

A4J CLIMATE LITIGATION TEMPLATES

TORT CLAIMS AGAINST CARBON MAJORS

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.

Tort Claims Against Carbon Majors

The **A4J Tort claims against Carbon Majors Template** concerns legal cases brought against big corporations who have significantly contributed and continue to contribute to climate change. These cases are typically brought against **fossil fuel companies** (oil, coal and gas companies) who are responsible for a large proportion of global greenhouse gas emissions. They are brought by claimants who alleged that they have suffered or will suffer damage because of climate change. Claimants may include individuals or “municipalities” such as “The City of Abuja”.

A number of Carbon Majors cases have been brought in the last decade, including:

- ***Lliuya v RWE AG***: A case brought by a Peruvian farmer in German courts against RWE (a German energy company) for their contribution to climate change and its impact on glacial melts and flooding of his community.
- ***The County of San Mateo v Chevron Corp and Others***: A case brought by the county of San Mateo in California against 28 fossil fuel companies for their role in contributing climate impacts in California.
- ***Vereniging Milieudefensie and Others v Royal Dutch Shell plc***: A case brought by a coalition of NGOs and over 17,000 claimants against Royal Dutch Shell for its contributions to climate impacts in the Netherlands.

The A4J Carbon Majors 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 company the case 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 or that a fossil fuel company ought to reduce its output, will not in itself enable successful action to be brought. The law on climate change is constantly evolving but so far most "tort" cases have failed and 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 "**causes of action**" (i.e. the law you're arguing has been broken) such as the torts of **negligence, nuisance or product liability**. To bring a successful climate case under these causes of action, you will need to:

1. 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;
2. Base your arguments in reliable **climate science** that demonstrates the causes and impacts of climate change;
3. Have **evidence** of the defendants' (the Carbon Majors you are bringing a case against) contribution to climate change (e.g. their greenhouse gas emissions and actions to prevent climate action) and, in some cases, their knowledge of the potential for damage to be caused by climate change;
4. Have evidence of the national/local impacts of climate change and how climate change has impacted you personally;
5. Go through each **element** (i.e. ingredient) of the cause of action you are arguing and demonstrate how it has been established in your case (base this on case law); and
6. Outline the **remedy** or outcome you want to get if you win (e.g. compensation and/or an order to do something or stop doing something).

Further Considerations

The A4J Carbon Majors 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. negligence, nuisance etc), 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; and
- How you can enforce a court order if you win.

The [A4J platform](#) can help you answer these questions but you will need legal advice in your country.

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. 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 causes of action for which you are claiming the Defendant is liable (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 1-12 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA);
- Pages 1-2 of the complaint in [Lliuya v RWE AG](#) (Germany); and
- Paragraphs 1-11 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA).

B. PARTIES

2. This section provides details on the claimants and the defendants in the case. This can be important information for the purpose of establishing the court’s jurisdiction.

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:

- Paragraphs 16-90 of the complaint in [*Juliana et al v United States et al*](#) (USA);
- Pages 6-8 of the complaint in [*Family Farmers and Greenpeace v Federal Government of the Federal Republic of Germany*](#) (Germany); and
- Paragraph 18 of the complaint in [*Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy*](#) (UK).

ii. Claimants (Organisations – if applicable)

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:

- Paragraphs 122-304 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands);
- Paragraphs 91-95 of the complaint in [Juliana et al v United States et al](#) (USA); and
- Paragraph 17 of the complaint in [Plan B Earth & Others v The Secretary of State for Business, Energy and Industrial Strategy](#) (UK).

iii. Defendants

5. Provide the following information regarding the Carbon Majors which you are suing:
 - a. Name;
 - b. Legal status;
 - c. Country of incorporation;
 - d. Location of global HQ and/or principal place of business;
 - e. Internal structure of the company (e.g. the link between the parent company and its subsidiaries);
 - f. The operations of the company in relation to climate change (e.g. exploration and production of fossil fuels); and
 - g. If there are multiple defendants, add a paragraph on the links between them (e.g. their contribution to climate change through their greenhouse gas emissions).

Example:

- Paragraphs 19-32 of the complaint in [State of Rhode Island vs Chevron Corp and Others](#) (USA).

