

Demanding Justification through Climate Litigation in Europe



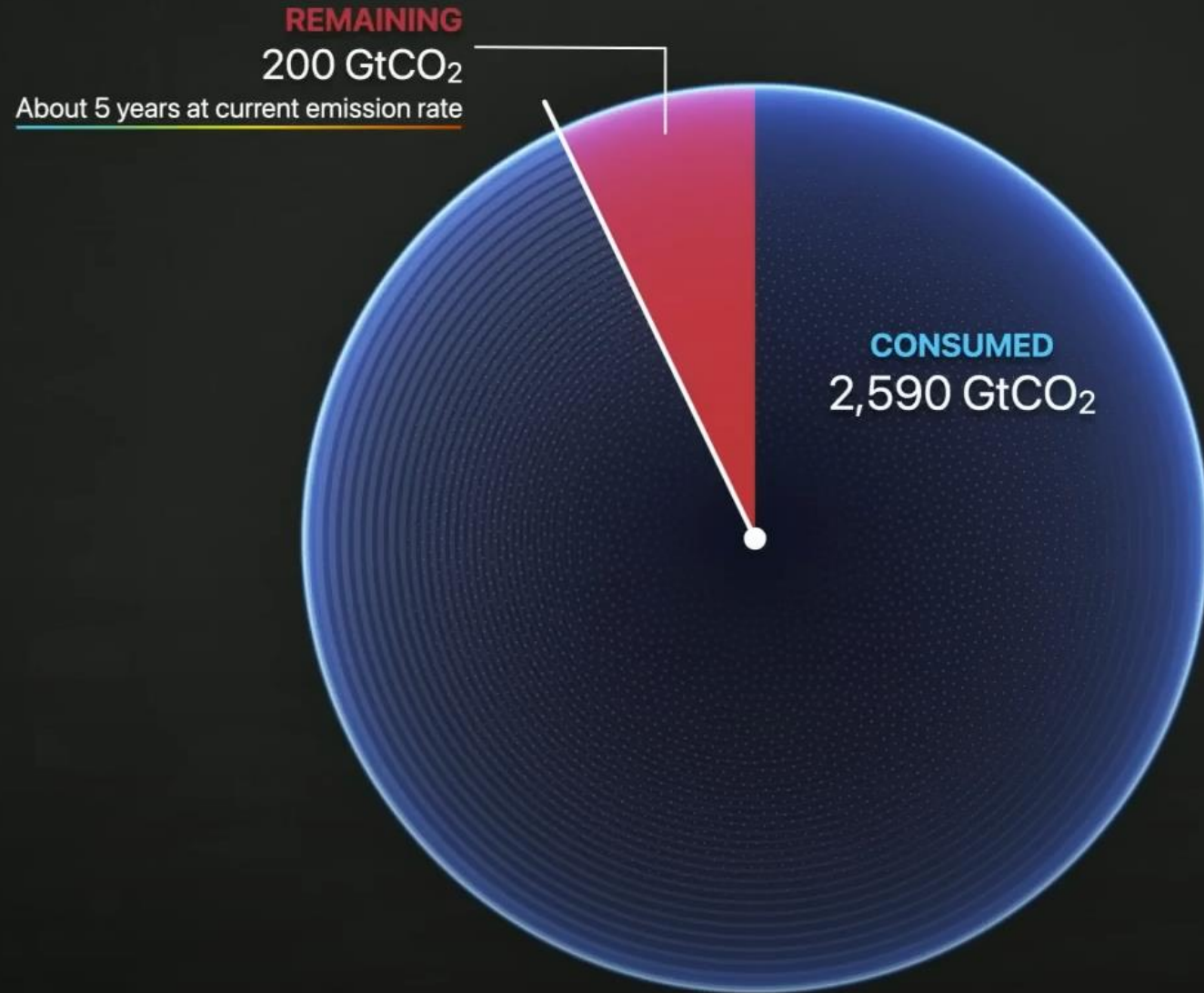
Christina Eckes



Climate change • Climate change refers to long-term shifts in temperatures and... >

REMAINING CARBON BUDGET

1.5°C (50% likelihood)

