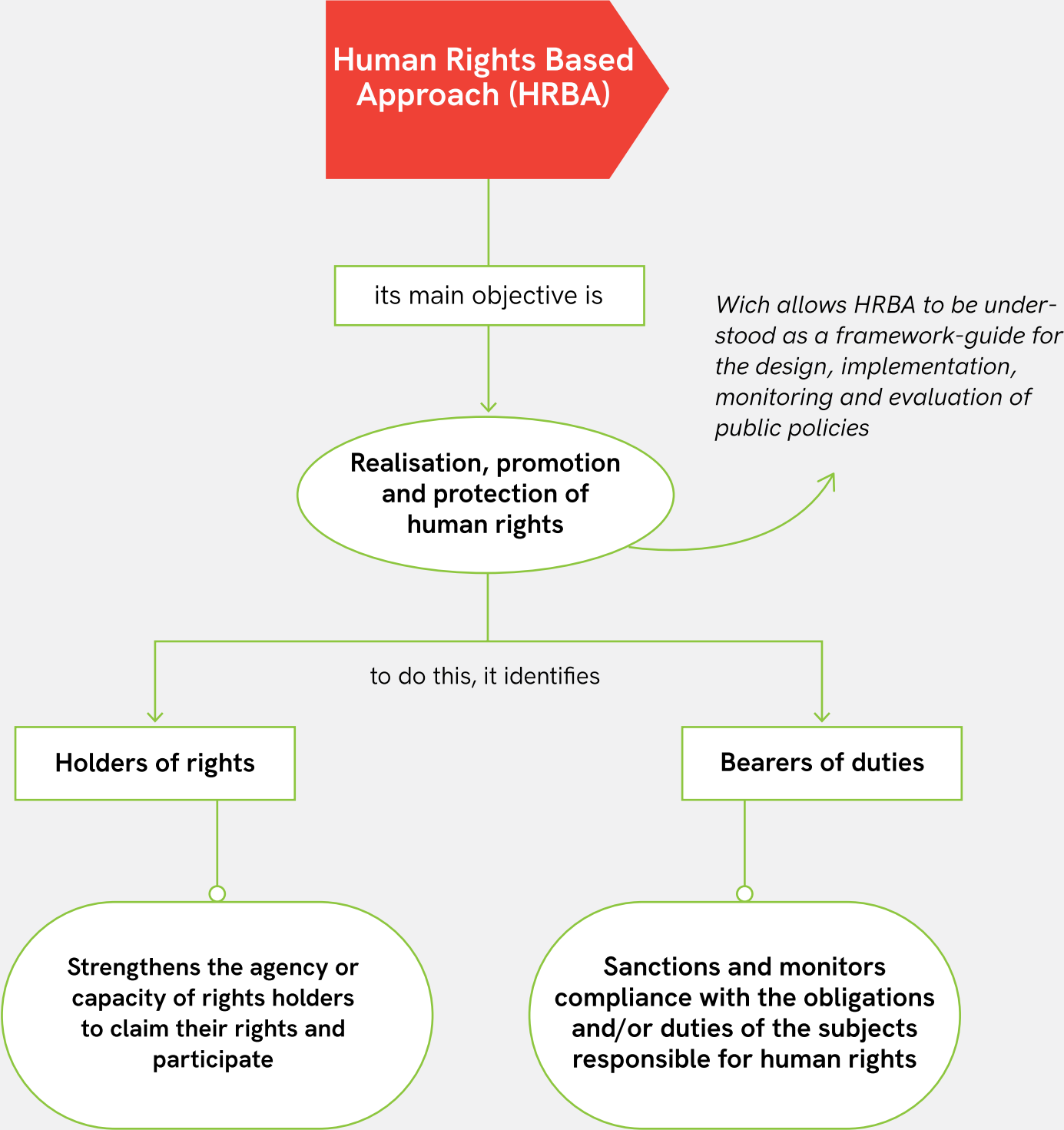


Figure - Summary of the principles and operation of the HRBA



In this regard, as the previous diagram illustrates, the main focus of the HRBA is to ensure the correct balance between the promotion of rights and their safeguarding or protection; between promoting the agency or activation of rights holders and monitoring compliance with the obligations of rights guarantors.

This implies that the vulnerable population(s) to be targeted should not be understood as the sole and unequivocal objective of public policy, but also that the state, its institutions and agents should be explicitly treated as policy objectives. This last action is profoundly reflexive, since it demands the deployment of a wide range of actions. Thus, the HRBA (which, as we will see later, also implies the Differential Approach) constitutes a general framework whose application and scope must be simultaneous for holders of rights and for holders of duties.

In short, the Human Rights-Based Approach is a framework-guide that allows and promotes the incorporation of human rights principles into human development plans, policies and processes. Its objective is, as we have seen, on the one hand, the coupling of or concordance between the internal/national rights of the States and international law by providing a legal system or field of corresponding rights and obligations to which public policies must refer normatively; and on the other hand, the promotion of the human rights of rights holders and the authorisation of the powers of the duty holders for their protection.

1.3. Rights standards in the HRBA

From the launch of the HRBA, as well as from the work carried out by Katarina Tomasevki in 1999 as the first Special Rapporteur of the United Nations, on human rights standards emerged. **The term human rights standards is understood to mean the pronouncements of intergovernmental organisations and other human rights bodies, through resolutions, recommendations, declarations, or decisions in specific cases;** that is, human rights standards are the result of efforts to implement human rights (Condé, 1999). These are as follows:

-
- **Availability:** the State must ensure the provision of services and programmes in sufficient quantity to cover the entire population for the realisation of their human rights.
-
- **Accessibility and participation:** the State must ensure that there are no obstacles in access to services and programmes that could prevent the realisation of people's human rights and their full participation in society. Accessibility consists of three dimensions:



1. *Non-discrimination*: the State must ensure that services and programmes are accessible to all people, especially groups that are in a situation of disadvantage and social exclusion, such as indigenous people, migrants, people with disabilities, LGBTI+, in a situation of poverty, deprived of liberty, among others.
 2. *Physical or material accessibility*: the State must ensure that services and programmes are within the geographical reach of the entire population, especially groups that are in a situation of disadvantage and social exclusion. In this dimension, accessibility also includes adequate access for people with disabilities.
 3. *Economic accessibility*: the State must ensure that the services and programmes do not have a direct or indirect associated cost that prevents people from accessing them and thus fulfilling their rights.
-

- **Acceptability**: the State must ensure that the services and programmes are culturally appropriate and of good quality for the realisation of human rights, which must be considered as such by the people themselves.
-

- **Adaptability**: the State must ensure that services and programmes are flexible to adapt to society and its transformations. For the proper realisation of human rights, services and programmes must be capable of responding to the needs of people, as well as their cultural and social contexts.



2. The Differential Approach to Rights

2.1. Origins of the Differential Approach to Rights

The discourses and versions regarding the origin of the Differential Approach to Rights or Differential Approach - are diverse and heterogeneous. While some propose that the differential approach is the logical development of the contemporary way of handling the various international instruments on human rights that exist within the national legal bodies, others propose that it is a new way whose origin is found in the sociopolitical processes and events that Colombia experienced as a result of the armed conflict. Within this second line, some positions maintain that the differential approach would be the product of the convergence of various actors in society (Montealegre & Urrego, 2011) (social movements, academia, international organisations, vulnerable sectors, etc.), while other versions suggest that its privileged positioning was a purely legal process in the context of the signing of peace agreements and post-conflict reparation processes for victims.

Beyond the controversies between different positions regarding the tracing of their genealogy, the truth is that contemporary commentaries that speak fully and directly of a differential approach over and above other terms and concepts (such as preferential treatment, positive discrimination, etc.) have been made mostly in Colombia. This is so since, as we will see in the next section, the Differential Approach is intrinsically and fundamentally a legal device, whose formalisation, that is, its explicit naming and positioning within legal and regulatory bodies, in the case of Colombia, was necessary to address the problems resulting from the reparation processes for victims of forced displacement and provide legitimacy to the peace process.

In this sense, the differential approach as a categorical and rights-realisation strategy is completely contingent on specific sociohistorical processes and a certain geopolitics of knowledge and power: the differential rights approach is a historical fact and, therefore, it is a practice that responds to the contexts and transformations of those scenarios where it is deployed. Therefore, in order to understand the Differential Approach to Rights, it is essential to bear in mind that it is inseparable from the sociohistorical context in which it emerges. In this sense, its emergence and development bears the marks or traces of the efforts and struggles against discrimination, social inequality and forms of oppression typical of the realities of the contexts in which they exist (see vignette).



Vignette No. 1

The case of Colombia⁵

The product of its own process of jurisprudential development, the differential approach to rights is currently present in multiple national regulations, international instruments and other documents related to human rights, showing that it is fully valid in terms of legal measures aimed at certain population groups. A clear reflection of the above is the central place it occupies in an instrument as transcendental in the recent history of that country as was the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace (2016), in which, said notion is present in a transversal way; or, to mention another case, the decisive and controversial role that the differential approach had in the peace agreements (Koopman, 2020). According to the arguments of Donny Meertens (2002), the first legal precedent – in addition to the tacit contents found in the Political Constitution of 1991 – of the differential approach can be found in Article no. 10 of Law 387 of 1997, created within the framework of the measures adopted to combat forced displacement caused by the armed conflict. This would explain, according to the author, why one of the characteristic elements of the Differential Approach is vulnerability, the degree of determination of which makes it possible to “prioritise” state policies and measures in favour of specific population groups. Regarding the formalisation of the concept, this is already fully mentioned in Article 13 of Law 1448 of 2011, incorporating the differential approach as a guiding principle of all processes, measures and actions that are developed in pursuit of assistance, care, comprehensive protection and reparation of victims. Finally, in 2017 the Differential Approach was given Constitutional status through Legislative Act 02 that reformed the Political Constitution of 1991 in order to provide legal safeguards and political stability to the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace. In said document it is mentioned that:

5. It should be noted that the signing of the Peace Agreement on November 24th, 2016 was preceded by long decades of negotiations prior to the agreement, which began even before the 1991 constitution. Prior to the peace agreement, in Mexico the General Law of Victims was approved and published in 2013, which aims to “Recognise and guarantee the rights of victims of crime and human rights violations, especially the right to assistance, protection, attention, truth, justice, comprehensive reparation, due diligence and all other rights enshrined therein, in the Constitution, in the International Human Rights Treaties to which the Mexican State is a Party and other human rights instruments” (General Law on Victims, 2017, Article 2, frac. I). In this regard, as Cortes (2020) rightly points out, “This legal system provides various aspects that require a broad and in-depth analysis to generate specific courses of action, which specify the provisions established in this matter. As proof of this, Article 5 of this law states that the established mechanisms, measures and procedures will be designed, implemented and evaluated applying, among other principles, the differential and specialised approach” (2020: 3). For this reason, it has been decided to define the process of integration of the Differential Approach in the country as a case.

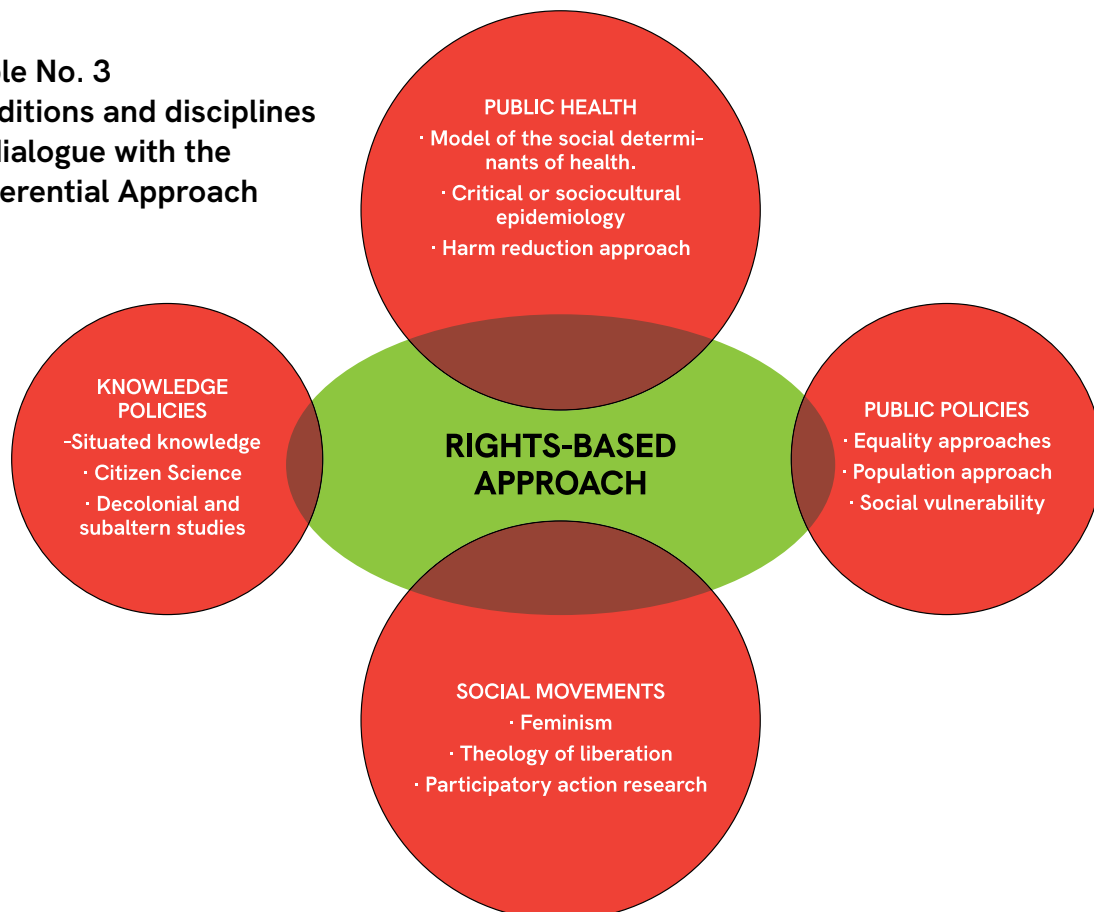


Thus, finally, it can be argued that both the emergence and development (jurisprudential, technical, political, etc.) of the Differential Approach to Rights responds to historically situated processes. The Colombian case arises with “the aim of offering a panorama of restitution of rights to victims of the [armed] conflict based on their specific needs”

(Arteaga, 2012: 15).

Before concluding this brief section on the origins of the Differential Approach, it is necessary to bear in mind that, in history as a discipline, much ink has flowed regarding the relevance, adequacy and even validity of the word *origin* or the concept of *origin* as a historical category. For this same reason, different authors prefer to use the term commencement, beginning or emergence to underline the network of relationships that precede, connect and even continue to be present in the new. Following this argument, we cannot fail to point out the concurrence and dialogue that characterises the Differential Approach, and that, like its communicating vessels, connect it with other disciplines and traditions of thought. In this regard, the following table indicates some of these.

Table No. 3
Traditions and disciplines in dialogue with the Differential Approach



6. “[The differential approach principle] recognises that there are populations with particular characteristics due to their age, gender, sexual orientation and disability situation. For this reason, the humanitarian aid, care, assistance and comprehensive reparation measures established in this law will have this approach.” Article 13, Law 1448.



As can be well observed in the preceding table, there are many traditions, disciplines and approaches that, directly or indirectly and with different intensities, outline the genealogy of their lineage.

2.2. Definition and characterisation of the Differential Approach to Rights

Taking into account the historical characterisation that defines its nature, the differential approach is usually defined as a conceptual framework that seeks to fulfil the human rights of vulnerable groups, taking into account their particularities. Thus, one of the most often-consulted definitions in the existing literature is the one proposed by the Office of the United Nations High Commissioner, which establishes that:

“The differential approach has a double meaning: it is both a method of analysis and a guide to action. In the first case, it uses a reading of reality that aims to make visible the forms of discrimination against those groups or populations considered different by a majority or by a hegemonic group. In the second case, it takes said analysis into account to provide adequate care and protection of the rights of the population.”

