**To the Supreme Court of Justice of the Nation of the United Mexican States**

*Amici Curiae*

**Techo México vs. Instituto Nacional de Estadística y Geografía (INEGI)**

**CONTENT**

## 1. Presentation of the *Amicus Curiae* Brief

This *amici curiae* brief is submitted by:

1. **Asociación Civil por la Igualdad y la Justicia**
2. **Center for Economic and Social Rights**
3. **Centro Mexicano de Derecho Ambiental**
4. **Dejusticia**
5. **Oficina para América Latina de la Coalición Internacional para el Hábitat (HIC-AL)**
6. **Human Rights Law Network**
7. **Nazdeek**
8. **Right to Education Initiative**
9. **Socio-Economic Rights Institute**
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The organizations listed are members of the Strategic Litigation and Monitoring working groups of the International Network for Economic, Social and Cultural Rights (ESCR-Net). Dr. Casla participates in his individual capacity. The amici have expertise in human rights analysis and litigation, including in relation to economic, social, cultural, and environmental rights (ESCER).

ESCR-Net has more than 280 organizational and individual members in more than 75 countries. The ESCR-Net Secretariat contributed, coordinating the elaboration of the present filing. It has supported *amicus* briefs, third-party interventions, and expert opinions by various members in a range of international and national jurisdictions over the past years.

## 2. Introduction

The present case concerns human rights violations derived from a lack of statistical information regarding the number, location, characteristics, and population of informal settlements in the United Mexican States. *Techo México vs. Instituto Nacional de Estadística y Geografía (INEGI)* provides the Supreme Court of Justice of the Nation (SCJN) with a novel opportunity to demonstrate its willingness to enhance the system of constitutional rights protections. It is a chance for the Court to delineate criteria concerning the rights to adequate housing; to equality and non-discrimination; to information and participation in the conduct of public affairs; and to adequate and effective remedy, thereby contributing to their full realization.

This *amicus* brief is intended as a technical and legal contribution to the SCJN concerning international human rights law and several pertinent comparative constitutional law examples. The aim is to provide inputs for the Court to address the present case in a manner fully in line with the international obligations assumed by the Mexico State, including via the June 2011 constitutional reform.

*Techo México v. INEGI* focuses on analyzing human rights of the population living in informal settlements, which are defined as residential areas where:

> 1) inhabitants have no security of tenure vis-à-vis the land or dwellings they inhabit, with modalities ranging from squatting to informal rental housing; 2) the neighborhoods usually lack basic services

and city infrastructure; and 3) the housing may not comply with building and planning regulations and is often situated in geographically and environmentally hazardous areas.[1]

In addition, informal settlements are characterized by poverty and large agglomerations of precarious housing. The inhabitants are constantly exposed to eviction, illness, and violence.[2] Therefore, those residing in informal settlements in Mexico comprise a vulnerable population suffering structural discrimination due to the socio-economic situation in which they live.

The SCJN's decision in the present case could assist in addressing this large-scale social issue. According to 2018 data from the United Nations (UN) Secretary General, 21% of the population in Latin America and the Caribbean lives in informal settlements.[3] The United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (the Rapporteur), has devoted a recent report to this topic, showing that conditions in such settlements are often inhuman, as many residents live in overcrowded, insecure dwellings, without water and sanitation, fearful of eviction, and exposed to preventable life-threatening illnesses. The Rapporteur stated that "[f]rom a human rights perspective, informal settlements … are systemic human rights violations, the effects of State actions, inaction and policies depriving millions of their fundamental human rights.[4]"

Mexico and other states have committed themselves internationally to addressing the issues faced by informal settlements. Under Goal 11 of the 2030 Agenda for Sustainable Development, the states agreed to "upgrade slums"[5] and to ensure "access by all persons to housing and adequate, safe and affordable basic services," by 2030.[6] In order to be able to assess progress toward this goal, an indicator was created, and it was determined that censuses can provide the information needed to evaluate this goal's fulfillment.[7]

Nevertheless, Mexico currently has no clear data about settlements lacking secure tenure—one of several key indicators of informality. This is recognized by the Secretariat of Agricultural, Territorial and Urban Development (Secretaría de Desarrollo Agrario, Territorial y Urbano, SEDATU) in the 2020-2024 National

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[1] Naciones Unidas sobre la Vivienda y el Desarrollo Urbano Sostenible (Hábitat III), Issue Paper 22, "Informal Settlements" (31 May 2015), Nueva York, 29 de mayo de 2015, p. 1, disponible en: http://habitat3.org/wp-content/uploads/Issue-Paper-22_ASENTAMIENTOS-INFORMALES-SP.pdf

[2] World Bank (2008), Approaches to urban slums; UN-Habitat (2015), Streets as tools for urban transformation in slums; Cities Alliance (2010), Building Cities; Cities Alliance, World Bank and UN-Habitat (2002), Cities without Slums.

[3] Naciones Unidas, Informe de los Objetivos de Desarrollo Sostenible (Nueva York, 2018) e informe del Secretario General sobre los progresos realizados para lograr los Objetivos de Desarrollo Sostenible (E/2018/64), anexo estadístico.

[4] United Nations General Assembly. *Informe de la Relatora Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y del derecho de no discriminación en este contexto, Leilani Farha.* September 19, 2018. A/73/310/Rev.1. Par. 11. Available in: https://www.undocs.org/en/A/73/310/Rev.1

[5] Although the 2030 Agenda refers to "slums," the Special Rapporteur prefers the expression "informal settlements," considering it more in line with a human rights approach to housing. The expression "slums" is often considered pejorative and insulting, and has generally led to adopting mistaken policies; in fact, "slums" are often seen as a problem which should be eliminated and not as communities deserving support. For an analysis of the terminology, the Rapporteur refers to: Naciones Unidas sobre la Vivienda y el Desarrollo Urbano Sostenible (Hábitat III), documento temático núm. 22, "Asentamientos informales" (31 de mayo de 2015); Agenda 2030 para el Desarrollo Sostenible, Naciones Unidas, Objetivo 11.

[6] The 2030 Agenda for Sustainable Development, United Nations, Goal 11.

[7] Naciones Unidas, Comisión Económica para América Latina y el Caribe (CEPAL), *Los censos de la ronda 2020: desafíos ante la Agenda 2030 para el Desarrollo Sostenible, los Objetivos de Desarrollo Sostenible y el Consenso de Montevideo sobre Población y Desarrollo,* 2017, pp. 60-62. Available at: https://repositorio.cepal.org/bitstream/handle/11362/42394/1/S1700849_es.pdf

Housing Program (*Programa Nacional de Vivienda*), which refers to those with housing without title and to those with rental housing without a contract. SEDATU affirms that:

> the actual magnitude of the problem is not known; for example, although the National Institute of Sustainable Soil (Instituto Nacional de Suelo Sustentable, INSUS) estimates that in Mexico there are approximately 7.5 million irregular plots used for housing, there is actually no official record or measurement of this development. Furthermore, there is no specific, standardized source of information at the national level on the reasons and consequences of the legal insecurity of housing; such information could be useful to explain and to raise awareness on the seriousness of the issue, as well as to develop a preventive solution.[8]

SEDATU further acknowledges that, regarding the availability of services, resources, facilities, and infrastructure, one in every five dwellings in Mexico has deficits relating to access to potable water, sanitary drainage, and energy, among others, with irregular settlements among those most affected, where the population may be forced to incur higher expenses to satisfy their service needs.[9]

These realities demonstrate the need for and timeliness of a decision by the SCJN mandating census and other forms of data collection to enable the production of reliable statistical information regarding informal settlements. Such information should be complete, sensitive to the realities of informal settlements, and gathered in line with human rights obligations. It should also be as relevant as the information compiled by INEGI regarding the general population, in order to help eliminate the structural discrimination suffered by those living in informal settlements and to develop public policies to secure the ESCER of this population.[10]

Section three of this *amicus* addresses the international right to adequate and effective remedy and the Court's role in ensuring its effective application in this and similar cases.

Section four of the brief details international and comparative law regarding state obligations to gather data to enable the realization of the rights to adequate housing; to equality and non-discrimination; and to information and to participation in the conduct of public affairs.

Section five offers an analysis of how such data should be gathered to meet the state obligations specified in the prior section.

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[8] SEDATU, Programa Nacional de Vivienda 2020-2024, November 2019, p. 15, available at: https://www.gob.mx/cms/uploads/attachment/file/514070/Programa_Nacional_de_Vivienda_2019-2024.pdf

[9] SEDATU, Programa Nacional de Vivienda 2020-2024, November 2019, p.17.

