**Report of the UN Special Rapporteur on the right to adequate housing to the   
52nd session of the Human Rights Council**

**The right to adequate housing and climate change**

**Questionnaire**

Name of submitting entity, organization or individual: **Habitat International Coalition, with direct inputs from the Housing and Land Rights Network Violation Database and inputs from HIC members in Spain (Observatori DESC) and India (Sathi All For Partnerships India).**

Contact e-mail:

***Impact of climate change on the right to adequate housing***

*In real life*

1. In your country, what have been the main effects of the climate crisis, on the enjoyment of the right to adequate housing? Please specify whether there have been any climate-induced impacts on the security of tenure, availability, affordability, accessibility, habitability, location and cultural adequacy of housing, including climate crisis related displacement.[[1]](#footnote-1)

**Habitat International Coalition and its Housing and Land Rights Network maintain a global scope of operation. The erratic weather accompanying climate change in all regions has led to droughts, reduced crop yields, increased and unseasonal temperatures and rainfalls. HIC-HLRN monitoring focuses on the cases that constitute violations of human rights to habitat such as loss or damage to housing, land and related environmental good and services (water and sanitation, biodiversity and ecosystem); that is, where these are foreseeable and involve duty bearers’ commission and/or omission.[[2]](#footnote-2) The consequences include loss of shelter, property, livelihood, displacement and/or homelessness. In some cases, these include physical injury and loss of life.**

**In these cases, it is crucial to determine the cause-and-effect relationship between the climate crisis and human factors involving state responsibility,[[3]](#footnote-3) on the one hand, and the consequences to the enjoyment of adequate housing, on the other. Some cases involve environmental degradation due to human activity as direct causes; however, the state also remains the principal duty bearer under the obligation to protect.**

**For illustrative cases of human-caused environmental destruction that contribute to the climate crisis, as well as caused violations of the human right to adequate housing, see:**

[**Kurdistan Border Forests Denuded**](http://www.hlrn.org/activitydetails.php?title=Kurdistan-Border-Forests-Denuded&id=p2ppZQ==#.YpEcjahBy70)**, Iraq (2021)**

[**Cyclop Mountain landslide, Indonesia**](http://www.hlrn.org/violation.php?id=p21taqk=) **(2019)**

[**Eagle Creek Blaze**](http://www.hlrn.org/violation.php?id=p21ta6s=)**, Oregon, USA (2018)**

[**Keystone Leak**](http://www.hlrn.org/violation.php?id=p21pa6o=)**, USA (2019)**

[**Frackers Grab Forest**](http://www.hlrn.org/violation.php?id=o2xsZg==)**, USA (2012)**

[**Fuego de Lago Grey**](http://www.hlrn.org/violation.php?id=p21ta6o=)**, Chile (2011)**

[**West Papua Deforestation, Indonesian-occupied Iryan Jaya**](http://www.hlrn.org/violation.php?id=q29s) **(2010)**

[**EcoCamp Patagonia**](http://www.hlrn.org/violation.php?id=p21ta6k=)**, Chile (2005)**

**Some concrete cases gathered with our membership include:**

**1) India: Migration and population shrinking due to droughts and increasing temperatures (which directly affect crops) in communities in Jharkhand**

**2) Spain: homes lost due to sea level rise (homes on the waterfront or in flood zones). 1 million residents living in areas at risk of flooding[[4]](#footnote-4) / Heat and cold waves accompanied by a high number of tropical nights (this, together with the ravages of energy poverty, widespread in Spain, complicate and violate the right to adequate housing, leading to deaths from heat and deaths from cold due to poor insulation. In addition, given the poor insulation, there is an increase in the consumption of electricity and gas, with the expense that this entails, which often leads to energy poverty / Increase in storms (leaks in homes, losses and damage due to wind, rain and hail) / Heat island effect (in cities).**

1. Does the climate crisis affect the right to adequate housing differently in urban and rural areas and how? If yes, is there an interrelationship between the two?

