

Climate Change, Coming Soon to a Court Near You

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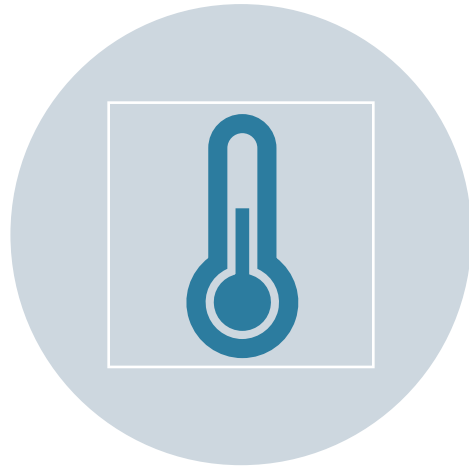
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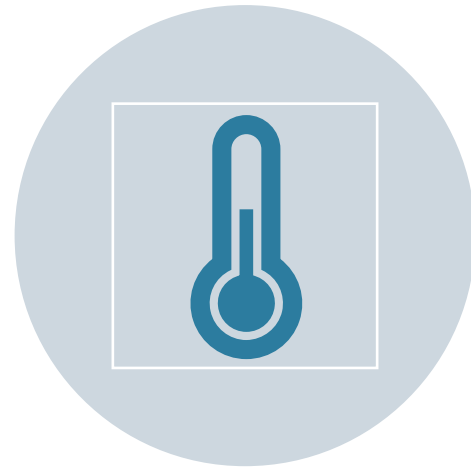
Lecture Structure



