

A4J FORESTS LEGAL DEFENCE GUIDE

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SUB-PAGE 1: INTRODUCTION

1.1. Introduction

Deforestation is a threat to the environment, our human rights and the livelihoods of communities across the world.

There are things that can be done to protect forest ecosystems and prevent deforestation. One of the options is **litigation**. Forest defence litigation is a broad term that includes different types of **legal action that aim to combat deforestation and improper forest management**.

This is a **step-by-step guide** designed to introduce you a range of legal responses that may be available to you to fight deforestation. It is also designed to help you think about which response may be right for you, your community or your organisation. It is intended to help anyone who lives in or cares about forests, but particularly community groups, NGOs/CSOs and lawyers.

In particular, this guide provides guidance on using the following types of law and legal action to protect forests:

- National Laws and Codes;
- International/Regional Laws and Conventions;
- Acquisition of Forest Land/Rights in Forest Land;
- Challenges to Unauthorised Deforestation (e.g. EIA/ESIAs);
- Other Mechanisms;
- Climate Change Issues;
- Supply Chain Accountability; and
- Non-judicial Remedies.

Many countries have laws protecting forests. Sometimes they can be relied upon and enforced in the place where the forest is. Often even if there is a law it cannot be enforced in the place where the forest is. This may be because the local authorities are too busy or lack resources. Or there may be corruption, or threats against those who protect the forest.

Sometimes there are no national laws to protect the forest. Even if this is the case there may be ways of protecting the forest, by use of legal action in another country or internationally.

It may be possible that more general environmental laws can be used to protect forest land and communities. This Guide will introduce and cover these issues in the following sub-pages.

Scope and Purpose of the Action4 Justice Forest Litigation Guide

This Guide is designed to help you think about whether forest defence litigation is right for you. It provides an introduction to the different types of claims you could bring, legal strategies that could help you bring such claims, and highlights organisations and other resources that could help your case.

This Guide is not a substitute for legal advice. If, after reading the Guide, you want to explore the possibility of taking climate litigation further, **seek legal advice from a lawyer** or an organisation that could help you start your case. For more information, see **Where Can I Get More Information and Support** at [Sub-Page 12](#) of this Guide.

Legal Action to Protect Forests

This guide is intended to provide practical “how to” guidance to using legal intervention to protect forests and those living in them. It is for anyone, but particularly community groups, lawyers and NGOs/CSOs. As this guide is intended to give you an overview of the legal principles and the international mechanisms, conventions and agreements that exist to protect forests, it is not always applicable in each case and every country. The law and the different ways in which they can be used in each country. This guide is intended to add to and not replace the skills and resources of those working in specific countries, with an emphasis on international and regional laws, conventions and agreements.

Some general introductory points may help the reader to make the most of this guide and increase the chance of successful legal action

- Many countries have laws which protect forests and those who live in them, but they are not readily enforced due to lack of resources, corruption or lack of political will;
- Many of the problems in protecting forest overlap with other issues such as Land Rights, Climate Change, Business and Human Rights. You may be able to make a successful legal intervention with relying on laws designed to protect forests
- Many successful legal actions require use of a combination of local laws and procedures with international mechanisms or treaties or laws
- Although laws and procedures are different in every country, often examples of successful legal action in one country may be adapted and used in a different country
- Sometimes, the solution to a problem lies outside the country where it happens. So, to combat deforestation in Colombia or the Democratic Republic of Congo, it might be appropriate to take legal action in Europe or the USA. This is because often the ultimate drivers of deforestation are companies based in these places or financed by banks or institutions based there.

1.2. Forests – What Are They

Forests cover 31% of the land on Earth. There are [varying definitions](#) of a forest under international law. The FAO’s definition is widely used and provides that for land to be considered a forest, its tree canopy needs to:

- Span at least 0.5 hectares
- The trees’ height must measure more than 5 metres;
- Have a canopy cover of at least 10%; and
- The trees cannot be for primarily agricultural use, urban forests or planted in agroforestry systems.

Other definitions can be found under the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. National policies may also use different definitions of forests.¹ What is important “Forest” includes more than just the popular notion of forest as a large area of continuous and dense tree cover.

Example: Legal Definition of ‘Forests’ in [Chile’s Environmental Legislation](#)

Under Art. 2 DL 701, ‘forests’ are defined as: ‘A place populated with vegetal formations – with the predomination of trees – that occupy an area of at least 5,000 m², with a minimum width of 40m, and with a treetop cover of over 10% of the total area in arid and semi-arid conditions and 25% in more favourable conditions’

1.3. Benefits of Forests

Forests are of immense importance, in social, environment and economic terms. They are homes to hundreds of millions of people, including particularly Indigenous People. They are vital resources in relation to climate change. They are typically areas of great biodiversity. For example, forests:

- Allow us to breathe - one single mature tree produces a day’s worth of oxygen for 2 to 10 people.
- Are a source of food and medicine - 70% of known plants with cancer fighting properties only grow in forests - fruits, nuts, seeds, deer, rabbits, etc.
- Are a home or source of livelihoods for local communities and Indigenous People - 300 million people reside in forest, including 60 million Indigenous People who rely on them as their source of livelihood and their cultural identities. 13.2 million people have a job in the forest sector, and another 41 million people have a job related to them. The destruction of forests may also lead to the extinction of these peoples’ identities as well as their traditional knowledge that help conserve forests. Evictions from forest land may also have a particular [effect on women](#) which is not felt by men, such as the destruction of homes and shelters that are traditionally occupied by women and children.
- Provide clean water.
- Prevent or slow down climate change - trees are carbon sinks and absorb about a fifth of all carbon fuel emissions.
- Biodiversity - home to 80% of biodiversity on land.
- Protect watersheds and reduce erosion rates and the speed of chemicals to reach waterways
- Are buffers in natural disasters such as floods, hurricanes, etc.

Video: [The Importance of Forests](#)

This animation introduces the increasing threats against global forest resources and what might be done to stop deforestation.

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4980317/>

1.4. Threats to Forests

Although our forests are important for our well-being and survival, they face continued threats. Despite forests covering [31% of global land area](#) (the total forest area is approximately 4.06 billion hectares), the world has lost 420 million hectares of forest since 1990. [Half the world's rainforests](#) have been cleared over the last century. Whilst natural threats such as disease, pests and fire are part of the forest cycle, human activity has a number of negative consequences for forest ecosystems. The following activities cause ecological degradation in forest systems:

- Agriculture and the demand for **“forest-risk commodities” that drive the deforestation economy, including** soya, beef, cacao, palm oil, timber, leather and paper. To source these commodities, tropical forest area is converted for other purposes such as agriculture, livestock grazing, mining and drilling, accounting for [more than half of all deforestation](#). Deforestation at this scale in the tropics threatens biodiversity and the livelihoods of forest communities.
- Illegal Logging: [Illegal logging](#) is the harvesting of timber against national laws (e.g. without a logging licence). Illegal land clearing for timber products causes deforestation, livelihood loss and climate change. Corruption and bribery may impact the licensing process, causing illegal deforestation. Indigenous Peoples may also be accused of illegal logging on their own land, causing further legal complexity.
- Wildfire: Although they may occur naturally, wildfires can occur as a consequence of human activity and account for [23% of global deforestation](#). Sometimes, fire is used to clear land for other uses such as planting crops (i.e. slash and burn farming). However, they may occur accidentally or as a result of climate change. Wildfires can negatively impact soil fertility, forest habitats, carbon storage and the livelihoods of forest communities.
- Urbanization: Involves the expansion and intensification of urban development and comprises a [small fraction](#) (0.6%) of global forest loss.

1.5. Summary of Types of Legal Intervention

Legal language and terms can be confusing. The purpose of this guide is not to describe many different laws, but rather to provide suggestions for a range of possible legal solutions to practical problems. The guide will in particular cover the following (N.B. listed in chronological order of the guide as opposed to order of importance):

- **Use of national forest protection laws.** If for example the law of a country prohibits logging on forest land without a licence, and you can prove that this has taken place, you may be able to bring a court action, or encourage public authorities to bring a court action, to stop the illegal activity and ensure that the person carrying it out has to pay compensation or is subject to criminal penalties.
- **Use of international or regional mechanisms, treaties and agreements.** In certain circumstances deforestation may involve contravention of state obligations or policies under conventions such as the UN Framework Convention on Climate Change or the Convention on

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Biological Diversity. International conventions will not usually provide a remedy to affected communities, but violations of the conventions may be relevant in legal proceedings.

- **Deforestation may breach human rights of local people under national or international human rights, or under their country's constitution.** This might include the right to a healthy environment, or to livelihood, health, property, food, water and so on. Indigenous People ("IP") are often particularly affected by deforestation, and particular or special rights granted to such people may be of particular relevance in legal action.
- In some countries **rights are given to nature itself**, and deforestation may breach those rights.
- **Challenging the acquisition of land or grant of rights over land which is forest.** For example, a lease or concession may be granted to a company to grow palm oil or sugar on forest land. It may be that the lease or concession is contrary to law, appropriate level of consent has not been sought from the relevant landowners, or has not been properly authorised and can be challenged.
- **Challenging use of forest land, for example for agriculture or mining or building of a road.** Again it may be that the process of granting a permit for such use can be challenged, because relevant laws and procedures had not been complied with.
- **Use of requirements to carry out an Environmental Impact Assessment, or Environmental and Social Impact Assessment.** Many laws require these assessments to be carried out before forest land can be used for another purpose. If none has been carried out, or if the assessment is inadequate or flawed, this may provide grounds to challenge such use.
- **Action to stop activity on forest land which is wrongful because it is damaging the property or health of those in the area.** Where there is pollution or contamination this may give rise to criminal prosecution, or an action by those affected to seek an order to stop the activity or pay compensation. In some countries a legal action can have both a criminal and a civil aspect. In others civil claims are separate from criminal proceedings. Civil claims are brought by affected communities or inhabitants, and criminal proceedings are brought by the state authorities. Collective civil claims (or class action lawsuits) can also be brought by NGOs in certain jurisdictions.
- **Laws on tax evasion or money-laundering.** Often illegal deforestation or logging is carried out by those who breached tax laws or money-laundering regulations and action against them can be brought in this way. These actions are typically criminal proceedings that will need to be instigated by prosecutors.
- **Laws on biodiversity and endangered species.** Deforestation usually has a profoundly negative affect on wildlife. Laws to protect particular species may be used to stop deforestation (but should be balanced so that they are not used as a tool to violate Indigenous Peoples' rights).
- **Climate Change.** Deforestation often has negative implications in terms of climate change. Laws or policies which are designed to prevent climate change or its consequences may be used to prevent deforestation.
- **"Follow the money".** Much deforestation occurs because land is deemed more economically valuable for agricultural, mining or development rather as forest. Often deforestation occurs because of investment, frequently by foreign companies or banks. Legal action against those that finance development projects are rare and challenging, but action may be possible against these companies or banks where they are situated.
- **Supply Chain laws.** Much deforestation takes place in order to log timber or grow crops or commodities which are then exported internationally. Laws in the places where they are sold

to may prohibit sale or use of products whose growth or manufacture contributes to deforestation.

- **Complaints and procedures which are not actual court action.** Although not strictly legal action, it is often possible and effective to make complaints other than in court claims. These might be to local or United Nations Commissions on human rights or the environment, or to the complaints bodies of International Financial Institutions, or to trade or business associations which have set out codes of practice designed to prevent deforestation.

1.6. Thinking Creatively

The list above of types of legal action just gives some examples. However, lawyers and communities can be creative and imaginative in thinking of how to use the law to protect their environment. Just as an example, it might be impossible to protect a forest by direct legal action, but it might be that trucks carrying logged products breach noise or pollution standards if they have to drive through a village on the way to the forest, and that they can be stopped in this way. Or deforestation may affect the water supply to a nearby community, in breach of a right to water.

1.7. Summary of Practical Issues

Taking effective legal action requires more than just identifying a law which may have been breached or which might be relied upon. There are many practical issues involved. Some of these are concerned with local procedures and how to bring an action. A successful action is likely to require legal knowledge and resources, some financial resources and the support of the campaign group. In addition there are some other important topics to consider. Sub- page 13 gives a list of further resources and references, as well as a list of organisations may be able to help you. Other particular things to think about, which are addressed in this guide, include the following.

- **Evidence/Information.** It is not enough for you to believe or even know that a law has been broken. It is important to gather reliable evidence which can be used to prove this in court. This is often one of the most challenging parts of taking legal action.
- **Enforceability.** It is usually not enough to solve the problem to obtain a court order in your favour, for example that a party stops logging or burning forest, or pays compensation. It will only be effective if that order can be enforced.
- **Getting public authorities to take action.** Taking legal action can be difficult and challenging. It is often easier, in appropriate cases, to gather evidence and information to take to public authorities who will bring the legal action themselves.
- **Defending the defenders.** Those who defend forests and the human rights of those who live in them are often subject to violence, imprisonment, threats and a whole host of other unpleasant actions. It is important that safety and security are considered when thinking of legal action. There are all sorts of ways in which it may be possible to defend those who are defending the environment.

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- **Legal action in coordination with campaigns.** Legal action in relation to protecting forests is much more likely to be effective if it has the full support and involvement of local communities, and that it is accompanied by appropriate political or media campaigns.

For more information on these issues, see **Going to Court** at [Sub-Page 11](#) of this Guide.

SUB-PAGE 2: NATIONAL LAWS FOR PROTECTION OF FORESTS

This section concerns the National Laws that can be used to defend forests. These claims involve bringing **governments to court to demand they** comply with national laws governing the use and

protection of forests. These claims can also be taken to hold governments and other relevant defendants (i.e. private companies) to account for their obligations to comply with national laws and to respect constitutional rights, human rights and Indigenous Peoples' ('IP') rights. These claims involve **bringing a government to court to demand they uphold their legal obligations to regulate and protect forests.**

Claims under national law are typically brought against governments of countries who have either significantly contributed to deforestation or have failed in their legal obligations to protect and sustainably manage their forest cover.

Consider the following checklist if you are thinking about making a forests defence claim based on your country's national legal obligations:

CHECKLIST	YES/NO
1) Have you communicated with all affected parties and local communities about their aims? Who are the key players and how can communities be incorporated in the claim as a process of co-creation?	
2) What do you, and the parties you are representing, want to achieve? Is your case situated within a larger advocacy effort?	
3) Is there an appropriate national right/law I can enforce?	
4) Do I have the right to bring the claim? If not, then who does?	
5) Have I identified the right defendant to take a claim against?	
6) Have I gathered enough evidence to bring a claim?	
7) Have I identified and followed the procedural steps I need to take in my claim?	
8) If I win, what remedies could I get?	
9) If I lose, is there an appeals process or a regional/international court that I can bring my claim to? If so, have I raised those regional/international arguments under the national legal process ("exhaustion of domestic remedies").	

If you are bringing a claim based on national laws for protection of forests, you will usually bring a claim under national laws and codes specific to forests and protected areas or under constitutional or national human rights law. These types of laws fall within an area of law called "**public law**" or "**administrative law.**" This is the body of law that regulates the relationship between State and individuals and are often brought against the government or public bodies. There are many different areas of public law. Each area prevents public bodies from doing certain things or requires them to do certain things, and provides consequences when laws are broken.

Once you have outlined the facts of your case, look at the areas of law below and see which most closely relates to your situation. Then check your national law to see what the law is in your country.

Remember:

Your **legal analysis has to be supported by the evidence you have gathered**. You may wish to seek legal advice. A lawyer with expertise in the relevant area should be able to provide advice on the options available to you and advise on your chances of success.

The types of evidence you may need to support your argument will be outlined later in this section.

The specific content of these laws will change in different countries. However, below are the main types of law on which you could have a “**cause of action**” to base a national legal claim on.

2.1. What Laws Could I Base My Claim On?

A. Laws and Codes Specific to Forests/Protected Areas

In many countries, there are forest laws and codes specific to forests or similar protected areas that the government and other entities must follow. You may be able to bring a claim if your government, or another public body, fails to follow these laws. However, the exact content and cause of action will depend on your country’s laws, codes and regulations, and there may be circumstances where the defendants can be private companies. Therefore, remember to check the laws in your country before bringing a claim.

Case Example: [Sanga v Teika](#)

The claimants brought this timber rights case under the Solomon Island’s Forest Resources and Timber Utilisation Act. They requested an interim order to restrain the defendants from a number of activities including logging, building roads, and removing felled trees from the Tehakamagoku Land.

The Court granted the interim order, noting that continued logging would cause severe damage to the natural forest, as well as landscape and streams, and would take generations for it to recover.

This Guide primarily deals with laws that relate to deforestation, forest degradation and the need to protect forests from harm. However, forestry laws do not always need to wholly or directly relate to deforestation. Many countries have laws and codes that set out a number of other legal duties in relation to forests, including:

- Reforestation and conservation duties;
- Forest management duties; and
- Forestry reporting laws.

Case Example: [Law 20,283 on Native Forest Recovery and Forestry Development](#) (Chile)

This law governs the protection and recovery of native forests. It also regulates management plans for logging these forests.

TIP: It is not only laws about forests that can be relied on to protect forests. So many countries have general laws in relation to the environment and its protection which includes forests. Most countries also have laws regulating activities which may cause damage to forest areas, such as mining. These types of laws are discussed in more detail in **Sub-Pages 7 and 8 of this Guide**.

Key Resource: [ClientEarth Forest Logbook](#)

ClientEarth has created an excellent, open-access resource which is a centralised collection of a wide range of countries' forest protection laws and governance. It also includes information on measures that impact the trade of forest-risk commodities and other resources on forest legality.

Further Resource: [Grantham Research Institute on Climate Change and the Environment: Forest Laws and Policy Database](#)

LSE's Grantham Research Institute has a useful Climate Change Laws of the World database, which can be utilised to search for forest-specific laws and policies. The search can be narrowed to specific regions and countries, dates and types of legislation and instruments.

Further Resource: [World Resources Institute Forest Legality Initiative](#)

This resource was created by the World Resources Institute with help from the Environmental Investigation Agency and USAID. The website contains a Document Library and country-specific information for national and regional Laws & Policies relating to forestry resources, management, products and illegal logging.

Below you will find a number of examples of country-specific national laws and codes that are directly relevant to protecting forests. However, these are only a small number of examples, and it is important to check your country's laws as there are likely to be many more laws relevant to the protection of forests.

Brazil: [Brazilian NR](#)

This website contains unofficial translations of Brazilian regulatory standards and an easily accessible list of Brazil's main sources of Environmental Legislation, including a number of key forest regulations and management directives.

Brazil: Brazil 2012 - Original [Portuguese](#) version & Explainer [guide](#)

This is a key example of a national forestry law that can be used to challenge deforestation. It established a land maintenance system, which dictates that a percentage of rural land must be permanently maintained as forests and prohibits the clearing of vegetation of sensitive areas. Whilst legal deforestation is allowed on privately owned land, landowners must first obtain a deforestation licence from the government. Any deforestation that occurs without a licence is illegal. The Forest Code promotes environmental compliance (with the Rural Environmental Registry/CAR) and recognises the jurisdiction of state environmental agencies (OEMAs). An amended/new Forest Code

has been in force since 2012. See further WWF guidance, “[Brazil’s New Forest Code, Guide for Decision-makers in Supply Chains and Governments.](#)”

The following elements must be considered to bring an action against forest clearance under Brazil’s Forest Code:

1. The permit required for forest clearance is unambiguous and details the clearance process;
2. All forested lands are subject to an environmental and social evaluation of whether clearance is appropriate;
3. The timeframe for when to apply for a clearance permit is explicit and consistent across all relevant laws;
4. The rights of local communities and Indigenous Peoples to participate in decision affecting their land and resources are upheld; and
5. Laws are accompanied by strong enforcement and dissuasive penalties.

Brazil Case Example: [Public Prosecutor’s Office v. H. Carlos Schneider S/A Comércio e Indústria & Others](#)

Civil proceedings were filed against a group responsible for draining and clearing a mangrove forest and replacing it with landfill and other structures. The Forest Code of 1965 and Article 225 of the Federal Constitution of 1988 provided the legal basis for the court’s decision.

The Court declared that the destruction of the mangroves was illegal and ordered the defendants to restore the forest. It noted the ecological, social and economic function of the mangroves and the importance of preserving them.

Republic of Congo : [Law No. 33-220 of July 8, 2020 on the Forest Code](#)

The Republic of Congo recently passed a new law which governs the fundamental principles of the organisation and management of national forests in Congo. It also establishes rules for the exploitation and marketing of forest products and resources. Finally, the Forest Code recognises the statutory rights of local communities and Indigenous Peoples over the nation’s forests.

Chile: [Decree Law No. 4.363 of 1931 \(also known as the Forests Law\) and Decree Law No. 701 of 1974](#)

The 1931 law recognises the importance of the forests from an ecological, economic and social point of view, and applies to forest planted before 1974. It prohibits a number of activities including the cutting of native trees or shrubs and woodlands which are located near certain natural springs and on certain types of slopes. The 1974 law promotes forestry plantations whilst placing an obligation on owners to establish a management plan approved by the National Forestry Corporation prior to any intervention, e.g. felling (in natural or plantation forests).

India: [National Forest Policy 1988](#)

The core obligation under this Policy is to ensure environmental stability and maintain ecological balance of State Forests. Within this, existing forests and forest lands should be fully protected, and

their productivity improved. The national goal is to have forest or tree cover across a minimum of one-third of total land area. For more information as to policy updates in India, see [here](#).

National legislation may also designate forest land as a “**protected area**”. Where forest use takes place in a **protected area**, there may be further national procedural requirements or a complete ban on deforestation or degradation. Forest use can be challenged if these requirements or the prohibition are broken.

The relevant law for **protected areas** can be found within international and regional conventions or national legislation on protected areas and habitats. There also exist a number of international, regional and national instruments that create special protections for a given area.

Key Resource: [World Database on Protected Areas](#)

The WDPA is the most comprehensive global database of marine and terrestrial protected areas. It is updated on a monthly basis and includes protected areas designated under both international and regional conventions.

Further Resource: [IUCN](#)

The IUCN provides a key definition of **protected areas**, which are a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means to achieve the long-term conservation of nature with associated ecosystem services and cultural values.

Designating a place as a protected area enables actors to conserve biodiversity and protect local community livelihoods whilst protecting vital ecosystem services such as food, clean water supply, medicines and protection from the impacts of natural disasters such as floods. Protected areas are also vital for the mitigation of and adaptation to climate change; the IUCN notes it has been estimated that the global network of protected areas stores at least 15% of terrestrial carbon.

The IUCN has a number of helpful resources on protected areas, found [here](#).

Forest land may fall (fully or partially) within the following [categories](#) of protected areas:

- Strict nature reserve;
- Wilderness areas (i.e. largely unmodified areas without permanent or significant human habitation);
- National parks;
- National monuments or features;
- Habitat/species management areas;
- Protected landscapes/seascapes; and
- Protected areas with sustainable use of natural resources

These areas are classified according to their management objectives. They are often incorporated into a country’s national legislation. Designating forest land as a protected area may require states and relevant authorities to undertake a number of activities including:

- Biodiversity conservation;

- Inclusion of local communities in protected area governance; and
- Ecosystem maintenance.

If a state allows environmentally degrading activities to occur in a protected area or fails to do any of the specified activities, it may violate its national forestry legislation and principles of public and constitutional law.

Case Example: [Wilpattu Judgement](#)

The petitioner, a conservation and environmental justice organisation, brought a case concerning the clearing of forest land and development of displaced person settlements in the reserved forests in and nearby Wilpattu National Park in Sri Lanka. The case was brought against a number of public officials including those representing the Department of Forest Conservation, Department of Wild Life and the Minister of Industry and Commerce. Section 7 of Sri Lanka's Forest Conservation Ordinance prohibits certain clearing and development activities in reserved forests. Article 27(14) of the Constitution requires the State to protect, preserve and improve the environment for the benefit of the community and this obligation extended to public officials and representatives.

The Court concluded that the re-settlement of displaced persons in this area violated the Forest Conservation Ordinance.

Case Example: [Mining and Environmental Justice Community Network of South Africa and Others v Minister of Environmental Affairs and Others](#)

A South African Cabinet minister approved the development of a coal mine in the Mabola Protected Environment, which is a high-yielding water catchment area that is designed as a protected area under the Protected Areas Act. The claimants sought judicial review of this decision on a number of grounds including transparency, procedural unfairness and failing to take relevant considerations into account. The Pretoria High Court set aside the ministerial approval. This decision was upheld in the Constitutional Court, which [refused](#) to hear the mining company's appeal in 2019.

For more information on how you can use your national law and codes to challenge infrastructure projects (e.g. development and mining projects) that cause unauthorised or illegal deforestation, see [Sub-Page 5 "Acquisition of Forest Land/Rights in Forest Land"](#) of this Guide.

B. Constitutional and National Human Rights Relevant to Forests

Human rights are the **rights and freedoms held by every human being** without discrimination. Human rights protect our basic needs and freedoms.

In most countries, there are laws that protect human rights and Indigenous Peoples' rights (for an overview of IP rights, please see section C of this subpage). These are often found in a country's constitution but can also be found in your country's national human rights laws. These laws are generally enforced in national courts.

- There may be rights protected in your national constitution that may also be protected in international human rights law, such as the right to a healthy environment; and
- International human rights laws may not create legal rights or obligations which are enforceable in national courts, whereas rights under national constitutions are often enforceable in national courts.

Key Resource: [Constitute Project](#)

This database contains an open-access compilation of the world's constitutions. Constitutions can be filtered by topic (including "protection of environment" and "Indigenous rights") and by country.

(i) What Human Rights are Impacted by Deforestation?

Deforestation and associated forest degradation pose a serious threat to the enjoyment and exercise of our human rights. As deforestation is intimately connected to rising greenhouse gas emissions and levels of carbon in the atmosphere, many of the threats posed by deforestation are also related to climate change.

Resource: [Impacts of Deforestation and Forest Degradation](#)

This resource from WWF is a useful summary of the wider impacts caused by deforestation. As forests are carbon sinks, they help to mitigate the emission of carbon dioxide and other greenhouse gases. However, when forests are cut down, burned or cleared through other means, they emit carbon rather than absorbing it. This causes a number of serious threats to human wellbeing, including rising temperatures, changes to weather patterns and water cycles and increased likelihood of extreme weather events such as drought.

Resource: [Human Rights Impacts of Deforestation](#)

The Forest Peoples Programme provides a useful summary of some of the human rights impacts of deforestation, as well as a number of country-specific policy papers, case studies and facts on the topic.

