



Climate change law and policy:
litigation, negotiations, prospects

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Maruia Society Inc v Whakatane District Council (1991) 15 NZTPA 65.



“Whether the evidence at present available in respect of matters such as the “greenhouse” effect is anything more than conjecture I do not know. I neither accept nor reject the evidence that was placed before me in respect of such matters as it does not fall within my province. It would be a matter entirely for the Council or the Planning Tribunal as to the extent to which it takes such information into account.”

- per Doogue J at 21

Weir v Kapiti Coast District Council [2013] NZHC 3522

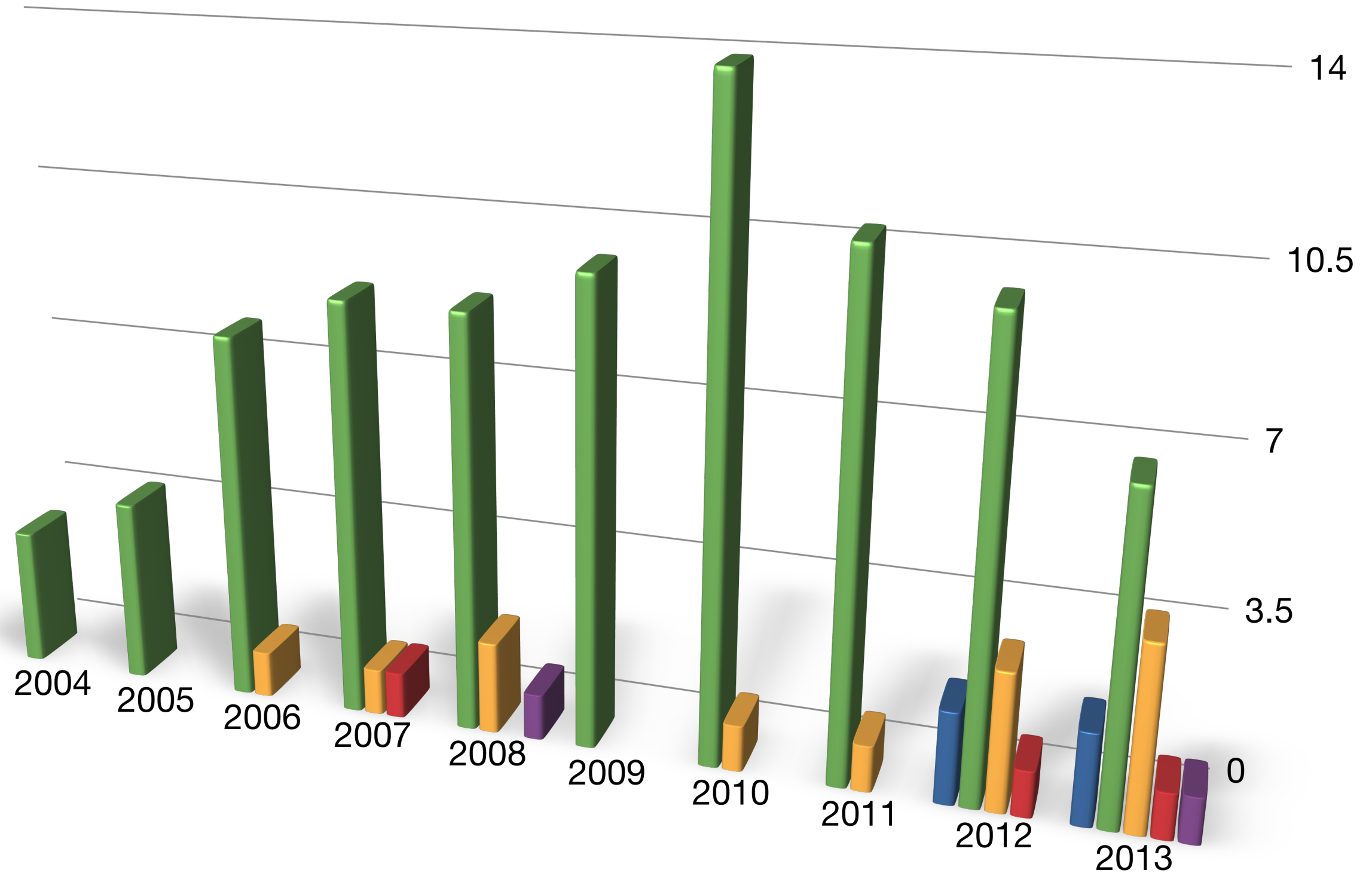
“The coast is a dominant social, cultural and economic feature of life in these islands. The coastline itself is constantly evolving, but **the climate change phenomenon seems to be accelerating and accentuating the processes that drive these changes.** This case is about how coastal communities are learning to cope with both **the inevitability of marine incursion onto the foreland, and the difficulty of predicting where and at what rate, incursion will occur.**”