CLIMATE BASICS



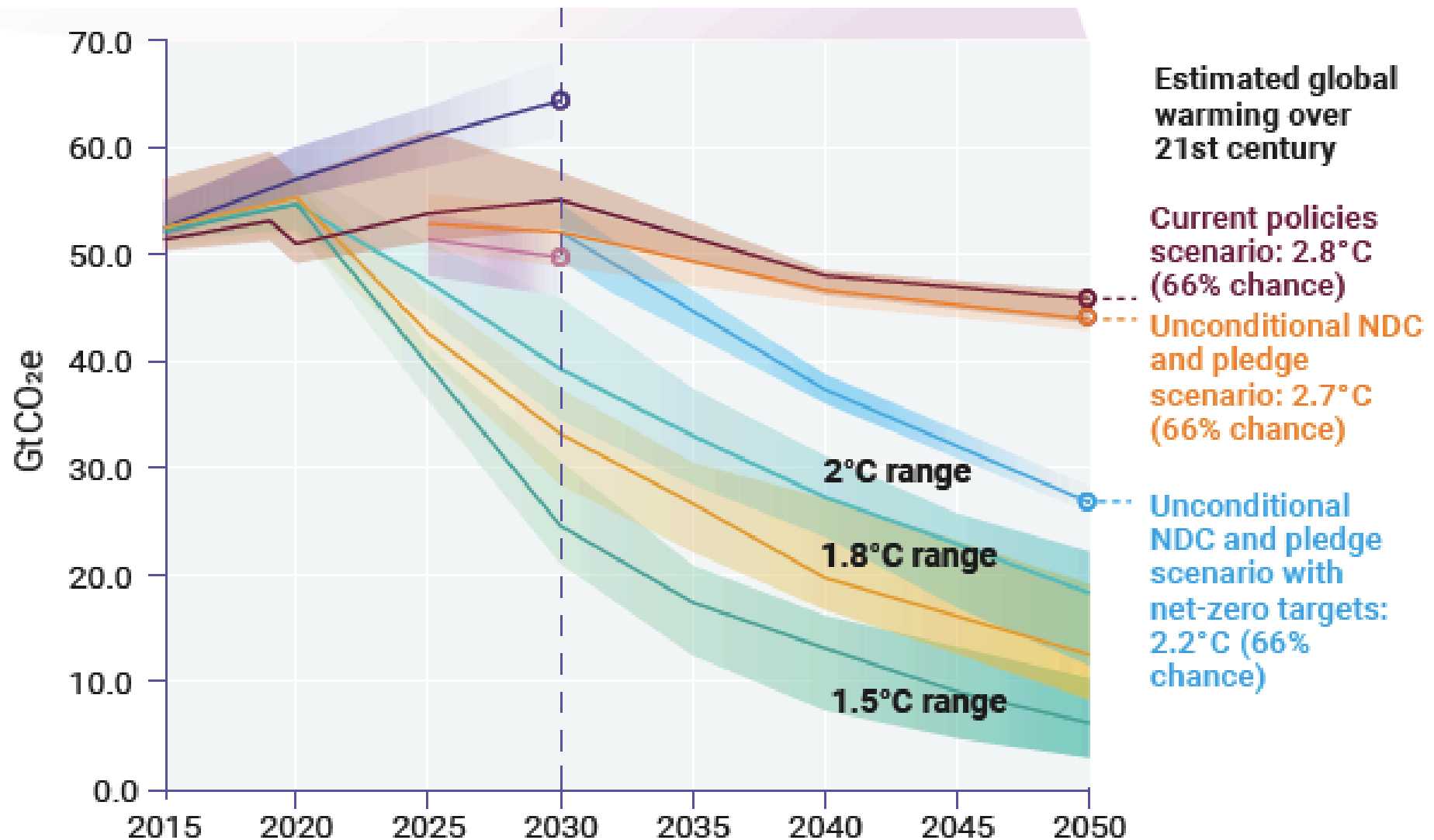
CLIMATE LITIGATION



CLIMATE BASICS

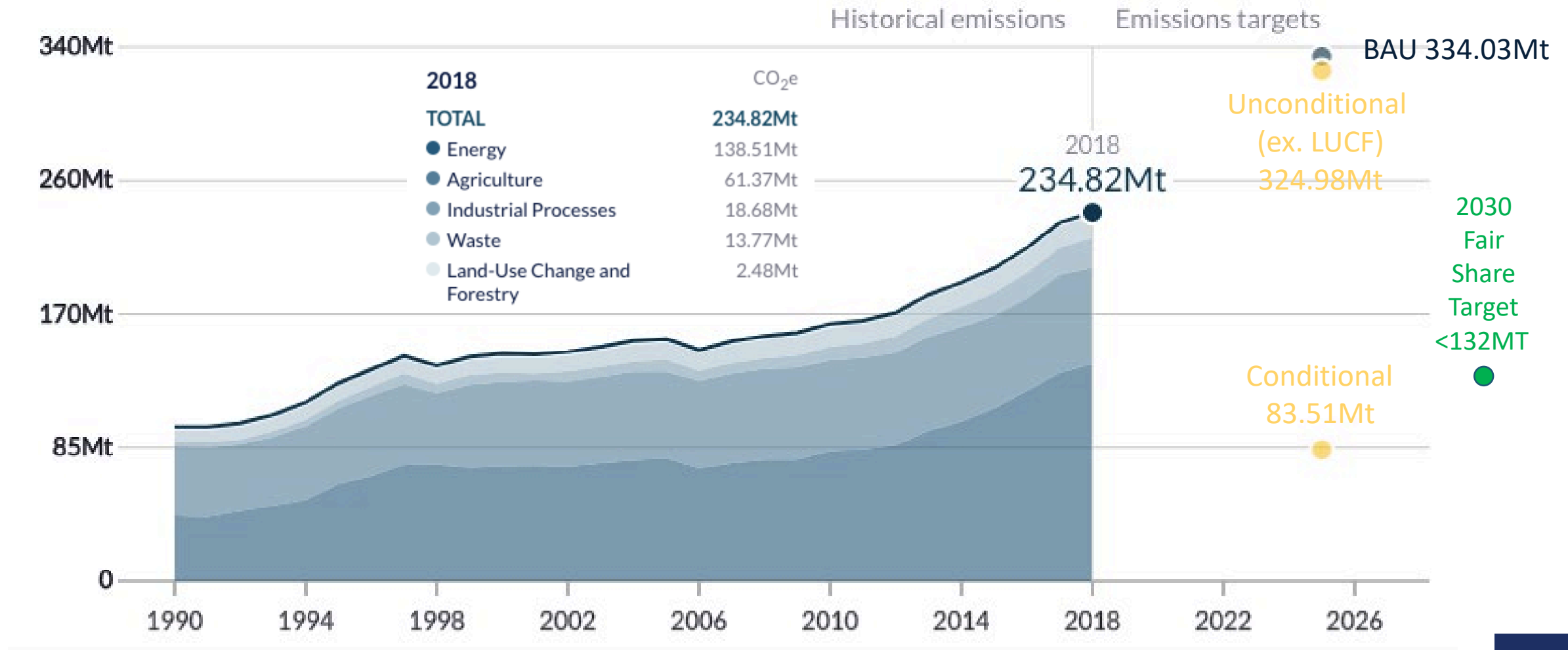


Different GHG Scenarios and Emissions Gap in 2030





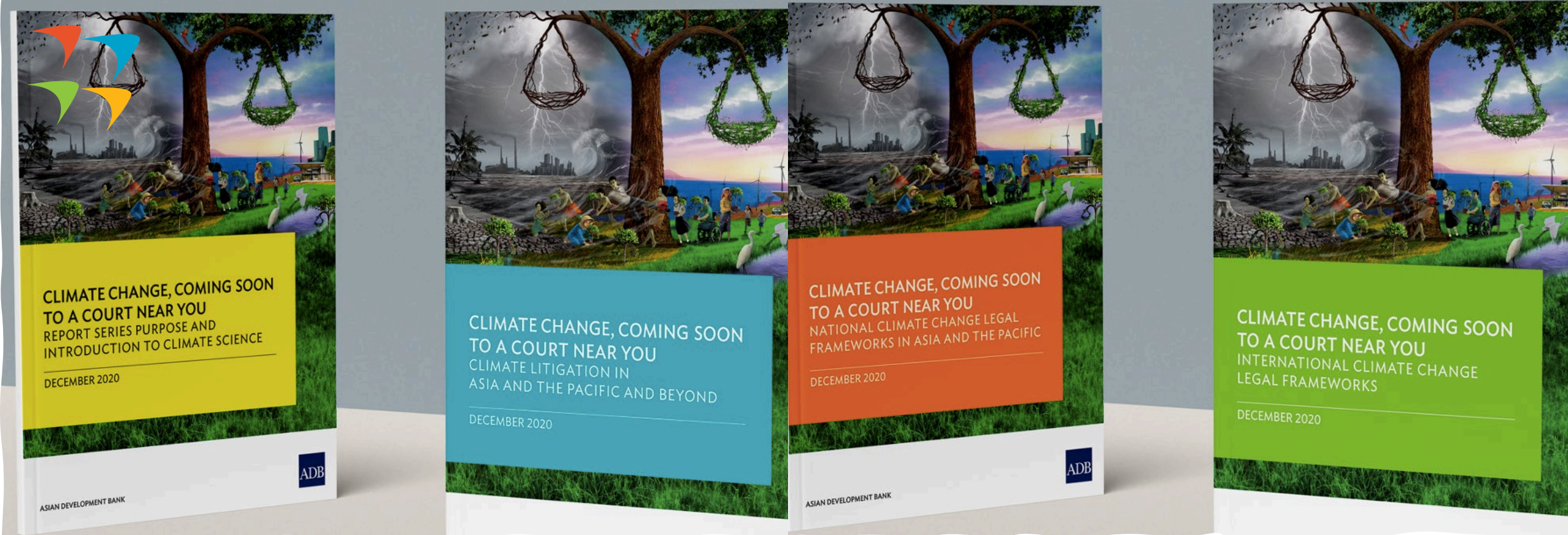
Greenhouse Gas Emissions and Emissions Targets