The following human rights are most clearly affected by deforestation and degradation:

- **The right to life:** Deforestation poses a threat to human life and Indigenous Peoples due to its contribution to environmental degradation and climate change. A higher incidence of mortality is associated with extreme weather events, increased heat, drought and disease.
- **The right to health:** Deforestation increases pollution and causes loss of sources of traditional medicines. It also brings humans into closer contact with wildlife, and there is evidence of an increase in vector-borne diseases linked to deforestation. Climate change also presents a

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number of health-related impacts linked to extreme weather events, natural disasters and nutritional deficits linked to food shortages and loss of livelihood.

- **The right to a healthy environment:** Deforestation severely impacts ecosystems, threaten biodiversity and habitats and contributes to pollution and soil degradation.
- **The right to water:** Deforestation and forest degradation increase greenhouse gas emissions which contribute to changes in patterns of water availability and drought. Trees also play vital roles in sustaining water cycles. In addition many activities associated with deforestation, such as mining or intensive agriculture, themselves may use very large quantities of water
- **The right to food:** Clearing trees from the land impacts soil quality and can contribute to soil erosion, which in turn impacts crop production and yields. Many of the crops planted in place of deforested land also contribute to soil erosion. The contribution of deforestation to climate change can also result in the declining the availability of food.
- **The right to self-determination:** Deforestation threatens the existence and traditional livelihoods of Indigenous Peoples and communities. It compromises Indigenous People's rights to use traditional land and resources as they choose and infringes on Indigenous People's rights to self-government through the eradication of customary rights and land use conversion plans.
- **The right to culture and religion:** Deforestation infringes upon traditional knowledge, traditional livelihoods, access to traditional resources and cultural heritage (i.e. the destruction of sacred sites or areas of cultural importance).
- **Land, property and territorial rights:** Deforestation impacts Indigenous People's collective rights to own, control and manage their customary lands, territories and resources. In some cases, deforestation has disrupted livelihoods and cultures and has contributed to social conflict, loss of land rights and forced displacement/migration. The customary titles of Indigenous Peoples must be recognised on an equal basis with other forms of title such as individual private property.
- **The right to development:** Deforestation impacts the right to improve their wellbeing, as both a process and an outcome.

The Right to a Healthy Environment

A number of countries' constitutions guarantee the right to a **"healthy, clean and/or satisfactory"** environment. The following examples outline the different ways that a country's constitution may establish a right to a healthy environment and place duties on the state to fulfil this right.²

Example: [Constitution of Colombia](#)

Title II, Chapter III, Article 79 states: 'Every individual has the right to enjoy a healthy environment. An Act shall guarantee the community's participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.'

Example: [The Interim Constitution of Nepal 2063](#)

²https://www.iucn.org/backup_iucn/cmsdata.iucn.org/downloads/constitutional_provisions_related_to_environment_conservation_a_study.pdf

Article 16(1) states: ‘Everyone has the right to live in a clean environment’

Article 35(5) Policies of the State: ‘The State shall make such arrangements as may be required to keep the environment clean....The State shall make arrangements for the protection of, sustainable uses of, and the equitable distribution of benefits derived from, the flora and fauna and biological diversity.’

Example: Constitution of the Republic of Angola 1992

Article 24 states: All citizens shall have the right to live in a healthy and unpolluted environment. The State takes the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance. Acts that damage or directly or indirectly jeopardize conservation of the environment is punishable by law.

Even though these provisions do not provide an absolute an unqualified right to a healthy environment, they may be used as a basis for legal action on forest protection.

Case Example: [Sentencia 460-2018 de la Corte Suprema de Justicia, Sala de Casacion Civil, M.P. Luis Armando Tolosa Villabona \(2018\)](#)

This case was brought by Andrea Lozano Barragan and others against the President of Colombia and others. The petitioners asserted the increased deforestation in the Amazon threatens their rights to life, health and a healthy environment (including that of future generations and non-human subjects).

The Supreme Court decided that the claim could be brought on the basis that a violation of a group’s collective rights resulted in the violation of individual human rights. The Court ruled that ‘environmental protection intrinsically entails the safeguard of supralegal guarantees’ and fundamental rights such as the right to life are connected to the well-being of the environment and ecosystems. Moreover, ‘without a healthy environment, the subjects of rights and sentient beings in general will not be able to survive.’

Rights of Nature

One further right(s) that offers a potential opportunity to combat deforestation and degradation are the Rights of Nature. Whilst these are not human rights, they are protected in some countries’ constitutions and may place duties on the state to protect the rights of nature itself.

Key Case: [Caso Nro. 1149-19-JP/21: Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros](#)

In June 2020, Constitutional Court of Ecuador, agreed to take on a landmark [case](#) brought by communities near Los Cedros Reserve against the government on the grounds that its concessions for mining exploration and exploitation projects violate the Rights of Nature enshrined in the Ecuadorian constitution.

Ecuador's highest court [upheld](#) the rights of nature as enshrined in the country's constitution. The court held that the rights applied across Ecuador, as opposed to protected areas specifically.

The claimants had to prove their standing. See the section on “**Standing**” for more information on this area.

Example: [Panama](#)

In 2023, new legislation will come into force in Panama, which sets out an explicit definition of “nature” and its right to exist. The law will require the government's future domestic and foreign policies to align with and promote the rights of nature and ecosystems.

(ii) What Are My Government's Relevant Human Rights Obligations?

Governments have an obligation to **respect, protect and fulfil** their human rights obligations related to forests.

- **Respect:** This obligation requires government not to take action that interferes with your human rights.
 - You will need to prove that the interference with your rights was not justified
- **Protect:** This obligation requires governments to take action to prevent third parties (e.g. corporations, individuals) from interfering with human rights
 - For example: Government has obligation to adopt and enforce laws regulating corporations, ensure they are held accountable and that people receive a remedy when deforestation interfere with human rights
 - You will need to prove that the government has not taken reasonable steps to prevent, investigate, punish or provide access to remedies
- **Fulfil:** This obligation requires governments to take conservation measures to promote sustainability of forests and restore ecosystems
 - You will need to prove that the government has not taken reasonable steps in view of available resources

Case Example: [Sentencia 460-2018 de la Corte Suprema de Justicia, Sala de Casacion Civil, M.P. Luis Armando Tolosa Villabona \(2018\)](#)

This case was brought by Andrea Lozano Barragan and others against the President of Colombia and others. The petitioners asserted the increased deforestation in the Amazon threatens their rights to life, health and a healthy environment (including that of future generations and non-human subjects).

The Supreme Court decided that the claim could be brought on the basis that a violation of a group's collective rights resulted in the violation of individual human rights. The Court ruled that ‘environmental protection intrinsically entails the safeguard of suprallegal guarantees’ and fundamental rights such as the right to life are connected to the well-being of the environment and ecosystems. Moreover, ‘without a healthy environment, the subjects of rights and sentient beings in general will not be able to survive.’

Case Example: [Suray Prasad Sharma Dhungel v. Godavari Marble Industries and others](#)

The respondent company's activities were causing deforestation, pollution and environmental degradation to the Godawari forest and surrounding areas in Nepal. The Court held that a clean and healthy environment was part of the right to life under the constitution of Nepal. It ruled that the respondents must take action in the public interest to protect the air, water sound and environment and specifically, to protect the environment of the Godawari area.

See the **A4J [Environment](#)** and **[Land](#) Modules** for a broader picture of a state's environmental and land related human rights obligations.

(iii) What Right Should I Base My Claim On?

In deciding which rights to base a forests defence litigation claim on, you need to consider:

1. How does deforestation or degradation affect my human rights?

After you have gathered evidence about the impacts of deforestation and degradation in your country or region, think about the impacts outlined in the Introduction to this Guide and the list of rights above. Then narrow down the most relevant rights to your factual situation.

For example, if you are a member of an Indigenous community and deforestation has forcibly displaced you from your land, the right to culture, religion, land, property, and related territorial rights may be most relevant.

2. What human rights are legally enforceable in my country?

After you have identified the most relevant human rights, you need to check which ones are legally enforceable in your country. Although human rights are universal in principle, they may not all be recognised in a law that you can enforce.

If you want to enforce a human right in national courts, it must generally be contained in:

- Your **national constitution** or **national human rights laws**; and/or
- An **international or regional human rights treaty** which your state is a party to and is directly enforceable in your country.

If you are bringing a case regarding a national human right, you may have the option of going to a regional/international body if you don't succeed at the national level. For more information on International and Regional Human Rights related to deforestation, see [Sub-Page 3 International/Regional Laws and Conventions](#) of this Guide.

Additionally, in the event you are enforcing rights protected in a national constitution through domestic courts, the interpretation and application of that right to your case could be influenced by how similar rights are understood and enforced at both the international level and through a

comparative perspective (i.e. how national courts in other countries have approached similar perspective). For more information on how international law can be used in national courts, see [What Laws Could I Enforce](#) in the **A4J Going to Court Guide**.

(iv) How Can I Argue that the Government Has Violated My Human Rights?

Once you have identified a relevant and legally enforceable right, you need to argue that the government has **violated** that right. This means that it has breached the human rights obligations it owes you.

For this argument to be successful, you usually need to show:

- There has been an **interference** with your enjoyment of a human right. This means that deforestation has affected your rights. You must show the impact on your enjoyment of the human right has (i) reach a minimum threshold of seriousness; and (ii) is caused by deforestation or activities causing forest degradation. To demonstrate this, it will be important to have evidence of the legal test and threshold of seriousness to meet in your country, past cases which has reached this threshold, and deforestations impact on you; and
- The interference **cannot be justified**. Governments may try to justify deforestation and degradation on the basis of development goals or economic well-being. You must show that the government's actions were an unreasonable or disproportionate way to achieve these objectives when compared to the impact their failure has had on your rights. This will be a highly contested and fact sensitive argument.

Case Example: [Sheikh Asim Farooq v. Federation of Pakistan](#)

A group of citizens filed a petition against the Pakistani government for violating their rights by allowing widespread deforestation and endangering the climate. They argued that the government's failure to follow its own environmental policies and obligations to protect the forest violated their constitutional rights to life, dignity and access to public places of entertainment and provision of leisure places.

C. National Indigenous Peoples' Rights

Indigenous Peoples and local communities are fundamental for the protection and preservation of forests across the world. However, many Indigenous Peoples and communities are disproportionately subjected to socially, economically and environmentally harmful deforestation as a result of logging, mining and other development activities. These activities negatively impact the livelihoods, land and rights of Indigenous Peoples.³

At the national level, **Indigenous Rights** are often incorporated under national procedural and substantive bodies of law, such as laws that protect land rights. However, some countries enshrine

³ <https://amazonwatch.org/news/2020/0702-mining-on-indigenous-territories-brings-devastation>

Indigenous rights and specifically, **the right to consultation** and, where available, the right to **free, prior and informed consent** in their national legislation.

Example: [The Indigenous Peoples' Rights Act of 1997 \(Philippines\)](#)

This Act was created to recognise and promote all the rights of Indigenous Cultural Communities and Peoples within the framework of the Constitution. Lands possessed by these groups include ancestral and forest land.

The requirement for the communities' and individuals' free, prior and informed consent in matters affecting these lands is established in Section 58.

Those looking to bring a claim to their country's national courts based on their rights as Indigenous People should check your country's national forestry laws, land laws, constitutions, specific laws relating to Indigenous rights (if any), and national human rights obligations to determine what cause of action might suit you best.

Case Example: [Policy for Territorial and Environmental Protection of Indigenous Lands \(PNGATI\) \(Federal Decree 7.747/2012\)](#)

This is a Brazilian policy that aims to guarantee and promote the rehabilitation, conservation and sustainable use of Indigenous Land and territorial natural resources. It also aims to ensure the integrity of Indigenous land property, improve the quality of life and the physical and cultural conditions for present and future generations of Indigenous People.

For more information on Indigenous rights and deforestation, [see Acquisition of Forest Land/Rights in Forest Land in Sub-Page 5 of this Guide](#).

2.2. Who Can Bring a Claim?

In order to bring a constitutional, public law or human rights claim, you must have "standing" (the legal right to bring a claim).

See [Sub-Page 4](#) of this Guide for more information on standing.

TIP: Often the person or organisation that ought to bring a claim to enforce forest laws is a state prosecutor, or state department such as an environment protection agency. Sometimes the best way of protecting the forest is not to take legal action yourself but to ask a government agency to do so. However, these agencies are unwilling to take action to stop illegal activities. This may be due to lack of resources of knowledge, corruption or political pressure. Sometimes legal action can be taken against these agencies to compel them to take action to enforce the law.

2.3. Who Can I Bring a Claim Against?

For claims based on constitutional, public law or human rights, the appropriate defendant could be:

- The **State** as a whole (i.e. your country);
- The **government department, ministry or body** that is responsible for deciding forest and/or environmental policy in your country;
- **Corporate defendants**, depending on the facts of the case and the laws or codes engaged.

For further information, see “[Who Can I Bring Legal Action Against](#)” in the **A4J Going to Court Guide**.

2.4. What Evidence Do I Need to Bring a Claim?

In public law actions, it is the claimant (e.g. you) who has the “**burden of proof**”. This means the person bringing a civil claim needs to bring evidence to prove their case.

One of the first things you need to do to bring a successful claim is gather evidence that will be accepted in court. You must have a set of facts that describes what happened and evidence that supports your “**version of events**” (i.e. what you are saying happened). This is called “**factual evidence**” and will be used to support your claim.

You will need to ensure you have specific evidence of:

- **National environmental or climate change policy** that relates to the conservation, maintenance or protection of forests and protected areas;
- **National policies (if any)** that relate specifically to deforestation;
- **Deforestation activities** in an area by a government body/authorisation of deforestation by a government body AND/OR evidence of your government **failing to take action** to prevent deforestation;
- The **impacts of deforestation on you** (e.g. your land, property, health or finances); and
- Evidence of the **ecological impacts** of deforestation in your area.

For further information on evidence, including the scope of evidence you will need to provide, see the section on “**Evidence and Information**” in [Sub-Page 11](#) of this Guide.

For general information on evidence, see the section on “[How Can I Prove My Case](#)” in the **A4J Going to Court Guide**.

2.5. What Procedural Steps Do I Need to Take?

These claims are usually taken in **national administrative or constitutional courts**.

- In some countries, this process is called “judicial review” or a “constitutional petition”.
- In many Latin American countries, this process is called “amparo proceedings”.

The procedure that you must follow will depend on whether you live in a “**common law country**” or “**civil law country**”. The law in your country will outline a judicial review, constitutional petition or amparo process, so that you can bring a claim to the courts and the court may review the situation and provide a remedy.

Focus Point: Limitation Periods

A limitation period imposes a time limit within which a claimant may bring a case. The limitation period depends on the precise cause of action and will dictate the amount of time you have to file your case in court. If you do not file your case within the relevant limitation period, you may be prevented from bringing the claim.

Research the law in your country to determine the relevant limitation period for your claim. You will also need to identify when the time starts running for the limitation period. Time may start running from one of the following:

- The date the harm occurred (e.g. when a forest fire occurred);
- The date you learned about the harm; or
- The date the government made the specific policy decision or took an action that you are challenging.

In some cases, it may be possible to apply for the limitation period to be extended.

For more information, see “[What Procedural Steps do I need to take](#)” in relation to Administrative, Constitutional and Human Rights Cases in the **A4J Going to Court Guide**.

2.6. What Happens If I Win?

A. Remedies

If you bring a successful claim against the government in public law, human rights or constitutional law, you may be entitled to one or more of the below “**remedies**”. The outcome of a successful case will depend on your cause of action and specific claim:

- **(i) Declaratory Judgment:** the Court may be able to issue a declaratory decision that the government or public body has acted unlawfully. However, a declaratory judgement does not tell the government what to do.
- **(ii) Court Order:** If the Court finds that your country has violated its national laws, it may order the government to take a certain type of action. This may include:
 - Demand the government take action to stop deforestation;
 - Demand the government follow proper procedures in authorising deforestation; or
 - Require the government to commit to returning the deforested area to an acceptable state, e.g. through reforestation or afforestation plans.

- Require the government to pay compensation for the harm caused by any damages and evictions.

Case Example: [Future Generations v. Ministry of the Environment and Others](#)

The Court ruled in favour of the claimants and order the government to form a plan of action to combat deforestation; create an intergenerational pact for the Colombian Amazon (including measures to reduce deforestation and greenhouse gases to net zero); and to take immediate action to stop deforestation.

Case Example: [Sheikh Asim Farooq v. Federation of Pakistan](#)

Ruling in favour of the claimants, the judge ordered the Pakistani government to uphold its environmental laws and climate change policies, including its obligations to protect the forest. The judge also ordered the government to publish annual reports on progress of reforestation, punish those who illegally cut down trees and take disciplinary action against public officials who fail to carry out their duties.

If you have brought a successful case under Indigenous Peoples' rights, you may be granted the above remedies as well as:

- Granted an order declaring that you have ownership of the land and **native customary rights over the land** (for property rights claims); or
- **Given compensation or reparations.**

Case Example: [Brazil's Ashaninka Deforestation Settlement](#)

The Ashaninka people in the state of Acre in the Brazilian Amazon received reparations for deforestation that occurred on their lands in the 1980. The logging company, which supplied Europe's furniture industry, was owned by the family of the current governor of Acre. The case involved a number of constitutional questions, including the right to a decent life.

It is important to remember that the **affected individuals and communities should lead on deciding which remedies are appropriate**, as opposed to NGOs or lawyers. For most communities, restoration of their land, or rights over their land, is the main priority. Consider the community impacts of each possible remedy.

For more information, see our general page, "[What Remedies Are Available?](#)" in the **A4J Going to Court Guide**.

B. Enforcement

Winning in court is only the start of the process. Many successful court judgments are either not enforceable or are not enforced in practice.

You may be able to go back to court and ask for the judgement to be defined and enforced. See the general page on [“How Can I Enforce a Court Order”](#) in the A4J Going to Court Guide.

2.7. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these, see the relevant headings in [Sub-Page 11 “Going to Court”](#) of this Guide.

SUB-PAGE 3: INTERNATIONAL/REGIONAL LAWS AND CONVENTIONS

There are a number of **international and regional treaties, conventions and legal mechanisms** which may be relevant to legal action in relation to deforestation or failure to comply with legal obligations to undertake sustainable forestry management. Generally, a country's head of state signs a treaty or convention on behalf of their country. The country then follows an internal ratification process. The process differs from country to country but could include enacting national legislation that makes the international treaty or convention law under domestic law (e.g. section 231 of the Constitution of South Africa). Once completed, that country is bound by the particular treaty.

How the provisions of an international agreement or legal mechanism can be utilised by individuals or legal entities within that country depends on the country's domestic legal system. For example, according to section 39(1)(b) of the Constitution of the Republic of South Africa requires South African Courts to consider international law when interpreting its Bill of Rights. This means that individuals can refer to and rely on international agreements in South African courts.

Even if international agreements cannot be relied upon in legal claims by ordinary citizens, sometimes a breach can only be alleged in actions between states.

Even where these laws and instruments cannot be relied upon directly, they may set out standards or obligations which can be relied upon. For example, a private citizen cannot usually bring a legal action to compel a state to observe its treaty obligations. But if there is an issue in a legal case as to whether a state's policy is reasonable or justifiable if an action, it will be harder to justify a policy which is not consistent with the state's international obligations, such as human rights obligations or those under the Convention on Biological Diversity.

Remember:

Your **legal analysis has to be supported by the evidence you have gathered**. You may wish to seek legal advice. A lawyer with expertise in the relevant area should be able to provide advice on the options available to you and advise on your chances of success.

The specific content of these instruments varies. However, below are some examples of the legal obligations that may give rise to a **"cause of action"** to base a deforestation case on.

3.1. What Laws Could I Base My Claim On?

There are a wide range of international conventions (i.e. treaties) and other agreements that can be utilised to challenge unauthorized deforestation. The following (non-exhaustive) list of conventions and other sources of international law that may be of relevance to your situation; however, they represent only a small section of relevant international law.

Before bringing a claim under one of the following international or regional laws, check to whether the agreement is legally binding and to see if your country has signed and ratified the relevant convention.

A. International Laws, Regional Laws and Conventions Relevant to Forests⁴

(i) *Legally Binding International Agreements*

1. The Convention on Biological Diversity (CBD)

Whilst the [CBD](#) does not directly address forests, Article 1 states, ‘the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.’ As such, forests fall within the remit of this definition. The CBD has also directly addressed forests through its [expanded programme of work](#) on forest biological diversity. States have national reporting obligations, and the Conference of Parties to the CBD issues a number of decisions regarding liability and redress for damage to biological diversity. The CBD also has a number of Protocols for the protection of biodiversity and genetic resources that can aid in the defence of forests.

For more information about the link between biodiversity and deforestation, see [Sub-Page 7 “Other Mechanisms”](#) of this Guide.

2. UN Framework Convention on Climate Change (UNFCCC)

As carbon sinks, forests play a crucial role in the mitigation of greenhouse gases and will be detrimentally affected by climate change. Whilst the UNFCCC lacks enforcement mechanisms, a state party’s obligations under the UNFCCC can be invoked to force a government to take positive action or cease activities that will have a negative climate impact (e.g. deforestation). The UNFCCC Conference of Parties also created a framework to guide the implementation of [REDD/REDD+](#) activities in the forest sector. As such, a state has a number of obligations in respect of these projects. Finally, the [Paris Agreement](#) includes the obligation for parties to take action to conserve and enhance forests.

For more information on the connection between deforestation, climate change and REDD/REDD+, see [Sub-Page 8 “Climate Change Issues”](#) of this Guide.

3. UN Convention to Combat Desertification (UNCCD)

The [UNCCD](#) is a legally binding international agreement which links the environment and development to sustainable land management, including forestry management. The Parties to the UNCCD have a number of obligations including to cooperate to combat desertification and drought and to restore land and soil conditions. The UNCCD can be invoked to force a signatory country fulfils the aims of these obligations in respect of their forestry management policies.

⁴ This guide is outdated but a useful summary of international law re: forests <https://policy-powertools.org/Tools/Engaging/docs/law%20for%20forests2.pdf>

4. Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters

The [Aarhus Convention](#) can be invoked to ensure your country is upholding the principles of access to environmental information, public participation and access to justice in environmental matters, including matters relating to the forest sector. There are also opportunities for public involvement in compliance reviews (Article 15).

5. International Tropical Timber Agreement (ITTA) 2006

The [ITTA](#) is a trade agreement which governs the international trade of tropical timber. Members are encouraged to develop national policies aimed at the sustainable management and conservation of tropical timber producing forests. It can be invoked to protect a tropical forest where illegal logging and unsustainable forestry management are occurring within the tropical timber economy. The International Tropical Timber Organization's governing body, the [International Tropical Timber Council](#) takes decisions and makes recommendations on forest related policies and finance field-led projects.

6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The main aim of [CITES](#) is to ensure that international trade does not threaten the survival of a number of listed endangered species, including endangered forest species. CITES can be invoked to ensure that your country is complying with its conservation (i.e. preventing illegal logging of protected species) and its monitoring and enforcement obligations.

7. Convention for the Protection of the World Cultural and Natural Heritage (CWH)

The [CWH](#) provides for the protection of natural heritage, which includes physical and biological formations, physiographical formations which constitute the habitat of threatened species of animals and plants, and natural sites of outstanding universal value, which extends to forests. It is a conservation treaty that can be invoked to ensure your country is fulfilling its duty to identify, protect and conserve these areas.

(ii) Non-Legally Binding International Agreements

This section contains a non-exhaustive list of non-binding sources of international law which can be used to support your case. Whilst these agreements are not technically legally binding (i.e. they are not conventions), they may reflect emerging standards of international law and will carry a degree of legal significance in supporting a case against unauthorised deforestation.

1. The Rio Declaration of the UN Conference on Environment and Development ("Earth Summit") (Rio Declaration)

The principles contained in the [Rio Declaration](#) can be used to demonstrate whether your country is pursuing sustainable development, including sustainable forestry management. This includes several important principles for forestry management, including:

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- The **“No-harm principle”** which requires states to prevent transboundary environmental harm in other countries where the source of the harm comes from their territory. States that allow large scale deforestation may facilitate transboundary harm to other states.
- The **“Precautionary principle”** which provides that whenever there are threats of serious or irreversible damage, lack of full scientific certainty cannot be used as an excuse for postponing measures to prevent environmental degradation.
- The **“Polluter Pays principle”** which requires a polluter to bear the expense of pollution prevention and control measures and of remedial measures to return the environment to an acceptable state.

Case Example: [Wilpattu Judgement](#)

The petitioner, a conservation and environmental justice organisation, brought a case concerning the clearing of forest land and development of displaced person settlements in the reserved forests in and nearby Wilpattu National Park in Sri Lanka.

The Court concluded that the re-settlement of displaced persons in this area violated the Forest Conservation Ordinance. In deciding what remedies were appropriate, the Court considered the Polluter Pays principle. The Court issued an order for the respondents to take action to implement a tree planting programme at their own cost.

2. UNCED Agenda 21

[Agenda 21](#) is a non-binding action plan. It contains provisions specific to combatting deforestation, management of land resources and managing fragile ecosystems. It has a number of objectives for combatting deforestation, including the need to enhance activities related to the management, conservation and sustainable development of forests. You may be able to refer to the objectives found in Agenda 21 to demonstrate whether your country is pursuing effective and sustainable forestry management.

3. Addis Abba Principles and Guidelines for the Sustainable use of Biodiversity

The [Addis Abba Principles](#) seek to prevent biodiversity decline by promoting sustainable use of biological diversity. It promotes governing frameworks that are consistent with international and national law as well as science and traditional knowledge. The principles can be used to encourage your country to strengthen its procedural and substantive approaches to forest management and conservation.

(iii) *Other International Legal Mechanisms*

1. International Court of Justice

The decisions of the International Court of Justice (ICJ) can be a useful source for determining a state's obligations of international law. It has dealt with a number of cases relevant to development activities

causing transboundary environmental harm. The general principles of international law outlined in these decisions may be used to establishing state responsibility for sustainable development, e.g. sustainable forestry management.

Case Example: [Case Concerning the Gabčíkovo-Nagymaros Project \(Hungary/Slovakia\)](#)

This case concerned the construction of two dams in Slovakia and Hungary. The treaty governing the construction of these dams addressed the environmental impact of the project and noted that the water in the Danube river should not be degraded as a result of the development and operation of the dams.

Hungary eventually abandoned its dam due to the environmental impacts, but Slovakia did not immediately do so. Hungary argued that states must take action to prevent transboundary environmental harm on the basis of the precautionary principle. The principle of sustainable development was also discussed in a separate opinion to this case, with the Judge noting that development and the environment must be balanced.