-per Williams J



New Zealand Court Judgments involving climate change considerations 2004-2013

IPT EC HC CA SC



KP: Annex B commitments

Australia	108	Monaco	92
Austria	92	Netherlands	92
Belgium	92	New Zealand	100
Canada	94	Norway	101
Croatia	95	Poland*	94
Czech Republic*	92	Portugal	92
Denmark	92	Romania*	92
Estonia*	92	Russian Federation	100
European Community	92	Slovakia*	92
Finland	92	Slovenia*	92
France	92	Spain	92
Germany	92	Sweden	92
Greece	92	Switzerland	92
Hungary*	94	Ukraine*	100
Iceland	110	United Kingdom of Great Britain and Northern Ireland	92
Ireland	92	United States of America	93
Italy	92		
Japan	94		
Latvia*	92		
Liechtenstein	92		
Lithuania*	92		
Luxembourg	92		

The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A **do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B** and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

-Art 3.1, Kyoto Protocol



President Obama
COP15, Copenhagen 2009

Todd Stern

US Special Envoy for Climate Change

COP15, Copenhagen 2009

Copenhagen Accord

- Aspirational 2°C target, with GHG emissions peaking as soon as possible
- A pledge-and-review process of
 - Quantified economy-wide emissions targets for 2020 by developed countries
 - Nationally appropriate mitigation actions of developing country Parties

to be reported every 2 years



NZ's Copenhagen Accord Commitment

Conditional emissions reduction target range of 10% to 20% below 1990 levels by 2020.

Conditions:

- a **global agreement** that sets the world on a pathway to limit global temperature rises of not more than 2°C
- **comparable efforts by other countries**
- **actions by advanced and major emitting developing countries** fully commensurate with their respective capabilities.
- **effective rules governing land use, land use change and forestry (LULUCF)**
- **full recourse to a broad and efficient international carbon market**



“New Zealand’s 2020 target will be less than the -10 to -20% range in the event that these conditions are not met as has been previously stated publicly and in international negotiations.”

On 16 August 2013, the Government announced an **unconditional 2020 climate change target of 5 per cent below 1990 emissions...**

“New Zealand will join countries responsible for more than 70 per cent of global greenhouse gas emissions who are making international pledges under the United Nations Framework Convention (the Kyoto Protocol’s parent body). New Zealand will apply the Kyoto Protocol framework of rules to our unconditional 2020 target to ensure that our actions are transparent and have integrity.”

Copenhagen Accord – Non-Annex 1 party commitments

China

“China will endeavor to lower its carbon dioxide emissions per unit of GDP by 40-45% by 2020 compared to the 2005 level, increase the share of non-fossil fuels in primary energy consumption to around 15% by 2020 and increase forest coverage by 40 million hectares and forest stock volume by 1.3 billion cubic meters by 2020 from the 2005 levels.



Please note that the above-mentioned autonomous domestic mitigation actions are voluntary in nature and will be implemented in accordance with the principles and provisions of the UNFCCC, in particular Article 4, paragraph 7.”



India

“India will endeavour to reduce the emissions 1 intensity of its GOP by 20-25% by 2020 in comparison to the 2005 level.”



COP17, Durban, South Africa
December 2011

2011 Durban Platform for Enhanced Action

Parties to the UNFCCC agreed to negotiate towards “a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties.”

