

A4J CLIMATE LITIGATION TEMPLATES

SUBSTANTIVE CLIMATE-BASED INFRASTRUCTURE CHALLENGES

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.

A4J Template Substantive Climate-Based Infrastructure Challenges

The **A4J Substantive Challenge Template** concerns legal cases brought against public bodies who have licensed resource extraction or infrastructure development which will significantly contribute to climate change (e.g. coal mines, oil drilling, fracking etc).

These projects can be challenged on the basis that the extent to which the project will contribute to climate change mean they will violate your human/constitutional rights and/or be inconsistent with the government's legal commitments to reduce its GHG emissions. Such challenges against carbon projects are starting to be brought in different countries:

- ***Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy***: Environmental organisations in Norway are challenging a licensing decision to permit oil exploration in the Barents Sea. They are challenging the decision on the basis that it violates the constitutional right to a healthy environment;
- ***The De Justicia Case***: A group of youth in Colombia successfully argued that the government's failure to stop illegal deforestation of the Amazon rainforest violated their constitutional rights to a healthy environment, health, water, life and food. While this case did not involve a government's act in licensing an infrastructural project, but its omission in failing to stop deforestation, it involves a similar argument (i.e. the government's actions which significantly contribute to climate change violates our rights).

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 **human and constitutional rights**, as well as **public law principles** 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 project's **contribution to climate change** (e.g. the GHG emissions that will result from the project);
6. Make strong **legal arguments** based on constitutional law and 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 Procedural Challenge 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 Infrastructure Challenge Template can help you hold your government accountable for and secure climate justice for your community.

It should also be noted that the A4J Template deals with “**substantive climate-based arguments**”. Extraction and infrastructural projects can also be challenged on procedural grounds (see **A4J Template for Procedural Infrastructure Challenges**). In many cases, a combination of procedural and substantive arguments is used alongside each other.

Disclaimer

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[COURT NAME]

[Case Reference Number]

BETWEEN:

[CLAIMANT NAME]

Claimant

and

[DEFENDANT NAME]

Defendant

COMPLAINT OF THE CLAIMANT

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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. An outline of the extractive/infrastructural project you are challenging;
 - d. The project’s contribution to climate change;
 - e. 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
 - f. The relief or remedies that the Claimant seeks.

Example:

- Paragraphs 1-12 of the Claim in [Plan B Earth and Others v Secretary of State for Transport \[2019\] EWHC 1070](#).

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).

Example:

- Paragraphs 16-90 of the complaint in [Juliana et al v United States et al](#) (USA); and
- Section 4.3.1. of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case – Colombia*).

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 organization;
 - f. The aims/mission of the organization as stated in its constitution/articles of association;and
 - g. Activities of the organization in relation to climate change.

Examples:

- Pages 4-5 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#).

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 the licensing of the project you are challenging;

Example:

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

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:

- Pages 4 and 33-35 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#); and
- Section 4.1 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case* – Colombia).

D. FACTUAL BACKGROUND

7. This section details the facts that the complaint relies on and the evidence required to prove these facts.

i. The Occurrence, Causes and Impacts of Climate Change

8. When challenging a project on climate-based grounds, it is useful to start by providing general facts regarding climate change which the rest of the claim will rely upon. The following 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 (which are created by the type of project you are challenging);
- c. The safe limit of global warming which the world can sustain (i.e. 2° or 1.5°);
- d. The size of the global carbon budget. This is the amount of remaining GHGs that can be emitted if the world is to stay below 2° or 1.5° (this is especially important to include when challenging individual projects);
- e. The warming of the Earth beyond the above limits will have significant impacts (e.g. sea level rises, extreme precipitation and flooding, ocean acidification, heatwaves, forest/bushfires, droughts, loss of biodiversity and storms); and

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 scientific basis for climate change should then be reinforced by outlining the international political and legal consensus regarding climate change (e.g. the United Nations Framework Convention on Climate Change and the Paris Agreement). This will be especially important if you are arguing the government failed to take these agreements into account.