Source: Climate Watch, CAIT data source



CLIMATE LITIGATION



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<https://www.adb.org/publications/series/climate-change-coming-to-court>



CLIMATE CHANGE, COMING SOON TO A COURT NEAR YOU

CLIMATE LITIGATION IN ASIA AND THE PACIFIC AND BEYOND

DECEMBER 2020

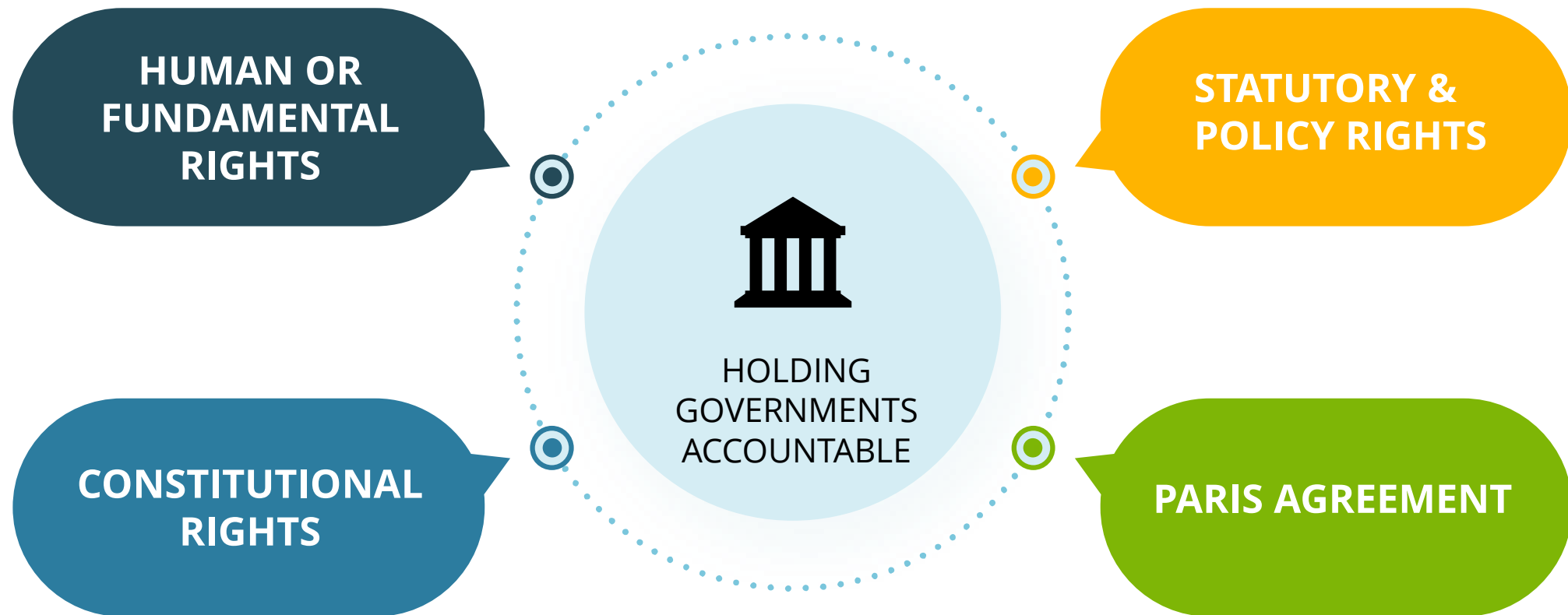
**HOLDING
GOVERNMENTS
ACCOUNTABLE**

**PERMITTING &
JUDICIAL REVIEW**

**CASES AGAINST
PRIVATE PARTIES**

ADAPTATION

**VULNERABLE
PEOPLE**

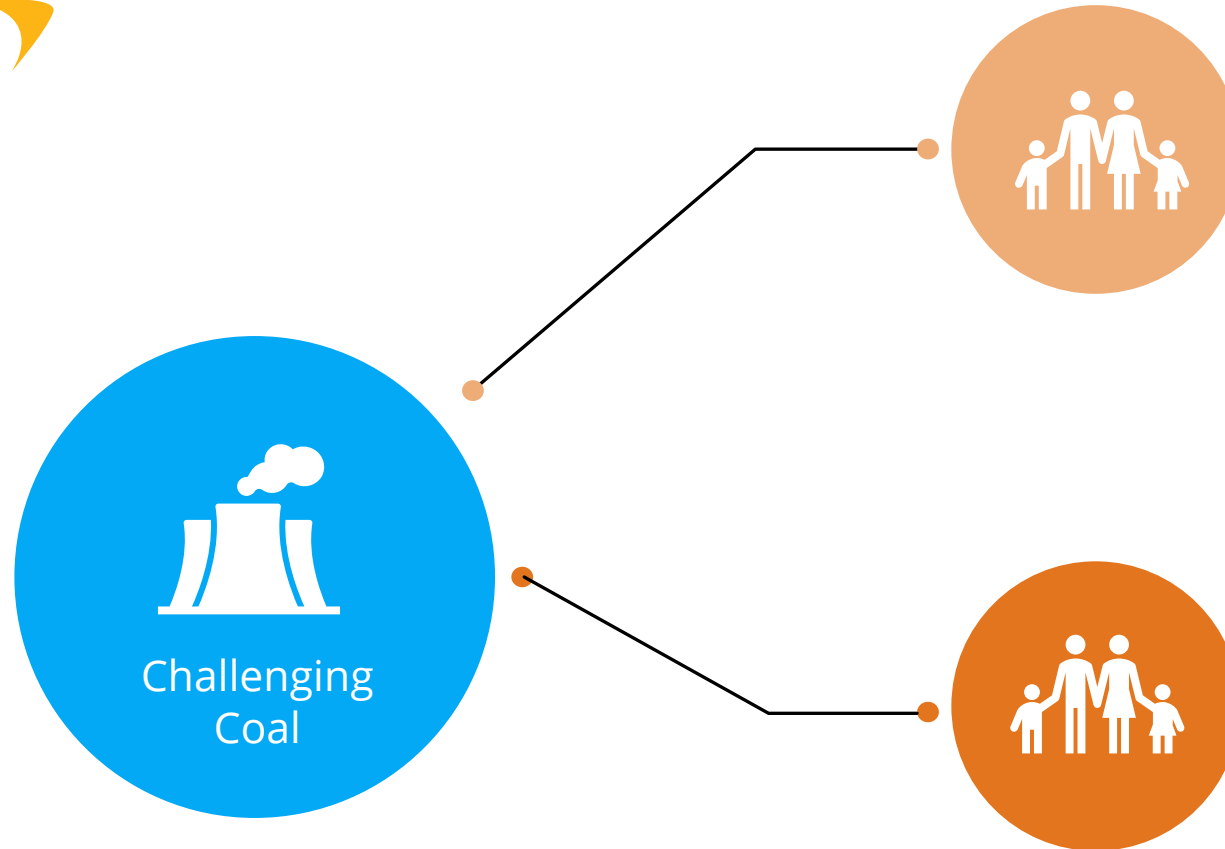




Holding Governments Accountable

- *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Urgenda Foundation* (2019): duty under the European Convention on Human Rights. The 2015 decision of the Hague District Court was the first time globally a court ordered a government to reduce its emissions
- *Advocate Padam Bahadur Shrestha vs Prime Minister and Office of Council of Ministers and Others* (2018): government must pass a climate law as climate change is an existential threat to fundamental constitutional rights
