



Briefing

UK Export Finance – climate litigation

Introduction

In September 2020 Friends of the Earth (England, Wales, NI) legally challenged the UK Government’s decision to provide around \$1 billion of UK taxpayer support for a huge liquified natural gas (LNG) development in Mozambique.

The financial decision amounted to one of the largest single financing packages for a fossil fuel project ever offered by the UK export credit agency: UK Export Finance (UKEF). The Prime Minister was reportedly “bounced” into it ([The Times, 27 July 2020](#)) despite controversy around the nature of the project at a time of climate crisis, and the facts surrounding the decision were shrouded in secrecy.

Friends of the Earth believes the decision was illegal. This briefing summarises the context, outlines the legal grounds and sets out the legal proceedings so far.

Export Credit Agencies and the Climate Crisis

The largest driver of climate change is the burning of fossil fuels, such as gas, and we urgently need to reduce production and use. We also know the climate crisis disproportionately impacts those in the Global South and is already doing so with devastating consequences. This has led to a climate emergency - we must now decisively reduce emissions and secure a *fair* transition to a low carbon future.

However, the UN Environment Programme’s 2019 reports on emissions and production gaps established a collective failure to limit emissions, and: “*Governments are planning to produce about 50% more fossil fuels by 2030 than would be consistent with a 2°C pathway and 120% more than would be consistent with a 1.5°C pathway*” (Production Gap Report, p4 – see also end note on 2020 update).

Governments and their export credit agencies (ECAs) around the world continue to support new large-scale fossil fuel developments that would otherwise not be possible due to their risk profiles. The Mozambique LNG project is a good example. Multinational ECA support allows for an unnecessary new project despite an insurgency (see more below) and given the climate crisis.

This support for fossil fuel industries is not aligned with a Paris Agreement compliant pathway to prevent dangerous climate change. In the UK, the House of Commons Environmental Audit Committee’s report (2019), recommended that UKEF should end investment in fossil fuel projects by 2021, and concluded that its fossil fuel investment was “unacceptably high”. It identified that in 2017/18, 99.4% of UKEF’s energy sector

June 2021

support in low- and middle-income countries went to fossil fuel projects and just 0.6% to renewables. The Committee on Climate Change also concluded in 2019 that UKEF's activities were not aligned with the UK's own climate goals. And according to Global Witness's analysis of UKEF's 2019/2020 Annual Report, £760 million has been spent supporting more than 50 fossil fuel projects in the most recent financial period.

ECA's investments are clearly a strategic problem in our fight to stop the climate crisis and the inequality it creates.

Mozambique LNG

Mozambique is one of the poorest countries in the world and its people are already struggling with the impacts of climate change. It ranks 181st out of 187 countries in the most recent UNDP's Human Development Index and is considered one of the most climate vulnerable nations in the African continent.

Nevertheless, huge gas deposits were discovered in the early 2010s which has led to major international interest. The Mozambique LNG project is one of a series of linked projects to extract and produce LNG in the north of the country off the uniquely beautiful Cabo Delgado coast and neighbouring UNESCO biosphere of Quirimbas Archipelago.

The potential climate impacts of this project are very significant. When operating at full capacity it is estimated the project will produce around 18MtCO₂ per year. The construction phase alone will increase the greenhouse gas emissions of Mozambique by up to 10% by 2022. There will be even larger emissions from the end use/burning of the gas, estimated to be around 116MtCO_{2e} per year: *equivalent to the total emissions from the aviation sector for all EU member states combined.*

To make matters worse, communities along Mozambique's gas rich coast are already losing their homes, farmland and fisheries to make way for this damaging development. The development of the gas industry is believed to be a main factor fuelling an insurgency that has led to violence, deaths and further displacement.

The Judicial Review Case

Friends of the Earth believes the decision to finance this project was unlawful and issued an application for judicial review at the High Court in September 2020. Deficient assessments of climate, environmental and human rights impacts, as well as the lack of transparency and disclosure around the decision, are considered to be illegal.

The original grounds of challenge were that:

1. the decision was made on the incorrect basis that the project was consistent with the UK and/or Mozambique's commitments under the Paris Agreement;
2. the defendants failed to consider essential issues or carry out the necessary analysis to properly determine if supporting the project aligned with the UK's and Mozambique's obligations under the Paris Agreement;

June 2021

3. the decision was unreasonable (and therefore substantively unlawful), because of major impacts on climate change, biodiversity and human rights, and that the defendants failed to adequately investigate and consider them; and/or
4. UKEF acted unlawfully because it failed to notify and publish the relevant information of its contemplated and final decision (including its assessments of impacts) - contrary to its stated policy and to principles of transparency.

In March 2021, permission to proceed to a full judicial review on these grounds was refused on the papers. Friends of the Earth then applied for a hearing where the grounds could be put before a judge orally – only grounds 1, 2 and 3 were put forward at the renewal hearing. On 22 April 2021 Friends of the Earth were granted permission to proceed to a full judicial review on grounds 1 and 2 (permission refused on ground 3).

As such, Friends of the Earth maintains that the conclusion of Paris Agreement alignment was wrong, and its full climate case continues. The case scrutinises whether UKEF adhered to its own policy commitments, regarding:

- international climate law and UK climate legislation;
- the UK Government's Green Finance Strategy;
- UN Sustainable Development Goals;
- international standards for environmental, social and human rights due diligence, such as: the OECD Common Approaches; the Equator Principles; the International Finance Corporation Performance Standards; and
- disclosure and transparency.

Judicial analysis of these issues may be of interest to others scrutinising ECA activity and performance in the environmental field.

The defendants are: (1) the Chancellor, (2) the Secretary of State for International Trade, and (3) UK Export Finance (an agency of the Department of International Trade). Judicial review permission stage, and any hearing, is expected sometime in early 2021.

Will Rundle, Head of Legal
Bella Dennis, Legal Intern

End Notes

1. Friends of the Earth are represented by: Jessica Simor QC, Kate Cook, Anita Davies (all of Matrix Chambers), and Leigh Day LLP.
2. Information regarding the inequality created by climate change between the global north and the global south, can be found in Oxfam's carbon inequality reports: [2015 report here](#), and [2020 report here](#).
3. UNEP production gap 2020 COVID update [executive summary is available here](#), although it post-dates the UKEF decision.
4. UKEF is one of eight Export Credit Agencies financially backing the Total led Mozambique LNG project. For a full list [see here](#).
5. The LNG project is an offshore deep-water gas production facility 50km from the coast of Northern Mozambique which has/will lead to immediate detrimental impacts (including dredging, habitat destruction and forced relocation of communities).
6. As reported via media outlets, there have already been devastating human rights impacts on local communities, such as insurgent attacks on villages by 'Islamic terrorists'. The consequent increase in military presence has led to abuse of power and oppressive actions.
7. UKEF classified the Project as a Category A project, which means that it has potential significant adverse Environmental, Social and Human Rights ("ESHR") risks or impacts which are diverse, irreversible and/or unprecedented and may affect an area broader than the project site(s). The government website [is here](#).
8. The House of Commons EAC report on UKEF [is available here](#).
9. UKEF's 2019/2020 Annual Report is [available here](#).