

**A4J CLIMATE LITIGATION MATRIX**

**TABLE OF CONTENTS:**

LEGAL ACTION TO GET MY GOVERNMENT TO REDUCE ITS GREENHOUSE GAS EMISSIONS.....2

LEGAL ACTION TO GET MY GOVERNMENT TO TAKE ADAPTATION MEASURES TO PROTECT ME FROM THE IMPACTS OF CLIMATE CHAGE.....5

LEGAL ACTION TO CHALLENGE CARBON-INTENSIVE PROJECTS.....8

LEGAL ACTION AGAINST CORPORATIONS FOR CONTRIBUTING TO CLIMATE CHANGE.....11

INVESTOR AND OTHER FINANCIAL CLAIMS.....15

ARE THERE ALTERNATIVES TO GOING TO NATIONAL COURT?.....18

**KEY:**

- C – Claimant
- D – Defendant
- CC – Climate Change
- HR – Human Rights

## LEGAL ACTION TO GET MY GOVERNMENT TO REDUCE ITS GREENHOUSE GAS EMISSIONS

*Incompatibility with "higher" national, regional or international legal obligation, including constitutional or HR obligations, equality or anti-discrimination provisions.*

TYPE OF CLAIM	SOURCES OF LAW	CAUSE OF ACTION/ELEMENTS OF CLAIM	KEY ISSUES AND DEFENCES	REMEDIES	KEY CASES
<p>Judicial review of a public body decision, or regulation or law re: Mitigation Measures (including a decision to adopt a policy or decision not to act). This includes decisions or regulations directly concerned with climate change (such a national emissions policy or renewable energy regulations) and those with climate change implications.</p>	<p>Based on general judicial review and constitutional principles</p> <p>Check the national law in your country</p>	<ul style="list-style-type: none"> <li>• <b>Acting without lawful authority; failing to take action required by law, or misinterpretation of law:</b> Incompatibility of decision with applicable law/legal obligation or applicable policy</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Improper purpose:</b> Incompatibility of measures with specific legal objectives</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Relevant and Irrelevant Considerations:</b> Procedural irregularity in decision making process</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Irrationality or unreasonableness:</b> may involve looking at non-binding benchmarks like public international law principles and/or Paris Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural Requirements</li> <li>• Justiciability</li> <li>• Standing of C – damage/injury</li> <li>• Whether decision amenable to review</li> <li>• Whether discretion within executive discretion</li> <li>• Time bar/limitation periods</li> <li>• Jurisdiction</li> <li>• Sufficient evidence is needed to bring a claim; burden of proof on C</li> </ul>	<ul style="list-style-type: none"> <li>• Declaratory Judgement</li> <li>• Court Orders</li> </ul>	<p><a href="#">Friends of the Irish Environment v. Ireland</a></p> <p><a href="#">Plan B v Secretary of State for Business, Industrial and Energy Strategy</a></p> <p><a href="#">Thompson v Minister for Climate Change Issues</a></p> <p><a href="#">Plan B Earth v Secretary of State for Transport</a></p>

		Commitments and/or International HR obligations and principles			
Human and Constitutional Rights Based Challenges in National Courts	<p>Based on Government's obligation to protect HR and constitutional rights.</p> <p>Look to national constitution and/or international or regional HR treaty</p> <p>Nature of constitutional right – often related to HRs but may have express right to clean and healthy environment</p>	<ul style="list-style-type: none"> <li>• HR and/or constitutional right <b>legally enforceable in national law</b> by incorporation, direct effect or through national constitution</li> <li>• The right must be <b>relevant/applicable</b></li> <li>• Government or public body <b>failure to take CC mitigation measures</b> has violated/interfered with right</li> <li>• Interference <b>cannot be justified</b> (proportionality test)</li> </ul>	<ul style="list-style-type: none"> <li>• Justiciability</li> <li>• Standing</li> <li>• Procedural Reqs.</li> <li>• Whether sufficient harm/risk to engage right</li> <li>• Whether elements of respect/protect/remedy are engaged</li> <li>• Margin of Appreciation – whether act complained of is proportionate pursuit of legitimate aim</li> <li>• Has government ratified rights instrument or incorporated right into national law?</li> <li>• Territorial Jurisdiction – but Extraterritorial HR obligations</li> <li>• Exhaustion of local remedies</li> <li>• Shared Responsibility</li> <li>• Sufficient evidence is needed to bring a claim; burden of proof on C.</li> </ul>	<ul style="list-style-type: none"> <li>• Declaratory Judgement</li> <li>• Court Orders</li> </ul>	<p><a href="#">Álvarez et al v. Peru</a></p> <p><a href="#">Lho'imggin et al. v. Her Majesty the Queen</a></p> <p><a href="#">Urgenda v Kingdom of the Netherlands</a></p> <p><a href="#">The Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights</a></p> <p><a href="#">Swiss Senior Women for Climate Protection v Swiss Federal Government</a></p> <p><a href="#">Maria Khan v Federal Republic of Pakistan</a></p> <p><a href="#">De Justicia</a></p>
Doctrine of Public Trust	Based on the constitutional	<ul style="list-style-type: none"> <li>• Government has violated public trust because it has not taken</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural Requirements</li> <li>• Justiciability</li> </ul>	<ul style="list-style-type: none"> <li>• Declaratory Judgement</li> </ul>	<p><a href="#">Juliana v United States</a></p>