- *Neubauer, et al. v. Germany* (2021): constitutional rights mean the legislature must set a carbon budget to limit warming to well below 2°C and to 1.5°C if possible
- *Bushfire Survivors for Climate Action Incorporated v Environmental Protection Authority* (2021): NSW EPA has a statutory duty to include more than aspirational statements in its climate policy





Ali v. Pakistan **(2016 Petition Pakistan SC)** **(undecided)**

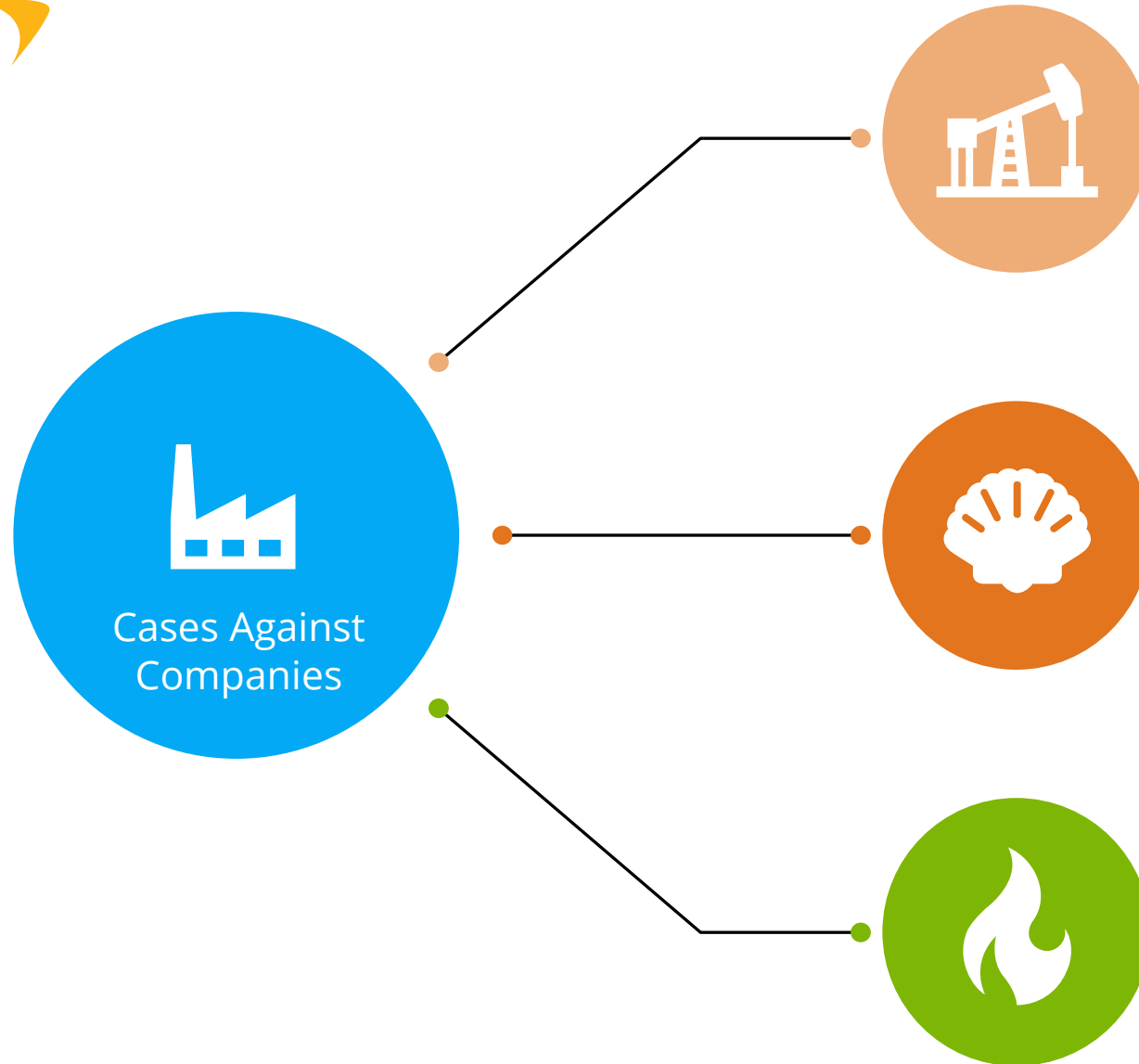
10-year-old challenges government's plan to exploit untapped coal reserve in Thar Desert. Ali argues (a) she has an inalienable right & constitutional right to a stable climate, (b) public trust doctrine means government owes a fiduciary duty to reduce atmospheric CO2. By failing to reduce emissions, govt. is criminally negligent, and (c) government bound by Paris Agreement and the commitments it made under its Nationally Determined Contributions to reduce atmospheric CO2 to 350 ppm

Sharma and Others v Minister for the Environment (2021, Federal Court Australia)

There is a novel duty of care under the common law of negligence to protect Australian children from personal injury flowing from the effects of climate change.