**Effects differ mostly in the degree to which urban settings involve (1) greater density of consequences (numbers and values at stake) and (2) victims/affected people generally having more resettlement and livelihood options in urban areas. Also, relief agencies and civil defence services operate either less or with less rapidity in rural and remote areas. This remains a factor in the availability of both remedies for those affected and information (numbers and other details) about the victims/affected persons and the consequences they endure, including the whereabouts and conditions (e.g., adequacy of housing and costs incurred) in their eventual displacement.**

**Moreover, rural areas tend to have less public money dedicated to climate change adaptation (such as climate shelters) and less is invested in all types of services. Public transportation in rural areas is underfunded and functions poorly. The discourse of territorial balance and less travel in private vehicles to mitigate climate change is contrasted with the reality of centralization of public services in large cities, neglecting small towns and rural areas, which have their population needing to travel to go to the doctor or access other basic services.**

1. Are certain groups distinctly affected in the enjoyment of their right to adequate housing as a result of the climate crisis? Please describe in what way.

**Yes, the rural and urban poor are the most affected, including those already living with discrimination, inadequate housing and insecure land tenure among them. These groups include also those with traditional or so-called “informal” tenure. Moreover, specific groups such as women and elderly are particularly affected, as well as the urban poor, in particular those affected by energy poverty. Specific cases linked to the HLRN Violation Database illustrate such categories:**

[**Durban flood**](http://hlrn.org/violation.php?id=p21taqs=)**, South Africa (2022)**

[**Petrópolis landslide, RJ, Brazil**](http://www.hlrn.org/admin/violations/article_edit.php?id=55969&back=YXJ0aWNsZV9kaXNwbGF5LnBocA==#l) **(2022)**

[**Cyclop Mountain landslide, Indonesia**](http://www.hlrn.org/violation.php?id=p21taqk=) **(2019)**

**[Post-Maria aid denied](http://hlrn.org/violation.php?id=p21sbKk=), Puerto Rico (2017)**

[**Bainsiria Village, Odisha, India**](http://www.hlrn.org/violation.php?id=p21taqc=) **(2011)**

[**West Papua Deforestation, Indonesian-occupied Iryan Jaya**](http://www.hlrn.org/violation.php?id=q29s) **(2010)**

1. How is the right to adequate housing ensured for persons who have been internally or internationally displaced by the climate crisis? How and under what conditions is their right to voluntarily return ensured?

**Among other factors such as the availability of resources and capacities of domestic or international public agencies and nongovernmental service providers, governance and political will are key, including nondiscrimination in that context. The human needs and, hence, (accessory) human rights to public participation, information and administrative justice, etc. come into high relief in cases of their denial.**

**Illustrative is the case of the drought-induced depopulation of 161 mostly Kurdish villages in northern Syria in 2009–10. In response, the Ministry of Housing promptly issued as decree prohibiting freehold or leasehold tenure of housing to anyone migrating from his/her habitual residence. This act was a thinly veiled form of discrimination, denying the human right to adequate housing to minority citizens. (See** [**Systematic Housing and Land Rights Violations against Syrian Kurds**](http://www.hlrn.org/img/documents/kurds%20status%20in%20Syria.pdf) **[2011].)**

**In Spain, for example, the reception program (SAYER) for international displaced persons is limited to political exiles, with no programs for national displaced persons. The concept of voluntary return is seen with apprehension, since it is intimately related to the expulsion of migrants in vulnerable situations and not responding to their rights in national territory.**

1. When housing has been damaged or lost due to climate-induced events, what has been the related impact on the lives, health and livelihoods of the affected populations?

**In the global practice of reporting on such cases, the weakest data are those describing or quantifying** the **related impacts on the lives, health and livelihoods of the affected populations. This type of inquiry is not often found in press or civil society reports, but more likely among relief agencies. The pursuit of answers to these questions are precisely why the** [**HLRN Violations Database**](http://www.hlrn.org/welcome_violation.php#.YpEhFKhBy71) **and associated thematic** [**World Habitat Day reports**](http://www.hlrn.org/img/documents/Habitat_Day_2013_en.pdf) **have promoted further development of this type of inquiry, particularly among civil society. The objective of this exercise would be to aid the processes of remedy and reparation, as appropriate, by applying the UN reparation framework (**[**A/RES/60/147**](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement)**).**

**To that end also, HIC-HLRN has developed and applied its** [**Violation Impact-assessment Tool**](http://www.hlrn.org/spagenew.php?id=qnE=#.YpEgnKhBy70) **to cases of gross violation of the human right to adequate housing, including in incidences related to the climate crisis.**

1. How have people been able to access redress and compensation for damages to or loss of their housing as a result of the climate crisis and extreme weather events? What are the main obstacles to accessing timely redress and compensation, and what could be effective solutions?

