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Introduction

This report is one of 43 country reports which look at whether the laws and policies in countries around the world make it possible for children to access their environmental rights.

We are looking at:
• How the law protects - or fails to protect - children’s environmental rights.
• How children can currently access the courts in environmental cases.
• What courts can do when children’s rights are violated
• How these countries protect - or fail to protect - children’s civil and political rights so that they are able to protest and campaign on environmental issues.

These research reports are just the start to CRIN’s work on this issue. We think it’s important to start with a solid foundation and understanding of what the law says, but we want to build on this in collaboration with others. We want to turn the research into practical tools and resources that organisers and activists (both young and old) from around the world can use.
Methodology

Identifying 43 countries

The country reports look at 43 countries which we chose in consultation with our partners. We aimed to achieve a broadly representative sample that reflected a regional balance as well as the different types of legal systems and legal traditions. We included countries that are established regional or global leaders on children’s rights and environmental law. We also chose some countries that are often excluded from comparative studies in this area.

Developing the questions

The first draft of the research questionnaire was developed based on gaps in our knowledge that we had identified during our previous work on this issue. We then consulted a number of individual experts and organisations working in the field of children’s rights and the environment. Based on their feedback, we amended the questions.

The questions were then passed on to a team of pro-bono lawyers who used these to guide their research and write the reports.

The review process

The country reports were then reviewed and edited by CRIN. The reports were then sent to at least one official state representative and one national expert for the opportunity to provide feedback and comments. The experts included relevant government ministries, State permanent missions to the United Nations, non-governmental organisations, children’s rights lawyers and advocates, environmental rights lawyers and advocates and individual lawyers specialising in the issues covered by the reports. The contributors to the country reports have been credited in the individual country reports, except where the reviewer asked to remain anonymous. To note, for some countries CRIN was unable to find an official state representative or national expert able to give feedback.
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I. NATIONAL LEGAL PROTECTIONS
A. Are environmental rights protected within the national constitution?

Environmental rights are protected under the Constitution of Brazil. Article 225 of the Constitution protects the right of everyone to an “ecologically balanced environment,” which is “essential for a healthy life.” The Article states that “the Government and the community have a duty to defend and to preserve the environment for present and future generations.” Article 225 (1) sets forth the specific responsibilities of the Government in preserving the environment:

• Preserve and restore essential ecological processes and provide for ecological management of species and ecosystems;
• Preserve the diversity and integrity of the Country’s genetic patrimony and to supervise entities dedicated to research and manipulation of genetic material;
• Define, in all units of the Federation, territorial spaces and their components that are to be specially protected, with any change or suppression permitted only through law, prohibiting any use that compromises the integrity of the characteristics that justify their protection;
• Require, as provided by law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment;
• Control production, commercialisation and employment of techniques, methods and substances that carry a risk to life, the quality of life and the environment;
• Promote environmental education at all levels of teaching and public awareness of the need to preserve the environment;
• Protect the fauna and the flora, prohibiting, as provided by law, all practices that jeopardize their ecological functions, cause extinction of species or subject animals to cruelty.”
Sections 2 through 7 of Article 225 cover various obligations of those engaging in activities which affect the environment and the parameters of the same.\(^2\)

Article 5 contains critical environmental rights protections as well. The Article begins with a decree statement that “everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property...”. Article 5 (LXXIII) goes on to declare that:

“any citizen has standing to bring a popular action to annul an act injurious to the public patrimony or to the patrimony of an entity in which the State participates, to administrative morality, to the environment and to historic and cultural patrimony; except in a case of proven bad faith, the plaintiff is exempt from court costs and from the burden of paying the prevailing party’s attorneys’ fees and costs.”

This provision is crucial in that it bestows standing on any citizen to bring an action to enjoin an act injurious to the environment. Although this provision does not mention children specifically, it provides a powerful mechanism through which a child may assert their right to be free from living in environmentally detrimental conditions, although minors generally cannot access the court system without due representation (see below).