	principle of public trust.	measures to protect <b>shared natural resources</b> of the State (which will be impacted by CC)	<ul style="list-style-type: none"> <li>• Standing of C – damage/injury</li> <li>• Whether decision amenable to review</li> <li>• Whether discretion within executive discretion</li> <li>• Time bar/limitation periods</li> <li>• Jurisdiction</li> <li>• Sufficient evidence is needed to bring a claim; burden of proof on C</li> </ul>	<ul style="list-style-type: none"> <li>• Court Orders</li> </ul>	
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## LEGAL ACTION TO GET MY GOVERNMENT TO TAKE ADAPTATION MEASURES TO PROTECT ME FROM THE IMPACTS OF CLIMATE CHANGE

*Incompatibility with "higher" national, regional or international legal obligation, including constitutional or HR obligations, equality or anti-discrimination provisions.*

TYPE OF CLAIM	SOURCE OF LAW	CAUSE OF ACTION/ELEMENTS OF CLAIM	KEY ISSUES AND DEFENCES	REMEDIES	KEY CASES
Civil or Private Law Adaptation Cases - Typically, failure in design or construction causes damage/injury to C	Your country's relevant civil or private law (e.g. tort or provisions in the civil code)	<ul style="list-style-type: none"> <li>• <b>Negligence or breach of statutory duty</b> which has caused harm to C               <ul style="list-style-type: none"> <li>○ Duty of Care</li> <li>○ Breach of duty of care</li> <li>○ Causation</li> <li>○ Loss and damage</li> </ul> </li> </ul> <p>Can be brought against:</p> <ul style="list-style-type: none"> <li>• Public authorities</li> <li>• Private actors such as architects, engineers (i.e. Secondary Liability Claims)</li> </ul>	<ul style="list-style-type: none"> <li>• Proving specific duty of care</li> <li>• Justiciability</li> <li>• Standing</li> <li>• When D is Public Authority: Court may indicate claims should be dealt with through public law</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Declaratory judgement</b></li> <li>• <b>Compensation or damages</b> paid by D to you</li> <li>• <b>Court orders</b> for D to change or restrict their actions</li> <li>• <b>Court order</b> for corporation to contribute to cost of responding to climate impacts</li> </ul>	<a href="#">Burgess v Ontario Minister of Natural Resources and Forestry</a>
Adaptation cases against public bodies	Based on general judicial review and constitutional principles	<ul style="list-style-type: none"> <li>• <b>Failing to take action required by law:</b> e.g. public body matters such as duty to construct flood defences or fire breaks etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Justiciability (However: you are not asking the government to change its climate policy which may be useful for</li> </ul>	<ul style="list-style-type: none"> <li>• Declaratory Judgements</li> <li>• Court Orders</li> </ul>	<a href="#">St. Bernard Parish v US Army Corps of Engineers</a>

