

# 神戸製鋼石炭火力訴訟 —— 気候訴訟の課題と展望

**Kobe Climate Case: Challenges and future prospects**

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Provisional translation by Kiko Network

# Climate Litigation in Japan

- In Japan, there are several lawsuits challenging the installation and operation of coal-fired power plants.
  - Background
    - ① Lack of system for environmental class action lawsuits (civil lawsuit) → Individuals must become plaintiffs to claim infringement of their “own” rights.
    - ② Neither way to directly challenge negligence of the governmental obligation to reduce emission, nor a system of constitutional objections, etc.
    - ③ Other difficulties (high hurdles in alleging and proving claims in lawsuits, few attorneys who can work exclusively on climate litigation, etc.)
- Climate litigation against coal power plants in Japan
  - Sendai Power Station Case
    - Civil lawsuit (2017-2021, Sendai District Court, Sendai High Court)
  - Kobe Climate Case
    - Pollution Mediation (2017-2018, Hyogo pref. Pollution Review Boards)
    - Civil lawsuit (2018- Kobe District Court, Osaka High Court)
    - Administrative lawsuit (2018- Osaka District Court, Osaka High Court, Supreme Court)
  - Yokosuka Climate Case
    - Administrative lawsuit (2018- Tokyo District Court, Tokyo High Court)

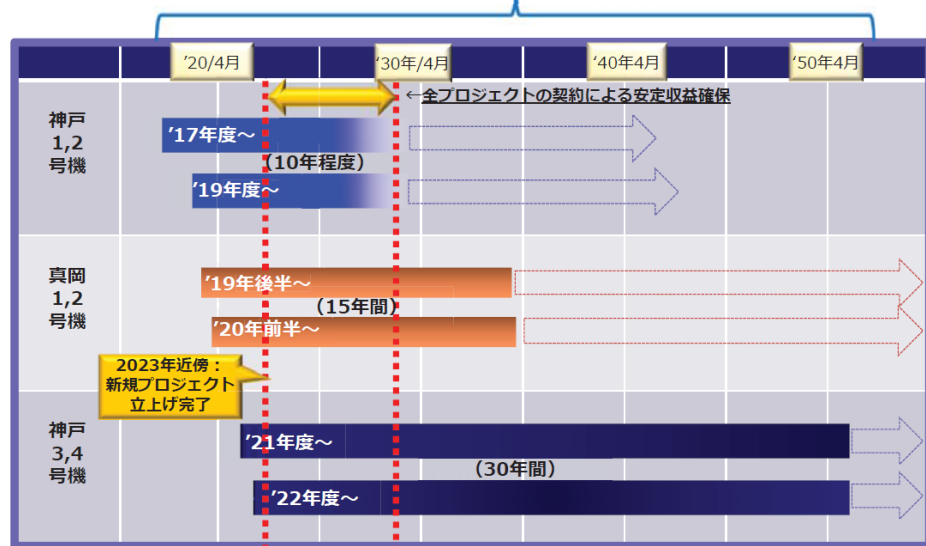


Photo: Kobe Climate Case -Plaintiffs and attorneys entering courtroom

# Newly-constructed coal-fired power plants by Kobe Steel, Ltd.

締結済みの電力供給契約：各契約期間（神戸1,2号機は新契約移行後）

- In 2013, Kobe Steel started planning to construct new coal-fired power generation units in Kobe city, in addition to its 2 existing units.
- Output: 1,300 MW (650 MW x2 units)
- EIA: Minister of Economy, Trade and Industry did not find any environmental concerns to substantially approve the project
- CO2 emission: 6.92 MtCO<sub>2</sub>/year
- Power interchange contract with Kansai Electric Power



発電所の石炭使用量とCO<sub>2</sub>排出量

石炭の年間使用量	317万ト
CO <sub>2</sub> の年間排出量	
新設の発電所からの排出量	約700万ト (200万世帯分)
既設・新設発電所合計排出量	約1400万ト (430万世帯分)
神戸市の排出量	約1200万ト