[10] Statistic information on informal settlements focused on solely gathering data related to security of tenure may lead to inaccurate information, since experiences in other countries show that "A recurring problem in surveys is self-perception, so that when asked if they own their dwelling residents often answer affirmatively, because that is how they perceive it. Another issue is the lack of accurate soil cadastres and centralized soil records in many countries, which limits the possibility of obtaining new data on the illegality of the occupations;" therefore, the scope of the information must be expanded to include access to public services, among other questions. Fernandes Edésio, *Regularización de Asentamientos Informales en América Latina, Informe sobre enfoque en política de suelo*, Lincoln Institute of Land Policy, Cambridge, 2011, pp. 14-15. Available at: https://www.lincolninst.edu/sites/default/files/pubfiles/regularizacion-asentamientos-informales-full_0.pdf

**3. State Duty to Guarantee Effective and Adequate Remedy for ESCER Violations**

The United Nations Committee on ESCR (CESCR) has explained that the provision of adequate and effective judicial remedies to address violations of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) contributes to the fulfillment of state obligations under the treaty.[11] According to the Committee's General Comment 3 on the nature of state parties' obligations, "[t]he means which should be used in order [for a State party] to satisfy the obligation to take steps are stated in article 2 (1) [of the ICESCR] to be 'all appropriate means.'"[12] As established by the Committee:

> Among the measures which might be considered appropriate ... is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of articles 2 (paras. 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, 'shall have an effective remedy' (art. 2 (3) (a)).[13]

As evidenced by the comparative law examples from Argentina, Colombia, India, South Africa, and the United Kingdom discussed in section 4, the substantive human rights at issue in *Techo México v. INEGI*—the rights to adequate housing; to equality and non-discrimination; and to information and participation in the conduct of public affairs—are precisely the kind of justiciable rights referenced above as needing to be appropriately remedied by the judiciary. Indeed, equality rights were referred to by CESCR as an illustration of a right amenable to judicial remedy in General Comment 3. Similarly, the rights to information and participation in the conduct of public affairs are amenable to adjudication, as shown by a diverse set of cases worldwide. The right to adequate housing has also been successfully adjudicated for decades before national and international tribunals around the globe. Furthermore, in relation specifically to the right to adequate housing under the ICESCR, the Committee gave the example of the need for access to adequate and effective remedies in the context of evictions, noting a connection to the International Covenant on Civil and Political Rights (ICCPR):

> It is pertinent to recall article 2.3 of the ICCPR, which requires States parties to ensure 'an effective remedy' for persons whose rights have been violated and the obligation upon the 'competent authorities (to) enforce such remedies when granted'.[14]

Nevertheless, though Mexico expressly informed the United Nations that *amparo* actions are "the constitutional means by which human rights are enforced before the courts"[15] in its periodic compliance report to CESCR, the Committee declared its concern that *amparo* suits were not actually providing adequate

[11] México acceded to the ICESCR in 1981.
[12] CESCR, General Comment 3, para.: 3.
[13] CESCR, General Comment 3, para.: 5.
[14] CESCR, General Comment 7, para.: 13. Mexico ratified the ICCPR in 1975.
[15] Mexico state party report, CESCR, 2017, para. 3.

and effective remedy for violations of ICESCR rights as required.[16] According to the Committee's review of Mexico in 2018:

> 5. Although the Committee notes that the rights set out in the Covenant can be invoked before the courts and applied in judicial decisions, it is concerned at the fact that, in practice, victims of violations of economic, social and cultural rights have difficulty in accessing effective judicial remedies, including the remedy of *amparo*. In addition, it is concerned at the lack of effective enforcement of the judgments handed down in amparo proceedings in which violations of economic, social and cultural rights have been found.
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> 6. The Committee recommends that the State party adopt the necessary measures to ensure that economic, social and cultural rights are enforceable at all levels of the justice system and to facilitate access to effective judicial remedies, including the remedy of *amparo*, for victims of violations of those rights. In addition, it encourages the State party to provide training, especially to judges, lawyers, law enforcement officers, members of Congress and other stakeholders, on the rights protected under the Covenant and the possibility of invoking them in court. It also encourages the State party to conduct campaigns to raise awareness of these rights among rights holders. The Committee urges the State party to ensure the effective enforcement of judgments handed down in favour of victims of violations of economic, social and cultural rights and draws its attention to general comment No. 9 (1998) on the domestic application of the Covenant.[17]

This express recommendation to the Mexican State was issued in 2018 by CESCR, even though several constitutional and legal reforms had already been enacted in Mexico in 2011 with the goal of enhancing human rights protection, including by making effectiveness and reparation mechanisms more flexible in cases of violations. It is evident that those reforms were not sufficient to guarantee adequate and effective remedies for violations of ESCER.

Indeed, in the present case, *amparo* litigation has thus far failed to remedy the violations concerning informal settlements of the rights to adequate housing; to equality and non-discrimination; and to information and to participation in the conduct of public affairs. This lack of effective and adequate remedy violates state obligations to judicial protection derived, as noted above, from Arts. 2(1) (state duty to take steps ... by all appropriate means), 2(2) (guarantee of non-discrimination), and 11(1) (right to adequate housing) of the ICESCR, in conjunction with ICCPR Arts. 2(1) (guarantee of equality of application of Covenant rights), 2(3)

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[16] Concluding Observations, CESCR, 2018, para. 5-6.

[17] Concluding Observations, CESCR, 2018, para. 5-6. In its General Comment 9, the Committee also stated:

> a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not "appropriate means" within the terms of article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies. ... [W]henever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary.

CESCR, General Comment 9, paras.: 3, 9.

(state duty to provide adequate and effective remedy), 14(1) (right to adjudication of rights with equality and fairness before competent, independent, and impartial domestic tribunals established by law), 19 (right to information), 25 (right to participation in the conduct of public affairs), and 26 (right to equality before the law and equal protection of the law).

The violation of the right to effective and adequate remedy with respect to ESCER rights in Mexico is evidenced by a fundamental legal hurdle faced by claimants of these rights before domestic tribunals: the relativity principle of *amparo* judgements.

The principle of relativity of judgements is an obstacle for accessing effective and adequate remedies to violations of diffuse or collective rights. Applied rigidly, this principle is not compatible with redressing systemic violation of ESCER because it can be seen as requiring all effects of any amparo judgement to be limited solely to the named parties, a rule that could bar any litigation with potentially broad effects. Indeed, this principle has often been invoked to bar cases in which collective and diffuse rights are claimed. Such a restrictive interpretation of the principle of the relativity of judgments renders *amparo* actions inadequate and ineffective with regard to rights violations affecting broader communities, leaving those suffering from such harms defenseless. The SCJN can, however, limit this principle or interpret it more broadly, in line with the constitutional *pro persona* principle and Mexico's international human rights obligations to guarantee adequate and effective remedies for ESCER violations.

**4. State Obligation to Gather Official Data on Informal Settlements to Secure Full Realization of Rights to Adequate Housing,to Equality and Non-Discrimination, the Rights to Information and Participation**

INEGI has the obligation to conduct a census and to gather other data on the population living in informal settlements in the United Mexican States in order to produce disaggregated statistical and qualitative data on the persons living in the settlements, access to the basic services at the core of the right to housing, and the state of the dwellings. This flows from Art. 3, 4, 6, 55 and 78 of National Statistical and Geographical Information System Act (*Ley del Sistema Nacional de Información Estadística y Geográfica*), the law regulating Article 26(B) of the Political Constitution of the United Mexican States. Accordingly, the First Circuit District Fourth Court (*Juzgado Cuarto de Distrito del Primer Circuito*), when hearing the present case, acknowledged that "in fact, [INEGI] is the agency bound by the *Sistema Nacional de Información Estadística y Geográfica* to provide information of relevant, accurate and timely quality to contribute to national development."[18] The Court also concluded that INEGI "contrary to the claim made by it, does have powers to act as demanded by the author of this mechanism of constitutional control, since it is the agency exclusively empowered to conduct any type of census; therefore, the said actions must be considered true."[19] Art. 78 of the law regulating the National Statistical and Geographical Information System establishes that INEGI must gather information of national interest, including sets of data or indicators regarding: "population and geographical dynamics; health; education; employment; income distribution and poverty; government, public safety and law administration; housing … registry data," among other data needed to support national public policy design and evaluation.

[18] Juzgado Cuarto de Distrito en Materia Administrativa de la Ciudad de México, indirect amparo decision 944/2018, p. 10.

[19] Juzgado Cuarto de Distrito en Materia Administrativa de la Ciudad de México, indirect amparo decision 944/2018, p. 13.

Furthermore, in its Arts. 6 and 3, the law states that information gathered by INEGI will be used on a mandatory basis by "the federal government and agencies, municipalities and territorial demarcations of Mexico City," in order to contribute to national development.

Under Art. 22 of the *Ley del Sistema Nacional de Información Estadística y Geográfica*, such information is mainly gathered through the National Population and Housing Census. According to INEGI, the census is the most relevant statistical project at the domestic level, since it allows for:

1. Giving an account of the current demographic situation of the country;
2. Showing major socioeconomic characteristics of the population;
3. Assessing progress and setbacks in the population's level of well-being; and
4. Defining public policies.[20]

Furthermore, INEGI has stated that the Population and Housing Census is the most comprehensive source of information from which an understanding of the overall domestic situation is shaped. The data provided by the census, in addition to providing an answer for questions such as, how many are we?, what are we like?, and where and how do we live?, enable the various sectors of society to identify social gaps, vulnerable groups, as well as the population's needs in terms of housing, education, health, drinking water services, electricity and drainage, among others.[21] Based on the census, plans and programs are designed to improve the population's conditions of living.[22]

In fact, the main purpose of a census is counting the population residing in the country, and updating data on their major demographic and socioeconomic characteristics, in order to enable State authorities to design policies aimed at guaranteeing the population's ESCER. The 2020 population census is meant to update data, including the count of the population residing in the country; major socioeconomic and cultural characteristics of the population; total count of dwellings and their characteristics; and their distribution in the national territory.[23]

This information should also, in accordance with international human rights law, including the ICESCR, enable the formulation and prioritization of policies that develop differential measures of the enjoyment of ESCER of the most vulnerable populations and thereby guarantee the right to adequate housing and substantive equality, and make it possible to assess and monitor the compliance of States with respect to those rights, functions that are also key to the rights to information and to participation in the conduct of public affairs.

Though informal settlements in Mexico are part of a vulnerable population, INEGI has not included them in the Population and Housing Census to be carried out in 2020. By failing to gather basic data on this population, which all levels of official agencies in Mexico must use, the State is unable to make public policy decisions aimed at securing the ESCER of the vulnerable population living in its domestic territory.