	Check the national law in your country.	<p>OR</p> <ul style="list-style-type: none"> <li>• <b>Improper purpose:</b> Incompatibility of measures with specific legal objectives</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Relevant and Irrelevant Considerations</b></li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Irrationality or unreasonableness:</b> High threshold and likely only to be successful if government was taking no adaptation measures or completely inadequate measures</li> </ul>	<p>overcoming justiciability)</p> <ul style="list-style-type: none"> <li>• Standing of C</li> <li>• Jurisdiction</li> <li>• Whether decision amenable to review</li> <li>• Whether discretion within executive discretion</li> <li>• Limitation periods</li> <li>• Sufficient evidence is needed to bring a claim</li> </ul>		
Human and Constitutional Rights Based Challenges in National Courts	<p>Based on Government’s obligation to protect HR and constitutional rights.</p> <p>Look to national constitution and/or international or regional HR treaty</p> <p>Nature of constitutional right – often related to HRs but may have express right to clean and healthy environment</p>	<ul style="list-style-type: none"> <li>• HR and/or constitutional right <b>legally enforceable in national law</b> by incorporation, direct effect or through national constitution</li> <li>• The right must be <b>relevant/applicable</b></li> <li>• Government or public body <b>failure to take CC adaptation measures has violated/interfered</b> with right</li> <li>• Interference <b>cannot be justified</b> (proportionality test)</li> </ul>	<ul style="list-style-type: none"> <li>• Justiciability</li> <li>• Standing</li> <li>• Procedural Reqs.</li> <li>• Whether sufficient harm/risk to engage right</li> <li>• Whether elements of respect/protect/remedy are engaged</li> <li>• Margin of Appreciation – whether act complained of is proportionate pursuit of legitimate aim</li> </ul>	<ul style="list-style-type: none"> <li>• Declaratory Judgements</li> <li>• Court Orders</li> </ul>	<p><a href="#">The Inter-American Court of Human Rights’ Advisory Opinion on the Environment and Human Rights</a></p> <p><a href="#">Leghari v Republic of Pakistan (2015)</a></p> <p><a href="#">Petition of the Torres Strait Islanders</a></p>



			<ul style="list-style-type: none"> <li>• Has government ratified rights instrument or incorporated right into national law?</li> <li>• Territorial Jurisdiction – but Extraterritorial HR obligations</li> <li>• Sufficient evidence is needed to bring a claim</li> </ul>		
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## LEGAL ACTION TO CHALLENGE CARBON-INTENSIVE PROJECTS

Action to challenge the procedural (i.e. the decision-making process) and/or substantive (i.e. incompatibility with “higher” national, regional or international legal obligation) legality of carbon-emitting projects.

TYPE OF CLAIM	SOURCE OF LAW	CAUSE OF ACTION/ELEMENTS OF CLAIM	KEY ISSUES AND DEFENCES	REMEDIES	KEY CASES
<p><b>Procedural Challenge</b> - Challenges in national courts to carbon intensive projects such as mine or power stations, or carbon intensive infrastructure such as roads, dams, airports</p>	<p>Based on judicial review or constitutional law principles. Specific regulations found in planning laws and regulations, regulations pertaining to specific industries or environmental legislation.</p>	<ul style="list-style-type: none"> <li>Decision making process which led to licensing of the project failed to consider or gave insufficient weight to CC impacts</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li><b>EIA(s)</b> non-existent or inadequate</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li><b>Statutory Requirements</b> to Take CC into Account</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li><b>Public Participation:</b> No opportunity for public to participate</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li><b>Relevant and Irrelevant Considerations:</b> Licencing decision based on inaccurate CC science/GHG assessment; or CC impact/science, Paris Commitments, EIA findings etc. not taken into account</li> </ul> <p>OR</p>	<ul style="list-style-type: none"> <li>Standing</li> <li>Whether decision amenable to review</li> <li>Whether discretion within executive discretion</li> <li>Time limits/limitation periods</li> <li>Sufficient evidence is needed to bring a claim, including details of the project, its climate impact and the procedure leading to the licensing of the project.</li> </ul>	<ul style="list-style-type: none"> <li>D must <b>redo licensing process</b> with proper consideration of the climate impacts of the project;</li> <li><b>Quashing order</b> – licence is directly cancelled and has no legal effect</li> <li>D must <b>stop the implementation of the project</b></li> <li>D must take actions to <b>reduce the amount of GHG emissions that will be emitted</b> as a result of the project; or</li> <li>D must take actions to <b>offset the GHG emissions</b> that will be produced by the project</li> </ul>	<p><a href="#">EarthLife Africa Johannesburg v Minister of Environmental Affairs</a></p> <p><a href="#">Save Lamu v Nema &amp; Amu Power Ltd</a></p> <p><a href="#">Plan B Earth v Secretary of State for Transport</a></p> <p><a href="#">Mexico Supreme Court Ruling on Modification to the Ethanol Fuel Rules</a></p> <p><a href="#">Stephenson v Secretary of State for Housing and</a></p>



