

# **Taiwan's National Reduction Targets Constitutional Litigation**



Environmental Rights Foundation

Zoe Huang



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## Attorney at Law



- Master of Public Laws, National Taiwan University (2015-2019)
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- Attorney At law, Environmental Rights Foundation(2018-)
- Legal Counsel, Katratripulr Tribe(2022-)
- Deputy Chairperson, Environmental Law Committee of Taiwan Bar Association(2022-)
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- Legal Intern, Nature Law Firm(2017-2018)
- Legal Assistant , Legislator Office(2016-2017)







司法院

大

法

司

台灣蠻野  
Wild for Wilderness Taiwan

台灣無條件基本收入協  
會

地球公民基金會

THE SOCIETY OF  
WILDERNESS PROTECTION  
荒野保護協會

媽祖  
Mazu

台灣環境規劃協會

Green Citizens  
綠色公民行動

環境權保障會  
Environmental Rights Protection Association

台灣樹人會

新  
XIN

GREEN  
綠色和平

氣候債不留子孫  
人民提憲法訴訟



Small informational cards or pamphlets on the ground.





**Indigenous  
people**



**Farmers  
and fishers**

Petitioner

**Children**

**Others**





# Priority Statement

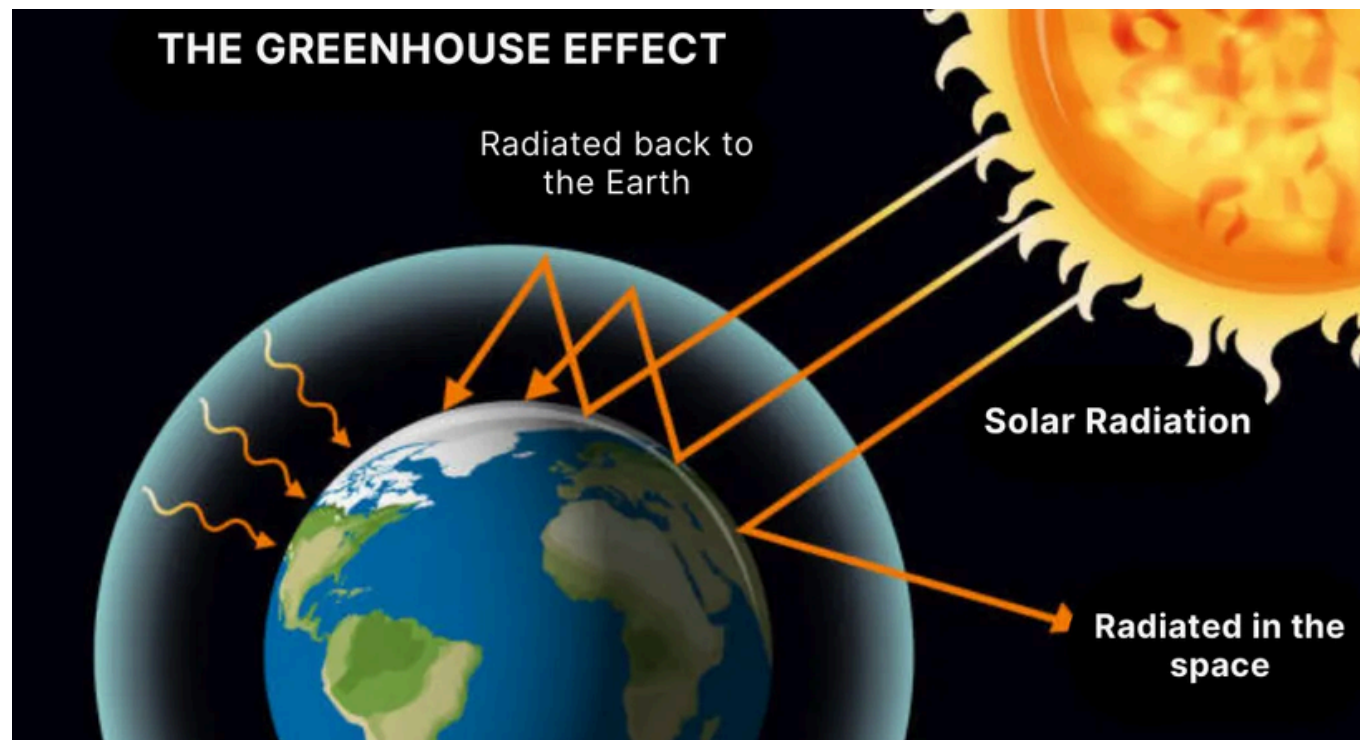
The failure of legislators to enact short and medium-term national reduction targets or provide standards for enacting those targets is unconstitutional.





# Facts: Global Warming

The sun powers the earth's climate system, radiating energy at very short wavelengths, predominately in the visible or near-visible (e.g., ultraviolet) part of the spectrum.



Human activities, primarily the burning of fossil fuels and clearing of forests, have greatly intensified the natural greenhouse effect, causing global warming.

There is a near-linear relationship between cumulative anthropogenic CO<sub>2</sub> emissions and the global warming they cause.