上表：神戸製鋼作成資料から

0.02% of global emissions of energy-related CO<sub>2</sub> per year

Over 30-years operating plan from FY 2021 or 2022

Approx. 14Mt CO<sub>2</sub> will be emitted from all 4 units in total per year

上表：神戸の石炭火力発電を考える会作成資料から

# Civil case: plaintiffs call for an injunction to stop construction and operation of the coal-fired power plants

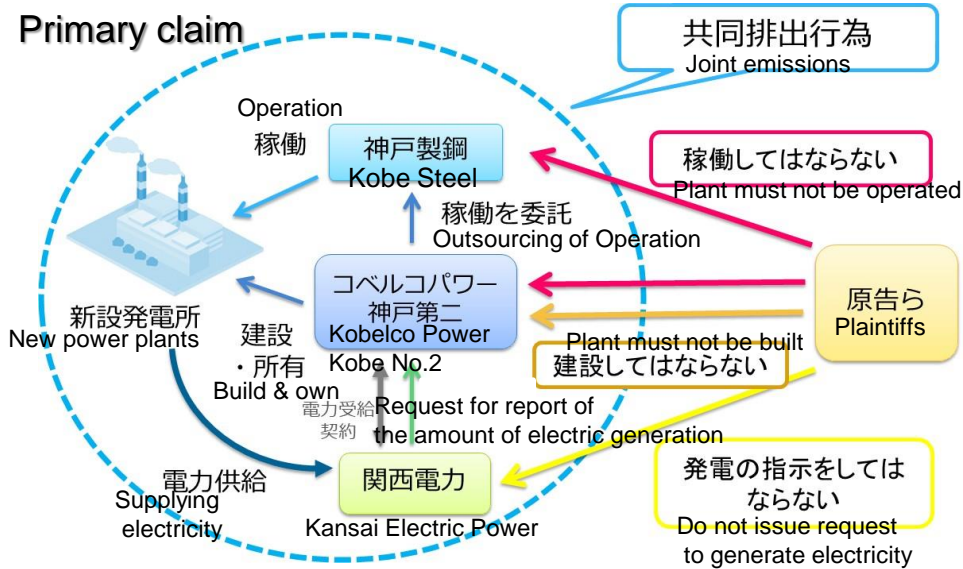
- **Plaintiffs:** group of 40 citizens (mostly living in Kobe city, including children and their families)  
**Defendants:** Kobe Steel Ltd., Kobelco Power Kobe No.2, and Kansai Electric Power Co., Inc.
- **Primary claim:** Calling for an injunction to stop the construction, operation and instruction of operation of coal-fired power plants to ensure Jinkaku-ken(personal rights) and the right to peaceful life  
**Preliminary claim:** Calling for phasing out emissions of CO2, etc.
- **Sep. 2018:** Filing the civil lawsuit/**Mar. 2023:** District Court decision (Dismissal) → **Appeal**



画像：神戸製鉄所敷地から約400mの新在家南町より(※パノラマ画像) 2018年11月2日  
神戸の石炭火力発電を考える会提供

# Dismissed plaintiffs' claim

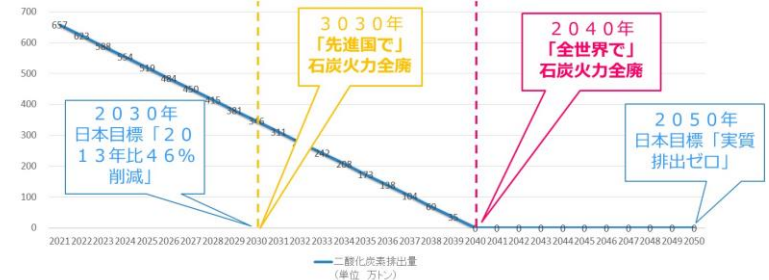
## Primary claim



- CO2 emissions from newly constructed power plants will contribute to global warming, and disasters caused by climate change will cause damage to plaintiffs' lives, bodies, health and livelihoods.

→ On the basis of personal rights, we called for an injunction (preliminary request for partial injunction) of operation of the power plants.

## Preliminary claim: Phasing out emissions of CO2



- However, Kobe District Court dismissed our claim because:
  - No “specific (tangible) danger” to the life, body or health of the plaintiffs has materialized. There are many uncertain factors around the possible damage from climate change.
  - No “proximate cause” between defendants’ emissions and plaintiffs’ damages.

# Errors in the first judgement and our objections

- While acknowledging the request for an injunction on the grounds of damage caused by global warming, the first judgment denied “specific (concrete) danger” and “proximate cause between defendants’ emissions and plaintiffs’ damages”.

## “A drop in the ocean theory”

**Unreasonable consequence that each individual damage categorized as public interests is never legally protected**

Lack of understanding of how climate change works, and lack of a sense of crisis

— Our objections

- Climate change systems:** CO2 emissions by unspecified majority drives climate change  
→ Danger and causation of emissions are collective
- Damages:** the exacerbation of damage in all aspects itself means violation of human rights (personal rights).