		<ul style="list-style-type: none"> <li>• <b>Procedural Unfairness:</b> Failed to give reasons for licencing project; failed to consult with public; exercising bias in licencing; legitimate expectations project would not be licenced</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Procedures incompatible with human/constitutional Rights</b></li> </ul>			<p><b>Communities and Local Government</b></p> <p><b>IACtHR Advisory Opinion on the Environment and Human Rights</b></p> <p><b>Maria Khan v Federal Republic of Pakistan</b></p> <p><b>Western Organization of Resource Councils v. U.S. Bureau of Land Management</b></p> <p><b>Claire Stephenson v. Secretary of State for Housing and Communities and Local Government</b></p>
<p><b>Substantive Challenge -</b> Challenges in national courts to carbon intensive projects such as</p>	<p>Can be based on the State’s obligation to respect HR.</p> <p>Look to national constitution,</p>	<ul style="list-style-type: none"> <li>• Project will contribute to CC and <b>inconsistent with government’s legal commitments to reduce GHG emissions.</b></li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Government or public body, through its act of licensing or</li> </ul>	<ul style="list-style-type: none"> <li>• Justiciability</li> <li>• Standing</li> <li>• Whether decision amenable to review</li> </ul>	<ul style="list-style-type: none"> <li>• D must <b>stop the implementation of the project</b></li> <li>• D must <b>take actions to reduce the amount of GHG emissions that</b></li> </ul>	<p><b>The Inter-American Court of Human Rights’ Advisory Opinion on the Environment and Human Rights</b></p>

<p>mine or power stations, or carbon intensive infrastructure such as roads, dams, airports</p>	<p>national human rights legislation and/or international or regional HR treaty.</p>	<p>approving a carbon-emitting project, has <b>violated/interfered with HR or constitutional right</b> and interference is <b>not justified</b></p> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Irrationality or unreasonableness:</b> Licensing of a project was irrational because it was wholly and obviously incompatible with available climate science</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Doctrine of Public Trust:</b> Licensing of carbon intensive project violates public trust because it demonstrates the government is damaging the shared natural resources of the State (which will be impacted by CC)</li> </ul>	<ul style="list-style-type: none"> <li>• Whether discretion within executive discretion/margin of appreciation</li> <li>• Time limits/limitation periods</li> <li>• Sufficient evidence is needed to bring a claim including details of the project, its climate impact, and the specific impact of climate change on you.</li> </ul>	<p><b>will be emitted</b> as a result of the project; or</p> <ul style="list-style-type: none"> <li>• D must take actions to <b>offset the GHG emissions</b> that will be produced by the project</li> </ul>	<p><a href="#">Plan B Earth v Secretary of State for Transport</a></p> <p><a href="#">De Justicia - Future Generations v Ministry of Environment and others, Colombia</a></p> <p><a href="#">Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy</a></p>
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## LEGAL ACTIONS AGAINST CORPORATIONS FOR CONTRIBUTING TO CLIMATE CHANGE

*Private (i.e. civil) law claims against Carbon Majors for violations of your private rights.*

TYPE OF CLAIM	SOURCE OF LAW	CAUSE OF ACTION/ELEMENTS OF CLAIM	KEY ISSUES AND DEFENCES	REMEDIES	KEY CASES
<p><b>Tort (Private Nuisance)</b> claim against large corporations who have significantly contributed to and continue to contribute to CC</p>	<p>Check civil law in your country (common law tort principles or civil codes in civil law countries)</p>	<p>Corporation unreasonably causes substantial damage or interference with use or enjoyment of your land:</p> <ul style="list-style-type: none"> <li>Affected land is your <b>property</b>;</li> <li>Land has been <b>damaged</b> or your <b>use or enjoyment</b> of the land has been <b>interfered</b> with;</li> <li>Damage/interference caused by actions of corporation (<b>causation</b>); and</li> <li>Interference is <b>unreasonable and substantial</b>.</li> </ul> <p>Check whether alternative tests of causation apply – may be available where there are multiple actors that have contributed to harm (e.g.</p>	<ul style="list-style-type: none"> <li>Can be difficult</li> <li>C has burden of proof</li> <li>Jurisdiction and domicile issues</li> <li><b>Defence of Justiciability</b></li> <li><b>Defence of Lawful Authority or Justification for their actions</b></li> <li>SLAPP suits a deterrent</li> <li>Causation issues</li> <li>Remoteness of damage</li> <li>Limitation periods</li> <li>Evidence must be linked to legal basis of your claim</li> </ul>	<ul style="list-style-type: none"> <li><b>Declaratory judgement</b></li> <li><b>Compensation or damages</b> paid by D to you</li> <li><b>Court orders</b> for D to change or restrict their actions</li> <li><b>Court order</b> for corporation to contribute to cost of responding to climate impacts</li> </ul>	<p><a href="#">Lliuya v RWE AG</a></p> <p><a href="#">Rhode Island v Chevron Corp &amp; Others</a></p> <p><a href="#">County of San Mateo v. Chevron Corp.</a></p> <p><a href="#">City of Richmond v. Chevron Corp.</a></p>