**Each case differs from the other, depending on the type of governance, possible forms of discrimination, tenure status and type, access to information, etc. Where a gross violation of the human right to adequate housing (e.g., forced eviction) results from the incident, then the entitlements are classified as “reparation,” which is composed of:**

* **Restitution:**
* **Return,**
* **Resettlement,**
* **Rehabilitation of all kinds;**
* **Compensation for those values that cannot be materially restored;**
* **Guarantees of nonrepetition; and**
* **Satisfaction.**

**However, these rights and entitlements of effected persons rarely are realized in their entirety, including in cases of gross violations of the human right to adequate housing. From the illustrative cases above, we note that in:**

[**Bainsiria Village, Odisha, India**](http://www.hlrn.org/violation.php?id=p21taqc=) **(2011), flooding survivors forced to live in a vulnerable area due to their lower-caste status, received compensation at only a small portion of their actual losses;**

[**Post-Maria aid denied**](http://hlrn.org/violation.php?id=p21sbKk=)**, Puerto Rico (2017), US Federal Emergency Management Agency (FEMA) actively denied aid to** [**335,748 Hurricane Maria-effected households**](http://www.hlrn.org/activitydetails.php?title=Puerto-Rico:-Still-No-Relief-since-Hurricane-Maria&id=p2pnYw==) **on the basis of their tenure status, no matter how legitimate the tenure was, because their holdings were no officially registered;**

[**Petrópolis landslide, RJ, Brazil**](http://www.hlrn.org/admin/violations/article_edit.php?id=55969&back=YXJ0aWNsZV9kaXNwbGF5LnBocA==#l) **(2022), the Bolsonaro Administration discontinued preventive measures and Civil Defence Services since 2019, exacerbating the losses from the recent deluge that destroyed some 300 homes and households.**

1. Please indicate any key rulings of national courts and tribunals protecting tenants and home owners from the impact of the climate crisis or on their right to adequate housing or related to climate induced displacement? Please also describe their outcome and impact?

**In Spain, some cases can be cited in terms of energy poverty:**

**- 24/2015, autonomous law (in Catalonia) that protects from water, power and gas cuts.**

**- Bono social 24/2013 of the electricity sector, art 45 = 25% discount of the electricity bill ( fully unemployed families, minimum pensions or large families). It does not protect from cuts.**

**- Royal Decree 7/2016, new financing mechanism for all suppliers + prohibition of disconnection for vulnerable families.**

*In measures*

1. Please explain how energy efficiency, green urban planning, climate mitigation and adaptation policies and programmes take into account the right to adequate housing. What measures have been taken to ensure that they do not have any (unintended) discriminatory impact on particular population groups?

**In HLRN’s** [**recent study of green transition in the MENA region**](https://annd.org/uploads/publications/Going_Green_-_Monitoring_the_Green_Transition_in_the_Arab_Region_EN.pdf)**, we came up against the same question. In that review, neither the official policy documents and reports of states on SDG and NUA implementation, nor the technical advice and promotional materials on “green building,” for example, mention the human right to adequate housing or any normative guidance on the subject. The same is true of related products of UN agencies.**

**UN Habitat’s flagship Global Urban Monitoring Framework (GUMF) cites the legal definition of adequate housing (CESCR, GC No. 4), but does not mention the prohibition against forced evictions and the criteria for a lawful eviction (or evacuation, as the case may be). In fact, in a recent online stakeholder consultation, the principal author of the GUMF vociferously rejected the inclusion of such criteria. The inclusion of human rights criteria in green-transition policy, financing and project implementation is a core recommendation of the above-mentioned study.**

**In Spain, there are no particular measures in place and some subsidies of European public money are transferred in speculation through the renewal of housing measures which is transferred to an increase in the final price of rent.**

**In India, projects on green urban planning demonstrate islands of excellence on paper. In practice when a single woman wants to shift from Delhi due to rise in temperature, she faces the barriers. The NGO Sathi All For Partnerships has supported single women to buy land and build their housing through linkage services. In their experience it has been very difficult to find the right site as incessant rains have led to landslides in the mountainous areas where we are situated. The flash flood in the area have increased and it has led to falling of retaining walls that hold housing plots.**

1. Please explain how natural disaster preparedness, response and recovery/reconstruction strategies and plans ensure non-discrimination?