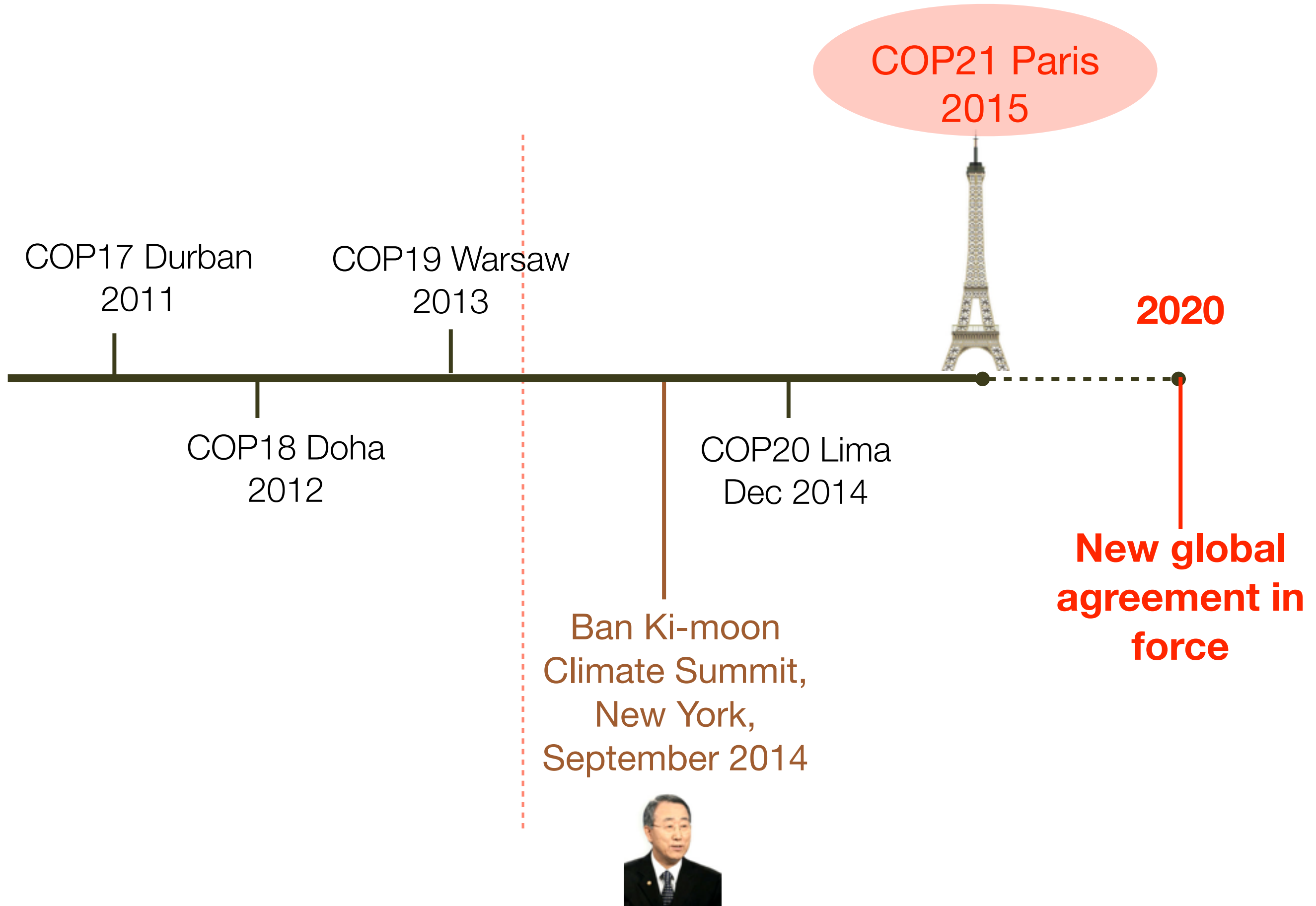




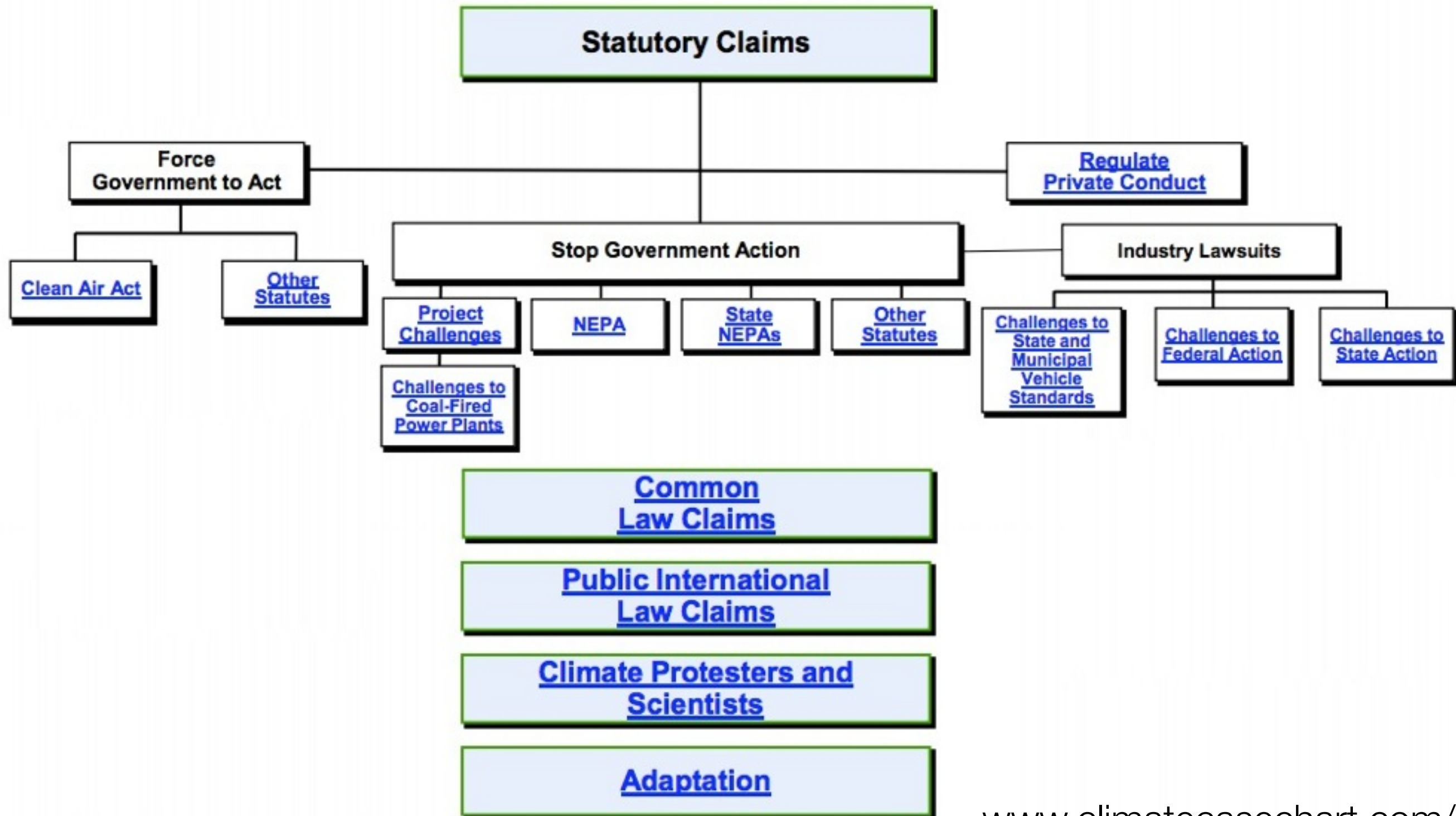
Tacloban, Leyte, Philippines,
November 13, 2013

Yeb Sano