		<b>material contribution test or doctrine of shared responsibility)</b>			
<b>Tort (Public Nuisance)</b> claim against large corporations who have significantly contributed to and continue to contribute to CC	Check civil law in your country (source of law dependent on whether common or civil law country)	<p>As above <b>but does not require individual property damage:</b></p> <ul style="list-style-type: none"> <li>• Must prove you are in a <b>class/group</b> of people that has been impacted (group could be connected by location/way of life/age/etc);</li> <li>• Damage/interference caused by actions of corporation (<b>causation</b> – but for test); and</li> <li>• Harm was <b>unreasonable and substantial</b></li> </ul> <p>Unless the claimant can evidence how the injury or damage is “special” in some way to them (in contrast to how general public may be affected), the claimant <b>may</b> need to gain prior consent of the attorney general of the jurisdiction in which the claim is being launched</p>	<ul style="list-style-type: none"> <li>• Can be difficult</li> <li>• C has burden of proof</li> <li>• Jurisdiction and domicile issues</li> <li>• <b>Defence of Justiciability</b></li> <li>• <b>Defence of Lawful Authority or Justification for their actions</b></li> <li>• SLAPP suits a deterrent</li> <li>• Causation issues</li> <li>• Remoteness of damage</li> <li>• Limitation periods</li> </ul> <p>Evidence must be linked to legal basis of your claim</p>	<ul style="list-style-type: none"> <li>• <b>Declaratory judgement</b></li> <li>• <b>Compensation or damages</b> paid by D to you</li> <li>• <b>Court orders</b> for D to change or restrict their actions</li> </ul> <p><b>Court order</b> for corporation to contribute to cost of responding to climate impacts</p>	<p><b>County of San Mateo v. Chevron Corp.</b></p> <p><b>Rhode Island v Chevron Corp &amp; Others</b></p> <p><b>City of Richmond v. Chevron Corp.</b></p>
<b>Tort (Negligence)</b> claim against large corporations who have significantly	Check civil law in your country (source of law dependent on whether	Corporation’s actions fall below the <b>standard of care</b> they owe you, and this causes harm	<ul style="list-style-type: none"> <li>• As above</li> <li>• Foreseeability issues</li> <li>• Remoteness of damage/proximity</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Declaratory judgement</b></li> </ul>	<b>Rhode Island v Chevron Corp &amp; Others</b>

<p>contributed to and continue to contribute to CC</p>	<p>common or civil law country)</p>	<ul style="list-style-type: none"> <li>• Corporation owes <b>duty of care</b>;</li> <li>• Corporation <b>breached</b> this duty of care;</li> <li>• Breach <b>caused you harm</b> (causation)</li> <li>• Proof of loss and damage</li> <li>• Do not need to show corporation intentionally caused injury – can be enough to show acted unreasonably or carelessly</li> </ul>	<ul style="list-style-type: none"> <li>• Mitigation</li> <li>• Evidence must be linked to legal basis of your claim</li> <li>• Questions over standard of care?</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Compensation or damages</b> paid by D to you</li> <li>• <b>Court orders</b> for D to change or restrict their actions</li> <li>• <b>Court order</b> for corporation to contribute to cost of responding to climate impacts</li> </ul>	<p><b>County of San Mateo v. Chevron Corp.</b></p> <p><b>City of Richmond v. Chevron Corp.</b></p>
<p><b>Tort (Strict Product Liability)</b> claim against large corporations who have significantly contributed to and continue to contribute to CC</p>	<p>Check if applicable in your country. Generally provided for in statute or a country’s civil code.</p>	<p>Business introduces <b>dangerous products</b> (e.g. petroleum or coal) to the market, which create <b>risks for consumers</b>:</p> <ul style="list-style-type: none"> <li>• Corporation <b>designed, produced, promoted or sold</b> a product;</li> <li>• Product is <b>defective</b> or <b>poses a foreseeable risk to the public</b>;</li> <li>• Design defect was <b>inherent to the product</b> or the corporation <b>failed to warn</b> consumers about the risk posed to the climate; and</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Strict liability</b> – no defences where design defect or failure to warn is proven</li> <li>• Jurisdiction</li> <li>• Causation issues</li> <li>• Limitation periods</li> <li>• Evidence must be linked to legal basis of your claim</li> </ul>		<p><b>County of San Mateo v. Chevron Corp.</b></p> <p><b>Rhode Island v Chevron Corp &amp; Others</b></p> <p><b>City of Richmond v. Chevron Corp.</b></p>