**Again, hypothetically, these efforts would best ensure nondiscrimination by explicitly requiring that priority be given to those groups subject to historic discrimination, including those living in areas subject to various kinds of spatial injustice (low-lying areas, food deserts, rural and remote populations, women-headed households, indigenous peoples, people under occupation and alien domination, informal settlements, etc.)**

**The UN Agenda 2030 alludes to social justice in SDG 10: “Reduce inequality within and among countries.”[[5]](#footnote-5) Moreover, reducing inequalities and ensuring no one is left behind are integral to the achieving the Sustainable Development Goals.[[6]](#footnote-6) The SDGs also prioritise efforts to reach the furthest behind first.[[7]](#footnote-7) While these are merely temporary, voluntary policy commitments, states and their organs, including cities and local governments and authorities, are likewise duty bound under ICESCR and ICERD uphold the human right to adequate housing. This implied the reduction of inequalities and inequities, and to ensure the worse off become better off first.**

**These human rights criteria and the normative framework of sustainable development (with its economic, social and environmental pillars, buttressed by human rights) cause us to critically interrogate the fashionable concept of “resilience” as applied to people (as distinct from buildings and infrastructure). Lacking any commensurate normative content, as often expressed, “resilience” the objectivizes a return to the *status quo ante*, no matter how inadequate that may be. It does not rise to the level of the human rights obligations of “achieving progressively the full realization of the rights recognized in”[[8]](#footnote-8) ICESCR, or “the continuous improvement of living conditions.”[[9]](#footnote-9) Moreover, the habitual usage of “resilience” puts the onus on the victims/affected persons to achieve recovery, without respect to rights of reparation rights, accountability for the shocks that necessitate resilience, nor to resistance against the violations that may accompany them.**

**Under the Paris Agreement on climate change and the Conference of Parties (CoP) processes, new remedial methods such as the Warsaw Mechanism and green-transition project financing make it possible to achieve recovery/reconstruction for affected communities.**

**These need to be developed further within human rights and nondiscrimination frameworks. Since CoP25, much thinking has been invested in the theory and practice of recovery and restitution of losses and damage due to climate change.[[10]](#footnote-10)**

1. What are the main barriers to addressing and mitigating the adverse impacts of climate change on the realization of the right to adequate housing?

**In Spain:**

**- In the context of a country where the context of housing has been promoted through property titles, we find large layers of the population with the responsibility to carry out energy efficiency improvement works but they do not have the capital to execute them and subsidies are few.**

**- The housing stock is of low quality, old, and in need of economically costly works.**

**In India:**

* **Government apathy**
* **Ignorance due to lack of awareness**

***Impact of housing on climate change***

1. How does the housing sector in rural and urban areas contribute to climate change? It may be helpful to think of:

* energy consumption for heating, cooling, cooking, lighting of housing;
* urban sprawl and related climate impacts (soil sealing, commuter traffic etc.);
* increase of average per capita living space;
* water use;
* emission of pollutants;
* climate impact of construction and used construction materials;
* deforestation, desertification and loss of biodiversity caused by housing development projects.

Please provide as well any statistical information on the climate impact of the housing sector compared to other sectors in your country.

**Urbanization is a major cause of climate change. Causality test results indicate that urbanization has a causal effect on the greenhouse gas emissions and temperature change in the long run. In contrast, a unidirectional causality is also found between urbanization and carbon-dioxide emission in the short run. Cities use a large proportion of the world's energy supply and are responsible for around 70 per cent of global energy-related greenhouse gas emissions, which trap heat and result in the warming of Earth.[[11]](#footnote-11)**

**Some statistics from Spain:**

* energy consumption for heating, cooling, cooking and lighting in the home - final energy consumption in Spain comes mostly from fossil fuels. In Spain, the building sector is responsible for 30.1% of final energy consumption and 25.1% of emissions[[12]](#footnote-12)
* Urban sprawl and related climate impacts (soil sealing, commuter traffic, etc.) Great process of artificialization and waterproofing of the soil, loss of natural soil since the 1998 land law and the urbanization process on rural land in the years 2000-2008
* water use; - low per capita water consumption data; - low pollutant emissions
* pollutant emissions; - pollutants from poorly treated waste, monopoly of private waste management companies
* climate impact of construction and construction materials used; - high profusion of reinforced concrete in construction, GHG emissions
* deforestation, desertification and biodiversity loss caused by housing development projects.
* Energy inefficiency: The energy inefficiency of housing is responsible for 14% of emissions (in Spain it reaches, on average, 29,000 tons of GHG per year and in Europe a total of 450,000 tons)[[13]](#footnote-13)
* What measures are being implemented in rural and urban areas to reduce and eliminate the adverse impacts of the housing sector on the climate? How successful have been these programmes?

