

2nd LAWASIA Human Rights Conference

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SESSION 4 Emerging norms in climate change litigation

**Japan's judiciary's response to date and  
potential to address climate change**

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# Serious Damage of Climate Change in Japan

- Torrential rain disaster

Total rainfall has not changed, but heavy rainfall has increased.

July 2018 torrential rains - unprecedentedly large.

232 dead or missing, more than 17,500 houses destroyed

Torrential rain disasters have occurred almost every year.

99 people died in Typhoon No. 19 (Nagano) in October 2019

78 people died in the torrential rains (Kumamoto) in July 2020

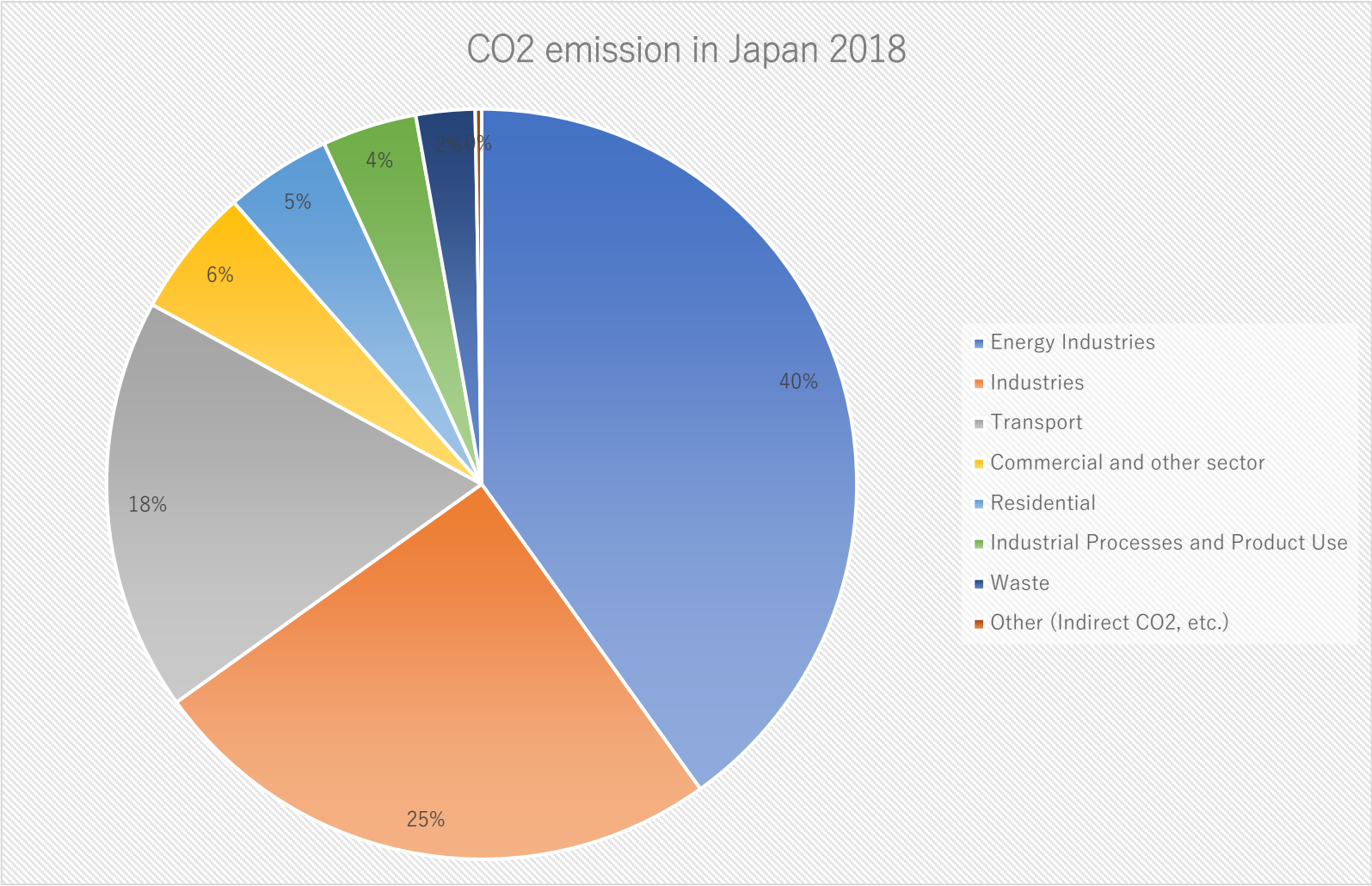
# Serious Damage of Climate Change in Japan