		<ul style="list-style-type: none"> <li>Product <b>caused the harm</b> your claim is based on (causation)</li> </ul>			
<p><b>Breach of Statutory Duty</b></p> <p>claim against large corporations who have significantly contributed to and continue to contribute to CC</p>	<p>Check if applicable in your country. Generally in environmental legislation or legislation related to health/safety.</p>	<p><b>Statutes/legislation</b> passed that:</p> <ul style="list-style-type: none"> <li>Prohibits people or companies from causing <b>environmental damage</b>; and</li> <li><b>Creates a right for individuals to sue</b> companies in breach.</li> </ul> <p><b>Breach, causation and harm</b> must be proven per requirements of statute/legislation</p>	<ul style="list-style-type: none"> <li>Defences set out in statute or legislation</li> <li>Jurisdiction and domicile issues</li> <li>Causation issues</li> <li>Limitation periods</li> <li>Evidence must be linked to legal basis of your claim</li> </ul>		<p><b>Rhode Island v Chevron Corp &amp; Others</b></p>
<p><b>Human Rights</b></p> <p>claim against large corporations who have significantly contributed to and continue to contribute to CC</p>	<p>Look to applicable <b>due diligence laws</b> of your country</p> <p>If HR not directly enforceable against corporations in your country, <b>HR principles and standards</b> could be used to support a case based on tort law or another legal basis.</p> <p><b>See A4J Business and HR Guide</b></p>	<p><b>Due diligence</b> laws that allow individuals to take HR claims directly against businesses when they do not take <b>reasonable steps to prevent HR abuse in their operations</b>:</p> <ul style="list-style-type: none"> <li>CC impacting your HR;</li> <li>D significantly contributing to CC and therefore impacts your HR; and</li> <li>D has not taken reasonable steps to prevent impacts on HR (similar to breach of duty of care).</li> </ul>	<ul style="list-style-type: none"> <li>C has burden of proof</li> <li>Jurisdiction and domicile issues</li> <li><b>Defence of Justiciability</b></li> <li><b>Defence of Lawful Authority or Justification for their actions</b></li> <li>Limitation Periods</li> <li>Evidence must be linked to legal basis of your claim</li> </ul>		<p><b>Philippines Commission on Human Rights and Carbon Majors Investigation</b></p> <p><b>Milieudefensie et al. v. Royal Dutch Shell plc.</b></p>

## INVESTORS AND OTHER FINANCIAL CLAIMS

*Climate change has caused physical, transition and/or liability risks to a company, which have in turn caused financial harm to investors and shareholders.*

TYPE OF CLAIM	SOURCE OF LAW	CAUSE OF ACTION/ELEMENTS OF CLAIM	KEY ISSUES AND DEFENCES	REMEDIES	KEY CASES
Claims by Shareholders against Companies and/or management	Company law legislation.  Check the national law in your country.	<ul style="list-style-type: none"> <li>Company faced CC related financial risks that were <b>material and foreseeable</b>;</li> <li>Company's board of management or directors were in <b>breach of duty (to identify, assess and manage risks)</b>;</li> <li>C must show <b>actual loss and damage</b> caused by breach of duty (e.g. <b>reduction in share value</b>).</li> </ul>	<p>Action must be brought by <b>shareholders</b></p> <p>Check laws in your country to see if minority shareholders can bring this type of action – if not check to see if they can take a <b>derivative</b> action</p>	<ul style="list-style-type: none"> <li><b>Compensation or damages</b> for financial loss caused by the breach</li> <li><b>Court order</b> for a company to take specific action or refrain from action</li> </ul>	<p><a href="#">Von Colditz v Exxon</a></p> <p><a href="#">Client Earth v ENEA</a></p> <p><a href="#">Ramirez v Exxonmobil</a></p> <p><a href="#">People of the State of New York v. Exxon Mobil Corporation</a></p>
Misreporting of financial results/risks emanating from CC	Company law legislation, financial/regulatory codes  Check the national law in your country	<p>Companies must provide accounts and reports which are <b>true and accurate</b></p> <ul style="list-style-type: none"> <li>Complaint/report must be made to the relevant <b>national regulatory authority</b></li> </ul> <p>Provide evidence that:</p>		<ul style="list-style-type: none"> <li><b>Declaration</b> company was in breach</li> <li><b>Requirement</b> that the <b>information is corrected</b></li> <li>Company ordered to pay a <b>fine</b></li> </ul>	<p><a href="#">ClientEarth Complaint to the Financial Report Council (UK)</a></p>