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[20]INEGI. 2010. Marco conceptual del Censo de Población y vivienda. Available at: https://celade.cepal.org/censosinfo/manuales/MX_MarcoConceptual_2010.pdf

[21]Importancia, objetivos y metas del Censo de Población y vivienda 2010. Available at: https://www.inegi.org.mx/programas/ccpv/2010/

[22]Importancia, objetivos y metas del Censo de Población y vivienda 2010. Available at: https://www.inegi.org.mx/programas/ccpv/2010/

[23]Importancia, objetivos y metas del Censo de Población y vivienda 2020. Information available at https://www.inegi.org.mx/programas/ccpv/2020/default.html#Documentacion

Therefore, INEGI must abide by the obligations imposed on it by the constitution (Art. 26), international human rights law, and the National Statistical and Geographical Information System Act by including the informal settlements existing in Mexico in the 2020 Population and Housing Census, as well as by using supplementary methods to compile any other data necessary to achieve full realization of ESCER. Otherwise, INEGI would fail to comply with international and constitutional human rights obligations assumed by the State regarding the gathering of statistical information, as discussed further below.

***Measurable Progressive Development of the Right to Adequate Housing, Including Access to Basic Services***

The right to adequate housing was first recognized in Art. 25(1) of the Universal Declaration of Human Rights. It was subsequently included in other human rights instruments which have been ratified by the Mexican State, such as: International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5); Convention on the Rights of the Child (Art. 27 (3)); and Convention on the Elimination of All Forms of Discrimination Against Women (Art. 14 (2)). However, the most comprehensive protection of the right to adequate housing is found in Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that "the State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate housing." The Mexican state acceded to the Covenant on March 23, 1981, and its entry into force occurred on May 12 of the same year.[24] The United Nations Committee on Economic, Social and Cultural Rights (CESCR) developed the scope of

[24] En la tesis aislada Derecho Fundamental a Una Vivienda Digna y Decorosa. Alcance Del Artículo 4o., Párrafo Séptimo, de la Constitución Política de los Estados Unidos Mexicanos se reconoce que dicho derecho debe ser interpretado de conformidad con el estándar desarrollado en el Pacto Internacional de Derechos Económicos Sociales y Culturales y la Observación General N° 4. [TA]; 10a. Época; 1a. Sala; Gaceta S.J.F.; Libro 5, abril de 2014, Tomo I; Pág. 798. Registro 2006169.

the right to adequate housing in its General Comment No. 4.[25] Interamerican instruments also contain the right to adequate housing.[26]

The right to adequate housing is also expressly protected in the Federal Constitution of Mexico as a human right in Art. 4: "… All families are entitled to enjoying a dignified and decent housing. The Law shall establish the instruments and support needed to reach such goal…"

Building on most of the characteristics in CESCR's General Comment 4, the Federal Housing Act (*Ley Federal de Vivienda*), in its Art. 2, establishes that housing is considered dignified and decent when it complies with applicable legal provisions regarding human settlements and construction, habitability and health standards;

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[25] El Comité ha sostenido que:

> [E]l derecho humano a una vivienda adecuada tiene una importancia fundamental para el disfrute de todos los derechos económicos, sociales y culturales [...] [E]l derecho a la vivienda se debe garantizar a todos, sean cuales fueren sus ingresos o su acceso a recursos económicos [...] En esencia, la obligación [estatal] consiste en demostrar que, en conjunto, las medidas que se están tomando son suficientes para realizar el derecho de cada individuo en el tiempo más breve posible de conformidad con el máximo de los recursos disponibles.

La Observación General establece además que para que una vivienda sea adecuada necesita contar con 7 características:

1. La seguridad de la tenencia: ésta adopta una variedad de formas (el alquiler público y privado, la vivienda en cooperativa, la vivienda de emergencia, los asentamientos informales y la ocupación de tierra o propiedad). Los ocupantes deben contar con seguridad de la tenencia, que les garantice protección jurídica contra el desalojo forzoso, el hostigamiento y otras amenazas.

2. Disponibilidad de servicios, materiales, instalaciones e infraestructura: los ocupantes de la vivienda deben contar con agua potable, instalaciones sanitarias adecuadas, energía para la cocción, la calefacción y el alumbrado, y conservación de alimentos o eliminación de residuos.

3. Asequibilidad: el costo de la vivienda no debería poner en peligro o dificultar el disfrute de otros derechos humanos.

4. Habitabilidad: la vivienda debe garantizar la seguridad física o proporcionar espacio suficiente, así como protección contra el frío, la humedad, el calor, la lluvia, el viento u otros riesgos para la salud y peligros estructurales.

5. Accesibilidad: debe tomar en consideración las necesidades específicas de los grupos desfavorecidos y marginados.

6. Ubicación: debe ofrecer acceso a oportunidades de empleo, servicios de salud, escuelas, guarderías y otros servicios e instalaciones sociales, y no estar ubicada en zonas contaminadas o peligrosas.

7. Adecuación cultural: debe tomar en cuenta y respetar la expresión de la identidad cultural.

Comité de Derechos Económicos, Sociales y Culturales de la ONU, Observación General Número 4: El derecho a una vivienda adecuada, pár. 1, 7, 8, 9, 11, 14.

[26] En la Carta de la Organización de los Estados Americanos (OEA), artículo 34 (k), se reconoce "el derecho a una vivienda adecuada para todos los sectores de la población". En la Declaración Americana de los Derechos y Deberes del Hombre se contemplan disposiciones relativas al derecho a una vivienda adecuada en los artículos 8, 11 y 23. La Convención Americana de Derechos Humanos reconoce, en su Artículo 26, derechos económicos, sociales y culturales. En el Protocolo de San Salvador, se reconoce este derecho de manera indirecta en el artículo 11. Esos instrumentos regionales todos crean obligaciones estatales para México.

offers basic services; provides occupants with legal security in terms of ownership or legitimate tenure; and takes into consideration criteria aimed at preventing disasters and providing physical protection of inhabitants against natural elements which are potentially hazardous.

States have an international obligation to improve conditions of enjoyment and exercise of ESCER, and to do so in a measurable way. The ICESCR establishes that States should adopt measures to achieve, in a progressive manner and by all appropriate means, the full realization of the rights recognized (Art. 2). There are immediate obligations, such as the duty of non-discrimination and non-regression in the area of human rights, a minimum obligation assumed by States. Other obligations are of progressive nature, demanding demonstrable efforts to advance toward full realization and prohibiting a lack of steps taken toward measurable progress.

Effective monitoring of a State's housing situation is an immediate obligation (General Comment N 4, para 13). For a State Party to meet its obligations pursuant to Art. 11(1) of the ICESCR, the State Party must show, among other things, that it has adopted all necessary measures, on its own or based on international cooperation, to assess the lack of housing and the existence of inadequate housing within its jurisdiction. In this respect, the Revised General Guidelines Regarding the Form and Contents of Reports issued by CESCR highlight the need for "detailed information on those groups in society which find themselves in a vulnerable, disadvantaged situation in terms of housing."[27] These groups include, in particular, homeless persons and their families, persons living in inadequate accommodation and who lack access to basic facilities, persons living in "illegal" settlements, those subject to forced evictions, and low-income groups.

These specific State duties to monitor the housing situation accord with general State reporting obligations under the ICESCR. Art. 17 of the ICESCR establishes that State Parties must submit yearly reports to CESCR in order to monitor progressive implementation of the rights. In its General Comment 1, CESCR defines the guidelines for submission of State reports and sets forth that States must constantly monitor the actual situation of each right. This monitoring obligation is not limited "to preparing aggregate national statistics or estimates."[28] The States meet this obligation when "special attention [is] given to any worse-off regions or areas, and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged."[29] Therefore, the Committee emphasizes that "the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation."[30]

CESCR thus clearly states that ESCR monitoring obligations not only involve having domestic statistical information, but also gathering data that show the conditions of implementation and promotion of such rights in the territory. Such disaggregated and comprehensive data, CESCR further states, are essential for States to be able to design "clearly stated and carefully targeted policies."[31] Therefore, States must include in their periodic reports to CESCR "qualitative, as well as quantitative, data," which "shows the progress over time, with respect to the effective realization of the relevant rights."[32] In reviewing States on an individual basis, CESCR has repeatedly stated that, for the purposes of ESCR monitoring, States must gather

[27] Revised General Guidelines regarding the Form and Contents of Reports issued by CESCR (E/C.12/1991/1.)
[28] Committee on Economic, Social and Cultural Rights. General Comment No. 1. Available at: https://confdts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CESCR/00_1_obs_grales_Cte%20Dchos%20Ec%20Soc%20Cult.html#GEN1. Para. 3.
[29] Committee on Economic, Social and Cultural Rights. General Comment No. 1, para. 3.
[30] Committee on Economic, Social and Cultural Rights. General Comment No. 1, para. 3.
[31] Committee on Economic, Social and Cultural Rights. General Comment No. 1, para. 4.
[32] Committee on Economic, Social and Cultural Rights. General Comment No. 1, para. 7.

comprehensive and detailed statistical information by region of their territory and by vulnerable populations. CESCR has consistently objected to the lack of such diagnostic data in State reporting.[33] According to Abramovich and Courtis:

> the key point in this issue is the impossibility of knowing the exact content of the State obligation without previously knowing the enjoyment status of a social right—health, housing, education, so that the lack of information on the situation of this right hinders the possibilities of enforceability, since it is not possible to compare between the situation before and after measures adopted by the State. Therefore, according to the interpretation by the Committee on Economic, Social and Cultural Rights…, the Covenant imposes on States the obligation to gather and produce information, and even to design an action plan aimed at progressive implementation (CESCR General Comments No. 1 and 4).[34]

The obligations derived from the right to adequate housing, and particularly the obligation to gather information, has been further discussed by the Special Rapporteur on the right to adequate housing, who has insisted on the need for States to compile official data on settlements lacking secure tenure. Such is the case of the Guiding Principles on Tenure Security of the Urban Poor, which, when referring to the collection of official data, states the following:

> Individuals without legally recognized tenure, including those living in urban settlements, homeless and displaced persons, are often not covered in censuses and other official data collection. When their information is ignored, their lack of legal tenure status effectively denies them official recognition as members of society. This exclusion exacerbates their invisibility in policy design and budget allocations essential to the realization of their human rights. States should ensure that such individuals are counted and included in all official data collection processes.[35]

The Mexican State itself has recently acknowledged before CESCR that:

> Systematic information on informal settlements is scarce, considering the irregularities that exist in the various types of ownership (e.g. *ejido*, communal, private, or public sector owned by federal, state or municipal governments) and the shifting dynamics of the population group in question. The 2014

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[33] See, for example, Observaciones Finales sobre Colombia, 2010, párr. 8.

