

Is ACE a legal obligation?

A review of States' obligations under international, regional and national legal frameworks



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About Climate Outreach

Climate Outreach is a team of social scientists and communication specialists passionate about widening and deepening public engagement with climate change. Through our research, practical guides and consultancy services, our charity helps organisations engage diverse audiences beyond the usual suspects. We focus on building and sustaining cross-societal support for climate action, overcoming political polarisation, and turning concern into action. We have nearly two decades of experience working with a range of international partners including government, international bodies, media and charities.

About DLA Piper

DLA Piper is a global law firm helping organisations transition to, and thrive in, a more sustainable future. The firm's lawyers are located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific. Their clients range from multinational, *Global 1000*, and *Fortune 500* enterprises to emerging companies developing industry-leading technologies. They also advise governments and public sector bodies.

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Cover: People participating in France's citizens' climate assembly which took place in 2019 and 2020. *Photo: Katrin Braumann / Convention citoyenne pour le climat*

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Executive summary

The duty of governments to educate their citizens on climate change, involve them in policymaking, and ensure they have all the necessary information, rarely gets a mention. When COPs take place, the headline news is dominated by countries' commitments to reducing carbon emissions and high-profile pledges on climate action.

There is very rarely any talk of public engagement – how countries plan to communicate with people about the effects of climate change and explain what they can do to help. This is counter-intuitive: people cause climate change, people suffer from its consequences and people are the answer to tackling it. The UK Climate Change Committee has estimated that 62% of emissions reductions will require changes to individual behaviours, such as how we travel, power our homes and choose our food. People are at the heart of addressing climate change: it is vital they are engaged with meaningfully.

Public engagement is often an afterthought for governments. But it shouldn't be. **In fact, countries that have signed up to the Paris Agreement are required to implement all the promises in good faith, including Article 12 of the Agreement which is known as Action for Climate Empowerment (ACE).** ACE is made up of six elements: education; training; public awareness; public participation; public access to information; and international cooperation on these issues. Where it gets tricky is that, although the Paris Agreement is legally binding, the strategies negotiated by governments to implement the six elements of ACE are voluntary and governments are not legally bound to carry them out.

Why does this matter? It is difficult to compel governments to act if there are no consequences for inaction. Against this backdrop, **this report takes a deep dive into legal frameworks that could be used to compel governments to carry out public engagement activities.** Evidence continues to show that educating citizens about climate change, getting them involved in solutions and inspiring them to call for systematic change is the best way to reduce emissions and lower global temperatures.

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An international oil company's plan to drill off the coast of Australia was ultimately abandoned in part due to 'paddle out' peaceful protests like this one in Burleigh Heads, Queensland, Australia. *Photo: Lachlan Gardiner / Climate Visuals*

Our research found that **two of the ACE elements are easily enforceable by human rights bodies and in many domestic courts: public access to (climate) information, and public participation in climate decision-making**. Once these two elements have been implemented, the next part of ACE, public awareness, follows. This is encouraging news and means that governments can be compelled to act on these basic points.

Two other ACE areas are less well established in international law and national legal systems: education and training. While the general right to education is enshrined in human rights treaties, very few governments have incorporated the right to climate education and training into their climate laws. Only Italy has made climate change education compulsory for school children since 2020. The fact that there is little or no legal obligation to provide climate education and training is concerning.

However, **momentum on public engagement is growing**: there is an increasing trend of people taking governments and corporations to court for their failure to ensure the protection of the environment. This is currently focused on measurable obligations, like carbon emissions reductions, but it is possible that in the future other obligations such as ACE could gain prominence.

As these legal obligations become better understood, governments will be increasingly compelled to take action on public engagement. The cost of not doing so is too high – **without people on their side, governments will stand little chance of tackling climate change successfully**.

Introduction

Action for Climate Empowerment (ACE) refers to the implementation of Article 6 of the United Nations Framework Convention on Climate Change (UNFCCC) and Article 12 of the Paris Agreement (2015).¹ According to the UNFCCC, the overarching goal of ACE is to empower all members of society, including children, youth, and indigenous and local communities, to engage in climate action, through education, training, public awareness, public participation, public access to information, and international cooperation on these issues.² The implementation of all six areas has been identified as the pivotal factor for everyone to understand and participate in solving the complex challenges presented by climate change.