(OHCHR, 2010, Bulletin, p. 1)..

It is convenient, then, to dwell on these two mentioned aspects: the differential approach as a form of analysis and the differential approach as a guide for action. Regarding the first of these ways of approaching the Differential Approach, it would be a question of conceiving that the purpose or objective of the approach is the visibility (or apprehension) of the vulnerabilities and violations suffered by specific groups and individuals due to their affiliation or crossing to certain “categories of difference” (age, race, ethnicity, gender, sexuality, etc.). In this regard, it would be this aspect where the greatest power or transformative force of the Differential Approach would lie, insofar as it is this operation of characterisation of the groups that allows giving priority and context to the actions of protection and restoration of violated human rights, by identifying the gaps and risks that these groups or populations suffer (Ministry of Social Protection & UNHCR, 2011: 27).

On the other hand, the Differential Approach to Rights assumes that this is a regulatory framework, a guide for action. In this specific way, the approach would be present or operate in the formulation, execution and adoption of the necessary reparatory measures for vulnerable groups, together with the effective enforcement of the full enjoyment of the principles of non-discrimination, equality and social participation by part of the group in question. The result or effect of the above results in the recognition and structuring of the vulnerable group as holders of rights, that is, as full and dignified persons. It is in this regard that some authors propose that the Differential Approach does not have the exclusive purpose of offering a framework for the implementation of public policies for the victims of the conflict, but rather suggests much more structural



solutions based on essential principles of all social rule of law, such as equity, equality and justice (Arteaga, 2012: 21-24).

“[the differential approach carries] .. the implicit right to exercise citizenship based on difference in scenarios of participatory democracy, of equal inclusion of citizens in the political scene, and in decision-making in the family, private and public sphere.”

(Baquero M., 2009, p. 1)..

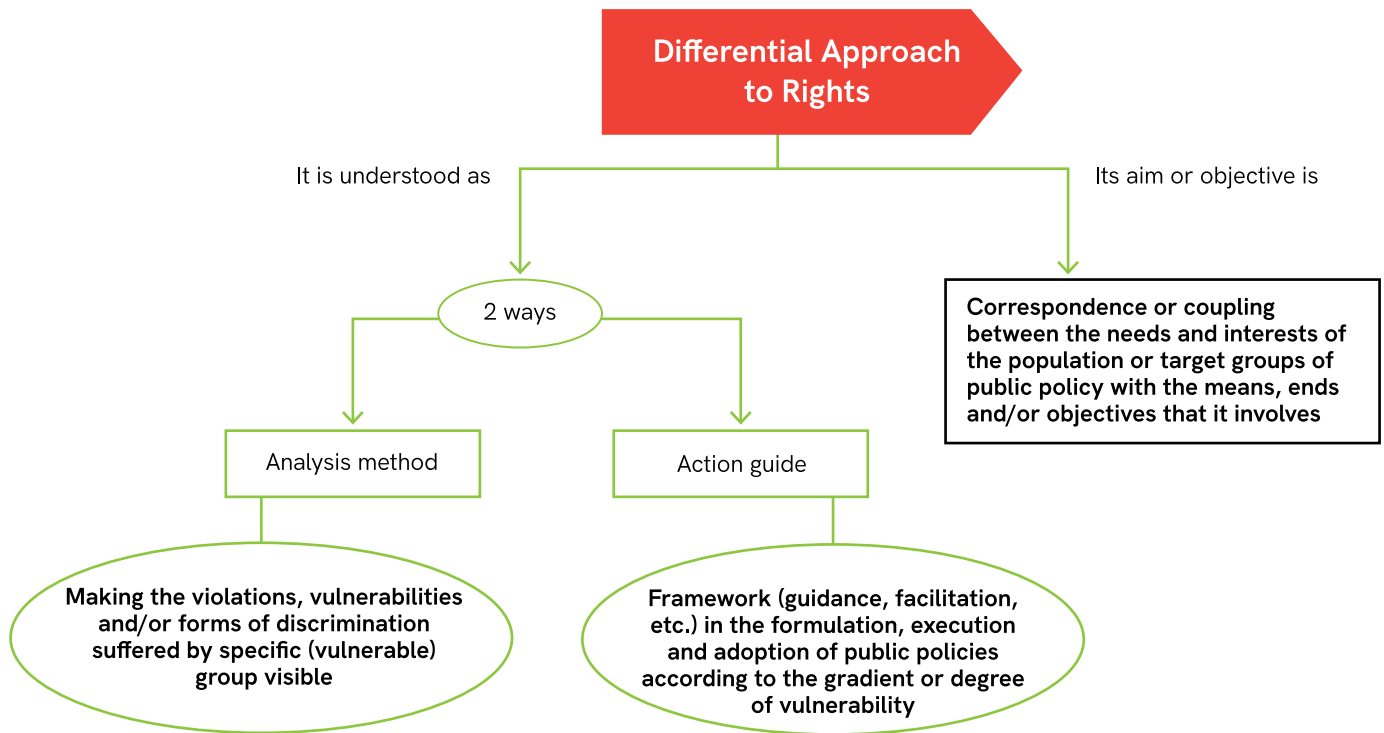
However, before understanding the differential approach as split into the form of analysis and guide to action, this paper aims to outline the Differential Approach as a practice or procedure of technical-methodological operationalisation, which allows to materialise the fulfilment of the human rights of the population at which the policy is aimed within the integral process of its formulation, design and implementation. We believe that it is important to distance ourselves from definitions such as that of the High Commissioner to the extent that, as García et al (2010) explains, these approaches can lead to equating the Differential Approach to the population approach or to other forms of segregation of the population in categories, or to mistakenly think of the operation of the Differential Approach as the deployment of intersectoral approaches. Regarding our own position, a definition close to it is the one produced by Montealegre and Urrego:

“As a construct of individual and collective order, the differential approach is a continuum of rational procedures that respond to a social problem in which Human Rights (HR) are obviously violated (Paipa, 2015), establishing parameters for social and institutional action as a condition for the exercise of co-responsibility at the public, private and community level, as well as the guarantee of individual and collective rights for all the inhabitants of the territory”.

(Montealegre and Urrego, 2013, p. 43.)

In conclusion, the Differential Approach to Rights is a socio-legal device that ensures the adaptation and/or adjustment of all stages of public policy to the particularities of the target population in pursuit of their full insertion and participation in the processes, thereby enforcing the principles of non-discrimination, equality and social participation. It is characterised, in this way, as being a form of realisation and operationalisation of both national and international legal frameworks in the field of rights, by duly delimiting the plausible field within which the objectives and purposes of the policy to be built take on meaning since it promotes the correspondence between this policy and the needs and interests of vulnerable populations.

DIAGRAM No. 2 Fundamental architecture of the Differential Approach



2.3. Compatibility between the EDD and the HRBA

At this point, it is important to pay attention to certain existing differences (conceptual and practical) between the Differential Approach to Rights and the Rights-Based Approach, given the theoretical and socio-historical specificities of the EDD with respect to the HRBA. Below, some of these differences will be outlined and, by virtue of them, the degree of compatibility and/or complementarity that these approaches have with respect to each other will be explored.

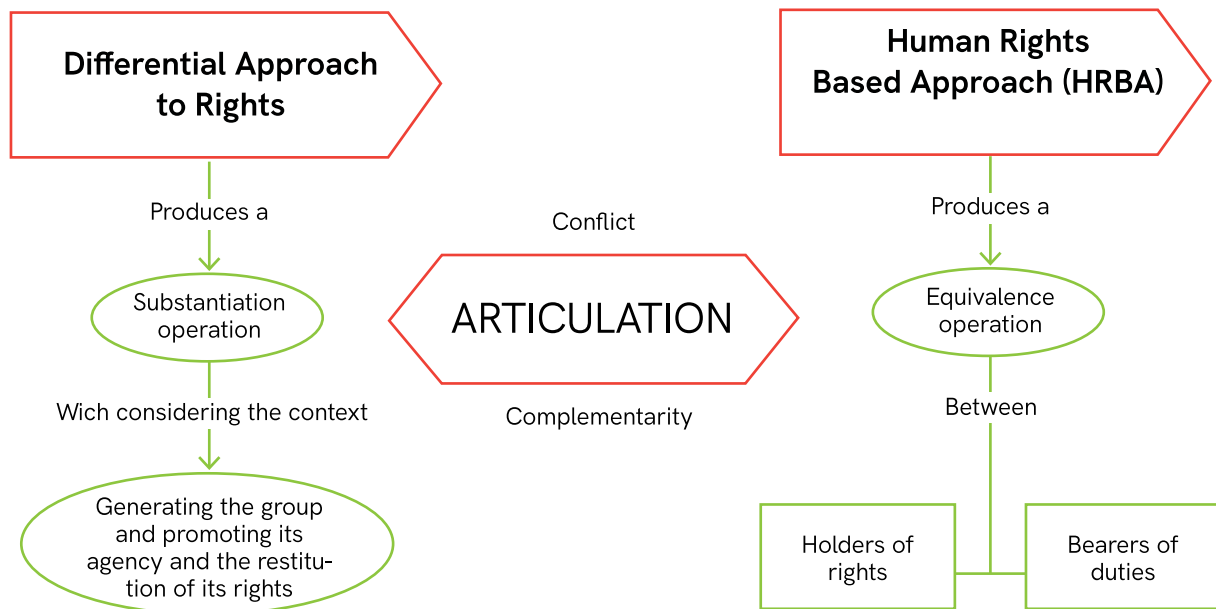
a. First of all, the differential approach and the rights approach differ in the level of their operation: the first is local, partial, contextual; the second is of a universal nature. Understanding ensuring the guarantee of the full exercise of human rights to be a common principle, the difference lies in the identification of the parties to whom to apply this compliance. The HRBA, following the declaration of human rights, establishes all human beings as holders of rights regardless of their gender, age, ethnicity, religion, sexual orientation or other personal characteristics. In this regard, it does not particularly identify any group or population, but rather universalises the scope of its actions. On the other hand, the Differential Approach insofar as it originates, as we have seen, in the reparation processes of the victims of the armed conflict, represents another way, one in which the particularities of the group that is served are central to fulfilling the proposed purpose or objective. What the Differential Approach seeks in order to enforce the principles of non-discrimination, equality and social participation is to generate the necessary adjustments to the process of designing and implementing public policy



according to the population or vulnerable group with which it works. For these reasons, the Differential Approach needs, almost necessarily, to focus on a level immediately below the HRBA. In this way, we find that some points of complementarity between the EDD and the HRBA are precisely due to this difference in level, since it makes it possible to operate both approaches simultaneously: while one watches over the process from a general (or external) point of view, the other approaches it from inside the case.

b. The second difference, closely connected to the above, is regarding the type of operation that these approaches deploy. In the previous sections we said that the HRBA is characterised by proceeding with an equivalence operation: identifying the holders of rights and the parties responsible or their guarantors, the HRBA acts on both the former and the latter. In a certain way, this characteristic is correlative to the fact that its level is general/universal, since this procedure – the simultaneous examination and action of rights holders and duty holders – requires it. The Differential Approach, on the contrary, does not work by means of an equivalence or equality between two terms, but rather, we would say, exacerbates an unequal base condition by providing greater protections, guarantees, etc. based on the context or particularities that occur in that specific group. In this regard, the Differential Approach operates precisely by giving substance, or consistency, to the vulnerable group as an active subject with rights.

DIAGRAM No. 4 Differences and complementarity between the HRBA and the EDD





c. Finally, the last difference between the EDD and the HRBA is related to their scope in the design and implementation of public policies. While the Rights Approach comprehensively covers the entire process, including becoming involved in stages or processes such as accountability, inspections, etc., in order to ensure that said operations and processes are in accordance with international law, the Differential Approach seems to focus its scope mainly on the formulation, design and implementation stages. The foregoing is due, in our opinion, to the fact that the Differential Approach is mainly concerned (as has been mentioned) with realising the principles of non-discrimination, equality and participation of rights holders, which is why the field of observation and action would be this one. This, however, should not lead to mistakenly equating the differential approach with other figures, such as citizen consultations, since the latter are a resource for the participation of the groups or populations involved in public policy, but not a conceptual framework-guide for their construction or for human development.

After this explanation of the differences between the Differential Approach and the Rights Approach, we can conclude that these two approaches do not logically follow on from each other; or, in other words, building a public policy based on the differential approach does not logically or necessarily lead to said policy being within the framework of the human rights based approach, and vice versa. They constitute, so to speak, two different rationalities; two different logics for approaching the realisation of human rights. Taking this aspect into account is decisive when planning and adopting this or that approach, since the dimensions that each one prioritises may be ignored or unknown. Finally, since a priori their relationship is not given, it is extremely important to take into account the fact that depending on the articulation that occurs, they may well come into conflict with, be juxtaposed with or complement one another.

2.4. Differential approach and intersectionality

Just as the relationship between the EDD and the HRBA has its tensions and meeting points, the differential approach and intersectionality is another key point that is mostly addressed in the available literature on the differential approach. The relationship between these two notions is central to many of the documents reviewed, mainly advocating for the complementarity that intersectionality has with the differential approach as it provides greater robustness to its procedures.

Due to the growing polysemy of the term, it is worth asking, what do these documents mean by intersectionality? Primarily a methodology. Thus, for example, we find the following:



“Intersectionality is a methodology that examines how various biological, social, and cultural categories (such as the differential approach, religion, age, nationality, education, economic status, etc.) interact in a person’s life on multiple and simultaneous levels.

(Differential and intersectional approach.
Unit for comprehensive care and reparations for victims, 2017)

“Intersectionality is an analysis methodology aimed at clarifying the situation of oppression or privilege of a person or group of people due to their belonging to multiple social categories and the interaction between them. The term was coined by Kimberlé Crenshaw in 1989. [...] In other words, this methodology involves jointly implementing differential approaches, as well as other differential categories that may aggravate a person’s situation of exclusion or discrimination. Among others, their economic level, level of education, political opinion and geographic location (territorial approach).”

(Guide to the application of differential approaches in transitional justice mechanisms:
uses and adaptation of best practices. Government of Colombia & Pan-American
Foundation for Development)

It is important to emphasise this condition of intersectionality as a methodology, since that affiliation gives it the status of a “toolbox”, which is where the foundation of the complementarity between it and the Differential Approach arises. From this perspective, intersectionality, by being able to outline how the multiple categories of differences reciprocally affect each other, allows for the simultaneous implementation of more than one differential approach – as one of the quotes mentions. In this sense, intersectionality appears significant to the literature because it offers the possibility of that adjustment within the Differential Approach, and not so much because of its theoretical, epistemic and political qualities and implications.

Contrary to the foregoing, we understand that intersectionality is not and cannot be reduced to the status of a mere methodology, nor to that of a theory or conceptual framework. On the contrary, following Patricia Collins, we understand intersectionality as a constitutive part of a global knowledge project that addresses the examination of the articulation and configuration of the various systems and/or relations of power in the production and maintenance of forms of oppression and inequality. This means that intersectionality is above all a form of knowledge construction that cannot be circumscribed solely to gender and/or sexuality studies, but to any reality or social phenomenon, since these are in themselves a product of the articulation of various social axes or categories. We quote verbatim:



“Intersectionality is a way of understanding and analysing the complexity in the world, in people and in human experiences. The events and conditions of social and political life and the self can seldom be understood as shaped by one factor. They are generally shaped by many factors in diverse and mutually influencing ways. When it comes to social inequality, people’s lives and the organisation of power in a given society are better understood as being shaped not by a single axis of social division, be it race or gender or class, but by many axes that work together and influence each other.”