Title VII of the Constitution, covering Economic and Financial Order, also includes provisions regarding environmental protections. Article 170 (VI) states that the economic order is “intended to assure everyone a dignified existence,” which includes “environmental protection, including through differentiated treatment in accordance with the environmental impact of the products and services, and the processes by which they are elaborated and rendered.” Article 174 further dictates that the State shall “tak[e] into account protection of the environment and the socio-economic promotion of the prospectors and miners” during prospecting and placer-mining activity. Similarly, Article 186 (II) stipulates that rural property

\(^2\) Sections 2 through 7 of Article 225 read as follows:

§2°. Those who exploit mineral resources are obligated to restore any environmental degradation, in accordance with technical solutions required by the proper governmental agencies, as provided by law.

§3°. Conduct and activities considered harmful to the environment shall subject the violators, be they individuals or legal entities, to criminal and administrative sanctions, irrespective of the obligation to repair the damages caused.

§4°. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone are part of the national patrimony, and they shall be utilised, as provided by law, under conditions assuring preservation of the environment, including use of natural resources.

§5°. Lands necessary to protect natural ecosystems, which are vacant or which have reverted to the States through discriminatory actions, are inalienable.

§6°. Power plants with nuclear reactors shall be located as defined in federal law and may not be installed otherwise.

§7°. For purposes of the provision in [Article 225(1)(VII)], sporting practices that utilise animals shall not be considered cruel as long as they are cultural manifestations, in conformity with [the] Constitution, registered as a good of immaterial nature that is part of Brazilian cultural patrimony, which should be regulated by a specific law that assures the well-being of the involved animals.
shall be used in accordance with certain legal criteria and standards, including adequate use of available natural resources and the preservation of the environment.

Title VIII contains several other provisions protecting environmental rights as they relate to the Social Order. Article 200 provides that the unified health system shall collaborate in environmental protection, including that of the workplace. Article 220 requires that federal law establish legal measures that “afford individuals and families the opportunity to defend themselves against...commercials for products, practices and services that may be harmful to health and the environment.”
B. Have constitutional rights protections been applied by national courts with regards to environmental issues?

In Maia Filho v. Federal Environmental Agency\(^3\), Brazil’s highest court for non-constitutional issues, the Superior Court of Justice (STJ) upheld the federal environmental agency’s penalty for the use of fires in harvesting sugarcane, a practice that releases GHG emissions. The court determined that the fine was valid under the National Environmental Policy Act, 1981, a federal law that restricts burning for agricultural purposes. The court interpreted the National Environmental Policy Act in light of climate change, reasoning that climate change informed how the objectives of environmental protection—established in the text and environmental norms of the Constitution of Brazil—should be applied\(^4\).

In the case Public Prosecutor’s Office v. H Carlos Schneider S/A Comércio e Industria & Others\(^5\), the trial court was persuaded by the Federal Prosecutor, who had filed a civil proceeding against the group responsible for draining and clearing a mangrove forest and putting a landfill and various structures in its place. The old Forest Code of 1965\(^6\) and Article 225 of the Federal Constitution of 1988 provided the legal basis for the court’s decision. Before ordering the defendants to restore the forest, the court noted that mangroves serve a variety of functions—ecological, social, and economic—and that sea level rise makes it especially important to preserve them. The trial court’s decision was upheld by the Regional Federal Court of the Fourth Region, and upheld again by the Superior Court of Justice\(^7\).

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C. Has the concept of intergenerational equity been applied within national courts? If yes, in what circumstances?

Article 225 of the Constitution provides that both “the Government and the community have a duty to defend and to preserve the environment for present and future generations”.

