

A4J CLIMATE LITIGATION TEMPLATES

MITIGATION CLAIMS

Action4Justice

Action4Justice (“A4J”) is a **civil society platform** created by a coalition of partners including Greenpeace, Oxfam, Transparency International, PILAC and IHRDA. Its mission to improve **access to justice** globally by building capacity in communities, redistributing legal knowledge and forging partnerships between legal activists. The platform has a range of how-to-guides, manuals and tools designed to help communities and activists use legal action for social justice. The latest of these tools is our series of **A4J Climate Litigation Templates**.

A4J Climate Templates

The A4J Climate Litigation Templates respond to the wish, amongst many communities in many countries in civil society in many countries, to uphold their legal rights in relation to Climate Change and its effects on them. This is illustrated by **the growing wave of legal cases** being taken around the world. The Templates harness the **best practices** in different countries and provide a skeleton for people to follow if they want to use legal action to hold corporations and governments accountable for harmful actions or lack of action on climate change. The Templates have been designed by legal professionals with expertise in climate litigation.

The Templates aim to encourage effective use of the law to bring climate related litigation in appropriate cases by providing:

- An appropriate **format** for drafting a document in which to make a claim (**“the legal complaint”** - paragraphs, font, page numbers, title, headings etc);
- An effective **structure** in which users can place their legal and factual arguments regarding climate change;
- An outline of the **arguments** that could be used when bringing climate litigation; and
- References to **climate science and cases** to help the user build a strong case.

While your complaint needs to be different depending on what country you are taking a legal case, the Templates provide useful general tips and guidance to get you started if you are thinking about using legal action for climate justice.

Mitigation Claims

The **A4J Mitigation Claims Template** concerns legal cases brought against governments of countries who have significantly contributed to emissions causing climate change and are accused of failing to take sufficient action to reduce their GHG emissions (i.e. to take mitigation measures). These cases are typically brought against industrialised countries (e.g. USA, Germany, Argentina etc) who are responsible for a large proportion of global GHG emissions.

Many cases have been brought against governments in the last decade, including:

- ***Urgenda v The Netherlands***: A human rights case brought by an environmental group in the Netherlands against The Netherlands for not reducing their GHG emissions in line with the 2-° target. The case was successful, and the court found that the government’s failure to reduce GHGs sufficiently violated the rights to life and private life, ordering the government to take action to reduce Netherlands GHGs immediately.
- ***Maria Khan v Pakistan***: Case brought against the government by a woman in rural Pakistan. She is arguing the government’s failure to reduce its GHG emissions violates her constitutional rights to life, dignity and a healthy environment.
- ***Thompson v Minister for Climate Change***: A girl from New Zealand brought a case against a government body for setting too low a GHG reduction target. The court held that the target breached the NZ Climate Change Response Act.

The A4J Template extracts key tips, lessons and arguments from these cases, and others, that can be used to draft **complaints** in future cases (in some countries these documents are called pleadings, pleas, particulars of claim, points of claim or petitions). This is where the “**Claimant**” (the person bringing the case – in some countries this is called the plaintiff or complainant) argues that the “**Defendant**” (the government or public body that it is being brought against) has broken the law.

This complaint forms the basis of your case. It does not need to anticipate or “pre-empt” the defences the Defendant will use. It sets out your arguments which the Defendant will have to respond to before the

case goes to court. However, it is important to note that litigation can only be successful if factual and legal grounds exist for bringing a claim. For example, the fact that you have suffered climate-related loss and damage, together with the fact that you think that your government's action on climate change is insufficient, will not in itself enable successful action to be brought. Many of the cases which have been brought have not succeeded and their cases have been dismissed. You will not be able to judge the prospects of success in bringing a case simply by looking at this template. You will need legal advice in the place where you are to assess whether such a claim is appropriate.

These cases involve “**grounds**” for arguing the law has been broken. Common grounds include **constitutional and human rights**, **public law principles** (e.g. irrationality) and **climate change/environmental legislation**. These different claims can be broadly described as “**public law claims**”. To bring a successful climate case under public law, you may need to:

1. Prove that you have the court has jurisdiction (i.e. the power to hear the case)'
2. Prove that you have **standing** (the right to bring a claim) because of either your location, the way you have been affected by climate change, or your status as an organization;
3. Prove that the claim is **justiciable**, involving a legal question rather than a political question which infringes the separation of powers;
4. Base your arguments in reliable **climate science** that demonstrates the causes and impacts of climate change (global, national and personal impacts);
5. Have **evidence** of the defendant's contribution to climate change (e.g. the GHG emissions of the country);
6. Make strong **legal arguments** based on relevant legal principles; and
7. Outline the **remedy** or outcome you want to get if you win (e.g. an order to do something or stop doing something).