(Collins & Bilge, 2016)

The potential of intersectionality seen from this position would be that these broad general margins from which it is carried out prevent the use of rigid categories expressed in specific definitions which are typical of an instrumental reflective exercise (Collins, 2000). For this reason, intersectionality exceeds the simple assumption of being a methodology, since it already displays in itself a theory, an epistemology, a method, a political will, etc.

Freed from its condition as an adjustment tool, the relationship between intersectionality and the differential approach is substantially modified. It is no longer a question of complementarity, but rather of a direct relationship: before giving it coherence or internal robustness, intersectionality provides the medium in which the differential approach can truly be developed. In this way, for example, when examining the ways in which the domination matrix is structured, intersectionality is an operation of analytical construction of the vulnerable subject with whom to work, being able to effectively comply with the rights of individuals.

This means that the intersectional analysis is articulated on the basis of a social subject (collective and individual) categorically indexed to the set of populations or vulnerable groups and, from there, undertakes the analysis and understanding of its positional and relational uniqueness. In other words, it means that in the Differential Approach, vulnerability is specific because it expresses the difference within the difference (mono-category) that is given by belonging to a specific population or vulnerable group: **we could say, vulnerable in vulnerability**. For this reason, the second key issue to consider is that the specific vulnerability does not exist only as a product of a normative or categorical indexing process but is also the product of an analytical and interpretive operation articulated as appropriate in relation to certain subjects.

Finally, it should be noted that, as with the relationship between the Rights Approach and the Differential Approach, the relationship between the Differential Approach and intersectionality is not already given. This means – once again – that executing a Differential Approach to Rights in any area does not in any way mean carrying out an intersectional analysis; in the same way that carrying out research under the guidelines of intersectionality does not imply arriving at or formulating a differential approach.



In the former case, that of the differential approach, we are talking about rights; in the second, in intersectionality, we are talking about social inequality, oppression and social complexity. However, it is here, in this disjunction, where the strength of that articulation lies, since it enables a critique of inequality, exclusion and social vulnerability that is much more comprehensive and conciliatory of different positions when attacking the problem and justifying the need for reparative measures from different angles: a regulatory-legal one in the case of the Differential Approach and another much more theoretical-analytical one on the part of intersectionality.

2.5. Recommendations for the adoption of the EDD

Finally, at this point, this text will outline some recommendations regarding the adoption of the Differential Approach:

One of the first aspects to take into consideration is related to its social and political context of origin: Colombia. The analysis of the case of Colombia, as suggested by the authors who have studied it, underlines the importance of the fact that the populations and groups at which it is directed as priority populations, generally have a previous history as active social actors. Clearly, the application of the approach in a national context that does not have active or negotiated citizenship, nor constitutional legal protection, must be able to deal with these absences. In this regard, the precaution to take in this last case is not to let the fundamental guarantees and prerogatives remain at the discretion of power groups, or at best, only at the discretion of the government authorities. In both cases, the Differential Approach, either as a tool for action or as a method for analysing the reality in order to take decisions, could benefit certain groups to the detriment of others according to their power interests.

On the other hand, in the same line of caution, special care should be taken to prevent the EDD from being subsumed by clientelistic, paternalistic or technocratic logics that reduce or prevent the fulfilment of its objective, especially considering the possibility that the absence of active citizenship may lead to misunderstandings between collectivities that, operating in an individualistic and/or trade union logic, may be pushed to compete for access to the means and state measures available to redress the violation of their rights.

To tackle this situation, we have two recommendations:

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1. on the one hand, to activate citizens in order to constitute active subjects or political actors that generate a political agency (and agenda) in terms of their rights;
 2. and on the other hand, the positioning of a form or method of knowledge building. Regarding the second point, our position is that said method turns out to be intersectionality as we have conceived it in the previous section under the proposals of Patricia Collins. In this regard, we maintain that intersectionality is what would



allow not only to articulate the Differential Approach of Rights and the Human Rights Based Approach in a positive, that is to say, complementary, way, but also to serve as a platform of agency for communities and political actors while, due to their own history, this has always been a privileged meeting space for certain communities.

Finally, it is worth highlighting, despite the reiterative nature of the premise, that when we talk about the Differential Approach to Rights we are immediately circumscribing the discussion to a socio-legal sphere. Talking about human rights, whether we like it or not, necessarily means entering the field of law. In this regard, despite the fact that the Differential Approach deploys a theoretical-conceptual scaffolding by using terms such as “vulnerability”, “inequality”, etc., in and of itself it does not constitute a theory or theoretical perspective, but rather a method of analysis and a guide to action. The same is valid for the opposite case: theories or epistemological perspectives that focus on these concepts do not constitute a Differential Approach. This is important to consider in order to implement the Differential Approach in various scenarios in order not to make inaccurate statements and also to be able to give effective and optimal responses to the human rights problems of vulnerable populations and groups.



3. Knowledge Policies with a Differential Approach to Law in the Field of Drugs

3.1. Framework of human rights and drug policies

After a historical distance between the United Nations drug policy and human rights organisations, in the last two decades there are some signs that the distance between the two worlds would be slowly beginning to reverse. Proof of this would be the fact that the consequences of anti-drug policies for Human Rights have progressively become an inescapable and recurring theme in world debates on drug policies. Along with this, the debate on the implementation of new regulations on the control and supervision of drugs, mainly related to cannabis and the decriminalisation of possession and consumption, has been put into practice by some pioneering countries in these matters, as is the case of countries such as Uruguay and Portugal, respectively. At the same time, issues relating to the right to health, the penal system regarding the growth of females among the imprisoned population, the stigma and discrimination that enhances the vulnerability of certain subpopulations or groups of users and its serious consequences for their health (HIV/AIDS, hepatitis B and C, tuberculosis and deaths due to overdose), among other harm to health, are being incorporated little by little into the regional agendas and those of the nation States. Undoubtedly, after these slow advances, arduous work has been done in which scientists, research centres, social movements, Non-Governmental Organisations, international organisations and user associations have participated, among many others, all of them being essential in the progress made.

Regarding this outlook, despite all the criticisms and objections expressed from different sectors of civil society, one key milestone was the Special Session of the United Nations General Assembly on the World Drug Problem held in 2016 (UNGASS, 2016) whose results were systematised and disseminated through the *“Final document of the Thirtieth Special Session of the General Assembly. Our Joint Commitment to Effectively Address and Counter the World Drug Problem”*⁷. Although both the way in which the document was prepared and its contents were subject to harsh criticism⁸, UNGASS would provide an opportunity to accelerate the inclusion of a strong human rights narrative in drug policy debates across the United Nations system (IDPC, 2022).

7. Resolution S-30/1 of the General Assembly. Approved on 19 April 2016.



What is significant for the purposes of this document is to take into consideration certain background information regarding the political and institutional context on drugs and human rights. In the same direction, it is useful to provide some background that highlights, and thus allows us to understand that the process of convergence of drug policy and human rights, in which the differential approach to rights is inscribed, is a recent historical process and that for the same reason it has not yet been able to crystallise as a strictly historical fact. Notwithstanding the above, in light of this background, it will be possible to identify a series of fundamental contents that constitute the outline of said process.

In this context, we will refer to two documents that are key for the aforementioned purposes. The first of these corresponds to the Report on the results of the *“Study on the repercussions of the world drug problem on the exercise of human rights prepared by the United Nations High Commissioner for Human Rights (ONU, 2015)”*, which was prepared prior to the realisation of UNGASS, whose relevance is related to the contribution to the drawing up of a diagnostic look regarding the situation of Human Rights in the framework of drug policy. In this direction, it highlights situations of violation of rights related to omission regarding the scarce development of harm reduction programmes in different regions and the health impacts associated with these deficiencies in the supply of adequate services. In other words, the existence of an offering that is not adapted to the needs of certain groups (for example, homeless people, sex workers, drug users, etc.), does not guarantee access to health and therefore violates the right to health. Not only that, but it exposes these populations to a series of cases of multilevel harm, including adverse health consequences such as exposure to HIV, HCV, among other communicable diseases.

The second document that seems significant to us as a key precedent in the convergence process was prepared after UNGASS was held, in which, as its title, *“International Guidelines on Human Rights and Drug Policies (UN, 2019).”* It proposes a series of lines of action, in different areas of public accountability, highlighting priority groups which, given their status as public responsibility, highlighting priority groups that, given their condition of vulnerability, historic exclusion and, in accordance with a series of agreements and conventions signed by the States, require reparative actions and

8. According to the report prepared by IDPC on UNGASS “UNGASS was more evolution than revolution, creating a framework for future discussions rather than being the main event itself. While those who had hoped that 2016 would mark the end of the ‘war on drugs’ may have gone home disappointed, the meeting and discussions do represent tangible progress and an important milestone on the road to the next UN review in 2019 or 2020. Work must begin to prevent the UN drug architecture from triggering a response on autopilot and ensure that this next encounter is not just a repeat of what has happened before; for example, through the creation of an expert advisory group that addresses some of the existing tensions and proposes different scenarios for the future.” (IDPC, 2016: 20)



differential attention. In this case, women, indigenous peoples (ethnic minorities), girls, boys and adolescents who, being in situations of vulnerability, require differential attention, stand out. In summary, after a careful reading of these documents, including the UNGASS report, it is possible to form an idea of what we could call, in metaphorical terms, *Landscape of Drug Policy and Human Rights*.

The selected documents also account for small discursive displacements in the level of drug policy rationality⁹, from which a story has begun to take shape that put people at the centre of drug policies and health in the foreground.¹⁰ This could mean that, in those countries where it is beginning to be a reality or in those where it could still be a present-near future, the integration of a rights-based approach in drug policies would allow¹¹ their introduction into a **regulatory framework** from which it would be possible to formulate, implement, evaluate and update comprehensive national drug policies and strategies. Policies that promote balanced, multidisciplinary and evidence-based **approaches**, with full respect for human rights and fundamental freedoms, in accordance with the principle of shared common responsibility, and in line with the obligations of the parties under international law, and having a **perspective** of gender, age, community, cultural context and development with social inclusion.¹²

The drawing up of drug policies based on international human rights legislation and standards entails different objectives and priorities from those derived from the prohibitionist perspective enshrined in the international conventions on drugs. Inevitably, it also entails different policies on the ground. The key to these slow but progressive changes is the recognition that punitive drug policies have not only systematically failed in their stated objective of eradicating the illegal drug market but have also had devastating consequences for certain populations in our region. In this regard, as can be deduced from the following vignette, the following questions are raised: How much progress has been made towards a rights-based approach? For whom does the drug policy scenario show unmistakable signs of change? Judging by the vignette, the works of Loic Wacquant published more than a decade ago (2004 - 2009) with suggestive titles such as *Las cárceles de la miseria (Jails of Misery)* and *Castigar a los pobres (Punish the Poor)* respectively, start to look like newly published works exhibited in the shop

9. In a highly schematic way, Nikolas Rose and Peter Miller define political rationalities as discursive fields of changing configuration, within the framework of which a conceptualisation of the exercise of power is produced. These would include various aspects: the various moral justifications for the particular ways of exercising power by different types of authorities; the notions about the appropriate forms, the objects and the limits of politics, and the conceptions about the correct distribution of these tasks among the different authorities, be they secular, spiritual, military, family, pedagogical, etc. (Rose & Miller 1992: 175)

11. We use a conditional verb conjugation at all times as we are talking strictly about a hypothetical future, since the convergence of human rights and drug policies is a process in which progress, setbacks and stagnation can be observed depending on the issues, contexts, problems, etc.

12. See Objective 2 in the section on Institutional Reinforcement corresponding to the Hemispheric Action Plan on Drugs 2021-2025 (OEA/CICAD, 2020).



windows of the present.

Vignette No. 2

Women, drugs and criminalisation in the Latin American context

Studies on this problem do not have extensive precedents in the region; however, it is clear that Latin America has experienced a growth in the number of incarcerated women. Thus we find a recent publication by the CIM (Inter-American Commission of Women), the Washington Office on Latin America [WOLA], the International Drug Policy Consortium [IDPC] and Dejusticia, which states: “While the number of men incarcerated is greater, incarceration of women is growing at a faster pace. According to the Institute for Criminal Policy Research, the total female prison population in Latin America increased by 51.6% between 2000 and 2015, compared to 20% for men. In Argentina, Brazil, Costa Rica and Peru, more than 60% of the female prison population is in prison because of crimes relating to small-scale dealing in drugs. As noted in that publication, “the population of women incarcerated for drug offences increased by 271% in Argentina between 1989 and 2008, and by 290% in Brazil between 2005 and 2013. The driving forces behind the exorbitant rates of incarceration are the issuance of extremely punitive drug laws and the imposition of disproportionate sentences” (Ibidem). Various authors agree that, although the increase began in the 1980s, the number skyrocketed in the 1990s. But this quantitative increase is closely related to the increase in the laws that persecute these drug selling activities. Within the drug trafficking circuit, specific studies indicate that the insertion of women into the organised crime chain is at the lowest level, that is, in the sections of retail sale and trafficking, which has increased worldwide, Latin America being no exception. But one might wonder what link exists between this “choice” and the increase in single-parent families headed by Latin American women, who are characterised by their multiple responsibilities, not just caring for their children. In the same sense as described, the investigation carried out by CELS, the Public Ministry of Defence of the Nation and the Penitentiary Prosecution Service of the Nation (2011)³ shows that:

Most of the incarcerated women headed single-parent families and were



the head of the household. [...] 60.1% of the total number of respondents answered that at the time of arrest they did not live with a spouse or partner, and 63.5% that they were the main economic breadwinner in their household, a percentage that reaches 70.4% in the case of non-nationals. In addition, 4 out of 10 women responded that, even after arrest, they continued to make economic contributions to their homes. This last piece of data is categorical in terms of the pressing economic situation of the family group, even more so if one considers the meagre income received by the inmates for the work activities they carry out. (p. 154)

Practices and meanings in the criminalisation of women detained for drugs *Frontiers*
between law and violence (2023: 315-316)

Authors: Laura Judith Sánchez, Rossana Angélica Gauna and Rita Silvina Herrera

Within this framework, the series of documents that we have cited underline the need to make progress in the decriminalisation of drug possession and consumption, in guaranteeing access to health for the population deprived of liberty, in the application of alternative measures to imprisonment for women incarcerated for drug-related reasons. This in the best of cases, because in others, it is about defending the right to life (against drug-related executions), limiting physical constraints, etc. In other words, as we have already underlined, the transition from a punitive regime to another based on rights is still a long way from being consolidated. As the reports on human rights and drug policies show, whether by action or omission of rights, violations of these rights are still present in the daily life of our societies and countries in our region. The foregoing is reason enough to understand the relevance of a Differential Approach to Rights in drug policy.

A careful review of the series of documents to which we have referred offers an outline image of a new drugs scenario in the process of construction in which one can observe, sometimes clearly and at other times less clearly, the integration of a rights-based approach to drug policy.

3.2.- Visibility and Recognition

The adoption of a rights-based approach in policies and strategies to address the drug problem as a horizon of possibility, will understand international human rights law as a conceptual framework that, widely accepted by the international community, would be capable of guiding the policy formulation, implementation and evaluation process in this field. In this regard, one of the main contributions of this approach would be to provide public policy with an explicit conceptual framework, from which valuable elements could be inferred to reflect on the various components: *accountability mechanisms, equality and non-discrimination, participation and the granting of power to neglected and excluded sectors*. This would also contribute to defining with greater precision the obligations of the States in the face of the main problems related to drugs. The foregoing



is without neglecting to attend to and observe the iatrogenic effects and programmatic vulnerability themselves derived from the responses to the drug problem.