1. What measures are being implemented in rural and urban areas to reduce and eliminate the adverse impacts of the housing sector on the climate? How successful have been these programmes?

**With specific reference to ‘green building,’ a ‘green’ building is one that, in its design, construction and/or operation, reduces or eliminates negative environmental impacts, and can create positive impacts on climate and natural environment. Green buildings are intended to preserve precious natural resources and improve our quality of life through:**

* **Efficient use of energy, water and other resources;**
* **Use of renewable energy, such as solar energy;**
* **Pollution and waste reduction measures, and the enabling of re-use and recycling;**
* **Good indoor environmental air quality;**
* **Use of materials that are non-toxic, ethical and sustainable;**
* **Consideration of the environment in design, construction and operation;**
* **Consideration of the quality of life of occupants in design, construction and operation;**
* **A design that enables adaptation to a changing environment.**

**Some Arab states have reported on as an adaptation and mitigation measure, notably Saudi Arabia. This innovation at a local scale remains part of a largely private-sector-driven global movement, with some academic participation. The World Green Building Council, headquartered in Toronto and London, has developed the methodology for certifying projects as achieving Leadership in Energy and Environmental Design (LEED). Three Arab states have established Green Building Councils (Egypt, Jordan and UAE), with emerging or prospective Councils in five others (Bahrain, Kuwait, Palestine and Qatar). They list a total of 1,192 certified green building projects across the region, mostly in UAE.[[14]](#footnote-14)**

**Green buildings are environmentally friendly buildings whose design, implementation and operation apply the best engineering solutions, materials and modern technologies to reduce energy consumption and natural resources, and work to protect the external environment from pollution. It also works to ensure a healthy, pure and safe internal environment through the application of an integrated system of Procedures and solutions that would reduce energy consumption, reduce emissions polluting the environment, and choose environmentally friendly building materials, while relying on renewable local natural resources without harming the environment to improve the quality of the building’s internal environment and increase its life span to raise productivity and support the national economy.[[15]](#footnote-15)**

1. What are the main barriers to reducing and eliminating the adverse impacts of the housing sector on the climate?

**In Spain some barriers highlighted are:**

**- Lack of funds for building rehabilitation**

**- Lack of innovation in wood construction techniques and "close to 0" energy consumption construction models, passive systems, etc.**

***Towards a just transition to a rights-compliant, climate-resilient and carbon-neutral housing***

1. What specific legislation, policies, or programmes have been adopted to put in place and finance a just transition to a rights-compliant, climate-resilient and carbon-neutral housing for all, without discrimination?

**Egypt has cited efforts to improve energy efficiency and reducing emissions from lead foundries,**[[16]](#footnote-16) **recycling straw from the rice harvest,**[[17]](#footnote-17) **reducing effects of, and relocating popular settlements away from polluting industries. Its VNRs omit mention of green building where it would appear appropriate to mention. For evidence of green building efforts, the Green Building Council reports 22 certified green buildings constructed in Egypt since 2012.**[[18]](#footnote-18)

**Jordan’s Intended Nationally Determined Contribution (INDC) under the Paris Agreement commits to “requiring the implementation of green building codesby setting clear standards for construction, materials and land based on best practices; and requiring all new buildings in the public sector to comply with [LEED].**[[19]](#footnote-19) **Jordan Renewable Energy & Energy Efficiency Fund (JREEEF) finances projects that reduce electrical energy consumption in the domestic sector by providing energy efficiency solutions, distributing and installing energy-saving lighting units windows, and applying methods and solutions for home insulation, and also by providing renewable energy solutions using solar heaters and photovoltaic cells.**[[20]](#footnote-20) **According to the Green Building Council, Jordan has produced 10 certified ‘green building’ projects to date.**[[21]](#footnote-21)

**In Lebanon, the National Energy Efficiency and Renewable Energy Action (NEEREA) is a national platform launched on 25 November 2010. It is based on the Circular 236 of the Central Bank of Lebanon, which, in collaboration with the EU, lists the terms and conditions to obtain subsidized green loans. In 2013, as per Circulars 313, 318, and 346, Banque du Liban introduced new incentives to focus on energy efficiency, renewable energy and certified green buildings. By the end 2017, the NEEREA financing mechanism had approved more than 780 projects with a total value of more than US$ 464 million.**