Further Considerations

The A4J Mitigation Claim Template gives you useful tips and guidance. However, in every successful case, you have to **adapt your arguments to the country** you are from/taking a case in.

This means you will have to research:

- The procedure you need to follow to bring a case (including time limits for different steps of the case);

- The law on jurisdiction and standing in your country;
- The substantive law (e.g. constitution, human rights law and environmental laws), their elements and key cases that support or undermine your case; and
- The remedies courts in your country are able to give.

You will also need to consider **practical issues**, such as:

- How you can fund your case;
- How you can gather evidence;
- Where you can get legal support;
- How you can enforce a court order if you win; and
- Threats that you may face in retaliation for bringing climate litigation.

The [A4J platform](#) can help you answer these questions but you will need legal advice in your country. We hope the A4J Mitigation Claims Template can help you hold your government accountable for and secure climate justice for your community.

Disclaimer

The information within this template and all its material, including the pages to which it links ("content"), are for general information purposes only, prepared as a service to the public. The content is not intended for and does not constitute legal advice under any laws. The content may not reflect the current law in the Reader's jurisdiction. Readers should not rely upon the information of this website as a substitute for legal advice on any subject matter. No Reader should act or refrain from acting based on the content of this website without seeking appropriate legal counsel in the relevant jurisdiction. There is no attorney-client privilege created between the Authors of the content and the Readers of this website. The opinions presented here are those of the Authors alone and may not reflect the opinions of the supporter organisations or any individual attorney.

[COURT NAME]

[Case Reference Number]

BETWEEN:

[CLAIMANT NAME]

Claimant

and

[DEFENDANT NAME]

Defendant

COMPLAINT OF THE CLAIMANT

TABLE OF CONTENTS

A. INTRODUCTION.....6

B. PARTIES6

 i. Claimants.....7

 ii. Defendants8

C. JURISDICTION.....8

D. FACTUAL BACKGROUND.....9

 i. The Occurrence, Causes and Impacts of Climate Change9

 ii. Local/National Impacts of Climate Change9

 iii. Mitigation Target to Avoid Dangerous Climate Change10

 iv. Defendant’s Emissions and Actions11

 v. Claimant Loss or Damage.....13

E. ADMISSIBILITY & STANDING14

 i. Standing14

 ii. Justiciability15

F. GROUNDS FOR THE COMPLAINT16

Principles or Instruments of Public International Law	16
i. Violation of Constitutional or Human Rights	18
ii. Illegality (Unlawfulness or Ultra Vires)	22
iii. Irrationality (Unreasonableness)	24
v. Public Trust Doctrine	25
F. REMEDIES SOUGHT	25

A. INTRODUCTION

1. The introduction provides a summary of the claim. The introduction should provide an overview of the following:
 - a. Who the Claimant(s) is;
 - b. Who is Defendant(s) is;
 - c. The occurrence, causes and impacts of climate change;
 - d. The Defendant’s contribution to climate change;
 - e. The harm suffered by the Claimant;
 - f. The grounds for which you are claiming the Defendant has broken the law (you do not need to state your reasons for making this assertion in the introduction); and
 - g. The relief or remedies that the Claimant seeks.

Examples:

- Paragraphs 1-16 of the Statement of Facts and Grounds in [*Plan B Earth and Others v Secretary of State for Business and Energy and Industrial Strategy and Another \[2018\] EWHC 1892 \(Admin\)*](#) (UK);
- Paragraphs 1-8 of the Request in [*Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017*](#) (Switzerland); and
- Paragraphs 1-32 of the Complaint in [*Sacchi and others v Argentina, Brazil, France, Germany and Turkey \(2019\)*](#) (UN Committee on Rights of the Child).

B. PARTIES

2. This section provides details on the claimants and the defendants in the case. This can be important information to establish the admissibility of the claim (see **section E**).

i. Claimants

Individuals

3. If the claimants are individuals, provide information regarding:
 - a. Name;
 - b. Citizenship and residence, particularly if location is vulnerable to climate change impacts (e.g. islands, exposure to floods and forest fires, coastal areas etc);
 - c. Characteristics if relevant to climate change impacts (e.g. age (youth/elderly), disabilities, ethnicity or membership of an indigenous group);
 - d. Occupation and way of life if relevant to climate change impacts (e.g. farming, fishing etc);
 - e. Property that the Claimant owns if this has been impacted by climate change;
 - f. The way in which climate change has impacted them personally; and
 - g. If there are multiple claimants, have a paragraph that links the Claimants together (e.g. by the fact they are all from the same place, have the same way of life or are affected by climate change in a similar way).