At the same time, it would be a mistake to understand the operation of the norms as deterministic. Normative schemes are interrupted by one another, they emerge and fade depending on broader operations of power (Butler, 2010). Thus, for example, the mere fact of devoting an entire section to harm reduction in the *International Guidelines on Human Rights and Drug Policy* (UN, 2019), neither guarantees nor even determines its political realisation. In this regard, in the *Global Harm Reduction Report 2022*, it is noted that in recent years the global budget allocated to harm reduction programmes shows a downward trend in public investment, also pointing out that the main obstacles to a change in this trend generally come from the governments themselves. Following the argument, it can be affirmed that the mere identification of populations or needs is not enough, nor (as we will see later) is it enough to understand them, which is why the concept of *recognition* is fundamental for the consideration of people as equal subjects, holders of a series of rights and obligations.

Consequently, as some authors in the field of political philosophy maintain, we will say that the act of recognition requires the prior existence of “recognisability” conditions for its realisation. The latter is co-extensive with the difference in levels in which international human rights law and the HRBA operate. Let us agree that rights do not say much about the content of policies, although they do provide a conceptual framework to guide their formulation and implementation. Unlike the above, the HRBA says much more regarding the contents of public policy to the extent that it promotes the identification of marginalised or excluded groups and the formulation of policies that positively correct social inequalities to guarantee the universal realisation of the rights. The latter is understood as a way of approaching, understanding and identifying alternative responses to the needs of a specific population. Within this outlook, *this will generate conditions to guarantee the exercise of their individual and collective rights and the restoration of violated rights.*

In this regard, the HRBA will operate at the level of political pragmatism, and at the same time, at that of political rationality, and thus generate the normative conditions for carrying out the act of recognition. In this way, one of the main contributions of the HRBA will be the link between rights and public policy.

We have addressed the concepts of recognition and recognisability, highlighting their mutual and intrinsic interdependence, but we have not yet said anything about who receives the recognition, in other words, who is constituted as a subject in the act of recognition itself. From the point of view of international human rights law, this will be the person or groups of people, which is why in the texts and tax discourses of this framework we repeatedly find statements that begin by stating “Everyone has the right to...”.

Unlike the above, in the case of the HRBA, whoever receives the recognition is usually described as a *population and sometimes as a group*. Finally, we will see that in the



case of the Differential Approach, those who receive the recognition are usually named as a person, population, group, and unlike the previous approaches, the latter includes the term 'subject' (of rights, attention, social, etc.).

The different denominations used by the approaches to refer to who receives recognition are neither gratuitous nor irrelevant; however an exploration of this is beyond the objectives of this work. **What does seem important to us to put on the table in relation to the series *person, population, group or subjects* is the fact that whatever the case, in each and every one of them, they depend on an intelligibility matrix that makes their appearance in the public space possible.** In other words, **any of the denominations that make up the series requires public visibility as a condition of existence.**

It is at this point that the differential approach to rights becomes an extremely powerful tool, since it is an approach that addresses social realities by delving into the causes of non-respect of rights, unequal treatment and discrimination. **Making the invisible visible requires a series of mediations and operations,** which seen from the point of knowledge policies and in particular the work of the observatories, implies having tools for the production of reliable, timely and truthful information, capable of illuminating the dark areas, the hidden populations, the socially imperceptible needs. The question is inevitable. How else could we design resources adapted to needs and accepted socially and culturally if we are not capable of seeing what has remained hidden, invisible or minority?

This same argument, which is no more opaque for those who work from a post-positivist paradigm, allows us to understand that the subject/object, in this case the hidden populations, are inseparable from our strategies and tools that make their ineligibility possible. Linked to the above, perhaps the very nature of this visible/hidden duality is blurred if we accept the displacement proposed by the open sciences (OS) and citizen sciences (CS), since from the beginning OS/CC, the dividing line between the cognising subject and the known subject is blurred, or at least becomes porous (see vignette on the case of CS and CS)..

With that in mind, as a result of stigma and discrimination, these populations are located in what we could call an *epistemically opaque zone*. In fact, it is no coincidence that they are called populations of difficult access. Certainly, they are part of a much more extensive and varied set of populations and human groups that have in common the fact of being located on the obverse or limit of what is visible. On the other side of visibility, there exists an extensive zone of "nonbeing", a concept masterfully developed



by Frantz Fanon regarding our deeply racialised and gendered colonial condition. The same tools that today allow us to understand the conditions of existence in which hundreds of children and young people live immersed in the illegal economies and chains of production and distribution of drugs. Subjects incarnated as an effect of what the Peruvian sociologist Aníbal Quijano masterfully conceptualised as **coloniality of power**, and for this very reason, impossible to be understood through the traditional tools of knowledge and information production. Hidden and condemned populations of the earth coexist in invisibility with hundreds of young people and women¹³ deprived of liberty for drug-related reasons. They also coexist with hundreds of people submerged in informal work, not only dealing with illegal drugs, but also selling medicines in street markets and more formal food markets as an eloquent expression, not only of the barriers to access them, but also of the growing dangers to health. These, and many other populations, groups and collectives of people located below the visibility threshold, make up the map of vulnerability in the region.

It is worth recalling what was stated in chapter two regarding the difference in spatial terms between how the human rights-based (universal) approach and the differential (place-specific) approach to rights work. Keeping this distinction in mind will be fundamental when it comes to understanding the challenges faced by drug information systems in general and Drug Observatories in particular, and consequently, the potential for use that the differential approach to rights offers.

As indicated, we affirm that the challenge in examples like those above is related to the construction of intelligibility schemes that make it possible for certain subjects with their respective singularities, even outside the strictly normative plane, to appear in the public space. **Precisely the differential approach to rights works in a situated way in the construction and obtaining of information regarding an “other”, favouring that**

13. Thus we find a recent publication by the CIM (Inter-American Commission of Women), the Washington Office on Latin America [WOLA], the International Drug Policy Consortium [IDPC] and De Justicia, which states: “While the number of men incarcerated is greater, incarceration of women is growing at a faster pace. According to the Institute for Criminal Policy Research, the population of women prisoners in Latin America climbed 51.6 percent between 2000 and 2015, compared to 20 percent for men.” (2023: Within the drug trafficking circuit, specific studies indicate that the insertion of women into the organised crime chain is at the lowest level, that is, in the sections of retail sale and trafficking, which has increased worldwide, Latin America being no exception. One might wonder what link exists between this “choice” and the increase in single-parent families headed by Latin American women, who are characterised by their multiple responsibilities, not just caring for their children. In the same sense as described, the investigation carried out by CELS (Centre for Legal and Social Studies, an Argentinian NGO), the Public Ministry of Defence of the Nation (Defence of Human Rights, not Defence in the military sense) and the Public Prosecutor’s Office (2011)³ shows that in Argentina, Brazil, Costa Rica and Peru, more than 60% of the female prison population is in prison because of crimes relating to small-scale dealing in drugs. As noted in that publication, “the population of women incarcerated for drug offences increased by 271% in Argentina between 1989 and 2008, and by 290% in Brazil between 2005 and 2013. I already read this topic with data before... but they may not be the same.



other's intelligibility as a social subject, holder of rights, embodied and with agency capacity. The point is that making certain generally excluded groups visible means crossing the threshold of the zone of *nonbeing* and extending the visibility of certain groups or subjects so as to legitimise their different ways of life.

In this regard, let us think for a moment about sex workers who use drugs. We will see that, beyond the political reason that has led to their invisibility, the traditional information collection and production mechanisms are not sufficiently appropriate to make this group intelligible and consequently their spectral appearance in the public space will attract stereotyping, prejudice and probably discrimination.

3.3. Differential mechanisms and recognition

A rights-based approach to drugs policy implies, if not a paradigm shift, at least a different rationale that will favour the formulation of different objectives and priorities from those deriving from the prohibitionist perspective which, far from having withdrawn, is still very much present, and with which the rights-based approach has to coexist in an agonistic relationship. Inevitably, it would also involve the deployment of different care and response mechanisms. Here we come to a crucial point because translating the rationale of a new policy into its proper technical implementation requires not only information and pertinent knowledge but also the will to bring about political and social changes in this field in particular.

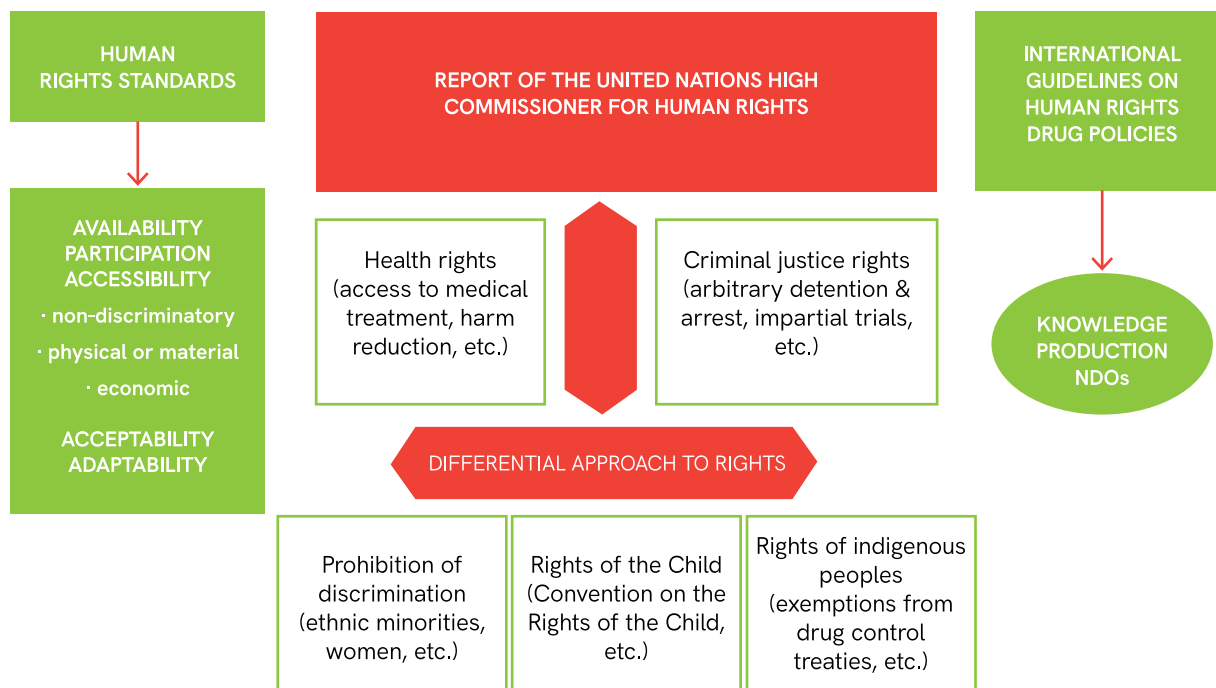
With this last point in mind it should be remembered that the rights-based approach brings with it a conceptual framework, the components of which refer to mechanisms of responsibility, equality and non-discrimination, participation and empowerment of neglected and excluded sectors, which will require much thought as to how to integrate them into public policies. It will also contribute to defining with greater precision the obligations of the States in situations deriving from criminal prosecution in the light of human rights, including the health responses or lack thereof that the different international documents emphasise as fundamental, such as the specific case of harm reduction.¹⁴

The set of ideas raised outlines a complex scenario that, strictly speaking, we could not say is something new, but rather emergent, since old and new aspects of drug policy intertwine. In this direction, the following table shows a diagram that seeks to summarise the main elements of this emerging scenario.

14. Programmatic vulnerability or programme-related vulnerability according to Gruskin et al., (2004) is understood as the impact of health policies and programmes on risk behaviours, risk-generating situations and, therefore, on the risk of harmful consumption. For example, drug use prevention programmes that ignore the existence or variations of youth and therefore their particular vulnerability to drug use may be considered an element of programme-related vulnerability. The fragile legal situation and social acceptability of some prevention and treatment initiatives, such as syringe exchange programmes, can also be seen as aggravating vulnerability.

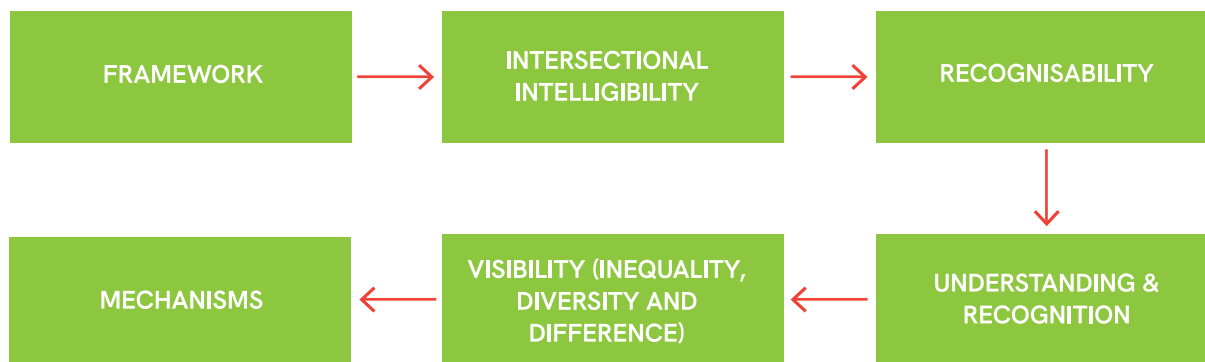


DIAGRAM No. 5. Emerging scenario



As the diagram shows in one of the boxes on the left, the integration of a rights-based approach into drug policies implies that they must be oriented and guided by a series of normative standards. When any of these are examined, it will be possible to verify its relevance and appropriateness not only to the area of drugs generally but also specifically to this guide. Indeed, if we select any of the approaches indicated in the diagram, we will see that making it operational requires specific and differential knowledge of the target groups. A given policy and its practical mechanisms (services, goods, technologies, etc.) may be accessible or accepted, for example, but it will have as a condition of possibility the cognition or recognition of the “other”, in terms of equality as subject to law, and in differential terms as a social subject.

With regards to the latter, it is worth remembering what was stated in the second chapter concerning the differences at the spatial level in which a human rights-based (universal) approach and a differential approach to rights (specific, situated) operate. Precisely, the spatial aspect is one of the reasons that support the incorporation of a **differential** approach to rights into public policies. This is why the existence of understanding and recognition, which are inseparably linked, is partly conditional upon the incorporation of an ethical-political framework established by the regime of international human rights law. The differential approach to rights seeks precisely to make these differences intelligible, and consequently the goods and services deployed will be based on their recognition and defence as long as they comply with the series of standards to which we have referred. The following table summarises these displacements.

Table N°. 4 Displacements

Going back to diagram 3, in the central part of it, a number of areas and themes (health, justice, etc.) are identified at different levels (facts, meanings, locations, etc.), as well as different subjects according to various conditions and situations. A relational analysis of this central part with the left-hand box will allow an approximation to the map of information needs on the basis of which policies and micro-policies of knowledge could be designed by and for the NDOs.

Indeed, by cross-referencing standards, areas, themes, levels, etc., it will be possible to obtain a first map or landscape of the absences, opacities, omissions, insufficiencies or grey areas of information, and thus produce an advance image of the adjustments, improvements and innovations to be made in the information system, in terms of both its technical-methodological and its procedural mechanisms for possible incorporation into the knowledge production processes. Going even further, in strictly speculative terms, we could come to think of certain displacements at the level of the knowledge paradigm, visualising other possible ways of thinking and designing research with an emphasis on other aspects that have not been much explored until now, such as the collaborative level with the non-scientific community as we are invited to do by citizen science in dialogue with open science. It will be essential to consider this dimension for the design of intervention mechanisms that comply with the standard of adaptation and cultural acceptance.