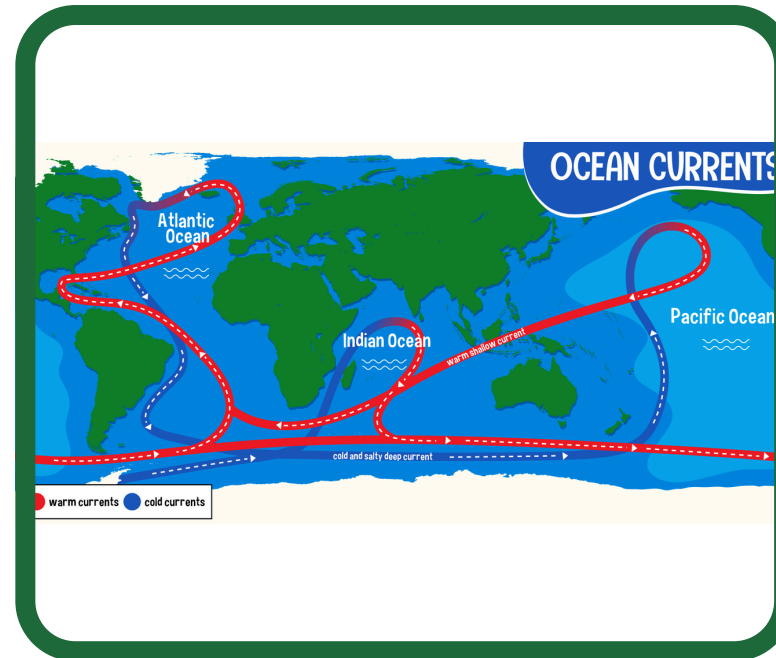




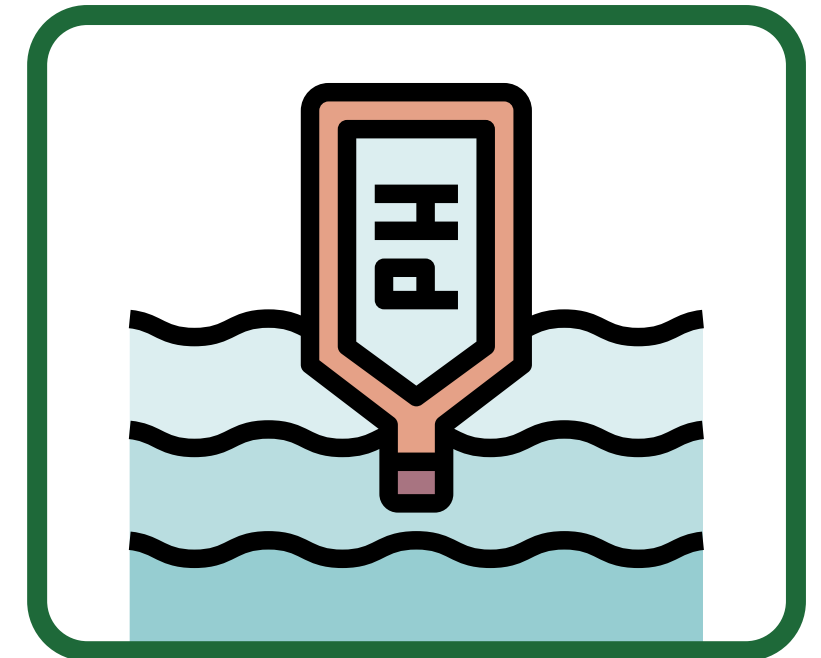
# Effects on Environmental Systems



Sea level rise



AMOC is losing strength



Ocean acidification

Extreme weather events:

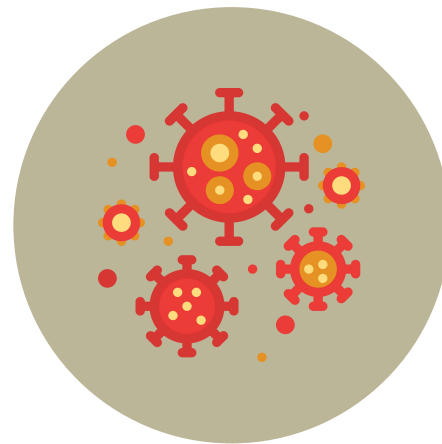
- heatwaves
- heavy rainfall
- droughts
- typhoon
- \* food safety
- \* water safety
- \* infrastructure damage



# Impacts on Humans



**Right to life**



**Right to health**



**Right to subsistence**



**Right to housing**



**Right to work**



**Right to property**



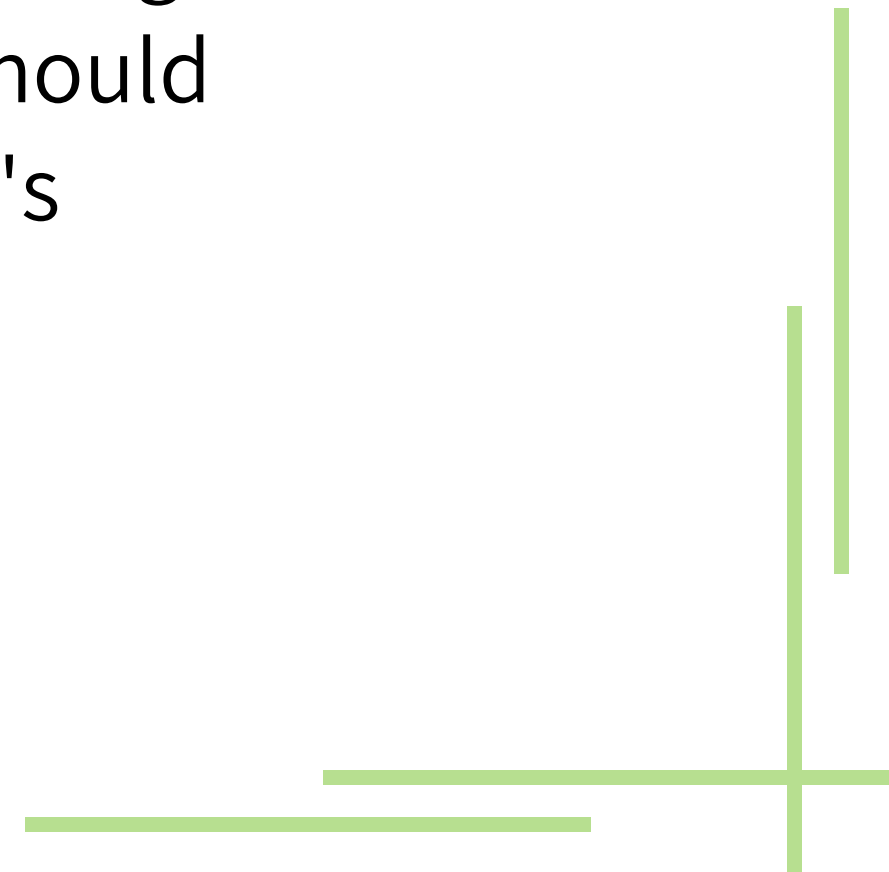
**Right to culture**



# Duty of Protection

The state has a duty to protect fundamental rights.