C. JURISDICTION AND ADMISSIBILITY**i. Personal Jurisdiction over the Defendant**

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, you will generally need to prove that:
 - a. The defendant company is registered/incorporated in the country of the court; or
 - b. It has its headquarters or principal place of business in the country of the court; or
 - c. The actions/harm you are complaining of happened in the country of the court.

Examples:

- Paragraphs 77-93 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and
- Paragraphs 9-10 of the complaint in [Native Village of Kivalina v ExxonMobil Corp and Others](#) (USA); and
- Pages 20-22 of the complaint in [Lliuya v RWE AG](#) (Germany).

ii. Justiciability

7. 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*). This argument could be raised to persuade judges that your claim concerns the regulation of the fossil fuel industry, which should be left to the political realm.

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

- a. Emphasise that your case concerns legal rights and duties under national law, and that it's the court's constitutional role to uphold your private rights (i.e. *the rule of law argument*);
- b. Where your private 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 Defendant must reduce its GHG emissions to a certain level without specifying how they should do this. This can leave room for the Defendant to decide how it will reduce GHG emissions (**section F**).

iii. Applicable Law (if applicable)

9. Where the claimant is not based in the country of the court or the actions complained of did not happen in the country of the court, there may be dispute over what is the applicable law (the law of the country of the court or the law of another country).

10. If there is a specific set of laws you want to apply, make your argument on the basis of the following factors:

- a. Where the injury to the claimant has occurred (e.g. the specific climate change impacts in the case);
- b. Where the actions which caused the injury occurred (e.g. where did the defendant create their fossil fuel extraction policy, where did it drill for and extract fossil fuels); and
- c. Where the claimant and the defendant are based

Examples

- Paragraphs 95-112 of the complaint in [Vereniging Milieudefensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and
- Pages 22-24 of the complaint in [Lliuya v RWE AG](#) (Germany).

D. FACTUAL CIRCUMSTANCES

11. This will be the biggest section of your complaint. 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

12. 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 greenhouse gas 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.

13. 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.

14. 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 306-436 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and
- Paragraphs 44-71 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA).

ii. Local/National Impacts of Climate Change

15. After outlining the general scientific basis regarding climate change, you 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. 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 477-493 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and
- Paragraphs 33-51 of the complaint in [People of the State of New York v Exxon Mobil Corporation and Others](#) (USA).

iii. Defendants' Emissions and Attribution

16. The defendant's operations need to be connected to the occurrence, cause and impacts of climate change. In other words, the extent to which the defendant has contributed (and will likely continue to contribute) to climate change has to be demonstrated and proven.

17. For past emissions of greenhouse gases, this can be done by:

- a. Detailing the operations of the defendant which create greenhouse gas emissions (e.g. the exploration, drilling, extraction, production and combustion of fossil fuels) and connecting these (in general terms) to the causes of climate change (see above);
- b. Calculating the overall greenhouse gas emissions that can be attributed to the operations of the defendant; and
- c. Calculating the percentage of overall global greenhouse gas emissions that the defendant is responsible for.

18. There are a number of reliable scientific studies on which such a calculation can be based. For example, the [Carbon Majors Reports](#) calculate the level of responsibility each Carbon Major has for the occurrence of climate change.

19. Evidence of continued investment in fossil fuel resources can provide useful evidence that the defendant intends to continue contributing to climate change.

Examples:

- Pages 12-13 of the [petition to the Commission on Human Rights of the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change](#) (The Philippines);
- Paragraphs 94-105 of the complaint in [State of Rhode Island vs Chevron Corp and Others](#) (USA);
- Paragraphs 72-80 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA); and
- Pages 17-19 of the complaint in [Lliuya v RWE AG](#) (Germany).

iv. Defendants' Knowledge and Actions

20. It may also be necessary to prove the defendant had knowledge (or should have known) of the impacts of climate change and the fact they were contributing to them. This can be proven with the following evidence:

- a. Internal memos of fossil fuel companies;
- b. Internal scientific reports commissioned by fossil fuel companies;
- c. External policy documents of fossil fuel companies;
- d. Attendance of fossil fuel companies at climate conferences; and
- e. General awareness of climate change once scientific and political consensus had publicly been reached.

21. Depending on the company, evidence of knowledge exists and is publicly available from as far back as the 1950s.

Examples:

- Paragraph 530-574 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and

- Paragraphs 63-75 of the complaint in [People of the State of New York v Exxon Mobil Corporation and Others](#) (USA).