Finally, on the right side of diagram 3, the international human rights guidelines for drug policies are indicated. These are consistent with the results of the evaluation carried out by the UN High Commissioner for Human Rights (UN, 2016), the latter partially represented in the central part of the diagram and lead us to visualise how a series of socio-sanitary and socio-legal problems deriving from the intersection of drugs and human rights turn on these three axes. Furthermore, if we return to the definition of the differential approach to rights (OHCHR, 2010) we see that it proposes that it be understood as a method of analysis and guide for action. In other words, as a tool for reading reality that aims to make visible the forms of discrimination against those groups or populations considered different by a majority or by a hegemonic group, and as a government technology to provide adequate attention and protection of the rights of



the population affected by drug consumption, production and policies (OHCHR, 2010); since then it is feasible to think, that is, to build what could be called a mapping of *the vulnerabilities and knowledge policies desirable with the differential approach to rights*. As a navigation metaphor this mapping would have the added value deriving from the convergence of these particularities and the know-how provided by the differential approach to rights in public policy in areas other than drugs; and on the other hand, the know-how contributed mainly by those drug policies with a public health approach, which, having demonstrated their effectiveness in this field, for various unrelated reasons have not been sufficiently implemented up to now¹⁵, and that will find favourable conditions for implementation within the framework of the HRBA. A cartographic approximation is shown in the following table.

15. Here we are thinking of a wide variety of approaches and strategies, such as community-based devices, risk and harm reduction programmes, peer support, emergency centres and advocacy, among many others. It should be noted that, in Latin America and the Caribbean, these types of strategies, programmes and devices have been promoted mainly by NGOs, often with little support from governments and states. This has meant that, due to budgetary restrictions, it has not always been possible to precede them (with diagnostics, ex-ante evaluation, etc.), or to accompany and/or systematise them through studies and research specifically designed for the purpose. This grey area of knowledge can be addressed within the framework of the COPOLAD III cooperation programme.

Table No. 5 Mapping

MAPPING OF VULNERABILITIES AND KNOWLEDGE POLICIES

FIRST LEVEL: IDENTIFICATION

Populations – groups	Conditions – situations
<ul style="list-style-type: none"> ● Ethnic groups ● Life cycle/generations ● Gender ● LGTBIQ+ ● Functional diversity ● Social class ● Territoriality 	<ul style="list-style-type: none"> ● Homeless people. ● Migrants - refugees. ● Sex workers who use drugs. ● Sexualised uses of drugs. ● Social markets and micro-trafficking. ● Incarcerated persons. ● Parenteral drug users. ● Children, young people and women immersed in the illegal economy and drug production and marketing chains. ● People with chronic pain and legal or other obstacles to accessing medication. ● Older adults and problematic consumption of psychotropic drugs.

SECOND LEVEL: APPLICATION OF THE DIFFERENTIAL APPROACH TO RIGHTS IN THE FIELD OF DRUGS

Vulnerable Population	Key population
<ul style="list-style-type: none"> ● Situation: set of circumstances and elements that contribute to generating discrimination and segregation and that may or may not be related to specific temporary situations. 	<ul style="list-style-type: none"> ● Context assessment: it is intended to describe contextual factors that may influence patterns of substance use, sexual behaviour, and rights status. This includes an evaluation of the structural context and the social and cultural context. ● Harm assessment: aims to gather information on adverse health consequences associated with substance use-related sex work.
<ul style="list-style-type: none"> ● Condition: refers to the material living conditions of the person or the population; it is associated with the satisfaction of their practical needs, interests and immediate requirements. 	<ul style="list-style-type: none"> ● Risk evaluation: analysis of practices, contexts, etc. that may have adverse health consequences (extent and nature). ● Evaluation of Actions: extent, nature and adequacy of current actions under the differential approach to rights and the specific problem of enquiry and assessment. ● Evaluation: Advocacy and agency referred to actions aimed at structural changes and associative power and participation.



The table raises the distinction between two cartographic levels. A first level of identification according to the application of population categories and vulnerability. The structural markers used in the table are based on two converging series: one of indications and suggestions designed with a differential population approach with intersectional potential, and the other of indications and drug policy guidelines, which, going in the same direction and meaning as the former series, proposes the recognition of priority sub-populations to which special attention should be paid. From the point of view of the production of knowledge in general and the work of the NDOs, the first column of the first level observes a series of criteria that are mostly considered and researched in drug studies. In this case, considering only the left-hand column, from the point of view of a differential analysis, while information no doubt exists, is collected and has variables, questions and thematic axes at this level of interest, the **key question** is to what extent its breakdown is processed, disseminated and applied in the design of the programme.

This key question or issue posed by the integration of a differential approach to rights in knowledge policies is its added value, in the following sense: it should be remembered that this approach is a tool allowing measures or actions of three types to be defined and implemented (i) actions and measures tending to eliminate the multiple forms of discrimination and violence (institutional, symbolic, structural) that certain groups face and that are related, not only to recognisable identity factors but also to contextual factors or dimensions; (ii) affirmative or positive discrimination actions directed at groups that face greater conditions of inequality and exclusion; (iii) and specific measures aimed at recognising and guaranteeing the rights of these groups based on the recognition of their particularities. **This suggests that a first line of work could be to advance in the use of the potential of population studies to generate and disseminate population breakdowns with intersectionality, fill information gaps that can be addressed in this way and use this for the actions indicated above. This advance will mean a redesign of the samples to allow the crossovers indicated by the intersectionality we seek to analyse.**

We know that population studies, due to methodological and procedural restrictions, are not always sensitive enough tools to capture emerging problems or contextual differences, let alone differential particularities related to certain situational dimensions. Thus, for example, if we look at the right-hand column of the table at the first level, we find a list of contextual and situational problems that add greatly to the complexity of certain specific problems. In other words, starting from the basis of a significant structural complexity that attempts to be apprehended through a work of disaggregation and intersectional analysis, they add contextual and situational dimensions that further increase the complexity of the phenomena, making it difficult to recognise the problems that we are trying to apprehend in the face of the recognition of their particularities. In this case, **it is most likely that we will find that there are certain information gaps that cannot be covered with the information as it is currently collected, that new public policy approaches have been adopted that demand information in these approaches. In this sense, the second major line of work will consist of adaptations and methodological strengthening to be implemented throughout the production phases in order to collect the necessary new information with the respective disaggregations demanded by the**



approach, and at the same time also to implement new or different research devices that are sensitive to contextual and situational particularities.

In either of the two cases, we will be able to understand the difference providing we can recognise theoretical-epistemological conditions associated with the differential approach to rights that precede any strictly technological operation. On the one hand, **the applied character that it acquires in knowledge and, on the other hand, its situated character.** This question leads us to the second level indicated in the two columns corresponding to this level in the table. In the column on the right of this second level, two operations indicated by the differential approach to rights not specific to the field of drugs are identified. On the other hand, a series of dimensions inspired by the rapid assessments (WHO, 1998) applied to the field of drugs and HIV/AIDS are identified by way of example. This second column puts the inter-sectional questions on a situated level of risk and harm reduction. Both operations described in the columns of the second level exemplify a way of making the research question operational in an epistemological and theoretical framework based on a differential approach to rights applied to the field of drugs.

In this framework, the inclusion of a differential approach to rights in the different knowledge production and dissemination systems, from national statistical systems through different public policy observatories, registry systems, epidemiological surveillance systems to study units and others, constitutes a fundamental step for the design, execution and evaluation of public policies aligned with the 2030 SDGs.

On the basis that groups of people are not homogeneous, the variables that account for their differences in all phases of the knowledge production process will be considered (design, production and collection of information and analysis). The design phase addresses the characteristics of people in their difference and particular life situations according to gender including sex, sexual orientation and gender identity, the life cycle, functional diversity, race/ethnicity and territoriality and other situational or emerging dimensions related to vulnerability such as migration, homelessness or sex work that will be complementary to the dimensions traditionally investigated (e.g. work, poverty situation, etc.). It is recommended that the inclusion of the EDD in the design phase be part of the results obtained from a situational planning process that has a strategic function insofar as its objective is to have information with greater levels of disaggregation in order to favour public decision-making. Even more so when this must be done in a context of generally very limited fiscal resources.

It must be borne in mind that the disaggregation of population statistics regarding their specific characteristics is a fundamental and necessary condition for shedding light on the particular conditions and gaps that affect certain population groups in various ways, as a first step towards including them in the production of data, but not a sufficient condition for the inclusion of the Differential and Intersectional Approach (DANE (Colombian Statistics Institute), 2020). Generating disaggregation consistent with a differential approach to rights requires a deep understanding of the conceptual and



historical frameworks and the added value that the approach brings to the field of public policy and knowledge policies within the framework of open and citizen science. It also involves mainstreaming these frameworks throughout the knowledge construction process, from the thematic design, through the appropriate approach to data collection instruments, the classification of variables with a large number of categories (such as occupation), their groupings and intersection of these and dissemination of these disaggregations accompanied by a stereotype-free gap recognition analysis.



4. Differential Approach to Rights as a Social Research Technology

The production of information or the conducting of studies with a differential approach to rights involves a series of activities that are interrelated, which must be considered if this approach is to be adequately implemented in social research. The differential approach to rights acts as a lens or filter that allows the precise definition of the dimensions and variables to be considered in the studies, always seeking to give visibility to sectors of the population that, until now, have not been properly studied.

This allows, on the one hand, a different treatment of the existing information, already collected, disaggregating the data that has not been processed or disclosed; on the other hand, it makes it possible to fill existing information gaps due to the way in which information is collected through existing channels.

This makes it possible to propose adaptations and methodological strengthening that can be implemented by public agencies in charge of collecting and producing information regarding the field of drugs in Latin America.

Based on the above, this section presents the description of the information generation process from the detection of needs, through the design, information gathering, processing, analysis and dissemination of the results obtained, applying the differential approach to rights (Figures 1 and 2). To facilitate the presentation of the process, four points have been highlighted that are considered significant and strategic in the application of the differential approach to rights and that represent turning points at the time of its application in the conducting of studies, research or production of qualitative or quantitative information in the field of drugs. By considering these points in the study implementation process, we expect to ensure their application in the most significant decisions in the production of information.

The points that stand out in this process are: the identification of needs, which implies consulting various actors who are aware of the differential approach to rights to apply basic principles of Inclusive Data; the design of the collection of information considering its disaggregation to include the existing gaps in population groups hitherto invisible and the adequate selection of informants to obtain valid and reliable information regarding these groups; information processing that ensures the visibility of the diversity existing



in the studied population, avoiding biases and stereotypes; and the dissemination of results taking this diversity into account, in order for it to reach all interested groups so that they can read and use it without difficulties.

Each of these points is described below and shown in the description of the process for generating information with the differential approach to rights.

4.1. Identification of needs.

The Differential Approach to Rights is characterised, mainly, by its operational nature, assuming methods and techniques that ensure it has a local, partial and contextual character, to guarantee the full exercise of the human rights of specific groups or populations, determined by gender, age, ethnicity, religion, sexual orientation or other particular characteristics. Through the application of methodological mechanisms appropriate to each context and/or particularity, it seeks to comply with the principles of non-discrimination, equality and social participation in public policy, which requires making adjustments according to the characteristics of human groups or specific populations that have suffered violations in one or more aspects in the development of their life in society.

In this sense, from a methodological perspective, the differential approach to rights seeks to identify conditions of inequality and vulnerability, given by the context or particularity of a specific group of the population, with the purpose of ensuring their full exercise of rights in a diverse society. Therefore, the first step is the identification of specific needs, which allows the visibility of differential situations within a population that responds to general characteristics such as nationality, age composition, socio-economic level, gender, ethnicity, etc.

The process of identifying differential needs requires a review of current regulations, international guidelines, public policies that focus on specific populations, laws that protect their rights, etc. This exhaustive review of norms, guidelines and policies is what will make it possible to identify aspects of current government projects and/or programmes in which an adequate response in the protection of rights is not taking place or must be improved (see Figure 1, point 1).

a. Consult users and experts

In the process of detecting needs with a differential approach, a review can be carried out of the statistical information collected in studies of the general population, studies carried out on specific populations, research reports issued by public or private organisations, contributions made by academia through their research activities, etc. The fundamental need is to conduct an exhaustive review and make adequate use of these sources. They can be both quantitative and qualitative.



For this, it is useful to consider the participation of people who are part of international organisations, public entities, civil society organisations, academia, with the aim of obtaining a broad, and at the same time specific view, which includes different perspectives of analysis, allowing the needs of certain groups or individuals that have not been made as visible as they should have been to be identified. The important thing is to ensure an in-depth examination of the information, which makes it possible to collect a compendium of needs that account for the sources reviewed and facilitates the establishment of criteria for a hierarchy of these.

Before issuing invitations to participate as a user or expert, a mapping of actors must be carried out considering some specific characteristics:

-
- People from civil society who are summoned to participate in this process can be part of user organisations or recipients of public programmes aimed directly or indirectly at populations that are part of the situation analysed, in this case related to organisations that work on drug issues and/or belong to potential populations to be studied (ethnic groups, people with disabilities, women, the LGBTI population, among others)
-
- For their part, the people invited from the academic world must meet the requirement of having carried out studies in the subject of drugs at a general level or in specific populations, making contributions that have been favourably reviewed by their peers and whose results are part of publications (academic or non-academic) that circulate in the country or internationally.
-
- People who are public officials, who are part of the organising entity or other institution, in addition to knowing the state regulations and actions in the field of drugs, must be familiar with the differential approach to rights, as a way of ensuring that recommendations for the application of the approach will be taken into account.
-
- People from international organisations that can be summoned should also be familiar with the differential approach to rights and the Sustainable Development Goals of the UN 2030 Agenda.
-

This group may be considered as a consultant to the technical teams in the different stages of the study of specific populations using the differential approach, with the purpose of making sure that the recommendations for applying the approach are taken into account and that the strategic issues identified will be promoted in accordance with the characteristics of each particular population.



b. Raising Awareness of the Differential Approach to Rights

The participation of people and organisations in needs identification processes requires an adequate understanding of the differential approach in order to reflect on its application and carry out a careful and considered analysis of the different populations in situations of vulnerability and/or risk.

In this sense, it is recommended to carry out activities that facilitate the understanding of the inequalities and gaps experienced by sectors of the national population and the need to make them visible in order to agree on ways of addressing actions that promote their tackling at public policy level. For this, it can be very useful to start from a human rights perspective, to later introduce the perspective of the differential approach to rights. It is important that awareness-raising involves all personnel working in the production of information in the public sector such as: pollsters, field workers, coders, managers of administrative records, thematic analysts, etc.). Sectors linked to civil society should also be included, as a way of generating a space for common exchange, where the same concepts are known, understood and applied for the analysis of information and detection of needs.

One of the main objectives of raising stakeholders' awareness is to reduce the reproduction of stereotypes or biases in the information, when analysing or disseminating it. This implies the application of the principle of improving human and technical capacity to collect, analyse and use disaggregated data promoted by the Inclusive Data Charter, IDC, promoted by the 2030 Agenda for Sustainable Development.

The five principles promoted by this Inclusive Data Charter are:

- **Principle 1.** All populations must be included in the data.

- **Principle 2.** All data should, wherever possible, be disaggregated in order to accurately describe all populations.

- **Principle 3.** Data should be drawn from all available sources.

- **Principle 4.** Those responsible for the collection of data and production of statistics must be accountable.

- **Principle 5.** Human and technical capacity to collect, analyse, and use disaggregated data must be improved, including through adequate and sustainable financing.



4.2. Collection of information and design of processing and analysis

During the design phase, the way in which the information will be collected and analysed is established, including the preparation of methodological documents that must take into account national and international references regarding the topic to be studied. These designs must be validated and adjusted according to the opinion of experts and the corresponding methodological tests, which provides the opportunity to make redesigns that include the differential approach to rights.

First, the study objectives must be confirmed, which can be done based on the needs of the users of the public policy programmes and current regulations, determining the results that are expected to be achieved; this goes hand in hand with the contextualisation and delimitation of the study problem from the theoretical, conceptual and normative perspectives. At this basic point, the inclusion of dimensions and/or variables can be considered for the disaggregation of population data, considering the conceptual framework built to adequately support the categories derived from these dimensions and/or variables.