Therefore, the state has an obligation to protect these fundamental rights from the impacts of climate change. When establishing relevant legal frameworks, it should adhere to the requirements for protecting people's fundamental rights.





# Climate Action



**Mitigation**

Reducing greenhouse gas emissions.

**1.5°C or 2°C**

Holding global warming well below 2°C and pursuing efforts to limit to 1.5 °C.

**Carbon budget**

The amount of CO2 emissions permitted over a period of time to keep within a certain temperature.

**National reduction targets**

Countries set targets for reducing greenhouse gas emissions.

**Sectoral reduction targets**

Reduction targets of the sectors of energy, manufacturing, businesses and residences, transportation, agriculture, and environment.



The regulatory framework  
of climate action

## National Reduction Targets

Functions

Meet the  
1.5°C / 2°C  
target

Guide the establishment of  
sectoral reduction targets  
and action programs





**Infringement of  
fundamental rights**



**Duty of  
protection**



**Climate action**





# Impacts of Climate Action on Freedom

Almost all human activities involve the emission of greenhouse gases.



IPCC special report: If emissions associated with pre- and post-production activities in the global food system are included, the emissions are estimated to be 21–37% of total net anthropogenic GHG emissions (medium confidence).



ILO: The textile and garment sector accounts for a significant proportion of global carbon emissions, estimates range between 6 and 8 per cent of total global carbon emissions, or some 1.7 billion tonnes in carbon emissions per year.



IPCC AR6: Total GHG emissions in the building sector reached 12 GtCO<sub>2</sub>-eq in 2019, equivalent to 21% of global GHG emissions that year.



IPCC AR6: In 2019, direct greenhouse gas (GHG) emissions from the transport sector were 8.7 GtCO<sub>2</sub>-eq (up from 5.0 GtCO<sub>2</sub>-eq in 1990) and accounted for 23% of global energy-related CO<sub>2</sub> emissions.



The production and use of furniture, household appliances, mobile phones, and other consumer goods also involves GHG emissions.

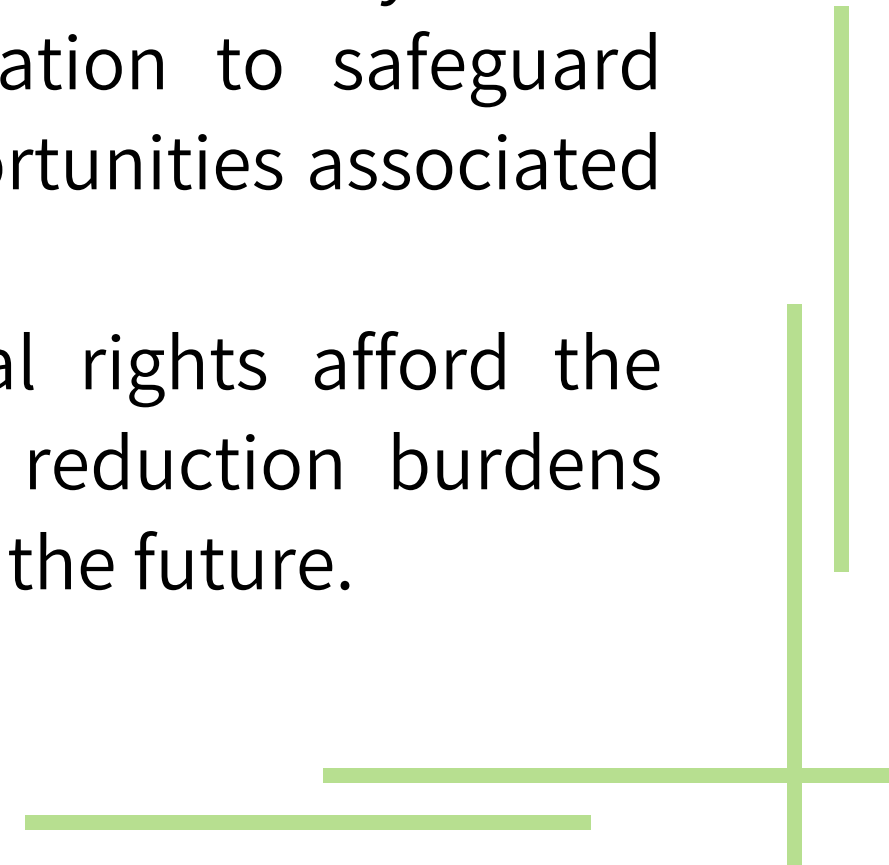


# **Legislators have a duty to evenly distribute reduction burdens over time and between generations.**

## **German Constitutional Court, Neubauer; et al. v. Germany:**

[KSG]significantly narrow the emission possibilities available after 2030, the legislator must take sufficient precautionary measures to ensure that freedom is respected when making a transition to climate neutrality. Under certain conditions, the Basic Law imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations.

As intertemporal guarantees of freedom, fundamental rights afford the complainants protection against the greenhouse gas reduction burdens imposed by Art. 20a GG being unilaterally offloaded onto the future.