ACE draws on Principle 10 of the Rio Declaration on Environment and Development, which states that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Over successive ‘work programmes’ negotiated under the UNFCCC’s annual Conference of the Parties (COP) process, key elements of the ACE agenda (such as public participation and public access to information) have become central to developing policy to tackle climate change.

A woman cleans a solar panel in Mauritania as part of a women’s cooperative. Photo: [Raphael Pouget / Climate Visuals Countdown](#)



In 2012, the Doha work programme on ACE formalised this process by inviting Parties (i.e. countries that have consented to be bound by a treaty's rules and obligations)³ to nominate a National Focal Point (NFP) for ACE activities, and to assign specific responsibilities to them.⁴ These included identification of areas for international cooperation, opportunities for strengthening synergies with other international frameworks and coordination of the preparation of ACE-related publications in UNFCCC communications.⁵ NFPs under Article 6 of the UNFCCC also serve as focal points under Article 12 of the Paris Agreement.

At COP 26 (Glasgow, November 2021), Parties adopted the Glasgow Work Programme,⁶ which recognised that *“Action for Climate Empowerment plays a key role in promoting changes in lifestyles, attitudes and behaviours needed to foster low-emission, climate resilient and sustainable development”* and acknowledged *“the growing interest and engagement of youth in climate action”*. However, implementing the Glasgow Work Programme on ACE is not a legally binding obligation on governments. All decisions under the ACE negotiations have an advisory status, in that they can only make recommendations to governments that a particular course of action be taken.

Why is this important to note? Experience has consistently shown that it is difficult to compel governments to act proactively or positively on issues of social significance without there being any consequences for inaction. Against this backdrop, this report provides a legal analysis of States' obligations in relation to ACE. To what extent are the various provisions of ACE legally binding on States? Does the provision create a legal obligation? How are ACE elements (such as public participation, public access to information and education) defined in international legal frameworks? Are ACE-related obligations justiciable, that is, can they be applied by domestic courts?

Answers to these questions go to the heart of 21st century debates on climate democracy and are of concern to States and non-State actors alike, including young people and all segments of society.

It is difficult to compel governments to act proactively or positively on issues of social significance without there being any consequences for inaction

Legal character of ACE

General considerations on the legal status of the Paris Agreement

The question of the legal status, and ultimately the legal bindingness of the Paris Agreement, sparked much debate during the Paris negotiations and far beyond. It has been argued that compliance with the Paris Agreement is 'voluntary' with no obligations to comply,⁷ and that it represents a 'Statement of Good Intentions' as it contains no enforceable rules with sanctions for non-compliance.⁸

Others have stated that the Paris Agreement qualifies as a treaty within the meaning of international law and creates mandatory obligations for ratifying Parties. Article 26 of the Vienna Convention on the Law of Treaties⁹ states that treaties are legally binding on States and must be performed in good faith. Meanwhile, States are prohibited from invoking "*non-respect of international law by the fact that this law does not as such form part of its domestic legal order; or that it contradicts a norm of its national legal order*".¹⁰

The position is supported by many, including by the European Commission, which states on its website that the Paris Agreement is "*the first ever legally binding global climate change agreement*".¹¹

Two points need to be made at the outset:

First, although it is legally binding, the Paris Agreement does not provide an enforcement mechanism and domestic judicial application. Whether it creates any directly enforceable rights or obligations varies according to individual Party domestic legal order and how it has been reflected into national law. However, the mere fact that the Paris Agreement was ratified by 194 States signals the will of the international community to make and act upon these climate objectives. As a result, the Paris Agreement will ultimately shape national laws,¹² which in turn will apply and interpret the objectives of the Paris Agreement and guide national judicial interpretation of internationally accepted obligations and norms.

The fact that the Paris Agreement was ratified by 194 States signals the will of the international community to act



An employee of renewable energy company Dulas cycles past the office bike shed, which has a solar panel on its roof that generates electricity for the building in Machynlleth, Wales, UK. Photo: [Andy Aitchinson / Ashden](#)

Second, the relevant literature generally distinguishes between the legal status of an international agreement (whether it is a legally binding treaty within the meaning of the Vienna Convention) and the legal character of individual provisions (whether the provision creates any rights and obligations for the Parties and sets standards of behaviour). Not every provision creates a legal obligation. According to Lavanya Rajamani, Professor of International Environmental Law at the University of Oxford, the Paris Agreement contains a mix of hard, soft and non-obligations.¹³ Drawing upon relevant international, regional and national legal frameworks, the following section looks at the normative content, language and precision of Article 12 of the Paris Agreement, to make a determination on its legal character.