The disaggregation of information is a minimum and fundamental step to achieve the inclusion of the Differential Approach in population studies. For this it is necessary to include information that allows the identification of the different population groups according to their particularities. In addition, it is essential to correctly define the dimensions and/or variables, as well as the different categories within each one in order to carry out an adequate characterisation of each group.

Another important aspect to consider in this phase is the information gathering methodology, due to the existence of sensitive information related to the particularity of each group. The methodologies selected for the study of specific populations must be suitable, considering the characteristics of each group and the topics to be considered; this has the objective of safeguarding the rights of the informants and preventing possible scenarios that cause harm to the consulted population.

The methodology selected for the collection of information guides the way in which the investigative processes will be implemented; the types of informants are defined (direct, indirect, suitable, etc.), the place where the information will be collected (private environment, public environment, face-to-face, remote, etc.), the characteristics of the personnel in charge of collecting the information (only men, only women, mixed) and the training required for field work, among other important decisions (See Figure 1, point 2).



a. Disaggregation of the information

In any information production procedure through general studies of a country's population, aggregate information, total statistical amounts or general averages are not enough. It is very important to be able to move forward in adapting the production of information towards higher levels of disaggregation.

The disaggregation of data marks the study process in a transversal way. At the time of including it in the design, it is assumed that it will be present throughout the implementation. It is important that the entire information collection process incorporates the methodological adaptations, instruments, concepts, classifications and adequate quality standards that allow and facilitate the achievement of disaggregation of the characteristics of each population with methodological relevance, and at the same time respect its particularities and clearly state the principles of inclusion, for its subsequent dissemination at a general level under these same principles.

For example, if a statistical study includes, at least, population disaggregation variables such as: sex, age, ethnicity, and disability, consideration must be given to including other variables that facilitate a disaggregated analysis of each population or sub-population that is part of the study, such as: gender identity, characteristics of their life cycle, migrant status, educational level, socio-economic stratum, victim of acts of violence (intrafamily, domestic, criminal, etc.), among others that are significant to the objectives of the research.

The disaggregation of information must cover a series of aspects, such as: considering the intersections of variables or classifications that account for gaps between population groups, for which it is necessary to present the data in a comparative way, using appropriate and relevant language and concepts to contextualise these gaps; complementing quantitative and qualitative information that facilitates the contextualisation of the gaps from the theoretical point of view and with a view to the use of the concepts by the actors.

For the disaggregation of information, it is also important to consider the principles of the Inclusive Data Charter, IDC. These principles are:

- **Principle one:** All populations must be included in the data. We can only achieve the goal of "Leaving No One Behind" by empowering those furthest behind. This means ensuring their voices are heard and their experiences are represented through data and analytics. We have to recognise all people, make them visible in the data to understand their lives and include them in the development process.



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- **Principle two:** All data should, wherever possible, be disaggregated in order to accurately describe all populations. We recognise that data should be disaggregated by gender, age, geographic location, disability, and where possible, by income, race/ethnicity, immigration status, and other characteristics significant to national contexts.
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- **Principle three:** Data should be drawn from all available sources. We recognise the need to create high-quality and timely data from accessible sources, both official and unofficial, and that these should include new data sources, where possible in accordance with internationally accepted statistical standards.
-
- **Principle four:** Those responsible for the collection of data and production of statistics must be accountable. Balancing the principles of transparency — maximising the availability of disaggregated data —, confidentiality and privacy to ensure that there is no abuse or misuse of information that puts any person at risk of identification or discrimination, in accordance with national laws and the Fundamental Principles of Official Statistics.
-
- **Principle five:** Human and technical capacity to collect, analyse, and use disaggregated data must be improved, including through adequate and sustainable financing. We know that collecting and analysing disaggregated data requires specific skills that need to be developed. We recognise the need to fund the proper and sustainable collection, analysis, and use of high-quality data so that it can be collected and used by governments, as well as by businesses, civil society, and citizens.
-

b. Appropriate selection of informants

The other important challenge for the collection of information that responds to the detection of differential needs is the consideration and selection of information collection methodologies that are up to the challenges of representativeness of vulnerable or invisible population groups that have specific and/or uncommon characteristics vis-à-vis the general population.

In methodological terms, representativeness is highly related to the sampling operation for these populations, which can be carried out using probabilistic sampling techniques in the case of quantitative studies or structural sampling in the case of qualitative studies. It should be considered that, as these are sub-populations with particular characteristics (for example: ethnicity, disabilities, migrants, having suffered violence and/or LGBTI), they may have low representation in general studies. In these cases, it is important to consider the possibility of projecting disaggregations according to the representativeness of these population groups in the general population, using sample weighting techniques that ensure their presence in the studies to be carried out.



Example of Weighting

When carrying out a study in a city X, a sample of 1000 cases was obtained: 650 of the interviews were answered by women and 350 by men. When consulting the last population census, in this city the population is distributed as follows: 50% made up of women and 50% men. Therefore, the study sample is disproportionate, because theoretically it should have been made up of 500 women and 500 men.

To correct this, different weights should be given to each case, depending on whether they are women or men. For this, the theoretical number of the sub-sample of women (500) is divided by the real number obtained (650), which is expressed as follows: $500/650$, obtaining a weighting of 0.77, which represents the weighting of each female interview in the sample. In the case of men, the operation would be: $500/350 = 1.43$, which represents the weighting for each male interview. Then, when analysing the results, these weightings are added instead of counting the cases.

Group	Population Census	Interviews Obtained	Weighting per Interview
Women	50%	650	$500/650 = 0.77$
Men	50%	350	$500/350 = 1.43$
Total	100%	1.000	

When it comes to a census study or to collecting administrative records in a specific population, the problem of lack of representativeness is not present and disaggregations can be projected in all the variables of interest for the differential approach, always maintaining statistical rigour. The applicability and appropriateness of the use of these operations should always be reviewed, from the theoretical and methodological point of view, considering the possibility that it may be sensitive information and clearly establishing the scope of the projections, in statistical terms.

In the case of some specific populations (for example: consumers of a specific type of drug, people with a specific behaviour that explains its consumption, etc.), we may be faced with the non-existence of sampling frameworks or previous studies, preventing the calculation of representative samples for study design, which is called "hidden populations". In these situations, techniques that involve field workers with the study population can be used, for example:



-
- **Respondent-Driven Sampling (RDS)** is based on the knowledge that the individuals who can best access a hidden population are those who belong to it; therefore, the success of this method lies in the affinity and reciprocal knowledge between the interviewer and the interviewee. In this way, the first 10 or 15 people who are part of the “hidden population” to be studied are recruited and are called “seeds”. They have the mission of recruiting the following subjects with the required characteristics through the use of “coupons”, and these in turn will have the mission of carrying out the same operation until reaching the sample size required for the study. This type of sampling has also been used in studies with social networks and virtual communities.
 - **Time-location sampling or TLS**, also known as venue-based sampling, is a method of recruiting a target population at a specific location and times, where units of time/place make up a sampling framework following a previous elaboration of the situation, in which it is determined that these units will capture the type of subjects that are going to be part of the investigation, and they are then selected randomly, simply or proportionally, for inclusion in the sample. Once the time/place units have been selected, in a second stage, the participants are systematically selected at random, which makes this a probabilistic method. This type of sampling can be used in virtual space, where time/place is represented by an application or virtual communities.

Also, it is possible to consider the use of variants of this type of sampling, where the selection of units of time/place and of participants is done for convenience, selecting according to the convenience of the research team, or arbitrarily, the number of participants there may be in the study; it is also possible to find a variant of intentional sampling, where the selection of the units and the participants is carried out by experts who establish criteria to be followed, although this is closer to a qualitative sample.

In the case of qualitative samples, it is about obtaining a socio-structural representativeness, which implies seeking to reproduce the main characteristics of the general population under study in the composition of the sample; that is, the qualitative sample must be a “reflection” of the study population. For this reason, in this case the representativeness is of a structural order and each selected unit expresses the differential position it occupies in the structure that makes up the population under study and, at the same time, all the units selected in the sample reproduce in their composition and dynamics the significant situations or relationships that are present in the population.

The qualitative sample seeks to represent the diversity of nuances present in the study population, which is called structural heterogeneity. This heterogeneity is mainly represented by structural levels: socio-economic axis (social class, occupation, gender, age, cultural differences, ethnicity, etc.), spatial axis (area of residence, type of settlement, rural-urban, etc.) and time axis (years, periodicity). By combining these characteristics or structural variables, it is possible to capture the heterogeneity of the population and construct a representative sample of this heterogeneity.

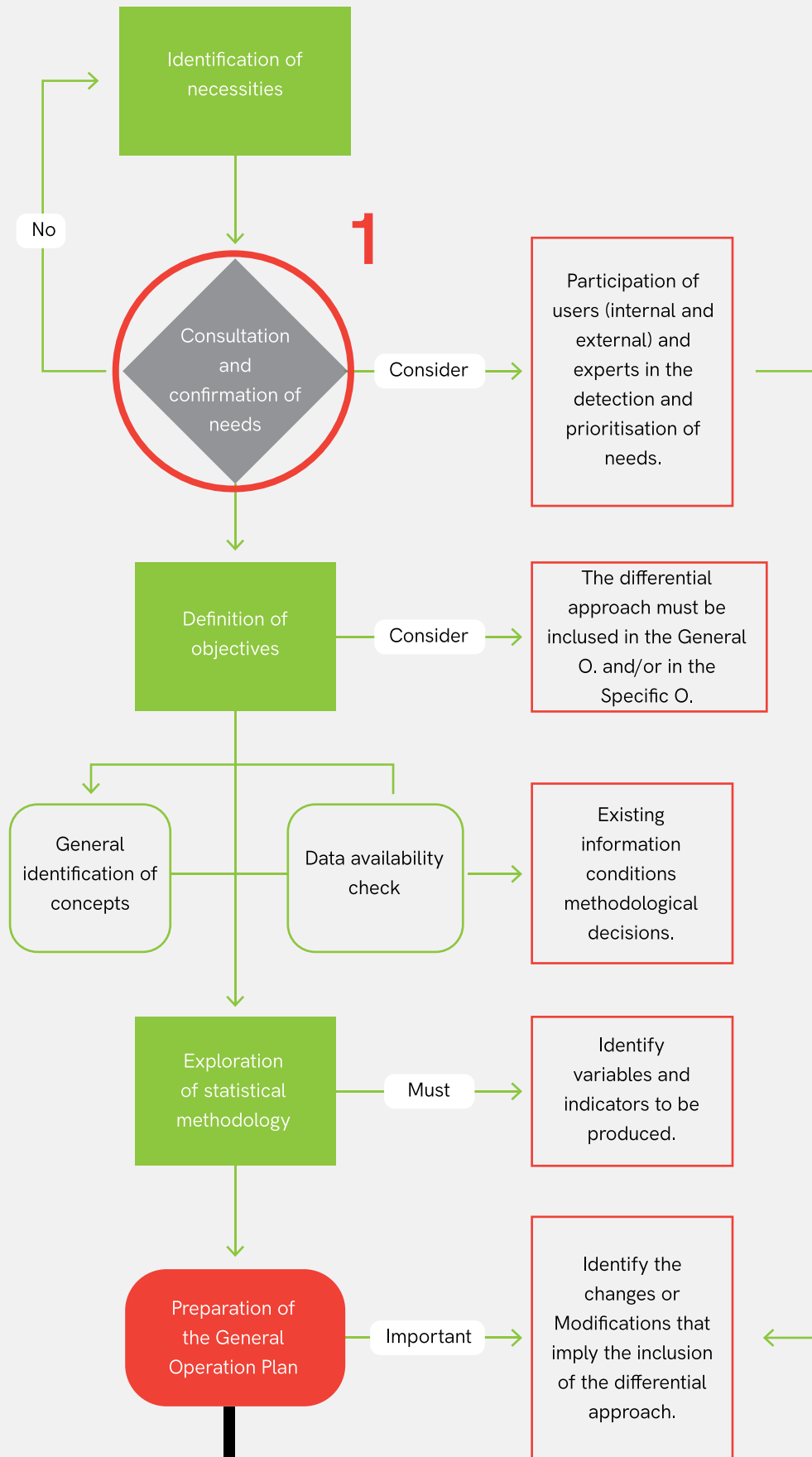


Types of qualitative sampling

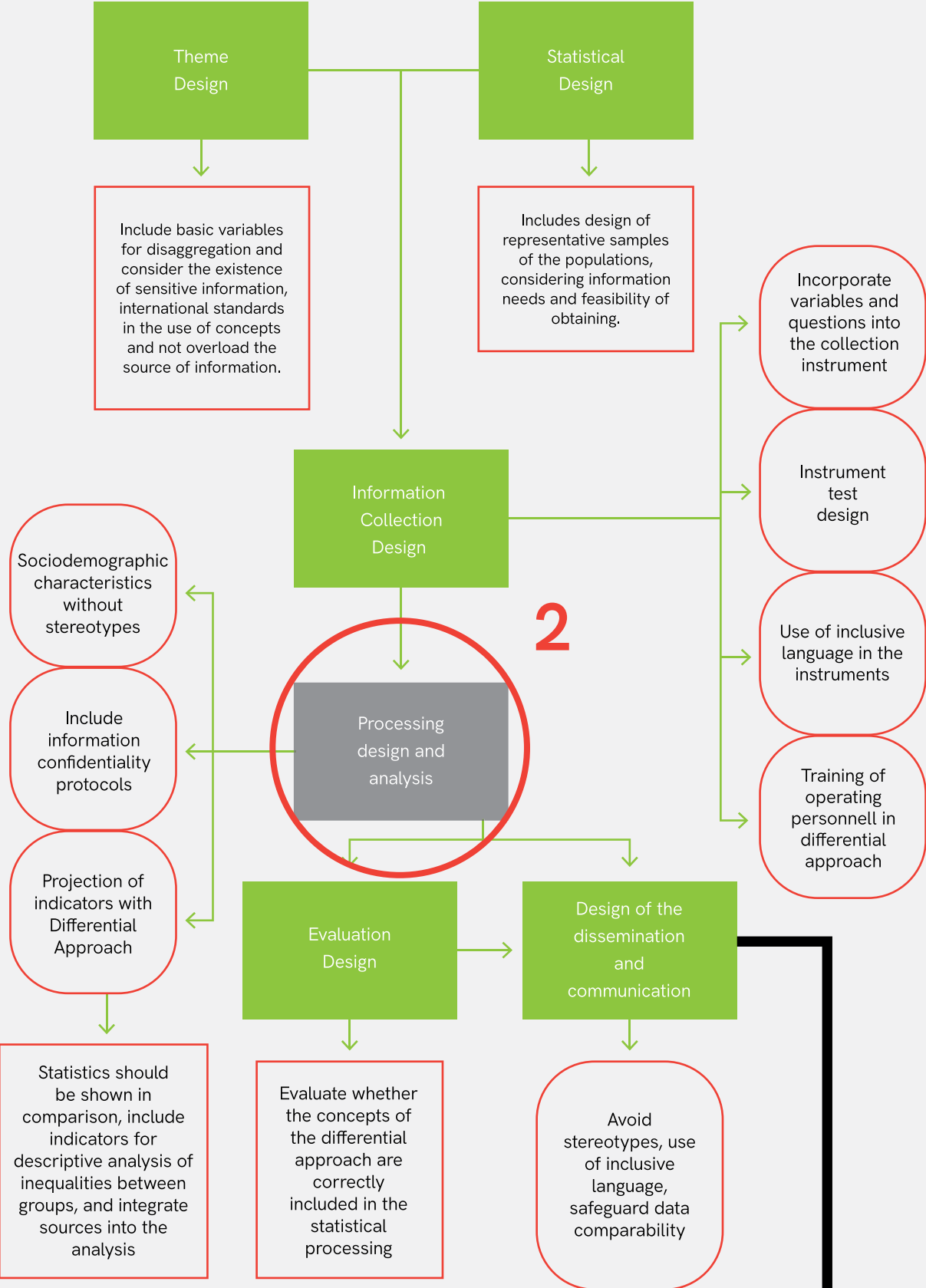
- **Convenience Sampling:** selection of sampling units arbitrarily, without any criteria that define it. The sample units are self-selected or chosen according to their easy availability. In this case, variables of the structural composition of the population are not considered, so their representativeness is questionable; although it is used a lot in the exploratory stage of research.
- **Purposeful sampling:** selection of sampling units based on theoretical criteria, adjusted to principles of structural representativeness. First, a conceptual approach to the study population is carried out and its structural characteristics are defined, which are used to define the study sample.
- **Contextual sampling:** is a variation of the previous method, where the approximation to establish the composition of the population under study is carried out using quantitative data or statistics. First, the structural levels are delimited theoretically and then the statistics are consulted to know the internal distribution of the population. Finally, the statistical criterion is used to determine the informants.