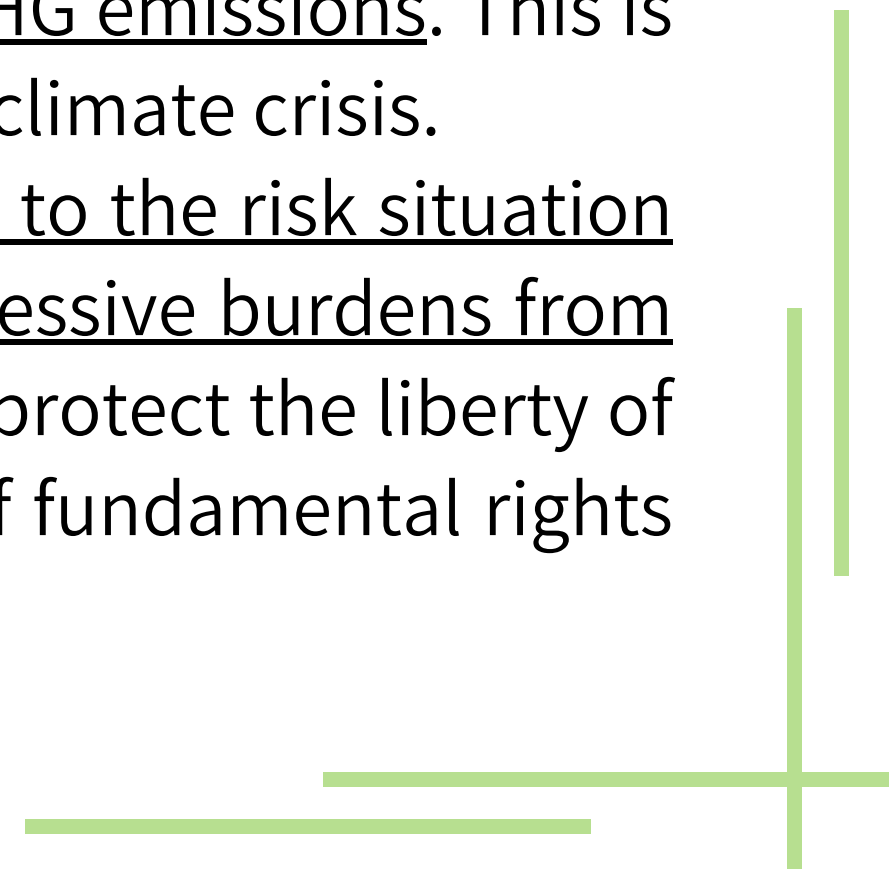
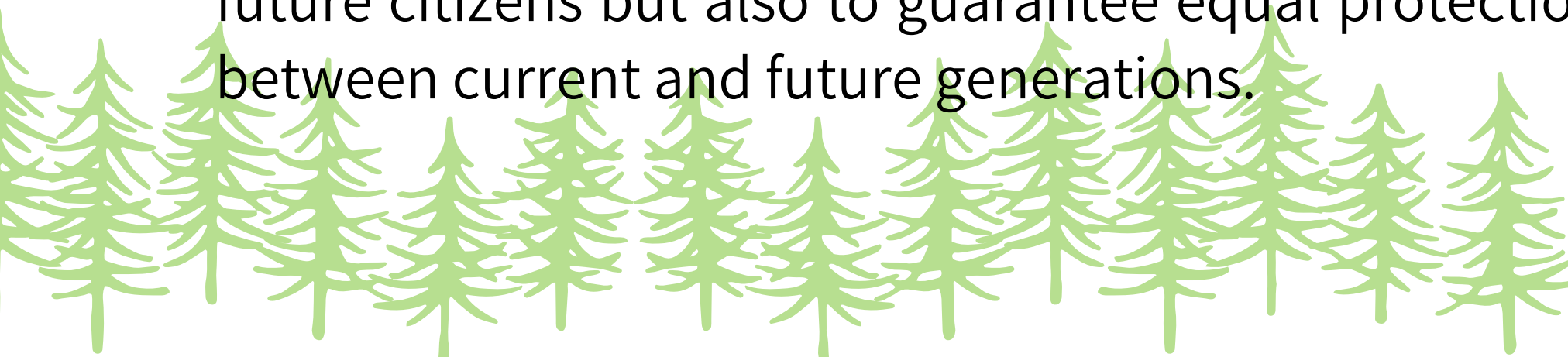


## **Prevent excessive burdens from being shifted to the future.**

Korean Constitutional Court:

insufficient efforts to reduce GHG emissions today will proportionately exacerbate the burden in the future, both in terms of heightened exposure to the negative consequences of climate change and the stricter restrictions on economic activities and lifestyles required to mitigate GHG emissions. This is a crucial characteristic of the risk situation posed by the climate crisis.

...when the State takes protective measures in response to the risk situation posed by the climate crisis, it is essential to prevent excessive burdens from being shifted to the future. This is not only necessary to protect the liberty of future citizens but also to guarantee equal protection of fundamental rights between current and future generations.



# The Right of Equality

Insufficient climate legislation leads to unequal negative impacts on:

- the right to life and health
- freedom







# WHY SHOULD NATIONAL REDUCTION TARGETS BE ENACTED BY LEGISLATORS? (LEGISLATIVE RESERVATION)





## **It is related to the minimum protection and significant restrictions of fundamental rights**

- Protect fundamental rights

Interpretation No. 785:

the state has a duty to provide minimum protection of fundamental rights. Therefore, legislators have a duty to enact frameworks that meet the requirements of protecting fundamental rights.

- Significant restrictions of fundamental rights

Interpretation No. 443, theory of essentialness



## 2

# The legislative body is the most appropriate institution for enacting national reduction targets.

- The characteristics of national reduction targets

National reduction targets involve individual fundamental rights, as well as societal, industrial, and economic transformations, and even the survival of humanity as a whole. Therefore, there is a need for strong democratic legitimacy, extensive deliberative dialogue, and higher levels of social consensus to determine the future direction of our country's development.

- The characteristics of Congress

Legislators are elected by majority vote of all citizens and decisions are made by majority rule. Additionally, they may also solicit public opinion and establish dialogue platforms to seek social consensus through public hearings regarding specific bills.