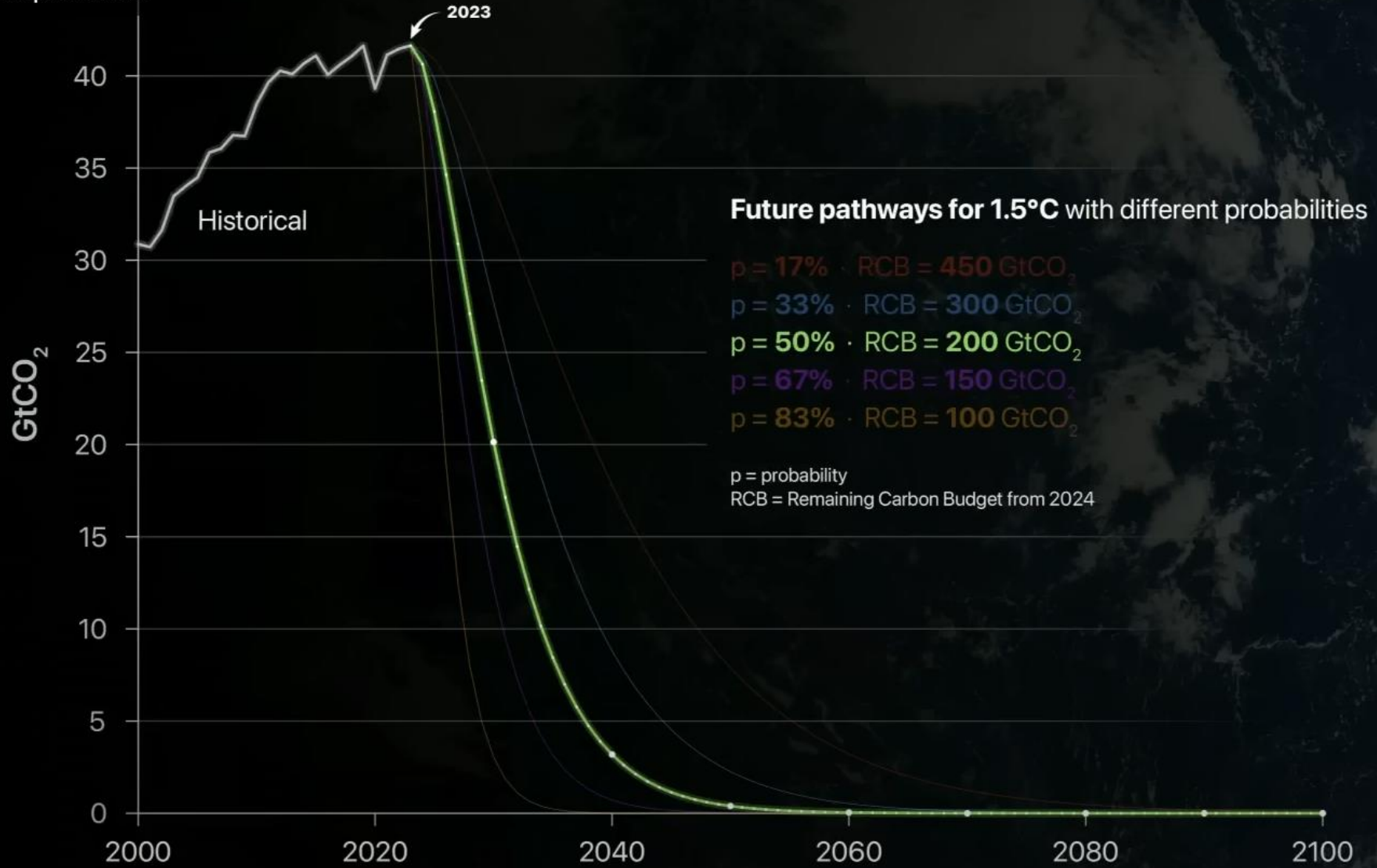




The Tipping Points of Climate Change — and Where We Stand | Johan Rockström | TED

Global CO₂ pathways for 1.5°C using IPCC AR6 Remaining Carbon Budgets

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Courtesy of Dr. Glen Peters.