These principles can be applied to projects that are causing significant environmental damage to the territory another state through deforestation or are causing forest degradation through transboundary environmental harm (e.g. pollution).

Case Example: [Nicaragua/Costa Rica](#)

Costa Rica brought a case against Nicaragua for environmental harm done to wetland vegetation located at the mouth of the San Juan River. The ICJ had previously ruled that Nicaragua had violated the sovereignty of Costa Rica through a land dispute. The ICJ ordered Nicaragua to compensate Costa Rica for this environmental damage.

For general information on international law and environmental harm, see the **A4J** [Environment Module](#).

2. International Criminal Court (ICC)

In recent years, the ICC has widened its remit to investigate environmental destruction cases. It will now also adjudicate on environmental crimes, such as illegal deforestation. It will have the power to prosecute both individuals and governments. There have also been recent proposals for the ICC to recognise ecocide as a crime.

Currently, under the Rome Statute of the ICC (Article 8(2)(b)(iv)), the list of war crimes in international armed conflicts includes intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

Environmental destruction that is linked to inhumane acts that intentionally cause great suffering or serious injury to bodily, mental or physical health can also fall within the ICC crimes against humanity.

ICC Investigation of Cambodia

In 2014, a communication was submitted to the ICC prosecutor's office according to Article 15 of the Rome Statute concerning widespread instances of land grabbing (illegal land transfers), including of forest land, in Cambodia.

It was argued the continued land grabbing amounted to a crime against humanity, per Article 7 of the Rome Statute. The decision of the office of the prosecutor to accept land grabbing and environmental destruction as falling within the ICC's mandate opens the remit of the ICC up to deforestation cases that cause significant harm.

Petition to the ICC on Crimes Against Humanity and Indigenous Genocide in Brazil

In 2019, the Brazilian Human Rights Advocacy Collective and the Dom Paulo Evaristo Arns Human Rights Commission delivered a report to the ICC, calling for an investigation into President Bolsonaro for the incitement of genocide of Indigenous People (for fires and environmental damage) and attacks on their land related to the expansion of logging, mining and agricultural industries.

The ICC recently [confirmed](#) that it is reviewing the petition to assess whether it is under the Court's jurisdiction.

4. International Economic Agreements

Some international economic organisations have created agreements that either explicitly or implicitly incorporate forestry management and sustainable economic development into international trade laws.

Example: World Trade Organisation (WTO) rules and the General Agreement on Tariffs and Trade (GATT)

Whilst forests are not explicitly mentioned, the GATT text notes the importance of the world's natural resources and the need for promoting sustainable development through the regulation of international trade.

The WTO dispute panels and Appellate Body have the power to hear disputes regarding the interpretation of WTO rules. The rules and past interpretations of WTO dispute bodies are [broadly relevant to](#) the trade of timber, proof of legality and combatting illegal logging in international trade.

For more information on these issues, see [Sub-Page 9 "Supply Chains"](#) of this Guide.

(iv) Regional Courts

Regional courts can also be used to combat unauthorised deforestation and enforce your states obligations regarding sustainable forest management. Check to see which regional court has jurisdiction over your country.

Case Example: [European Commission v Poland \(Poland/EU\)](#)

The European Commission launched a legal cause against Poland after the Polish government tripled logging limits in the Białowieża Forest, despite scientific warning that it would negatively impact biodiversity, endangered species and forest fire prevention. The Court of Justice of the European Union ruled that Poland broke EU environmental law. The increased logging limits were held to be illegal for a number of reasons, including the fact they endangered protected species within the Białowieża Forest ecosystem.

B. International and Regional Human Rights Instruments Relevant to Forests

Human rights are the **rights and freedoms held by every human being** without discrimination. Human rights protect our basic needs and freedoms. Human rights are contained in international human rights instruments, such as:

- International Covenant on Civil and Political Rights; and
- International Covenant on Economic Social and Cultural Rights.
- If a state signs and ratifies these treaties, they become “**binding**” on your state at international law. You can check whether your country has signed and ratified a UN Human Rights Treaty [here](#).

Key Case: [Sami community case before the Committee on the Elimination of Racial Discrimination \(CERD\)](#)

The Vapsten Sami reindeer herding community practice traditional reindeer herding. Members of this Indigenous community have petitioned the CERD, arguing that Sweden’s grant of mining concessions in their traditional territory have violated their convention rights to property, to equal treatment before tribunals and organs of justice, and to effective protection and remedies. The CERD concluded that the petitioners’ rights to property had been violated and recommended that Sweden provide an effective remedy to the community by revising the mining concessions after an adequate process of free, prior and informed consent.

Key Case: [The Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights](#)

The IACtHR held that the obligation for States to guarantee (i.e. protect) rights under the **American Convention on Human Rights** included an **obligation to prevent significant damage to the environment** which would interfere with other rights. This obligation includes:

- A **duty to regulate** activities that threaten to cause environmental damage which impact other rights;
- A **duty to supervise** and control such activities; and
- A **duty to mitigate** environmental damage that is occurring.

Key Case: [Case of the Saramaka People v. Suriname](#)

The Saramaka, a Maroon and Indigenous Peoples living in Suriname, had their customary lands handed out to mining and logging companies without any regard for their rights. The Saramaka claimed they had the right to use and possess the territory for their cultural, religious and economic activities. They asserted they have a right to use and enjoy the natural resources that lie on and within their traditionally owned territory.

The Inter-American Court of Rights found a violation of Article 3 (Judicial Personality); Article 21 (Right to Property) and Article 25 (Right to Judicial Protection) of the American Convention of Human Rights. The Court asked Suriname to delimit and demarcate the territory to the Saramaka people in accordance with their customary laws, and through effective and fully informed consultations.

(i) What Human Rights are Impacted by Deforestation and Degradation?

Deforestation and associated degradation pose a serious threat to the enjoyment and exercise of our human rights. As deforestation is intimately connected to rising greenhouse gas emissions and levels of carbon in the atmosphere, many of the threats posed by deforestation are also related to climate change.

See [Sub-Page 2](#) of this Guide for the human rights most clearly affected by deforestation and degradation.

(ii) What Are My Government's Relevant Human Rights Obligations?

Governments have an obligation to **respect, protect and fulfil** their human rights obligations related to forests.

- **Respect:** This obligation requires government not to take action that interferes with your human rights.
 - You will need to prove that the interference with your rights was not justified
- **Protect:** This obligation requires governments to take action to prevent third parties (e.g. corporations, individuals) from interfering with human rights
 - For example: Government has obligation to adopt and enforce laws regulating corporations, ensure they are held accountable and that people receive a remedy when deforestation interfere with human rights
 - You will need to prove that the government has not taken reasonable steps to prevent, investigate, punish or provide access to remedies
- **Fulfil:** This obligation requires governments to take conservation measures to promote sustainability of forests and restore ecosystems
 - You will need to prove that the government has not taken reasonable steps in view of available resources

See the **A4J** [Business & Human Rights](#), [Environment](#) and [Land](#) **Modules** for a broader picture of a state's environmental and land related human rights obligations.

(iii) What Right Should I Base My Claim On?

In deciding which rights to base a forests defence litigation claim on, you need to consider:

1. How does deforestation or degradation affect my human rights?

After you have gathered evidence about the impacts of deforestation and degradation in your country or region, think about the impacts outlined in the Introduction to this Guide and the list of rights above. Then narrow down the most relevant rights to your factual situation.

For example, if you are a member of an Indigenous community and deforestation has forcibly displaced you from your land, the right to land, property and related territorial rights may be most relevant.

2. What human rights are legally enforceable in my country?

After you have identified the most relevant human rights, you need to check which ones are legally enforceable in your country. Although human rights are universal in principle, they may not all be recognised in a law that you can enforce.

These rights will be contained in an **international or regional human rights treaty** which is directly enforceable in your country

Key Example: [African Charter on Human and People's Rights](#)

54 states in Africa have signed and ratified the African Charter, making it directly enforceable in these countries. For example, Article 14 establishes a right to property and Article 24 states 'all peoples shall have the right to a general satisfactory environment favourable to their development'.

(iv) How Can I Argue that the Government Has Violated My Human Rights under International Law?

Once you have identified a relevant and legally enforceable right, you need to argue that the government has **violated** that right. This means that it has breached the human rights obligations it owes you.

For this argument to be successful, you usually need to show:

- There has been an **interference** with your enjoyment of a human right. This means that deforestation has affected your rights. You must show the impact on your enjoyment of the human right has (i) reach a minimum threshold of seriousness; and (ii) is caused by deforestation. To demonstrate this, it will be important to have evidence of the legal test and threshold of seriousness to meet in your country, past cases which has reached this threshold, and deforestations impact on you; and
- The interference **cannot be justified**. Governments may try to justify deforestation and degradation on the basis of development goals or economic well-being. You must show that the government's actions were an unreasonable or disproportionate way to achieve these objectives when compared to the impact their failure has had on your rights. This will be a highly contested and fact sensitive argument.

Key Example: [The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean \(Escazú Agreement\)](#)

This treaty guarantees implementation of the rights of access to a number of procedural human rights relating to the environment. Its objectives contribute to the protection of the right of present and future generations to live in a healthy environment and to sustainable development.

(v) What Action Can I Take?

Individual Complaints to Regional Human Rights Courts and Commissions

Regional human rights courts and commissions can **enforce regional human rights treaties** when available domestic mechanisms (courts or other) have failed to protect your human rights.

- Individual complaints to regional human rights bodies are like bringing human rights or constitutional claims before national courts (they are **legal complaints**).

- This means that **the guidance provided on issues of law, evidence and procedure in the previous sections is relevant** to these complaints.

When could a complaint to a regional human rights court or commission be right for me? Bringing a claim to a regional or international court could be helpful in the following cases:

- You have tried and failed to bring a public claim against your government in national courts (up to the highest level);
- The national courts in your country are ineffective;
- The judgment from a national court hasn't been enforced or followed by the government; or
- You want to take a case against another country's government.

When Could I Bring a Complaint to a Regional Human Rights Court or Commission?

You may have the option of bringing an “individual complaint” (i.e. a case) to a regional or international human rights body if:

- (i) Your case is being brought **against the government**

For this reason, complaints to regional human rights courts or commissions are **most relevant to mitigation claims, adaptation claims or challenges to government licensed projects.**

- (ii) Your case is based on **human rights law**

These complaints are only relevant to claims where you are arguing that a human right that is protected in the relevant international human rights treaty has been violated. For this reason, it's important you check what rights are protected in the relevant treaty.

- (iii) Your country has **signed and ratified** a regional human rights treaty which gives a regional human rights court or commission **jurisdiction** to hear human rights complaints regarding your country.

For example:

- If in Europe, you could go to the **European Court of Human Rights** which enforces the **European Convention on Human Rights**;
- If in the Americas, you could go to the **Inter-American Commission on Human Rights** or the **Inter-American Court of Human Rights** to enforce your rights under the **American Convention on Human Rights**.
- If in Africa, you could go to the **African Commission on Human and Peoples' Rights** or the **African Court of Human and Peoples' Rights** to enforce your rights under the **African Charter on Human and Peoples' Rights**.

- If in West Africa, you could enforce the same rights before the ECOWAS Community Court of Justice. This is not a human rights court, but it can hear

These bodies can launch investigations into your case, facilitate negotiations between you and the government, declare that your government has violated your human rights, and order the government to give you a remedy and change its laws or policies.

Key Example: [The Ogiek Case in Kenya](#)

The Ogiek people have lived in the Mau Forest, their ancestral lands. They were evicted from a large part of their lands on the basis that the forest constituted a reserved water catchment zone and part of government land.

Following an eight-year legal battle, in 2017 the African Court found that the the Ogiek were Indigenous People and that the Kenyan government violated seven separate articles of the African Charter, including rights to property including land, rights not to be discriminated against, right to development and rights to practise traditional religion and culture, as the Ogiek had a close link with their forest environment. The conservation of the Mau Forest could not be used as a justification to evict the Ogiek, nor were the Ogiek responsible for their degradation (a key point in relation to conflict between conservation and IP rights)

(iv) Your claim is considered **admissible** by the regional human rights court or commission

For your claim to be admissible, you generally must show:

- That you are a “**victim**” of your government’s actions or omissions (i.e. that your health has been negatively impacted by their actions or omissions). This is similar to proving “**standing**” in national courts.
- That you have **evidence** to back up your claim.
- That you have first tried to bring your claim before national courts – this is often referred to as the “**exhaustion of local remedies**”
 - The exception to this rule is the ECOWAS Community Court of Justice

Individual Complaints to UN Human Rights Treaty Bodies

There may be the possibility to enforce your state’s human rights obligations through individual complaints before UN human rights treaty bodies.

[\[video\]](#)

While these aren't courts, they have individual complaints mechanisms which hear individual complaints like a court.

Case Example: [Länsman et al v Finland](#)

A permit was granted by Finland's Central Forestry Board to a private company to quarry stone from the Etela-Riutusvaara mountain. Indigenous members of the Muotkatunturi Herdsmen argued that the quarrying and transportation of stone through their reindeer herding territory would violate their right to culture under Article 27 of the International Covenant on Civil and Political Rights.

The UN Human Rights Committee concluded that because the quarrying was limited to a small area, it did not 'substantially' infringe the community's rights. However, it noted that future approval of mining activities in the area may violate the herdsmen's right to culture. The Committee also stressed the importance of consultation before undertaking these activities (though the requirement of the community's consent was not expressly addressed).

To access these bodies, your country must:

(i) Be a party to the relevant international human rights treaty

AND

(ii) Have accepted the competence of the treaty body to receive complaints against the state; this may be in the optional protocol to the treaty

AND

(iii) You must have first tried to bring your claim before national courts – this is often referred to as the “**exhaustion of local remedies**”

Key Resource: [OHCHR Website](#)

Here you can find information on:

- What countries have signed and ratified different human rights treaties
- The different treaty bodies that exist
- Guides for how to submit a complaint
- Past cases and examples

Submitting Shadow Reports to UN Treaty Bodies and other UN Human Rights Bodies

UN Treaty Bodies have a role in monitoring the human rights compliance of countries under UN human rights treaties.

As part of this role, UN Treaty Bodies issue **concluding observations** every few years about each country's human rights record.

- Concluding observations are general assessments of countries' compliance with specific UN human rights treaties. They identify failings and achievements of countries and make recommendations on how to improve their human rights record.

The concluding observations are based on:

- The country's own reporting of its human rights record;
- **Shadow reports of civil society organisations;** and
- Questioning of countries by the UN Treaty Body.

Key Resource: Indigenous and Human Rights NGOs Report to UN Committee on the Elimination of Racial Discrimination (CERD)

A group of NGOs in Indonesia prepared this submission, which focused on the destruction of customary forests on Indigenous lands for the development of roads, logging, palm oil plantations and mining projects and the resulting harm to local Indigenous populations. The NGOs called on the CERD to urge Indonesia to take action to suspend the expansion of these operations and enact legislation to protect the rights of Indigenous Peoples. They also called for remedial action for the ongoing rights violations in existing palm oil plantations.

If your country is due to report to a relevant UN Treaty Body and want to put deforestation on the agenda, the resources [here](#) and below may be a useful starting point:

- Human Rights Committee NGO [Guidelines](#) for the Reporting Process
- Committee on the Elimination of Racial Discrimination [Information for Partners](#)
- Committee on Economic, Social and Cultural Rights [Information Note](#) for civil society and national human rights institutions
- Committee on Rights of the Child [Guide on Reporting Cycle](#) for NGOs and national human rights institutions
- [Committee on the Elimination of Discrimination against Women](#)

Complaints to UN Special Rapporteurs

UN Special Rapporteurs are independent experts which focus on specific human rights issues. As part of their mandate, they can receive complaints from individuals.

- This is not a legal process and the outcome is not binding on countries but can be used to put pressure on your country to take more climate action.

For example, complaints can be submitted to the **Special Rapporteur on the Rights of Indigenous Peoples** under the special procedures mechanisms. The Special Rapporteur's thematic reports and recommendations can be a helpful resource for protecting Indigenous rights and their forest homes from logging or other activities which threaten them.

Key Resource: [Attacks and criminalisation of Indigenous human rights defenders: report](#)

The Special Rapporteur was concerned at the increasing number of threats faced by Indigenous Peoples, especially in respect of large-scale development projects such as logging, agribusiness and extractive industries.

This report contains a number of recommendations for stakeholders who are seeking to prevent violations and improve protection of Indigenous rights.

C. Indigenous Peoples' Rights under International Law

There are a number of useful sources of international law that uphold the rights of Indigenous Peoples and recognise the important role that Indigenous knowledge and cultures play in protecting forests across the world.

Whilst there is significant overlap between Indigenous rights and international human rights law, there are a number of legal instruments that are specific to the protection of Indigenous rights, which can be used in tandem with general human rights law.

Example: [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#)

Although the UNDRIP as a whole is instrumental in protecting Indigenous rights, several provisions relate directly to the protection of the environment and Indigenous land rights and can therefore be invoked to show that deforestation has infringed upon Indigenous rights.

Article 3: Indigenous peoples have the right to self-determination...

Article 19: States must obtain free, prior and informed consent between adopting or implementing measures that may affect Indigenous Peoples

Article 29(1): Indigenous peoples have the right to the conservation and protection of the environment and productive capacity of their lands or territories and resources...

Example: [International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#)

This is a major, binding international convention concerning Indigenous and tribal peoples which provides measures for safeguarding Indigenous Peoples and their institutions, property, labour, cultures and environment of the peoples concerned.

Example: [The Nagoya Protocol on Access and Benefit-Sharing](#)

The Nagoya Protocol covers access to genetic resources (i.e. trees and any food, medical, research etc. benefits arising from their use) and the equitable sharing of benefits arising from the utilisation of these genetic resources. It is a highly important instrument for the protection of Indigenous knowledge and the rights of Indigenous peoples over the genetic resources they hold. The Nagoya Protocol can be utilised to enforce a state Party's obligations to enact legislation to promote equitable access to these resources and share the benefits arising from their use with local communities.

For further information on the protection of Indigenous environmental and land rights, see [Sub-Page 5 "Acquisition of Forest Land/Rights in Forest Land"](#) in this Guide and more generally, the [A4J Environment](#) and [Land](#) Modules.

D. Business and Human Rights

There has been a movement towards greater corporate violations of human rights in respect of the environment.

Usually, human rights claims can only be brought against the State. But in some countries, there are "**due diligence laws**" that allow individuals to take human rights claims directly against businesses when they do not take reasonable steps to prevent human rights abuse in their operations.

- These laws could be used to take claims against corporations that are engaging in deforestation and violating your human rights.

Key Resources: [2008 UN Protect, Respect and Remedy Framework](#) and [2011 Guiding Principles](#)

The Framework is based on three pillars:

1. The State duty to protect human rights;
2. The corporate responsibility to respect human rights (the Guiding Principles recommend human rights due diligence as a central approach); and
3. Access to remedy where human rights are violated.

Human rights due diligence entails a company's responsibility to:

- Identify and assess human rights risks;

- Prevent and mitigate adverse human rights impacts; and
- Account for how it addresses human rights impacts.

Key Resource: [The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights in Practice: Extraterritorial Obligations in the Context of Eco-Destruction and Climate Change](#)

The 2011 [Maastricht Principles](#) provide a useful framework for protecting human rights in the face of harmful acts and omissions outside of a State's territory.

This resource provides useful information on the operation of the Maastricht Principles in respect of environmental harm and climate change, including the extraterritorial obligations pertaining to tropical forests, climate change and forests, and illegal logging.

It also addresses the risks posed by environmental destruction to non-state actors, Indigenous Peoples and environmental defenders.

There is also currently a draft treaty entitled '**Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises**'. This draft treaty aims to prevent and mitigate the occurrence of human rights abuses in the context of business activities. In the current version of the draft treaty, human rights abuses specifically includes any direct or indirect harm in the context of business activities to any person or group of persons that impedes their full enjoyment of human rights, including the right to a safe, clean and sustainable environment (Article 1(2)).

Even if human rights are not directly enforceable against corporations in your country, human rights principles and standards, such as the **UN Guiding Principles on Business and Human Rights**, could be used to support a case based on tort law or another legal basis. For more information on the human rights responsibilities of businesses, see the [Action4Justice Business and Human Rights Guide](#).

3.2 Who Can Bring a Claim?

In order to bring a claim through the international legal instruments, you must have "**standing**" (the legal right to bring a claim).

For example, to bring an individual complaint to the regional bodies and the UN Treaty bodies, you must prove that you have been harmed by your government's actions or omissions and that you have exhausted all domestic remedies in your country.

See [Sub-Page 4](#) of this Guide for more information on standing.

3.3. Who Can I Bring a Claim Against?

For claims based on international law, the appropriate defendant could be:

- The **State** as a whole (i.e. your country); or
- The **government department, ministry or body** that is responsible for deciding forest and/or environmental policy in your country; or
- In specific circumstances, e.g. Business and Human Rights claims, the defendant may be **a corporation**.

For further information, see [“Who Can I Bring Legal Action Against”](#) in the **A4J Going to Court Guide**.

3.4. What Evidence Do I Need to Bring a Claim?

The evidence required will depend on the type of claim you are bringing.

For further information on evidence, including the scope of evidence you will need to provide, see the section on [“Evidence and Information” in Sub-Page 11](#) of this Guide.

For general information on evidence, see the section on [“How Can I Prove My Case”](#) in the **A4J Going to Court Guide**.

3.5. What Happens if I Win?

A. Remedies

If you bring a successful claim against a state or corporation, you may be entitled to one or more of the below **“remedies”**. The outcome of a successful case will depend on the cause of action and specific claim:

- **(i) Concluding Observations and Reports:** The relevant UN Committee or Special Rapporteur may issue a general assessment of countries’ compliance with specific UN human rights treaties or a report on the issue at hand. These remedies identify failings and achievements of countries and make recommendations on how to improve their human rights record. However, these are **not legally binding**.
- **(ii) Court Order:** If the Court finds that a state or business has violated its due diligence obligations under international law, it may order it to take a certain type of action. This may include:
 - Where human rights are directly enforceable on a business in your country, the Court may require the corporation to take due diligence measures regarding deforestation and the human rights impacts of their activities

- Requiring a State to uphold its duty to protect human rights related to deforestation by halting the activities in question, changing its laws or policies, providing compensation or restoring the degraded area

If you have brought a successful case under Indigenous Peoples' rights you may be granted the above remedies as well as:

- Be granted **rights or a declaration of rights, including customary rights, over the land** (for property rights claims); or
- **Given compensation.**

It is important to remember that the **affected individuals and communities should lead on deciding which remedies are appropriate**, as opposed to NGOs or lawyers. Consider the community impacts of each possible remedy.

For more information, see our general page, "[What Remedies Are Available?](#)" in the **A4J Going to Court Guide**.

B. Enforcement

Winning in court is only the start of the process. Many successful court judgements are either not enforceable or are not enforced in practice.

Example: [Ogiek Case](#)

Three years after the landmark decision, Kenya has yet to implement the African Court on Human and Peoples' Rights' judgment in the Ogiek case. Although the government started an implementation Task Force, the government did not consult with the Ogiek community or include community representatives to the Task Force. The original Task Force did not issue any recommendations, but a second one was created one year later. The second Task Force also lacked community representatives and although it engaged the community more than the first, it has yet to publish a final report on implementation.

You may be able to go back to court and ask for the judgement to be defined and enforced. See the general page on "[How Can I Enforce a Court Order](#)" in the **A4J Going to Court Guide**.

3.6. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.



Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these, see the relevant headings in [Sub-Page 11 “Going to Court”](#) of this **Guide**.

SUB-PAGE 4: STANDING

The person or group bringing a legal claim (“the Claimant(s)” or “the Plaintiff(s)”) must show that they are entitled to bring the claim. In many countries, this entitlement is called “**standing**”. Establishing standing can be a difficult issue and may result in a case being declined as “**inadmissible**” because the claimant is unable to establish a sufficient legal interest to bring the case.

The standing requirements will depend on what action you are bringing. The following types of people can often have standing to bring constitutional, public law or human rights claims. However, you must check the laws in your country’s legal system as the laws on standing will vary from country to country.

If you are bringing a claim to a regional court or international body, the requirements on admissibility and standing may differ from your country’s rules. You must check these requirements prior to starting the relevant procedural process.

To learn more about standing in environmental litigation, see the **A4J [Environment](#) Module**.

If you would like more information on standing in general, see “[Who Can Take Legal Action?](#)” on the **A4J Going to Court Module**.

4.1. Affected Individuals and Groups

Standing requirements may require you to have a “sufficient interest” in the claim you are bringing. You will generally need to demonstrate to the court that you have a sufficient connection to the law, action, or omission that you are disputing.

This means that claims can generally only be brought by **the person who has been harmed** by deforestation or forest degradation when a national or international law is broken or when a government or corporation fails to take appropriate action. This usually means you must have suffered **actual harm**, but in some circumstances a **serious or immediate threat of harm** is admissible.

The harm you have or will suffer must also be redressable. For example, if you live in a protected forest area and suffer harm due to unauthorised logging, the harm you have suffered may be redressable if the Court has the authority to issue remedies to rectify this harm (such as a court order to stop the logging).

Some jurisdictions permit multiple affected individuals to be represented collectively by a claimant.

- These actions may be called “**group**”, “**collective**” or “**class**” action.

Claimants do not always need to be individuals or groups of individuals. For example, a Wildlife Trust that owns a nature reserve where unauthorised deforestation occurs may be permitted to bring a case.

Case Example: [Jet Sri-Ngeon v. Minister of Industry](#)

386 members of the Ban Haeng Conservation Group in Thailand filed an administrative claim against 8 defendants, including Thailand's Minister of Industry. They challenged a mining permit that was approved for a reserved forest site that had not yet been lawfully permitted for other uses. All 386 plaintiffs were residing and working in two villages in at the site of the mining permit.

The Court ruled that all 386 plaintiffs had standing to sue Defendant 1 (Minister of Industry) and Defendant 5 (who had the sole legal authority to approve the environmental impact assessment). The Court ruled that the plaintiffs were directly affected as stakeholders. They faced greater impact (unavoidable injury or harm to their constitutional rights) by the mining permit than the general public. However, the Court held the plaintiffs did not have standing to sue the remaining defendants because they were not harmed or threatened of unavoidable harm from their acts or omissions.

4.2. Public Interest Groups

In some countries, groups that have an interest in a particular issue can bring a case that involves that issue even if they are not personally affected.