		<ul style="list-style-type: none"> <li>• Company faced CC related financial risks that were <b>material and foreseeable</b>; and</li> <li>• Reports made by companies under their legal obligations are <b>not accurate</b> in this respect.</li> </ul>			
Claims against Investment Managers and Pension Funds	<p>Company law legislation.</p> <p>Check the national law in your country</p>	<p>Claim brought by someone with a pension plan against the trustees of their pension fund.</p> <p><b>Breach of any/all of following duties on a prudent trustee:</b></p> <ul style="list-style-type: none"> <li>• Duty to diversify;</li> <li>• Duty of loyalty;</li> <li>• Duty of impartiality;</li> <li>• Duty of inquiry;</li> <li>• Duty to monitor; and</li> <li>• Duty to act in accordance with plan documents.</li> </ul> <p>Check if trustee has also breached overarching <b>duty of prudence</b> and <b>duty to consider the interests of all potential beneficiaries.</b></p>	<ul style="list-style-type: none"> <li>• Did Trustees take climate-related risks into account at all?</li> <li>• Obtain expert assistance to assess breach where necessary</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement trustees <b>rectify breach and amend investments and investment policy</b></li> <li>• <b>Compensation</b> if beneficiaries have suffered loss (complex to assess)</li> </ul>	<p><b>McVeigh v Retail Employees Superannuation Trust</b></p>
Claims against Financial Advisers or Brokers	<p>General duties in tort law and civil codes (e.g. negligence).</p>	<p>General duty on financial advisers or brokers to <b>act reasonably and carefully in giving their advice to those who may rely on it:</b></p>		<ul style="list-style-type: none"> <li>• <b>Compensation</b></li> </ul>	



	Check the national law in your country for extent of duty	<ul style="list-style-type: none"> <li>• Duty <b>breached</b>;</li> <li>• C <b>suffers financial loss in reliance on poor advice.</b></li> </ul> <p>Can include claims against <b>credit rating agencies; auditors; and investment advisers.</b></p>			
Consumer Claims	<p>National consumer protection legislation, or general civil causes of action (e.g. tort of negligence).</p> <p>Check the national law in your country</p>	<p>Company has given <b>misleading information</b> about a climate-related aspect of their business or products (e.g. <b>misleading advertising</b>)</p> <p>Breach of specific <b>consumer; safety; environmental; insurance</b> and/or <b>advertising</b> legislation, codes or regulations:</p> <ul style="list-style-type: none"> <li>• E.g. ‘greenwashing’</li> <li>• Report to relevant authorities in your country</li> </ul>		<ul style="list-style-type: none"> <li>• Company to pay a <b>fine</b></li> <li>• Other consequences as set out in relevant legislation</li> </ul>	

## ARE THERE ALTERNATIVES TO GOING TO NATIONAL COURTS?

*Alternatives to going to national court if you want to challenge governments and corporations about their policies and actions on climate change.*

TYPE OF CLAIM	SOURCE OF LAW	CAUSE OF ACTION/ELEMENTS OF CLAIM	KEY ISSUES AND DEFENCES	REMEDIES	KEY CASES
Individual Complaints to Regional Human Rights Courts and Commissions	<p>International and/or Regional HR law</p> <p>Check which rights are protected in relevant treaty</p> <p>Check which regional courts/commission has jurisdiction over your country</p>	<p>Guidance on issues of law, evidence &amp; procedures re: <b>mitigation/adaptation/projects</b> claims relevant to these legal complaints</p> <ul style="list-style-type: none"> <li>• Case <b>against the government</b>;</li> <li>• Case based on <b>international HR law</b>;</li> <li>• Your country has <b>signed and ratified</b> a regional HR treaty which gives a <b>regional HR court or commission jurisdiction</b> to hear HR complaints regarding your country</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Jurisdiction</b></li> <li>• <b>Admissibility</b> (must prove victim status and provide evidence to support claim)</li> <li>• <b>Exhaustion of local remedies</b> (claim has been previously brought before national courts)</li> <li>• ECOWAS Community court of Justice does not require exhaustion of local remedies</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Investigations</b> into your case</li> <li>• Facilitation of <b>negotiations</b> between you/your country</li> <li>• <b>Declaration</b> that government has violated HR</li> <li>• Order government to give a <b>remedy and change</b> laws or policies</li> </ul>	<p><a href="#">IACtHR Advisory Opinion on the Environment and Human Rights</a></p>
Individual Complaints to UN	International HR law	Can be used instead of going to court or to support litigation	Not legally binding		<p><a href="#">Sacchi and others v Argentina, Brazil,</a></p>