Stocktake during a year of broken records

The world is witnessing a disturbing acceleration in the number, speed and scale of broken climate records. At the time of writing, 86 days have been recorded with temperatures exceeding 1.5°C above pre-industrial levels this year. Not only was September the hottest month ever, it also exceeded the previous record by an unprecedented 0.5°C, with global average temperatures at 1.8°C above pre-industrial levels. These records were accompanied by devastating extreme events, which the Intergovernmental Panel on Climate Change (IPCC) has warned us are merely a meek beginning. While the records do not imply that the world has exceeded the 1.5°C temperature limit specified in the Paris Agreement, which refers to global warming levels based on multi-decadal averages, they signal that we are getting closer.

EU Action

Through the [European Green Deal](#), the EU is committed to becoming climate-neutral by 2050 while leaving no one behind. To achieve this goal, we are taking action on multiple fronts.



What is the [European Green Deal](#)?

What is the [European Green Deal](#)?



EU competences in the field of climate action

Both the EU and Member States enact climate policies – but who does what?




European Climate

Writing into law the goals of the [European Green Deal](#) for a climate-neutral economy and society to reach net-zero by 2050.

EU Action

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EU recommends ambitious 2040 climate target, goes light on farming

By Kate Abnett

February 6, 2024 4:54 PM GMT+1 · Updated 8 months ago





Rijksoverheid

[Home](#) > [Onderwerpen](#) > [Klimaatverandering](#) >



Klimaatbeleid

De overheid neemt maatregelen om Nederland te beschermen tegen de gevolgen van klimaatverandering. Daarnaast kan verdere opwarming van de aarde beperkt worden door de uitstoot van broeikasgassen te verminderen. Hiervoor zijn nationale en internationale doelen afgesproken. De Rijksoverheid heeft met allerlei partijen afspraken gemaakt over hoe Nederland deze doelen gaat behalen.

Need for justification

- **UNFCCC**
 - Emission Gap Reports
- **Europe**
 - ESABCC: Inadequacy of reduction on territory/unfair
- **Netherlands**
 - Planbureau voor de Leefomgeving, Klimaat- en energieverkenning 2022 & 2023
- ***Who are we failing?***

Globally and within Europe = future generations, elderly, women, poor, less educated, those with health conditions; children

Further justification necessary!

Right to Justification

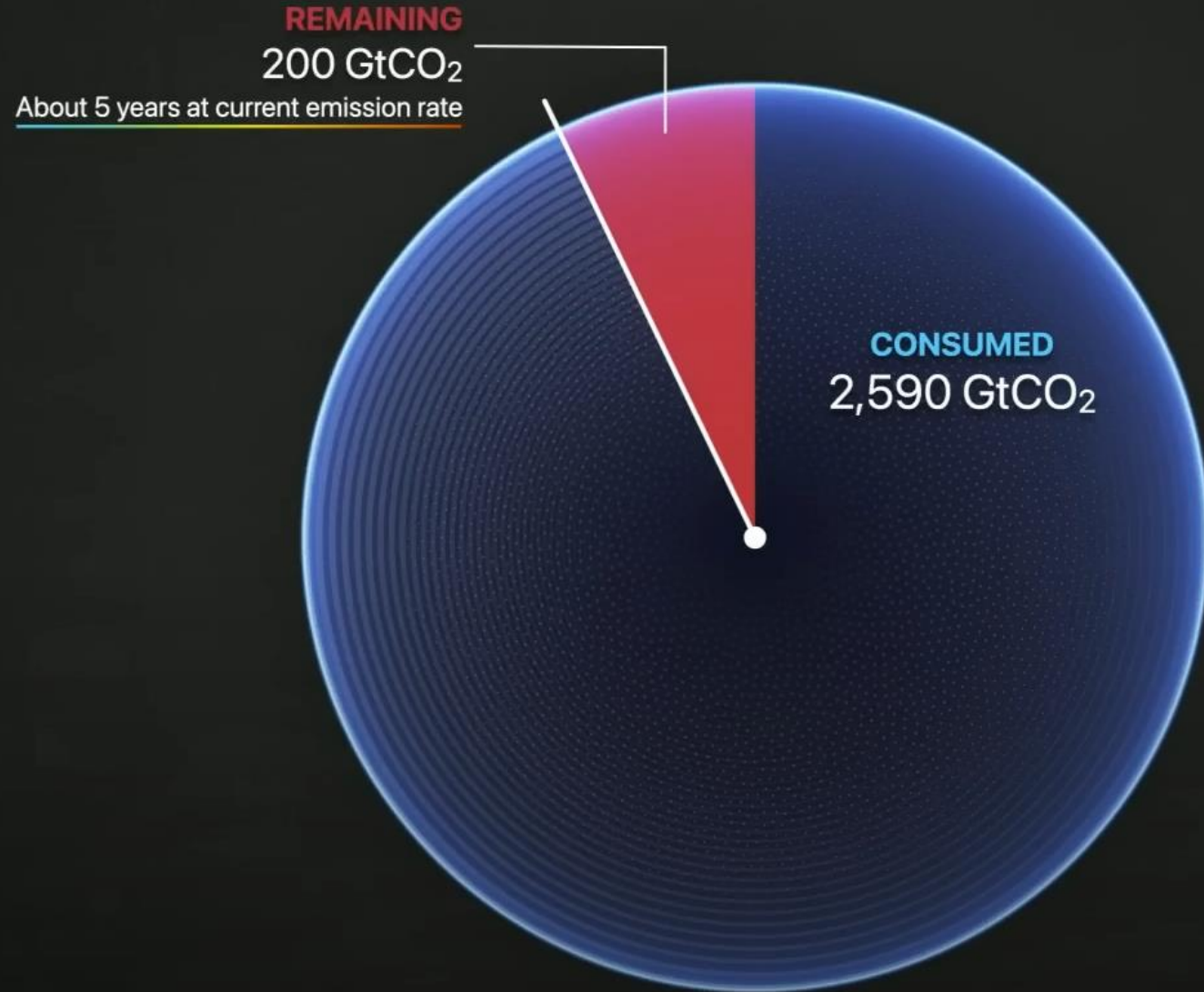
- Human Rights harms and restrictions
- Legal obligations to give reason
- **Right to justification** (*Forst; Kumm; Harel*)
 - Possibility of demanding justification forms part of law's claim to legitimate authority
 - Judicial review = process of reasoned engagement
- **QUESTION:**
 - NOT: Should judges make law?
 - BUT: **What is the authority of a decision that imposes a burden without justification?**