Examples:

- Pages 14-20 of the Writ of Summons in [*Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06*](#) (Norway);
- Paragraphs 26-37 of the Request in [*Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others \(2018\) A-2992/2017*](#) (Switzerland).

ii. The Government's Climate Change Commitments

11. It can strengthen the argument that a public authority should not have licensed a project which will significantly contribute to climate change when the government has already made legal and/or

political commitments to combat climate change. Demonstrate what commitments your government has made to combat climate change. For example:

- a. Signing and ratifying the Paris Agreement and UNFCCC;
- b. Making commitments in national law;
- c. Making a political or policy commitment publicly.

These commitments can then be contrasted against the government's decision to license a project that will significantly contribute to climate change.

Examples:

- Paragraphs 14-16 of the Claim in [Plan B Earth and Others v Secretary of State for Transport \[2019\] EWHC 1070](#).

iii. The Project

12. Details regarding the project you are challenging need to be outlined in depth. Provide details on the following:

- a. What the character of the project will be (e.g. the construction and operation of a coal-fired power plant or the exploration, drilling and export of oil);
- b. Where the project will take place;
- c. How the project was licensed;
- d. When was the project was licensed;
- e. Which public authority was responsible for licensing the project;
- f. When the project will begin;
- g. The duration of the project (i.e. the length of time the power plant will be operational); and
- h. Estimates/projections regarding the output of the project (e.g. if you are challenging an airport expansion, how many extra flights will the project facilitate; if you are challenging an oil drilling project, how much oil is likely to be produced).

Examples:

- Pages 7-9 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#).

iv. The Climate Impact of the Project

13. The extent of the contribution the project makes to climate change should be outlined. It is helpful to demonstrate:

- a. The amount of GHGs that will be emitted in relation to the project. This includes:
 - i. GHGs emitted through the direct operation of the project (i.e. through the process of oil drilling or the operation of a coal-based power plant); and
 - ii. GHGs will be emitted down the value chain of the project (i.e. GHGs emitted when the oil that has been produced by the project is used after it has been sold);
- b. The impact these GHG emissions will have on the global carbon budget (**sub-section D(i)**); and
- c. The impact these GHG emissions will have on the government's ability to meet its climate change commitments (**sub-section D(ii)**).

Examples:

- Pages 23-24 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#); and
- Pages 14-17 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case – Colombia*).

v. The Impact of Climate Change on the Claimant

14. After outlining the general scientific basis regarding climate change, you should detail the national, regional or local impacts that climate change will have. 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.

15. 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.

16. The Claimant’s injuries need to be consistent with the climate science and the local climate impacts outlined earlier. 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 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
- Pages 17-26 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case* – Colombia).

E. ADMISSIBILITY & STANDING

17. 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

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

Victim Status or Direct/Special Effect

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

20. 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)**), their connection to the project you are challenging (**sub-section D(iv)**) and state that **section F** will set out how these impacts are unlawful.

21. To be *specially* 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 67-73 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case* – Colombia);
- 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

22. 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 organization 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 above).

Examples:

- Paragraphs 46-63 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\)](#) [ECLI:NL:GHDHA:2018:2610](#) (Netherlands).

ii. Justiciability

23. 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*).

24. 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's 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 (**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

25. 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**. Arguments regarding the following common grounds will be outlined:

- a. Violations of constitutional or human rights;
- b. Illegality of a licensing decision because of a breach of a statutory duty of the State;
- c. Irrationality or unreasonableness of a licensing decision; and
- d. Breach of the Doctrine of Public Trust.

The grounds below 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.

26. 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

27. 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.

28. 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.

29. 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:

- Pages 37-39 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#); and
- Pages 77-84 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case – Colombia*).

i. Violation of Constitutional or Human Rights

30. 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 a substantive challenge to a carbon intensive project.

31. 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.

32. 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 that the Right Is Engaged

33. To establish a violation of a right, you must show that the State has a duty that has been breached. For substantive infrastructure challenges, you are arguing that the State has breached its negative *obligation to respect* your rights from climate change by licensing a project which will significantly contribute to climate change.

34. The first step in proving the State has breached its human rights obligations is to establish the right is engaged or applicable. This means you have to:

- a. Identify the interests that are protected by the right (e.g. the right to health protects one's physical and mental health, and the conditions required to live a healthy life); and
- b. Show that the case concerns these interests (e.g. climate change will impact the Claimant's health and the licensing of the project, by contributing to climate change, will affect the Claimant's health).