Examples:

- Paragraph 5 of the petition in [Maria Khan et al v Federation of Pakistan \(No. 8960 of 2019\)](#) (Pakistan);
- Paragraphs 16-90 of the complaint in [Juliana et al v United States et al](#) (USA); and
- Paragraph 18 of the statement of facts and grounds in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK).

Organisations

4. If the claimants are organisations, provide information on the following:
 - a. Name;
 - b. Legal status;
 - c. Membership;
 - d. Country of incorporation;
 - e. A brief history of the organisation;
 - f. The aims/mission of the organisation as stated in its constitution/articles of association;and
 - g. Activities of the organisation in relation to climate change.

Examples:

- Paragraphs 91-95 of the complaint in [Juliana et al v United States et al](#) (USA); and
- Paragraph 17 of the statement of facts and grounds in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK).

ii. Defendants

5. Provide the following information about the government or public body you are suing:
- a. Name;
 - b. The position of the Defendant within the government;
 - c. The responsibilities of the Defendant regarding climate change;
 - d. If there are multiple defendants, add a paragraph on the links between them (e.g. their shared responsibility to make/implement climate change policy in your country).

Example:

- Paragraphs 6-10 of the petition in [Maria Khan et al v Federation of Pakistan \(No. 8960 of 2019\)](#) (Pakistan);
- Paragraphs 98-130 of the complaint in [Juliana et al v United States et al](#) (USA); and
- Paragraph 2 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand).

C. JURISDICTION

6. The court must have jurisdiction for you to bring a case. Jurisdiction relates to whether a court has the power to hear a case. To establish jurisdiction in a public law claim, you generally need to point to a provision in the constitution or another national law that gives the court power to hear the type of claim you are bringing.

Example:

- Paragraphs 13-15 of the complaint in [Juliana et al v United States et al](#) (USA);
- Paragraph 60 of the complaint in [Sacchi and others v Argentina, Brazil, France, Germany and Turkey \(2019\)](#) (UN Committee on Rights of the Child); and
- Paragraph 14 of the Request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland).

D. FACTUAL BACKGROUND

7. This section details the facts and evidence that the complaint relies on.

i. The Occurrence, Causes and Impacts of Climate Change

8. Provide general facts regarding climate change which the rest of the claim will rely upon. The following facts need to be established:

- a. The Earth is warming is at an unprecedented rate;
- b. The warming of the Earth is caused by man-made GHG emissions (in particular, through the combustion of fossil fuels); and
- c. The warming of the Earth has impacts, such as: sea level rises; extreme precipitation and flooding; ocean warming and acidification; heatwaves; forest/bushfires; droughts; loss of biodiversity; and storms.

9. The above assertions have to be based on reliable climate science, such as the IPCC Reports, studies by respected scientific institutions, international organisations and scientific journals.

10. The above can be reinforced by outlining the international political and legal consensus regarding climate change. This is demonstrated by the number of countries that have signed and ratified the United Nations Framework Convention on Climate Change and the Paris Agreement.

Examples:

- Paragraphs 78-147 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#) (Netherlands);
- Paragraphs 15-54 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand); and
- Paragraphs 13-38 of the application in [Armando Ferrao Carvalho and Others v The European Parliament and the Council \(2018\) Case no T-330/18](#).

ii. Local/National Impacts of Climate Change

11. You then need to detail the impacts that climate change is having on the area the claimant lives (i.e. the country, region or community). The more specific the impacts can be demonstrated the better.

12. Useful sources of evidence to demonstrate local climate impacts often include local attribution studies, reports by government bodies and regional organisations, and respected scientific studies.

Examples:

- Paragraphs 126-128 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#) (Netherlands);
- Paragraphs 23-25 of the Request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland); and
- Paragraphs 231-255 of the complaint in [Juliana et al v United States et al](#) (USA).

iii. Mitigation Target to Avoid Dangerous Climate Change

13. You need to outline and justify a mitigation target for your State. This target is the minimum rate at which a State should reduce its GHG emissions over a certain period of time (“**the minimum appropriate mitigation target**”). The minimum appropriate mitigation target will be compared with the mitigation target the State has actually set (“**the proposed mitigation target**”) and/or the target it will reach if its climate policy stays the same (“**the actual mitigation target**”).

14. To calculate the minimum appropriate mitigation target, first, identify the maximum safe global temperature increase your claim will be based on. Different limits are used in the IPCC studies and the Paris Agreement. The main ones are:

- a. **The 2° Limit:** The IPCC 4th Assessment Report set 2° as the maximum temperature increase to avoid dangerous climate change (the Paris Agreement sets the target of “*well below 2°*”); and
- b. **The 1.5° Limit:** The more recent IPCC 1.5° Special Report sets 1.5° as the maximum temperature increase to avoid dangerous climate change. This has been accepted by many countries and the Paris Agreement states countries should pursue efforts to limit temperature rise to 1.5°.