Philippines lead climate
change negotiator, COP19

Climate talks timeline



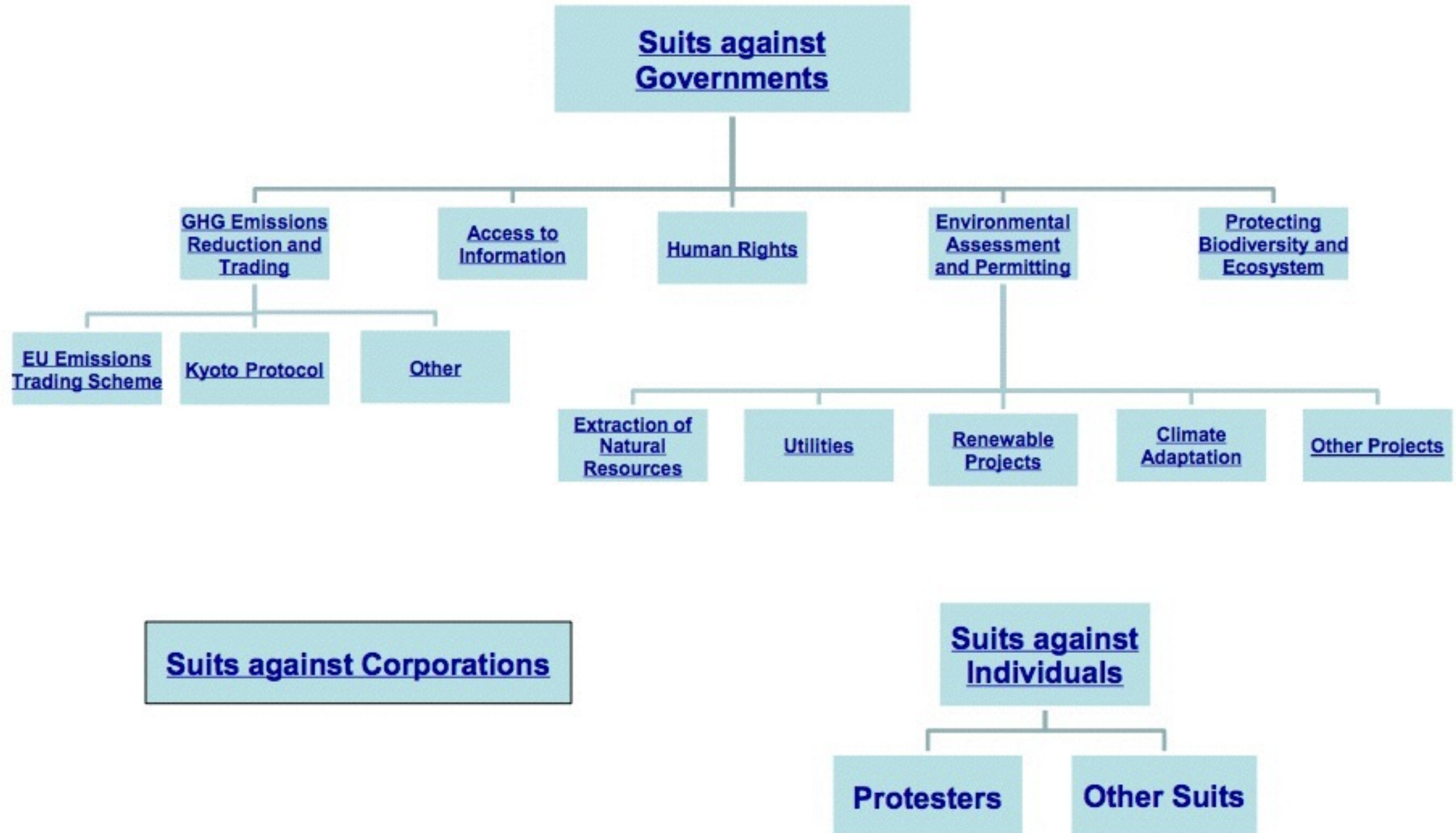
CLIMATE CHANGE LITIGATION IN THE U.S.