Secondly, the Minister for Environment must also consider the potential harm to children as a mandatory relevant consideration that the Minister was required to consider as a matter of administrative law in determining the application.





Carbon Majors (2019 Philippine CHR)

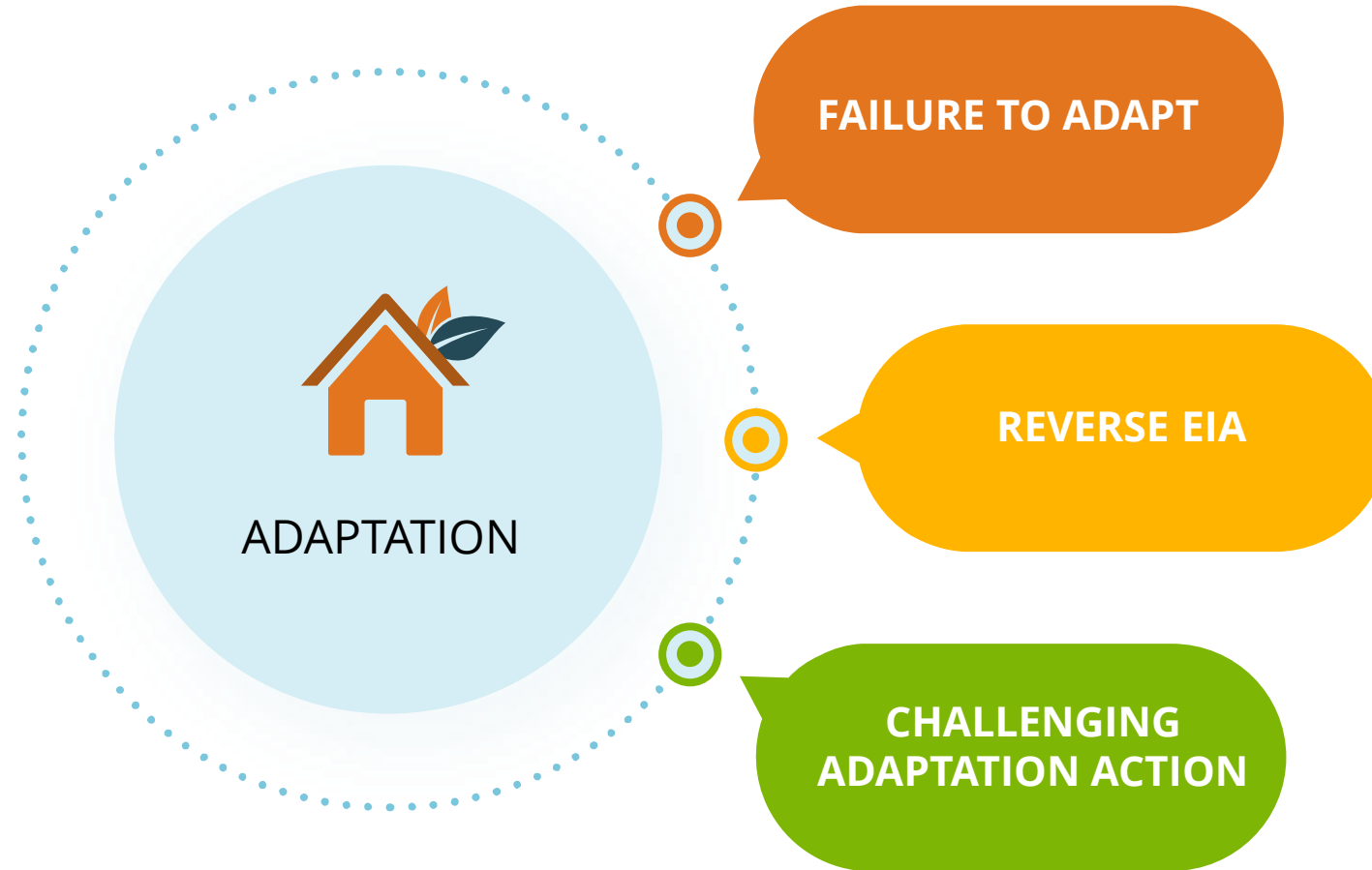
- Climate change is defining challenge of our time—legal and clarion call for protection of fundamental rights. It is time for climate change justice. Treated matter as a writ of Kalikasan
- Failure to act violates constitutional right to life and human dignity. These rights include the right to a healthy and clean environment—established CC Commission and required it to report under orders of continuing mandamus

