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Backgrounder: Youth Climate Case Japan for Tomorrow/Future (Youth Climate Case Japan)

Youth Climate Case Japan - Legal Team

Co-representative: Akiyoshi Harada

Co-representative: Mie Asaoka

Secretary-General: Hiroshi Kojima

1. Aims of the lawsuit

Facing a climate in crisis, the plaintiffs and the youth they represent filed this civil lawsuit with the aim of protecting themselves from the adverse effects of dangerous climate change and to protect their future under a stable climate.

This is Japan's first youth climate lawsuit. The plaintiffs assert that the defendants (the main operators of power utilities are Japan's highest emitters, accounting for about 40% of energy-derived CO₂ emissions) have a legal obligation to reduce emissions as required by international consensus (as confirmed at Paris Agreement, COP26 Glasgow Climate Pact, and COP28 UAE Consensus - a 48% reduction in CO₂ emissions relative to 2019 by 2030, and 65% by 2035) based on science that calls for limiting the global temperature rise to 1.5°C (Synthesis Report of IPCC Sixth Assessment Report), and the plaintiffs demand that the defendants perform their legal obligations.

2. Parties to the lawsuit, courts, etc.

(1) Plaintiffs

Sixteen youth aged 14 to 29 (at the time of filing the lawsuit) living in Hokkaido, Akita, Fukushima, Tokyo, Nagoya, Kyoto, Nara, Osaka, Hiroshima, Fukuoka, etc.

(2) Defendants (Thermal Power Plant Operators)

Ten companies, namely, JERA Inc., Tohoku Electric Power Co., Inc., Electric Power Development Co., Ltd. (J-POWER), Kansai Electric Power Co., Inc., Kobe Steel, Ltd., Kyushu Electric Power Co., Inc., Chugoku Electric Power Co., Inc., Hokuriku Electric Power Company, Hokkaido Electric Power Co., Inc., and Shikoku Electric Power Co., Inc.

(3) Court of First Instance

Nagoya District Court

(4) Outline of the Claim

The plaintiffs are demanding of the defendants that the thermal-power-derived CO₂ emissions from electricity they sell be on a pathway consistent with the 1.5°C goal indicated by the IPCC's Sixth Assessment Report; that is, emissions in 2030 must not exceed 52% of 2019 emissions, and emissions in 2035 must not exceed 35% of 2019 emissions.

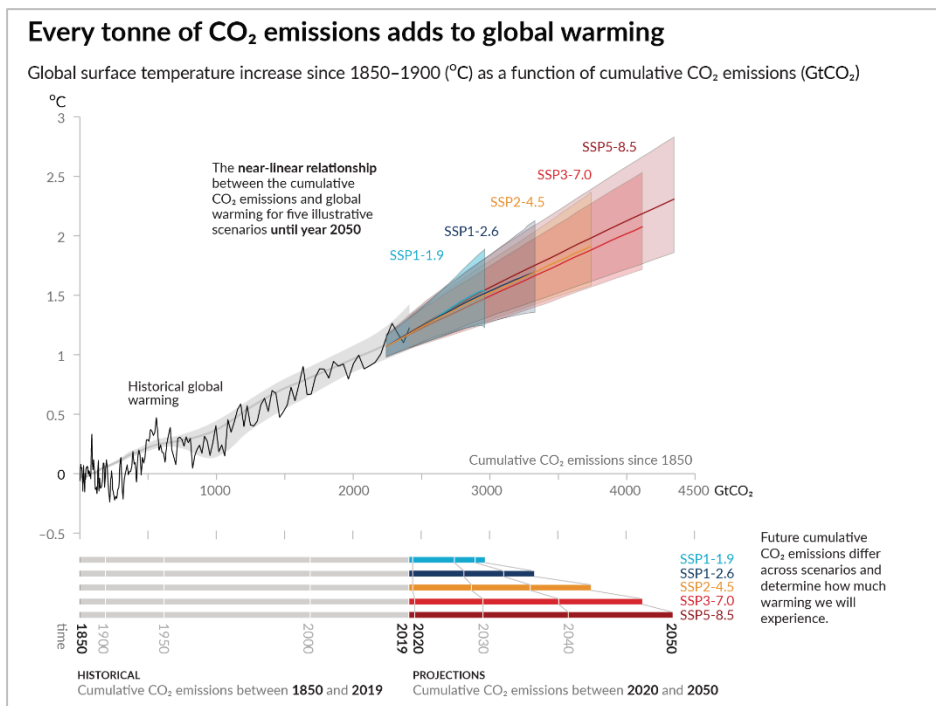
(Partial injunction against emissions based on Japan's Civil Code's tort law)