**Above 1.5°C warming = serious violation of personal rights**

- Assessment of CO2-emitting actions:** illegality would be assessed based on the amount, cause and state. **CO2 emissions that significantly interfere with achieving the 1.5°C goal should be illegal and be subject to injunction**

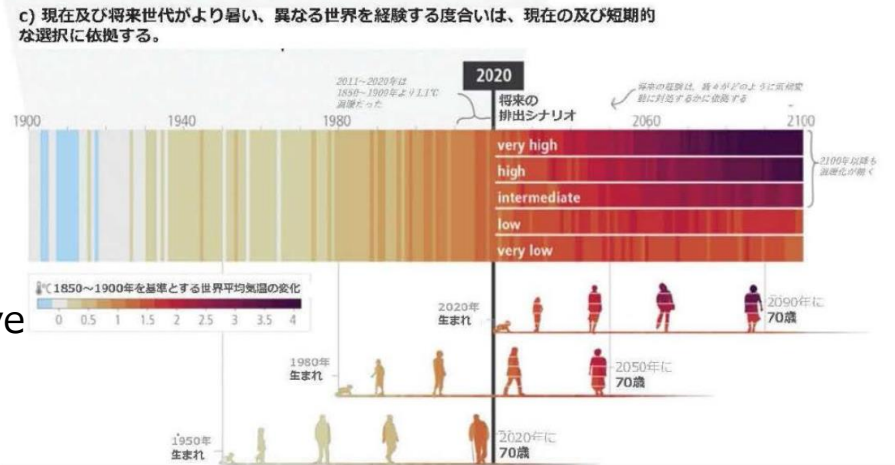
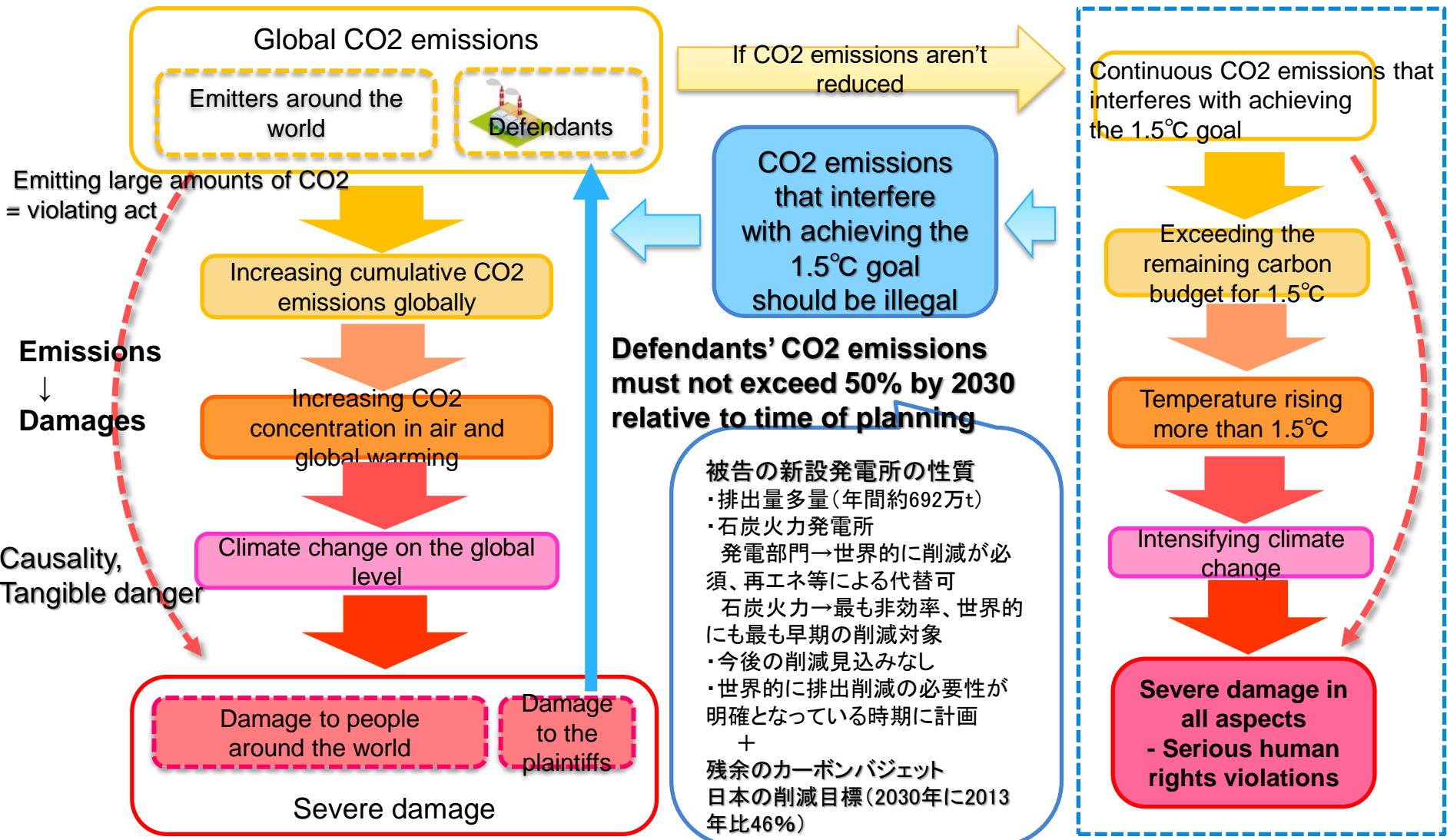
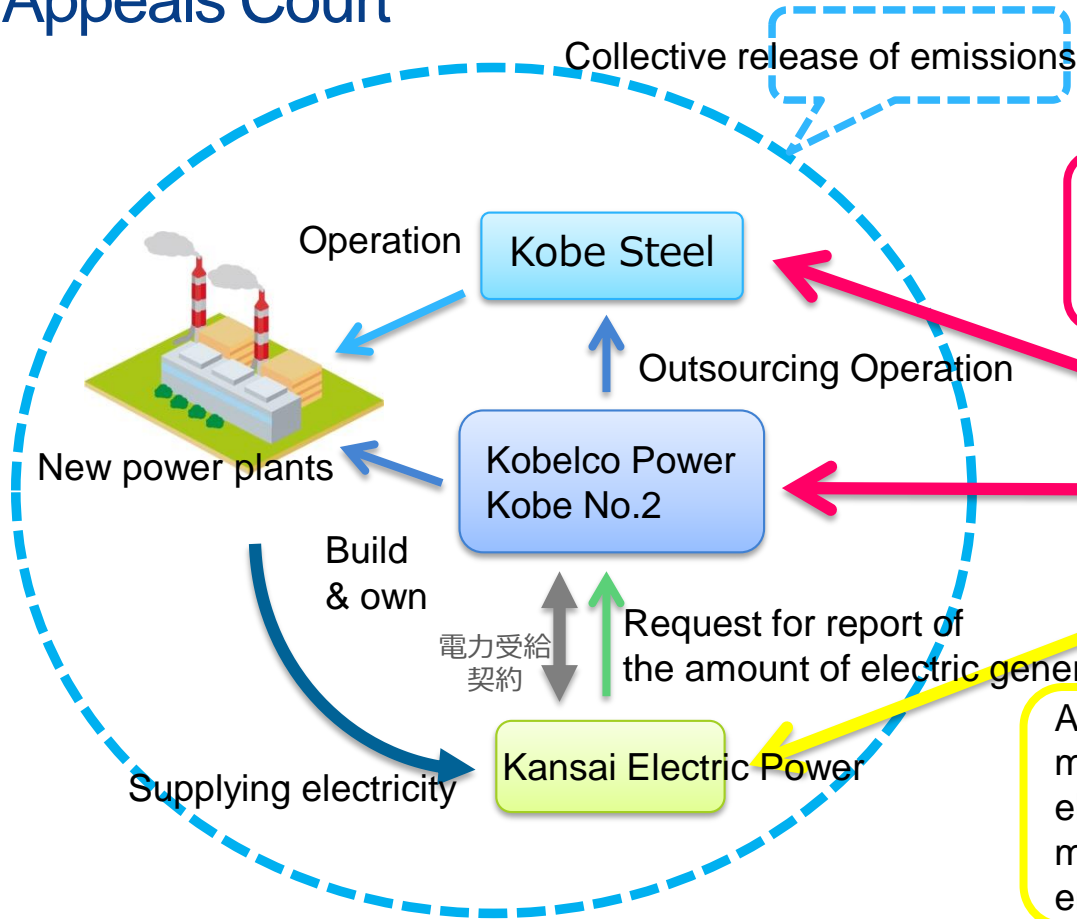


図1 IPCC第6次統合報告書 (AR6 SPM.1)



# Claim to reduce CO2 emissions at the Appeals Court



= 2030年時点 2018年比  
50%削減請求

Kobe Steel and Kobelco Power Kobe No.2 must reduce CO2 emissions by 50% by 2030 relative to the 2018 level

2030年以降、計画段階の見込み排出量の50%を超える量のCO2を排出してはならない

Plaintiffs

After 2030, Kansai Electric power must not issue requests to generate electricity more than the amount of CO2 emissions above without CCS/CCUS.



# Challenges and future prospects of climate litigation in Japan

- Issues
  - **Civil case:** rights, specific (tangible) danger, causality, tolerance limits (illegality)
  - **Administrative case:** standing/limitations to assertion, administrative discretion
    - Need to overcome “a drop in the ocean theory” and unreasonable consequence described as “everyone's damage is no one's damage” in litigation
- Lack of sense of crisis and blind faith in government's policies by courts in Japan (← lack of awareness in entire Japanese society)
- Meanwhile, courts have been gradually evolving in their recognition of climate change.

—— We need to challenge continuously through domestic litigation, including the Kobe Climate Case.