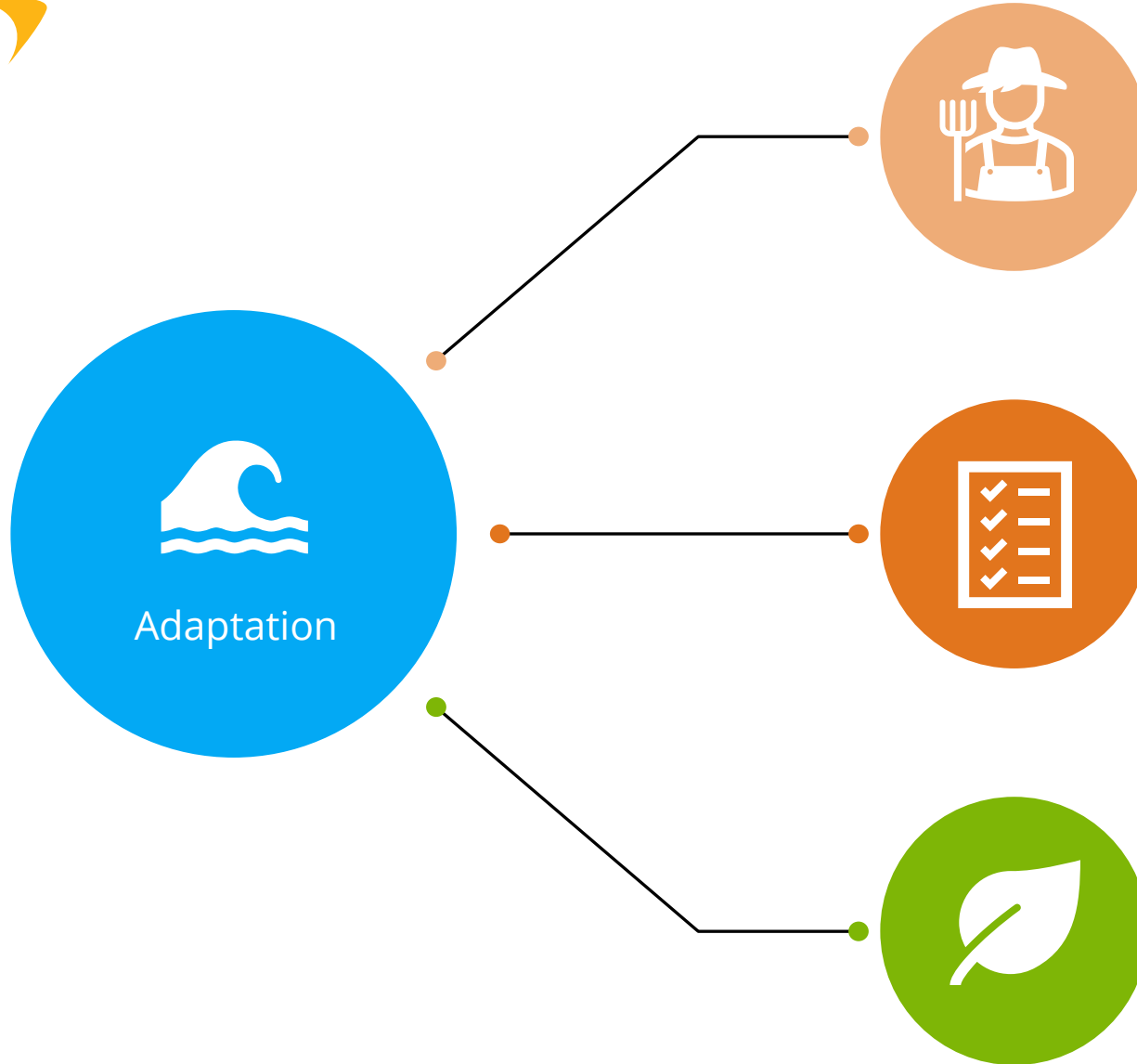
Milieudefensie et al. v Royal Dutch Shell (2021 Hague District Court)

- Argument: given the Paris Agreement's goals and scientific evidence about the dangers of climate change, Shell has a duty of care to reduce its GHG emissions. Duty stems from art. 6:162 of the Dutch Civil Code, informed by arts. 2 and 8 of the ECHR. Further, Shell knew of dangers of fossil fuels and made misleading statements
- Orders: there is an unwritten standard of care laid down in the Dutch Civil Code which means that acting in conflict with what is generally accepted according to unwritten law is unlawful. Shell must reduce its scope 1, 2, and 3 GHG emissions by 45% by 2030 relative to 2019

MoE v. PT. Kalista Alam v. MoE (2015 Indonesian SC)—Restoration

Kalista Alam drained & burned 1,000 ha. peatland for palm oil plantation. MoE successfully sought damages for ecological, biodiversity, & economic losses, release of 4,275 tons of CO₂, 49.14 tons of CH₄, & other pollutants; peatland restoration (\$10 per ton); mitigating carbon release (\$10 per ton); lost capacity to absorb carbon (4,725 tons of CO₂).





Leghari v. Pakistan (2018 Lahore HC)

Climate change is defining challenge of our time—legal and clarion call for protection of fundamental rights. It is time for climate change justice. Treated matter as a writ of Kalikasan

Failure to act violates constitutional right to life and human dignity. These rights include the right to a healthy and clean environment—established CC Commission and required it to report under orders of continuing mandamus

Gaurav Kumar Bansal v. Union of India & Ors (2015 NGT)

Central gov't must prepare national action plan on climate change and state governments must comply

BELA Vs. Bangladesh (2021 Bangladesh SC)

Petition to objecting to illegal occupation and dumping of sand in agricultural land and wetlands, violating the Bangladesh Economic Zone Act, 2010.

Bangladesh is a party to the Ramsar Convention. Hence, the government has a legal obligation to immediately formulate a national policy and pass a law to realize the objectives of the Convention and protect Bangladesh's wetlands. The Education Ministry must educate Bangladesh's students on the importance and benefits of protecting Bangladesh's wetlands.





