

Climate Litigation: The Fight Heats Up

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Asia Pacific Judicial Conference on Environmental and Climate Change Adjudication:

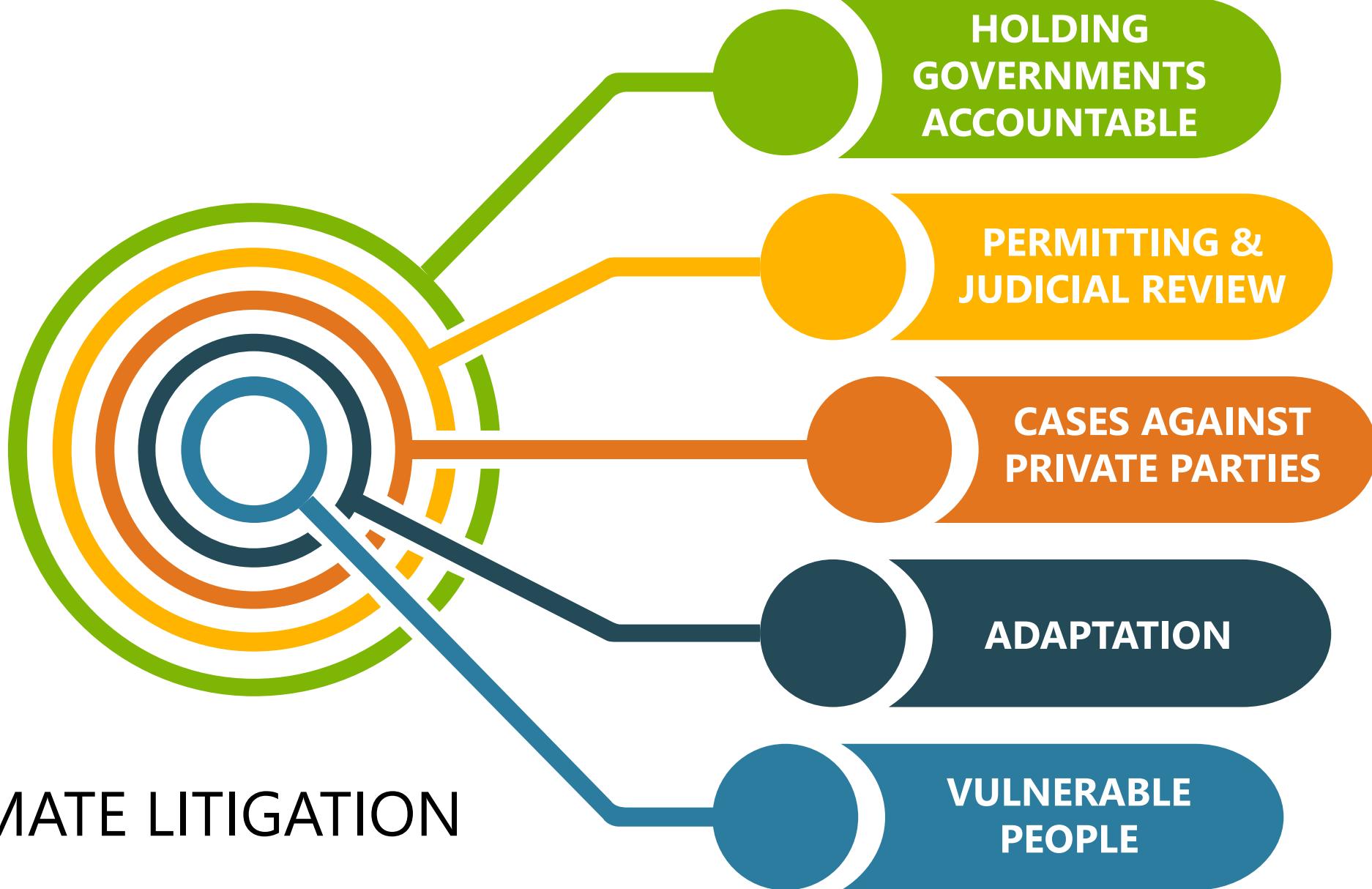
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CLIMATE LITIGATION





Standing for Public Interest Suits

PT Inti Indorayon Utama (PT IIU)

(1988 Dist. Court Jakarta)