The legal character of ACE provisions

Subject, language and precision of Article 12

Article 12 of the Paris Agreement furthers the commitment to ACE established in the UNFCCC. The provision states that:

Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

According to Professor Rajamani, whether a provision creates rights and obligations for the Parties and set standards of behaviour depends on a number of elements, including:

- a. **location**;
- b. **subject** (who the provision is addressed to);
- c. **normative content** (whether the provision contains requirements on States or sets a standard of behaviour);
- d. **language** (whether the provision includes recommendation language like 'should' or mandatory language like 'shall');
- e. **precision** (the extent to which the provision contains contextual, qualifying or discretionary clauses); and
- f. **oversight** (what mechanisms exist to ensure enforcement and accountability).¹⁴

ACE obligations as described in Article 12 are addressed to ‘Parties’, which denotes a collective or cooperative obligation. Article 12 is phrased in mandatory terms in that it uses the imperative ‘shall’, which is conventionally considered as creating rights and obligations for Parties. That seems to suggest an intention to impose a hard law obligation (therefore legally binding) on States to cooperate in taking measures to enhance climate education, public information and participation. However, Article 12 does not set precise standards of behaviour that could be used to assess compliance or non-compliance. The use of discretionary language, such as ‘as appropriate’, opens the door for wide interpretation by Parties and may limit a consistent approach to implementation.

However, taken separately and as explained below, ACE procedural obligations, namely public participation, public awareness and public access to information, are entrenched in international law, even if certain other ACE norms are less well established.

Article 12 is phrased in mandatory terms in that it uses the imperative ‘shall’, which is conventionally considered as creating rights and obligations for Parties

Normative content

Article 12 of the Paris Agreement essentially describes an obligation to cooperate in relation to procedural responsibilities associated with the protection of the environment, such as access to information and public participation, as well as climate education, training and public awareness.

The rules of interpretation of the Vienna Convention require a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Under Article 31 of the Vienna Convention, the context for interpretation of a treaty includes in the first place the text of the treaty, including its preamble and annexes. The preamble of the Paris Agreement acknowledges that Parties should “*respect, promote and consider their respective obligations on human rights*” when taking action to address climate change.

Article 31(3)c of the Convention meanwhile provides that, when interpreting a treaty, any relevant rules of international law applicable in the relations between the parties shall be considered, together with the context.

We therefore consider ACE normative content (i.e. the specific standards or rules that are imposed on States) in light of the relevant environmental and international human rights norms to which a great number of Parties are bound.

Procedural obligations: Access to information and public participation

States have several procedural obligations in relation to the environment and climate change. These include a duty to assess environmental impacts and make environmental information public and facilitate public participation in environmental decision-making.¹⁵ ACE procedural obligations (such as access to information, public participation and access to remedies) have strong bases in international environmental instruments, international human rights treaties and domestic legal systems.

Access to information in international environmental and human rights law

International level

The right to freedom of expression (which includes the right to seek, receive and impart information) is enshrined in several international and regional human rights instruments, including the Universal Declaration of Human Rights (Article 19), the International Covenant on Political and Civil Rights (Article 19), the European Convention of Human Rights (Article 10), the African Charter on Human and Peoples' Rights (Article 9) and the American Convention on Human Rights (Article 10).

According to the UN Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment,¹⁶ the right to access to information encompasses environmental and climate change information.¹⁷

Principle 7 of the Framework Principle on human rights and the environment¹⁸ states that access to information comprises two dimensions in international human rights law:

- **First**, States are required to collect, update and disseminate environmental information, including information about the quality of the environment, environmental impacts on human health and wellbeing and relevant laws and policies.
- **Second**, States should uphold requests for environmental information without the need to show a legal or any other interest.