3. Climate change science and international consensus

(1) Increases in global average temperatures are proportional to total cumulative CO₂ emissions

Consensus and public policy in the international community to limit the average temperature rise to 1.5°C

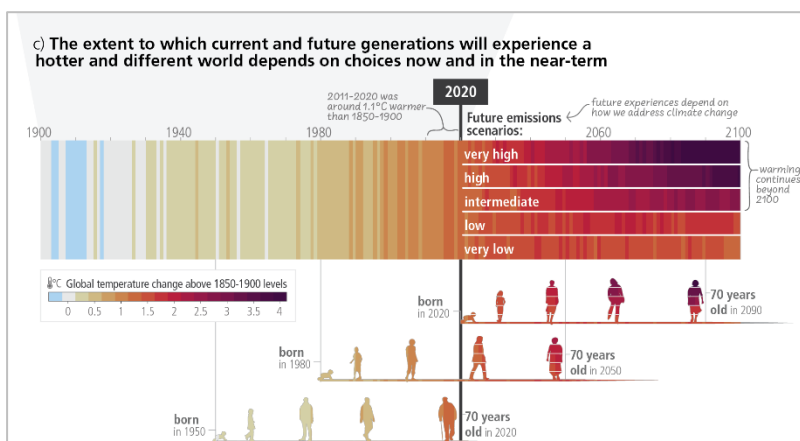
Limiting the average temperature rise to 1.5°C above pre-industrial levels is essential for preserving people’s lives, health, living environment, and well-being. As a result, the world’s remaining allowable CO₂ emissions (remaining carbon budget) amount to about 400 gigatons (according to the 2021 IPCC Sixth Assessment Report (AR6), Working Group I). Much of this has already been consumed.



IPCC AR6 WG1 Figure SPM.10

https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

(2) The adverse effects of climate change due to anthropogenic CO₂ emissions have already constrained the health and quality of life of younger generations, including the plaintiffs, but the damage will become even more serious in the future.



IPCC AR6 SYR Figure SPM.1: (c)

https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf

(3) Impacts of climate change can be described as modern pollution, but what is the difference from pollution damage in the past?

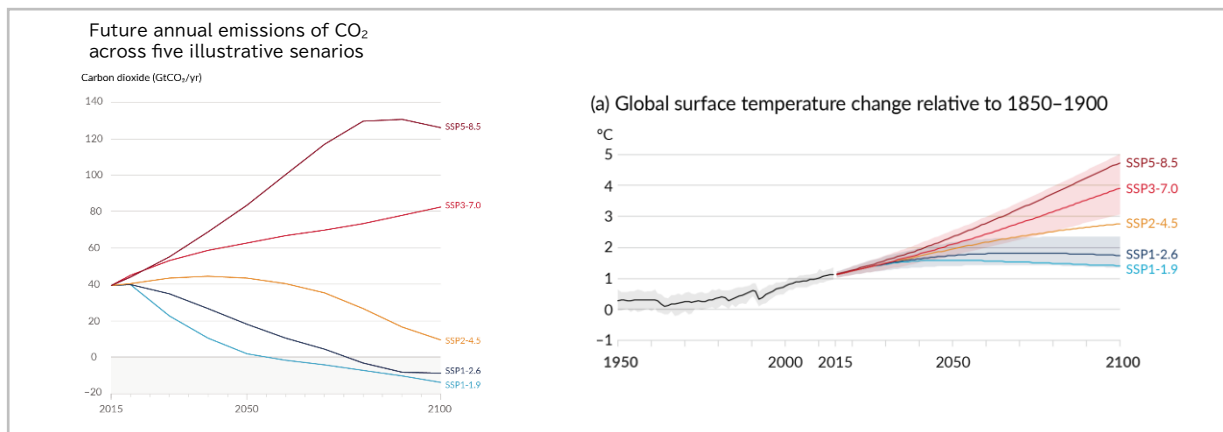
(a) In the context of climate change, temporal and spatial proximity to emission sources are irrelevant. Only the amount of emissions is relevant.

(b) Extreme heat waves and heavy rain disasters, as dangerous forms of climate change, are human-induced impacts. There is no doubt that these impacts will be more severe in the future (IPCC AR6).