Climate science and the current international consensus point in favour of the 1.5° limit. However, a key factor in choosing a target can be what mitigation target is set in your country’s national law.

15. Secondly, identify the minimum targets of GHG emission reduction that your country must follow to stay within the 2° or 1.5° limit. This will depend on: (1) the temperature limit you pick; (2) your country's level of development; and (3) any legal/political commitments your country has made. For example:

- a. Where a 2° limit is picked, the IPCC 4th Assessment Report shows that industrialised countries must reduce their emissions by at least 50% below 1990 levels by 2030;
- b. Where a 1.5° limit is picked, the IPCC 1.5° Special Report still maintains a minimum mitigation target of at least 50% by 2030 (depending on the pathway you choose);
- c. If you live in a developing country, the mitigation target is likely to be lower; but
- d. If your country has adopted a specific mitigation target in law or has committed to a mitigation target in policy (e.g. its INDCs under the Paris Agreement), these targets could be used against them in court.

Examples:

- For an example concerning a developing country and a 2° temperature limit, see paragraphs 11-18 of the petition in [Maria Khan et al v Federation of Pakistan \(No. 8960 of 2019\)](#) (Pakistan);
- Paragraphs 59-70 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand); and
- Paragraphs 34-46 of the Request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland).

iv. Defendants' Emissions and Actions

16. The extent to which your country has contributed (and will likely continue to contribute) to climate change has to be demonstrated. This can be done by:

- a. Outlining the amount of GHG emissions that come from your country;
- b. Outlining the level of GHG reduction that your country has made; and
- c. On the basis of current policy, outline statistics that project the level of GHG emissions your country will make by 2030 and/or 2050 (the actual mitigation target).

17. These statistics need to be compared with the minimum appropriate mitigation target which you identified in **sub-section D(iii)**. This provides the basis of your argument that your government is not doing enough to prevent climate change. However, the fact that the target is not consistent with achieving Paris targets will not usually be enough in itself to challenge them.

Examples:

- Paragraphs 335-383 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#) (Netherlands);
- Paragraphs 61-82 of the Request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland).

18. An alternative argument is that the proposed mitigation target that your government has set in national law or policy (e.g. INDCs) is inadequate. To make this argument, compare the proposed mitigation target with the minimum appropriate mitigation target (see **sub-section D(iii)**).

Examples:

- Paragraphs 71-85 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand); and
- Paragraphs 275-285 of the application in [Armando Ferrao Carvalho and Others v The European Parliament and the Council \(2018\) Case no T-330/18](#).

19. In one case, you can argue both that: (1) the proposed mitigation target is inadequate; and (2) the government's actual mitigation target is not aligned with its proposed mitigation target and/or the minimum appropriate mitigation target.

Examples:

- Paragraphs 214-219 of the complaint in [Sacchi and others v Argentina, Brazil, France, Germany and Turkey \(2019\)](#) (UN Committee on Rights of the Child); and
- Paragraphs 61-87 of the request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland).

v. Claimant Loss or Damage

20. In cases where you are arguing an individual's rights have been violated, individual harm is required for standing, or where compensation is sought, the specific loss or damage the Claimant has suffered as a result of climate change needs to be detailed. This includes future impacts and threat of injury. This may include:

- a. Property damage (e.g. extreme weather events such as forest fires, storms and floods that have endangered or destroyed the claimant's property);
- b. Economic loss (e.g. sea level rises, drought, ocean acidification or loss of biodiversity which has affected the claimant's way of life/occupation); or
- c. Personal injury: Extreme weather events or temperature changes that have affected the claimant's health or well-being.

21. The Claimant's injuries need to be consistent with and supported by the climate science outlined in **sub-section D(i)** and the local climate impacts outlined in **sub-section D(ii)**. In addition, the following evidence should be used to supplement this scientific basis (this can often be annexed to the complaint and can simply be referred to by name without going into detail here, or can be provided to the court at a later date):

- a. Witness statements from persons (including the claimant) in the local community who have been affected by climate change impacts;
- b. Photographs, videos and satellite images;
- c. Environmental samples from the local area demonstrating environmental harm (e.g. ocean acidification);
- d. Local scientific, university, NGO/CSO and government reports, and an expert witness which corroborates the harm claimed by witnesses; and
- e. News reports of extreme weather events in the area.