22. Highlight that Carbon Majors have had the opportunity to change their operations and transition to renewable energy and green technologies but generally have failed to and/or chosen not to do so, although some have done more than others.

Example:

- Paragraphs 623-627 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands).

23. In some cases, there is evidence that Carbon Majors have not just known about climate change but have failed to disclose information regarding climate change and campaigned to deceive the public and prevent action to combat climate change. This can be proven by:

- a. Comparing the above evidence regarding Carbon Majors' knowledge of climate change to:
 - Public relations campaigns encouraging the continued use of fossil fuels;
 - Public relations campaigns dismissing the risks of climate change and challenging its scientific basis;
 - Lobbying efforts designed to slow regulation of the fossil fuel industry; and
- b. Internal memos and policy documents devising the abovementioned public relations efforts and the intent behind them.

Example:

- Paragraphs 110-161 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA).

v. Claimant Loss or Damage

24. 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.

25. 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.

26. Where compensation/damages are being claimed, detail all financial losses that have been suffered by the Claimant as a result of the Defendant's actions (this can be done within the complaint or by attaching a schedule of loss to the complaint). Financial losses may include:

- a. Cost of relocating from one area to another;
- b. Cost of adaptation (i.e. making one's property more resistant to climate impacts);
- c. Cost of repairs to property;
- d. Value of property lost; and
- e. Loss of earning due to climate impacts on way of life.

Examples:

- Pages 4-16 of the complaint in [Lliuya v RWE AG](#) (Germany);
- Paragraphs 185-188 of the complaint in [Native Village of Kivalina v ExxonMobil Corp and Others](#) (USA);
- Paragraphs 494-497 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and
- Paragraphs 197-224 of the complaint in [State of Rhode Island vs Chevron Corp and Others](#) (USA).

E. GROUNDS FOR THE COMPLAINT

27. The following legal claims that are likely to apply to climate litigation against Carbon Majors for their contribution to climate harm will be outlined:

- a. Negligence;
- b. Private nuisance;
- c. Public nuisance;
- d. Product liability: Design defect;
- e. Product liability: Failure to warn;
- f. Breach of statutory duty; and
- g. Violation of human rights and breach of due diligence.

28. For each legal claim, all the elements (in *italics*) have to be established for there to be liability. The elements will vary in different countries but are often similar. The legal arguments should be supported by referring to the relevant facts outlined in the last section. If you do not consider that it is arguable an element can be established, do not include that legal claim in your complaint.

29. In addition to establishing the elements, the Defendant may have defences. It is for the Defendant to raise in their “Defence” and does not have to be addressed in your complaint, but you should think about what arguments you can use to overcome common defences in court.

i. Negligence

30. The elements below are based on a typical claim of negligence in common law countries. In many civil law countries, a similar duty not to unlawfully harm others is often imposed by the civil code. The

elements in civil law countries can differ but the key requirements of proving damage and causation still apply.

Duty of Care

31. Provide details on the relationship between the Defendant and the Claimant which give rise to a duty of care. With reference to the facts outlined in the previous section, highlight:

- a. Foreseeability of harm: Publicly known nature of climate change impacts and the defendant's knowledge therein (see **sub-section D(iv)**);
- b. Proximity between the defendant and the claimant: Establish on the basis of the causal link between the defendant's actions and the harm to the claimant; and
- c. The fairness of imposing a duty on the defendant: Highlight the gravity of the harm at issue, any vulnerability of the claimant and the means of the defendant.

Example:

- Paragraphs 240-241 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA); and
- In civil law countries, a duty not to unlawfully harm others is often imposed by the civil code. This, in effect, skips this element and you can move straight to questions regarding the standard of care and breach. See, for example, paragraphs 511-518 of the complaint in [Vereniging Milieudefensie and Others v Royal Dutch Shell plc](#) (The Netherlands).

Standard of Care

32. Outline factors which influence the standard of care owed by the defendant:

- a. The gravity of the harm at issue (refer to **sub-section D(v)**);
- b. The likelihood that the harm would arise (refer to **sub-section D(v)**);
- c. The foreseeability of the harm and/or the defendant's knowledge of the harm (refer to **sub-section D(iv)**);
- d. The feasibility of preventing/reducing the risk of harm (i.e. availability of transition to renewable energy/low-carbon technologies – refer to **sub-section D(iv)**);
- e. Lack of social utility regarding the Defendant's actions (i.e. how much do the actions complained of benefit society - refer to **sub-sections D(i)-(ii)**).