(c) Climate change is not a matter of the precautionary principle. It is a matter of the **duty to prevent harm before it occurs** (Prof. Tadashi Otsuka, Waseda University). It is necessary to limit warming to 1.5°C, and to implement the necessary emission reductions to do so.

(4) Prevention: The duty of care implies the 1.5°C goal and the emission reduction pathways to achieve it

(a) Limiting the temperature rise to 1.5°C does not mean just carbon neutrality by 2050. Emissions must be reduced by a pathway (SSP1-1.9) that does not exceed the above-mentioned remaining carbon budget (emissions indicated in blue in the figure below). Significant reductions by 2030 and 2035 are essential.



IPCC AR6 WG1 Figure SPM.4(a) (Left), SPM8(a)(Right)
https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

Last year and this year, the average global temperature in individual years has approached 1.5°C, so the emission reduction pathway is not consistent with 1.5°C. There are concerns that 3°C or 4°C warming scenarios could be realized.

(b) The international community (at COP28) has confirmed the latest required emission reduction levels (2023 IPCC AR6 SYR)

Greenhouse gas (GHG) emissions: 43% reduction by 2030 and 60% by 2035, relative to 2019

CO₂ emissions: 48% by 2030 and 65% by 2035, relative to 2019

Reductions over the next decade, that is, by 2030 and 2035, are critical to achieving the 1.5°C goal.

Table SPM.1: Greenhouse gas and CO₂ emission reductions from 2019, median and 5-95 percentiles. [3.3.1, 4.1, Table 3.1, Figure 2.5, Box SPM.1]

		Reductions from 2019 emission levels (%)			
		2030	2035	2040	2050
Limit warming to 1.5°C (>50%) with no or limited overshoot	GHG	43 [34-60]	60 [49-77]	69 [58-90]	84 [73-98]
	CO ₂	48 [36-69]	65 [50-96]	80 [61-109]	99 [79-119]
Limit warming to 2°C (>67%)	GHG	21 [1-42]	35 [22-55]	46 [34-63]	64 [53-77]
	CO ₂	22 [1-44]	37 [21-59]	51 [36-70]	73 [55-90]

IPCC AR6 SYR SPM p.21
https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf

(c) As a developed country Japan must achieve higher emission reductions

Japan's 2030 target for a 46% reduction in GHG emissions relative to 2013 is equivalent to a 37% reduction relative to 2019 (or a 36% reduction in CO₂ emissions). In view of fairness and equity, based on population, Japan's remaining carbon budget must not exceed its share of population (about 5.4 gigatons).

(d) The defendants (electricity producers) must achieve net-zero emissions sooner than other sectors (IPCC, IEA).

(e) The lawsuit calls for the defendants to reduce emissions by 2030 and 2035 in line with the level of the above-stated international consensus, as the minimum obligation to reduce emissions.

4. Basis for the defendants' responsibilities: They emit the majority of emissions from the power sector, which is Japan's highest emitting sector

In fiscal year 2019, the base year, **emissions from the power sector (394 million tons)** were **about 40% of Japan's energy-derived CO₂ emissions (1,029 million tons)** that year. This would rank the sector **sixteenth in the world in terms of emissions by country**.

The table below shows the direct emissions of the top 20 emitters, by company. One defendant, JERA, ranks first, and the other defendants also rank high.

Table: Top-20 companies in terms of direct emissions

CO₂ emissions reported by specified emitters under the Mandatory Greenhouse Gas Accounting and Reporting System (FY2019)