Figure 1: Study implementation process with Differential Approach to Rights, part 1

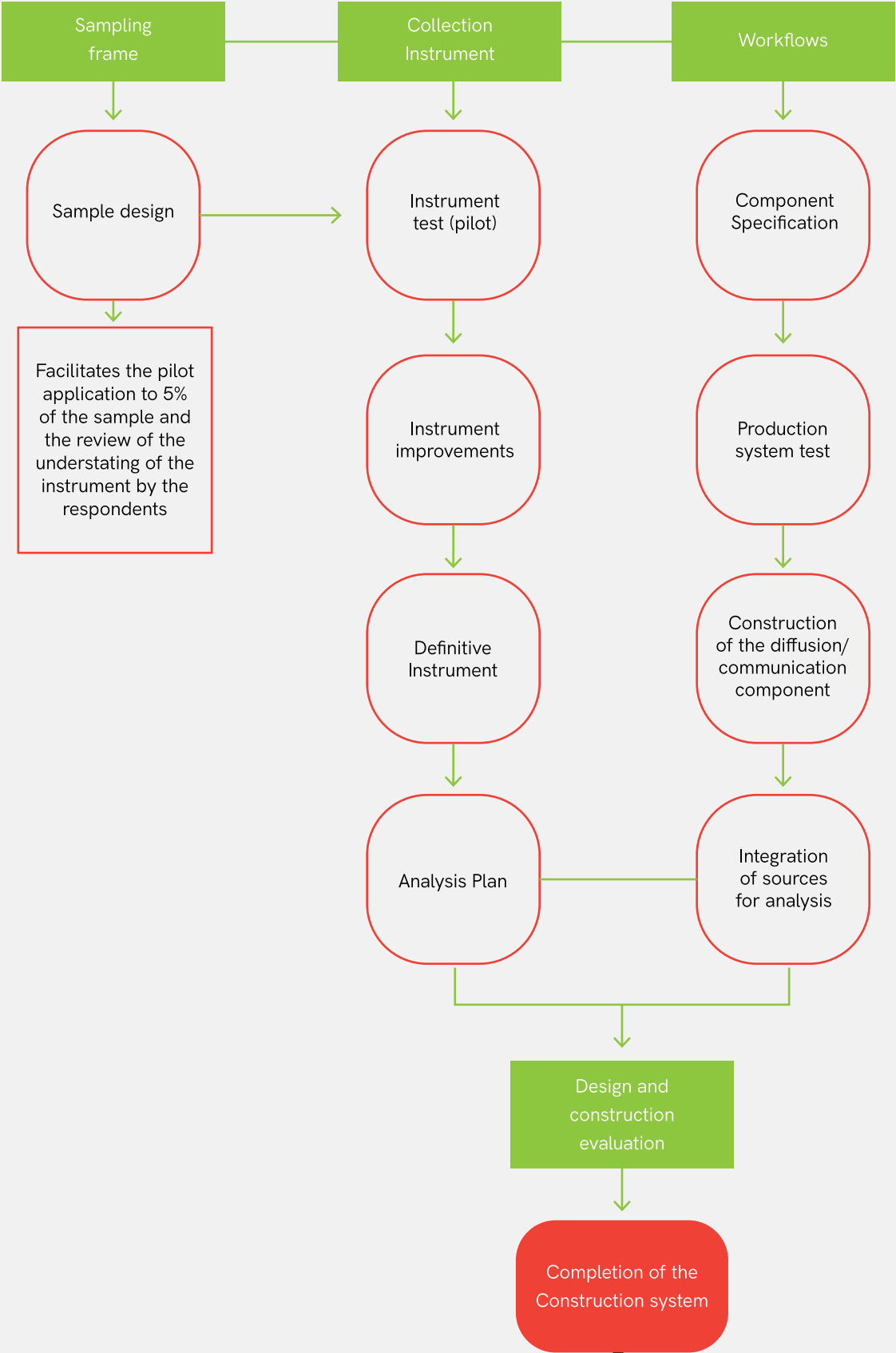
Detection and analysis of needs



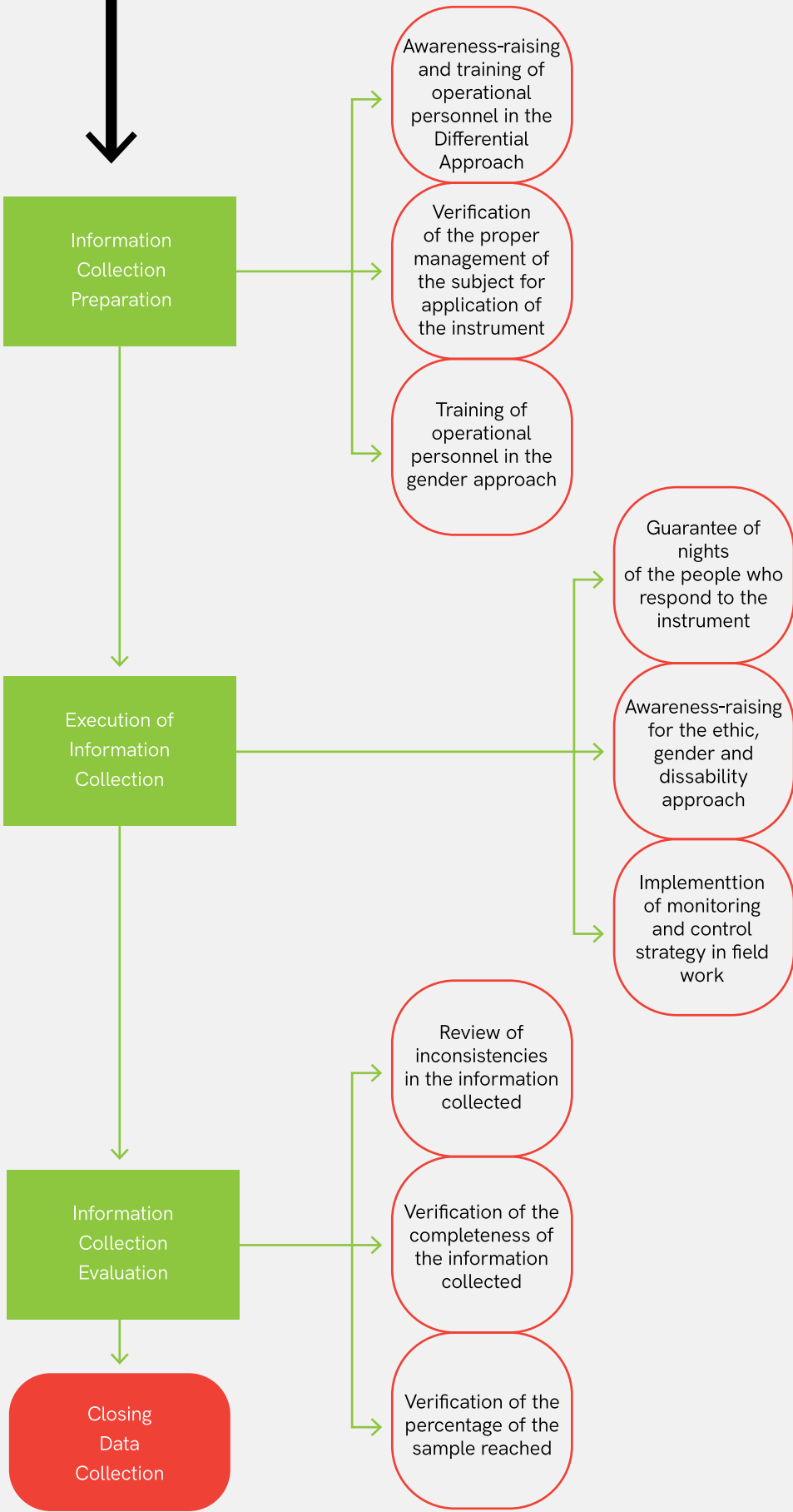
Design



Construction



Information Collection





4.3. Information processing and analysis

Once the information of an investigation or study is collected, activities must be developed to guarantee its proper processing. For this, it is necessary to consider some principles that guide the process, avoiding the reproduction of stereotypes and using inclusive language.

Stereotypes are defined as generalised visions or preconceptions about the attributes or characteristics of the members of a particular group or about the roles that they must fulfil, assuming that all the members of a certain social group have the same attributes or characteristics (for example: assuming that at a certain age “everyone” is irresponsible) or have specific roles (for example: identifying all women as caregivers of children and the sick). So, the key element of a stereotype is the assumption that a specific group possesses certain attributes or characteristics or fulfils certain roles, and it is assumed that a person belonging to this group will act in accordance with this existing preconception about it.

For this reason, it is important, especially in the information analysis and processing phase, to avoid the reproduction of stereotypes related to specific population groups (women, men, young people, older adults, people with disabilities, ethnic groups, population belonging to sexual diversities, etc.) or populations that have a particular place of birth or residence, or a determined income level. The same applies with the intersections that occur between these groups or between other situations that account for the existence of specific populations with particular characteristics (See Figure 2, point 3).

Specifically, avoiding the use of stereotypes implies avoiding the use of generalisations with respect to population groups, promoting the visibility of diversity, personal and collective freedom, and rejecting any manifestation that harms or victimises these groups.

Apart from this, in the use of language, biases and/or stereotypes can be reproduced that have systematically excluded, minimised, ignored or devalued specific groups of the population. Its careful use can allow the respectful inclusion of a diversity of groups that were previously invisible, contributing to their recognition and seeking to overcome situations of vulnerability that they have historically experienced. One of the most common aspects, in the use of Spanish is the widespread use of the masculine form in many everyday expressions that refer to the human species, making the feminine action invisible; in this case, making an effort to avoid this bias of omitting the feminine and including it in daily use is proposed.

Considering this, the use of language should be considered from the design of the instruments and guidelines that will be used to collect information, including inclusive language in the questions or response categories. The same applies in the processes of analysis and presentation and/or dissemination of results, where all the information produced must use inclusive language and avoid the reproduction of stereotypes,



avoiding discrimination based on differential characteristics and facilitating the accuracy and reliability of the data by users of the figures with a differential approach.

a. Protection of data quality, avoiding stereotypes

During the processing and analysis of the information, the use of an adequate system of classification (quantitative) and coding (qualitative) of the information must be ensured. Both procedures must include the use of dimensions and/or grouping variables covering differences of sex, age, socio-economic level, place of residence, etc., taking account of structural variables, and then perform intersection analysis according to the presence of sub-groups such as: sexual diversity, ethnicity, disability, etc. These considerations must be present from the design of the investigation and the development of the instruments, to ensure the use of processes that include a differential approach. If they have not been included from the beginning, other sources of information (censuses, surveys and administrative records) can be used to allocate the data or include qualitative information in the integrated analysis.

It is important to consider that, when various sources are integrated in the information analysis, it is essential to verify that there is strict coherence with the theoretical assumptions that are the basis of the investigation's design, taking only the information that is adequate and pertinent. In the event of deciding to use information that does not fully meet the conceptual definitions used in the design, but that can be used to move the analysis forward with a differential approach, explanatory notes must be included that allow understanding and correct interpretation.

In the case of quantitative studies, during processing, data must be edited and imputations made in the case of missing data, inconsistencies, errors or omissions. This implies assigning a value to a missing piece of data as long as there is evidence of relationships that indicate the most probable value. The most common methodology for making these imputations is to use the average of the cases with characteristics similar to those with the omission, which implies a risk of bias in the information.

Therefore, it is essential that, for all types of information analysis, consideration be given to raising the awareness of personnel in charge of information processing and analysis and training them, with the aim of avoiding their basing their work on assumptions or stereotypes when editing, coding, imputing or validating the information collected with the consequent risk to its consistency.

b. Safeguards in the analysis of information

To ensure the quality of the information analysis, it is necessary, first, to verify the coherence and consistency of the results obtained; that is, the information must have internal consistency, maintaining a coherent relationship with the theoretical approaches of the study or research. In addition, the results must be externally consistent, that is, they must be strongly related to valid findings in the disciplinary field in which they are developed.



In addition, the resulting information, the variables incorporated and the disaggregations carried out must allow comparisons between groups and respond adequately to the information needs detected at the beginning; that is, the results must be able to meet the information needs of public policy, regulations, the findings provided by academia, the recommendations of international organisations and civil society organisations that represent the population groups (users) that are part of the study.

It is very important to carry out comparative analyses that show differential situations, reflected in the information collected, being consistent with the design of the investigation. For this, the use of an inter-sectional analysis is fundamental, for which the techniques of multivariate analysis in the quantitative aspect and the triangulation of information in the case of qualitative and mixed studies are an appropriate solution. What is expected is to show the existence of differential and unequal situations between the populations in order to subsequently monitor the change in these gaps over time, once the studies are systematically replicated.

4.4. Dissemination of Results

After processing and analysing the information, the information generated by the studies with a Differential Approach must be made available to the general public through the media and digital platforms available in the public sector. On the one hand, technical criteria must be considered for the communication, publication and dissemination of information emanating from quantitative and/or qualitative studies on specific populations, based on the way in which the analysis was carried out; that is, the disaggregated information must be presented, avoiding the use of stereotypes, clearly establishing who the informants were and the way in which the information was collected (techniques used).

On the other hand, it is recommended that the dissemination of results includes making the supporting documentation, the editorial products produced and/or published, and the databases generated in the process available to users, researchers, and interested persons. This information must be available for use by any person, with the safeguards referring to the use of sensitive data and the protection of private information, and access to databases and documents through digital platforms for public use must be facilitated.

In order to adequately implement the communication strategies of the public entities that are in charge of the drug issue in the different countries and, at the same time, comply with the standards established by each entity regarding the Differential Approach, it is advisable to carry out a thorough review at each step of the dissemination process. Thus, all dissemination products must be reviewed by a group or unit specialised in the Differential Approach to rights, as a way of validating the technical criteria for communication, publication and dissemination of the information (See Figure 2, point 4).



a. Presentation of contextualised information

In general terms, any type of information is loaded with meanings, which can contribute to knowledge and the possibility of generating actions based on said knowledge to achieve an objective; that is, information is the basis for decision-making in different areas of life. Therefore, for the decisions to be projected in the expected direction, it is very important to consider the information's production context, which must be duly communicated when presenting or disseminating the results of the studies carried out.