Human Rights Treaty Bodies	Check optional protocol for competence acceptance	Country must: <ul style="list-style-type: none"> <li>• Be a <b>party</b> to the relevant international HR treaty; and</li> <li>• Have <b>accepted the competence</b> of the treaty body to receive complaints against the state</li> </ul>			<p><b>France, Germany and Turkey</b></p> <p><b>Petition of the Torres Strait Islanders to the UN Human Rights Committee</b></p>
Submitting Shadow Reports to UN Treaty Bodies and other UN Human Rights Bodies	International HR law	<p>Can be used instead of going to court or to support litigation</p> <p>Civil Society organisations can submit shadow reports to UN Treaty Bodies and other organisations such as Human Rights Council</p>	<p>Not legally binding</p> <p>Check reporting procedures prior to preparing report</p>	<p>Reports contribute to <b>Concluding Observations</b> and <b>Universal Periodic Review</b></p>	<p><b>UN Committee on Economic, Social and Cultural Rights Concluding Observations for Norway</b></p>
Complaints to UN Special Rapporteurs	International HR law	<p>Can be used instead of going to court or to support litigation</p> <p>Can receive complaints from individuals</p>	<p>Not a legal process &amp; Not legally binding but can be used to put pressure on your country to take more climate action</p>		<p><b>Complaint to UN Special Rapporteurs re Climate-Forced Displacement of Indigenous Peoples</b></p>
Complaints to Non-Judicial Corporate Accountability and Regulatory Mechanisms	See A4J Business and HR Guide	<p>Internal corporate grievance mechanisms</p> <p>International Corporate Accountability Mechanisms</p>			<p><b>Dutch NGOs vs. ING Bank</b></p> <p><b>Market Forces v SMBC</b></p>

					<b>ClientEarth OECD Complaint against BP</b>
Complaints under the Complaints Mechanisms for International Financial Institutions (IFIs)	Check relevant codes of practice and performance standards	<p>Corporate/IFI grievance or complaint procedures</p> <p>IFI did not observe relevant principles</p> <p>IFIs include the World Bank; African Development Bank, Asian Development Bank; and Inter-American Development Bank</p>		Complaint may be made with object of getting IFI to <b>withdraw funding or for changes to be made to the project</b>	<p><b>The World Bank Grievance Redress Service</b></p> <p>Philippine Movement for Climate Justice’s <b>complaint</b> to the IFC’s independent accountability mechanism, the Compliance Advisor Ombudsman (CAO)</p>
Complaints to National Human Rights Institutions (NHRI)	Check NHRI procedures in your country	Complaints to NRHI for violation of HR or HR issues arising from CC impacts	Judgements are not legally binding	<ul style="list-style-type: none"> <li>• <b>Inquiries into HR issues</b> which can generate publicity and raise awareness/put pressure on government</li> <li>• Some NHRIs can then <b>take the case to a court</b> for determination which may lead to enforceable order for remedy</li> </ul>	<p>A list of NHRIs can be found <a href="#">here</a></p> <p><b>Philippines Commission on Human Rights and Carbon Majors Investigation</b></p>
Campaigns and Actions	See: <b>Alternatives to PIL: Campaigning</b>	Not a legal action – these are co-ordinated range of activities		<ul style="list-style-type: none"> <li>• <b>Apply pressure</b> to businesses</li> </ul>	There are a number of campaigns and

		<p>dedicated to achieving a common goal.</p> <p>Shareholders can start <b>shareholder action campaigns</b> within fossil fuel companies, investors, banks and insurers</p>		<ul style="list-style-type: none"> <li>• <b>Apply pressure</b> to governments</li> <li>• <b>Give a voice</b> to communities</li> <li>• Publicity leads to <b>higher public awareness</b> and <b>increases possibility of obtaining funding</b> for legal action</li> </ul>	<p>actions put forward by environmental and climate organisations such as <b>Greenpeace</b> and <b>Friends of the Earth</b>.</p>
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