Rank	Specified emitters	Industry Sector	Energy-related CO ₂ (unallocated) + CO ₂ emissions from other operations	
1	JERA Co., Inc.	Power stations	124,500,784	
2	Nippon Steel Corporation	Iron industries, with blast furnaces	79,356,610	Excluding emissions from industrial processes
3	JFE Steel Corporation	Iron industries, with blast furnaces	53,705,638	Excluding emissions from industrial processes
4	Electric Power Development Co., Ltd. (J-POWER)	Power stations	42,735,608	
5	Tohoku Electric Power Co., Inc.	Power stations	30,342,897	
6	The Kansai Electric Power Co., Inc.	Power stations	26,600,000	
7	The Chugoku Electric Power Co., Inc.	Power stations	18,977,972	
8	Kyushu Electric Power Co., Inc.	Power stations	18,300,000	
9	ENEOS Corporation	Petroleum refining	18,143,656	
10	The Hokuriku Electric Power Company	Power stations	16,500,000	
11	Kobe Steel, Ltd.	Iron industries, with blast furnaces	14,288,429	Excluding emissions from industrial processes
12	Hokkaido Electric Power Co., Inc.	Power stations	13,019,527	Corrected in FY2020
13	Soma Kyodo Power Co., Ltd.	Power stations	8,370,844	
14	Joban Joint Power Co., Ltd.	Power stations	7,370,000	Error-corrected numbers
15	Shikoku Electric Power Co., Inc.	Power stations	6,978,411	
16	Idemitsu Kosan Co., Ltd.	Petroleum refining	6,613,001	
17	Tosoh Corporation	Soda	6,597,792	Excluding emissions from industrial processes
18	Kobelco Power Kobe Inc.	Power stations	6,411,002	
19	Setouchi Joint Thermal Power Co., Ltd.	Power stations	5,582,591	
20	UBE Corporation (formerly Ube Industries, Ltd.)	Cyclic intermediates, synthetic dyes and organic pigments	5,376,580	Excluding emissions from industrial processes, CO ₂ emissions from power plants were larger than that from factories

Source: Mandatory Greenhouse Gas Accounting and Reporting System (MoE)

<https://ghg-santeikohyo.env.go.jp/result>

The companies also purchase and sell electricity generated with thermal power by their affiliates, so the total CO₂ emissions they are responsible for amount to as much as 33% of Japan’s energy-derived CO₂ emissions.

Table: Defendants’ CO2 emissions in FY2019 and FY2021

	Established/ Started Thermal Power Business	CO2 emissions in FY2019 (10 Mt- CO2)	CO2 emissions based on sales volume in FY2019 (10 Mt- CO2)	CO2 emissions based on sales volume in FY2021 (10 Mt- CO2)
JERA	2019	12451	13901	13174
Tohoku Electric Power	1951	3051	4607	4384
J-POWER	1967	4274	4385	4160
Kansai Electric Power	1951	2850	4248	3745
Kobe Steel	1959	756	756	815
Kyushu Electric Power	1951	1894	2937	2642
Chugoku Electric Power	1951	1906	3487	3541
Hokuriku Electric Power	1951	1650	1680	1899
Hokkaido Electric Power	1951	1306	1377	1452
Shikoku Electric Power	1951	737	1392	1563
Total		25845	33740	32581

Excluding overlap/duplicates

Source (CO2 emissions): Mandatory Greenhouse Gas Accounting and Reporting System (MoE)
<https://ghg-santeikohyo.env.go.jp/result>

5. Failure to fulfill the duty of care regarding each defendant’s level of emission reductions

(1) Emissions must not exceed the levels of science-based global consensus (public policy of the international community)

Elements that shape the content of the duty of care in Article 709 of the Civil Code:

(a) Acts that violate human rights

The defendants also acknowledge that it is necessary to reduce emissions as a measure against climate change.

The level of emission reductions should not fall below the level of international consensus mentioned above.

(b) The role of non-state actors such as the business sector (paragraphs 133 and 134 of the decision of the parties to adopt the Paris Agreement)

(c) Duty of business actors to protect human rights (UN Guiding Principles on Business and Human Rights)

“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

(d) OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

(e) United Nations Global Compact

(2) Defendants’ plans including “50% reduction by 2030” are insufficient. The plans lack feasibility.

(a) GHG reduction target by 2030:JERA only has emission intensity targets, no emission volume targets. The wording lacks specificity. Targets relative to 2013 are low. The plans also lack feasibility. The plans rely on hydrogen or ammonia co-firing, CCS, and the restart of nuclear power plants.

Table 3-4. Hydropower and thermal power plant transmission end power [100gWh]

Type	2020	2021	2025	2030
Hydropower	826	844	855	898
Hydro	769	764	782	801
Hydro (Pump)	56	81	74	97
Thermal Power	6,378	6,206	6,023	5,792
Coal	2,638	2,899	3,033	3,022
LNG	3,548	3,090	2,779	2,565
Oil and others	193	217	211	204

Source: OCCTO(2021), Aggregation of Electricity Supply Plans for FY 2021 (Translated by Legal Team)
https://www.occto.or.jp/kyoukei/torimatome/files/210331_kyokei_torimatome_2.pdf

(b) 2035 reduction targets: Only JERA has set a target. It is inadequate, however. Other defendants have not set targets.