Case Example: [Yala National Park Decision](#)

The Sri Lankan Supreme Court ruled in favour of three local environmental groups who brought an action against a biofuel company that had been allegedly illegally clearing forest land in Yala National Park. The land clearing was impacting elephant population as well as local farmers.

4.3. Rights of Nature and Standing

Recognition of the Rights of Nature gives some or all aspects of the natural environment (e.g. trees and forest ecosystems) the legal right to stand in court when it has suffered harm. Under these rights, nature is a subject of its own rights and has the right to have these entitlements defended in court.

These rights are sometimes known as "Earth Rights" or "Pachamama Rights".

Although there is currently no legal recognition for the Rights of Nature in international law, some countries have recognised the Rights of Nature in their national laws and constitutions.

Example: [Rights of Nature in Ecuador's Constitution](#)

Title II, Chapter 7 of Ecuador's Constitution explicitly refer to the Rights of Nature. Among other rights, it importantly has the right to exist and the right to restoration. The State is also required to

take precaution and restrict activities that can cause extinction, ecosystem destruction or alter natural cycles.

Case Example: [Lake Tota Case \(Columbia\)](#)

The water from Lake Tota was contaminated with high levels of lead, impacting the 7 municipalities in Boyacá that relied on it for drinking water. In addition to finding that the rights of the municipalities had been violated, the First Civil Court of the Oral Circuit of Sogamoso [declared](#) Lake Tota and its basin a subject of rights to protection, conservation maintenance and restoration under the responsibility of the State.

4.4. Reporting to Government or International Bodies

You may be able to bypass specific standing requirements if you are able to report to a particular government body or independent organisation rather than bringing a case to court. This may be a useful option in supply chain accountability cases where there are regulatory and oversight bodies managing the chain.

For more information on these, see [Sub-Page 9 “Supply Chain Accountability”](#) and [Sub-Page 10 “Non-Judicial Remedies”](#) of this Guide.

4.5. Issues of Standing

Standing is part of the wider concept of “**justiciability**” which limits the Courts authority to adjudicate where a legal issue is not suitable for judicial review.

See the **A4J Topic Sheet on [Justiciability](#)** for more information.

SUB-PAGE 5: ACQUISITION OF FOREST LAND/RIGHTS IN FOREST LAND

Land tenure and land rights play a fundamental role in preventing deforestation and degradation. This section will address the importance of customary land tenure, property rights and the right to free, prior and informed consent in protecting forest land.

Land rights are any rights you have that relate to a piece of land. These could be:

- Rights to own land;
- Rights to use land such as for farming or food;
- Rights to occupy/live on land;
- Rights to carry out specific activities on land, including religious or cultural ones
- Rights to inherit land; and
- Indigenous Peoples' right to self-determination and free, prior and informed consent regarding their territories.

In line with these rights, “**community forestry**” is based on the recognition of the customary rights of communities to establish and enforce rules governing the access and use of forests. However, deforestation processes are often predicated on the denial of participation, access to information and legal representation, as well as government-imposed deforestation policies and the forced displacement of forest communities without their consent.

Although Indigenous Peoples and rural communities hold the [majority of the world's land area](#), they only have ownership over a small fraction (10%) of this land. This makes these groups vulnerable to conflicts over land, including forest conflicts. These can include:

- Land grabs and forced evictions/dispossession;
- Conflicts about land ownership, management and occupation rights;
- Conflicts about the right to use land;
- Boundary disputes;
- Disputes about the right to access land; and
- People harming the land through deforestation, logging, extractive industries and other forms of environmental degradation.

Case Example: [Maya Indigenous Communities of the Toledo District v. State of Belize](#)

This case concerned an action brought to domestic courts in Belize regarding the non-implementation of the Inter-American Commission of Human Rights' [report](#) that the government should recognise the Maya people's collective rights to traditionally use and occupy certain lands and natural resources in in Toledo. The state had been granting logging and oil concessions and failed to adequately protect these lands, which negatively impacted the environment that the Maya peoples depend on for subsistence, culture and livelihoods.

The Supreme Court of Belize ordered the government to recognise Maya land rights, demarcate and title their land, and cease and abstain from interfering with their right to property.

A similar claim was heard by the Supreme Court in 2013, in which the Court ruled that government permission to commence oil drilling and construct roads in Belize's Sarstoon-Temash National Park was unlawful on the basis that the permission was granted without first seeking the free, prior and informed consent of the affected Maya Communities.

Securing land rights in forest land can be an effective tool for combatting and preventing further deforestation. There is often also legal requirement that communities who will be affected by forest use are informed, properly consulted with and their consent is given before forests can be exploited. Forestry licenses can be challenged if this requirement hasn't been followed.

This section only focuses on a small number of land rights issues relating to forests. If you would like more information on securing land rights, see "[Who Can Take Legal Action?](#)" on the **A4J Land Rights Module**.

Key Resource: [Land Matrix](#)

This resource is a public database on land deals. It is an open access platform that can be used to find detailed information about land deals in nearly 100 countries and across regional focus points.

Data can be filtered by intended land use including timber extraction, conservation, mining and biofuels.

Further Resource: [Large-Scale Acquisition of Rights on Forest Lands in Africa](#)

This is a Rights and Resources Initiative report that provides a useful overview of legal frameworks and forest concession in Central Africa. It also contains a discussion of the conditions and strategies surrounding the threat of land acquisition for palm oil in the region.

2.1. What Laws Could I Base My Claim On?

Often the acts that occur before deforestation happens, in terms of taking over the land, are in themselves breaches of rights. You may be able to challenge concessions, grants or illegal occupation of your land in order to secure your rights and protect your land from deforestation or forest degrading activities.

Full, **private ownership** of land has the potential to bring a greater degree of security for Indigenous and forest peoples. It can help them to enforce their land-based and other rights where deforestation and degradation occurs. However, **designated lands** (i.e. publicly owned) are a more insecure form of land tenure and exclude communities from a number of important rights that may prevent illegal occupation or grants of land for logging or other forms of deforestation.

Resource: [Who Owns the World's Land? A global baseline of formally recognized Indigenous and community land rights](#)

Rights and Resources Initiative 2015 baseline report shows global, regional and country-based data regarding formal recognition of Indigenous Peoples' and local communities' tenure rights. It also sets out opportunities for reform.

The report identifies several key challenges presented by the lack of ownership rights:

- It excludes communities from rights to due process or compensation if a government or outsiders come onto their land to exploit it; and
- It may also undermine incentives to invest in long-term improvements such as reforestation or effective community management of natural resources.

Resource: [FAO Voluntary Guidelines on the Responsible Governance of Tenure](#)

Although these guidelines lack formal legal status, they can be used to evidence that your country has not created adequate systems of land tenure or has unlawfully occupied your land. It sets out a number of tenure rights and duties in respect of its public land, fisheries and forests.

Governments may choose to grant private companies in the forest risk commodity industries land rights for **logging concessions** on publicly owned forest land. As they are considered illegal **land** grabs, these concessions have the potential to lead to illegal logging and deforestation.

Resource: [Tirana Declaration](#)

The Declaration notes that large scale land-grabbing can occur at the national or international level and is defined as acquisitions or concessions that are one or more of the following:

- In violation of human rights;
- Not based on free, prior or informed consent of affected land users;
- Not based on a thorough assessment [e.g. EIA] or disregard socio-economic or environmental impacts;
- Lack of transparency in contracts and binding commitments within contracts;
- Not based on democratic planning, independent oversight and meaningful participation.

Resource: [Who Owns the World's Forests? Forest Tenure and Public Forests in Transition](#)

This 2002 report by the Centre for International Environmental Law contains concession data from 16 countries across the world and can be used as a starting point for concessions research. The report notes that most logging concessions give companies long-term rights to access and manage the land, as well as harvest timber and exclude the general public from the forest.

The report also contains information on official forest ownership in 24 countries, recent legal reforms for community forest tenure, and a number of country-specific case studies for tenure reform and forest management.

Customary landowners can bring cases against the government for its decision to issue a lease, licence or logging concession on their lands illegally. Action can also be taken if the government fails to consult with or obtain the consent of Indigenous and forest communities prior to implementing decisions regarding their land.

Therefore, illegal land concessions may be challenged on a number of legal grounds, including:

- **Procedural Irregularity;**
- The **status of the land makes it ineligible** for the concession;
- There has been a **breach of conditions of the grant or permit;**
- Land acquisition is tainted **by corruption, bribery or duress;** and
- The concession was granted without the local community's **free, prior and informed consent.**

See the **A4J [Land Rights](#) Module** for further information about these legal grounds.

Case Example: [Maniwa v Malijiwi](#)

This case was brought by customary landowners in Papua New Guinea against government ministries and licence holders. They were challenging a lease for forest land to be harvested and logged for palm oil production. The landowners argued their land had been acquired by the state without proper consent and prior consultation. The Court ruled in favour of the landowners and declared the licence null and void.

Case Example: [Jubang Anak Punjap, Juslin Majang Anak Bada, Berjaya Anak Pundu, Mat Anak Taggon Vs First Binary Sdn Bhd, Director Of Forest, Sarawak, Superintendent Of Lands And Surveys, Samarahan Division., Government Of The State Of Sarawak](#)

An Indigenous community in Malaysia challenged a logging licence on their lands, on the basis that it was carried out without their consent. The Court concluded that their community traditions meant they had native customary title over the land. No licence could be delivered over the land.

Your country's **national law** as well as **public international law and international human rights law**, can be useful tools for combatting insecure land rights and logging concessions. These bodies of law are most relevant to Indigenous Peoples who can use their cultural connection to the land to enforce their land rights and right to participate in decision making concerning their lands.

Resource: [World Resources Institute Report - The Scramble For Land Rights: Reducing Inequity between Communities and Companies](#)

This WRI report contains extensive information on community land rights (including information on forests and deforestation). It also contains several tables of data relevant to company land acquisition across a number of countries in Latin America, Africa and Asia, including:

- Community Data and Land Tenure Laws (including information on duration of rights and ability to request land in the future);
- The Land Acquisition Process/Extent of community Consultations Required;
- Rights Received During Company Land Acquisition (including trees/forest resources); and
- List of National Laws and Regulations Reviewed in the Report

Community consent requirements can be found in a number of legal instruments. International law generally requires states and corporations to obtain free, prior and informed consent from Indigenous and forest communities prior to starting deforestation (whether legally or illegally). States also often have an obligation to consult with Indigenous and forest communities in good faith prior to issuing concessions or granting an occupation of their land.

Key Resource: [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#)

Article 32(2): States have an obligation to consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions in order to obtain free, prior and informed consent prior to approval of any project affecting their land or territories.

Key Resource: [International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#)

Article 6(1)(a): Governments have a duty to consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, wherever consideration is being given to legislative or administrative measures which may affect them directly.

Article 15(1): The rights of the peoples concerned to the natural resources pertaining their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

For more information about protecting the status of land or Indigenous People against illegal use, illegal concession grants and free, prior and informed consent, as well as deforestation in these contexts, see the **A4J [Environment](#) Module and [Land Rights](#) Module.**

5.2. Who Can Bring a Claim?

In order to bring a forest land rights claim, you must have “standing” (the legal right to bring a claim).

See [Sub-Page 4](#) of this Guide and “Who Can Take Legal Action in a Land Dispute” in the A4J [Land Rights Module](#) for more information on standing.

5.3. Who Can I Bring a Claim Against?

Depending on how the concession was granted, who it was granted to and the activities in question, the appropriate defendant could be:

- The **State** as a whole (i.e. your country);
- The **government department, ministry or body** that is responsible for deciding forest and/or environmental policy in your country;
- **Local agents** or representatives;
- **Financial actors** behind the actors that committed the wrong;
- The **corporation or individual that holds the licence**. You may also be able to sue the parent corporation; or
- **Those who have taken or bought the natural resources that came from the land** (e.g. the timber that was logged)

For further information, see “Who Can You Sue in a Land Dispute?” in the A4J [Land Rights Module](#) and more generally, “[Who Can I Bring Legal Action Against?](#)” in the A4J Going to Court Guide.

5.4. What Evidence Do I Need to Bring a Claim?

In public law actions, it is the claimant (e.g. you) who has the “**burden of proof**”. This means the person bringing a civil claim needs to bring evidence to prove their case.

One of the first things you need to do to bring a successful claim is gather evidence that will be accepted in court. You must have a set of facts that describes what happened and evidence that supports your “**version of events**” (i.e. what you are saying happened). This is called “**factual evidence**” and will be used to support your claim.

You will need to ensure you have specific evidence regarding:

- **The concession, grant or permit/licence** that was granted;
- Whether the government or public body obtained **free, prior and informed consent**;
- **Deforestation activities** in an area by a government body/authorisation of deforestation by a government body AND/OR evidence of your government **failing to take action** to prevent deforestation;
- The **impacts of the land grant and deforestation on you and your land**; and

- The **ecological impacts** of deforestation in your area.

For further information on evidence, including the scope of evidence you will need to provide, see the section on [“Evidence and Information” in Sub-Page 11](#) of this Guide.

For general information on evidence, see the section on [“How Can I Prove My Case” in the A4J Going to Court Guide](#).

5.5. What Procedural Steps Do I Need to Take?

These claims can be taken in **national administrative or constitutional courts**.

- In some countries, this process is called “judicial review” or a “constitutional petition”.
- In many Latin American countries, this process is called “amparo proceedings”.

The procedure that you must follow will depend on where you are bringing the claim and whether you live in a **“common law country”** or **“civil law country”**. The law in your country will outline a judicial review, constitutional petition or amparo process, so that you can bring a claim to the courts and the court may review the situation and provide a remedy.

However, depending on the nature of your claim, you may also bring land disputes to other bodies, such as:

- **Local Administrative Procedures** (e.g. registering your land with your local or national land office or land commission);
- **Customary forums**;
- **Regional Courts** and **International Bodies**; and
- **Foreign courts**.

For more information on how to take action in land disputes, see **“Where Can You Take Legal Action in Land Disputes?” in the A4J [Land Rights](#) Module**.

Focus Point: Limitation Periods

A limitation period imposes a time limit within which a claimant may bring a case. The limitation period depends on the precise cause of action and will dictate the amount of time you have to file your case in court. If you do not file your case within the relevant limitation period, you may be prevented from bringing the claim.

Research the law in your country (or the law of the international body or foreign country you are bringing the case to) to determine the relevant limitation period for your claim. You will also need to identify when the time starts running for the limitation period. Time may start running from one of the following:

- The date the harm occurred (e.g. when a forest fire occurred);

- The date you learned about the harm; or
- The date the government made the specific policy decision or took an action that you are challenging.

In some cases, it may be possible to apply for the limitation period to be extended.

For more general information, see [“What Procedural Steps do I need to take”](#) in relation to Administrative, Constitutional and Human Rights Cases in the **A4J Going to Court Guide**.

5.6. What Happens If I Win?

A. Remedies

If you bring a successful land rights claim, you may be entitled to one or more of the below **“remedies”**. The outcome of a successful case will depend on your cause of action and specific claim:

- **(i) Court Order(s)**; or
- **(ii) Settlement or Agreement** to resolve the dispute.

It is important to remember that the **affected individuals and communities should lead on deciding which remedies are appropriate**, as opposed to NGOs or lawyers. Consider the community impacts of each possible remedy.

For more information, see **“What Legal Remedies Exist for Land Disputes”**, in the **A4J Land Rights Module**. For more information on legal remedies, see our general page [“What Remedies Are Available?”](#) in the **A4J Going to Court Guide**.

B. Enforcement

Winning in court is only the start of the process. Many successful court judgements are either not enforceable or are not enforced in practice.

You may be able to go back to court and ask for the judgement to be defined and enforced. See the general page on [“How Can I Enforce a Court Order”](#) in the **A4J Going to Court Guide**.

5.7. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these, see the relevant headings in [Sub-Page 11 “Going to Court”](#) of this **Guide**.

Sub-Page 6: USE OF FOREST LAND – CHALLENGES TO UNAUTHORISED DEFORSTATION

Licensed infrastructure projects, including projects conducted by the extractive, logging and agricultural industries, may threaten or destroy forest lands. These projects also threaten Indigenous and forest communities.

- **Deforestation:** Deforestation projects, including logging, are serious threats to forest ecosystems and environmental health. Mass deforestation can irreparably damage vital ecosystems and prevent recovery.
- **Coal Mines and other Extractive Industries:** Mining and extractive projects sometimes require wood from surrounding forests to fuel plants and contribute to pollution and climate change, which further harm forests.
- **Oil and Gas Pipelines:** The construction of pipelines across forest land increases deforestation and degradation. Broken pipelines result in toxic spillages which can damage ecosystems.
- **Transport related projects, such as building or expansions of airports, roads, ports:** These projects may require deforestation to construct the infrastructure and may increase environmental damage and pollution in the surrounding area.
- **Agriculture:** Intensive agriculture, including the clearing of land for monocultures such as soy and palm oil, is a major driver of deforestation.
- **Other infrastructure projects or policies:** This could involve energy projects such as dam construction projects and commercial developments that harm forest land.

Resource: For examples of case studies from Colombia, Peru, Guatemala and Panama, see the [Rights and Resources Initiative's Report on the Impact of the Extractive Industry on the Collective Land and Forest Rights of People and Communities](#)

Key Resource: [Pressures and Threats on Protected Areas and Indigenous Territories in the Amazon](#)

RAISG has compiled a series of maps & data-based publications that may be useful for evidencing the impact of infrastructure-driven threats to the Amazon.

Resources include mapping of infrastructure projects and investment plans in the Amazon region, including deforestation.

For more information on environmental threats from infrastructure projects taken by the development and industrial sector, see the **A4J [Environment](#) Module**.

Unauthorized deforestation is the logging or clearing of land without licensing. Generally, a company requires a **licence (or permit)** to conduct logging activities or clear forests to extract minerals and other resources. Deforestation can be challenged if a company does not have a licence and is clearing forest land or illegally logging.

Where a licence has been granted, it sometimes gives individuals and the community an opportunity to challenge the terms of a licence. This is especially if the company is **acting outside the remit of their**

licence, or if the correct procedures for grant of a licence have not been followed, and the activity concerned is causing damage through deforestation or forest degradation.

Where government authorisation is required before deforestation or certain types of forest use can occur, forest use can be challenged when the activities are:

- Unlicensed; or
- Forestry practices are carried out in breach of their licence.

Unauthorised deforestation can be challenged through litigation to defend forests. These claims can be split into 2 types of challenges:

1. **Substantive challenges:** Infrastructure projects can be challenged on the basis that the extent to which the project causes deforestation or forest degradation mean they will violate your human/constitutional rights and/or be inconsistent with the government's commitments to conserve and protect forests, stop deforestation/degradation and prevent further degradation.
2. **Procedural challenges:** Projects can be challenged on the basis that the decision-making process which led to the licensing of the project failed to consider or gave insufficient weight to their impacts on forest ecosystems or the communities that live on forest land.

When you have outlined the facts of your case, look at the areas of law below and see which most closely relates to your situation. Then check the national law in your country.

Remember:

Your **legal analysis must be supported by the evidence you have gathered**. You may wish to seek legal advice. A lawyer with expertise in the relevant area should be able to provide advice on the options available to you and advise on your chances of success.

6.1. What Laws Can I Base a Substantive or Procedural Challenge On?

There are a number of laws on which you could have a “**cause of action**” for a **substantive or procedural infrastructure challenge**. These laws are based on:

- **Tort** (see the section on [“Other Mechanisms” at Sub-Page 7](#) of this Guide);
- **Contravention of laws relating to forest protection** of regulating extractive/industrial/development activity (see [Sub-Pages 2 and 7](#) of this Guide);
- **Judicial Review and Constitutional Law Principles** (see sub-section A below);
- The **Doctrine of Public Trust** (see sub-section B below);
- **Statutory Requirements/Breach of Statutory Duty** (see sub-section C below);

- **Free, Prior and Informed Consent and Public Participation in Decision Making** (see sub-section D below); and
- **Human and Constitutional Rights** (see the relevant sections on National and International laws at **Sub-Pages 2 and 3** of this Guide for more information on substantive rights challenges. See sub-section E below for procedural rights challenges).

A. Judicial Review and Constitutional Law Principles

In many countries, there are general public law principles that can make an action or omission of a public body unlawful in respect to its national laws for the protection of forests. If your government violates these principles, you may be able to bring a claim.

(i) Procedural Unfairness

Even if there is not a specific law which requires the government to adopt a specific procedure, decisions of governments in many countries can be challenged where the procedure leading to the decision is unfair. For example, where the decision was biased, or the process was not transparent.

Case Example: [South African National Parks v MTO Forestry \(Pty\) Ltd and another](#)

South African National Parks (SANParks) entered into an agreement with MTO Forestry for the clearing of invasive forests in Table Mountain National Park. The contract was a lease under the National Forests Act 1998. SANParks made a decision to accelerate the felling process at the request of MTO. The Court ruled these actions amounted to the exercise of public authority and administrative action.

There was no public participation process. Court held that the public had a legitimate expectation to be consulted under these circumstances and therefore the decision to accelerate the clear-felling process was procedurally unfair.

(ii) The Doctrine of Irrationality/Unreasonableness

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.

This is a very high threshold to reach. It could be argued that the licensing of a project was irrational because it failed to account for the severe impacts of deforestation or forest degradation on a local community.

Case Example: [Patil v. Ministry of Environment and Forests](#)

The Ministry of Environment and Forests granted environmental clearance for a project to build a thermal power plant near a village. The Court considered the application of the doctrine of

unreasonableness and whether relevant considerations had been followed. It held that there was an improper declaration in respect of the nature and category of the land acquired for the environmental clearance project.

(iii) Relevant and Irrelevant Considerations

Where a law gives a public body power to make a decision, but the public body takes irrelevant considerations into account or fails to take relevant considerations into account when making the decision.

Case Example: [Mining and Environmental Justice Community Network of South Africa and Others v Minister of Environmental Affairs and Others](#)

A South African Cabinet minister approved the development of a coal mine in the Mabola Protected Environment, which is a high-yielding water catchment area that is designed as a protected area under the Protected Areas Act. The claimants sought judicial review of this decision on a number of grounds including the failure to take relevant considerations prescribed by the National Environmental Management Act 107 of 1998 into account and by taking irrelevant considerations into account.

The High Court's decision to set aside the ministerial approval was upheld in the Constitutional Court, which [refused](#) to hear the mining company's appeal in 2019.

(iv) Improper Purpose

Where there is a national law that authorises a public body to take actions to stop deforestation or protect a forested area, but the public body uses the powers under the law for an improper purpose.

(v) Misinterpretation of Law

Where there is a law that authorises a public body to take action to protect forest land or conserve forest biodiversity, but the action taken is based on an interpretation of the law that is incorrect

Case Example: [Mining and Environmental Justice Community Network of South Africa and Others v Minister of Environmental Affairs and Others](#)

One of the questions that formed the basis of the claimant's request for judicial review of the decision was whether there was proper interpretation of the relevant statutory provisions that set out Ministers duties and obligations under the National Environmental Management Act 107 of 1998.

(vi) Acting Without Lawful Authority

Where there is a law in your country which sets limits on deforestation or places on a government body's powers in relation to forestry management and infrastructure projects, but the body acts outside the limits of the law.

Case Example: [Jet Sri-Ngeon v. Minister of Industry](#)

The court ruled that the mining permit site was a reserved forest that was not yet lawfully permitted for other uses. This was an essential requirement for the mining permit review process under national legislation. By issuing the Letter of Permission to enter the reserved forest and Permission Order for Forest Clearing for the purposes of the coal mine, the Minister of Industry violated procedural requirements by acting outside its legal authority.

(vii) Failing to Take Action Required by the Law

If there is national legislation which requires the government to take action to protect a forested area or prevent forest degradation and the government fails to do this, this can be challenged.

Case Example: [Sheikh Asim Farooq v. Federation of Pakistan](#)

The Court held that the government failed to implement existing laws and policies and was responsible for the deforestation crisis. It noted that "had above-mentioned laws and policies properly been implemented by the Respondents Departments in letter and spirit with proper mechanism and procedure, the forest of Pakistan could have been saved for [sic] further depletion and deforestation".

(viii) Environmental Impact Assessment (EIA)/Environmental Social Impact Assessment (ESIA)

Where there is a law in your country which sets limits or conditions on the government's powers when it comes to licensing/approving projects that will cause deforestation, the licensing/approval of a project could be challenged where it acts outside of those limits. These laws are often found in environmental legislation, planning laws and regulations, regulations pertaining to specific industries, general constitutional requirements for government licences or land use laws.

An **environmental impact assessment** (EIA) is a process that evaluates the range of likely environmental impacts of a proposed project. An **environmental and social impact assessment** (ESIA) is similar but also accounts for the social impacts in addition to the environmental impacts.

Where planning, industry or environmental legislation requires the government to conduct an EIA or ESIA before licensing infrastructure/energy projects, a licence could be challenged if:

- And EIA/ESIA was not carried out at all; or

ACTION JUSTICE

Legal action for social justice

- The EIA/ESIA that was carried out was inadequate as it did not assess the forest or environmental impact of the project (the legislation itself may require this or you could argue that any EIA/ESIA must take into account deforestation and the environmental and/or social impacts it will have).

Key Example: [Sudiep Shrivastava v. Union of India](#)

The claimants challenged a government decision to approve a proposal to clear a forest for a coal mine. The claim was brought on the basis that the EIA was inadequate, and the government ignored a recommendation from the Forest Advisory Committee (FAC) to preserve the forest for ecological reasons. The area had also been designated as a protected area.

The Tribunal quashed the government's decision on the grounds that it rejected the FAC's advice with no scientific basis for that decision.

The findings of an EIA can also be used to show that your government did not take into account relevant considerations of a project (e.g. the impact of a project on surrounding forest ecosystems).

Check your country's specific EIA/ESIA legal requirements for the appropriate the appropriate procedural steps and minimum content requirements.

Key Resource: [ELAW Global EIA Laws](#)

ELAW has compiled a database covering more than 50 key aspects of EIA laws from around the world. There are separate databases for EIA Procedure and EIA Content, as well as a Complete EIA Law Comparison database.

For more information about environmental decision making and EIAs, see the **A4J** [Environment Module](#).

B. The Doctrine of Public Trust

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 that country. The shared natural resources are for the common public benefit. The Government holds these resources on trust and are obligated to manage them properly.