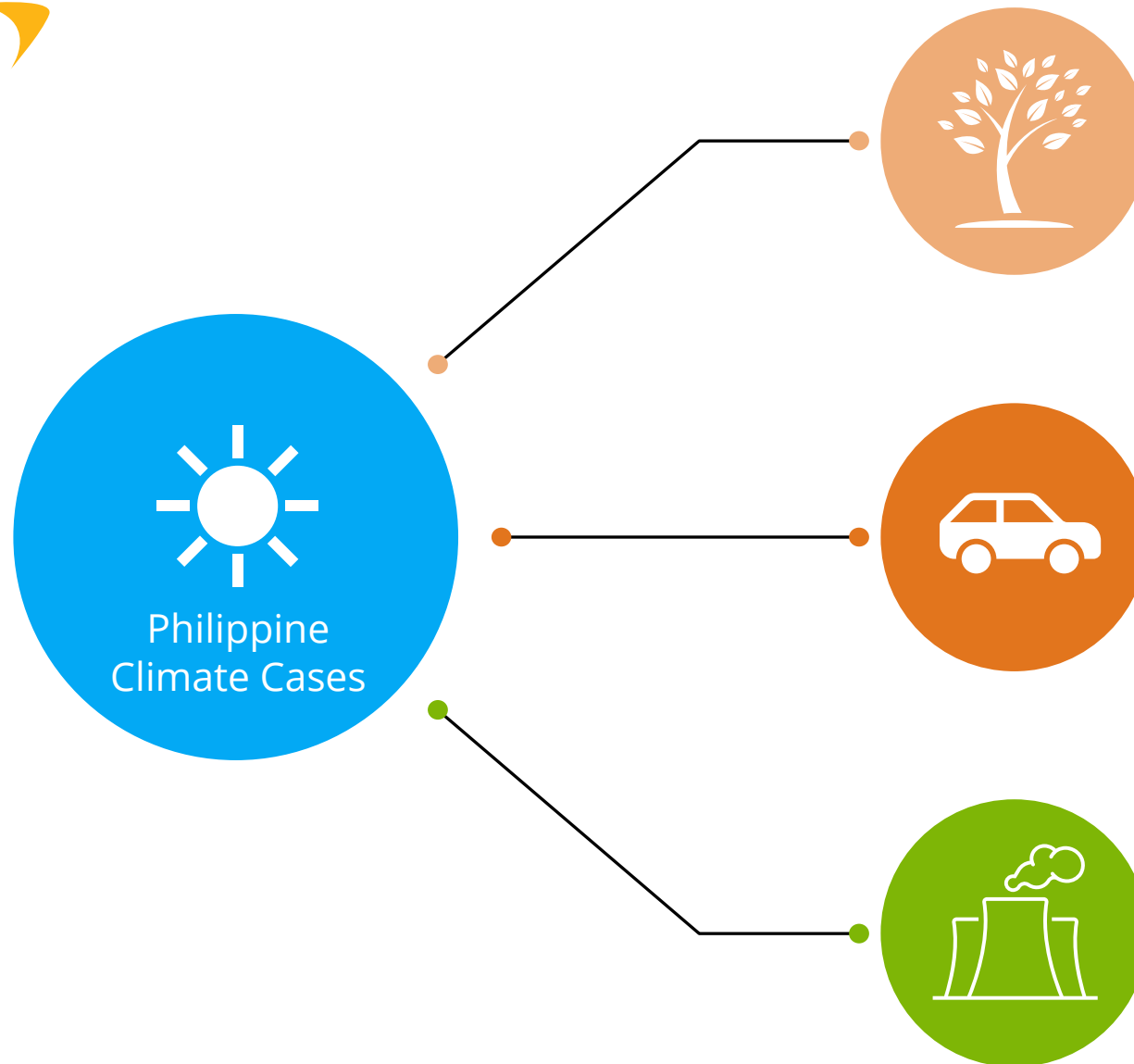
Post Disaster & Climate Migration

Gaurav Kumar Bansal v. Union Of India And Ors (2017 SC India)

- 2 petitions following deadly flooding in Uttarakhand in 2013
- **Argument:** national and state governments must properly prepare for disasters, prepare disaster management plans, and implement the Disaster Management Act, 2005
- **Directions:** government to prepare disaster standards and guidelines
- Also: ***BELA Vs. Bangladesh***: post cyclone disaster assistance

Ioane Teitiota v. Ministry of Business, Innovation & Employment (2014 NZ SC)

- Kiribati citizen should refugee status in New Zealand due to sea level rise and environmental degradation
- **Decision:** while Kiribati faces challenges, Mr. Teitiota will not face persecution causing “serious harm” under Refugee Convention definition. He is not a refugee under law
- Similar decisions in *re: AD (Tuvalu)* (2014) and *0907346* (2009) Refugee Tribunals in New Zealand and Australia



Oposa v. Factoran (1993)



Successful challenge to the issuance of timber licenses. There was a violation of the petitioners' rights. The right to a balanced and healthful ecology falls within the declaration of principles and state policies and not under the bill of rights. Nevertheless, the right concerned self-preservation and self-perpetuation—rights that are assumed to have existed from the inception of humankind.

Henares v. LTFRB (2006)