(3) Liability of Joint Tortfeasors

The defendants are members of groups such as the Federation of Electric Power Companies of Japan (FEPC) and the Electric Power Council for a Low Carbon Society (ELCS, Kobe Steel is affiliated via Kansai Electric), and are working together to address global warming.

6. Case law and expert commentary

(1) Overseas cases

State responsibility - Dutch Supreme Court (December 20, 2019)

The adverse impacts of dangerous climate change are a real violation of human rights. The **urgency of danger relating to climate change** is not about how long it takes for impacts to become evident but about the certainty of heading towards those impacts. The Netherlands (0.5% of global emissions) has a proportional responsibility to reduce emissions at the level of the global consensus. Climate change is a political issue, but it is also a human rights issue, and the judiciary also has a role in this.

Hague District Court ruling - Milieudefensie et al. v. Royal Dutch Shell plc. (May 2021)

“The responsibility of business enterprises to respect human rights, as formulated in the [UN Guiding Principles], is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Therefore, it is not enough for companies to monitor developments and follow the measures states take.”

References

Dutch Civil Code Chapter 6, Article 162, paragraph 2. Unwritten duty of care to be taken by enterprises

1. A person who commits a tortious act (unlawful act) against another person that can be attributed to him, must

repair the damage that this other person has suffered as a result thereof.

- As a tortious act is regarded a violation of someone else's right (entitlement) and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct, always as far as there was no justification for this behaviour.

Japanese Civil Code

Article 709: A person that has intentionally or negligently infringed the rights or legally protected interests of another person is liable to compensate for damage resulting in consequence.

Article 719 (1): If more than one person has inflicted damage on another person by a joint tort, each of them is jointly and severally liable to compensate for the damage.

Table: Defendants' CO2 emissions in FY2013, FY2019 and FY2021, and comparison of defendants' FY2030 and FY2035 targets with IPCC AR6 global modelled mitigation pathways

Defendants (10 thermal power companies)	CO2 emissions in FY2013 (10 Mt- CO2)	CO2 emissions in FY2019 (10 Mt- CO2)	CO2 emissions in FY2021 (10 Mt- CO2)	Projected CO2 emissions in FY2030 (10 Mt-CO2)		Projected CO2 emissions in FY2035 (10 Mt-CO2)	
				Planned by defendants	52% compared to FY2019 level	Planned by defendants	35% compared to 2019FY level
JERA Group (electric power business)	18248	13901	13174	Target has not been set	7229	7299	4865
CO2 emissions from company-operated power plants	16904	12450	11675				
Tohoku Electric Power CO2 emissions based on sales volume	5163	4607	4384	2522	2396	Target has not been set	1612
CO2 emissions from company-operated power plants	3670	3051	3274				
J-POWER Group	4796	4385	4160	N/A(2590 in the case of 50%)	2280	Target has not been set	1535
CO2 emissions from company-operated power plants	4702	4274	3949	2627			
Kansai Electric Power CO2 emissions based on sales volume	6681	4248	3745	N/A(3341 in the case of 50% of CO2 emission based on sales volume)	2209	Target has not been set	1487
CO2 emissions from company-operated power plants	4850	2850	2370	1455			
Kobe Steel	780	756	815	Target has not been set	393	Target has not been set	265
Kyushu Electric Power CO2 emissions based on sales volume	4785	2937	2642	N/A(2393 in the case of 50%)	1527	Target has not been set	1028
CO2 emissions from company-operated power plants	3690	1894	1740				
Chugoku Electric Power CO2 emissions based on sales volume	4314	3487	3541	2114	1813	Target has not been set	1220
CO2 emissions from company-operated power plants	2504	1906	1844	1252			
Hokuriku Electric Power CO2 emissions based on sales volume	1851	1680	1899	926	874	Target has not been set	588
CO2 emissions from company-operated power plants	1820	1650	1870				
Hokkaido Electric Power CO2 emissions based on sales volume	1941	1377	1452	946	716	Target has not been set	482
CO2 emissions from company-operated power plants	1840	1306	1403				
Shikoku Electric Power CO2 emissions based on sales volume	1946	1392	1563	973	724	Target has not been set	487
CO2 emissions from company-operated power plants	1220	737	964				

Website: Youth Climate Case Japan (<https://youth4cj.jp/en/>)