35. To establish the scope of the interests a right protects, refer to cases in your country, UN human rights bodies and regional human rights courts, which demonstrate that the right has applied in the past to similar environmental harms.

Examples:

- Pages 35-37 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#);
- 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).

36. 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

37. 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 climate change and your country's GHG emissions.

38. 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.

39. For causation, you need to outline a factual causal link between the GHG emissions related to the project, 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 the GHG emissions related to the project 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 (v)**);
- d. Once a, b and c have been proven, factual causation has been established between the project's GHG emissions, climate change and the harm suffered by the Claimant.

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

- a. Countless projects and activities emit GHGs and contribute to climate change;

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 40** will be sufficient.

Examples:

- Pages 108-110 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case* – Colombia);
- 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

41. Once it is established that GHG emissions from the project interfere with the enjoyment of your rights, the only remaining question is whether the licensing of the project can be justified. This often rests on whether the interference is *proportionate* to a legitimate public interest which the project is designed to serve (e.g. economic development).

42. This 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 GHG emissions of the project will contribute to climate change by eating into the global carbon budget based on the climate science and international consensus outlined in **sub-sections D(i)** and **(iv)**;

- b. The extent the GHG emissions of the project will be inconsistent with the climate change commitments the government has made (**sub-section D(ii)**);
- c. The severity of the impacts that climate change has had or will have on the Claimant (**sub-section D(v)**);
- d. The State's knowledge of climate risks and the foreseeability of the harm to the Claimant (**sub-section D(ii) and (iv)**);
- e. The widespread nature of the threats posed by climate change in your country as a whole (**sub-section D(v)**);
- f. The level of development of your State and its related ability to transfer away from fossil fuel consumption/production;
- g. The existence of feasible alternatives to the project which could achieve comparable economic results; and
- h. The quality of the process which led to the licensing of the project (**sub-section D(iii)**).

Examples:

- Page 40 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#); and
- Paragraphs 248-257 of the summons in [Urgenda Foundation v Kingdom of the Netherlands \(2018\) ECLI:NL:GHDHA:2018:2610](#).

ii. Illegality (Unlawfulness or Ultra Vires)

43. Where there is a law in your country which sets limits or conditions on the government's powers when it comes to infrastructure or energy 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 licensing a project, the project can be challenged if the government does not abide by the above limits/conditions; and
- b. If there is a law which sets a mitigation target for the government (i.e. that it must reduce GHG emissions by a certain amount by a certain year) and you can show that the GHG emissions of the project will be inconsistent with this target, the licensing of the project could be considered unlawful on this basis.

iii. Irrationality (Unreasonableness)

44. 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.

45. This is a very high threshold to reach but, in extreme cases, it could be argued that the licensing of a project was irrational because it was wholly and obviously incompatible with available climate science and the international consensus regarding climate change. To make this argument, highlight the same factors in **paragraph 42**.

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).

iv. Breach of the Public Trust Doctrine

46. 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 licensing of a carbon intensive project violates the public trust because it demonstrates the government is damaging the shared 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(v)**); and
- b. Highlight the contribution of the project to climate change (**sub-section D(iv)**).

F. REMEDIES SOUGHT

47. Briefly outline what you want the court to do if you win. For procedural challenges against infrastructural or extractive projects, this will likely involve:

- a. A court order demanding that the Defendant redo the licensing process with proper consideration of the climate impacts of the project;
- b. A court order demanding that the Defendant stops the implementation of the project;
- c. A court order quashing the licence and making it have no legal effect; or

d. A court order that the Defendant takes other actions to offset the GHG emissions that will be produced by the project.

Examples:

- Page 41 of the Writ of Summons in [Greenpeace Nordic and Nature and Youth v Ministry of Petroleum and Energy \(2018\) 16-166674TV1-OTIR/06](#);
- Pages 116-117 of the complaint in [STC4360-2018 \(2018\) Case No 11001-22-000-2018-00319-01](#) (*De Justicia Case – Colombia*).

[signature of legal representative]

Date