- Deaths due to heat stroke
  - July 2018 heat wave: +2.8° C above normal, 1st highest since statistics began in 1946
  - 1,032 deaths due to heat stroke in one month (highest number ever)
  - More than 1,000 heat stroke deaths for three consecutive years in 2018, 2019, and 2020
  - before 300 or less
- Damage to fisheries

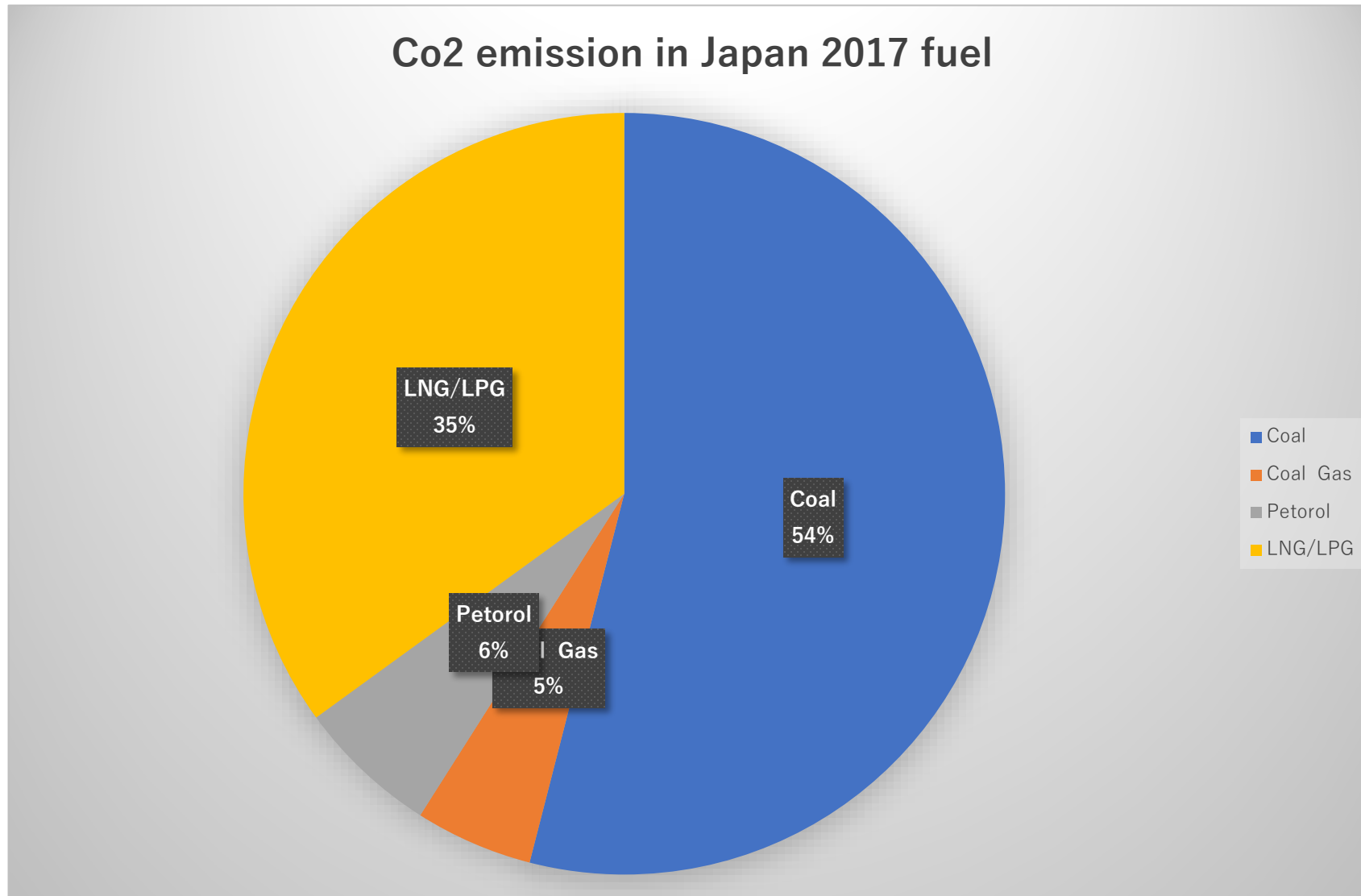
# Need for emission reductions

- Considering the serious impact of global warming in Japan
  - Achieving carbon neutrality by 2050 and 46% reduction by 2030 should be the minimum.
  - it is necessary to achieve carbon neutrality as soon as possible.
- IPCC 1.5° C special report (October 8, 2018)
  - We need to reduce our emissions by 45% globally by 2030. At the current rate, the temperature will reach 1.5° C by 2030.

The majority of Japan's carbon dioxide emissions come from the power generation sector (40%).