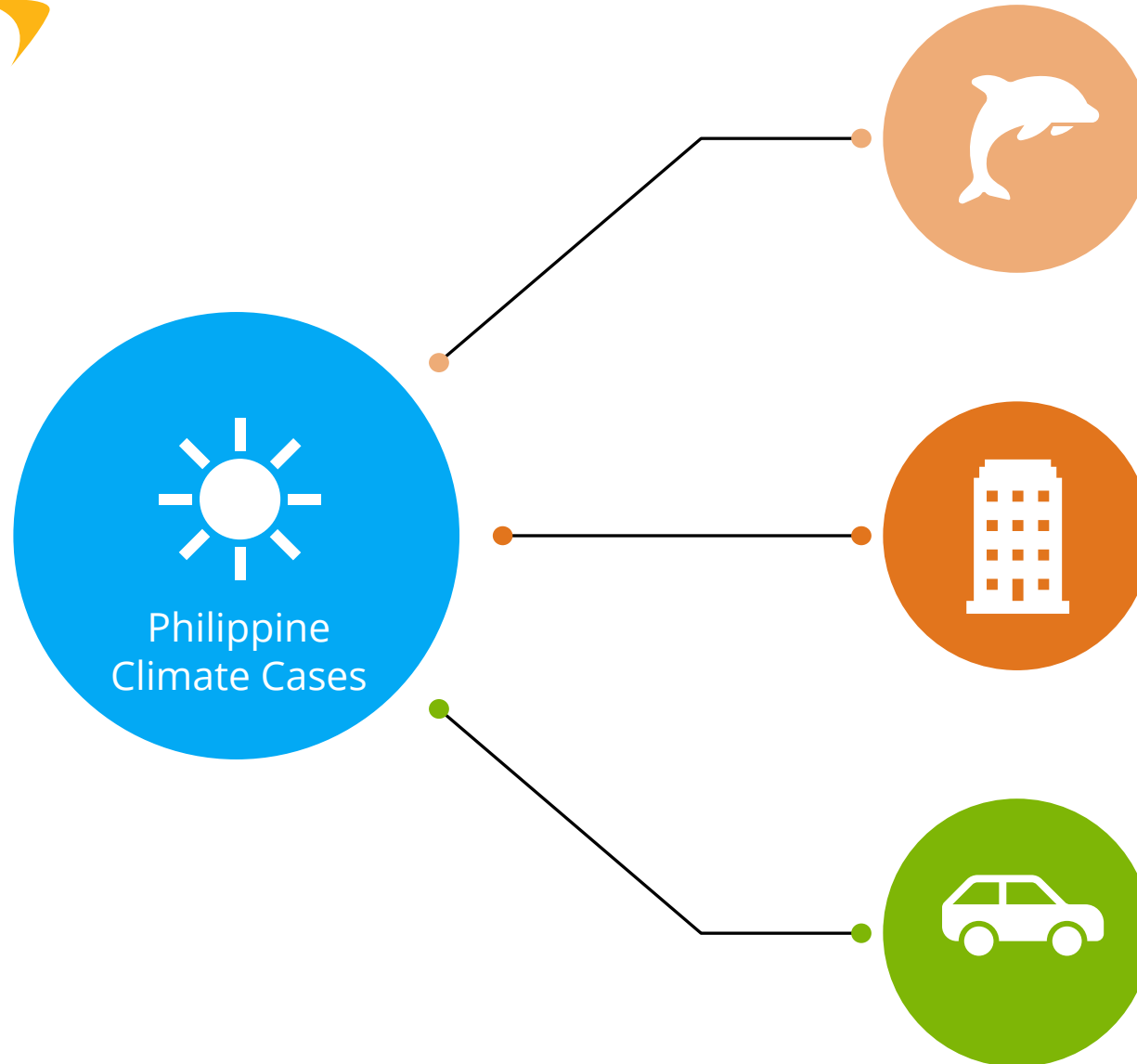


Unsuccessful case seeking mandamus orders requiring use of compressed natural gas in PUVs. Petitioners had a fundamental right to clean air, a matter of transcendental importance. Petition failed. Courts may only issue mandamus orders to compel a duty specifically ordered by law. In this case, there was no law mandating government authorities to require motor vehicle owners to use compressed natural gas.

Paje v. Casino (2015)



Unsuccessful petition seeking a writ of *Kalikasan* for an environmental clearance granted for a 300-MW coal-fired power plant in Subic. Case unsuccessful due to poor evidentiary. Court noted parties could use might use a writ of *Kalikasan* to challenge an environmental clearance



Resident Marine Mammals of the Protected Seascape Tañon Strait et al. v. Secretary Angelo Reyes (2015)



Two petitions challenged the ECC and service contract for oil exploration and drilling within Tañon Strait. 2010 Philippine Rules of Procedure for Environmental Cases allow for citizen suits on the principle that humans are stewards of nature. The contract violated the National Integrated Protected Areas System Act, which prohibits the exploitation of natural resources in protected areas. Only a law could permit the exploitation and use of this resource within a protected marine area

West Tower Condominium Corp v. First Philippine Industrial Corporation et al. (2015)



Writ of *Kalikasan* with a TEPO granted requiring respondent to (i) cease operating the leaking pipeline, (ii) check the pipeline's structural integrity, and (iii) implement measures to prevent any incidents resulting from leaks and report on those measures. Supreme Court refused to order creation of a special trust, reasoning that the petitioned trust fund went beyond special trust funds as contemplated by the 2010 Rules of Procedure for Environmental Cases.

Segovia v. CC Commissioner (2017)



Petition sought a writ of *Kalikasan* and continuing mandamus orders to compel the creation of road sharing and requiring President and cabinet members to use public transport. Petitioners failed to show that government was guilty of violating or neglecting environmental laws or that such acts violated constitutional rights.



RESOURCES AND CLIMATE CONSCIOUSNESS



CLIMATE CHANGE, COMING SOON TO A COURT NEAR YOU

NATIONAL CLIMATE CHANGE LEGAL FRAMEWORKS IN ASIA AND THE PACIFIC

DECEMBER 2020

TRENDS

CONSTITUTIONAL
RIGHTS SURVEY

NATIONAL
LEGAL & POLICY
FRAMEWORKS



CLIMATE CHANGE, COMING SOON TO A COURT NEAR YOU

INTERNATIONAL CLIMATE CHANGE LEGAL FRAMEWORKS

DECEMBER 2020

**INTERNATIONAL
LEGAL
FRAMEWORKS**

**MULTILATERAL
ENVIRONMENTAL
LEGAL INSTRUMENTS**

**REGIONAL
ENVIRONMENTAL &
CLIMATE CHANGE
INSTRUMENTS**

**RIGHTS-BASED
INSTRUMENTS**



Climate Law Takeaways

- In the 21st century, legal practice will increasingly have to consider climate
- Climate conscious lawyering requires climate awareness and creativity
- Skill is needed to walk courts through impacts, applicable principles, comparative litigation, and climate-responsive remedies

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