Example

- Pages 126-148 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands).

Breach of Duty

33. Outline the actions of the defendant that potentially breach the duty of care. For example:
- a. Defendant's failure to substantially reduce GHG emissions and significant contribution to climate change in spite of knowledge and/or foreseeability of the harm (refer to **sub-sections D(iii)-(iv)**);
 - b. Defendant's increase of GHG emissions and continued investment in fossil fuels in spite of knowledge and foreseeability of harm (refer to **sub-sections D(iii)-(iv)**);
 - c. Defendant's failure to change their operations and transition to renewable energy/green technologies in spite of the knowledge and foreseeability of harm (refer to **sub-sections D(iii)-(iv)**); and
 - d. Defendant's engagement in a campaign of deception and concealment regarding climate change (refer to **sub-section D(iv)**).

Example

- Paragraph 271 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA); and
- Pages 126-148 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands).

Causation and Loss

34. Outline the factual causal link between the GHG emissions of the Defendant, the occurrence/impacts 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 Defendant's GHG emissions and their contribution to climate change (refer to **sub-section D(iii)**);
 - 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)**);

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.

35. The factual causal link above must meet the relevant legal standard of causation. Usually a 'but for' test is used (e.g. but for the Defendant's bad driving, I would not have been injured) but there are difficulties using this test in climate litigation:

a. There are multiple governments and corporations which emit greenhouse gas emissions 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;

c. These points mean that it can be difficult to say *but for* the Defendant's actions (i.e. greenhouse gas emissions contributing to climate change), the Claimant would not have suffered harm due to a forest fire or heatwave.

36. However, in some countries, there are alternative tests of causation that can be used where there are multiple actors that have *contributed* to harm, rather than causing it on their own:

a. Some tests ask whether the Defendant's actions were the "effective cause" of the harm or whether they "materially contributed to the risk";

b. Under these tests, the Defendant could be held liable for their level of contribution to the climate change and its contribution to the harm suffered by the Claimant (rather than all the harm);

c. Check if there are any alternative tests of causation used in your country for cases involving multiple causes of harm.

Examples:

- Paragraph 272-273 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA);

- Paragraphs 243-244 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA); and
- Paragraphs 641-651 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands).

ii. Private Nuisance (or “Unlawful Impairment”)

37. Relevant where the Claimant’s land or use of land has been impacted by climate change.

The Affected Land Was the Property of the Claimant

38. Generally, you need to show that:
- The land was owned by the Claimant;
 - The land was occupied by the Claimant; or
 - The land was used by the Claimant.

Example:

- Pages 26-27 of the complaint in [Lliuya v RWE AG](#) (Germany).

The Land Has Been Damaged and/or the Claimant’s Use and Enjoyment of the Land Has Been Interfered With

39. With reference to the climate change impacts affecting the Claimant (see **sub-section D(v)**), you need to show that:
- The land has been damaged (e.g. there has been flooding, fires or contamination of the land); or
 - The way the Claimant uses the land (e.g. fishing, farming, hunting etc) has been interfered with (e.g. sea level rises have caused coastal erosion which have affected farmland, ocean acidification has affected fishing etc).

Example:

- Paragraph 123 of the complaint in [People of the State of New York v Exxon Mobil Corporation and Others](#) (USA);
- Pages 26-29 of the complaint in [Lliuya v RWE AG](#) (Germany).

Causation

40. In the same way as negligence, there must be a causal link between the Defendant's actions and the damage/interference with the Claimant's property (**paragraphs 34-36 above**).

Example:

- Pages 31-37 of the complaint in [Lliuya v RWE AG](#) (Germany); and
- Paragraph 125 of the complaint in [People of the State of New York v Exxon Mobil Corporation and Others](#) (USA).