Climate change information refers to national communications, Nationally Determined Contributions (NDCs), national adaptation plans, biennial update reports, biennial transparency reports and adaptation communications. It also refers to awareness that may help individuals understand how climate change may undermine their rights, including the right to life and health.¹⁹

ACE procedural obligations have strong bases in international environmental instruments, international human rights treaties and domestic legal systems

The Intergovernmental Panel on Climate Change (IPCC), comprised of 195 member States, ensures that governments have access to scientific information about the drivers of climate change, its impacts and future risks. According to the IPCC, international cooperation on knowledge sharing includes, *inter alia*, information exchange, coordinated or harmonised research agendas, measurement and technology standards.²⁰

Meanwhile, a myriad of multilateral environmental agreements set obligations for States to provide information about the threats of environmental harm. These include, *inter alia*, Principle 10 of the Rio Declaration, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,²¹ the Stockholm Convention on Persistent Organic Pollutants²² (Article 10) and the Aarhus Convention (Article 4).

Regional level

The Aarhus Convention is of particular interest. This Convention is an international convention established by the United Nations Economic Commission for Europe that entered into force in October 2001. There are 47 Parties to the Convention, which are primarily from the European and Central Asian regions, including the EU.²³ It was founded upon Principle 10 of the Rio Declaration.

The Aarhus Convention is predicated upon three 'pillars': (i) access to information; (ii) public participation; and (iii) access to justice. These pillars span the ACE principles of education, training, public awareness, public access to information, public participation and international cooperation, but emphasise the access to information and public participation elements of ACE.

Article 4, para 1 of the Convention states: *"Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation..."*. Article 4, para 1 also makes it clear that, where requested, the Party must make available *"copies of the actual documentation containing or comprising such information"* without an interest having to be stated, unless it is reasonable to make it available in another form, or the information is already publicly available in another form.

Participating in France's citizens' climate assembly. Photo: Katrin Braumann / Convention citoyenne pour le climat



The Aarhus Convention is implemented in signatory states through a variety of national laws and through European Union legislation.

The more recent Escazú Agreement must also be considered. The Escazú Agreement emerged from the 2012 United Nations Conference on Sustainable Development (Rio+20) and was adopted in Escazú, Costa Rica on 4 March 2018. The Agreement came into force in early 2021. It has been ratified by 13 countries²⁴ and 11 other countries have signed but not yet ratified, all from the Latin America and Caribbean region.

It is the region's first environmental treaty as well as the world's first agreement with provisions on human rights defenders in environmental matters, an issue of particular importance in the region due to risks for advocates and activists.

The objective of the Escazú Agreement is to implement Principle 10 of the Rio Declaration, which is intended to guarantee full and effective implementation of:

- i. the right of access to environmental information;
- ii. public participation in the environmental decision-making process and access to justice in environmental matters;
- iii. the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person to live in a healthy environment and to sustainable development.

It therefore also spans across the elements of ACE obligations, with an emphasis on the elements of access to information, public participation, training and cooperation.

There is no specific timeframe in which parties to the Escazú Agreement are required to have the necessary legislative, regulatory and other measures in place. As it has only very recently come into force, it remains to be seen how the Escazú Agreement will be implemented and enforced.

National level

At the national level, many States have adopted comprehensive Freedom of Information Acts to facilitate access to information to public records.²⁵ Meanwhile, several governments (including, *inter alia*, Costa Rica, Kenya and Portugal) have included a duty to disclose climate information in their climate laws and policies.²⁶ The Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment noted that Algeria, Costa Rica and Ghana, for example, launched innovative initiatives with respect to educational information about climate change.²⁷

Several governments have included a duty to disclose climate information in their climate laws and policies

Public participation

International level

The right to public participation in environmental decision-making is also well established in international law. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognise the rights of everyone to take part in the conduct of public affairs. Principle 9 of the Framework on Human Rights and the Environment emphasises that States should provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process.²⁸ The human rights obligation to facilitate public participation covers climate policies.²⁹

Public participation includes the development of policies, laws, regulations, projects and activities that must be open to all members of the public (including specifically those who may be affected by climate decisions) and occur at the early stage of the decision-making process. It must be done in a way that allows the public, including marginalised communities, to understand and discuss mitigation or adaptation decisions and projects, and have their views taken into consideration.³⁰

For the right to public participation in climate policies to be effectively guaranteed, States must ensure that freedom of expression and association, including the right to oppose climate policies or projects, is guaranteed. States must also protect the right to life, liberty and security of anyone, notably environmental defenders,³¹ exercising those rights. The obligation to ensure public participation is widely established in international environmental treaties, including, *inter alia*, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the UN Convention to Combat Desertification and the Aarhus Convention.