Brazil’s highest court for non-constitutional issues, the Superior Court of Justice (Superior Tribunal de Justiça, “STJ”), has only recently started applying this principle in its decisions. Since 2010, the Court has increasingly emphasised the significance of preserving the environment for future generations. In a 2010 case on the protection of mangrove swamps, the Superior Court of Justice equated the destruction of the swamps and the subsequent deprivation of their use to the “theft of chattel.” In the 2014 case Federal Public Prosecutor’s Office v. Edegar Antônio Castegnaro, for example, the Court ruled: “The principles of sustainable development and prevention set by Art. 225 of the Federal Constitution, should guide the interpretation of environmental laws, whether they are administrative or criminal, given that the environment is a patrimony to this generation and the ones to come, as well as a fundamental right, which should result in cautious conducts, avoiding the risk of causing damage, even if potential, to the environment.”

In other cases the courts have been more explicit, saying that: Everyone has the right to an ecologically balanced environment. This is a typical third generation (or very new dimension) right, which assists the entire human race (RTJ 158 / 205-206). It is incumbent upon the State and the community itself to defend and preserve, for the benefit of present and future generations, this right of collective ownership and of a transindividual character (RTJ 164 / 158-161). The fulfilment of this obligation, which is indispensable, represents the guarantee that serious intergenerational conflicts will not arise in the community due to the breach of the duty of solidarity, which is imposed on all, for the protection of this essential good of common use for the people. In 2021, in a direct action of unconstitutionality for omission, Minister Rosa Weber referred to the “intergenerational character of the fundamental right to a healthy environment”.

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9 Ibid.


12 See: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=387260

13 See: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5930766
D. What legislation is in place to regulate environmental protection? Are there any proposals for legal reforms currently under review in the national legislature?

The key laws governing environmental matters are: 14

- Law No. 7.735 of 22 February 1989, which created the federal environmental protection agency, the Institute of Environment and Renewable Natural Resources (Instituto Nacional do Meio Ambiente e dos Recursos Naturais Renováveis, “IBAMA”)17.
- Law No. 9.605 of 12 February 199818: Environmental criminal and administrative offences; and its Decree 6.514 of 22 July 200719.
- Law No. 10.650 of 16 April 200320: Access to environmental information.

In addition, there are several federal laws and decrees21 governing specific environmental topics. These are:

- Law No. 6.766 /197922: Urban Land Law, which establishes the rules for urban subdivisions, prohibited in ecological preservation areas, in those where pollution represents a health hazard and in wetlands.
- Law No. 7.661/198823: Establishes the National Coastal Management Plan to guide the national use of resources in the Coastal Zone, in order to contribute to raising the quality of life of its population, and the protection of its natural, historical, ethnic and cultural heritage.
- Law No. 7.802/198924 and Decree No. 4.074/200225: Pesticides Laws.