The Interference is Substantial and Unreasonable

41. Outline that the impact on the land has been big and that the defendant's actions in causing the interference have been unreasonable (i.e. not justified in the circumstances). This is similar to proving a breach of duty in negligence. Highlight the following factors:

- a. The gravity of the interference on the Claimant's property (see **sub-section D(v)**);
- b. The duration and frequency of the interference (i.e. the interference has been ongoing, will be set to continue, and increase in terms of frequency/magnitude until action is taken – see **sub-section D(i)-(ii)**);
- c. The interference is not justified as there are safe and reasonable alternatives to the burning of fossil fuels to produce energy (i.e. renewable energy);
- d. It would be reasonable for the Defendant to avoid the interference by transitioning to renewable energy production;
- e. The vulnerability of Claimant's property to climate-related impacts (see **sub-section D(v)**); and
- f. The Defendant's knowledge of the dangers of their actions and foreseeability of harms (see **sub-section D(iv)**).

Example:

- Paragraphs 264-265 of the complaint in [Native Village of Kivalina v ExxonMobil Corp and Others](#) (USA).

iii. Public Nuisance

42. Public nuisance is similar to private nuisance, except that there is no requirement that it was the property of the Claimant that was damaged. The following must be shown.

Impact on a Class of People

43. The climate change impacts must affect a group of people who are connected in some way:
- a. The group could be connected by location, way of life, or age group. Climate change disproportionately impacts certain groups and places more than others. If you are raising public nuisance, this disproportionate impact should be outlined in **sub-section D(ii)**;
 - b. The Claimant must be part of this group of people (see **sub-section B(i)**);
 - c. The impact can be on the health, way of life, or well-being of the group (it need not specifically relate to property damage); and
 - d. In some countries, you also have to prove that the injury or damage to the Claimant is “special” (i.e. different from how other people in the group are affected – see **sub-section D(v)**).

Example:

- Paragraphs 116-117 of the complaint in [People of the State of New York v Exxon Mobil Corporation and Others](#) (USA).

Causation

44. There must be a causal link between the Defendant’s actions and the impact on the class of persons (see **paragraphs 34-36 above**).

Example:

- Paragraph 117 of the complaint in [People of the State of New York v Exxon Mobil Corporation and Others](#) (USA).

The Interference Was Unreasonable

45. As with private nuisance, it must be shown that the Defendant’s actions leading to the impacts were unreasonable (see **paragraph 41 above**).

iv. Product Liability: Design Defect

46. In some countries, there is “**strict product liability**” where a product (e.g. petroleum or coal) is introduced to the market and there is an inherent flaw in its design which could be avoided and makes the product dangerous (“design defect”). Strict liability means that where one of the above is proven, there are **no defences** and the Defendant will be liable.

The Defendant Designed, Produced, Promoted and/or Sold the Product

47. The Claimant has to show that the Defendant has been involved in, for example, the design, production, promotion, or selling the product (e.g. petroleum, coal, gas etc).
- a. Refer to the facts in **sub-section D(iii)** to demonstrate this.

Example:

- Paragraphs 217-219 of the complaint in [The County of San Mateo v Chevron Corp and Others](#) (USA).

The Product is Defective

48. It has to be demonstrated that:
- a. The product posed significant risks to consumers and the public. For fossil fuels this can be shown by highlighting the link between fossil fuels and climate change, and the risks climate change poses to the public (see **sub-section D(i)**);
 - b. The Defendant knew or should have known about these risks (**sub-section D(iv)**);
 - c. The Claimant/consumer did not know or expect these risks to exist; and
 - d. The defect was inherent to the product, rather than being created once the product was outside the Defendant's control (refer to **sub-section D(i)** regarding fossil fuels as a cause of climate change).

Example:

- Paragraphs 255-258 of the complaint in [State of Rhode Island vs Chevron Corp and Others](#) (USA).

Causation and Loss

49. As with negligence and nuisance, it needs to be demonstrated that the defective products caused harm to the public/Claimant (see **paragraphs 35-37** above).

v. Product Liability: Failure to Warn

50. Another form of "strict product liability" where the product poses risks to the consumer (i.e. climate change impacts caused by the burning of fossil fuels) and the producer failed to warn the consumers about risk ("failure to warn").

The Defendant Designed, Produced, Promoted and/or Sold the Product

51. See **paragraph 47** above.

Example:

- Paragraphs 234-235 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA).

The Product Poses a Foreseeable Risk to the Consumer and Public

52. See **paragraph 48(a)-(c)** above.

Example:

- Paragraphs 236-238 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA).