> The Committee regrets that the report of the State party does not contain sufficiently updated information and detailed statistics that would enable it to fully assess whether and how the rights set out in the Covenant [International Covenant on Economic, Social and Cultural Rights] are being implemented in the State party. The Committee recommends that the State party provide updated information in its next periodic report on the practical application of the Covenant, including through disaggregated data and relevant statistics on a comparative annual basis, regarding the implementation of its laws and the practical results of plans, programs and strategies carried out in relation to the various rights enshrined in the Covenant.

Similarly, see Concluding Observations on Uruguay, 2010, para. 6; República Dominicana, 2010, para. 7; Argentina, 2011, para. 12; Chile, 2015, para. 10; and Venezuela, 2015, para. 15.

[34] Abramovich, Víctor y Courtis Christian, "El acceso a la información como derecho", Anuario de Derecho a la Comunicación; Año 1 Vol. 1 (2000); Editorial Siglo XXI, Buenos Aires. Available at: https://www.cels.org.ar/common/documentos/acceso_informacion_como_derecho.pdf

[35] United Nations General Assembly. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik,* A/HRC/25/54, 30 December 2013, para. 54. Available at: https://digitallibrary.un.org/record/766905/files/A_HRC_25_54-ES.pdf.

> socioeconomic conditions module of the national household income and expenditure survey revealed that there were no title deeds for 25.3 per cent of all housing units.[36]

In its concluding observations, the CESCR recommends that Mexico, "[g]ive due priority to the disadvantaged and marginalized individuals and groups living in camps or informal settlements or in precarious and unfavourable conditions."[37]

A census in line with human right obligations, enabling the gathering of statistical information on informal settlements—information which should have at least the same level of detail, depth, breadth and rigor as with respect to formal settlements—is a prerequisite for designing policies and measures to guarantee the right to adequate housing, in particular, and to ESCER, in general, of populations living in informal settlements. Such information would also permit the assessing of whether Mexico complies with the terms of the ICESCR. By failing to implement a census of the settlements, INEGI violates an immediate obligation related to the right to adequate housing assumed by Mexico upon the entry into force of the ICESCR 39 years ago.

A look at comparative law and jurisprudence strengthens and complements these international human rights law standards.

In South Africa, for example, the right of access to adequate housing is enshrined in section 26 of the 1996 Constitution, which provides that:

> (1) Everyone has the right to have access to adequate housing.
>
> (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
>
> (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The seminal judgement on this right being that of the Constitutional Court in Government of the Republic of *South Africa v. Grootboom and Others*,[38] which delineated the content of the right and explained the positive duty placed on the state to realise it, articulating a reasonableness standard. The court stated that:

> Reasonableness must also be understood in the context of the Bill of Rights as a whole. The right of access to adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic human needs. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be

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[36] UN Committee on Economic, Social and Cultural Rights. *Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. Combined fifth and sixth periodic reports that the States parties had to submit in 2012. Mexico*, E/C.12/MEX/5-6. Date received: 8 June 2016, para. 147.

[37] UN. Committee on Economic, Social and Cultural Rights. Concluding Observations on the combined fifth and sixth periodic reports of Mexico, para. 50 b). Available at: https://www.hchr.org.mx/index.php?option=com_k2&view=item&id=1094:comite-de-derechos-economicos-sociales-y-culturales-de-la-onu-observaciones-finales-a-los-informes-periodicos-quinto-y-sexto-combinados-de-mexico&Itemid=282

[38] *Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 CC*

> reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.[39]

The *Grootboom* judgment made clear that low-income communities must be prioritised for basic services and housing development projects. Measures that exclude low-income earners would result in the state failing to meet its legal obligations. The Court went further to provide that the state must fully understand the extent of the deprivation or denial of the right it seeks to realise prior to developing a plan. All levels of government must administer integrated development plans that meaningfully consult with individuals and communities affected by the development.[40]

To comply with *Grootboom*, since 2009, the South African government has been guided by the Upgrading of Informal Settlements Programme (UISP) in the National Housing Code, which emphasizes the need for local officials to ensure participatory processes. The *Melani* case challenged the South African government's disregard for the informal settlement upgrading policy. In 2016, the high court judgment affirmed that the UISP is binding on municipalities and that community participation must be upheld.[41] The judgment held that the municipality's decision to ignore the UISP in favour of pursuing a plan of eviction and relocation was in breach of section 26 of South Africa's Constitution and the Housing Act.[42] For the South African government to fulfil its legislative and policy obligations to informal settlement upgrading, information about informal settlements must be deepened. Governments must begin thorough data collection and monitoring regarding households and the availability and accessibility of basic services, *inter alia*, in informal settlements. A first step is to conduct socio-economic surveys and geotechnical studies across informal settlements within a region and then aggregate the data to a metro, district, or provincial level in order to develop area-wide plans for incremental upgrading.

In the case of India, the Supreme Court made it clear that the "right to shelter is a fundamental right, which springs from the right residence assured in Article 19(1)(e) and the right to life under Article 21 of the Constitution."[43] The State duty to progressively realize the right to housing has been upheld by various state High Courts in India, and also by the Supreme Court. The applicability of the doctrine of progressive

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[39] *Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 CC*, para 44

[40] *Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 CC, Para 84*

[41] *Melani and Others v City of Johannesburg and Others, 2016, ZAGAPJHC 55.*

[42] *Melani and Others v City of Johannesburg and Others, 2016, ZAGAPJHC 55.*

[43] *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.* 1996 AIR 114, 1995 SCC Supl. (3) 456; *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545; *Shantistar Builders v. Narayan Khimalal Totame* 1990 1 SCC 520*; State of Karnataka and Ors. v. Narasimhamurthy and Ors* (1995) 5 SCC 524; *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Ors.* (1997) 11 SCC 121; *Sudama Singh and Others v. Government of Delhi and Anr W.P.* (C) Nos. 8904/2009, 7735/2007, 7317/2009 y 9246/2009, High Court of Delhi, 11 February 2010; *Delhi Dayalbagh Coop. House Building Society Ltd. v. The Registrar Cooperative Societies and Ors.* 195 (2012) DLT 459; *The Commissioner, Bangalore Development Authority and Anr. v. State of Karnataka and Anr.*, 2006(1) Kar LJ1.; R. *Krishnasamy Gounder v. the State of Tamil Nadu*, W.P. No. 7517 of 1998; *Ramesh Chandra Sahni v. State of U.P.*, 2006 (4) AWC 3993; *Gopiram Agarwalla v. Smt. Bina Agarwalla and Anr.*, (1985) 1 GLR 248; *S. Shangreikhai and Ors. v. Union of India and Ors.*, AIR 2011 Gau 171; y *Yamkhomang Haokip v. State of Manipur and Ors.*, (2003) 3 GLR 409.

realization has been stressed by the High Court of Delhi in the *Sudama Singh* judgement,[44] which was later upheld by the Supreme Court of India. The Supreme Court of India, in *Chameli Singh & Ors. v. State of U.P. & Anr.* in defining the contours of the Right to Housing and shelter itself, held that:

> Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation ...[45]

The right to access basic services in informal settlements has also been enumerated in various laws and policies.[46] In furthering the right to adequate housing, in a more recent judgement a division bench of the Delhi High Court, in the case, *Ajay Maken & Ors. v. Union of India & Ors.* referred also to the right to the city (RTTC), holding it to be an integral part of the progressive realization of the right of adequate housing for all. While also highlighting the importance of equality before law, and drawing from the New Urban Agenda, which was unanimously adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador, on October 20, 2016, the Delhi High Court stated that RTTC imposes State obligations to ensure no discrimination is exercised in ensuring access to and realization of the right to adequate housing. According to the Court:

> [RTTC] is a right not in the sense of liberty but in the sense of power; it is an individual as well as collective or common right; it is a right to call for, or achieve, change in our living spaces and ourselves.[47]

The access to the city must be equitable and just among all its residents and inhabitants, since the city is a common good.[48] The Court specifically stated that:

> The law explained by the Supreme Court in several of its decisions discussed hereinbefore and the decision in *Sudama Singh* discourages a narrow view of the dweller in a JJ basti or jhuggi as an illegal occupant without rights. They acknowledge that the right to adequate housing is a right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city. They

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[44] *Sudama Singh v. Govt. of Delhi*, (2010) 168 DLT 218 (DB).

[45] *Chameli Singh & Ors. v. State of U.P. & Anr.* (1996) 2 SCC 549.

[46] La ley "Electricity Act" de 1943, en su art. 43, dispone: "…*a solicitud del propietario u ocupante de cualquier habitación, proporcionar suministro eléctrico a tal habitación, dentro del mes siguiente al recibo de la solicitud de dicho suministro* …" Esta ley confiere así el derecho absoluto a la electricidad. Este derecho ha sido considerado parte del derecho fundamental a la vivienda y a un estándar digno de vida por la Corte Suprema de India. En el estado de Delhi, el organismo urbano Delhi Urban Shelter Improvement Board, que está facultado por ley para asegurar una calidad de vida adecuada para las personas que viven en, entre otros, asentamientos informales, posee la obligación legal, promoviendo la realización progresiva del derecho a la vivienda, de preparar un plan de desarrollo de asentamientos informales, el cual debe incluir "*suministro de inodoros e instalaciones de baño, mejoramiento de cloacas, suministro de agua, pavimentación de la calle y suministro de tachos de basura o lugares de recolección de desechos, iluminación de calles, o alguno de estos suministros o cualquier infraestructura similar*", con arreglo al art. 11 de la ley "Delhi Uran Shelter Improvement Board Act" de 2010 (ley DUSIB).