The right to public participation in environmental decision-making is well established in international law

Regional level

Articles 6 to 8 of the Aarhus Convention require public participation in relation to the three types of environmental decisions:

- Decisions made by public authorities on specific activities³² (e.g. oil and gas refineries, chemical factories, waste management facilities, etc.);
- Decisions made during the preparation of legally binding rules that have a significant effect on the environment;³³
- Decisions made in the preparation of plans, programmes and policies that relate to the environment.³⁴

Article 7 of the Escazú Agreement requires signatory States to ensure the public's right to public participation and in particular to ensure mechanisms for participation in decision-making processes, revisions, re-examination or updates with respect to projects and activities, and in other processes for granting environmental permits that have or may have a significant impact on the environment, including when they may affect health.

Some governments have launched innovative democratic climate initiatives

National level

At the national level, many States³⁵ have adopted laws providing for public participation in the development of environmental laws and environmental impact assessment procedures. Some governments have launched innovative democratic climate initiatives. France, for example, ran the Citizens' Convention on Climate in 2019 and 2020, which was charged with making proposals for reducing France's carbon emissions. The Convention led to the enactment of the Climate and Resilience Law.

Climate education, training and public awareness

If ACE procedural obligations are well recognised in international, regional and national legal frameworks, the obligation to cooperate in taking measures to enhance climate education, training and public awareness is far less well established.

According to Vicky Evans, head of sustainability for Cambridge University Press and Assessment, education has an important role to play in driving the transition to a sustainable future: *"By increasing the quality and accessibility of education and developing people's knowledge, attitudes and behaviours towards climate change, the world can see more effective and swifter change."*³⁶ Climate education is an essential part of ensuring that Parties to the Paris Agreement meet their NDCs, in part because it helps improve citizens' environmental literacy and, thus, their climate behaviour.³⁷ This policy justification for viewing climate education as an obligation that can be imposed on States is supported by the UN's commitment to education on climate change, which provides *"that it is just as important to make progress in areas such as reducing greenhouse gas emissions and formulating effective government policies as it is to provide education and training to raise awareness in as wide an audience as possible."*

Students studying – their school is under threat of being washed away due to the increasing erosion of the Kholpetua river in Gabura Upazila, Bangladesh. Photo: [Moniruzzaman Sazal / Climate Visuals](#)



Climate education is an essential part of ensuring that Parties to the Paris Agreement meet their NDCs

Article 26 of the Universal Declaration of Human Rights states that “everyone has the right to education” and that education “shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”. The right to education is also enshrined in Article 13 the International Covenant on Economic, Social and Cultural Rights. In its General Comment 13, the UN Committee on Economic, Social and Cultural Rights (CESCR) observed that references included in other international instruments on the right to education,³⁸ such as respect for the environment, are implicit in and reflect a contemporary interpretation of Article 13(1).³⁹

According to Professor Ludovic Hennebel, a member of the CESCR, the right to education, under Article 13 when read in conjunction with Article 11 of the Covenant, encompasses climate education, training and public awareness, as described by Article 12 of the Paris Agreement.

Principle 6 of the Framework Principle on Human Rights and the Environment makes it clear that States should provide for education and public awareness on environmental matters:

States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment.⁴⁰ Environmental education should begin early and continue throughout the educational process. It should increase students’ understanding of the close relationship between humans and nature ... and strengthen their capacity to respond to environmental challenges.

Increasing the public awareness of environmental matters should continue into adulthood. To ensure that adults as well as children understand environmental effects on their health and well-being, States should make the public aware of the specific environmental risks that affect them and how they may protect themselves from those risks.

As part of increasing public awareness, States should build the capacity of the public to understand environmental challenges and policies, so that they may fully exercise their rights to express their views on environmental issues (framework principle 5), understand environmental information, including assessments of environmental impacts (framework principles 7 and 8), participate in decision-making (framework principle 9) and, where appropriate, seek remedies for violations of their rights (framework principle 10). States should tailor environmental education and public awareness programmes to the culture, language and environmental situation of particular populations.