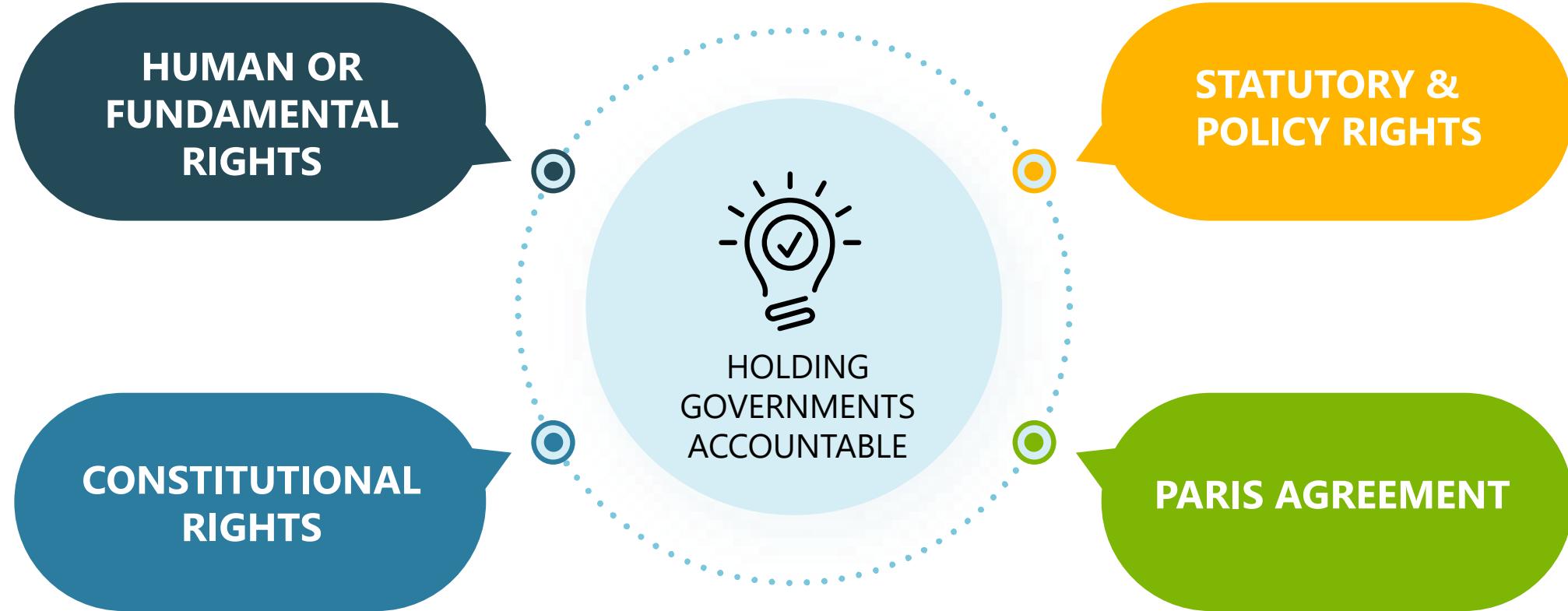
- WALHI (environmental org.) sued PP IIU (paper mill) for environmental harm
- Standing granted on 2 grounds:
 - ✧ **environment is common property + there is a public interest in environmental preservation**
 - ✧ **environment has an intrinsic right to be sustained** and WALHI could legitimately represent “environmental interest”

Oposa v. Factoran (1993 Philippine SC)

- Standing for minors and unborn generations
- Petitioners have right to a healthy and balanced ecology
- Government responsible for preserving rhythm & harmony of nature for full enjoyment of a balanced and healthful ecology
- **Right to a balanced & healthful ecology concerns self preservation.** It is an **assumed right** that need not be written in a constitution

Farooque Vs. Bangladesh (1997 Bangladesh SC)

- BELA (environmental lawyers) challenged a flood action plan
- No specific const. envi. right
- “Any person aggrieved” test—where there is:
 - ✧ **public wrong or injury, or**
 - ✧ **invasion of fundamental rights of an indeterminate number of people,** any citizen suffering the common injury or invasion of rights in common with others meets the test





Holding Governments Accountable

Shrestha vs Nepal

(2018 Nepal SC)