Case Example: [T.N. Godavarman Thirumulpad v. Union of India \(Valuation of forests\)](#)

The case covered questions of conservation, preservation and protections of forests and forest ecosystems. In particular, it addressed the question of what measures are required to compensate for loss of forest land and ecology when forest land is used for non-forest purposes. The Forest (Conservation) Act 1980 specified that State governments and authorities must first consult with the Central Government prior to designated forest land for non-forest purposes. The issue was whether the user agency of the forest land should make a payment to compensate for the loss of forest-related benefits in diverting forest land for non-forest purposes.

The Court noted that under the doctrine of public trust, the natural resources are not under the ownership of any State or individual, but the public at large. Any compensatory payments are for the protection of the environment and not for property rights. Therefore, all payments made under the Compensatory Afforestation Fund Management and Planning Authority must be used for ecosystem regeneration.

The success of a public trust claim is often dependent on the incorporation of the public trust doctrine into the state's constitution. Check your country's constitution to see if this doctrine has been incorporated into the constitution.

C. Statutory Requirements/Breach of Statutory Duty

If a government is required by legislation to take (i) environmental or forest-specific impacts into account when licensing a project or (ii) have regard for conserving the environment and biodiversity; a licence could be challenged if the government has failed to do this.

Example: [English Biodiversity Duty](#)

Public authorities in England have a biodiversity duty that they must meet in carrying out all their activities. This duty is contained in the Natural Environment and Rural Communities Act 2006.

Public authorities are widely defined. These bodies must be able to prove that they have followed their duty to have regard for conserving biodiversity and that they have identified ways they can integrate biodiversity when they take a number of decisions including: management of the planning system, management of woodlands and nature reserves and when they develop infrastructure.

D. Free, Prior and Informed Consent and Public Participation in Decision-Making

Where legislation requires the government to consult with and give the public and any relevant stakeholders an opportunity to participate in the decision-making process, a licence or permit could be challenged if it fails to do this.

Case Example: [Reserva Los Cedros v. Ecuador](#)

In June 2020, the Constitutional Court of Ecuador agreed to take on an infrastructural challenge brought by Los Cedros Reserve against the government on the grounds that its concessions for mining exploration and exploitation projects violate the Rights of Nature enshrined in the Ecuadorian constitution. The claimants argued that the projects violated the legal status of the Los Cedros Protected Area, collective rights of Indigenous Peoples and the procedural rights of communities to prior consultation before potential environmental damage.

See [Sub-Page 5](#) of this Guide for more information about these claims.

E. Human Rights and Constitutional Rights

Human rights also have a procedural dimension. Where the government is taking actions that may interfere with your human rights, it must abide by certain procedural safeguards.

Example: [IACtHR Advisory Opinion on the Environment and Human Rights](#)

The Inter-American Court of Human Rights outlined that States have the following procedural obligations before they undertake activities which could cause significant environmental damage that impacts human rights:

- **Duty to require and pass environmental impact studies;** and
- **Provide opportunities for public participation** in the first stages of decisions

The licensing of an infrastructure project on forest land could be challenged on human rights or constitutional grounds where these requirements are not complied with. This obligation remains even if there is no specific law in your country that requires the government to conduct an Environmental Impact Assessment.

Case Example: [India Supreme Court Tree-Cutting Guidelines for Development Projects](#)

The West Bengal Government was planning to fell hundreds of heritage trees to build Road Over Bridges. Noting the importance of preventing climate change and protecting the constitutional right to a healthy environment, the Supreme Court Bench held that “sustainable development must remain at the heart of any development policy implemented by the state”. The Bench set up a committee to develop scientific and policy guidelines that will guide decision-making in relation to the felling of trees for developmental projects.

6.2. Who Can Bring a Claim?

In order to bring a claim, you must have “**standing**” (the legal right to bring a claim).

See [Sub-Page 4](#) of this Guide for more information on standing.

6.3. Who Can I Bring a Claim Against?

The case should be brought against:

- The **government department, ministry or body** that is responsible for granting the license or permit; and/or
- The **company or group** that holds the licence or permit.

For further information, see “[Who Can I Bring Legal Action Against](#)” in the **A4J Going to Court Guide**.

6.4. What Evidence Do I Need to Bring a Claim?

In public law actions, it is the claimant (e.g. you) who has the “**burden of proof**”. This means the person bringing a civil claim needs to bring evidence to prove their case.

One of the first things you need to do to bring a successful claim is gather evidence that will be accepted in court. You must have a set of facts that describes what happened and evidence that supports your “**version of events**” (i.e. what you are saying happened). This is called “**factual evidence**” and will be used to support your claim.

You will generally need to ensure you have specific evidence of:

- **National environmental or climate change policy** that relates to the conservation, maintenance or protection of forests and protected areas;
- **National policies (if any)** that relate specifically to deforestation;
- **Details of the project;**
- Evidence of the **ecological impacts** of deforestation in your area.

The details of the project could be found in the body of the licensing decision or in records of political decision-making. Some of this information will be publicly available and others may be made available after a [freedom of information request](#). For more information see the A4J [Access to Information](#) Module.

For **substantive challenges** you will also need to show the **impacts of the project’s deforestation or forest degradation on you** (e.g. your land, property, health or finances).

If you want to make a **procedural challenge**, you will also need evidence of what happened at key stages of the decision-making process which led to the licensing of the infrastructure project.

- When you have information about what happened in the procedure leading to the licensing of the project, **you can compare this to what procedure should have been adopted as a matter of law.**

Key Questions

Key stages in the licensing process and questions often include:

- (i) Details of the project:**
 - a. What is the project?
 - b. Where will it take place?
 - c. How and when was the project licensed?
 - d. Which public authority was responsible for licensing the project?
 - e. When will the project begin?
 - f. How long will the project last for?
- (ii) The initiation of the process;**
 - a. How was the decision-making process initiated?

- b. What public body was responsible for overseeing the process?
- c. Why was the project initiated?
- (iii) **Social and environmental impact assessments** that were made before the licensing decision was made:
 - a. Where impact assessments made?
 - b. At what stage in the decision-making process where the assessments made?
 - c. What information was included in the assessments?
 - d. What were the results of the assessments?
 - e. How did this affect the licensing decision?
- (iv) **Expert evidence and consultations** that were made before the licensing decision was made:
 - a. Was expert evidence considered? Where consultations made?
 - b. At what stage in the decision-making process did the consultations take place?
 - c. Who was consulted?
 - d. What were the outcomes of the consultations?
 - e. How did this affect the decision?
- (v) **Public participation** in the decision-making process:
 - a. Did the public have an opportunity to participate in the process?
 - b. At what stage in the decision-making process where the public given opportunities to participate?
 - c. In what way were the public able to participate?
 - d. Was were the views of those who participated?
 - e. How did this affect the outcome of the decision?
- (vi) **Policy papers, memos or press releases** that were made by the government during the decision-making process;
- (vii) **Political debates** regarding the licensing decision; and
- (viii) **Final reasons** for the licensing decision.

For further information on evidence, including the scope of evidence you will need to provide, see the section on [“Evidence and Information” in Sub-Page 11](#) of this Guide.

For general information on evidence, see the section on [“How Can I Prove My Case” in the A4J Going to Court Guide](#).

6.5. What Procedural Steps Do I Need to Take?

These claims are usually taken in **national administrative or constitutional courts**.

- In some countries, this process is called “judicial review” or a “constitutional petition”.
- In many Latin American countries, this process is called “amparo proceedings”.

The procedure that you must follow will depend on whether you live in a “**common law country**” or “**civil law country**”. The law in your country will outline a judicial review, constitutional petition or amparo process, so that you can bring a claim to the courts and the court may review the situation and provide a remedy.

Focus Point: Limitation Periods

A limitation period imposes a time limit within which a claimant may bring a case. The limitation period depends on the precise cause of action and will dictate the amount of time you have to file your case in court. If you do not file your case within the relevant limitation period, you may be prevented from bringing the claim.

Research the law in your country to determine the relevant limitation period for your claim. You will also need to identify when the time starts running for the limitation period. Time may start running from one of the following:

- The date the harm occurred (e.g. when a forest fire occurred);
- The date you learned about the harm; or
- The date the government made the specific policy decision or took an action that you are challenging.

In some cases, it may be possible to apply for the limitation period to be extended.

For more information, see “[What Procedural Steps do I need to take](#)” in relation to Administrative, Constitutional and Human Rights Cases in the **A4J Going to Court Guide**.

6.6. What Happens If I Win?

A. Remedies

If you bring a successful claim against the government under a substantive or procedural challenge, you may be entitled to one or more of the below “remedies”. The outcome of a successful case will depend on your cause of action and specific claim:

- **Revocation** of the licence or permit;
- Court order for the defendant to **stop the illegal clearing of forest land and re-do the licencing process**; or
- Court order for the defendant to take **restoration (e.g. reforestation or afforestation) measures**.

Case Example: [Sheikh Asim Farooq v. Federation of Pakistan](#)

Ruling in favour of the claimants, the judge ordered the Pakistani government to uphold its environmental laws and climate change policies, including its obligations to protect the forest. The

judge also ordered the government to publish annual reports on progress of reforestation, punish those who illegally cut down trees and take disciplinary action against public officials who fail to carry out their duties.

It is important to remember that the **affected individuals and communities should lead on deciding which remedies are appropriate**, as opposed to NGOs or lawyers. Consider the community impacts of each possible remedy.

For more information, see our general page, [“What Remedies Are Available?”](#) in the **A4J Going to Court Guide**.

B. Enforcement

Winning in court is only the start of the process. Many successful court judgements are either not enforceable or are not enforced in practice.

You may be able to go back to court and ask for the judgement to be defined and enforced. See the general page on [“How Can I Enforce a Court Order”](#) in the **A4J Going to Court Guide**.

6.7. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these points, see the relevant headings in [Sub-Page 11 “Going to Court”](#) of **this Guide**.

SUB-PAGE 7: OTHER MECHANISMS

In many countries, there are other legal mechanisms which may be used to enforce environmental duties and obligations. Logging and forest use projects can be challenged if they are in breach of these duties. It is often easier to think of these claims not in terms of “rights”, but of “wrongs”. They are examples of a general principle which is part of many laws that where a party causes damages by harmful activity, the law will require them to stop or remediate the damage, or pay compensation. The well-known principle, “the polluter pays” is an example of this

These claims will usually be “**civil claims**” or “**criminal claims**”.

- A **civil claim** involves arguing a person or corporation violated your private rights (e.g. by breaking a contract or causing you harm or injury or damage to your property).
- A **criminal claim** alleges a crime has been committed

Activities which threaten forest may be a civil wrong or a criminal act or both. In some countries civil and criminal proceedings are separate. In others they are combined so that the person responsible may be required to pay a fine to the state, or compensation, or both.

There are many different areas of civil and criminal law. Each area prevents people, corporations and governments from doing certain things and provides consequences when laws are broken.

Civil and criminal laws also vary from country to country depending on whether they are “**common law**” countries or “**civil law**” countries.

Once you have outlined the facts of your case, look at legal areas below and see which most closely relates to your situation. Remember to check your national law to see what the law is in your country. Legal advice or assistance may be needed to pursue these claims but three general question to consider are

- Can action be taken in the country where the damage or harm has occurred against the state or corporate entity who has caused it?
- Can action be taken in a foreign country (e.g. in Europe or North America) against a corporation or its parent company if they have caused it ?
- Can action be taken, where the harm has occurred or in a foreign court, against those who have encouraged or financed or enabled the harm to happen?

Common examples of activities related to forests which may cause harm or damage: Burning or cutting/logging of forest land, mining or building on forest land, escape of chemicals from mining or oil production, causing smoke, haze, dust, noise.

Common examples of harm in a forest context: Loss of forest land/timber, air pollution with smoke or dust, water pollution with chemicals or oil, contamination of land, injury disease or death. Also economic losses resulting from these.

Remember:

Your **legal analysis must be supported by the evidence you have gathered**. You should consider

seeking legal advice. A lawyer should be able to provide advice on the options available to you and advise on your chances of success.

The types of evidence you may need to support your argument will be outlined later in this section.

7.1. What Laws Could I Base My Claim On?

A. Civil Claims

A “**tort**” or “**delict**” is a civil (private) wrong that causes you to suffer loss, injury or harm. Laws regarding civil responsibility can be used to bring a case against a person, corporation (including foreign parent companies) and/or your government. These are a key type of civil claim.

This section covers a non-exhaustive list of the areas of tort and civil responsibility law that can be used to prevent or fight illegal deforestation. Each country has its own laws of civil and criminal wrongs.

- In “**common law countries**”, the scope of torts is mostly defined by cases decided by judges. The law develops over time to meet new situations.
- In “**civil law countries**”, civil responsibility or wrongs are often defined in a national civil code.

Most countries provide for legal action where the actions of one person cause damage or injury to another person or to their property, especially where the action is unreasonable or contrary to a law. The person who has suffered the damage may be entitled to **compensation** or may be able to get an **order to stop the harmful activity**. The types of tort listed below are simply examples of different types of claim arising from different types of conduct or damage caused by it.

Once you have outlined the facts of your case, look at the areas of law below and see which closely relates to your situation. Then check your national law to see what the law is in your country. You will need to know what the things are you need to be able to prove to take legal action. Most legal systems only allow legal action where the defendant’s conduct has harmed the claimant. Other important points to consider include:

- What sort of **loss or damage** you must prove;
- What **interest in any damaged property** (ownership, right to possess, right to use etc) must be shown;
- Is it **necessary to show that the defendant was a fault**: in the sense of acting negligently or unreasonably or intentionally to cause the harm. Sometimes a defendant is liable for harm caused (such as an escape of chemicals) even if it is without their fault, but sometimes they are only liable if they did not take enough care to prevent it;
- “**Foreseeability**”: Sometimes it is necessary to shown that the harm is a foreseeable or natural result of what the defendant did;
- Can the defendant be **liable for omissions (failing to do something)** as well as positive actions;

- **What is the relevant test for causation?:** how directly must the damage be linked to the defendant's act? It is relevant if the defendant was any partly responsible for the harm, or just one of number of people responsible for it;
- **Can people who did not themselves do the act complained of be liable?:** These are people who may have encouraged or ordered or assisted in doing an act or financed it , or who could have stopped it but did not;
- **Is there a time limit for a claim??** Most systems of law require legal action to be brought within a specified number of years (perhaps 1 or 3 or 6 or 10 years after the wrongful act or the damage).

The law on torts or delicts varies from country to country and may be complicated, depending on case precedents or specific provisions of a national legal code. However, in common law countries, there are different types of legal harm or "tort" each of which have different rules.

(i) Negligence

In common law countries, negligence will be committed where the actions of a person, corporation or authority fall below the **standard of care** they owe you, and this causes you harm. This might be injury or damage to your health. Or it might be damage to or destruction of your property. Some system of law also allows for compensation for economic damage

To bring a claim in negligence, you do not need to show the defendant intended or wanted to cause the injury. It can be enough to prove they acted recklessly or carelessly.

To hold a defendant liable in negligence for deforestation or forest degradation, you will need to prove that:

(a) The defendant owes you a **duty of care**.

This means that the defendant must meet a **standard of expected care** towards you. This means the defendant must act with a degree of caution or care when it is taking action that' could impact you.

When arguing that a corporation owes you a duty of care relating to deforestation, you may need to show:

- **Harm is foreseeable:** It may be helpful to highlight that the impact of deforestation you are complaining about is publicly known, and that the defendant knew about the harm.
- **"Proximity" between the defendant corporation and you:** It may be helpful to highlight the **causal link** between the corporation's actions and the harm you are suffering from. This is related to the foreseeability point. The point here is that "proximity" does not necessarily mean geographical proximity but refers to the **degrees of closeness or relationship** (if any) between the defendant and claimant. For example, it could be argued that the causal link between a corporation's logging activities and harm to an individual creates a sufficiently close relationship, but there is no guarantee this argument will be accepted.
- It is also important to highlight the **gravity of the harm**, your **vulnerability to deforestation**, and the existence of **alternatives** for the defendant's actions or business model.

(b) The defendant has **breached its duty of care**.

This means the defendant did not meet the expected standard of care. For example, the breach of a duty of care could be a corporation's failure to change their logging operations despite knowing that it will cause harm to Indigenous communities living in the logging area.

You may also be able to argue that a foreign parent company has a duty of care not to allow deforestation or forest degradation.

Case Example: [Vedanta v. Lungowe](#)

This case involved the mining company, Vedanta Resources, and environmental damage caused by its subsidiary company (KCM) in Zambia. Zambian villagers brought a case in the English courts against Vedanta, claiming that mining waste had polluted waterways and caused property damage, loss of income and personal injury to the claimants.

The UK Supreme Court accepted jurisdiction held that Vedanta, as the parent company, owed a duty of care to the claimants.

(c) The defendant's breach of duty **caused the harm** that your claim is based on.

The requirement for causation in negligence is similar to private nuisance (see below).

(ii) Private and Public Nuisance

Private Nuisance

In common law countries, you may have a cause of action in **private nuisance** if deforestation impacts your land. A private nuisance occurs where a person or corporation unreasonably and substantially damages or interferes with the use or enjoyment of your land.

To establish private nuisance, you generally need to show:

(a) The **affected land is your property**

This can include land that you legally own, occupy or use.

(b) The **land has been damaged** or your **use or enjoyment of the land has been interfered with**

For deforestation, this could include:

- Your land is being harmed by illegal logging activities or unauthorised forest clearing for intensive agriculture; and

- Your use of land (e.g. farming, fishing or hunting) is being interfered with by deforestation (e.g. deforestation is causing forest fires, habitat/species loss and soil degradation)
- Your land being affected by smoke or heat or pollution from fires

(c) The damage or interference was **caused by the actions of the defendant**.

What you need to do to prove **causation** will change in different countries and in different types of claims.

First, you will need to outline the **factual causal link or connection** between the activities of the defendant and the harm you are suffering from.

Second, **this factual causal link above must meet the relevant legal standard of causation**.

- In tort, a **'but for' test** is usually used. To satisfy the but for test, you must show that the harm you have suffered would not have happened if the defendant did not take the action you are complaining about (e.g. but for the Defendant's bad driving, I would not have been injured).
- Where deforestation is the sole cause of harm suffered by individuals, causation may be easier to establish (e.g. but for the Defendant's slash and burn practices, I would not have suffered from haze pollution).

(d) The interference is **unreasonable and substantial**. So for example if a mining company caused some chemicals to escape on to forest land they may not be liable if they can show that the amount of chemical was very small and within permitted limits or if it was reasonable for some chemicals to escape.

This is similar to proving a breach of duty in negligence. It can be helpful to highlight:

- The seriousness of the impact of deforestation on your property;
- Whether the impact is continuous (e.g. soil degradation) or how often your property is affected by deforestation (e.g. forest fires, habitat loss, floods etc);
- The interference is not justified as there are sustainable alternatives available to the defendant's activities or current business practices, and it would be reasonable for the defendant to avoid the interference by transitioning to more sustainable practices
- The vulnerability of your property to the relevant deforestation impact; and
- The defendant corporation's knowledge about deforestation, its impacts and the dangers of their actions.

Public Nuisance and Government Liability for Forest Damage

Public nuisance is a common law criminal offence that involves environmental damage to the public. It is similar to private nuisance, except that there is no requirement that your individual property has been damaged. Governments or public authorities can be held liable for deforestation that unreasonably interferes with a right of the general public.

ACTION JUSTICE

Legal action for social justice

You will need to prove that you are part of a **class of people that has been impacted**. The impacts of deforestation that your claim is based on must affect a group of people who are connected in some way.

- The group could be connected by location, way of life, or age group. Deforestation disproportionately affects Indigenous and forest peoples who live in and rely on the forests for their livelihood;
- You must be part of this group of people; and
- The impact can be on the health, way of life, or well-being of the group. The impact does not need to specifically relate to property damage.

Like private nuisance, you also must prove that:

- The actions of the defendant **caused the harm** your complaint is based on; and
- The harm was **unreasonable and substantial**.

In some countries, you also have to prove that the injury or damage is “special” in some way (i.e. distinct from how the general public may be affected). In absence of this evidence, you will not be able to fulfil the requirement of standing unless you receive prior consent of the attorney general of the jurisdiction in which the claim is being brought. Check the law in your country to see the specific requirements on public nuisance claims.

There are similar examples of these types of claims **in civil law countries**. Although claims in civil law countries will not be based on common law principles, governments can be held liable for widespread environmental damage such as forest fires and other types of forest-related damage.

Case Example: [Citizen Lawsuit on Forest Fires v. Indonesia](#)

A group of citizens and environmental activists brought a lawsuit after devastating forest fires occurred across Indonesia in 2015. The Indonesian Supreme Court upheld a ruling that the government and president were liable for these forest fires and the haze that covered the country. It held that the government failed in its responsibility to mitigate forest fires and prevent them from recurring despite existing laws setting out this responsibility.

Haze litigation can also have a criminal element to it where an entity (inclusive of a government body) can be held liable for conduct that causes haze pollution damage from forest fires.

Example: Indonesia’s Transboundary Haze Pollution Act 2014

This Act sets out civil and criminal responsibility “for any entity to engage in conduct, or to condone conduct, causing or contributing to haze pollution in Singapore”.

(iii) Trespass

In common law, you may have a claim in trespass if an individual, corporation or authority **has intentionally entered your land without lawful permission** to conduct logging activities or other activities causing deforestation.

Trespass also occurs when:

- Someone **remains on your land** after permission has been revoked; or
- Someone **places or projects an object** on your land without lawful justification. For example, a person corporation dumps toxic substances onto your forest land.

You do not need to prove you have suffered special harm to prove trespass.

Key Example: [Gramgari v Crawford](#)

A customary landowner brought an action against PNG Tropical Wood Products for ‘unlawful harvesting of timber and environmental damage on his clan’s land.’ The plaintiff was successful in recovering damages under the tort of trespass.

(iv) Tort of Conversion or Interfering with Goods

A tort of conversion is committed when someone interferes, without justification, with your personal property (i.e. goods that are not land). You may wish to bring a claim under this tort if a company has interfered with the trees or related products that you own or have the right to possess or use. A claim may also be brought against a foreign parent company, whose subsidiary company in your country has interfered with your personal property.

Case Example: [Song Mao v Tate & Lyle Industries Ltd and Tate & Lyle Sugars Ltd](#)

A group of Cambodian villagers sued Tate & Lyle in the United Kingdom. Tate & Lyle bought sugar emanating from land which had been converted from forest and farming land. The villagers previously living there alleged it had been illegally cleared and occupied land. They argued that they were the legal owners of the land and the sugar which had come from cane grown on it and that the Tate & Lyle had wrongly taken it when they bought it. The villagers alleged that Tate & Lyle had committed the tort of conversion. The case has not been yet resolved by a court

This tort is also applicable to supply chain claims. For more information, see [Sub-Page 9](#).

(v) Other

Haze Litigation and Civil Responsibility for Forest Fires

Haze Litigation describes the civil (and criminal) litigation that can be taken for victims of haze pollution that emanates from slash and burn style forest fires for the production of forest risk

commodities. It is a type of transboundary civil litigation that can be taken in the origin country rather than in international or regional courts.

Example: [ASEAN Agreement on Transboundary Haze Pollution](#)

The ASEAN Agreement is a legally binding agreement to prevent, monitor and reduce haze pollution in Southeast Asia. The objective is to prevent and monitor transboundary haze pollution as a result of land and/or forest fires which are to be mitigated through national efforts and regional and international cooperation (Article 2).

Example: [Singapore's Transboundary Haze Pollution Act 2014](#)

Section 6 of this Act sets out civil and criminal liability for both state and non-state actors to engage in conduct, or to condone conduct, that causes contributes to any haze pollution in Singapore.

These types of laws, as well as general laws of civil responsibility, can be used to hold companies liable for directly setting off forest fires or potentially, where they are conducting forest degrading practices that then causally lead to forest fires and pollution.

Case Example: [Kallista Alam in the Indonesian Supreme Court](#)

The Indonesian Supreme Court rejected an appeal from the palm oil developer, PT Kallista Alam. The company was ordered to pay \$26 million in fines and reparations for slash and burning forest in the Tripa peat swamp region, which was damaged by rogue plantation operations.

Breach of Statutory Duty

A statutory duty arises where the statute or law or regulation imposes a civil duty to do (or not to do) something, such as to protect forest species and environment, or prevent fires. If the defendant breaches the statute, it may be liable to a fine or to be prosecuted by the authorities but may also be liable to compensate those harmed by the breach. Environmental and forestry legislation may contain duties on civil responsibility, such as a duty not to dispose of toxic waste that will cause harm to others and damage the natural environment (e.g. forest land). If this duty is not followed, a claimant may be able to retrieve damages for the breach in question.

Example: Indonesia - [Number 41 1999 Stipulation to the Act on Forestry](#)

Article 49 notes that holders of rights or licences shall be responsible for forest fires occurring in their working area.

Article 50 sets out a number of forestry offences, including the prohibition on licensed users undertaking activities leading to forest damages (50(2)) and a prohibition on the burning the forests (50(3)(d)). Any person who negligently violates the provisions of Article 50 are liable to punishment by varying levels of imprisonment and fines.

B. General Environmental Laws and Other Laws that can be Used to Protect Forests

A claimant may be able to rely on breaches of laws other than specific forest laws. Many countries have general environmental protection laws, principles and regulations that can be used to protect forests or prevent illegal deforestation.

In some countries, other environmental and non-environmental laws may impose obligations on governments, public authorities and corporations that can be useful in preventing deforestation, degradation or repairing the land after forest damage has occurred. These laws can be used to challenge logging and forestry projects and hold actors accountable if they violate these obligations. Such laws will vary from country to country, so remember to check the applicable laws in your country prior to bringing a claim.

These obligations may found in:

- Laws and regulations that govern activities which may be damaging to forests, such as mining or other industrial processes, including manufacturing and development;
- Laws based on the [precautionary principle](#) that prevent environmental harm (see [Sub-Page 3 of this Guide](#) and the [A4J Environment Module](#));
- Biodiversity and Endangered Species Laws (see [subsection C below](#));
- Laws based on sustainable development that seek to balance environmental sustainability with economic development;
- Legal principles that may guide courts to protect the environment from harm;
- Laws regulating environmentally harmful activities, including those dealing with licences or permits to operate.

Examples: Zambia's [Environmental Management Act 2011](#) and [Mines and Minerals Development Act 2015](#)

Section 4 of the **Environmental Management Act** gives claimants the right to take action including, to prevent, stop or discontinue any activity or omission which threatens or is likely to cause harm to human health or the environment (4(a)); and compel the person responsible for environmental degradation to restore the degraded environment (4(e)). 12 core principles are to be applied in achieving the purpose of the Act, including:

- Environment is the common heritage of present and future generations;
- Precautionary Principle; and the
- Polluter Pays Principle.