The Defendant Failed to Warn the Claimant of the Risk

53. It must be shown that the Defendant did nothing to warn the Claimant of the risks their products posed to the climate. This can be supported by evidence that Carbon Majors ran campaigns of deception and misinformation regarding climate change (see **sub-section D(iv)**).

Example:

- Paragraphs 239-240 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA).

Causation and Loss

54. It must be shown that the Defendant's failure to warn caused or contributed to the harm suffered by the Claimant (see **paragraphs 34-36** above).

Example:

- Paragraph 242 of the complaint in [City of Richmond v Chevron Corporation and Others](#) (USA).

vi. Breach of Statutory Duty

55. In some countries, there are statutes/legislation (i.e. laws passed by government) that can be used to hold Carbon Majors liable for climate harms. Check if there is a statute which:

- a. Prohibits people or companies from causing environmental damage; and
- b. Create a right for individuals to sue companies in breach

56. If there is a suitable statute, look at what you need to do to prove a breach in the context of climate change. You will usually rely on the same facts and arguments as other claims in this Template. For example, you will usually have to prove:

- a. Damage or harm to the Claimant (refer to the facts in **sub-section D(v)**); and
- b. Causation between the defendant’s actions and the harm (refer to the facts in **sub-section D(iii)** and **paragraphs 34-36** above).

Example:

- Paragraphs 306-314 of the complaint in [State of Rhode Island vs Chevron Corp and Others](#) (USA).

vii. Violation of Human Rights and Duty of Due Diligence

57. In some countries, there are “due diligence laws” that allow individuals to take human rights claims against businesses when they do not take steps to prevent human rights abuse in their operations.

Climate Change Interferes with the Claimant’s Human Rights

58. It has to be shown that the Claimant’s human rights have been impacted by climate change. This involves connecting the facts in **sub-section D(v)** to particular rights that the Claimant has under national human rights law (e.g. the right to life, the right to health etc).

Examples:

This has been successfully argued in cases against States. A similar argument can be applied in cases against Carbon Majors. For example, see:

- Paragraph 5.6 of the judgment in [Urgenda v The Kingdom of the Netherlands](#) (The Netherlands) for acceptance of this argument in a case against the State; and
- Paragraphs 663-665 of the complaint in [Vereniging Milieudefensie and Others v Royal Dutch Shell plc](#) (The Netherlands) to see how the ruling in the *Urgenda* judgment was used in a case against a Carbon Major.

Causation

59. A causal link needs to be drawn between the Defendant’s actions and climate change (i.e. the human rights issue – see **sub-section D(iii)** and **paragraphs 34-36** above)).

The Defendant Has Not Taken Reasonable Steps to Prevent these Interferences

60. It then has to be shown that the Defendant has not done enough to prevent the human rights impacts of their operations. These arguments should be based on:

- a. The gravity of the harm caused to the Claimant (**sub-section D(v)**);
- b. The Defendant's knowledge of the harm (**sub-section D(iv)**);
- c. The fact that the Defendant did not change their business model but continued to invest and produce in fossil fuels (**sub-sections D(iii)-(iv)**); and
- d. This can be supported by evidence that the Defendant actually look steps to prevent action being taken to combat climate change (**sub-section D(iv)**).

Example:

- In France, a complaint has been filed under the "duty of vigilance" against Total. It argues that the company failed to assess the threats of new oil projects to human rights. Find a [summary here](#) (translation of complaint from French pending).

F. REMEDIES SOUGHT

61. Briefly outline what you want the court to do if you win. This could involve:

- a. A declaratory judgment stating the Defendant is in breach of a legal duty;
- b. Compensation or damages to be paid by the Defendant to the Claimant;
- c. A court order demanding that the Defendant does something (e.g. reduces its greenhouse gas emissions and transitions to renewable energy);
- d. A court order demanding that the Defendant stops doing something (e.g. stopping producing fossil fuels at a certain rate); and/or
- e. Return of profits related to the breach.

Examples:

- Page 140 of the complaint in [State of Rhode Island vs Chevron Corp and Others](#) (USA); and
- Pages 204-205 of the complaint in [Vereniging Milieudéfensie and Others v Royal Dutch Shell plc](#) (The Netherlands); and
- Page 67 of the complaint in [Native Village of Kivalina v ExxonMobil Corp and Others](#) (USA).

[signature of legal representative]

Date