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14 Milaré Advogados, Environmental law and practice in Brazil: overview, Practical Law Country Q&A, 2021. Available at: https://uk.practicallaw.thomsonreuters.com/w-014-7503?transitionType=Default&contextData=(sc.Default)&firstPage=true
15 Available at: http://www.planalto.gov.br/ccivil_03/Leis/L6938.htm
16 Available at: http://www.planalto.gov.br/ccivil_03/leis/l7347orig.htm
17 Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L7735.htm
18 Available at: http://www.planalto.gov.br/ccivil_03/leis/l9605.htm
20 Available at: http://www.planalto.gov.br/ccivil_03/leis/2003/110.650.htm
21 See also Bill 9950/2018 on the conservation and sustainable use of the wetlands - Pantanal Biome: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2170839
22 Available at: http://www.planalto.gov.br/ccivil_03/leis/16766.htm
23 Available at: http://www.planalto.gov.br/ccivil_03/leis/17661.htm
24 Available at: http://www.planalto.gov.br/ccivil_03/leis/17802.htm
25 Available at: http://www.planalto.gov.br/ccivil_03/decreto/2002/D4074.htm
• Law No. 7.805/1989\textsuperscript{26}: Mineral Exploration Law.
• Law No. 9.795/1999\textsuperscript{28}: National Environmental Education Policy Act.
• Law No. 9.985/2000\textsuperscript{29}: National System of Conservation Units Act.
• Decree No. 5.377/2005\textsuperscript{30}: National Policy for the Resources of the Sea.
• Law No. 11.516/2007\textsuperscript{31}: Created the federal agency responsible for the management of federal conservation units, the Biodiversity Conservation Institute (Instituto Chico Mendes de Conservação da Biodiversidade, “ICMBio”).
• Law No. 11.445/2007\textsuperscript{32}: Basic Sanitation National Policy Act (overhauled by Law No. 14.026/2020\textsuperscript{33}, updating the national legal framework on basic sanitation).
• Decree No. 6.040/2007\textsuperscript{34}: National Policy on Sustainable Development and Traditional People and Communities.
• Complementary Law 140/2011\textsuperscript{37}: Clarifies and delimits the environmental competences of each level of government in Brazil, with the aim of avoiding conflicts and overlaps, including with regard to environmental licensing.
• Law No. 12.587/2012\textsuperscript{38}: National Urban Policy Act.
• Law No. 12.651/2012\textsuperscript{39}: Forestry Law.
• Decree No. 7.747/2012\textsuperscript{40}: Policy for Territorial and Environmental Protection of Indigenous Lands.
• Law No. 13.123/2015\textsuperscript{41}: National Biodiversity Policy Act.

\textsuperscript{26} Available at: http://www.planalto.gov.br/ccivil_03/leis/l7805.htm
\textsuperscript{27} Available at: http://www.planalto.gov.br/ccivil_03/leis/l9433.htm
\textsuperscript{28} Available at: http://www.planalto.gov.br/ccivil_03/leis/l9795.htm
\textsuperscript{29} Available at: http://www.planalto.gov.br/ccivil_03/leis/l9985.htm
\textsuperscript{30} Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/Decreto/D5377.htm
\textsuperscript{31} Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/Lei/L11516.htm
\textsuperscript{32} Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/l11445.htm
\textsuperscript{33} Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Lei/L14026.htm
\textsuperscript{34} Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6040.htm
\textsuperscript{35} Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/l12187.htm
\textsuperscript{36} Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12305.htm
\textsuperscript{37} Available at: http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp140.htm
\textsuperscript{38} Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12587.htm
\textsuperscript{39} Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12651.htm
\textsuperscript{40} Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/decreto/d7747.htm
\textsuperscript{41} Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13123.htm
• Decree No. 10.144/2019⁴²: Establishes the National Commission for the Reduction of Greenhouse Gas Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Forest Management and Increase of Forest Carbon Stocks

The National Environment Council (CONAMA) is the advisory and deliberative body of the National Environment System (SISNAMA). The council was established by Law 6.938, of 1981, which provides for the National Environment Policy with the purpose to advise, study and propose to the Government Council and other environmental agencies governmental guidelines and policies for the environment and to deliberate, within the scope of its competences, on norms and standards for the environment. And there are several federal resolutions⁴³ that establish environmental standards⁴⁴.

In Brazil all levels of government share environmental protection responsibility and therefore the regulations of federal environmental authorities are often supplemented by acts of estate and municipal authorities. Each member of the federation is therefore responsible for environmental policy and enforcement in its own jurisdiction⁴⁵, but policy must follow the guidelines of federal regulations, and may be more restrictive according to local issues.

Many Brazilians were also concerned by President Bolsonaro’s push to open indigenous lands to mining, but were encouraged by his appointment of General Hamilton Mourão as the head of the newly formed Amazon Council⁴⁶. Mourão has proved to be a supporter of protecting the environment and spreading awareness around climate change.

The National Environment Council (Conselho Nacional do Meio Ambiente, “CONAMA”) is the federal regulatory authority responsible for regulating atmospheric emissions and determining limits on levels of exposure⁴⁷. In collaboration with industry representatives, municipal governments and civil society, CONAMA issues resolutions setting various pollution limits and general requirements for the protection of the environment.