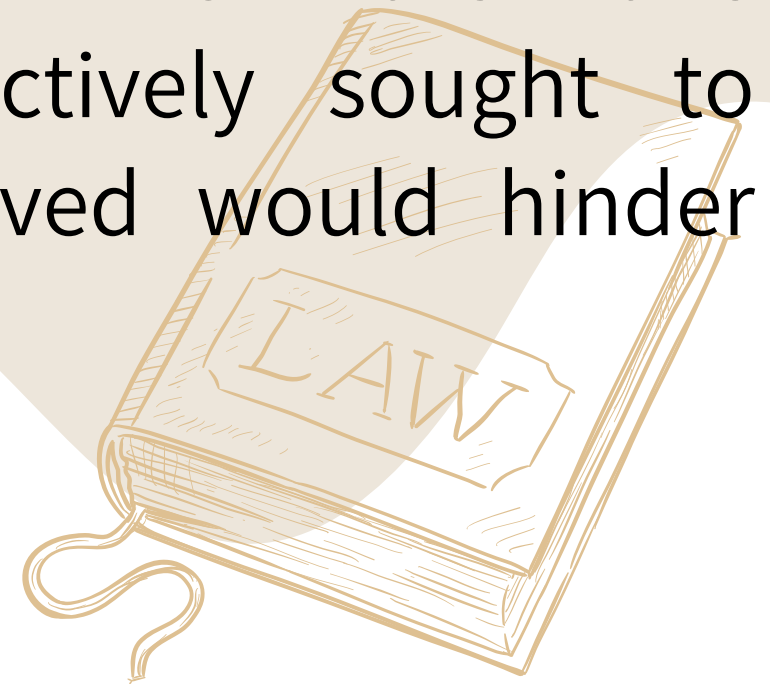
Although the legislative body may lack expertise compared to the executive branch, it can complement this by requesting reports and questioning administrative agencies.

# 3

## The stability requirement



National reduction targets should have a certain degree of stability and should not be subject to changes based solely on the will of the president. Taking the United States as an example, the Trump administration not only withdrew from the Paris Climate Agreement but also actively sought to dismantle regulations they believed would hinder efficient energy production.



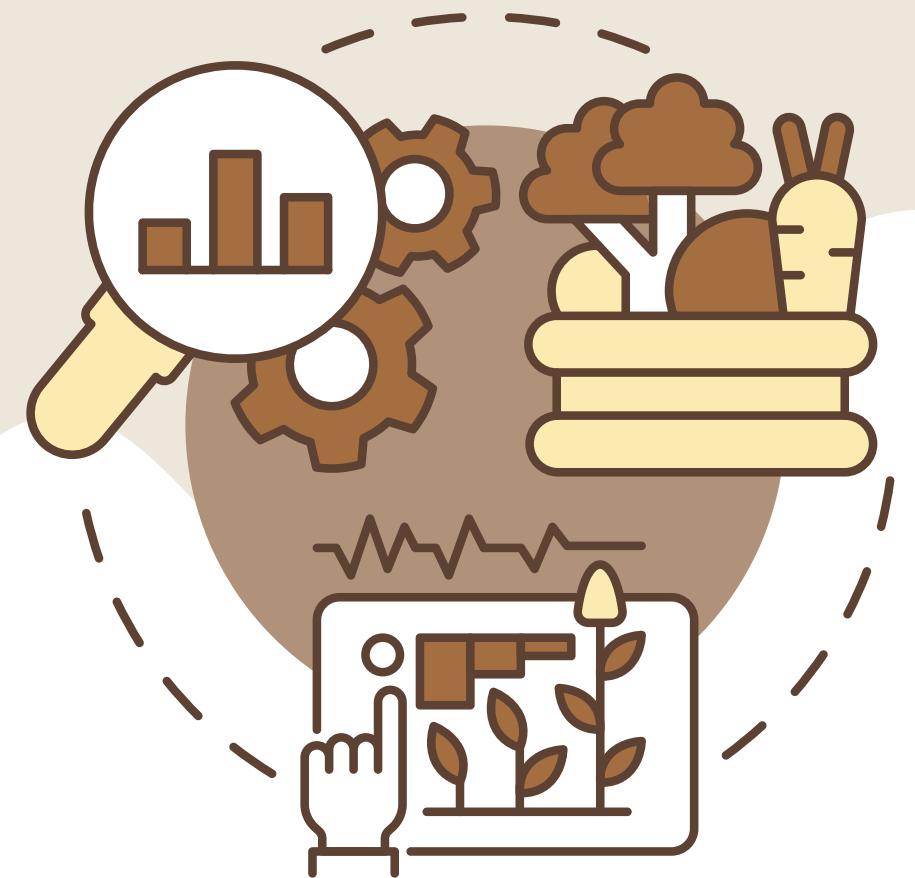


**4**

**Enable people to foresee and prepare for the low-carbon transition**

**5**

**Guide administrative agencies in formulating sectoral reduction targets and reduction measures**



# Is a single country enough to save the earth? Drop in the ocean?



Dutch Supreme Court, Urgenda Foundation v. the Netherlands:  
Each country is thus responsible for its own share...The State is therefore obliged to reduce greenhouse gas emissions from its territory in proportion to its share of the responsibility.



German Constitutional Court, Neubauer; et al. v. Germany:  
...climate change's global impact and the global nature of its causes does not, in principle, rule out the possibility of a duty of protection arising from fundamental rights.



Korean Climate Litigation Decision Case No. 2020Hunma389:  
Climate change is a global issue in both its causes and impacts. As no nation can claim to bear absolutely no responsibility for contributing to the climate crisis, no nation can avoid its own share of responsibility merely by pointing out other countries' GHG emissions.



what is important is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm. ... States should take measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects.



LEGISLATION

# CLIMATE CHANGE RESPONSE ACT





## Long term national reduction target

Art. 4 i

The long-term national GHG emission reduction goal is achieving GHG net-zero emissions by 2050.