Examples:

- Paragraphs 25-27 of the petition in [*Maria Khan et al v Federation of Pakistan \(No. 8960 of 2019\)*](#) (Pakistan);
- Paragraphs 88-103 of the request in [*Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017*](#) (Switzerland); and

- Paragraphs 96-167 of the complaint in [Sacchi and others v Argentina, Brazil, France, Germany and Turkey \(2019\)](#) (UN Committee on Rights of the Child).

E. ADMISSIBILITY & STANDING

22. For a court to hear a public law case, the claim must be admissible. Specific admissibility requirements depend on your country's legal system but the requirements below are common.

i. Standing

23. Standing concerns the right of an individual or organisation to sue.

Victim Status or Direct/Special Effect

24. Many countries require an individual to show they are a *victim* or have been *directly* and/or *specialy* affected by an issue to bring a public law case.

25. To show that you are *directly affected*, you must show that you have been or will be impacted by climate change and that these impacts relate to unlawful action of the State. It is often enough at this point to refer to the relevant legal test, briefly outline the climate change impacts you face (**sub-section D(v)**) and state that **section F** will set out how these impacts are unlawful.

26. To be *specialy* or *individually* affected, you have to show that climate change affects you in a way that is different from the rest of the population. This could be done by highlighting that:

- a. Physical characteristics or health conditions of yours which make you especially vulnerable to climate change;
- b. Your geographic location is particularly vulnerable to climate change impacts; or
- c. Your way of life and culture is particularly vulnerable to climate change impacts (**section 1 & sub-section D(v)**).

Examples:

- Pages 29-36 of the opposition to a motion to dismiss in [Juliana et al v United States et al](#) (USA);
- Paragraphs 221-223 of the statement of facts and grounds in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK); and

- Paragraphs 121-125 of the application in [Armando Ferrao Carvalho and Others v The European Parliament and the Council \(2018\) Case no T-330/18](#).

Public Interest

27. Where organisations are the claimant, there has to be a provision in national law that gives organisations standing to take cases in the public interest or on behalf of other persons. Where such laws exist, you often have to show that:

- a. The issues of the case relate to the interests/objectives defined in an organisation's constitution or articles of association (e.g. an organisation with a stated objective to protect the environment could have standing to take climate litigation in countries with such laws); or
- b. The interests and rights of the group's members are or will be affected (see victim status above).

Examples:

- Paragraphs 46-63 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#) (Netherlands); and
- Paragraphs 18-20 of the request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland).

ii. Justiciability

28. In some countries, the justiciability requirement can prevent judges from hearing cases they consider raise *political questions* which should be left to the executive/legislative arms of government (this is based on the principle of the *separation of powers*).

29. To overcome the justiciability requirement, it can be helpful to:

- a. Emphasise that your case concerns legal rights and duties under national law/constitution, and that it is the court's constitutional role to review the lawfulness of government action under the constitution (i.e. *the rule of law argument*);
- b. Where your rights have been violated, argue that you have a right to access remedies under the constitution/national law (i.e. *the access to remedies argument*); and/or
- c. Limit the requests for relief in your case to a declaration of unlawfulness or a limited court order that the government must reduce its GHG emissions to a certain level without specifying

how they should do this. This can leave room for the government to decide how it will reduce GHG emissions (**section G**).

Examples:

- Paragraphs 404-421 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\)](#) [ECLI:NL:GHDHA:2018:2610](#) (Netherlands); and
- Pages 13-14 and 22-26 of the opposition to motion to dismiss in [Juliana et al v United States et al](#) (USA).

F. GROUNDS FOR THE COMPLAINT

30. The laws on which you should base your claim will depend on what country you are bring the claim. Your legal arguments should be based on the facts outlined in **section D**. The following common grounds are outlined below. The argument may be that a climate change law, action or policy breaches a legal obligation owed by the State or infringes a right of the claimants. Examples include:

- a. Violations of constitutional or human rights;
- b. Illegality of a policy or law as contrary to a statutory duty/obligation of the State;
- c. Irrationality or unreasonableness of a climate change decision/policy;
- d. Procedural unfairness in reaching a decision on climate change; and
- e. Breach of the Doctrine of Public Trust.

These grounds can be argued on their own or together in a single complaint. If you do not consider a claim below to be arguable in your case/country, *do not* include that legal claim in your complaint.

31. The Defendant may have defences. However, defences are for the Defendant to raise in their “Defence” and do not have to be addressed in your complaint, but you should think about what arguments you may be able to use to overcome a defence if it is advanced.

Principles or Instruments of Public International Law

32. Before making your arguments for the grounds of the complaint, it can be useful to outline a number of key principles of international law relevant to climate change. These are not usually directly applicable in a national court, but they may influence the judge’s assessment of the grounds below.