(Fundamental Right & Policy)

- Climate change is an **existential threat** affecting all humankind and animals
- Govt.'s **failure** to enact climate legislation and effectively implement its climate policy **amplifies existential threat**
- Held: issued a writ of mandamus ordering govt. to **pass and implement** a climate change **law** immediately & implement climate **policy**

Rajiv Dutta v. India

(2017 India NGT)

(Constitutional & Policy Right)

- 2016: forest fires raged across northern India
- Argued govt. authorities failed to
 - (i) prevent & avoid disasters per constitutional mandate to safeguard forests and wildlife,
 - (ii) implement national forest policy
- **Held: fires have contributed to climate change and impaired forest's ability to sequester carbon**
- Gov't must meet its mandate & prepare national policy and guidelines





Judicial Review: Challenging Coal

Ali v. Pakistan (2016 Petition Pakistan SC)

(Constitutional Rights and Paris Agreement)

- 10 year old challenges government's plan to exploit untapped coal reserve in Thar Desert
- Ms. Ali argues:
 - ✧ She has an inalienable right & constitutional **right to a stable climate**
 - ✧ Public trust doctrine means **government owes a fiduciary duty** to reduce atmospheric CO₂. By failing to reduce emissions, govt. is criminally negligent
 - ✧ Government bound by Paris Agreement and the commitments it made under its Nationally Determined Contributions to reduce atmospheric CO₂ to 350 ppm
- Matter still running

Challenging Waste-to-Energy

Sukhdev Vihar Residents Welfare Association & Ors. v. State of NCT of Delhi & Ors.
(2017 India NGT)

WtE plant—3,000 MT waste / day

No waste residue—plant makes fly ash bricks

Residents: plant emits air and water pollution + more CO₂ than fossil fuel plant

NGT considerations: city must manage 14,100 MT daily waste. Strike balance between SD & precautionary principle

“Not in my backyard” argument bends to public interest if plant compliant

Findings:

- Plant fined for exceeding emissions
- Local authorities must use fly ash bricks in public and private projects
- Govt. must provide more landfill sites and establish more WtE plants
- Agencies must reduce landfill heights and use plastic for road construction



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

Kalista Alam drained & burned 1,000 ha. peatland for palm oil plantation

MoE sued & sought damages for:

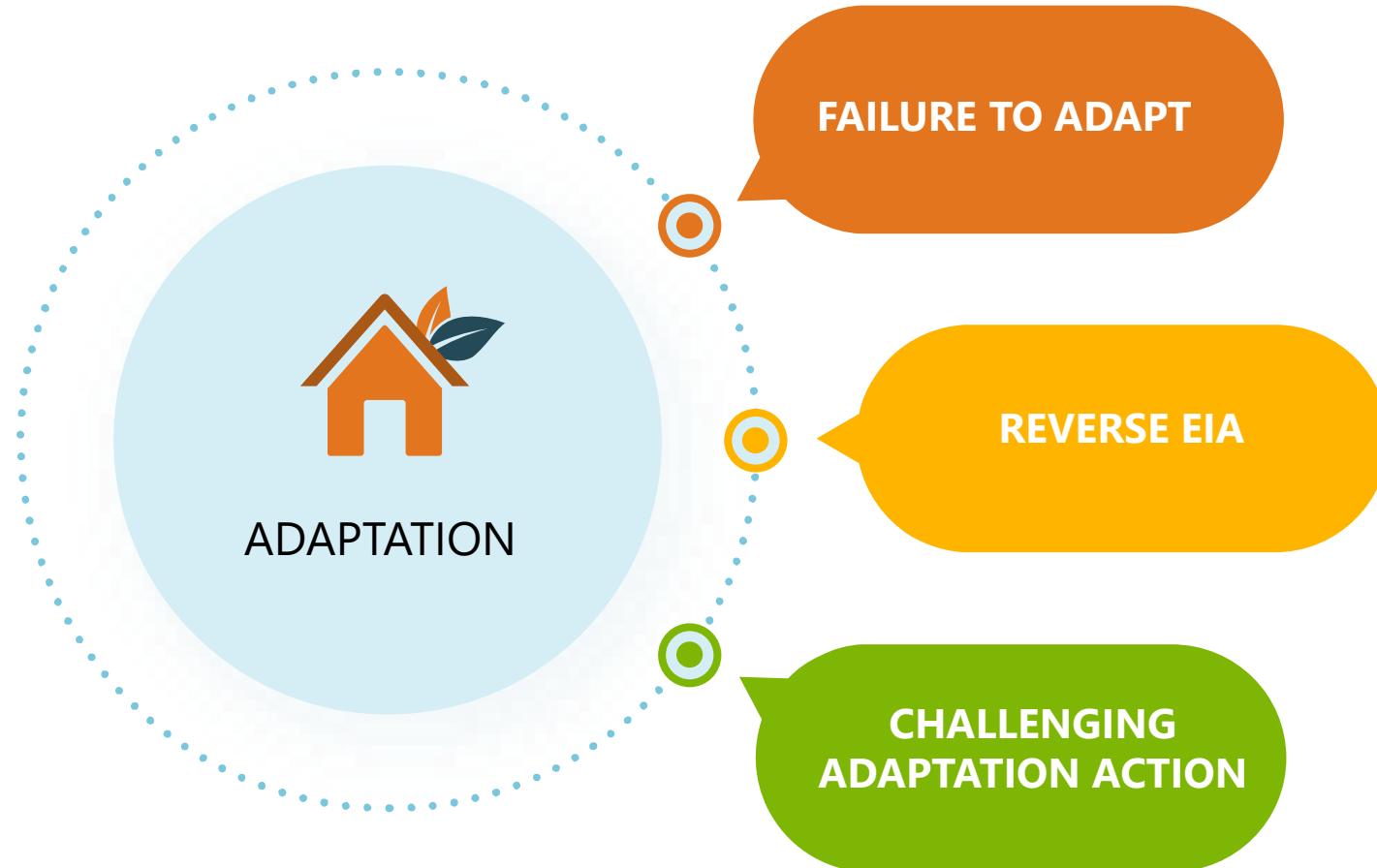
- Ecological, biodiversity, & economic losses, release of 4,275 tons of CO₂, 49.14 tons of CH₄, & other pollutants; peatland restoration (\$10 per ton); mitigating carbon release (\$10 per ton); lost capacity to absorb carbon (4,725 tons of CO₂)

Court:

- Alam violated regulations requiring concessionaires to prevent and remediate fires
- Alam liable for \$8 million in compensation + \$18 million for restoring peatland

Similar approaches in:

- *MoE v. PT. Selatnasik Indokwarsa* and *PT. Simpang Pesak Indokwarsa*: mining companies cleared forest
- *MoE v. PT. Merbau Pelalawan Lestari*: illegal logging





Leghari v. Pakistan (2015 Lahore HC)

- Climate change: **defining challenge of our time—legal and clarion call for protection of fundamental rights**. It is time for climate change justice
- 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
- Judicial toolkit for addressing and monitoring governmental response to climate change—be guided by:
 - ✧ **Constitutional rights:** life, human dignity, property, information
 - ✧ **Constitutional values:** political, economic, and social justice
 - ✧ **International environmental principles:** sustainable development, precautionary principle, inter and intra-generational equity, and the doctrine of public trust



Failure to Adapt

- ***Gaurav Kumar Bansal v. Union of India & Ors.*** (2015 NGT): central gov't must prepare national action plan on climate change. State gov't must comply

Failure to Adapt—Protecting Resilience

- ***BELA Vs. Bangladesh*** (2010 Bangladesh SC): stopped ship breaking on beaches to protect mangroves for coastal resilience
- ***Environmental and Ecological Protection Samithy v. The Executive Engineer*** (1991 Kerala HC): stopped bamboo clearing to protect water resources—protecting riparian resilience
- ***BELA Vs. Bangladesh*** (2011 Bangladesh SC): stopped illegal construction to protect Dhaka's flood zones to enhance resilience to flooding





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



Key Takeaways—Climate Justice

- Adopts a human-centered approach in development, protecting the vulnerable
- Informed by science and acknowledges the need for equitable stewardship of the world's resources
- Covers many sectors: agriculture, health, building approvals, industry permits, technology, infrastructure, human resources, disaster preparedness, energy, transport, etc.

Source: *Leghari v. Pakistan* (2015)



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