[47] *Ajay Maken & Ors. v. Union of India & Ors.*, 2019 SCC OnLine Del 7618, pár. 80.

[48] "82.3. *The policy paper also sets out a non-exhaustive list of components that ensure the city as a common good': (a) a city free of discrimination; (b) a city of inclusive citizenship; (c) a city with enhanced political participation in all aspects of urban planning; (d) a city ensuring equitable access for all to shelter, goods and services;* …82.5. …*the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all ||. Formulated thus, what the New Urban Agenda has acknowledged is a RTTC.*" *Ajay Maken & Ors. v. Union of India & Ors.*, 2019 SCC OnLine Del 7618 at Para 82.

> recognise such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement.[49]

In elaborating on the nature of the doctrine of progressive realization of rights, a 5-judge Constitutional Bench of the Supreme Court of India, in the case of *Navtej Singh Johar & Ors. v. Union of India & Ors.* considered:

> The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead.[50]

It is also worth noting that the legal norms relevant to the census in a variety of jurisdictions require that all people, along with their life situations, be properly included in official data. For example, in Mongolia, the domestic census-related regulations require the inclusion of all people in data collection and includes five categories of life situations, including those of disadvantaged groups, such as traditional *ger* settlements --informal and formal settlements, registered and unregistered, urban and rural-- informal artisanal miners and homeless persons or those who are dwelling in locations not fit for human habitation (for example, entryways, attics or basements of homes).

Therefore, in ensuring the realization of the right to adequate housing, an assessment needs to be drawn up by the government, and the assessment must be just, equitable, and free from discrimination. The assessment must also include and abide by the requirement of ensuring access to basic and essential services, in ensuring the realization of the right to housing. The procedure of this assessment has been highlighted by both the courts in India and South Africa.

***Right to Substantive Equality and Non-Discrimination***

In the present case, persons living in informal settlements in Mexico are a population suffering structural discrimination due to the socio-economic situation in which they live, a violation of their rights to equality and non-discrimination that requires data collection as a step toward redress.

The right to equality and the related right to non-discrimination have become an essential element to address situations of historical, systemic and recurring discrimination, mainly against certain particularly vulnerable groups, such as women, persons with diverse sexual orientation or gender, indigenous peoples, afro-descendant communities, peasant persons and groups, and persons with disabilities, among others. Guaranteeing equality and protection against all discrimination is therefore a basic prerequisite for the protection and exercise of human rights.[51]

In this respect, major international human rights instruments recognize the right to equality and prohibit discrimination, including: Arts. 1, 2 and 7 of the Universal Declaration of Human Rights; Art. 26 of the International Covenant on Civil and Political Rights; Arts. 2(2) and 3 of the International Covenant on

[49] *Supra* at Para 141 & 142
[50] *Navtej Singh Johar & Ors. v. Union of India & Ors.*, 2018 SCC OnLine SC 1350 at Para 188.
[51] Inter-American Human Rights Court. Advisory Opinion 18/03. Para. 83

Economic, Social and Cultural Rights; Arts. 1 and 24 of the American Convention on Human Rights; Art. 3 of the Additional Protocol to American Convention on Human Rights in the Matter of Economic, Social and Cultural Rights, "Protocol of San Salvador"; Art. 14 of the European Convention on Human Rights; Arts. 2 and 3 of the African Charter on Human and Peoples' Rights; Art. 2 of the Convention on the Rights of the Child; Arts. 1 and 15 of the Convention on the Elimination of all Forms of Discrimination against Women; and Art. 1 and 2 of the International Convention on the Elimination of all Forms of Racial Discrimination.

Equality has three dimensions: a formal dimension, the prohibition on discrimination, and a substantive dimension.

The formal dimension defines that all persons are born equal before the law and may enjoy their rights with no distinction whatsoever.[52] Article 1 of the Constitution of the United Mexican States recognizes it by affirming that "all persons shall enjoy the human rights acknowledged in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection." However, this dimension alone is insufficient, so normative developments have added the other two dimensions to give greater content and scope to the right.

The equality of treatment dimension entails a prohibition on discrimination.[53] As stated by the Inter-American Court of Human Rights in Advisory Opinions 4, 17 and 18, as well as by the United Nations Human Rights Committee in multiple occasions, the key lies in the fact that equal treatment does not prohibit creating differences, but, rather, it requires that differences have an objective, reasonable basis. This means that under the right to equality, in its second dimension, the constitution solely admits differences in treatment which (i) pursue admissible and legitimate objectives, (ii) are grounded on an important difference, and (iii) are an adequate and proportionate means to reach such legitimate objective. This is the origin of the judges' duty to conduct an equality review to examine whether authorities have made arbitrary or capricious differences.[54]

Accordingly, equal treatment implies that, in addition to the guarantees aimed at promoting equality, the State must prohibit and protect all persons against discriminatory measures or treatment. This dimension is thus made up of two aspects: on the one hand, the prohibition of acts or measures which restrain rights or establish privileges without justification; and, on the other hand, the obligation to address the various forms of discrimination existing in society through adequate mechanisms. Equality of treatment is enshrined on Art.

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[52] This concept of equality is reflected in various universal system instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR Art. 2.2 and 3); International Covenant on Civil and Political Rights (ICCPR Art. 2 and 26); International Convention on the Elimination of all Forms of Racial Discrimination (Art. 2); Convention on the Rights of the Child (Art. 2); Declaration of the Rights of the Child (Principle 1); International Convention on the Protection of the Rights of Migrant Workers and their Families (Art. 1, 7, 18.1, 25, 27, 28, 43, 45.1, 48, 55 and 70); Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Art. 2, 3, 5-16), among others. In the IAHRS, this concept is included in the American Convention on Human Rights (Art. 24) and the Convention of Belem do Pará (Art. 4). In the Mexican Constitution, it is recognized in Art. 13 and has been developed in many court decisions.

[53] Op. Cit. Inter-American Court, 2003.

[54] Only four human rights treaties contain definitions of "discrimination" (see below). These definitions tend to use "equality," or at least "equal treatment," as a term exchangeable with "non-discrimination." Both ILO Conventions define discrimination in terms of equality and viceversa. The Convention on the Elimination of Racial Discrimination and the Convention on the Elimination of Discrimination against Women define discrimination in terms of having the same basis in respect of the enjoyment of rights and liberties.

1 of the Constitution of the United Mexican States as follows: "Any discrimination based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, opinion, sexual preference, marital status or any other factor opposed to human dignity and intended to nullify or impair the rights and freedoms of individuals shall be prohibited."

The substantive dimension entails positive State obligations to guarantee and protect equality among individuals. This requires the State to address situations of discrimination by making use of different measures aimed at the effective exercise of the right to equality.[55] This dimension sometimes calls for a differential treatment in order to address the historical discrimination experienced by marginalized or particularly vulnerable groups. CESCR has also commented on substantive equality through its General Comment No. 20 of 2009, on non-discrimination and ESCR. On that occasion, the Committee noted that "[m]erely addressing formal discrimination will not ensure substantive equality as envisaged and defined by article 2.2," so States must "immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination."[56] It is worth noting that such state obligations are congruent with the commitments undertaken by the Mexican state in the context of the Sustainable Development Goals of the UN, especially Goal 10: "Reducing inequalities between countries."

In this context, it is possible to distinguish between individual and structural discrimination. Individual discrimination occurs when the unjustified difference in treatment takes place in concrete cases, while structural discrimination happens when the difference in treatment follows historical, social, and cultural patterns of discrimination. For example, recurring factors in structural discrimination include sex, sexual orientation, gender, race, ethnic origin, diverse cultural identity, socioeconomic situation, disability, and nationality. Such structural discrimination prevents the effective enjoyment of rights by the affected population groups. In order to address extreme inequalities, the State must grant differentiated treatment in favor of persons in situations of special vulnerability. Substantive equality recognizes that the State, as guarantor of rights, has, in addition to the general duty not to discriminate, the obligation to adopt affirmative actions or differentiated public policies to accelerate the equal participation of all persons in human rights.

Other jurisdictions have taken legal measures to attempt to promote the three dimensions of the right to equality and non-discrimination. For example, in the United Kingdom (UK), the Equality Act of 2010 contains a "public sector equality duty" to "have due regard" to the need to eliminate unlawful "discrimination, harassment (and) victimization", "advance equality of opportunity" and "foster good relations" (section 149) in relation to a list of "protected characteristics", namely, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation (section 4). Right at the beginning of the Act (sections 1–3), the socio-economic duty would require that a public authority, "when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage" (section 1). In other words, the socio-economic duty would mean that public authorities have to actively and systematically consider the effects that their most important decisions have on increasing or decreasing material inequalities of outcome stemming from socio-economic disadvantage. On two occasions the UN Committee on the Elimination of

[55] Human Rights Committee General Comment 18, para. 10.

[56] Committee on Economic, Social and Cultural Rights. General Comment No. 20. Non-discrimination and economic, social and cultural rights (art. 2, para. 2, International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/20, para. 8

Discrimination against Women and CESCR recommended that the UK bring the socio-economic duty into force.[57] CESCR issued the recommendation as a means "to enhance and guarantee full and effective protection against discrimination in the enjoyment of economic, social and cultural rights".[58]

In the present case, the residents of informal settles in the United Mexican States are a vulnerable population who suffer structural discrimination due to the socioeconomic situation in which they live.