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Fair Share

- **IPCC** as the uncontested general touchstone
- **Budgets and pathways**
 - Likelihoods of reaching 1,5 C
 - Overshoot; emission removals
- **Domestic Scientific Bodies**

FAIR SHARE IS NOT SCIENCE

- **Normative principles** (*Rajamani* for international law)
 - Equality, responsibility and capacity
- **European Union law**
 - avoiding harm and sharing burdens
- **National (constitutional) law / ECHR**

Climate Litigation

Litigation is a venue of norm creation

Urgenda (NL, 2019)

- Justification for not doing its 'fair share'
- 25% in 2020

Neubauer (DE, 2021)

- Budget approach – (timid) fair share calculation
- Cost of mitigation measures

Klimaatzaak (BE, 2023)

- Still not demonstrated adequate and reasonable measures
- Absolute minimum

KlimaSeniorinnen (ECHR, 2024)

- *Duty to quantify a fair share carbon budget*

What's new?

- *'Tailored approach'*
- *Two margins of appreciation*
- *Procedural (and substantive) duty to quantify a **fair share** carbon budget*
- *Procedural duty to offer appropriate opportunity for associations to contest climate policy-making*

= very mindful of the (national) democratic process

Issues

Human or Fundamental Rights

Right to a healthy environment?

Right to life

Right to private / family life

Right to access to justice

Access to Justice

Standing Requirements

Rule of Evidence

Costs of Litigation and Counter-Litigation

Democratic Concerns

Separation of Powers

Roles of Parliaments and Courts

Division of Powers in Environmental Matters

EU competence

Primacy of EU law



*Who determines
what is 'fair'?*

Substantive minimum reduction

- *Urgenda*
- *Klimaatzaak*

Procedural obligation with normative yardstick

- *Neubauer*
- *KlimaSeniorinnen*

Judges = normative authority

- to give meaning to legal (int & EU) norms
- *Legal epistemologies*

Scientific Bodies



Cyclical nature of politics

Germany

- *Neubauer*
- *New Climate Protection Law in 2021*
- *Amendment of Climate Protection Law in 2024*
- *Three new constitutional complaints (5 NGOs; open to signature)*

Netherlands

- *Urgenda*
- *Greenpeace Bonaire*

United Kingdom

- *Net Zero Plan I & II*

New scientific studies, attribution science, growing impacts, passing time