Section 80 of the **Mines and Minerals Development Act** requires consideration of the need to protect and conserve the environment and human health when granting mining rights or mineral processing licences. Section 87 establishes strict liability for any harm or damage caused by mining operations and mineral processing, and it requires compensation to include the cost of reinstatement/rehabilitation measures where harm or damage are caused to the environment.

Focus Point: Balance of Convenience Principle⁵

Certain courts may weigh competing interests to protect the environment from harm and the interests of the defendant. This is known as the “**balance of convenience principle**.”

It is highly relevant in claims that seek an injunction against environmental harm, including deforestation. This principle was considered in [John Labere and Agnes Votaia v Kalena Timber Company Ltd.](#)

C. Biodiversity and Endangered Species Laws

Forests are not only home to people; they are extremely important habitats for a diverse number of species. It is therefore important to protect and conserve the biological diversity (“**biodiversity**”) of forests and protect the endangered species that live within them and rely on forest resources. As forests are complex and fragile ecosystems, deforestation directly impacts forest biodiversity and the existence of endangered species.

There are a number international and regional sources of law that can be used to hold a state responsible for their failure to protect forest biodiversity from harm. Some countries have also enacted biodiversity policies and general environmental laws that impose obligations on public authorities, corporations and even individuals to conserve or protect biodiversity.

Example: Convention on Biological Diversity (CBD)

State parties are required to cooperate with other State parties regarding areas beyond national jurisdiction, for the conservation and sustainable use of biological diversity.

Other relevant obligations on include the need to:

- Establish a system of protected areas;
- Develop systems for managing protected areas;
- Regulate biological resources for the conservation of biodiversity; and
- Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species.

See [Sub-Page 3](#) of this Guide for more information on the CBD and how you can utilise it.

Case Example: [European Commission v Poland \(Poland/EU\)](#)

The European Commission launched a legal cause against Poland after the Polish government tripled logging limits in the Białowieża Forest, despite scientific warning that it would negatively impact biodiversity, endangered species and forest fire prevention. The Court of Justice of the European Union ruled that Poland broke EU environmental law. The increased logging limits were held to be

⁵ http://www.39essex.com/docs/articles/CZ_Injunctions_140906.pdf

illegal for a number of reasons, including the fact they endangered protected species within the Białowieża Forest ecosystem.

Another important point to consider is the impact of **biodiversity offsetting schemes and whether developers are following the law on these schemes**. If your country has a national policy on biodiversity offsetting, development corporations must abide by these laws. They may be held liable if they illegally cut down trees in protected areas, if they cause irreparable ecosystem damage or if they cut down more trees than the offsetting policy allows.

Key Resource: [Global Inventory on Biodiversity Offset Policies \(GIBOP\)](#)

GIBOP was created by the [IUCN](#) and The Biodiversity Consultancy. It contains 198 countries' publicly available national environmental laws and legislation with regards to offsets provisions, as well as country summaries and links to relevant documents.

In addition to biodiversity laws, endangered species laws can also be used to protect forests. Forest species that are under threat may be protected by national or international endangered species laws.

Key International Law: [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#)

The main aim of CITES is to ensure that international trade does not threaten the survival of a number of listed endangered species, including endangered forest species. There are several tropical timber trees that are protected from international trade under CITES.

CITES can be invoked to ensure that your country is complying with its conservation duties (i.e. preventing illegal logging of protected species) and its monitoring and enforcement obligations.

Your country may not have enacted legislation specifically protected endangered species. However, many countries' forestry and environmental laws and institutional frameworks are designed to protect, manage and conserve endangered species.

Check the environmental laws in your country to see if threatened forest species or habitats are covered under this legislation.

Key Example: [Law No. 94/01 of 20 January 1994 to lay down Forestry, Wildlife and Fishery Regulations \(Cameroon\)](#)

The law, its implementing orders and decree provide a blanket layer of protection for forest land and wildlife species belonging to any natural ecosystem, as well as all animal species captured from their natural habitat. Wildlife is classified into categories based on level of protection.⁶

For more information on habitats in need of protection, biodiversity, and the protection of animal and non-forest plant species, see the **A4J [Environment](#) Module**.

D. Environmental Crime

In some countries, it is a criminal offence to undertake illegal activity that harms the environment. In the context of deforestation, this means that illegal logging and other types of deforestation activities may be considered “**environmental crimes**” or “**forestry crime**”.

These activities will often be governed by national or international **criminal law**. However, many systems of law have combined civil and criminal actions for environmental harm. Remember to check the law in your country.

Examples of environmental crimes that relate to forests include:

- Significantly deteriorating protected habitats through deforestation;
- Unlawful and dangerous activities which cause deforestation;
- Illegal logging;
- Trading or trafficking stolen or illegally harvested timber.

Transnational organised crime is a key driver of environmental crimes and is often driven by money laundering.

There is international law that you can refer to if you are seeking to encourage your country to adopt more expansive legislation to combat organised crime that impacts the environment.

Key Resource: Resolution of the [COP to the UN Convention against Transnational Organized Crime](#)

The resolution on ‘Preventing and combating crimes that affect the environment falling within the scope of the United Nations Convention against Transnational Organized Crime’ established to prevent and combat transnational organised crimes that impact the environment and supply chains. State parties are called upon to make crimes that affect the environment ‘serious crimes’ in their national legislation.

State parties are urged to take measures to implement anti-money laundering frameworks and investigate the laundering of proceeds transnational organised crimes that affect the environment. It also calls upon State parties to assess and mitigate corruption risks.

⁶ <http://www.ijarset.com/upload/2018/january/12-IJARSET-AYUK-modified.pdf>

For more information on money laundering and its relationship to environmental crimes, see the following section on **Tax Evasion and Money Laundering** on this sub-page.

Corporations are often prosecuted for environmental crime. However, in some circumstances, individuals may also be found liable for environmental crimes.

Key Resource: [The Environmental Crime Crisis](#)

UNEP and Interpol's Rapid Response Assessment contains extensive data and insights relating to environmental crime and forest resources. It contains detailed sections on forest crime and the role of wood and illegal wildlife trade for threat finance (e.g. illegal charcoal trade)

Key Resource: [EU Directive on the Protection of the Environment through Criminal Law](#)

This Directive establishes measures relating to criminal law in order to protect the environment. It prohibits a range of activities including conduct that significantly deteriorates a habitat within a protected site and killing, destroying, possessing or taking wild fauna or flora species.

Forestry crimes are connected to the regulation of the timber supply chain and industries that use forest resources. If you would like more information on supply chain liability, see [Sub-Page 9](#) of this guide.

For general information on environmental crime, see the **A4J [Environment](#) Module**.

E. Tax Evasion and Money Laundering Laws

Illegal logging operations are key causes of deforestation. These operations may be funded through criminal activity such as tax evasion/fraud, money laundering, bribery and extortion. These criminal activities generate large sums of money (e.g. billions), which end up being unregulated and untaxed.

Often, the use of "offshore" tax havens is connected to the illegal degradation of forest resources. Foreign money is transferred to and from tax havens and to companies operating in the extractive industry. These companies then engage in potentially illegal deforestation activities. The financial transactions may occur in the forms of payments, financing or loans.

Resource: [The Hidden Environmental Consequences of Tax Havens](#)

Stockholm Resilience Centre has outlined a number of key points about the impact of tax havens on the environment. It provides insights into these impacts and cites a [study](#) that provides in depth information about the relationship between deforestation and the transfers of financial capital through tax havens.

The proceeds of illegal logging activities may also be converted into assets through a process called "**money laundering**".

Resource: [Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the World's Tropical Forests](#)

This 2012 UNEP and INTERPOL report highlights how tax fraud and money laundering are fuelling illegal logging operations. It outlines data on ways in which the export and trade in illegal logs and wood products are financed and profit laundered.

Some countries and regional bodies, such as the EU, have developed bodies, laws and procedures for dealing with money laundering and corruption.

Using anti-money laundering laws to prevent illegal logging and other forest crimes can be difficult.⁷ However, it is possible to take independent legal action independently in court against a corporation or government that are corruptly involved with illegal logging or deforestation. If you know of or suspect illegal activity, such as money laundering or the financing of illegal timber or wood products, seek legal advice before bringing a case. You will need to gather evidence on the public authority's or company's awareness and/or involvement in the corrupt activity (e.g. taking bribes related to deforestation).

You may also consider **alerting the relevant financial or regulatory bodies and forest law enforcement authorities** (such as your Forestry Commission) in your country, who may be able to **take legal action on your behalf**. Reporting to a regulatory body can complement any independent legal action you may wish to take.

Example: [Operation Carne Fria \(Cold Meat\)](#)

The world's largest beef producer, JBS, was fined after it purchased cattle from embargoed farm ranches in Brazil. The IBAMA places embargoes on farms that commit illegal deforestation and other environmental damage and are banned from economic activity. The illegally sourced cattle were laundered – where transportation documents are issued that make it look like the livestock is coming from legal, non-embargoed farms.

Remember to check the anti-money laundering legislation and criminal activity reporting laws in your country. You may also be able to report or independently bring a **due diligence case** against a corporation that has not followed relevant due diligence procedures that would require companies to comply with national laws relating to money laundering broadly or illegal deforestation (e.g. to conduct due diligence on companies they trade with to ensure they have not financed the forest products through money laundering and not to source illegally logged wood or from farms that are under embargo for breaking the law due to corruption). A company that does not conduct the relevant due diligence may be supporting or financing deforestation due to their supply chain relationships and breaking due diligence laws in their country.

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https://www.fern.org/fileadmin/uploads/fern/Documents/Money%20Laundering%20final%20report%20191015_a.pdf

Example: [UK Due Diligence Requirements](#)

The Environment Act places due diligence requirements on companies carrying out commercial activities in the UK (over a certain turnover/income). The Act requires companies to only source forest risk commodities in accordance with local laws and to carry out and report on supply chain due diligence for illegal deforestation in their own supply chains.

If companies do not comply with this, they will be subject to fines.

In the addition to the above options, you may also want to consider **telling your country's national crime or terrorism agency** by sending a "Suspicious Activity Report"/"Suspicious Transaction Report".

For more information on how to report to regulatory agencies or take independent legal action regarding corruption against a corporation or your government, see the **A4J [Corruption](#) Module**.

For more information on these types of claims and supply chain contexts, see [Sub-Page 9.1 of this Guide relating to Lenders and Financiers](#).

7.2. Who Can Bring a Claim?

This will depend on the type of claim you are bringing. Generally, in order to bring a tort/civil liability claim, claims based on statutes and legislation and other litigation, you must have "standing" (the legal right to bring a claim).

However, you may be able to bypass standing requirements if you are reporting to a regulatory agency, e.g. you are reporting corruption in a forest supply chain.

See [Sub-Page 4](#) of this Guide for more information on standing.

7.3. Who Can I Bring a Claim Against?

Depending on what time of claim you are bringing the appropriate defendant could be:

- A private **individual** (for tort or civil liability claims);
- A **corporation**;
- The **State** as a whole (i.e. your country); or
- The **government department, ministry or body** that is responsible for deciding forest and/or environmental policy in your country.

For further information, see "[Who Can I Bring Legal Action Against](#)" in the **A4J Going to Court Guide**.

7.4 What Evidence Do I Need to Bring a Claim?

In civil law actions, it is the claimant (e.g. you) who has the **“burden of proof”**. This means the person bringing a civil claim needs to bring evidence to prove their case.

One of the first things you need to do to bring a successful claim is gather evidence that will be accepted in court. You must have a set of facts that describes what happened and evidence that supports your **“version of events”** (i.e. what you are saying happened). This is called **“factual evidence”** and will be used to support your claim.

The type of evidence you will need to support your claim will depend on the claim you are bringing or the report you are making.

For further information on evidence, including the scope of evidence you will need to provide, see the section on [**“Evidence and Information” in Sub-Page 11**](#) of this Guide.

For general information on evidence, see the section on [**“How Can I Prove My Case”**](#) in the A4J **Going to Court Guide**.

7.5. What Procedural Steps Do I Need to Take?

If you are submitting a report to a regulatory authority, you will need to follow the relevant procedural steps of that authority.

When you have collected your evidence and conducted your legal analysis, you should then be able to start the court claim. If you are bringing litigation (e.g. a claim in tort or civil liability), the procedure that you must follow will depend on whether you live in a **“common law country”** or **“civil law country”**. The law in your country will outline a judicial review, constitutional petition or amparo process, so that you can bring a claim to the courts and the court may review the situation and provide a remedy.

Focus Point: Limitation Periods

A limitation period imposes a time limit within which a claimant may bring a case. The limitation period depends on the precise cause of action and will dictate the amount of time you have to file your case in court. If you do not file your case within the relevant limitation period, you may be prevented from bringing the claim.

Research the law in your country to determine the relevant limitation period for your claim. You will also need to identify when the time starts running for the limitation period. Time may start running from one of the following:

- The date the harm occurred (e.g. when a forest fire occurred);
- The date you learned about the harm; or

- The date the government made the specific policy decision or took an action that you are challenging.

In some cases, it may be possible to apply for the limitation period to be extended.

For more information, see [“What Procedural Steps do I need to take”](#) in the **A4J Going to Court Guide**.

7.6. What Happens If I Win?

A. Remedies

If you bring a successful claim against the government in a “tort” or harmful act case, you may be entitled to one or more of the below “**remedies**”. The outcome of a successful case will depend on your cause of action and specific claim:

- **(i) Declaratory Judgment:** the Court may be able to issue a declaratory decision stating that the defendant state or corporation is in breach of a legal duty;
- **(ii) Compensation or damages:** to be paid by the defendant to you. This could be financial reparation (i.e. money damages) for the harm you have suffered, to you or your property because of deforestation impacts or compensation for the for the action you have had to take to protect yourself from the impacts of deforestation or forest degradation.
- **(iii) Court Order:** If the Court finds that a defendant has committed a tort or wrongful act, it may order the defendant to take a certain type of action. This may include:
 - Order the defendant to do or stop doing something, for example to stop deforestation, such a close a mine or stop setting fires; or
 - An order for remediation Require the defendant to return the deforested area to an acceptable state, e.g. through reforestation or afforestation plans, or clean up contamination of it, or provide alternative land for affected or displaced people.

It is important to remember that the **affected individuals and communities should lead on deciding which remedies are appropriate**, as opposed to NGOs or lawyers. Consider the community impacts of each possible remedy.

For more information, see our general page, [“What Remedies Are Available?”](#) in the **A4J Going to Court Guide**.

B. Enforcement

Winning in court is only the start of the process. Many successful court judgements are either not enforceable or are not enforced in practice.

You may be able to go back to court and ask for the judgement to be defined and enforced. See the general page on [“How Can I Enforce a Court Order”](#) in the A4J Going to Court Guide.

7.7 Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these, see the relevant headings in [Sub-Page 11 “Going to Court”](#) of this Guide.

SUB-PAGE 8: CLIMATE CHANGE ISSUES

Forests are very important to preventing and mitigating the effects of climate change. They are important “**carbon sinks**”, which means they absorb more carbon from the atmosphere than they emit. Sometimes, certain activities such as biomass burning, and intensive agriculture can have knock-on effects on both forest health and climate change. The destruction and degradation of forests usually results in the emission of significant quantities of carbon dioxide and therefore contributes to climate change. It is estimated that deforestation causes 25% of the world’s greenhouse gas emissions.

The positive impact of forests on combatting climate change and the negative impacts of deforestation/forest degradation can sometimes be used when taking legal action to stop deforestation.

Case Example: [National Green Tribunal in India](#)

In a landmark judgment, the Supreme Court ruled that the National Green Tribunal has powers to initiate legal action and take up environmental issues on its own accord. The decision will allow the tribunal to have greater flexibility to address environmental damage and climate change.

8.1. Using the Climate Change Implications of Deforestation to Combat it

Forests play a crucial role in mitigating the effects of climate change and protecting human and ecosystems from the impacts of rising greenhouse gas (GHG) emissions. When considering what type of claim to bring to prevent deforestation, consider the climate impacts of the concerned activities. You may be able to use the negative climate change implications of deforestation to compel governments to take action or stop corporations from damaging forest land.

A number of courts have recognised the duty of national governments to address activities that contribute to global GHG emissions and climate change. These obligations are found in both national and international laws, such as the Paris Agreement.

Key example: [Future Generations v. Ministry of the Environment and Others](#)

A group of youths challenged the Colombian government for its failures to reduce deforestation in the Amazon and ensure compliance with a target for zero-net deforestation in the region by 2020. This target was agreed under the Paris Agreement and the Colombian National Development Plan 2014-2018. The plaintiffs argued these failures contributed to climate change and violated their fundamental rights to a healthy environment, life, health, food and water.

The Supreme Court ruled that the Colombian Amazon was entitled to protection, conservation, maintenance and restoration. It also ordered the Colombian government to design and implement plans to address deforestation in the region.

Key Example: [Álvarez et al. v. Peru](#)

In 2019 a group of youths filed a complaint against the Peruvian government for its alleged failure to halt deforestation in the Amazon. The youths have argued that this failure means the government has not taken sufficient action to address climate change. The claimants have also argued that their human and constitutional rights to a healthy environment, life, water and health have been violated.

The claimants are seeking an order that requires the Peruvian government to take mitigation and adaptation measures as well as establish concrete plans to reduce and prevent further deforestation in the Amazon.

Key Example: [Sheikh Asim Farooq vs. Federation of Pakistan etc.](#)

Civil society petitioners filed a petition against a number of government departments for their failure to implement laws, policies and strategies regarding the protection of Pakistani forests. Their petition was based on the Forest Act 1927, the Punjab Plantation and Maintenance of Trees Act 1974, and the National Climate Change Policy 2012. They also sought for the enforcement and protection of their fundamental rights.

The Court relied on principles of international environmental law (including sustainable development, precautionary principle, the doctrine of public trust and inter- and intra-generational equity). It directed the departments to take action as required by law to grow forests and plant trees in urban cities.

Governments are not the only potential defendants you can bring a case against. You may also be able to bring a case against corporations that are conducting unauthorised deforestation or engaging in activities such as extractive industries that are damaging forest land.

There have also been recent cases involving transnational corporate liability for environmental damage and climate change. These cases involve parent corporations where their subsidiaries abroad cause environmental damage.⁸ In theory, these cases could apply to deforestation.

For further information on the impacts of climate change and the types of climate litigation that you can take, see the **A4J [Climate Change Litigation](#) Module**.

8.2. Climate Change Mechanisms – uses and abuses – REDD +

REDD and REDD+ is a mechanism developed in International Climate Change negotiations. It stands for “**Reducing Emissions from Deforestation and Forest Degradation**”. The + stands for the additional commitment to foster conservation, sustainable management of forests, and enhancement of forest carbon stocks. Click [here](#) and [here](#) for more information about REDD/REDD+.

⁸ S Varvastian and F Kalunga, ‘Transnational Corporate Liability for Environmental Damage and Climate Change: Reassessing Access to Justice after *Vedanta v. Lungowe*’ 9 Transnational Environmental Law 323

ACTION JUSTICE

Legal action for social justice

Whilst a country's domestic legal frameworks govern the delivery and implementation national REDD+ strategies, there are also international rules under the United Nations Framework Convention on Climate Change.

Key Resource: [UNFCCC REDD+ Web Platform](#)

The UNFCCC platform was established to provide information on the outcomes of REDD+ activities. It contains useful fact sheets and submissions from State parties as well as relevant organisations and shareholders. The info hub also contains country-specific data and documentation.

Key Resource: [The Consolidated Guide to the REDD+ Rules under the UNFCCC](#)

This is a helpful guide that outlines the UNFCCC REDD+ rules regarding national strategies, implementation, monitoring and more. It also gives an overview of and guidance on non-UNFCCC REDD+ mechanisms. Appendix 1 contains a 'Guide to Other REDD+ Guides' for further information on specific REDD+ topics.

REDD/REDD+ projects must abide by relevant national laws and international obligations relevant to your country - including the need to protect customary rights, the livelihoods of forest communities, and local biological resources. These projects must also adhere to the rules on free, prior and informed consent and public participation.

Although REDD+ projects may help conserve forests and forest ecosystems, these projects are sometimes abused through weak implementation practices and by people who are interested only in the financial benefits. There are also problematic REDD+ schemes that have no positive impact on forests and may even result in the abuse of the Indigenous and forest peoples who live in the forest and rely on forest resources.

Example: [REDD failures in the Democratic Republic of Congo](#)

After a civil society monitoring mission, a [report](#) was released concluding that REDD+ activities on the ground were failing to adhere to national and international standards. Local community rights of free, prior and informed consent were violated, and local communities were often excluded from the opportunity to participate in activities that would improve their land rights. Communities often did not receive promised REDD+ benefits and no grievance mechanisms were put in place.

Example: [REDD+ in Paraguay](#)

Forest Peoples Programme and the Federación por la Autodeterminación de los Pueblos Indígenas released a set of reports in 2015 regarding the situation faced by Indigenous Peoples in Paraguay in relation to their land, natural resources and territories. The reports found that despite the

government's promotion of UN-REDD+ and other conservation funds, Indigenous Peoples are unlikely to see the benefits of climate change and conservation programmes.

It may be possible to take legal action if there is a REDD+ scheme that is planned or implemented in a way that violates your constitutional, human or land rights, breaks national and/or international law, or goes against established REDD+ rules.

Some countries have also developed or are working to develop their own **REDD+ Grievance Mechanisms**. If there is a grievance mechanism in your country, you may be able to file a complaint if you are having issues with a REDD+ project, there is a dispute or you think a REDD+ project is negatively impacting your rights or causing harm to forest land. Check the REDD+ laws in your country to see if there is a REDD+ grievance or complaint mechanism.

Key Resource: [Report on Development of a REDD+ Grievance Mechanism for Suriname](#)

This report was created with the aim of developing a REDD+ Grievance Mechanism for Suriname. It outlines current practices and proposals for design of a mechanism and grievance redress office.

8.3. Who Can Bring a Claim?

In order to bring a claim through the international legal instruments, you must have “**standing**” (the legal right to bring a claim).

See [Sub-Page 4](#) of this Guide for more information on standing.

8.4. Who Can I Bring a Claim Against?

The case should be brought against:

- The **government department, ministry or body** that is responsible for setting climate change mitigation targets, adaptation plans or the REDD/REDD+ programme;
- The **developer** that is delivering the REDD+ project in the local community;
- The **corporation or group** that is purchasing carbon credits from a REDD/REDD+ project; and/or
- The **corporation or group** that is responsible for the carbon emissions related to deforestation in your local area.

Example: [COONAPIP v. Panama](#)

In 2013, the National Coordinator of Indigenous Peoples in Panama (COONAPIP) announced its intent to sue the Panamanian government to shut down the country's REDD+ programme. COONAPIP argued that Indigenous People in Panama have not been properly engaged in the REDD+ process.

For further information, see the relevant sections of the **A4J Climate Change Module**. For more general information, see "[Who Can I Bring Legal Action Against](#)" in the **A4J Going to Court Guide**.

8.5. What Evidence Do I Need to Bring a Claim?

In public law actions, it is the claimant (e.g. you) who has the **"burden of proof"**. This means the person bringing a civil claim needs to bring evidence to prove their case.

One of the first things you need to do to bring a successful claim is gather evidence that will be accepted in court. You must have a set of facts that describes what happened and evidence that supports your **"version of events"** (i.e. what you are saying happened). This is called **"factual evidence"** and will be used to support your claim.

If you are bringing a complaint or case about a REDD/REDD+ project, you will also need to provide details on:

- The project in question; and
- How the project has impacted you, your land and/or violated your rights.

For further information on evidence, including the scope of evidence you will need to provide, see the section on ["Evidence and Information" in Sub-Page 11](#) of this Guide.

For general information on evidence, see the section on ["How Can I Prove My Case"](#) in the **A4J Going to Court Guide**.

8.6. What Procedural Steps Do I Need to Take?

If you are bringing a complaint or dispute to the REDD/REDD+ Grievance mechanism in your country, you will need to check the relevant procedures of the mechanism.

If you are bringing a lawsuit, these claims are usually taken in **national administrative or constitutional courts**.

- In some countries, this process is called "judicial review" or a "constitutional petition".
- In many Latin American countries, this process is called "amparo proceedings".

The procedure that you must follow will depend on whether you live in a **"common law country"** or **"civil law country"**. The law in your country will outline a judicial review, constitutional

petition or amparo process, so that you can bring a claim to the courts and the court may review the situation and provide a remedy.

Focus Point: Limitation Periods

A limitation period imposes a time limit within which a claimant may bring a case. The limitation period depends on the precise cause of action and will dictate the amount of time you have to file your case in court. If you do not file your case within the relevant limitation period, you may be prevented from bringing the claim.

Research the law in your country to determine the relevant limitation period for your claim. You will also need to identify when the time starts running for the limitation period. Time may start running from one of the following:

- The date the harm occurred (e.g. when the forest fire happened);
- The date you learned about the harm; or
- The date the government made the specific policy decision or took an action that you are challenging.

In some cases, it may be possible to apply for the limitation period to be extended.

For more information, see [“What Procedural Steps Do I Need to Take”](#) in relation to Administrative, Constitutional and Human Rights Cases in the **A4J Going to Court Guide**.

8.7. What Happens If I Win?

A. Remedies

If you bring a successful claim against the government or corporation, you may be entitled to one or more of the below “remedies”. The outcome of a successful case will depend on your cause of action and specific claim:

- **A response from the REDD/REDD+ Grievance Redress Mechanism** that commits to implementing direct action to resolve your complaint or further assessment of the complaint;
- **A Court Order** to stop the activities causing deforestation and carbon emissions; or
- **Compensation.**

It is important to remember that the **affected individuals and communities should lead on deciding which remedies are appropriate**, as opposed to NGOs or lawyers. Consider the community impacts of each possible remedy.

For more information on remedies and climate change litigation, see the details “Remedies” in the relevant sections of the **A4J Climate Change Guide**.

For information on remedies generally, see our page, [“What Remedies Are Available?”](#) in the **A4J Going to Court Guide**.

B. Enforcement

Winning in court is only the start of the process. Many successful complaint responses and court judgements are either not enforceable or are not enforced in practice.

You may be able to go back to court and ask for the judgement to be defined and enforced. See the general page on [“How Can I Enforce a Court Order”](#) in the **A4J Going to Court Guide**.

8.8. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these, see the relevant headings in [Sub-Page 11 “Going to Court”](#) of this **Guide**.