33. Identify the principles you consider relevant and outline how they should impact the decision.

These include:

- a. *The precautionary principle*: This principle requires that where there is a threat of serious or irreversible environmental harm, scientific uncertainty cannot be used as a reason to delay action to prevent the harm. This can be used to support your case where there is some uncertainty about the exact impact climate change will have on the Claimant or the exact amount the project will contribute to climate change. This can lower the amount of evidence you need to provide;
- b. *The no-harm principle*: This principle requires states to prevent transboundary environmental harm in other countries where the source of the harm comes from their territory. This can be used to highlight that climate impacts of the project outside your country are relevant to the court's assessment;
- c. *The rights of future generations*: The rights of future generations (or the principle of intergenerational equity) can strengthen an argument that human rights and environmental protections should be applied with a long-term view;
- d. *International human rights treaties*: If you are arguing that your human or constitutional rights have been violated, it can be helpful to highlight treaties which protect the same rights. These can influence how the court applies rights under your national constitution; and
- e. *International climate change agreements*: These have been highlighted in **sub-section D(i)**. It can be helpful to emphasise here that key climate change agreements (i.e. the UNFCCC and the Paris Agreement) and the climate targets under them should influence how national law is applied. The Paris agreement is especially important because governmental actions can be judged or "benchmarked" against the obligation to limit temperature rise to well below 2 °, even though there are no quantified limits on emissions for individual states.

34. You are not arguing that the licensing of the project is unlawful because the above principles have been violated. Rather, you are arguing these principles should influence how the court interprets and applies national law.

Examples:

- Paragraphs 59-69 of the Claim in [Plan B Earth and Others v Secretary of State for Transport \[2019\] EWHC 1070](#).

i. Violation of Constitutional or Human Rights

35. Climate change is having and will continue to have immense impacts on people's human rights. Where these rights are protected in law, they can form the basis of mitigation claims.
36. One of the first things you should do in making a human rights claim, is decide which rights you are going to argue the State has violated (e.g. the right to life, the right to health etc).
37. Consider the following questions when making your decision:
- a. What right or rights best relate to how climate change has affected you? (i.e. does it threaten your life? Is your health at risk? Is your food security and/or access to water affected? Is your way of life and culture threatened? Is your land impacted?);
 - b. Are the relevant rights protected in your constitution/national law? and
 - c. Are these rights justiciable in your national law? (i.e. can people bring cases about the right in court?).

Establishing a Duty

38. To establish a violation of a right, you must show that the State has a duty that has been breached. For mitigation claims, you need to show that the State has a positive *obligation to protect* your rights from climate change by taking action to reduce GHG emissions in your country (i.e. setting a proper mitigation target and taking action to meet that target).
39. To establish such a duty, refer to cases in your country, UN human rights bodies and regional human rights courts, which demonstrate:
- a. That the State has a positive obligation to protect under the right in question; and
 - b. That positive obligation extends to protecting, for example, your life, property or health from environmental harm.
40. It can then be argued the State's obligations extend to protecting your rights from climate change impacts (i.e. the environmental harm which is threatening your life, health or property).

Examples:

- Paragraphs 238-257 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#) (Netherlands);
- Paragraphs 162-174 of the request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland);
- Paragraphs 168-183, 260-265, 276-277, 286-292 and 301-303 of the complaint in [Sacchi and others v Argentina, Brazil, France, Germany and Turkey \(2019\)](#) (UN Committee on Rights of the Child); and
- [Medio Ambiente y Derechos Humanos \(Opinion Consultiva\) \(2017\) OC-23/17](#) (Inter-American Court of Human Rights).

41. It can also be pointed out that the interpretation and application of this duty is influenced by international climate change agreements (e.g. the Paris Agreement – **sub-section D(i)**) and principles of environmental law (e.g. the precautionary principle).

Establishing an Interference with Your Rights

42. It then must be established that your enjoyment of the right has been (or will be) interfered with by climate change. This often requires you to show that the impact on your enjoyment of your rights:

- a. Reaches a minimum threshold of seriousness;
- b. Is caused by or sufficiently connected to climate change and your country's GHG emissions.

43. To meet the threshold of seriousness, you should:

- a. Identify the legal test and threshold to meet in your country;
- b. Outline past cases which have reached this threshold;
- c. Outline the impacts on the Claimant (refer to **sub-section D(v)**); and
- d. Demonstrate that the impact on the Claimant's enjoyment of their rights by climate change is equal or greater to the impacts that have satisfied the threshold in previous cases.