## Short and mid-term national reduction targets

Art. 10 i

To achieve the national long-term GHG reduction goal, the central competent authority shall invite relevant central and local agencies, scholars, experts, and non-governmental organizations (NGOs) to participate through public hearing processes and also invite scholars, experts, NGOs from local and central government levels. After public hearing procedures, the authority should establish periodic regulatory goals in stages, implemented on a five-year basis and made available to the public after approval by the Executive Yuan.

## Standards?

Art. 6

National reduction targets and schedule shall seek to realize the common but differentiated responsibilities specified in UNFCCC, while also furthering the sustainable development of the nation's environment, economy, and society.



# Statutory Reservation



- **No short and mid-term reduction targets**
- **Delegate to the MOE without providing basic standards on how to determine such targets**



- **Common but differentiated principle**
  - common responsibility? stricter responsibility or looser responsibility?
  - 1.5°C or 2°C- carbon budget
  - Intergenerational Justice
    - >Sufficient to clearly outline the direction and intensity of national climate action.





# Backup Claim

It is unconstitutional that The Ministry of Environment has yet to publish national reduction target for 2026~2030.







## Unconstitutional

- The delayed establishment of national reduction targets is insufficient to safeguard fundamental rights from infringement and may also jeopardize freedoms and the right of work in the future.

## This Decade Matters



IPCC AR6:

- Limiting human-caused global warming requires net zero CO<sub>2</sub> emissions. Cumulative carbon emissions until the time of reaching net zero CO<sub>2</sub> emissions and the level of greenhouse gas emission reductions this decade largely determine whether warming can be limited to 1.5°C or 2°C (high confidence).
- All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade.

# **The importance of establishing national reduction targets as soon as possible for fundamental rights**

- Enable people to foresee and prepare for the low-carbon transition.
- Guided sectors in formulating sectoral reduction targets and sectoral action programs.

In 2021, the net greenhouse gas emissions remained higher compared to the base year of 2005 (+2.6%). Therefore, the forthcoming changes must be comprehensive and profound. Hence, enabling each sector to foresee its reduction responsibilities, providing them with sufficient time for response and preparation, is essential for achieving such comprehensive reforms and meeting the national reduction targets.















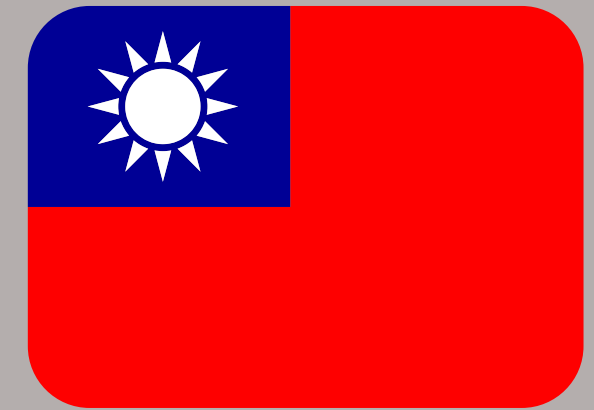
# **National Development Council Announced Taiwan's 2030 National Reduction Target of $24\pm 1\%$ .**

In 2022, the National Development Council announced Taiwan's 2030 National Reduction Target of  $24\pm 1\%$ .

The Ministry of Environment has stated that both the third-stage National Reduction Target and the National Periodic Regulatory Goals will be set based on the  $24\pm 1\%$  figure announced by the National Development Council.



		● Peak year	● Net-zero target year	Years from peak to net-zero
	Argentina	2007	2050	43
	Australia	2007	2050	43
	Brazil	2004	2050	46
	Canada	1999	2050	51
	European Union	≤1990	2050	≥60
	Japan	2013	2050	37
	Russian Federation	1990	2060	70
	South Africa	2009	2050	N/A
	United Kingdom	1991	2050	59
	United States of America	2007	2050	43



**Taiwan**  
**Peak year: 2007**  
**Base year: 2005**





**IS 24% BY 2030 ENOUGH?**



# IPCC AR6

## Carbon Budget from 2020

Taiwan's  
carbon budget

X



Population of TW(2020)

23,561,236

1.5°C 400 gigatonnes

Global  
carbon budget

1.7°C 700 gigatonnes

2°C 1150 gigatonnes

Global population (2020)

7,840,952,880



Taiwan's  
carbon budget

X

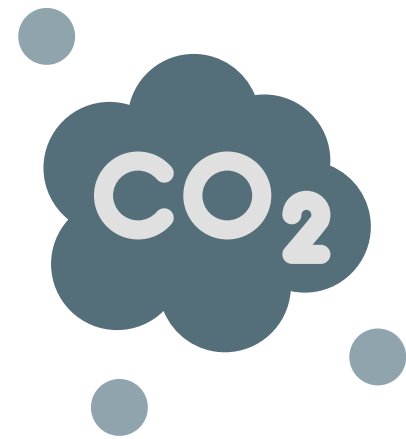


1.5°C 1.20 gigatonnes

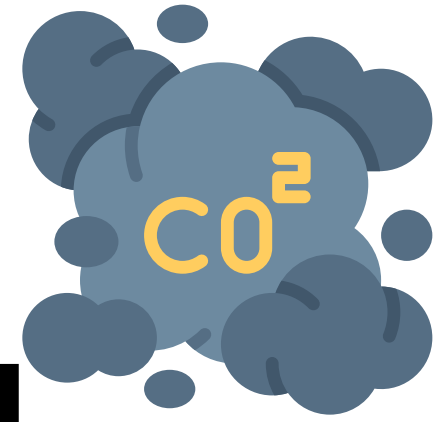
1.7°C 2.10 gigatonnes

2°C 3.45 gigatonnes





# Carbon Budget Per Capita Method



The Advisory Council took a per capita approach to emissions law – i.e. a distribution based on current population size – and accordingly used Germany’s 1.1% share of the total world population in 2016 as a basis...