Specifically in relation to housing, CESCR General Comment 20 states that: "[t]he exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence; e.g. whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle." The Committee also recognises property status as a prohibited ground of discrimination: "The Committee has previously commented that Covenant rights, such as access to water services and protection from forced eviction, should not be made conditional on a person's land tenure status, such as living in an informal settlement."

In order to implement public policies aimed at eliminating the inequalities and guaranteeing ESCER, several human rights instruments require States to have statistical data on vulnerable individuals. Such instruments have domestic legal force in the State of Mexico pursuant to Art. 1 of the Political Constitution, so the State cannot fail to know the obligations contained therein.

The Convention on the Rights of Persons with Disability[59] states that States must adequately collect appropriate statistical and research data to enable them to formulate and implement policies to give effect to the Convention (Art. 31). In addition, the Convention requires that the information gathered "shall be disaggregated and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights."

Similarly, the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women (best known as "Convention of Belém do Pará")[60] requires that States adopt measures to research, inform and collect statistical data on the causes, consequences, and frequency of instances of violence against women, so as to enable them to assess measures to prevent, sanction and eliminate all forms of violence against women (Art. 8). Furthermore, such statistical information must be used to prepare national reports to be submitted to the Inter-American Commission of Women (Art. 10).

Accordingly, the Special Rapporteur for Freedom of Expression[61] noted that "the lack of access to information by vulnerable groups may affect their rights to live free from violence and discrimination."[62] This is the case, for example, of women. In such cases, "the exercise of the right to access information is closely linked to the prevention of discrimination and violence suffered by this group, as well as to the access to

[57] UN CEDAW. 2013. Concluding Observations: UK. CEDAW/C/GBR/CO/7, para. 16-17; 2019. Concluding Observations: UK. CEDAW/C/GBR/CO/8, para. 15-16.
[58] UN CESCR. 2016. Concluding Observations: UK. E/C.12/GBR/CO/6, para. 23.
[59] Convention signed (8 June 1999) and ratified (25 January 2001) by Mexico.
[60] Convention signed (6 April 1995) and ratified (11 December 1998) by Mexico.
[61] Inter-American Commission of Human Rights (2016). Informe anual de la Comisión Interamericana de Derechos Humanos: Informe de la Relatoría Especial para la Libertad de Expresión. Available at: http://www.oas.org/es/cidh/expresion/docs/informes/anuales/informeanual2016rele.pdf
[62] Ibidem. Para. 166.

justice by the victims."[63] Therefore, as the Special Rapporteur concludes, States have the obligation to produce or gather statistical information on vulnerable groups in order to comply with the goals of the American Convention on Human Rights.

In fact, between 2015 and 2017, the CESCR reiterated 43 times the duty of States to provide qualitative and quantitative data to enable an assessment of the effectiveness of the ESCR protection, referencing it as a major concern,[64] a general recommendation,[65] or a specific recommendation referring to a right, issue, or particular population. Thirty-two of the reports include recommendations regarding collecting statistical data or additional information related to rights, issues, or given populations, or express concern due to the absence of such data. In all such cases, the need for statistical information was identified in relation to vulnerable populations. The rights include the right to housing**,** to education, to social security, to non-discrimination, to work, to food and cultural rights. The issues referenced include unemployment, sexual harassment in the workplace, poverty, domestic violence, corruption, forced evictions, regional compliance with ESCR, and economic exploitation of children. The populations include homeless persons, particularly childhood, children with disabilities, internally displaced persons, migrants, ethnic minorities such as Roma, and members of scheduled castes.

Similarly, the Inter-American Commission on Human Rights (IACHR)[66] showed concern for "the severe difficulties that the available statistics sources have in capturing in their records the enormous ethnic and cultural diversity that exists in each of the countries in the region."[67] For the IACHR, it is important and necessary for States to contain information gathering mechanisms which account for inclusion and exclusion categories of social sectors in order to highlight situations of "structural poverty or patterns of intolerance and stigmatization of social sectors, among other elements for evaluating contexts of inequity."[68] The IACHR has emphasized that the State's duty to "take positive steps to safeguard the exercise of social rights"[69] entails that official data "suitably disaggregated to identify these disadvantaged sectors or groups deprived of the enjoyment of rights is not only a means to ensure the effectiveness of a public policy, but a core obligation that the State must perform in order to fulfill its duty to provide special and priority assistance to these sectors."[70] Section five of this *amicus* covers in more detail how to comply with the obligation to disaggregate data to address different forms of discrimination.

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[63] Ibidem.

[64] Regarding 11 countries, in the section Main Reasons for Concern and Recommendations, concluding observations include gathering statistical data to enable an assessment of compliance of ESCR. In those occasions, the Committee has recommended to promote compiling yearly statistical data disaggregated by "age, sex, ethnic origin, urban and rural population, and other relevant criteria."

[65] The Committee often includes three different related provisions in the section Other Recommendations. The most common provision, which appears 22 times, although not explicitly recommending data gathering, does include a recommendation to elaborate and apply appropriate indicators related to ESCR. The second provision, found 9 times, recommends gathering data and using statistics on these indicators, and requests State Parties to include yearly statistical data in the subsequent State Party report, disaggregated by age, sex, ethnic origin, urban or rural population, and other relevant criteria. Additionally, in 2 reports a general provision is included, in which the State Party is asked to update its data related to all matters concerning the Covenant. In total, 32 reports include at least one of these recommendations.

[66] Mexico signed the Convention of San Salvador on 17 November 1988 and ratified it on 16 April 1996.

[67] Inter-American Commission of Human Rights. Lineamientos para la elaboración de progreso en materia de Derechos Económicos, sociales y culturales. Para. 60

[68] Ibidem. Para. 63

[69] Ibidem. Para. 58

[70] Ibidem. Para. 58

Producing information related to informal settlements in the United Mexican States is indispensable to elaborate a diagnostic of the current situation of the fundamental rights of the persons living in them, as well as to design effective public policies aimed at addressing the situation of exclusion faced by them. Lack of information and:

> [s]tatistical invisibility are a serious problem which prevents both an analysis of the actual situation and the knowledge available on socioeconomic and cultural relations, and inequality and discrimination patterns, as well as the quality of the design and implementation of policies… Defining what is measured, and how and when measurements are made, also involves decisions which may involve forms of discrimination and inequalities of participation and agency.[71]

The development and implementation of policies that adequately meet the needs of marginalised communities and address existing forms of discrimination and exclusion also has important implications for resource generation and allocation Human rights law requires states to respect, protect and fulfill economic, social and cultural rights. More specifically, the obligation to fulfill requires states to take positive steps to the maximum of its available resources (ICESCR Art 2.1) to progressively realize rights. The obligation of maximum available resources requires states to ensure that States generate and allocate an adequate amount of resources in a non-discrminatory manner to meet their human rights obligations. What this further means is that States must prioritise ESCR when considering the size of their total budget and in specific allocations in their budget, and to do so in ways that address existing forms of discrimination and promote equal enjoyment of rights. When the needs and concerns of specific groups are not reflected in data which is used as a basis for policy-making, such as the data that INEGI collects through the census, this leads to an inaccurate understanding of the total amount of resources needed to address these issues and a distorted sense of how resources should be allocated to adequately address them in furtherance of States' obligations to address discrimination and promote equality.

Consequently, population censuses and additional official data collection efforts must include questions which enable the gathering of information on vulnerable populations.

A review of the comparative treatment of the right to equality—and its relation to data gathering—in different jurisdictions shows the consolidated nature of these norms.

Populations with high levels of social exclusion and poverty have been included in population censuses in other Latin American countries. According to the UN Economic Commission for Lain American and the Caribbean (CEPAL), in its *Notas de población No. 97*, the number of countries which have included the identification of ethnic groups has been increasing: while in 1970 and 1980 there were only isolated census counts, the 1990, 2000 and, partially, 2010 rounds showed an increased statistical visibility of these groups. By the end of the 2010 round, 18 countries are expected to include self-acknowledgment questions for indigenous populations, and 16 countries, for afro-descendant persons. In fact, the inclusion of an ethnic approach in population censuses is due to the fact that indigenous peoples, afro-descendant, Roma, and other peoples tend to be on the social and economic periphery, with high levels of poverty and little recognition for

[71] CEPAL, 2016. La matriz de la desigualdad social en América Latina. LC/G.2690 (MDS.1/2), p. 84.

the exercise of their rights in all areas.[72] Censuses have allowed for visibility of the characteristics of these peoples and have identified the factors that prevent them from reaching higher standards of living.[73]

It has also been considered important and necessary to include populations with high levels of poverty and social exclusion, such as *campesinos* in Colombia and those living in informal settlements in Argentina. In Argentina, the 2001 and 2010 censuses have tried to reflect the count of "slums" and settlements existing in the national territory. In fact, for the 2020 round, a survey is being prepared which includes a thematic area, "Conceptualization of Slums and/or Settlements," aimed at formulating an operating definition of such settlements to enable their measurement and distinction in respect of other types of housing.[74]

In Colombia, a constitutional judge has acknowledged the need for *campesinos* to be included in population and housing censuses; since *campesinos* are a population with a high level of social exclusion, they have the right to benefit from affirmative policies designed by the State in order to responder to the violation of their right to equality. On November 23, 2017, 1758 *campesino* women and men filed a *tutela* action against the authorities in charge of including questions aimed at characterizing the different populations of Colombia in the 2018 National Population and Housing Census of that country. The defendants included the National Statistics Agency (*Departamento Administrativo Nacional de Estadística*), the Ministry of Interior, the President of the Republic, the Ministry of Agriculture and Rural Development and *Instituto Colombiano de Antropología e Historia*. In the case, the authors requested that the economic and social conditions of *campesinos* be included in the census in order to have public policies consider their specific social situation and cultural identity, arguing that otherwise their right to substantive equality would be violated. At the lower level, the Criminal Chamber of the Bogota High Court (*Tribunal Superior*) rejected the suit, concluding that the inclusion of *campesions* in the Population Census could not follow from a *tutela* action. On appeal, the Supreme Court decided that *campesinos* are a group subject to special constitutional protection[75] and, therefore, should benefit from substantive equality through public plans and policies that enable the improvement of their social and economic conditions. Such policies, as mentioned above, require the kind of information gathered in population censuses.