44. For causation, you need to outline a factual causal link between your country's GHG emissions, the occurrence of climate change, and the impacts complained of by the Claimant:

- a. Restate scientific basis of the causal link between GHG emissions and climate change (refer to **sub-section D(i)**);

- b. Highlight evidence regarding your country's GHG emissions and their contribution to climate change (refer to **sub-section D(iv)**);
- c. Restate the links between climate change and the specific climate impact (i.e. attribution science) that affects the Claimant (refer **sub-section D(ii) & (v)**);
- d. Once a, b and c have been proven, factual causation has been established between the Defendant's GHG emissions, climate change and the harm suffered by the Claimant.

45. The factual causal link above must meet the relevant legal standard of causation. There can be difficulties in proving causation in mitigation claims because:

- a. Every country emits GHGs and contributes to climate change (see the commentary on "shared responsibility" in para 48 for ways to deal with this fact);
- b. Climate change is often not the *only* cause of the harm suffered by the Claimant. In this regard, there is a distinction between:
 - i. Sea level rises: This is a constant and predictable consequence of climate change so the related harm can be easily linked to climate change; and
 - ii. Extreme weather events: Climate change cannot be identified as the *sole cause* of a single forest fire, heatwave or flood (especially where these have periodically occurred where the Claimant lives). Rather, the evidence shows that climate change makes certain weather events more intense or likely to happen;

However, in some countries, it is sufficient to show that an action or omission has *contributed* to or *increased the risk* of harm, rather than causing it on their own. Under such tests, there is a much stronger argument the factual causal link in **paragraph 44** will be sufficient.

Examples:

- Paragraphs 163-165 & 170-174 of the request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland); and
- Paragraphs 400-412 of the application in [Armando Ferrao Carvalho and Others v The European Parliament and the Council \(2018\) Case no T-330/18](#).

Establishing that the Interference with Your Rights Cannot be Justified

46. Once it is established that GHG emissions from your country interfere with the enjoyment of your rights, the State's obligation to protect will be engaged. The only remaining question is whether they have breached that obligation and violated your right. This often rests on whether the State has taken *reasonable or proportionate* steps to prevent, mitigate or redress the harm to the Claimant (i.e. climate change impacts).

47. This reasonableness or proportionality test is decided on the basis of a range of factors. Consider the following factors when making your legal argument:

- a. The extent the State's proposed and/or actual mitigation targets fall below the minimum appropriate mitigation target based on the climate science and international consensus outlined in **sub-sections D(iii)-(iv)**;
- b. The severity of the impacts that climate change has had or will have on the Claimant (**sub-section D(v)**);
- c. The State's knowledge of climate risks and the foreseeability of the harm to the Claimant (**sub-section D(iv)**);
- d. The widespread nature of the threats posed by climate change in your country as a whole (**sub-section D(ii)**);
- e. The level of development of your State and its related ability to transfer away from fossil fuel consumption/production;
- f. The existence of feasible alternatives to the State's current policy which it could take to reduce its GHG emissions without, for example, disproportionate short-term economic cost;
- g. The level of public participation which was involved in creating the State's climate policy (**sub-section D(iv)**); and
- h. Whether the State is disproportionately allocating money to other less necessary issues at the expense of climate change (**sub-section D(v)**).

Examples:

- Paragraphs 248-257 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#) (Netherlands); and
- Paragraphs 155-158 of the request in [Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017](#) (Switzerland).

48. It should also be noted that, although the State cannot prevent climate change on its own, preventing climate change is a shared responsibility in which all States must take appropriate mitigation measures to prevent climate change. It should be argued that each State can be held accountable for *their share* of the responsibility to prevent climate change.

Example:

- Paragraphs 387-403 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\)](#) [ECLI:NL:GHDHA:2018:2610](#) (Netherlands).

ii. Illegality (Unlawfulness or Ultra Vires)

49. In many countries, there are constitutional or public law principles which make an action or omission of a public body unlawful. Below are some common examples.

Acting without Lawful Authority

50. Where there is a law in your country which sets limits or conditions on the government's powers when it comes to climate policy but the government acts outside those limits, its act can be challenged.

For example:

- a. If there is a law in your country which requires the government to seek parliamentary approval, public participation or hold an environmental impact assessment before setting a mitigation target, the proposed mitigation target can be challenged if the government does not abide by the above limits/conditions; and
- b. If there is a law which requires any mitigation targets to be above a minimum level and the proposed mitigation target falls below that limit (**sub-section D(iv)**), the target can be challenged.

Failing to Take Action the Law Requires

51. If, for example, there is climate change legislation which specifies a mitigation target which the government must reach and the government fails (or is projected to fail) to do this, this can be challenged.

In your complaint:

- a. Set out the relevant law and what it requires; and
- b. Demonstrate that the government has failed to act accordingly (**sub-section D(iv)**).