Even though the Advisory Council’s specific quantification of the remaining budget contains significant uncertainties, it must be taken into consideration by the reduction targets set down in the legislation.



Referring to the relevant IPCC assessment of the global carbon budget, and the data of the Swiss greenhouse gas inventory , the applicant association provided an estimate according to which, assuming the same per capita burden ...

The Court is not convinced that an effective regulatory framework concerning climate change could be put in place without quantifying, through a carbon budget or otherwise, national GHG emissions limitations

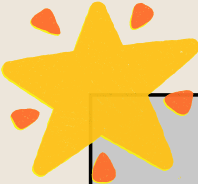
# Calculated cumulative emissions to 2030

Kilotonne

	2005		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
CO2 emission	266,460		283,416	273,955	271,649	283,114									
Carbon sink	22,290		21,984	21,917	21,905	21,850									
net emission	244,170		261,432	252,038	249,744	261,264	252854	244444	236034	227624	219214	210804	202394	193984	185569



- The predicted amount of emissions in 2030 is 76% of the amount of emissions in 2005.
- The predicted amount of emissions from 2022 to 2029 is expected to decrease by 8410 units per year compared to the previous year.



2020-2030
<b>2,483,929</b>

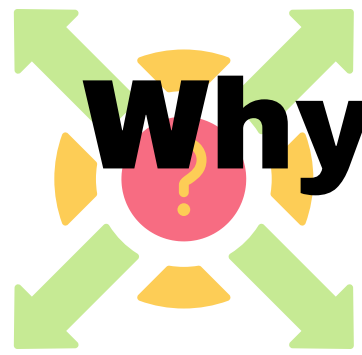


**The remaining carbon budget for our country until 2030 is calculated as follows:**



IPCC report	Global warming	Carbon budget	Cumulative emissions to 2030	Remaining carbon budget after 2030.
AR 6	1.5°C	1.20(2020-	2.48(2020-	-1.28
	1.7°C	2.10 (2020-	2.48(2020-	-0.38
	2°C	3.45(2020-	2.48(2020-	0.97

Unit: gigatonne



# Why Should Taiwan Adopt $1.5^{\circ}\text{C}$ Temperature Limit?

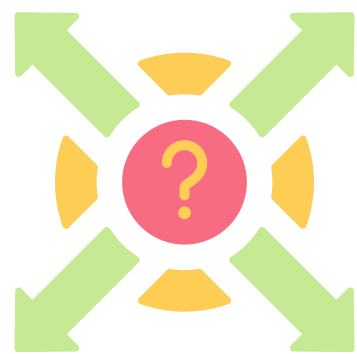
- IPCC Special report: Global Warming of  $1.5^{\circ}\text{C}$

- Taiwan's pledge: net zero by 2050

- Taiwan's NDC







## **Scientific Uncertainty?**

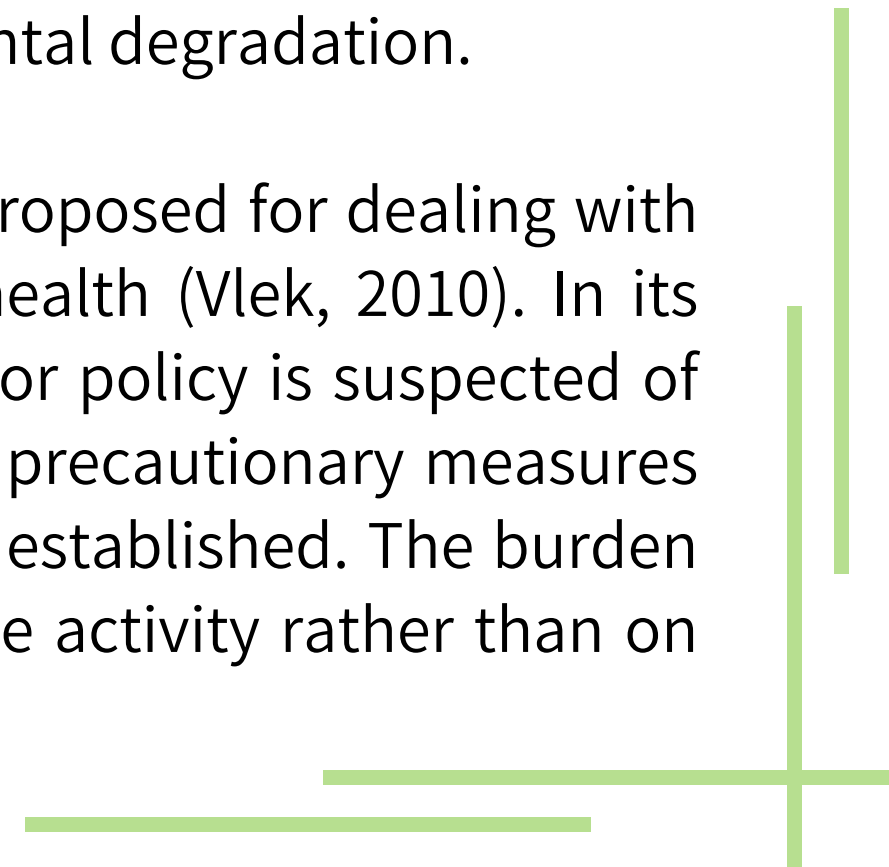
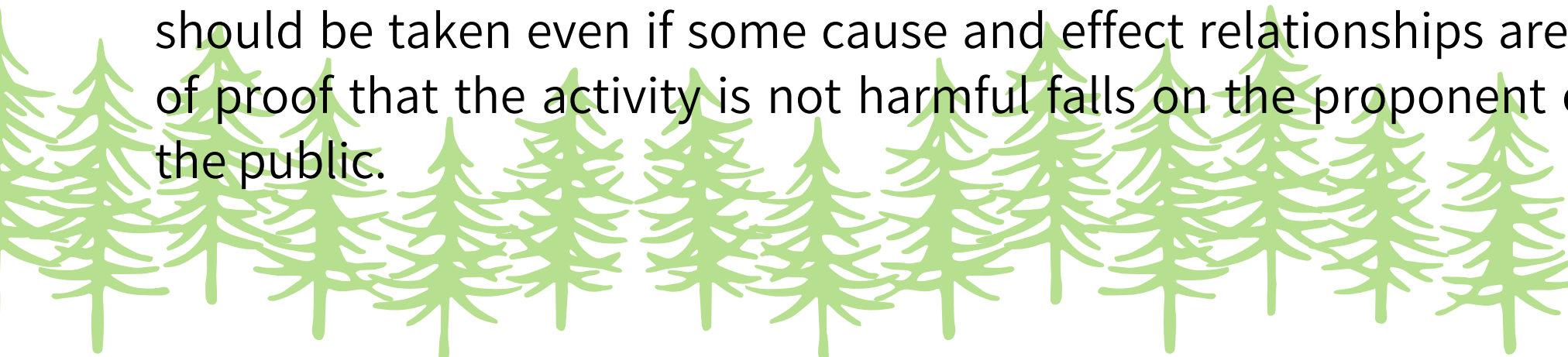
- Different calculation bases: greenhouse gases and carbon dioxide.
- Issues with the "per capita carbon budget" method.
- Uncertainty in the causal relationship between global carbon budget and the degree of global warming.