**The Kingdom of Saudi Arabia expresses an interest in improving public–private partnerships with an aim to ensure integration toward a sustainable environment and a green economy.**[[22]](#footnote-22) **Its 2019 VNR claims that the kingdom actively promotes green building, but does not provide specifics.**[[23]](#footnote-23) **However, it has been reported independently in 2020 that Saudi Arabia had developed its own green-building rating and certification system,**[[24]](#footnote-24) **and currently has certified 964 LEED projects, including 872 homes.**[[25]](#footnote-25)

**The emirate of Abu Dhabi introduced Estidama, a sustainable building framework in 2010, including the Pearl Rating System for the design, construction and operation of buildings, dwellings and communities. All new buildings are required to obtain at least a one-pearl rating out of five, whereas all government buildings and dwellings must obtain a minimum of a two-pearl rating. Dubai also introduced al-Sa’fat green building evaluation system in 2016, while targeting the retrofitting of 30,000 old buildings. A plan to transform all government schools to conform to green building specifications is in the works.**[[26]](#footnote-26)

**The UAE’s 2018 VNR claims that the Emirate is among the top ten countries outside the United States with the most LEED-certified buildings.**[[27]](#footnote-27) **The Green Building Council substantiates that claim, citing UAE as having 1,160 LEED-certified ‘green buildings’ to date.**[[28]](#footnote-28)

**In Spain some specific legislation and programmes include:**

**- Sustainable Development Strategy 2030 (Ministry of Ecological Transition) Agenda 2030 and SDGs.**

**- Spanish Urban Agenda.**

**- European funds (Next Generation)**

**- Discrimination has not been taken into account. Reforms not accompanied by price regulation lead to incentives for speculation.**

1. What measures have been taken to ensure that the costs of green transition in the housing sector are fairly shared between public authorities, taxpayers, homeowners, and tenants/renters or other affected interest groups, and to ensure the continued affordability of housing?
2. What adaptation strategies are needed to ensure the continued habitability of housing in the face of the climate crisis? (protection from e.g. heat, flooding, extreme weather, etc.)

**In Spain some strategies include:**

**- Building envelope refurbishment**

**- Solar energy cooperatives**

**- Improving electricity consumption**

**- Green roofs**

**- Passive cooling systems**

**- Pooling household costs**

**In India:**

**Training women in groups to access land and built infrastructure to work on propagating the following :**

* **Mud housing and building housing that has designs to let in air and light to reduce energy load**
* **Increasing forestation and green cover**
* **Increase making water bodies and preserving them**
* **Increase wild life and protecting them better from human conflict**

1. How are different interest groups, including marginalized communities, homeowners and tenants, being consulted, and able to participate in the design, implementation, monitoring and evaluation of:

* legislation, policies, or programmes been adopted that provide for specific measures to ensure the realization of the right to adequate housing in the face of the climate crisis;
* natural disaster preparedness, response and reconstruction, as well as in mitigation and adaptation efforts;
* measures to reduce and eliminate the adverse impacts of the housing sector on climate.

**In Spain the system is vertical. There are no spaces for direct citizen participation. The owners and the property have the power of decision.**

1. What is the role of international cooperation, technology transfer and development assistance of States and multilateral agencies to ensure a just transition?

**In Spain, the support is reduced to internal aid from the European Union.**

1. What are the main barriers to achieving such a just transition?

**Some barriers identified in Spain:**

**- Lack of public and private money dedicated to the integral reconversion of the housing stock. Lack of good practices and transfer of knowledge and green technology from Northern Europe.**

**- The energy oligopoly delays the energy transition and prevents public participation and democratization of the just ecological transition, going against the international mandate of the implementation of the Paris Agreement and the Glasgow Green Pact in the light of equity.**

***Other issues***

1. Please use this space to indicate any issue that should be considered for this report.

**Submission instructions**

**Email subject line:** Input for SR housing - report on climate change

**Accepted File formats:** Word only (supporting documents may as well be submitted in PDF)

**Accepted languages:** English, French and Spanish

Please include references to reports, academic articles, policy documents, text of legislation and, judgements, statistical information with hyperlinks to their full text or source or attach them to your submission (please respect total file size limit of 20 MB to ensure that it can be received)

**Potential confidentiality:** Please indicate on top of this questionnaire and in your e-mail if you want to have this submission or any particular attachment not to be published on the website of the Special Rapporteur and treated as confidential.