SUB-PAGE 9: SUPPLY CHAIN ACCOUNTABILITY

It is often difficult or impossible to stop deforestation directly in the place where it is happening. But forest products (timber) and products grown on deforested land (e.g. palm oil, soya, beef) often enter the global supply chain. It may be possible to take legal action against those in the supply chain (people who buy and sell these products) in other countries under the laws of those other countries.

The timber and agricultural supply chains are both major drivers of deforestation. The commodities produced by these industries fuel deforestation and environmental degradation which results in a number of environmental and social impacts. These commodities are known as **“forest risk commodities.”** They include (but are not limited to) timber products, soy, palm oil, and beef/cattle products. As such, commercial companies have a number of obligations in terms of preventing deforestation and environmental degradation in their activities and supply chains. However, complications in litigation may arise as there are numerous actors along the supply chain that may be liable for deforestation.

Key Resource: [Forest 500 Index](#)

Global Canopy Programme has a Forest 500 index which assesses the conduct and policy of 500 of the main “powerbrokers” in the global deforestation.

It also contains country-specific data for the countries involved in producing and trading forest-risk commodities, as well as data on deforestation policies of financial institutions.

This section contains information on how to hold supply chains accountable for deforestation and illegal logging. In some countries, there are laws prohibiting the import of illegally logged timber. If a company breaks these laws, regulatory (civil and criminal) action can be taken.

The [Global Forest Atlas](#) defines illegal logging as the harvesting of timber against a country’s national logging regulations. This may involve activities that exceed logging quotas, cutting trees in protected areas and/or harvesting protected species. For more information on the wood supply chain, including tools for supply chain traceability, see [here](#).

Resource: [Supply-Chain.org](#)

This Forest Trends information portal contains detailed information regarding a number of companies’ deforestation commitments. Companies are divided by industry, such as palm, soy, timber & pulp and cattle.

Resource: [Trase](#)

Trase is another useful resource for tracking specific supply chains and the countries they originate in. It provides data on the fully supply chain, which will be useful for identifying exporting and importing countries as well as business interests in the supply chain.

9.1 What Laws Are Relevant to the Supply Chain?

A. Timber-Specific Supply Chain Agreements and Legislation

If you are looking to bring supply chain accountability claim (where possible), you will generally be using supply chain timber or forest risk commodity legislation (i.e. national or regional law). The EU Timber Regulations, Australian Illegal Logging Prohibition Act 2012 and Regulation, and the U.S Lacey Act are all important supply chain legal frameworks.

In Europe, Australia and other countries, there are laws that make it illegal to import **illegally harvested timber** (i.e. wood from trees that have been illegally cut down in the country of origin) in that country if imported goods (such as timber) have been produced in a way that is contrary to laws in the country of origin.

(i) *EU Timber Regulations and FLEGT Voluntary Partnership Agreements*

The [EU Timber Regulations](#) make it illegal within the European union to supply timber which has been logged in a way that is against the law in the country of origin. Legal actions can be taken when these regulations are broken.

A **Voluntary Partnership Agreement** (VPA) is a trade agreement between the European Union (EU) and a timber-exporting country outside of the EU. A VPA seeks to ensure that any exported timber comes from legally harvested sources. It is also placed to assist the non-EU VPA country to combat illegal logging through improved forestry regulation and management.

Key Resource: [Forest Law, Enforcement, Governance and Trade \(FLEGT\)](#)

FLEGT is an EU initiative to improve forest and supply chain governance. The FLEGT website contains a number of useful resources aimed at increasing awareness of and reducing illegal logging. It also contains information about VPAs, which are a central part of the FLEGT Action Plan to address illegal logging.

For a list of VPA partner countries, see [here](#). Other countries with high exports of timber, such as China and Myanmar, have separate agreements and/or cooperation associations (i.e. South Asian Association for Regional Cooperation) to regulate and monitor cross-border timber supply chains.

Example: [VPA between the EU and Republic of Indonesia](#)

Indonesia is one of the world's largest exporters of tropical timber products. It is also one of the EU's biggest VPA partners. Indonesia was previously required to issue FLEGT licences to certify legal timber products exported to the EU; however, the trade ministry recently issued a [regulation](#) (effective May 2020) which indicates exporters no longer need licences to verify the legality of their timber sources.

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VPA Violations

In some cases, you will be arguing that a company has violated a VPA. You will need to look at the content of the VPA to see if the company has violated its terms. Legal action can be taken if this company has violated the terms of a VPA and obtained illegally sourced or produced timber products.

Key Example: [Swedish Court rules Myanmar Timber Documentation Inadequate for EU Importers](#)

A Swedish company that imported teak via a Singapore trader was held to have violated the EU Timber Regulations. The Court confirmed that the certificate issued by Myanmar Forest Products Merchants' Federation's failed to adequately prove the teak shipment had been legally harvested.

First, check the text of the VPA agreement to find the definition for "legally produced timber". The timber exporting country should have a system ("**Legality Assurance System**") in place to verify that the timber has been legally produced.

Example: [Cameroon VPA](#)

Cameroon's VPA is ratified and its system is being developed. The legality definition covers fiscal and administrative requirements; harvesting; forest management and processing operations; transportation; and social and environmental requirements.

Its Legality Assurance System applies to all timber and timber products produced, acquired and/or traded in Cameroon, including important timber.

It is also important to check the contents of the annexes. There are a number of VPA annexes that will cover legality, transparency, implementation and monitoring.

Key Resource: [VPA Unpacked](#)

The European Commission's VPA Unpacked is an in-depth guide to VPAs. It is organised into six chapters, which describe the different aspects of VPAs in detail. It is an important resource for establishing the general legal requirements of a VPA and information about licensing, monitoring and transparency.

Key Resource: [Sustainable Procurement of Forest Products Guide](#)

This guide contains extensive information about procuring forest products. It includes a key chapter on legality. You can view a range of countries' public procurement policies, logging and export bans, private sector legality requirements and VPA legality requirements.

The VPA process may have a direct impact on Indigenous communities. However, VPAs do not currently address human rights or community-centric standards. As such, customary land rights,

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Indigenous People's rights and other human rights remain dependent on the laws of the timber-exporting country. For more information, see the Forest Peoples Programme's guide on [Human Rights in Timber Supply Chains](#).

For further information about how local communities can protect their rights in different contexts, **Sub-Pages [2](#), [3](#) and/or [5](#) of this Guide.**

What If there's no VPA?

Finally, **where a VPA does not exist and a company does not comply with EU Timber Regulations**, you may be able to contact or make a complaint to a national consumer products regulatory authority.

Example: [Dutch Companies Breach EU Timber Regulation](#)

The FLEGT process in Myanmar has [not yet reached](#) the VPA implementation stage. In 2017, the Netherlands food and consumer product safety authority (NVWA), which enforces timber regulation, issued a preventative measure against two companies that import teak from Myanmar to the European market. These companies did not comply with EU Timber Regulation. The companies were required to pay a sum of money for every teak shipment they continue to place on the market.

(ii) *United States Lacey Act*

In the United States (US), the [Lacey Act](#) bans the illegal trafficking of fish, wildlife and plants. It establishes both civil and criminal penalties. It applies to relevant violations of both US and Native American tribal law.

Key Resource: [Lacey Act Fact Sheet](#)

The World Resources Initiative has compiled a detailed fact sheet on the Lacey Act. It also contains a FAQ section for further information.

Further Resource: [Forest Legality Initiative](#)

The Forest Legality Initiative has provided a useful breakdown of the Lacey Act, as well as a number of external links for further guidance on the Act.

A 2008 amendment expanded the Lacey Act to include a prohibition on products made from illegally logged woods, such as paper and timber products.

The Lacey Act establishes strict liability (i.e. you do not need to prove fault). Third party certification and lack of knowledge will not discharge liability under the Act.

Key Example: [Gibson Guitar Enforcement Action](#)

The US Department of Justice brought an enforcement action under the amended Lacey Act against Gibson Guitar. The company allegedly purchased and imported illegally harvested wood products into the US from Madagascar and India.

Gibson Guitar was required to pay a penalty of \$300,000 (USD), pay a community service payment of \$50,000 (USD) to the National Fish and Wildlife Foundation, implement a detailed compliance programme and relinquish its civil claims to the wood seized by the Government during the investigation.

(iii) Australia

The **Australian Illegal Logging Prohibition Act and Regulation** establishes the import of illegally logged timber as a criminal offence.

Like the EU, the [Australian Act](#) and regulations also place due diligence requirements on a company importing or processing certain regulated timber products.

(iv) Other Timber Legality Frameworks

A number of other countries and bodies have introduced legal frameworks for the regulation of timber:

- **Japan** – The **Act on Promotion of the Distribution and Use of Legally Logged Wood** ([‘Clean Wood Act’](#)) provides that companies must have a due diligence system for timber and timber product imports. Certification is encouraged for risk mitigation.
- **The Republic of Korea** – South Korea’s **Act on the Sustainable Use of Timber** is a compulsory framework which requires the submission of timber legality documentation prior to customs clearance (i.e. [pre-import controls](#)).
- **China** – China’s [voluntary Timber Legality Verification System](#) includes a timber legality verification standard. All companies in the supply chain are regulated. Due diligence is a key obligation within this system.
- **Log Export Ban Policies:** Many other countries have enacted log export ban policies to protect forests. For a non-exhaustive list of export bans, see Table 4 [here](#).
- **Pan-African Forest Certification (PAFC) schemes** – The [PAFC](#) is a regional initiative that is a collaboration between several African organization members of the [Programme for the Endorsement of Forest Certification](#) Alliance, aiming to put in place a unique regional approach to sustainable forest management, replacing national initiatives. The PAFC has a number of schemes including the Congo Basin, Gabon, Cameroon and Congo.
- **Peru** – The **US-Peru Trade Promotion Agreement** contains an [annex](#) that addresses illegal logging and timber trade through strengthened forestry governance in Peru

- **Industry Associations** – Trade associations may set codes of conduct, policies or guidelines (usually voluntary) to encourage members to remove unsustainable and/or illegal wood from their supply chains. See Table 7 [here](#) for a range of examples.

Key Resource: [Forest Policy, Trade, and Finance](#)

This 2017 Forest Trends report series sets out the status of timber import regulations in Asia. It is a useful starting point for assessing supply chain regulations across the region. Note that China's legislation has since been introduced.

The [Forest Stewardship Council](#) released a May 2018 [briefing](#) titled 'Legislation to prevent Illegal imports into Asian Countries' which contains updated information on legislation.

B. General Supply Chain Laws of Relevance to Deforestation and Forest Risk Commodities

Although timber supply chains contribute to global deforestation, there are other supply chains that cause environmental destruction. Many of these supply chains are subject to various regulatory frameworks that may be of use for stopping deforestation.

In **Brazil**, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) places bans known as [embargoes](#) on slaughterhouses and farms that engage in, or purchase cattle from other businesses that engage in, illegal deforestation or other environmentally degrading activities. This means that farms are required to cease all economic operations.

Example: [Operation Carne Fria \(Cold Meat\)](#)

The IBAMA placed an embargo on JBS, the world's largest beef producer after an investigation revealed it purchased cattle from 26 embargoed farms.

Several other countries and bodies have introduced legal frameworks for the regulation of forest risk commodity and other potentially socio-environmentally destructive supply chains. For example, conflict minerals, such as gold, supply chains are known to cause environmental degradation.

Conversely, some of these regulatory frameworks may be focused on human rights abuses within supply chains, but nevertheless may be relevant to bringing a claim to prevent deforestation or protect the rights of forest communities. For example, where a beef supply chain is exploiting people through modern slavery, it may be more effective to target these human rights abuses under modern slavery legislation, whilst also highlighting the environmental impacts of the supply chain.

Make sure to carefully check the text of the relevant laws or principles and consider what duties (particularly whether they place any extraterritorial obligations) they place on supply chain actors, including downstream or upstream suppliers within the supply chain.

- **United States** - Dodd Frank Act 2010 and California Transparency in Supply Chains Act 2010
- **Brazil** – National Pact for Eradication of Slave Labour (Voluntary Initiative)
- **France** - Corporate Duty of Vigilance Law 2017
- **United Kingdom** – Section 54, Modern Slavery Act 2015. The UK is also introducing a [supply chain due diligence law](#) that will combat illegal deforestation. The aim of this legislation is to prevent large companies from growing forest risk commodities (e.g. beef, soya) on land that has been illegally deforested.
- **Supply chain transparency/disclosure laws:** Where they are in force, supply chain transparency and disclosure laws require companies to scope and disclose what efforts, if any, they are taking to address the environmental and human rights (e.g. modern slavery) in their operations and supply chains.

C. Lenders and Financiers Claims

Claims against and by lenders, investors and shareholders can be influential in applying pressure to companies that fail to stop deforestation in their supply chains. Deforestation and its environmental impacts pose a number of financial risks to companies and those that invest in them, including (but not limited to):

- Deforestation and degradation increase the likelihood of **forest fires, drought and flooding**, which pose **physical risks** to a company and its profits;
- Deforestation increases the risk of **animal and insect-borne disease transmission**. Outbreaks of these (whether in the animal or human populations) may interrupt supply chains and profits; and
- Companies may be **liable to make financial disclosures about risks they face due to biodiversity loss**. Those who do not report where there is a duty to do so or fail to account correctly for these risks may render them liable. However [fewer than 25%](#) of companies worldwide currently report risks from biodiversity loss.

Example: [The Bunge Report](#)

Bunge, a global agribusiness, is the leading soy trader in Piauí. Despite Bunge's stated commitment to achieve zero-deforestation supply chains between 2020-2025 and take action to establish soy farms in non-forested areas, according to this report it continued to source from producers involved in *legal* deforestation. Its lenders and creditors have deforestation policies in place.

(i) Legal Action Against Lenders, Shareholders and Investors of Supply Chains

Lenders and investors have a duty to ensure their financial investments are compliant with national and international laws. The legal basis for this type of claim arises from the fiduciary duties that investment managers owe to the beneficiaries of the fund or the people they advise.

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Investors have several fiduciary duties to uphold in their investment decision making. In addition to standard fiduciary duties such as **due diligence**, the UNEP Finance Initiative has [noted](#) that most markets, excluding the US, have incorporated environmental and sustainability concerns into fiduciary duties, including:

- The duty to **incorporate environmental, social and governance (ESG) issues into investment analysis and decision-making**;
- The duty to **encourage high standards of ESG performance** in the companies they invest in;
- The duty to **incorporate (beneficiaries' and savers') sustainability preferences**; and
- The **duty to report** on how these ESG commitments have been implemented into practice.

Investment managers or companies that fail to follow these duties may be liable to litigation for failing to prevent or mitigate deforestation and forest degradation in their supply chains. If you are a beneficiary of an investment fund that is failing to adhere to its fiduciary duties and/or incorporate or report on ESG issues, you may wish to bring a claim for breach of these duties or under your national (or regional) laws regulating companies and their accounts.

Development to Follow: [EU Consideration of New Financial Reporting Requirements](#)

The European Commission is considering whether to establish stricter disclosure and reporting requirements for listed companies, banks and insurance firms about their exposure to biodiversity loss and pandemic risk (both risks [are increased](#) alongside deforestation).

You may also be able to bring a complaint to the relevant authority in your country. If you suspect a company has not made an adequate disclosure or report of its deforestation or biodiversity policies/risks, you can report this to the relevant regulatory authorities in your country.

(ii) Legal Action Against Lenders and Creditors

Lenders and creditors must also comply with the national and international laws regarding deforestation and sustainable supply chain management. Financial regulators and other national regulatory bodies can hold financial institutions liable if they finance deforestation or forest degradation.

Key Example: [Operation Soy Sauce](#)

An investigation in the Brazilian Matopiba region found a number of transnational grain trading companies and their supplying farmers to be accountable for illegal deforestation. The companies had cleared native brushland without deforestation licences and in breach of a federal embargo on soy crop cultivation and harvesting on protected land.

Over 5,000 tonnes of soy was seized during the course of the investigation. The companies were issued fines by the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA).

The IBAMA also fined institutions, such as [Santander Bank](#), that financed the cultivation of these crops in the Amazon rainforest region.

You can investigate the supply chain [here](#).

(iii) Claims by Shareholders Against Companies and Management

However, these duties can also be used by shareholders and investors to prevent deforestation in supply chains. If you are an investor, these duties can be especially important tools where a company has committed to reducing deforestation but have not fulfilled these commitments. You may be able to use these duties to pressure companies to take action in their supply chains.

One way to enforce these duties is to raise issues of deforestation and forest degradation in the supply chain at shareholder meetings. You or your organisation may be able to table a resolution to address these issues.

Example: [Proctor & Gamble Shareholders Vote to Address Supply-Chain Deforestation](#)

A majority (67%) of shareholders of Proctor & Gamble voted to address supply chain loopholes that contribute to deforestation and forest degradation. Green Century Fund, the mutual fund that put up the resolution for a vote, noted that Proctor & Gamble's failure to address deforestation in its supply chains 'was a material financial risk to the company and its shareholders.'

Example: [Investors Using Satellite to Target Companies with Deforestation in Supply Chains](#)

A coalition of investors with over €1.8 trillion in assets have tracked forest cover changes in Malaysia and identify companies involved in the palm oil supply chain involved in deforestation. The investors are demanding companies to disclose supplier lists for forest risk commodities and take action to mitigate and prevent deforestation in their supply chains. The investors' request is based on their 'fiduciary duty to lead the transition into a more sustainable society'.

If you are an investor at a company, the threat of removing financial support is a powerful way to hold trading companies in the supply chain accountable for their obligations (whether legal or self-imposed) to reduce and prevent deforestation.

Example: [The Bureau of Investigative Journalism \(TBIJ\) and *Unearthed* Analysis of Beef Companies in the Amazon](#)

The analysis revealed that British and European banks and financial organisations have provided financial backing (more than \$2 billion) through bonds, loans, underwriting and shares to beef companies linked to deforestation in the Amazon.

Some of the financial institutions in the analysis told TBIJ and *Unearthed* that they may reconsider financial support in the future if there is not sufficient progress on the companies' management of deforestation in their supply chains.

D. Taking Legal Action in Foreign Courts

You may be able to bring a case in a foreign court against a transnational company who has contributing to deforestation by purchasing illegally harvested timber or timber products. This may be a useful option if you are unable to seek effective redress in your country's domestic courts. Apart from the options listed above, there may be a claim based on ownership of illegally harvested products remaining with the communities that occupied or owned the land.

Key Example: [Song Mao v Tate & Lyle Industries Ltd and Tate & Lyle Sugars Ltd](#)

A group of Cambodian villagers sued Tate & Lyle in the United Kingdom. Tate & Lyle bought sugar emanating from land which had been converted from forest and farming land. The villagers previously living there alleged it had been illegally cleared and occupied land. They argued that they were the legal owners of the land and the sugar which had come from cane grown on it and that the Tate & Lyle had wrongly taken it when they bought it. The villagers alleged that Tate & Lyle had committed the tort of conversion. The case has not been yet resolved by a court.

Litigation against transnational companies can be a useful tool for fighting deforestation in global supply chains. Here you will be arguing for a company's transnational corporate accountability for the illegal acquisition of products and harms caused by illegal deforestation in their operations. Specifically, you will need to show that the company that purchased the goods (e.g. forest risk commodities, timber or timber products) has violated your ownership of the forest products through the transaction.

You will need to prove that the violations were so extreme that the foreign court has good reason to examine the validity of the laws in your country.

It will support your claim if you bring it in a national court in a country where the company has business connections. For example, bringing the claim in the country where the parent company of the violating company is based, or the country where the illegal timber or beef products ended up.

You will also generally need to show that you have exhausted judicial processes in your country before pursuing this type of claim. You will also need to demonstrate that the Court you are bringing it in has jurisdiction over the case.

For general information generally, see "[How Can I Bring a Civil Claim Against a Business in a Foreign Court?](#)" in the **A4J Business and Human Rights** Module.

E. Supply Chain Consumer Claims

At the consumer level of the supply chain, there are systems for **forest product certification** or **ecolabels** for food and consumer products that are meant to adhere to sustainability or certification requirements.

A common issue is the “**greenwashing**” of products or sustainability policies in supply chains, in which companies misrepresent their **certification status** or **ecolabels** and do not actually meet the standards they are meant to. It may be possible for consumers to bring legal action or make complaints where companies give misleading information about their deforestation and sustainable supply chain policies and products.

Voluntary Forest Certification Schemes are one example of product **certification** in supply chains. These schemes have been developed to allow the market, as opposed to government regulation or laws, to improve logging practices and control deforestation and forest degradation.

Two major examples of these schemes include **the Forest Stewardship Council** and **the Programme for the Endorsement of Forest Certification**.

Key Resource: [Forest Stewardship Council \(FSC\) GIS Map](#)

The FSC is an important body for global forest management. Its standards include Forest Management Certification, Chain of Custody Certification and Certification Body Accreditation.

The organisation has compiled an interactive map of FSC-certified forests and operations. The map makes it easy to assess data regarding important aspects of the FSC system, such as certified forests, international membership and regional presence.

However, these certifications are not always obtained in good faith.

Example: [IKEA Illegal Logging in Ukraine](#)

An investigation by Earthsight found that Ikea was selling furniture products made from wood that was illegally felled in Ukrainian forests that are home to endangered species. The illegal wood was also FSC-certified.

You can file a complaint with the FSC [here](#). You can file a complaint with the Programme for the Endorsement of Forest Certification [here](#).

In addition to these schemes, there are several other **ecolabels** for wood and paper products, as well as forest risk commodities. Examples of some of these voluntary ecolabelling certification schemes include:

- [Blue Angel](#): The ecolabel of Germany;

- [Bonscuro](#): An organisation that seeks to improve the social, environmental and economic sustainability of sugarcane production (which contributes to deforestation). It provides a database of certified companies that are bound by its Code of Conduct;
- [EU Ecolabel](#): The EU Ecolabel that is awarded to products and services meeting high environmental standards throughout their supply chain cycle

Example: [Bonscuro's Complaints and Grievance Management System](#)

Individuals and organisations have a number of options for reporting or complaining about the actions of Bonscuro members, auditors or actors across the sugarcane supply chain.

If you are concerned about a certification or ecolabel, report the company to the relevant regulatory authority or labelling system.

A company that falsely obtains an ecolabel may be removed from the labelling scheme, liable to breaches of advertising codes or regulations, fines or consumer compensation.

9.2. Who Can Bring a Claim?

Generally, in order to bring a claim, you must have “**standing**” (the legal right to bring a claim). See [Sub-Page 4](#) of this Guide for more information on standing.

The person or group who can bring the chain claim depends on the type of action you are pursuing and what laws have been broken.

Remember to check the laws in your country (and any producer/consumer countries) to see what type of action can be taken and how to make complaints to relevant bodies.

A. Supplier/Consumer Laws

Generally, government or regulatory bodies will bring the case. You can report to them if you suspect that illegally harvested timber is being imported or that companies are trading forest risk commodities from illegally deforested land.

You will either report or bring the litigation against the company or organisational group who has imported the timber or forest risk commodity.

B. Lender/Investor Action

These actions will be brought by:

- **Government or national regulatory bodies** that you can report an inadequate disclosure or make a complaint to (regardless of whether you are a shareholder of the company);

- Someone who is a **beneficiary of an investment or pension fund** that is not mitigating deforestation or degradation;
- **Shareholders or investors** of a company. Some countries have rules that minority groups of shareholders cannot take this type of action so check the laws in your country first.

C. Taking Legal Action in Foreign Courts

You may be able to bring the case as an individual or group. The general rules of standing will apply.

D. Consumer Claims

Consumers that rely on certification or ecolabels labels may be able to lodge a complaint if these labels are used in bad faith or falsely obtained.

9.3. Who Can I Bring a Claim Against?

Depending on the type of action you are taking, the case or complaint could be brought against:

- The company, lender or group that has imported the timber or forest risk commodity, is illegally logging, or failing to mitigate deforestation or degradation;
- The company that is misrepresenting or falsely using a specific certification or ecolabel; or
- The investment or pension fund.

9.4. What Evidence Do I Need to Bring a Claim?

This is a complex subject, and it is recommended that you obtain specialist advice. If you are reporting or pursuing a complaint or litigation against a company in the timber supply chain, you will need to obtain detailed information on the supply chain, including the origin of the timber. In any case, it will help if you can obtain the following information:

- The serial number of the timber or timber products in question;
- Evidence of illegal deforestation in the exporting country/region; and
- Details of the company that imported the timber.

It may also help to obtain DNA samples on the timber product.

Key Resource: [Traceability Guide for Forest Products](#)

Sustainable Forest Products have released a short guide on traceability, i.e. tracing the origin of the timber materials. It lists a number of methods and documents that will be useful for tracing the origins of raw materials, including tracing purchasers through supply chain purchase contracts.

See their [website](#) for further information on traceability and origin.

You may be able to access evidence documents via Freedom of Information Requests or requesting directly from suppliers or purchasers.

For other claims regarding forest risk commodity supply chains, you will likely need the following information:

- Freedom of Information data;
- Information about any embargoed farms;
- Purchase and transactional records;
- Shipment records;
- Deforestation Codes of Conduct/Sustainability Policies;
- Evidence of financial investors or lenders' knowledge of deforestation; and/or
- Evidence/impact assessment of deforestation and/or forest degradation occurring in the specified region.

Example: [UK Military Beef Supplier linked to Illegal Deforestation in Brazil](#)

An Earthsight investigation revealed that beef suppliers to the UK Ministry of Defence in Bahrain received beef from Frigosul. However, the Ministry of Defence's subcontractor bought cattle from farmers who were facing fines for malpractice, land clearance, falsifying documents and pollution.

Earthsight's evidence allegedly points to a 'cattle laundering' scheme between embargoed and non-embargoed farms within Frigosul's supply chain. It analysed freedom of information requests, data on sanctioned cattle ranchers, slaughterhouse transactions, and shipping data across the supply chain.

For further information on evidence, including the scope of evidence you will need to provide, see the section on ["Evidence and Information" in Sub-Page 11](#) of this Guide.

For general information on evidence, see the section on ["How Can I Prove My Case"](#) in the A4J Going to Court Guide.

9.5. What Procedural Steps Do I Need to Take?

The procedural steps will depend on the type of action you will be taking.

If you are reporting to a regulatory authority or another body, you will need to follow their reporting requirements. It is important to look at these requirements prior to bringing a complaint. Remember to check if there are any time limitations that will be relevant to your complaint.

If you are bringing litigation against a company, you will need to check the relevant civil or criminal procedures in your country.