# Precautionary Principle

Art. 3 iii of UNFCCC: The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures...

Principle 15 of Rio Declaration: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

IPCC AR5: In the 1970s and 1980s, the precautionary principle was proposed for dealing with serious uncertain risks to the natural environment and to public health (Vlek, 2010). In its strongest form the precautionary principle implies that if an action or policy is suspected of having a risk that causes harm to the public or to the environment, precautionary measures should be taken even if some cause and effect relationships are not established. The burden of proof that the activity is not harmful falls on the proponent of the activity rather than on the public.







# **Conclusion**

**24% GHG reduction by 2030 is not enough to protect fundamental rights from infringement of climate change.**



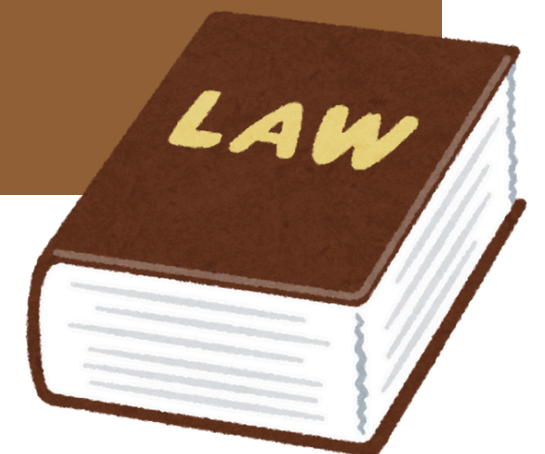


# Procedural Issue



# Germany's Act on the Federal Constitutional Court:

Article 90 (2): If legal recourse to other courts exists, the constitutional complaint may only be lodged after all remedies have been exhausted. However, the Federal Constitutional Court may decide on a constitutional complaint lodged before all remedies were exhausted if the complaint is of general relevance or if prior recourse to other courts would cause the complainant severe and unavoidable disadvantage.



# Korea's Constitutional Court Act

## Article 68 (2) :

If the motion made under Article 41 (1) for adjudication on the constitutionality of statutes is denied, the party may request adjudication on a constitutional complaint with the Constitutional Court. In this case, the party shall be precluded from filing a motion again to request adjudication on the constitutionality of statutes for the same ground in the proceedings of the original case.

## Article 41 (1) :

If the constitutionality of a statute is precondition of the judgment of a case, the ordinary court which takes charge of the case (including the military court; hereinafter the same shall apply) shall request adjudication on the constitutionality of the statute to the Constitutional Court, ex officio or by its decision upon a motion of a party.







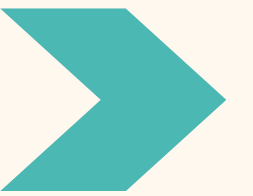
# This Lawsuit is not Allowed Under Taiwan's Legal System

## Article 59 of Taiwan's Constitutional Court Procedure Act :

After exhaustion of all ordinary judicial remedies, any person who believes that a final court decision that ruled against her or him, or the applicable law therein, unlawfully infringes upon her or his constitutional rights and contravenes the Constitution, may lodge a petition with the Constitutional Court for a judgment declaring either the said decision, or both the said decision and the applicable law therein unconstitutional.

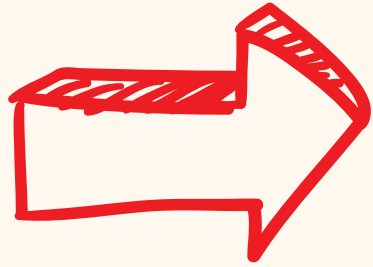
<--> **Administrative Dispositions**

**What's new?**





**24±1%**



**28±2%**



# 藍委提案修憲法訴訟法



大法官現有總額

↓

法定總額 **固定15人**

憲法訴訟法規定  
大法官現有總額  
三分之二以上參與評議  
**修法通過至少要10人**



**7名 總統府提名遭擱置**



**8名 現有大法官**

**恐無法運作**

形同癱瘓憲法法庭

台北

討論街頭擋公車 立院21日排審憲法訴訟法修法 綠批癱瘓憲法法庭

LIVE三立 SETN新聞網 3 NEWS







**OUR NEXT STEPS**





**4 young  
plaintiffs**



Administrative court



**MOE**

## 2030 reduction target

- 1 Insufficient
- 2 Violates the principle of legal reservation
- 3 Violates due process





Thank

You