Misinterpretation of the Law

52. Where the government has justified its proposed mitigation target under a certain law, but their decision was based on an interpretation of the law which you believe is wrong, the proposed mitigation target could be challenged. To do so, you should:

- a. Set out the government's interpretation of the law;
- b. Set out your competing interpretation; and
- c. Demonstrate with reference to the wording of the law, the purpose of the law, and its draft history (e.g. parliamentary debates regarding the law) that your interpretation is correct and the government's is wrong.

Example:

- Paragraphs 183-189 of the statement of facts and grounds in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK).

Improper Purpose

53. If a climate change law in your country has a provision which states the objective of the law (e.g. to avoid dangerous climate change, preserve a safe climate or implement the Paris Agreement), the government's proposed mitigation target under this law can be challenged if they are contrary to this objective. This can be the case even if the law does not set a minimum mitigation target. To make such a challenge:

- a. Outline what the purpose of the law is. Justify this with reference to the wording of the law, its context (i.e. preamble and provisions) and its drafting history (i.e. parliamentary debates);
- b. Set out what, at a minimum, what this purpose requires the government to do in terms of choosing mitigation targets (this could be one of the targets in **sub-section D(iii)**); and
- c. Demonstrate how the government's proposed mitigation target falls below this minimum and, therefore, are contrary to the purpose of the law (**sub-section D(iv)**).

Example:

- Paragraphs 168-182 of the statement of facts and grounds in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK); and

- Paragraphs 88-91 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand).

Relevant and Irrelevant Considerations

54. Where a law gives the government discretion in setting or implementing a mitigation target, its decision in how it exercises this discretion could be challenged if you can show:

- a. It took irrelevant considerations into account when making its decision (e.g. considerations based on inaccurate climate science); or
- b. It failed to take relevant considerations into account when making its decision (e.g. relevant climate science such as the IPCC 1.5° Report, the Paris Agreement goals, the impacts of climate change, findings of an EIA or recommendations of an official advisory committee on climate change).

55. To make such a challenge, you will need to carefully analyse policy papers, records of parliamentary debates and government memos which outline the reasons for their proposed mitigation target and climate action.

Example:

- Paragraphs 92-96 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand).

iii. Irrationality (Unreasonableness)

56. In many countries, irrationality is a principle in which a decision of a public body can be challenged if it is so unreasonable that no reasonable decision-maker could have made the decision.

57. This is a very high threshold to reach but, in extreme cases, it could be argued that an inadequate proposed mitigation target was irrational because it was wholly and obviously insufficient in view of available climate science and the international consensus regarding climate change. To make this argument, highlight the same factors in **paragraph 47**.

Examples:

- Paragraphs 190-204 of the statement of facts and grounds in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK); and
- Paragraph 97 of the statement of claim in [Thompson v The Minister for Climate Change Issues \[2017\] NZHC 733](#) (New Zealand).

v. Public Trust Doctrine

58. In some countries there is a legal doctrine called public trust which requires the government to take measures to protect the shared natural resources of the State. It can be argued that a government's failure to make and implement an appropriate minimum mitigation target violates the public trust because it demonstrates the government is not taking adequate steps to protect the natural resources of the State (which will be impacted by climate change). To make this argument:

- a. Highlight the national impacts of climate change (**sub-section D(ii)**); and
- b. Highlight the inadequacy of the government's proposed or actual mitigation targets (**sub-section D(iii)** and **(iv)**).

Example:

- Paragraphs 307-310 of the complaint in [Juliana et al v United States et al](#) (USA).

F. REMEDIES SOUGHT

59. Briefly outline what you want the court to do if you win. For mitigation claims this will likely involve:

- a. A declaratory judgment stating the Defendant is in breach of a legal duty;
- b. A court order demanding that the Defendant does something (e.g. reduces its GHG emissions to meet or sets a proper mitigation target);
- c. A court order demanding that the Defendant stops doing something (e.g. stopping producing fossil fuels at a certain rate); or
- d. A court order quashing a proposed mitigation target and requiring the government to set a new one; or
- e. A court order requiring the government to redo the process leading to the adoption of a proposed mitigation target free of procedural irregularities.

Examples:

- Paragraphs 325-331 of the complaint in [*Sacchi and others v Argentina, Brazil, France, Germany and Turkey \(2019\)*](#) (UN Committee on Rights of the Child);
- Pages 121-122 of the summons in [*Urgenda Foundation v Kingdom of the Netherlands \(2018\)*](#) [ECLI:NL:GHDHA:2018:2610](#) (Netherlands);
- Pages 18-19 of the petition in [*Maria Khan et al v Federation of Pakistan \(No. 8960 of 2019\)*](#) (Pakistan);
and
- Paragraphs 240-242 of the statement of facts and grounds in [*Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy*](#) (UK).

[signature of legal representative]

Date