Due to a lack of feasibility studies to define questions referring to cultural identity and a lack of ratification by other *campesino* sectors of the questions submitted by the petitioners, the constitutional judge did not order the inclusion of this population in the census. Nevertheless, the judge did denounce the defendants' lack of diligence in including questions aimed at determining which percentage of the national population is made up of citizens of "*campesino*" origin under guidelines and parameters confirmed by several studies. Accordingly, the judge affirmed the need for the national government to carry out positive public policies aiming to

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[72] Psacharopoulos, George y Harry Patrinos (1994), "Los pueblos indígenas y la pobreza en América Latina: un análisis empírico", Estudios sociodemográficos de pueblos indígenas, Serie E (LC/DEM/G.146), Santiago de Chile, Centro Latinoamericano de Demografía (CELADE).

[73] CEPAL. Notas 89 de población. Available at: https://repositorio.cepal.org/bitstream/handle/11362/12857/np89057100_es.pdf?sequence=1&isAllowed=y

[74] Defensoría del pueblo de la Nación Argentina. Informe "asentamientos informales y Derechos humanos. Available at: https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/ArgentinaDefensorPueblo.pdf

[75] According to Constitutional Court case law, individuals subject to special constitutional protection are those persons who, due to their particular physical, psychological or social conditions, deserve positive actions by the State in order to achieve real and effective equality. Thus, groups subject to special constitutional protection include: children, adolescents, the elderly, persons physically, psychologically and sensory impaired, women heads of household, persons displaced due to violence, and those living in extreme poverty. See, among others: Corte Constitucional. T 116 de 2011. MP. Juan Carlos Henao Pérez.

eliminate discrimination and improve the social and economic conditions of *campesinos* as a group subject to special constitutional protection.[76]

***Right to Information and to Participation in the Conduct of Public Affairs***

International human rights law also contains the right to access public information held by the State,[77] and the right to participate in the conduct of public affairs,[78] both of which imply the correlative obligation of governments to produce such information.[79] These are necessary conditions for decision-making processes related to public policies, and in order to guarantee citizen participation in such processes, an indispensable pillar in any democratic society.[80]

First of all, timely access to clear, comprehensive, and reliable information is essential to enable citizens' participation and meaningful engagement in public affairs and decision making.

The European Court of Human Rights has recognized that international human rights law has:

> Evolved to the point that there is a broad consensus, in Europe (and beyond) on the need to recognize the individual right of access to information held by the State to allow citizens to form an opinion on issues of general interest.[81]

As emphasized in Supreme Court jurisprudence from India:

> It is only if people know how the Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy… The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State.[82]

In a separate case, the Court reaffirmed that "[t]he right to information is fundamental in encouraging the individual to be a part of the governing process."[83] The Court has also decried, "one-sided information,

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[76] EU Agency for Fundamental Rights. 2017. Fundamental Rights Report. http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017, p. 64.

[77] See, *inter alia,* Art. 19 of International Covenant on Civil and Political Rights; Art. 13 of American Convention on Human Rights; Art. 13 of Convention on the Rights of the Child. See also: United Nations, Human Rights Committee, General Comment No. 34, *Art. 19: Libertad de opinión y libertad de expresión,* CCPR/C/GC/34, 12 September 2011, para. 18 *ff*; Corte IDH, *Caso Claude Reyes Vs. Chile,* decision of 19 September 2006, para. 77 *ff.*

[78] See, *inter alia,* Art. 25 of International Covenant on Civil and Political Rights.

[79] See International Covenant on Economic Social and Cultural Rights, Art. 2 and 17; the Inter-American Commission of Human Rights has similarly interpreted Art. 13 of the ACHR, as detailed in the Commission's Declaration of Principles on Freedom of Expression (2000); Declaration of Principles on the Right to Access Information by the Inter-American Juridical Committee (2008); and Model Law on Access to Public Information (2010). A detailed analysis is also found in the IAHR Court decision on Claude Reyes v. Chile.

[80] See Juzgado Federal en lo Criminal N°. 2 de Morón, República Argentina, causa FSM 52000096/2013, *"Mendoza, Beatriz Silvia y otros c/Estado Nacional s/ejecución de sentencia"*, sentencia del 4 de noviembre de 2013; ABRAMOVICH, Víctor y COURTIS, Christian, "*El umbral de la ciudadanía. El significado de los derechos sociales en el Estado social constitucional*", Editores del Puerto, Buenos Aires, 2006, p. 175.

[81] Corte Europea de Derechos Humanos, *Magyar Helsinki Bizottsag c. Hungría*, sentencia de 8 de noviembre de 2016, pár. 148.

[82] AIR 1982 SC 149, § 64

[83] Hindustan Times v. High Court of Allahabad, (2011) 13 SCC 155, § 3

disinformation, misinformation, and non-information, all equally creat[ing] an uninformed citizenry, which makes democracy a farce."[84]

This is particularly relevant for marginalised groups. When information concerning marginalised communities is not gathered (or done so incorrectly) and consequently unavailable to them, not do their needs and perspectives go unaddressed in public policy, but also they also are also unable to exercise their democratic prerogatives fully.

Secondly, in relation to states' obligations towards equality and non-discrimination, the lack of information about marginalised groups compounds existing inequality and discrimination as it de facto excludes them from meaningfully participating in public affairs. In this respect, several international instruments have adopted more explicit and detailed wording on the scope of State obligations within the framework of access to public information,[85] many of them with a focus on specifically protecting vulnerable groups.

However, these obligations rest on the prerequisite that data relevant to the exercise of constitutional rights, such as demographic data, is being collected by the state. Therefore, official data gathering—through census and additional means—on informal settlements in Mexico is not only required for the fulfillment of the right to adequate housing and equality and non-discrimination, it also is an obligation stemming from the rights to information and to participate in the conduct of public affairs.

## 5. Principles for Designing and Implementing Data Gathering, Analysis, and Use with a Human Rights-Based Approach

This section addresses how States should plan and implement data collection and analysis in line with human rights obligations derived from ICESCR and other international human rights treaties.

The ways in which data on ESCER is collected, analyzed, and used should be done in accordance with a human rights-based approach (HRBA), with the goal of promoting and protecting applicable international human rights standards. In the context of data collection, a human rights-based approach can increase data accuracy and policy success, as it centers policymaking processes around people's lived experiences and perspectives; protects the security and privacy of rights-holders; improves accountability; and enables the participation of vulnerable groups in decision-making.

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[84] Indian Express Newspaper (Bombay) Private Ltd. V. Union of India, AIR 1986 SC 515; India v. Association for Democratic Reforms; Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2SCC 161.

[85] See, for example, Convention on the Rights of Persons with Disabilities, Art. 31, which requires State Parties to *"gather adequate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the (...) Convention"* and that the information gathered *"shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights."* Subsection 3 further requires State Parties to *"assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others."* The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belem do Pará") establishes the State obligation of "*to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes"* (Art. 8 para. H).

### *Quality and relevance: Ensuring the full scope of human rights are measured*

To measure the implementation of human rights, particularly duties of progressive realisation, states should gather data in ways that meaningfully addresses all aspects of human rights, including their normative scope and associated legal obligations. The UN Office for the High Commissioner on Human Rights (OHCHR) and the OAS recommend the use of a model adopted for assessing implementation that is based on the development of *structural*, *process* and *outcome* indicators. This framework enables the assessment of progress made to formally protect rights through ratification of legal instruments and other laws (structural); the steps taken to implement laws, including policy-making and allocation of resources towards the implementation of rights (process); and outcomes in achieving realisation of rights for all in line with the principles of equality and non-discrimination.

For example, OHCHR has developed indicators on the right to housing that illustrate 1) Process: Share of public expenditure on provision and maintenance of sanitation, water supply, electricity, and other services of homes; Proportion of targeted population that was extended sustainable access to safely managed drinking water, sanitation services, electricity, and waste disposal in the reporting period; and 2) Outcome: Proportion of urban population living in slums, informal settlements or inadequate housing; Proportion of population using safely managed drinking water, sanitation services, electricity, and waste disposal; Proportion of population living in households with access to basic services; etc.

However, to provide an adequate picture of the progress in implementing the right to housing, and in line with the state's obligation to place particular attention towards vulnerable groups, states should gather both quantitative data, for instance through census and other, more frequent, statistical efforts, as well as qualitative data that allows the investigation of the causes and impact of specific problems in order to devise policies that can effectively address them. As the UN Special Rapporteur's Guidelines on the Implementation of the Right to Adequate Housing states:

> States tend to misunderstand the obligation to monitor progress as being merely a matter of collecting and disseminating data about housing programs, homelessness, expenditures and aggregate demographics. Evidence considered is often restricted to statistical information, without qualitative evidence based on experiences of rights holders. In many countries disaggregated data based on gender, race, disability, age, family status and income are not collected due to either the lack of technical capacity or absence of legislation allowing it ... Monitoring progress on the implementation of the right to housing should be focused on assessing compliance with the obligation to progressively realize the right. It should include the collection of qualitative and quantitative data related to dignity and the experience of rights holders with respect to all aspects of the right to housing, including security of tenure, availability of services, affordability, habitability, accessibility, location, cultural adequacy, homelessness and evictions. Statistical and qualitative information with appropriate safeguards should also be collected on the housing circumstances of groups facing systemic discrimination, on structural barriers to housing and on the outcomes of measures taken to address such barriers. Major trends and emerging challenges should also be identified.