Context analysis implies having a robust theoretical and methodological framework that supports the results and possible findings, based on the perspective of recognition of rights. This perspective makes it possible to substantiate possible causes or implications of the information obtained, either for the people affected or who are part of a specific population or for the decisions that must be made from the field of public policies. In this regard, the following guidelines should be considered:

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- The contextualisation of the information to be presented should help to avoid the reproduction of stereotypes, re-victimisation and harmful action, helping us to visualise the reality of a human group in a dynamic way and with evolution over time.
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- Contextualisation implies avoiding providing isolated data or data from a single population group, directing the analysis towards the comparison between population groups to identify gaps and inequalities, with a Differential and Intersectional Approach.
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- Therefore, the communication of contextualised information must be able to compare life situations of one or more populations, to establish the different ways in which they are affected and the different perceptions that derive from this.
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It is important to consider, at all times, the use of inclusive language in each and every one of the products created for the dissemination of information; this makes it easier to highlight the diverse composition of society and give visibility to the different sectors or populations that make it up, avoiding the reproduction of biases and stereotypes that give rise to discrimination against groups with particular characteristics.



b. Preparation of diverse and contextualised materials.

The products generated to disseminate the results must meet the needs of the users and/or the public to which they are addressed. The decision on which strategy to use for increasing visibility or transmitting information depends on the type of user or public to which it is addressed, and the same applies to the channels or media that will be used. In this sense, it is important to remember:

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- to use language that takes account of the characteristics of the group to which the communication is directed, ensuring that it is inclusive in terms of gender, sexual diversity, ethnicity, disability status, etc. The language must prioritise people, considering their particular characteristics; for example:
 - If an ethnic group is being addressed, consideration must be given to preparing material in that group's own language with the advice of interpreters or cultural mediators to ensure the correct use of the language.
 - If the information is intended to reach people with visual disabilities, the preparation of pieces in Braille and formats that contain audio must be considered.
 - If it is material aimed at people with impaired hearing, the use of descriptions in written language and/or subtitles must be considered.
 - If it is information aimed at people with low cultural capital, the preparation of infographics, tables or charts, images or icons, etc., that facilitate easy reading can be considered.

The overarching aim here is to enable a wide public, including in particular non-specialists, to access information that gives context to the characteristics and problems associated with various population groups.

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- The information must be clearly ordered and its component elements consciously considered so as not to reinforce stereotypes or historical biases associated with the predominance of certain groups over others. In addition, careful consideration must be given to the use of colours, icons and shapes, avoiding association with stereotypes; for example: the use of pink to refer to women, the use of icons representing occupations traditionally associated with men or women, or of images commonly associated with the way of life of indigenous groups, etc. In the use of visual and audiovisual material, images and colours can help readers to connect with the information that is to be delivered. For this reason, those in charge of communication must be aware of their ability to reinforce existing stereotypes and biases.
-
- Efforts must be made to understand how people belonging to a specific, differential group access information and view it at different times of the day using the multiple modalities and devices developed for its presentation. This will allow the use of strategies closer to the needs of the public to which the information is addressed, facilitating its accessibility and handling for its later use.



A basic principle is to involve the communities in the dissemination process, through the creation of diverse teams or consultation for collaboration in the preparation of specific materials.

c. Use of transversal and inclusive means of dissemination appropriate to each audience.

Once the presentation of the information is defined, the decision must be made about the means and channels through which the information will be transmitted to a specific public or the general public. These can be very diverse: use of printed paper material, electronic material, websites, emails, social networks, radio, television, written and/or electronic press, mobile phone applications, etc. The important thing is to design an adequate dissemination strategy for the various user audiences, taking account of their specific needs.

In addition, to facilitate the handling of information and its proper use, considering the contexts and needs of each user population, the products to be prepared must be carefully studied, these can be: printed and/or digital publications, press releases and websites, online query systems, geo-statistical viewers, thematic maps, data portal for public use, downloadable documents, etc.

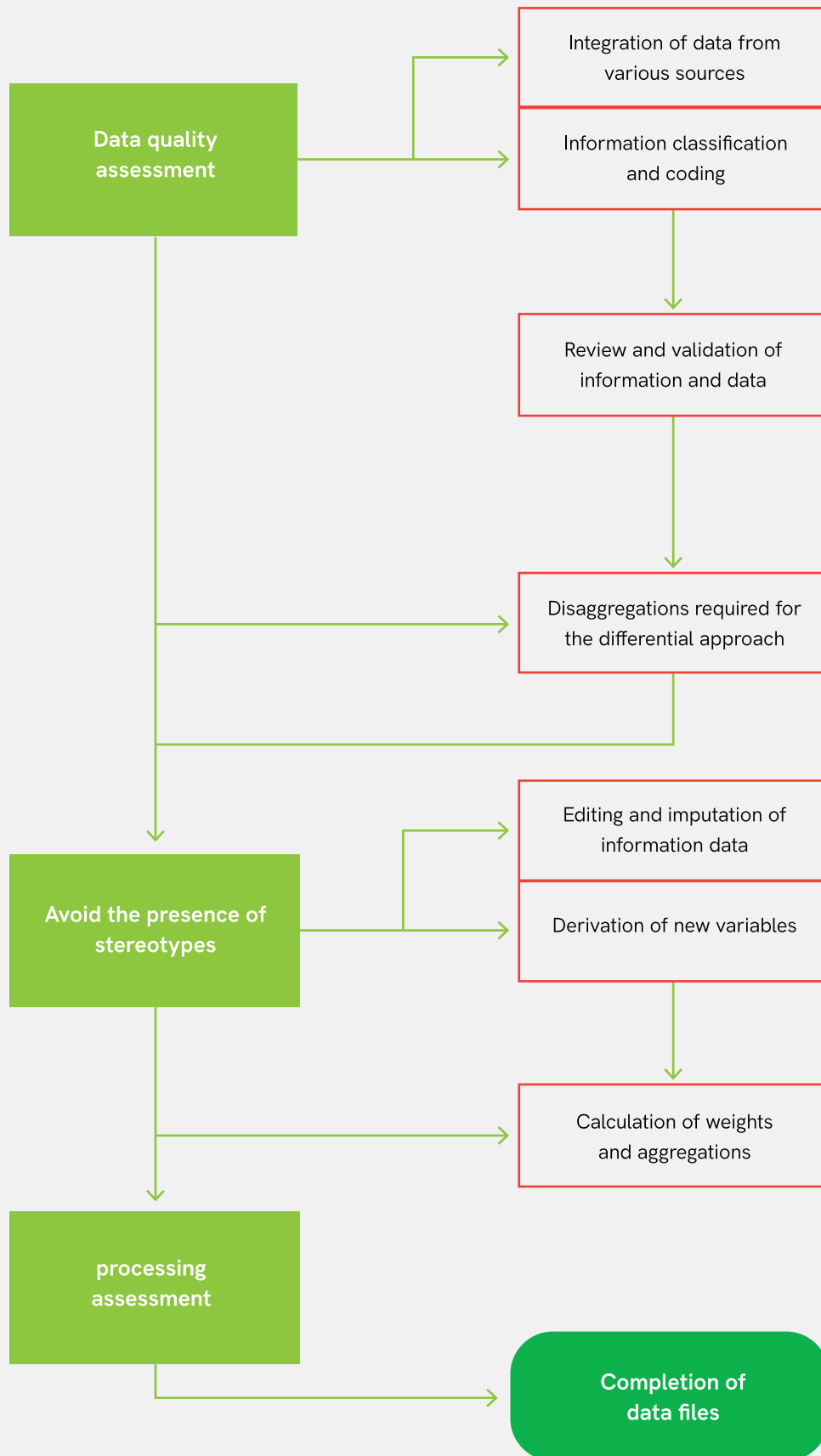
DANE, Colombia's statistics institute, also recommends the use of different types of publications, including in particular at least the following:

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- Publications specialising in differential and transactional approaches;
-
- Publications for the general public;
-
- Publications on commemorative dates of certain population groups (for example, women, sexual diversities, ethnic groups, against gender violence, etc.) that have been adopted nationally or internationally, aimed at recognising the rights of specific groups.
-

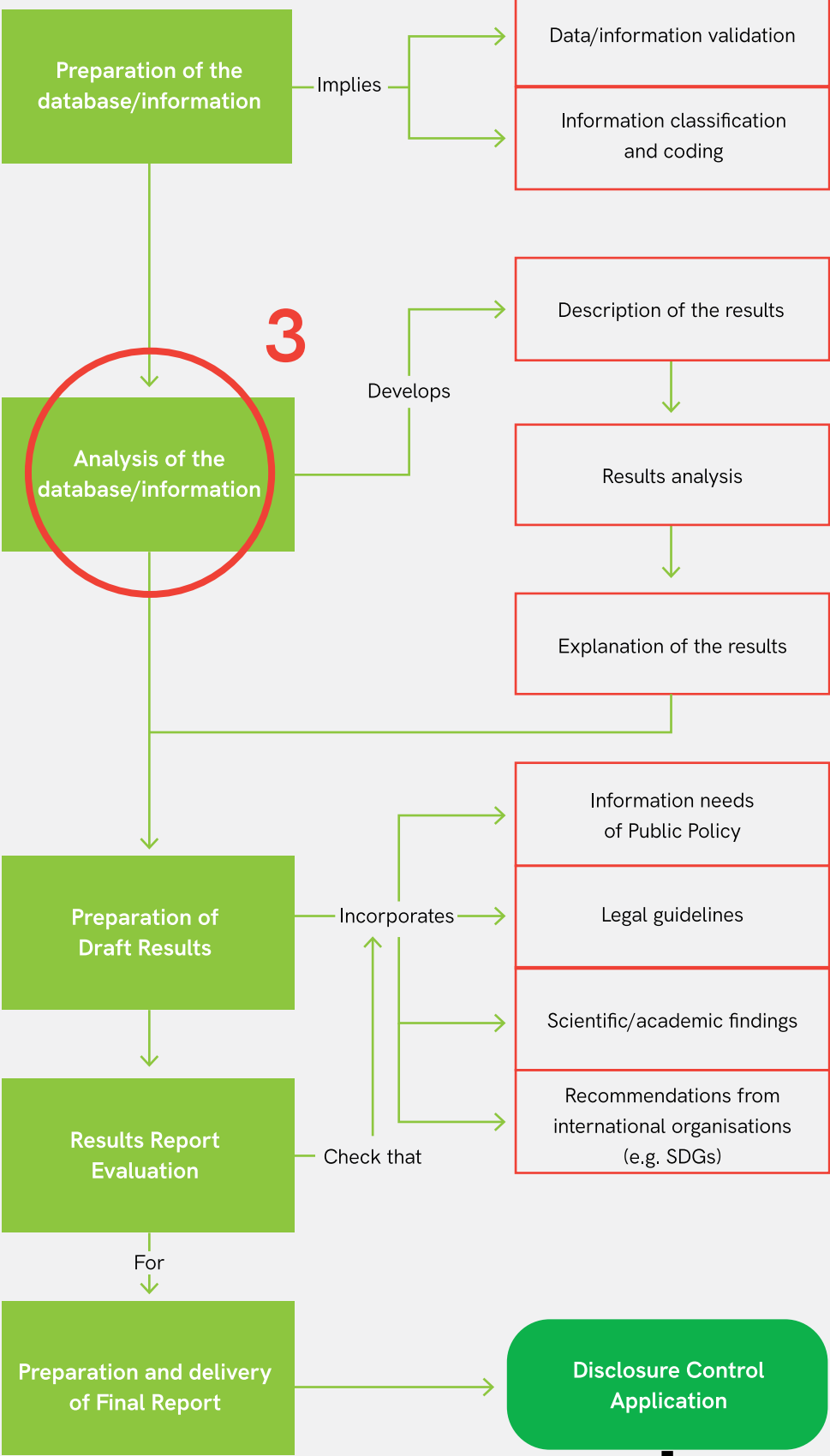
All types of publications, printed, digital and/or on websites, must take account of the national recommendations or standards on accessibility requirements, the aim of which is to ensure access to all types of users and the general public.

Figure 2: Process of implementing studies with a Differential Approach to Rights, part 2

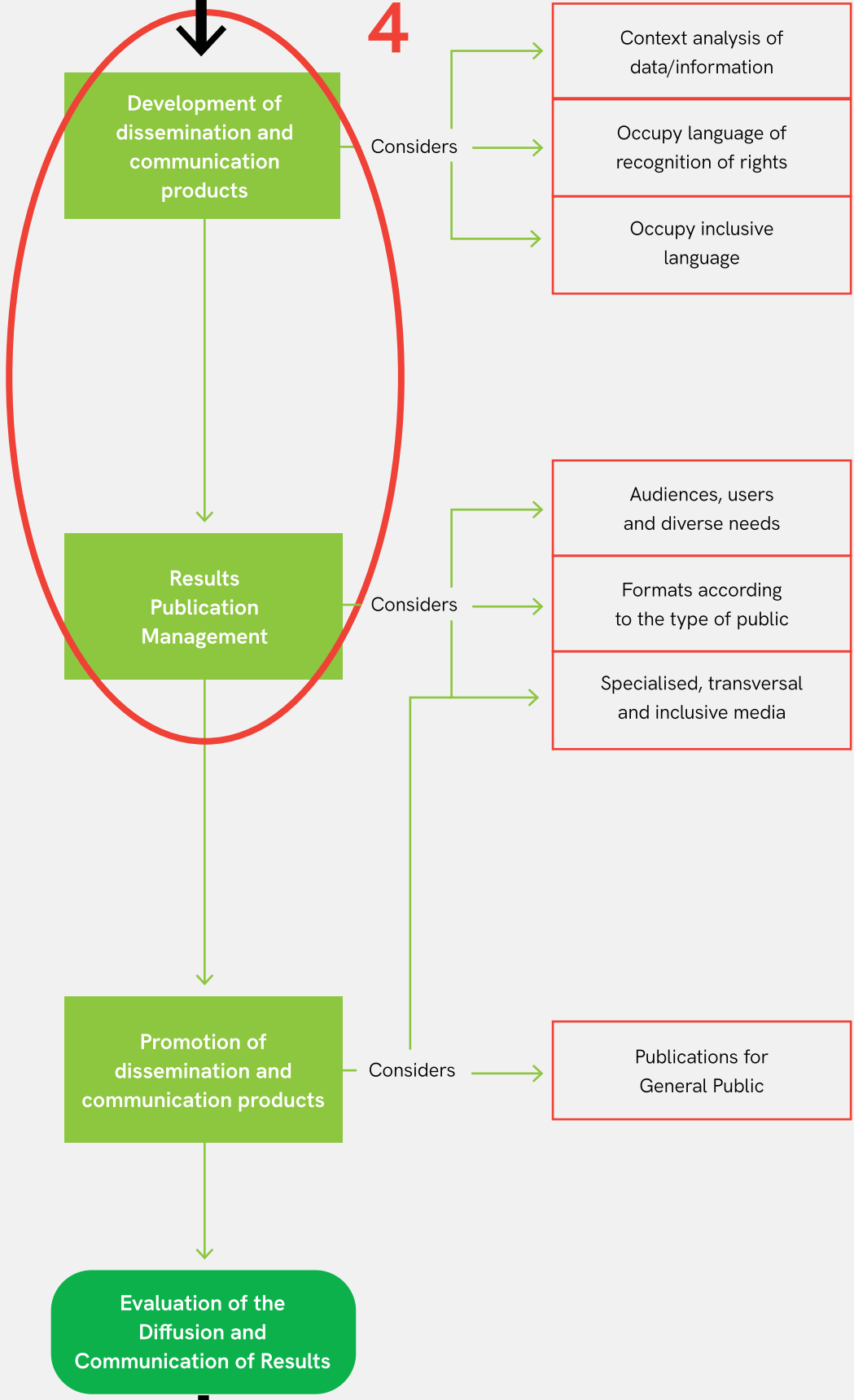
Processing



Analysis



Dissemination



Assessment



Systematisation
of inputs for
evaluation

Coming from

- The Objectives of the collection of information
- The phases of the lifting process
- From the design of the survey process



Assessment
Application

For

- Correct incorporation of the differential approach
- Strengths, weaknesses and opprtunities for improvement
- Achievement of goals



Preparation of an
Action Plan



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Incorporation of the Differential Approach to Rights in Information and Research Systems



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