9.6. What Happens If I Win?

Depending on the type of supply chain action you take, you may be entitled to one or more of the below “**remedies**”. The outcome of a successful case will depend on your cause of action or complaint:

- **Criminal or civil sanctions** against the company;
- **Nullification or suspension** of the timber license;
- Court order for the company to **halt operations or restore the forest**;
- **Reviews of logging limits**;
- Court order for the company to pay **finances or compensation/damages**.

It is important to remember that the affected individuals and communities should lead on deciding which remedies are appropriate, as opposed to NGOs or lawyers. Consider the community impacts of each possible remedy.

If you want more information:

- On remedies, go to our general page on [What Remedies Are Available? In the A4J Going to Court Guide](#).
- On how to enforce a remedy if the defendant is not cooperating, go to our general page on [How Can I Enforce a Court Order? In the A4J Going to Court Guide](#)

9.7. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these points, see the relevant headings in [Sub-Page 11 “Going to Court” of this Guide](#).

Tip: Supply Chain Campaigns and Financial Actions

Even where there are no laws against importing timber, campaigns can be to raise awareness about the corporate reputations of the companies that import illegal timber.

Example: [Global Witness Timber Campaigns](#)

US retailers of timber products committed to product changes following allegations of links to Indigenous rights abuses and illegal logging activities in Papua New Guinea

Legal action may be more effective if it is combined with campaigns and larger advocacy efforts directed at the people involved in the ultimate financing of and benefit from deforestation.

SUB-PAGE 10: NON-JUDICIAL REMEDIES

There are alternatives to going to national, regional or international courts if you want to challenge governments and corporations about their policies and actions on deforestation and forest management. This section of the Guide will give you a brief introduction on some of these alternatives (called “**non-judicial remedies**”). It will also give you tips on how to use these methods to protect forests.

10.1. Voluntary Codes and Standards

Corporate accountability in the forestry sector is very important. **Corporate Social Responsibility** (“CSR”) claims may be an important tool in holding corporations account for failing to comply with forest law or improper forest management.

Civil society organisations and company shareholders have increased pressure on private companies to implement initiatives to improve forest operations and reduce harm to communities. These initiatives can range from establishing individual codes of conduct to signing up to industry standards and certification schemes.

Each of these avenues have procedures for non-compliance and monitoring schemes to ensure accountability in the commercial forestry sector.

If you would like to make a complaint about a corporation’s or other organisation’s forestry activities, including deforestation, first check to see if the corporation has its own individual code of conduct for forest law compliance. You may be able to make a complaint through its grievance mechanism under the corporation’s code of conduct.

In some circumstances, you may be able to use a company’s CSR policy as a source of expected standards of conduct. There have been instances where this policy has helped establish a duty of care in law.

Case Example: [Vedanta v. Lungowe](#)

This case involved the mining company, Vedanta Resources, and environmental damage caused by its subsidiary company (KCM) in Zambia. Zambian villagers brought a case in the English courts against Vedanta, claiming that mining waste had polluted waterways and caused property damage, loss of income and personal injury to the claimants.

Vedanta had published a sustainability report for KCM. The Court stated that ‘the parent may incur the relevant responsibility to third parties, if in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not, in fact, do so. In such circumstances, its very omission may constitute the abdication of responsibility which it has publicly undertaken.’ The fact that Vedanta published a CSR report for KCM meant that it had a degree of responsibility for KCM. The UK Supreme Court accepted jurisdiction held that Vedanta, as the parent company, owed a duty of care to the claimants.

If there is no individual code of conduct (by the parent company or one of its subsidiaries), check to see if the organisation subscribes to a wider industry-led code of conduct, standards or certification protocol.

Voluntary transparency codes, certifications and standards play a key role in exposing corruption within illegal logging and trade, as well as the timber supply chain.

Key Resource: [Roundtable on Sustainable Palm Oil \(RSPO\)](#)

RSPO is a non-for-profit that unites stakeholders (over 4,000 global members) from different sectors of the palm oil industry. It has developed a set of environmental and social criteria which companies must comply with in order to produce Certified Sustainable Palm Oil.

The RSPO has a [complaints and appeal procedure](#) to address complaints against RSPO members. Affected communities and their representatives and other interested parties may make a complaint. However, the RSPO notes that this procedure is not intended as a replacement for legal requirements and mechanisms in force.

Key Resource: [Extractive Industries Transparency Initiative](#)

The EITI is the global standard to promote open and accountable management of extractive resources. In a small number of countries (such as Liberia and Myanmar), its accountability and transparency standards extend beyond the scope of the mining industry to the forestry management area.

For example, Myanmar produced an [EITI Forestry Report for 2017-18](#). It contains an expansive analysis including the legal framework and fiscal regime for forestry in Myanmar, as well as reconciliation results (e.g. forestry revenues).

Check to see if your country has chosen to include revenues generated by forestry in its EITI reporting obligations.

It is important to also check whether a company's CSR policy, whether it be a code of conduct or membership of a global standard scheme, is a form of false CSR or "**greenwashing**".

This is where a company has misleadingly described its CSR policy or products as being environmentally friendly (or forest friendly). A company that falsely states information in this regard may be liable for breaching codes and standards of conduct.

A company that engages with greenwashing may also be liable for breaching national advertising codes or regulations.

Steps you can take include reporting suspected instances of false CSR policies, greenwashing or inadequate reporting to the relevant authorities.

10.2. Complaints to Corporate Accountability Mechanisms - OECD Contact Points

Submitting complaints to non-judicial **corporate accountability and regulatory mechanisms** can be an alternative way to hold corporations accountable for their contributions to climate change.

More information on corporate accountability mechanisms can be found in the **A4J Business and Human Rights Guide**. There are pages dedicated to:

- **Internal corporate grievance mechanisms:** useful for investors who may want to challenge the business activities of a corporation; and
- **International Corporate Accountability Mechanisms:** there are a variety of industry specific and general complaints procedures which can be used to hold corporations accountable for human rights abuses.

Example: [Complaint to Dutch NCP regarding ING Group](#)

In 2019, Friends of the Earth Netherlands, and its partners in Indonesia and Liberia, filed a complaint to the Dutch NCP against ING Group (a Dutch financial institution). The complainants argued that ING's financing of companies in the palm oil supply chain has contributed to environmental and human rights abuses in the sector.

The Dutch NCP declared the complaint admissible in January 2020.

A key mechanism is the OECD Contact Point [complaints mechanism](#). National Contact Points (NCPs) are set up to ensure that multinational enterprises adhere to guidelines for responsible business conduct, including in the areas of the environment and human rights. If a multinational enterprise in a country that follows the OECD Guidelines fails to adhere to the guidelines, it may be possible to bring a case under the grievance mechanism.

Example: [KTNC Watch et al. vs. POSCO](#)

The complaint involved POSCO International's operation of its palm oil plantation in Papua. The complainants argued that POSCO's operations breached the OECD Guidelines by causing deforestation and biodiversity loss; lack of free, prior and informed consent; and infringed the community's right to water.

The complaint was filed with the Korean NCP. The Korean NCP has accepted the complaint as of March 2020.

10.3. Complaints under the Complaints Mechanisms for International Financial Institutions (“IFIs”)

Supply chain projects, REDD+ projects and infrastructure or development projects, which can cause deforestation, may be financed by international Financial Institutions, such as the World Bank. IFIs have their own codes of practice for assessing projects for sustainability and environmental impacts. If the relevant principles have not been observed, a complaint may be made with the object of getting the IFI to withdraw funding or for appropriate changes to be made to the project.

Example: [The World Bank Grievance Redress Service](#)

The Grievance Redress Service allows communities affected by a World Bank funded project (e.g. a REDD+ project) to complain if it has affected or will affect them.

Most IFIs including the African Development Bank (AfDB), Asian Development Bank (DB) and Inter-American Development Bank (IDB) have performance standards of this type.

10.4. National Human Rights Institutions

National Human Rights Institutions (NHRIs) are independent institutions that have responsibility for the protection, monitoring and promotion of human rights in a country.

Key Resources:

For more details on NHRIs, please see the [Asia-Pacific Forum’s Fact Sheet on NHRIs](#).

A list of the names of the NHRIs in different countries can be found on the [OHCHR website](#).

NHRIs do not make legally binding judgments like a court but can launch inquiries into human rights issues. The publicity from NHRI complaints and inquiries can raise awareness and put pressure on governments and corporations to change their actions.

Some NHRIs can hear individual complaints. Although NHRI complaints do not lead directly to binding judgements, in some countries the NHRI can then refer or take the case to a court for determination which may then result in an enforceable order for remedy.

10.5 Campaigns and Actions

Taking litigation is only one option of protecting forests, and litigation often plays a supporting role in a larger advocacy effort. As opposed to operating as an alternative or supplement to litigation, campaigning is a central part of the planning framework for defending forests.

A campaign is a co-ordinated range of activities dedicated to achieving a common goal. An effective campaign can:

- Put pressure on companies that handle forest risk commodities and corporations in timber supply chains to change their operations;
- Put pressure on businesses to improve forest trade practices;
- Put pressure on governments to do more to stop illegal deforestation; and
- Give a voice to Indigenous communities and forest peoples to speak out about the impact deforestation is having on them.

Key Example: [WWF Forests Campaign For Businesses](#)

WWF ran a campaign aimed at making responsible forest trade the norm in the UK market. They sought to transform timber markets in the UK and Europe. The campaign was highly successful with 10,000 supporters, 50 influential businesses and two major trade associations signing up to show their support.

Campaigning doesn't need to be done instead of bringing a legal claim. A strategic campaign can support and raise awareness about a legal case, or a legal case can fit within an already existing campaign effort. For example, a campaign could:

- Get the attention of organisations and lawyers that could help you take legal action; and
- Get people to pay attention to the importance of forests and the impacts of deforestation; and
- Get people to pay attention to or fund the legal case you are bringing.

For more information on the role of campaigns and the movement lawyering approach, see **A4J Alternatives to PIL:** [Campaigning](#).

10.6. Other Issues, Solutions and Practical Tips

In addition to all the factors above, there are further practical issues you need to consider.

One set of issues relates to the **resources you will need** by way of general support for you, and the case, legal and expert advisers, finance, logistics (such as transport), translation and printing.

Another set of issues is on the **safety and security** of you, witnesses and your information.

For general guidance on these, see the relevant headings in [Sub-Page 11 "Going to Court"](#) of this Guide.

CHAPTER 11: GOING TO COURT

Even if it appears that a legal remedy may be possible, bringing a case can be difficult and, in many parts of the world, dangerous. It will generally require the consideration of several point and issues.

This section provides a few basic points to consider, though it should not be considered an exhaustive list. For further information, please see Action4Justice's ["Going to Court Q&A"](#).

11.1. Barriers

The main barriers to bringing a court case, even if you are convinced that it should be possible, are as follows:

A. *Lack of knowledge or resources*

This Guide provides some tips and ideas on the legal means of forest protection. However, it will usually be necessary to have detailed legal advice. In addition, and as detailed in the Going to Court Guide, you will need access to other resources such as financial and logistical resources, expert advice and support, media or campaign support, and much patience and determination.

B. *Lack of evidence* – see section 11.2 below

C. *Corruption or lack of judicial independence*

Even if you have a good case in theory, it may still be impossible to obtain justice in local courts. This is because the judges may not be impartial or independent. Sometimes, courts are corrupt in the sense of taking bribes from parties. Sometimes judges are put under political pressure or threatened, to compel them to find in favour of powerful vested interests, whether state or non-state. If these factors prevent effective access to justice where forest damage or degradation occurs, you may wish to consider whether action can be taken in different or foreign courts or tribunals, and see Action4Justice's [Corruption Guide](#).

11.2 Evidence and Information

It is not enough to believe or even know that you have a good case. You must have the evidence to persuade the court to decide in your favour.

The terms "Evidence" and "Information" are often used to mean the same thing. However, usually "Evidence" refers to something used in court proceedings in accordance with the court rules. "Information" is a more general expression and includes all sort of information you may need before getting to the stage of evidence. This might include the name of a company that is committing or threatening forest destruction, who and where its shareholders are, whether it has been grant a permit for its activities, and so on.

Evidence may come in various forms, such as witness evidence (i.e. what people have seen and heard), documentary evidence (including electronic/"soft" copies of documents and emails or WhatsApp messages) photographs and videos, and physical evidence such as a log or part of a log or a soil sample.

Gathering evidence is a very important part of taking legal action and Action4justice is in the process of producing a separate guide. A few basic points:

- **Admissibility of evidence.** Most courts have rules about what sort of evidence is allowed to be used (admissible) and what is not (inadmissible). Evidence might be inadmissible if has been obtained illegally such as by hacking confidential information, or by threats or pressure. Sometimes "hearsay" evidence is not admissible. For example, if Person A testifies that they saw Person C damaging a forest, that is direct evidence. However, if Person A testifies that Person B told them that they saw a person damaging a forest, that is hearsay.
- **Weight of evidence.** Even where evidence is admissible, some evidence has much more weight or "probative value" than others. A video clearly showing Person C lighting a forest fire is of much more weight than Person A testifying that he remembers seeing someone who might have been Person C five years ago from a distance at dusk lighting a forest fire.
- **Fact evidence and expert opinion evidence.** Often, expert evidence is given by scientists or other specially qualified experts. Factual evidence may be given by members of a community that took samples of soil from particular places at particular times, and then an expert scientist might give evidence of analysis of those samples that demonstrate contamination by chemicals used in gold mining.

The evidence required is **highly specific for each situation and depends on the nature of the legal challenge**. For example, the evidence required for a permit challenge will likely differ from a challenge based on Indigenous Peoples' rights or the right to a healthy environment.

Evidence may be required on most or all the issues that may arise in a case, which can include:

- (a) What damage or harm has been suffered by the claimants;
- (b) What standing the claimants have to bring the case;
- (c) Whether the claimants are a specially protected group like Indigenous Peoples;
- (d) What rights of ownership or occupation the claimants have over affected land;
- (e) Can it be proved that the defendant's acts or omissions caused the harm; and
- (f) Was the defendant at fault in terms of acting without proper care or deliberately causing damage, and many others.

Depending on the facts and legal basis of the claim, you may need to gather:

- **Evidence of deforestation in an area** (photos, satellite imagery, videos, witness statements etc);
- **DNA and other techniques for tracing/tracking timber or other forest products or illegally grown products** (particularly for supply chain related claims);
- **Evidence of whether a licence or permit had been lawfully granted** (from public records or Freedom of Information Requests).

Where a case has been brought, there is usually a process called “**disclosure**” or “**document production**”, where the court may order each party to produce documents, even if they are not helpful to the party in possession of said documents. This is often very important. If a corporation or a state entity is sued for damaging forests, the private and confidential documents or internal communications that the corporation or state entity holds may provide important evidence that the claimant could not otherwise obtain without a court order.

For further guidance see the Action4Justice [Access to Information guide](#).

It is also worth noting the international conventions on access to information in environmental matters including:

- The [Aarhus Convention](#) (signatories include many European and Central Asian states);
- The [Escazu Agreement](#) (signatories include many Latin American and Caribbean countries but, significantly, it has not been ratified by Brazil, Peru or Colombia).

11.3 Getting public officials to act - EPA/Public prosecutors

It may be easier to persuade a prosecutor or environmental protection agency to take legal action, rather than taking it as a private individual.

However, you may need to present the authorities with good and concrete evidence to convince them that action is needed at a given point in time.

11.4 Enforcement

There may be little point in taking legal action to obtain a court order if this cannot be enforced and will bring no actual benefit to those bringing the claim. This must be considered at the outset.

For a detailed example of enforcement issues with court orders and fines relating to deforestation and how technology may help, visit [this article](#).

For more information, see the section, “How Can I Enforce a Court Order”, in the [Action4Justice Going to Court guide](#).

11.5 Defending the forest defenders

Environmental defenders and protectors of forests are vital to the preservation of the environment.

However, they are very vulnerable. Environmental defenders and activists face harassment, excessive police force and physical threats of violence. **1540 peaceful land and environmental defenders were killed between 2012 and 2020, with a further 358 human rights defenders killed in 2021.** Worldwide,

they face more and more assaults and murders, as well as intimidation, harassment, stigmatization and criminalization by state and non-state actors.

From the start to the conclusion of the litigation process, it is important to mitigate threats to and ensure the personal safety of claimants, lawyers and witnesses involved in the case, as well as people connected to these individuals and communities.

Keep in mind that circumstances may evolve over time: the security and safety needs of defenders may change throughout the lifecycle of a case. Unexpected events may also change the plan for ensuring personal safety and you should aim to re-evaluate your safety activities at each stage of the litigation process.

The following organisations with specialist skills have resources with detailed guidance on defending forest and environmental defenders:

- [Alliance for Land, Indigenous and Environmental Defenders](#)
- [Environmental Defender Law Center](#)
- [Holistic Security](#)
- [Frontline Defenders](#)
- [Protection International](#)

The [UN Environment Programme](#) and the United Nations Economic Committee (under the [Aarhus Convention](#)) have also developed rapid response mechanisms that enable these bodies to speak out on individual cases and facilitate technical and legal solutions for governments.

SUB-PAGE 12: WHERE CAN I GET MORE INFORMATION AND SUPPORT?

This Guide has given you an introduction into forest defence litigation and what options you may have when it comes to using legal action to protect, conserve and manage forests.

Having **information and support is important** if you want to take litigation to protect forests. If after reading this Guide, you are thinking about taking legal action, the organisations and resources outlined below could help you. However, this is a non-exhaustive list, and it is crucial to research the organisations and resources that may be available in your country and region.

12.1 What Organizations Could Help Me?

(a) International NGOs and Organizations

Below is a non-exhaustive list of NGOs and other international organisation that work on forest issues:

- [AIDA Americas](#): AIDA uses law and science to protect the environment and communities affected by environmental damage, primarily in Latin America.
- [ALL RISE](#): ALL RISE is a non-profit organisation and registered law clinic for climate and environmental justice located in KwaZulu Natal, South Africa. Their attorneys work pro bono for communities who can't afford legal services and take on matters of public interest.
- [Amazon Watch](#): Amazon Watch is a non-profit organization that protects the rainforest and advance the rights of Indigenous peoples in the Amazon Basin. They partner with Indigenous and environmental organizations in campaigns for human rights, corporate accountability and the preservation of the Amazon's ecological systems.
- [Amnesty International](#): Amnesty International is an international NGO working to end abuses of human rights worldwide.
- [Articulation of of Indigenous Peoples of Brazil \(APIB\)](#): The APIB was created by the **Acampamento Terra Livre (ATL)** of 2005, the national mobilisation which has taken place every year since 2004, to make visible the situation of Indigenous rights and to demand that the Brazilian State attend to the demands and claims of Indigenous peoples.
- [Center for Climate Crime Analysis \(CCA\)](#): The CCA is a non-profit organization of prosecutors and law enforcement professionals designed to support and scale up judicial climate action worldwide at the national and international level.
- [Centre for Environmental Rights](#): The Centre for Environmental Rights is an organisation of activist lawyers based in South Africa. They work with communities and civil society organisations in South Africa to realise the Constitutional right to a healthy environment and by advocating and litigating for environmental justice.
- [Centro Mexicano de Derecho Ambiental \(CEMDA\)](#): An organisation based in Mexico that specializes in using legal action to address a range of environmental issues, including forest and jungle coverage.
- [Center for International Environmental Law \(CIEL\)](#): CIEL is an organisation that specializes in using the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. It has a team of attorneys, policy experts, and support staff

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who provide legal counsel and advocacy, policy research, and capacity building on climate change issues. They are assisting other organisations in a range of climate litigation cases. They also have informative resources on their website to assist people wanting to stop deforestation.

- **Comissão Guarani Yvyrupa/[Commission Guarani Yvyrupa \(CGY\)](#):** CGY is an Indigenous organization that brings together collectives of the Guarani people from the South and Southeast regions of Brazil in the struggle for territory.
- **[ClientEarth](#):** An organisation that specializes in using legal action to protect the environment, including forests. They frequently use strategic litigation to challenge energy projects, government environmental policies and corporate malfeasance. They also have a useful library of resources on a range of environmental issues and legal strategies.
- **[Indigenous Work Center \(CTI\)](#):** CTI is a non-profit association made up of professionals with qualified training and experience in the most varied fields and committed to the future of Indigenous Peoples. Its identity is marked by direct action in Indigenous Lands, through projects developed based on local demands, aiming to contribute to the self-determination of Indigenous Peoples, with specific objectives of collaborating so that Indigenous Peoples exercise territorial control and management of their territories, in addition to supporting their ethnic and cultural affirmation.
- **[EarthLife Africa](#):** An organisation with offices in South Africa and Namibia that campaigns and uses legal action to secure environmental justice.
- **[EarthRights International](#):** A growing global team of community activists, campaigners, and legal strategists who challenge powerful institutions that violate peoples' rights and destroy our planet for profit.
- **[EarthSight](#):** EarthSight is a non-profit organisation that uses in-depth investigations to expose environmental and social crime, injustice and the ties to global consumption.
- **[Environmental Law Alliance Worldwide \(ELAW\)](#):** A global alliance of lawyers, scientists and other advocates who work to promote a sustainable environment, including by supporting legal action in different countries. They have a comprehensive database of environmental cases and legal research.
- **[Environmental Defender Law Center](#):** EDLC works to protect the human rights of people in the Global South who are fighting against harm to their environment by supporting civil lawsuits brought by and on behalf of those environmental defenders. EDLC's support includes legal and scientific resources, and funding to support environmental human rights cases. They also maintain a directory of resources available for persecuted environmental defenders.
- **[EarthRights International](#):** EarthRights International is an environmental organisation that specialises in using legal action to hold businesses accountable for human rights and environmental abuse. They take legal action against businesses. They also provide training and advice and campaign for corporate accountability.
- **[Environment Investigation Agency \(EIA\)](#):** The EIA investigate and campaign against environmental crimes and abuse.
- **[Friends of the Earth](#):** An environmental organisation with offices all over the world. They frequently take climate litigation cases and assist others who are taking cases.
- **[FERN](#):** Fern works to achieve environmental and social justice with a focus on forests and forest peoples' rights in the policies and practices of the European Union.

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- **Forest Carbon Partnership Facility**: The Forest Carbon Partnership Facility (FCPF) is a global partnership of governments, businesses, civil society, and Indigenous Peoples focused on reducing emissions from deforestation and forest degradation, forest carbon stock conservation, the sustainable management of forests, and the enhancement of forest carbon stocks in developing countries, activities commonly referred to as REDD+.
- **Forest Peoples Programme**: Forest Peoples Programme is a human rights organisation working with forest peoples across the globe to secure their rights to their lands and their livelihoods. They support forest peoples in campaigning and taking legal action to protect their forest homes.
- **Forest Stewardship Council**: FSC works to promote sustainable forest management and certification in an environmentally appropriate, socially beneficial and economically viable way.
- **Forest Trends**: Forest Trends pioneers innovative finance for conservation – including the promotion of healthy forests.
- **Gaia Foundation**: The Gaia Foundation has experience accompanying partners, communities and movements in Africa, South America, Asia and Europe. Together they work to revive bio-cultural diversity, to regenerate healthy ecosystems and to strengthen community self-governance for climate change resilience.
- **Global Forest Coalition**: GFC is an international coalition of NGOs and Indigenous Peoples' Organizations defending social justice and the rights of forest peoples in forest policies.
- **Global Canopy and the Forest 500**: Global Canopy is a data-driven non-profit working to target market forces destroying nature and to enable transformative change towards a global deforestation-free economy. Their project, the Forest 500, ranks companies driving tropical deforestation.
- **Global Legal Action Network (GLAN)**: GLAN works with affected communities to pursue innovative legal actions across borders to challenge powerful actors involved in human rights violations and systemic injustice.
- **Greenpeace**: Greenpeace is a network of 26 independent national/regional organizations operating in 55+ countries. They have teams that specialise in forest protection in different countries across the world.
- **InterAmerican Association for Environmental Defense (AIDA)**: AIDA has a team of lawyers across Latin America who use legal action to protect the environment and communities who rely on it.
- **Institute for Climate and Society (ICS)**: The ICS promotes prosperity, justice and low carbon development in Brazil. They operate as a bridge between international and national funders and local partners. They are part of a wide network of philanthropic organizations that are dedicated to finding solutions to the climate crisis.
- **International Union for Conservation of Nature**: IUCN is the global authority on the status of the natural world and the measures needed to safeguard it. It is a membership Union composed of both government and civil society organisations.
- **Open Society Justice Initiative**: The Open Society Justice Initiative provides expert legal support for its broader mission and values through strategic human rights litigation and other legal work. Their lawyers have represented individuals and groups before domestic and international courts and tribunals around the world. Working with partners, they also document violations, propose and pilot solutions, engage policymakers, and draw on their global legal experience so that access to justice can be available to everyone.

- [Politica por Inteiro](#): Monitor public environmental and climate policies in real time to identify the political signals (*policy signals*) of relevant changes announced (risks) or carried out (acts) by the Federal Executive [Brazil], as well as their effects. Project of [Instituto Talanoa](#), a Brazilian think tank dedicated to climate policy.
- [The Rainforest Foundation](#): The Rainforest Foundation uses advocacy and campaigning to protect the rights of communities who live in forests.
- [Institute Socioambiental \(ISA\)](#): ISA work alongside Indigenous, quilombola and extractivist communities, our historical partners, to develop solutions that protect their territories, strengthen their culture and traditional knowledge, raise their political profile and develop sustainable economies. They closely monitor public policy proposals and decision-making, whether by the Legislative, Executive or Judiciary, which may directly impact Indigenous Peoples, traditional populations, their territories and collective rights.
- [The World Wildlife Fund \(WWF\)](#): WWF is a leading international wildlife conservation and endangered species non-governmental organisation, with a mission to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature.
- [World Resources Institute \(WRI\)](#): WRI develops practical solutions that improve people's lives and ensure nature can thrive. Their programs focus on solving seven major challenges at the intersection of environment and human development: Cities, Climate, Energy, Food, Forests, the Ocean and Water.

(b) Local Organizations and Law Firms

The most important source of support you can often get is from lawyers and organizations who work in your country or local community.

Check to see if any of the following groups could support you in taking forest litigation:

- Local **civil society** organizations;
- Local **environmental justice movements**;
- **Community groups**;
- **Pro-bono lawyers** in your region, country or local community who offer free legal advice; and
- **Law centres** in your community or a nearby city.

The international organisations listed above may be able to help you find local support.

12.2. Do You Work on Forest Issues?

If you are an organisation or a law firm who works on forest-related issues and would like your name and/or resources to be used on the A4J Forest Litigation Guide, please contact us on [**administrator@action4justice.org**](mailto:administrator@action4justice.org)