Few States have incorporated the obligation to enhance climate education, training and public awareness into their climate laws:⁴¹ Italy, for example, made climate education compulsory for school children from 2020.⁴² A study published by UNESCO found that more than half of 50 countries reviewed make no reference to climate change in their educational plans and curricula frameworks.⁴³

Legal bindingness, enforceability, and justiciability of ACE

The obligation to cooperate in taking measures to enhance climate education, training and public awareness, access to information and public participation under Article 12 of the Paris Agreement creates a legal obligation on States, in that it is phrased in mandatory terms. Although the provision lacks precision, its normative content is well established in international, regional and national law.

However, as mentioned previously, at the UNFCCC level ACE does not have a strict enforcement mechanism. All decisions under negotiations on ACE have an advisory status. Parties and working groups may be given direction via adopted ACE conclusions and decisions, but the UNFCCC and its constituent bodies do not have any means by which to hold Parties to account. Rather, the ACE initiative and wider aims of the UNFCCC rely on Parties and States to cooperate and act in good faith.

As climate law is still very much in its infancy, other sources of law including international human rights and environmental law are increasingly being used to bridge the enforcement and accountability gap.⁴⁴

Taken separately, ACE obligations, especially access to information and public participation, have an application at the international, regional and national levels.

Under international human rights law, individual communications alleging a treaty violation may be brought against a member State that has accepted the competence of UN treaty bodies, such as the Human Rights Committee. Although the decisions of these bodies are not legally binding, States do respond to the pressure applied by UN mechanisms at the national level, particularly countries that, notwithstanding their own failings at home, seek to cultivate a reputation abroad as a progressive voice for human rights.

At a regional level, many judicial bodies refer to and acknowledge the authority of the decisions and recommendations of these UN mechanisms. The effect is a growing body of human rights jurisprudence on the interpretation of international obligations on a cross-regional level. Similarly, *“treaty body output has become a relevant interpretive source for many national courts in the interpretation of constitutional and statutory guarantees of human rights, as well as in interpreting provisions which form part of domestic law.”*⁴⁵

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Participating in France's citizens' climate assembly. Photo: Katrin Braumann / Convention citoyenne pour le climat

At the regional level, judgments of the European Court of Human Rights and those of the Inter-American Court of Human Rights are binding on States. Both systems provide for the right to individual petitions, which in turn allows a plaintiff to seek the enforcement of specific Convention rights.

At the EU level, Directive 2003/4/EC on public access to environmental information entered into force in 2005. EU member States had to incorporate it into national law by 2005. The directive guarantees the public access to information through active dissemination or upon requests.

At the national level, the applicability of ACE obligations by domestic courts varies according to domestic legal orders. For some States, international conventions will have a higher status than national law, while in others international conventions will form part of the domestic legal order or need to be transposed through national acts. As discussed above in the section on the legal character of ACE, many States have adopted legislation that, in effect, may lead to domestic enforcement of ACE obligations. Access to information and public participation form part of many national legal systems. In principle, they can be enforced through the courts. But the obligation to enhance climate education, training and public awareness is still very much in its infancy.

Role of courts

There is an increasing trend for individuals, activist groups and companies to start litigation proceedings on climate-related (if not ACE-specific) issues against States and/or State-related actors. They seek to rely on obligations enshrined in international frameworks, particularly human rights principles in climate litigation.

There is an increasing body of climate litigation that sees claimants successfully altering or preventing governmental policy and actions to ensure the protection of the environment

There is an increasing body of climate litigation that sees claimants successfully altering or preventing governmental policy and actions to ensure the protection of the environment. We note in particular the following cases:

- a. The Dutch case of *Urgenda v The Netherlands*⁴⁶ (2019) saw the claimant NGO Urgenda arguing for an outright obligation to reduce greenhouse gas emissions on the grounds that established human rights duties imposed a positive obligation on governments to adopt adequate measures to combat climate change. The Dutch court agreed, holding that the highest possible level of ambition on the part of the government in reducing greenhouse gases amounted to a 'due diligence standard' for complying with human rights obligations.
- b. The Administrative Court of Paris found the French government guilty of exceeding greenhouse gas emissions targets in its 2021 *Notre Affaire à Tous and Others v. France*⁴⁷ ruling, ordering immediate remedial action to repair the damage be taken by the government on the grounds that the government had infringed.
- c. In *PSB et al. vs Brazil*,⁴⁸ the claimant successfully argued that the Brazilian government's failure to implement a deforestation plan violated the fundamental rights of indigenous people and future generations and contributed to climate change. The Court held that the Paris Agreement is a human rights treaty, meaning the Brazilian government is now constitutionally obliged to combat climate change.