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⁴³ Available at: http://www2.mma.gov.br/port/conama/
⁴⁵ Milaré Advogados, Environmental law and practice in Brazil: overview, Practical Law Country Q&A, 2021. Available at: https://uk.practicallaw.thomsonreuters.com/w-014-7503?transitionType=Default&contextData=(sc.Default)&firstPage=true
⁴⁶ Financial Times, Bolsonaro seeks to open Brazil’s indigenous land to mining, 6 February 2020. Available at: https://www.ft.com/content/0d305b4-48d9-11ea-aeb3-955839e06441. See also: Americas Quarterly, Bolsonaro’s Amazon Plan Has Actual Reasons for Hope, 6 February 2020. Available at: https://www.americasquarterly.org/article/bolsonaros-amazon-plan-has-actual-reasons-for-hope/.
E. Is there any specific national policy addressing childhood exposure to toxic substances? If so, what is considered level of exposure and what is the process for determining safe levels of exposure?

Resolution CONAMA No. 5/1989 establishes the National Programme of Air Quality Control (Programa Nacional de Controle de Qualidade do Ar) (PRONAR) as a framework regulatory regime in the field. The goals of PRONAR are to enhance air quality, ensure compliance with the applicable environmental quality standards and preserve air quality within areas deemed not to be degraded. PRONAR is based on the following definitions:

- **Maximum Emission Limits:** the amount of pollutants that polluting sources are permitted to emit into the atmosphere (Res. No. 5/1989).

- **Air Quality Standard:** the concentration level in the atmosphere of a specific pollutant, linked to a period of exposure, which guarantees the protection of the environment and human health against the risk of harm resulting from atmospheric pollution. (Res. No. 491/2018).

- **Atmospheric Pollutant:** any form of matter in quantity, concentration, time or with other characteristics that causes or may cause the air to become impure or harmful to human health, safety and wellbeing, to fauna and flora, to property or to ordinary community activities. (Res. No. 491/2018).

Currently, there are no specific resolutions regarding limits on childhood exposure, and air quality standards\(^\text{48}\) are more permissive than the guideline values of air quality recommended by the World Health Organization in 2005.

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\(^{48}\) See CONAMA resolutions here: http://www2.mma.gov.br/port/conama/legiabre.cfm?codlegi=740
F. Is the country equipped with pollutant release and transfer registers? If yes, do these registers take into account child specific factors regarding the substances for which data is gathered and the type of data generated?

Although there does not appear to be a public register in place for Brazil, in June 2019 the country announced its intention to establish the National Air Quality Monitoring Network (Rede Nacional de Monitoramento da Qualidade do Ar) to analyse and respond to air pollution in each capital⁴⁹. State governments conduct the official analysis, but the findings are said to be “open to any institution interested in analysing the data”⁵⁰.

G. Does the State assert extra-territorial jurisdiction for any environmental issues?

Brazil asserts extra-territorial jurisdiction for offences against the country’s patrimony, under Article 7 (I) (b) of the Criminal Code⁵¹.

States do not assert extra-territorial jurisdiction for environmental issues. Under Article 6 (VI) of the Federal Law 6.938 of 31 August 1981, each State is responsible for ensuring that their jurisdiction complies with federal environmental standards⁵². However, as Article 23 of the Constitution stipulates that environmental protection is the common responsibility of the Union, States, Federal District and Counties, cooperation is required for effective enforcement of environmental laws. Federal Complementary Law No. 140⁵³ was instituted in 2011 to clarify and streamline this cooperation. When transboundary environmental violations occur, the federal government leads the involved states in dealing with the issue⁵⁴.