Reduction of Coal Fire Power Plant is key



# Need to reduce coal-fired power plants

- Coal-fired power plants, even the most advanced, emit twice as much CO<sub>2</sub> as natural gas-fired plants
- 31% of the electricity, 58% of the CO<sub>2</sub>.
- CCS is difficult to achieve in Japan.
- Both ammonia and hydrogen are currently uncertain and uncertain to be put to practical use even in 2030.
- It is also incompatible with renewable energy
- coal-fired power generation may delay the introduction of renewable energy).

# Construction of Coal-Fired Power Plants in Japan Continues

- As of July 2020, there are **11** coal-fired power plants **scheduled to be in operation by 2023**
  - As of 2023, Japan's coal-fired power plants will emit about 310 million tons of carbon dioxide per year, **about 1% of the world's total.**
  - As of 2030, Japan's coal-fired power plants will emit approximately **260 million tons** of carbon dioxide per year, **1.1%-1.4% of the world's total**
- If coal-fired power plants continue to operate as planned, it will be impossible to achieve the 2030 target



# Export of coal-fired power plants to Asia

- Since 2015, exported the following quantities
  - Boilers: 22, totaling 15,473 MW
  - Turbines: 20 in total, total 13,138 MW
- Official financial support for 55% of boiler exports and 66% of turbine exports
  - Official Development Assistance (ODA) provided by Japan International Cooperation Agency (JICA)
  - Export finance provided by Japan Bank for International Cooperation (JBIC) and Nippon Export and Investment Insurance (NEXI)
- The only OECD country to provide official financial support

Lawsuits seeking to **set standards** that would prohibit the construction of power plants that emit more than a certain amount of CO<sub>2</sub>.

- Osaka District Court Decision on March 15, 2021
- Judgment of the Court
  - 1 This is **not a legal dispute**.
  - 2 This would not **eliminate the anxiety or danger of the present legal status of the plaintiffs** (denying the benefit of the action).
- Is not the risk of heat stroke or torrential rain a real danger?
- Does not setting standards remove the danger?

Significant differences from rulings in the Netherlands, Germany

# Administrative lawsuit challenging the environmental impact assessment of a coal-fired power plant

- Osaka District Court Decision of March 15, 2021
- **Denying plaintiff standing** to those who may be harmed by greenhouse gas emissions = This harm is not an individual benefit.
  - Even if a person suffers water damage due to heavy rain and is likely to lose his or her life.
  - Even if there is a risk of death from heat stroke due to intense heat
  - Even if the loss of fishery resources that are essential to their survival and culture.
- The world's narrowest, plaintiff-standing

# Administrative lawsuit challenging the environmental impact assessment of a coal-fired power plant

- Osaka District Court Decision of March 15, 2019
- A person who may suffer air pollution damage **cannot claim global warming damage** caused by greenhouse gas emissions because **it is not the issue related to his or her legal interests** (Administrative Litigation Law, Article 10, Paragraph 1).
- Even though air quality is affected by the same exhaust gas?

Legal because the items in the EIS meet the agreement of the Directors of METI and MOE

→ Is agreement of the Directors law ?

1 Install ultra-supercritical pressure (USC) power generation facilities

→ Still double the amount of natural gas

2 The project will make systematic efforts to achieve the benchmark indicator targets based on the Energy Conservation Law, and will ensure compliance by FY2030, and will consider reviewing the project when the benchmark indicator targets cannot be achieved.

→ considering reviewing the project is enough?

Legal because the items in the EIS meet the agreement of the Directors of METI and MOE

3 Supply all electricity to Kansai Electric Power Company, which is a participant in the voluntary framework

→ Is it okay because it is reduced elsewhere?

4 Appropriately monitor carbon dioxide emissions each year

→ Anyway, you should do it.

Legal because the items in the EIS meet the agreement of the Director-General of METI and MOE

5 Continue to study the necessary measures for the future introduction of carbon capture and storage (CCS)

→ There is no point in studying what cannot be done.

6 Conduct necessary studies on long-term measures to reduce carbon dioxide emissions, taking into account future trends in Japan and abroad, and take necessary measures to an appropriate extent.

→ There are no concrete measures.

As long as there is an opinion from the Ministry of the Environment, it is necessary to consider that point, but the Osaka District Court ruled that it is not illegal even without it.

(Opinion of the Ministry of the Environment)

If coal-fired power plants are constructed as currently planned, it is possible that the reduction target and power source composition for FY2030 will not be achieved unless the operating rate of each facility is considerably lowered.



It should be considered in EIS how the addition of 7.26 million tons of carbon dioxide emissions per year from the new one power plant is consistent with Japan's goal as of 2018 of reducing carbon dioxide emissions from coal-fired power generation to approximately 220 million tons in 2030.

but this point was not considered in the EIS at all.

Still, the Osaka District Court ruled that there was no problem.