Governments are not the only focus: corporations are now also finding their actions and activities under increasing scrutiny. In *Milieudefensie et al. vs Royal Dutch Shell PLC*,⁴⁹ numerous NGOs and individuals successfully asserted that the annual carbon dioxide emissions of the global Shell group breached a duty of care under the Dutch Civil Code interpreted in light of international human rights law. Shell was ordered to reduce its CO₂ emissions by a net rate of 45% at the end of 2030, relative to 2019 figures. Shell is appealing the decision, and the reasoning has not been followed in other jurisdictions, but this case nonetheless represents an illustration of the impact which greater scrutiny on corporate conduct in relation to climate change is having, and is expected to have with increasing frequency.

It remains to be seen whether other European national courts will take a similar approach. In other jurisdictions, such as the UK, there has been more reticence from the courts to directly apply the principles and obligations from international agreements such as the Paris Agreement.⁵⁰

**Governments are not the only focus:
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Conclusion

Although it has been argued that implementing the ACE work programme is not a legally binding obligation on governments, certain ACE obligations are more comprehensively entrenched as legal rights at the international, regional and national level, which individuals may enforce against States at the regional and national levels.

Access to climate information and public participation in environmental and climate decision-making form part of many national legal and regional systems and can be enforced by international and regional human rights bodies and in many domestic courts.

Other ACE obligations, such as education and training, are less established in international law and national legal systems, and therefore would be more difficult to enforce directly against States.

There is an ever-growing body of laws spanning different jurisdictions that is bringing climate change rights and obligations to the forefront. Most cases currently relate to measurable State obligations, such as reductions in emissions. However, as this movement gains momentum, it appears more likely than not that other climate change-related obligations will gain prominence, such as ACE obligations. As attention on ACE obligations grows, the direct enforceability of Article 12 of the Paris Agreement will be called into question. **It is therefore likely that Article 12 will be invoked in support of calls to meet ACE obligations at a national level; courts, especially European courts, may increasingly find this persuasive.** For that reason, there is scope for the greater enforceability of ACE obligations in the future.

References

1. Decisions 17/CP.22 and 17/CMA.1
2. See UNFCCC website. <https://unfccc.int/ace>
3. Article 2 (Paragraph 1.g.) of the Vienna Convention on the Law of Treaties, Vienna Convention on the Law of Treaties (1969) (un.org)
4. United Nations Climate Change, Doha work programme on Article 6 of the Convention, Decision 15/CP.18, Annex, paragraph 22 (a) http://www.ciesin.columbia.edu/repository/entri/docs/cop/FCCC_COP18_dec15.pdf
5. United Nations Climate Change, 'National ACE Focal Points' <https://unfccc.int/topics/education-youth/national-ace-focal-points>
6. Glasgow work programme on Action for Climate Empowerment Decision 18/CP.26 and Decision 22/CMA.3 https://unfccc.int/sites/default/files/resource/cop26_auv_3b_Glasgow_WP.pdf
7. R. Falk, 'Voluntary International Law and the Paris Agreement' (16 January 2016), found at: <https://richardfalk.wordpress.com/2016/01/16/voluntary-international-law-and-the-paris-agreement/>. Cited in D. Bodansky, The Legal Character of the Paris Agreement (2016) 25(2) RECIEL 142.
8. A.-M. Slaughter, 'The Paris Approach to Global Governance', *Project-Syndicate* (28 December 2015), found at: <https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marie-slaughter-2015-12>. Cited in D. Bodansky, note 6
9. Article 26 of the Vienna Convention on the Law of Treaties, Vienna Convention on the Law of Treaties (1969) (un.org)
10. Article 27 of the Vienna Convention
11. European Commission, Paris Agreement at https://climate.ec.europa.eu/eu-action/international-action-climate-change/climate-negotiations/paris-agreement_en
12. See, for example, D. Cassel (2001) "Does International Human Rights Law Make a Difference?" *Chicago Journal of International Law*, Vol. 2: No. 1, Article 8.
13. L. Rajamani (2016) "The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations", *Journal of Environmental Law* 28: 337, 353
14. *Ibid.*
15. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment, A/HRC/31/52, para 50
16. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment, A/HRC/37/59, Framework Principle 7
17. A/HRC/31/52, note 13, para 33
18. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment A/HRC/37/59, Framework Principle 7
19. *Ibid.*
20. R. Stavins, J. Zou, T. Brewer, M. Conte Grand, M. den Elzen, M. Finus, J. Gupta, N. Höhne, M.-K. Lee, A. Michaelowa, M. Paterson, K. Ramakrishna, G. Wen, J. Wiener, and H. Winkler (2014) "International Cooperation: Agreements and Instruments". In O. Edenhofer, R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.). *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 13.9.3.1
21. Article 15 of the Rotterdam Convention
22. Article 10 of the Stockholm Convention
23. The Parties are Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, the European Union, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkmenistan, Ukraine and the United Kingdom.
24. Antigua and Barbuda, Argentina, Bolivia, Chile (although subject to certain interpretative declarations), Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia and Uruguay.