⁴⁹ See: https://www.mma.gov.br/component/k2/item/15508-mma-anuncia-programa-de-qualidade-do-ar.html
⁵⁰ Meghie Rodrigues, Brazil launches air-quality-monitoring program, 20 June 2019. Available at: https://cen.acs.org/environment/pollution/Brazil-launches-air-quality-monitoring/97/125
⁵¹ Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm
⁵² Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L6938.htm
⁵³ Available at: http://www.planalto.gov.br/ccivil_03/LEIS/LCP/Lcp140.htm
⁵⁴ Ronaldo Seroa da Motta, Environmental Sustainability in Trade: Evaluation of the Potential Industrial Environmental Impacts of the FTAA, Brazil Case Study, Instituto de Pesquisa Econômica Aplicada, November 2003, p. 27
II. ACCESSING COURTS
A. How can environmental cases be brought before national courts?

Until mid-2001, the Superior Court of Justice (STJ) established that Federal Courts had jurisdiction over all environmental matters. This has since changed as the STJ now considers that jurisdiction over environmental matters is to be shared between Federal and State Courts. The STJ’s case law serves as guidance for such Courts who must issue decisions in line with the STJ’s jurisprudence.

The Brazilian Federal Constitution establishes three types of liability that may arise as a result of a breach of environmental laws. The route by which an environmental case will be dealt with will vary depending on the type of liability involved:

i. Civil liability
Entities authorised by law may file claims for the recovery of the environment, usually through a public civil action. Civil liability may be enforced by the Public Prosecutor’s Office (Ministério Público), environmental agencies and NGOs.

ii. Administrative liability
Environmental agencies are responsible for the investigation of environmental incidents. They launch an administrative process during which each action/decision taken is recorded. This is the case both in the context of prevention (e.g. environmental licensing processes) and in the enforcement of environmental laws or regulations (e.g. fines, warnings, suspensions).

Wrongdoers may face administrative penalties imposed by way of infraction notices. The wrongdoer then has to present an administrative defence. It should be noted that it is also possible to file an action seeking an annulment of the infraction notice.

58 Ibid.
60 Milaré Advogados, Environmental law and practice in Brazil: overview, Practical Law Country Q&A, 2021. Available at: https://uk.practicallaw.thomsonreuters.com/w-014-7503?transitionType=Default&contextData=(sc.Default)&firstPage=true
iii. Criminal liability

Criminal investigations in relation to environmental cases will usually be conducted by the judicial police, which then has the ability to refer cases for prosecution to the Prosecutor General. Most federal and state prosecutors under the authority of the Prosecutor General’s Office have the power to handle civil or criminal environmental cases, and some work exclusively in the environmental protection domain. Once a prosecutor’s office becomes aware of a potential or actual environmental harm, it must then investigate the harm and pursue the case as necessary to remedy it. It should be noted that the Prosecution Service in Brazil is an independent body (i.e. not part of the Executive, Legislative or Judicial branches).

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63 Ibid.

64 See: http://www.prrj.mpf.mp.br/english
B. What rules of standing apply in environmental cases?

Individual citizens may bring environmental cases in court via the popular action under Federal Law No. 4.717/1965. Any citizen may bring an action under this law to protect the public interest from injurious acts.

Additionally, Federal Law No. 7.347/1985, or the Class Action Law, gives standing to the following institutions for filing environmental cases: environmental NGOs, the Public Prosecutor’s Office, the Public Defender’s Office, the Federal Union, the individual States and the municipalities, public companies, foundations and mixed capital corporations. It should also be noted that under this law, NGOs bringing suit must have been established for at least one year under the terms of civil law, and may recover for pecuniary or moral damages. Moreover, rather than bringing suit directly, NGOs often opt to file complaints with prosecutors, who have a legal obligation to act on them.

However, these rules differ when children are the complainants (see below).

C. Do these rules of standing differ when children are the complainants and if so in what way?

Both Federal Law No. 7.347/1985 and Federal Law No. 4.717/1965 are silent on this point.