Non U.S. Climate Change Litigation Chart

[Click here for Climate Change Litigation in the U.S.](#)



[Case Index: Sorted by Case Title](#)

[Case Index: Sorted by Country](#)

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New Zealand climate litigation ahead?

Ongoing RMA litigation

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graph TD; A[Ongoing RMA litigation] --> B[Planning for effects of climate change]; A --> C[Renewables projects];
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Planning for effects of climate change

- regional, district planning frameworks
- coastal subdivision & development
- infrastructure consenting

Renewables projects

- windfarm projects
- geothermal development
- hydro-generation

Query: what of the ‘tangibility’/‘*de minimis*’ issue

West Coast Ent Inc v Buller Coal Ltd [2013] NZSC 87 at [89]-[93]; [121]-[126]

New Zealand climate litigation ahead?

Operation of New Zealand's ETS

- Offence and 'make good' provisions of the CCRA concerning ETS obligations
- Monitoring, reporting, surrender obligations under the ETS
- Judicial review of decisions on free allocation - especially industrial sector



New Zealand tribal group threatens multi-million-dollar claim over carbon scheme

The Maori Iwi Leadership Group plans to file demand for NZ\$600 million against Wellington for environmental value lost through emissions trading scheme

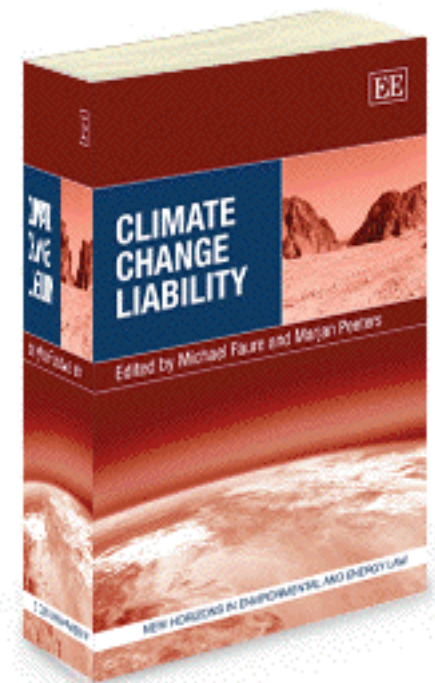
Reuters in Wellington

PUBLISHED : Friday, 07 February, 2014, 4:26pm

New Zealand climate litigation ahead?

Corporate/commercial/ tax litigation

- Director liability under the CCRA 2002
- Contractual issues associated with domestic emissions trading including NZ ETS cost pass-through
- Mergers & acquisitions issues
- Property issues, particularly in relation to forestry and farm land
- Securities issues
- Tax treatment of emissions units



CLIMATE

'When Kiribati disappears, we're going to die with our kids'

In a landmark case, Kiribati native Ioane Teitiota claimed refugee status in New Zealand as a victim of climate change. With his plea rejected, his hope of a better life is sinking quicker than his Pacific islands home.

Immigration
proceedings



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