25. National Democratic Institute, D Banisar, Freedom of Information around the World (2004)
26. See Climate Change laws of the World. For example, Framework Climate Law No. 98/2021 (Portugal), Ministerial Decree No. 40616 creating the Citizen Advisory Council on Climate Change (Costa Rica 2017), Canadian Net-Zero Emissions Accountability Act (2001) and the Climate Change Act (Kenya, 2016) <https://climate-laws.org/>
27. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment, Compilation of good practices, A/HRC/28/61, para 35
28. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment A/HRC/37/59, Framework Principle 9
29. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment, A/HRC/31/52, para 57
30. *Ibid.*, para 59
31. Report of the Special Rapporteur on the issue of human rights obligations relating to a safe, clean, healthy and sustainable environment, A/HRC/25/53, para 38
32. Annex 1 of the Aarhus Convention
33. Article 8, Appendix B of the Aarhus Convention
34. Article 7, Appendix C of the Aarhus Convention
35. See Climate Change laws of the World. For example, the Canadian Net-Zero Emissions Accountability Act (2001), the Climate Change Policy Framework for Jamaica (2015), the Climate Change Act (Kenya, 2016), the Environmental Management Act (Tanzania, 2005), Royal Decree 903/2010 on the Assessment and Management of Flood Risk (Spain, 2010), Framework Law No. 30754 on Climate Change (Peru, 2020) and Article 7 of the 2004 Charter of the Environment (France). <https://climate-laws.org/>
36. Why is education important in tackling climate change? (April 2022) <https://www.cambridge.org/news-and-insights/insights/why-is-education-important-in-tackling-climate-change#:~:text=Education%20has%20a%20hugely%20important,effective%2C%20and%20swifter%2C%20change>
37. In 2020, Global Education Monitoring reported that financing education in low- and lower-middle-income countries could reduce global emissions by 51.48 gigatons (a gigaton is one billion tons) by 2050. Research (such as that out of North Carolina State University in 2019) shows dedicated education on climate change and the environment can help change behaviours that harm the environment across a population.
38. World Declaration on Education for All (Jomtien, Thailand, 1990) (Art. 1), the Convention on the Rights of the Child (Art. 29 (1)), the Vienna Declaration and Programme of Action (Part I, para 33 and Part II, para 80) and the Plan of Action for the United Nations Decade for Human Rights Education (para 2)
39. General Comment No. 13 (Twenty-first session, 1999), E/C/12/1999/10
40. Convention on the Rights of the Child, Art. 29.
41. See Climate Change laws of the World. For example, France, Law No. 2021-1104 on the fight on climate change and resilience (climate education), Mauritius, Climate Change Act (No. 11/2020), Kenya, Climate Change Act 2016 (training and capacity building), Cambodia Sub-Decree No. 35 on the creation of a National Committee for Managing Climate Change, Andorra, Law 21/2018, of 13 September, on the promotion of the energy transition and climate change, and Zambia's Climate Change Gender Action Plan. <https://climate-laws.org/>
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46. [2015] HAZA C/09/00456689
47. N°s 1904967, 1904968, 1904972, 1904976/4-1
48. ADPF 760
49. C/09/571932 / HA ZA 19-379
50. See *Friends of the Earth v UK Export Finance* [2022] EWHC 568 (Admin) and *R (on the application of Friends of the Earth Ltd and others) (Respondents) v Heathrow Airport Ltd (Appellant)*, UKSC 2020/0042