More generally, Article 141 of Law No. 8.069/1990 (the Child and Adolescent Statute - Estatuto da Criança e do Adolescente) provides that every child and adolescent is guaranteed access to the Judiciary, the Prosecutor’s Office and the Public Defender’s Office. Pursuant to Article 142 of this Law, persons under the age of 16 must be represented by their parents or guardians in civil or administrative proceedings. Persons under 21 years old must be assisted by their parents or guardians in civil or administrative proceedings. The judicial authority will appoint a special guardian to a child or adolescent in the event that the interests of the child or adolescent are opposed to those of the parent or guardian.

In the context of class action lawsuits involving children as complainants, Article 210 provides that challenges may be brought by (i) the public prosecutor; (ii) the Union, state or municipal government, or the government of the Federal District; or (iii) certain NGOs.

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65 Available at: http://www.planalto.gov.br/ccivil_03/leis/l4717.htm
66 Available at: http://www.planalto.gov.br/CCivil_03/Leis/L7347orig.htm
68 Available at: http://www.planalto.gov.br/ccivil_03/Leis/L8069.htm
69 Specifically, associations which have been legally established for at least one year and which include among their institutional purposes the defence of the interests and rights protected by the Child and Adolescent Statute, without the authorisation of the assembly, if there is prior statutory authorisation.
D. What is the burden and standard of proof for allegations of personal injury as a result of toxic exposure?

The burden of proof in environmental actions is, as a rule, that of the polluter who has all constitutional prerogatives ensured in art. 14 of the National Environmental Policy Law, regardless of the agent’s proof of guilt: it is enough to prove the damage and the causal link, for the agent to be held responsible. The recent summary 618 of the STJ, approved on October 24, states that “The reversal of the burden of proof applies to actions of environmental degradation.”

There are three potential types of environmental liability:

i. **Civil liability**

Pursuant to Law No. 6.938/1981, the National Environmental Policy Act (“NEPA”), environmental civil liability is objective / strict (i.e. irrespective of fault). In other words, demonstrating the link between the damage caused and the agent’s conduct is sufficient to trigger the agent’s civil liability. NEPA establishes objective liability for environmental damage under Articles 4 (VII) and 14 (1). Article 14 (1) of the NEPA stipulates that direct and indirect polluters are obliged, regardless of the existence of fault, to indemnify or repair the damages caused to the environment and to third parties affected by their activity. Additionally, the sole paragraph of Article 5 goes even further, establishing an extra duty for corporate activities to be in accordance with the environmental protections in place, which means that every agent performing activities that can potentially affect the environment is to be considered a guarantor of it. The definitions of environmental degradation, pollution and polluter are included in Article 3 (2, 3 and 4) of the NEPA. It follows from these definitions that legal entities that are indirectly responsible for activities that cause environmental degradation also qualify as polluters within the meaning of Article 3 NEPA and thus act unlawfully.

In accordance with the unanimous understanding of the STJ, the concept of polluter under Brazilian environmental law is applicable to any natural or legal persons, of public or private law, responsible, directly or indirectly, for an activity that causes environmental damage.

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70 See: https://scon.stj.jus.br/SCON/sumanot/toc.jsp?livre=(sumula%20adj1%20%27618%27).sub
71 Available at: http://www.planalto.gov.br/ccivil_03/Leis/L6938.htm
72 “2. Environmental degradation means adverse change of the characteristics of the environment.
3. Pollution means environmental degradation resulting from activities that directly or indirectly: (a) adversely affect the health, safety and well-being of the population; (b) create adverse conditions for social and economic activities; (c) adversely affect the biota; (d) affect the aesthetic or health condition of the environment; (e) release materials or energy in violation of the environmental standards established.
4. Polluters are the individuals or legal entities, of public or private law, responsible, directly or indirectly, for activity which causes environmental degradation.”
According to the STJ’s understanding, the liability of indirect polluters may arise from different circumstances involving the companies that belong to the same group enterprise. An indirect polluter (i.e. a person or entity deemed equivalent to the direct polluters) is anyone who: (i) causes damage by omission, tolerance or permission; (ii) funds others to pollute/cause damage; or (iii) financially benefits from the pollution/damage73.

ii. Criminal liability

Criminal liability depends on fault or intent and the liability only affects the individual(s) who caused the environmental damage74.