1. Under international law, the right to adequate housing is more than having four walls and a roof. It is essentially the right to live in a place in peace, security and dignity. Housing adequacy covers the following seven essential elements: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. For organizations and stakeholders that may not be as familiar with the right to adequate housing in international human rights law, please consult General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, available [here](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en). [↑](#footnote-ref-1)
2. Applying human rights methodology, to determine who is a “victim” (affected person). two elements are necessary: (1) at least one of her/his codified and identifiable human rights must be breached, including through abuse of power (UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/477/41/IMG/NR047741.pdf?OpenElement>) and (2) the act or event must have a causative relationship to a duty bearer. In the case of a gross violation of human rights or international humanitarian law, the victim is entitled to reparations (UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/477/41/IMG/NR047741.pdf?OpenElement>), regardless of whether or not the duty bearer(s)/responsible party(ies) are identified, pursued, apprehended, prosecuted or convicted. The human rights approach in such situations prioritizes the recognition of, and remedy for victims, especially if restorative justice is sought (as distinct from retributive justice. (See “Justice (theories of),” The HICtionary: Key Habitat Terms (Cairo: HIC-HJLRN, 2022), p. 49, <http://www.hlrn.org/img/documents/HICtionary.pdf>.)

   Human-caused environmental degradation may already be considered a violation (of the human right to a safe, clean, healthy and sustainable environment, as the UN Human Rights Council recognized in October 2021. (Human Rights Council, The human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13, 18 October 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>.) owever, no corresponding state obligations have yet been codified. [↑](#footnote-ref-2)
3. The International Law Commission (ILC) has addressed the concept of foreseeability in the general subject of state responsibility: “To have been ‘unforeseen,’ the event must have been neither foreseen, nor of an easily foreseeable kind.” (ILC, , Report of the Fifty-Third Session, Responsibility of States for Internationally Wrongful Acts, 53rd session, A/56/10 (2001), Article 23, comment 2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/557/81/IMG/N0155781.pdf?OpenElement>.) The ILC’s commentary, thus, points to two dimensions of foreseeability; that is (1) whether the result was actually foreseen and (2) whether the result should have been foreseen. The second strand of foreseeability involves a normative dimension, as it requires assessing whether, at the time of conduct, state parties took steps to obtain the scientific and other knowledge necessary to undertake a determination of risk. This normative dimension underscores the importance of foreseeability as a limiting element of the fault-based standard in contrast with a strict-liability standard.

   The ILC has also addressed the issues of foreseeability and causality in the context of environmental cross-border harm. (See International Law Commission (ILC), Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, Report of the International Law Commission, 58th Session, para. 44–46, Principle 4, Commentary, para. 16, A/61/10 (2006), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/636/20/PDF/G0663620.pdf?OpenElement>. It reads: “The principle of causation is linked to questions of foreseeability and proximity or direct loss. Courts in different jurisdictions have applied the principles and notions of proximate cause, adequate causation, foreseeability and remoteness of the damage. This is a highly discretionary and unpredictable branch of law. Different jurisdictions have applied these concepts with different results. It may be mentioned that the test of proximity seems to have been gradually eased in modern tort law. Developments have moved from strict *condicio sine qua non* theory over the foreseeability (‘adequacy’) test to a less-stringent causation test, requiring only the “reasonable imputation” of damage.”)

   For example, the ILC comments: “the extent to which civil liability makes the polluter pay for environmental damage depends on a variety of factors. If liability is based on negligence, not only does this have to be proved, but harm [that] is neither reasonably foreseeable nor reasonably avoidable will not be compensated, and the victim or the taxpayer, not the polluter, will bear the loss. Strict liability is a better approximation of the ‘polluter-pays’ principle, but not if limited in amount, as in internationally agreed schemes involving oil tankers or nuclear installations. Moreover, a narrow definition of damage may exclude environmental losses [that] cannot be easily quantified in monetary terms, such as wildlife, or which affect the quality of the environment without causing actual physical damage.”(*Ibid.,* para. 14. See also Patricia Birnie and Alan Boyle, International Law and the Environment (Oxford: Oxford University Press, 2nd edition 2002), pp. 93–94.) [↑](#footnote-ref-3)
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