***Disaggregation to Meet Obligations of Equality and Non-Discrimination of Vulnerable Groups, which Include People Living in Informal Settlements***

According to the OAS, equality and non-discrimination can be:

> regarded as crosscutting categories common to all the rights contained in the Protocol, are meant to identify if the conditions for effective access to social rights are in place in each state through the free interplay of democratic and decision-making institutions and processes. For example, the historical discrimination of indigenous peoples in the Americas is based on ideological constructs of domination that regard inequalities among groups as 'natural,' rather than a consequence of a particular social structure. (...). Gender discrimination is another example... These indicators should be viewed alongside information on access to productive resources, the labor market, and social security/protection, as well as indicators on distribution of budgetary and extra-budgetary public resources.

Disaggregated data, because it allows for comparisons across groups, is essential to reveal inequalities and identifying patterns of discrimination and understanding structures of oppression. Inequalities across various subcategories often reveal that the chances people have to enjoy their economic and social rights are heavily shaped by the circumstances in which they are born and not by factors over which they have control.

From a human rights perspective, States have an obligation to collect data that allows them to identify where discrimination is taking place on any number of grounds. The Special Rapporteur on minority issues, Rita Izsák-Ndiaye, concludes that:

> Disaggregated data-gathering should be conducted at the national, regional and local levels through the national census and periodic social surveys, accompanied by appropriate statistical analysis. It is essential to include data takers from diverse backgrounds, including minority persons, especially in territories where minorities are concentrated.

Generally speaking, indicators should be collected and published with the highest possible level of disaggregation, while reflecting the needs of the related communities. The highest level of disaggregation includes data related to sex, sexual orientation, gender identity, age, race, ethnic origin, geographical location, socioeconomic status, and any other prohibited grounds of discrimination.

As mentioned above, in its General Comment 20, CESCR recognises place of residence among the prohibited grounds for discrimination. The Committee further explains that "[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying." As stated above, this could be the case for women, people with disabilities, children and individuals with other characteristics who live in informal settlements and who are likely to experience multiple forms of discrimination and deeper levels of inequality.

For this reason data should be representative and reflect the characteristics of different groups. If individuals and groups are not represented in data, or are not accurately represented, they themselves, their situation,

interests, and needs are not captured as they should be. Exclusion in data may therefore mean exclusion in reality.

A key way to ensure representativeness is to involve groups and individuals with different characteristics at all stages of data production, so that data reflects the things that actually matter to them and is collected, analyzed, and used in ways that are sensitive and respectful to different identities. This is particularly important in the design stage of data gathering processes, to identify categories and indicators that allow to capture the information that is most relevant to people.

Censuses and other data collection efforts should thus apply the principle of self-identification. From a human rights perspective, it is important that identity is not solely based on objective criteria but also subjective criteria such as self-identification.. This means that the individuals themselves should have complete control over whether they disclose their identity and what identities they choose to do so with. In relation to minority groups, for example, the Special Rapporteur on minority issues explained: "[c]ensus questions should allow for open and multiple responses to enable respondents to self-identify according to their national, ethnic, religious and linguistic affiliation, including multiple identities". Similarly, States should respect the decisions of individuals and communities and allow them to be counted under categories that they feel relevant and appropriate. As OHCHR states:

> In order to allow disaggregation of data, groups and/or categories must be defined prior to data collection. Many populations of interest for data collection are, by necessity, self-defining. That is, the parameters of the population cannot be imposed by an external party. Rather they are set by the members of the population and communicated via their (individual) decisions to disclose, or not disclose, their personal identity characteristics (e.g. their indigenous status, religion or sexual orientation). Any categories of identity should be developed through a participatory approach, to ensure respondents with these characteristics are optimally able to engage with the data collection. In some contexts, applying the principle of self-identification may involve including categories of identity beyond those currently listed in international treaties or recognised by national law. All questions on personal identity, whether in surveys or administrative data, should allow for free response as well as multiple identities. Personal identity characteristics (particularly those that may sensitive, such as religion, sexual orientation, gender identity or ethnicity) should be assigned through self-identification, and not through imputation or proxy.

***Data processes to Enable Community Participation and reflect Lived Experiences***

The right to participation is a well-established human rights principle as per the Charter of the United Nations, the ICESCR and the ICCPR. Meaningful participation encompasses the rights of all individuals and communities to have a say in the processes that affect them. As the UN Special Rapporteur on the right to adequate housing recently stressed, states should ensure participation in the design, implementation a*nd monitoring* of housing policies (Guidelines for states for the implementation of the right to adequate housing).

With regards to housing, the UN SR on the right to adequate housing as recognised that states should ensure meaningful participation in the design, implementation *and monitoring* of housing policies and decisions: "(a) The right to free and meaningful participation in housing policies must be guaranteed in law and include the provision of necessary institutional and other supports; (b) Affected individuals must be able to influence the

outcome of decisionmaking processes based on knowledge of their rights and have access to relevant information and sufficient time to consult; socioeconomic, linguistic, literacy and other barriers to participation must be addressed."

This requires gathering data in ways that centres the needs and perspectives of communities. It also means that data should address the needs and perspectives of different groups and individuals. To ensure accountability to communities, states and other actors should also share back what actions they have taken or will take on the basis of the data collected. Reporting back should happen in a timely manner and in ways that simplify the data and makes it accessible.

Secondly, data collection methodologies should allow people to express their views: current hierarchies around which kinds of data are more objective and valid tend to legitimate certain types of data—often quantitative and technical data—inappropriately disregarding communities' perspectives as biased and not legitimate. However, over-reliance on numbers tend to exclude or ignore essential issues and nuances that can only be captured through qualitative data, which affects how decisions are made. A human rights-based approach to data means recognising different forms and kinds of data, paying adequate attention to qualitative data that reflect communities' perspectives and knowledge. Data gathering, including official data, should integrate community-generated data or at a minimum use qualitative methods and tools that allow communities to fully express their views and perspectives about issues that matter to them.

Thirdly, community participation in collecting and analyzing data helps improve the accuracy of the information, for it makes it more likely for community members to offer information and do so in a complete way. As recognised by the Committee on Economic Social and Cultural Rights in its General Comment n 4 (Para 12), genuine consultation and participation results in policies that are more effective because better adapted and responsive to community needs.

***Accessibility and Usability***

As information is an essential precondition for the exercise of any right, people should have access to it in formats and ways that can be used to participate in decisions that affect them, understand how these decisions are made and on what basis, and hold powerful actors accountable. For such data to be useful, people must be able to read, organise, and interpret it, i.e. transform data into information. There is no "one size fits all" accessibility standard. While accessibility is relative to those affected by that information and whether the information is really usable, there is some level of agreement on the fact that data must be available at least in a reusable format, for example in CSV or Excel. As OHCHR puts it:

> Metadata (data describing the data) and paradata (data about the process by which the data were collected) should be available and standardized, as relevant, across data collectors and data collection instruments. Doing so facilitates accessibility, interpretation and trust.

On the other hand, when assessing whether the data is accessible, one should ask who needs access to this data, who will use it and for what purpose. Data and information must be adapted to the needs of different groups and communities in a specific context, taking into account considerations such as disability, language, literacy levels, and cultural background.

***Respecting Individuals' Privacy and Security***

The UN Human Rights Committee defines privacy as "a sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone." Generally speaking, collecting, analyzing, and using data should not cause harm to anyone. Safety and security should be understood broadly and include physical security, mental wellbeing, and digital security.

Data should not be published or publicly accessible in a manner that permits identification of individual data subjects, either directly or indirectly. Data, particularly when disaggregated, should be collected with extreme care as to ensure it does not increase the risk to certain groups or people. Although an important step to ensure their protection and full enjoyment of their economic and social rights, in some instances, collecting data on people with sensitive characteristics, such as those belonging to a persecuted ethnic minority, LBGTQIA+, undocumented migrants, and indigenous people, may expose them to unnecessary risk, which needs to be mitigated.

Data should be collected only following free, prior, and informed consent. This means that communities and individuals should have the ultimate decision-making power and agency on any aspect related to the data, including what data can be collected or if data can be collected at all, how it will be used, who else will have access to it, whether privately or publicly, and for how long it will be stored, before giving their informed consent to share their data. This includes the right to be excluded from data: while data should strive to be inclusive and representative, people have the right to not disclose personal information, particularly when it may be used in ways that counter human rights. This principle should be balanced with the ones described above and the potential damage weighed against the public interest. Where there are safety and privacy issues, data should *only* be collected and used for purposes that are absolutely vital, for example, for exposing human rights abuses. States should also carefully regulate data collection by private actors that could be used to harm specific groups or individuals.

**6. Conclusions**

Based on the above, the *amici* urge the Court to confirm:

1. the need for an adequate, effective judicial remedy to ensure realization of all international human rights valid in the United Mexican States, including the rights to adequate housing; to equality and non-discrimination; and to information and participation in the conduct of public affairs; including when they have systemic reach;

2. INEGI's obligation to gather data on informal settlements with the above-mentioned characteristics, guaranteeing full and progressive realization of the human rights of the population living in them; and

3. INEGI's obligation to gather such data with a human rights-based approach and considering their realization, complying with applicable criteria of data disaggregation, participation, self-identification, accessibility, usability, transparency, privacy, safety, and accountability.

Sincerely,

**Asociación Civil por la Igualdad y la Justicia**

**Center for Economic and Social Rights**

**Centre for Human Rights and Development**

**Centro Mexicano de Derecho Ambiental**

**Dejusticia**

**Oficina para América Latina de la Coalición Internacional para el Hábitat (HIC-AL)**

**Human Rights Law Network**

**Nazdeek**

**Socio-Economic Rights Institute**

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**Francesca Feruglio y Fernando Ribeiro Delgado**
**Secretaría, Red-DESC**