Article 2 of Federal Law No. 9.605/199875 (the Environmental Crimes Act) states that “anyone who, in any case, contributes to the crimes provided for in this Law, incurs the penalties imposed on them, to the extent of their guilt, as well as the director, the administrator, the member of the board and technical body, the auditor, the manager, the representative or agent of a legal entity, who, knowing about the criminal conduct of another, fails to prevent its commission, when he could act to avoid it”.

iii. Administrative liability

With regard to administrative liability, anyone who acts unlawfully can be held liable, even if the conduct does not result in environmental damage (Law No. 9.605/1998). An omission would also amount to an environmental administrative infraction76.

According to Article 2 of the Federal Decree No. 6.514/200877, any action or omission that infringes legal rules regarding the usage, enjoyment, support, protection and restoration of the environment is considered to be an administrative violation or infraction.

73 “For the purpose of ascertaining the causal link in the environmental damage, those who do, those who do not do when they should do, those who let others do, those who do not mind when others do, those who finance others to do, and those who benefit when others do are deemed to be equivalent”. See (i) STJ, Special Appeal No. REsp 1,071,741/SP, Second Panel, Rapporteur Justice Herman Benjamin, tried on 16/12/2010 [DOC. 1091]; (ii) STJ, Special Appeal No. REsp 1,376,199/SP, Second Panel, Rapporteur Justice Herman Benjamin, tried on 07/11/2016 [DOC. 1092]; (iii) STJ, Special Appeal No. REsp 650,728/SC, Second Panel, Rapporteur Justice Herman Benjamin, tried on 02/12/2009 [DOC. 1093].
75 Available at: http://www.planalto.gov.br/ccivil_03/leis/L9605.htm
76 See Art. 2 of Law No. 9.605/1998
E. What limitation periods apply in environmental cases?

In 2009, Brazil’s highest court for non-constitutional issues, the Superior Court of Justice (Superior Tribunal de Justiça, “STJ”) ruled that there were no limitation periods in relation to environmental damage, meaning that the environment must be remediated regardless of when damage occurred.\(^{78}\)

On 17 April 2020, the Federal Supreme Court (Supremo Tribunal Federal, “STF”) ruled\(^{79}\) that “the claim for civil remediation for environmental damage is not barred by time limitation.”\(^{80}\)

Federal Law No. 9.605/1998\(^{81}\) does not provide for specific time bars for compensation in relation to environmental claims in the context of criminal or administrative liability.

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\(^{78}\) OECD, OECD Environmental Performance Reviews: Brazil, 2015. Available at: https://read.oecd-ilibrary.org/environment/oecd-environmental-performance-reviews-brazil-2015_9789264240094-en#page1 See p. 124 Though there were some limitation periods for financial penalties, i.e. administrative fines. See Law No. 9.783/1999 and Art. 21 (2) of Decree No. 6.514/2008: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/decreto/d6514.htm

\(^{79}\) Extraordinary Appeal No. 654833/AC, available at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=4130104


See also Proinde, Supreme Court Rules There Is No Time Bar For Environmental Damage Claims, 23 April 2020. Available at: https://proinde.com.br/circulars/supreme-court-rules-there-is-no-time-bar-for-environmental-damage-claims/

\(^{81}\) Available at: http://www.planalto.gov.br/ccivil_03/leis/19605.htm
F. Is legal aid available in environmental cases? If so, under what circumstances?

Article 82 of the Code of Civil Procedure\(^\text{82}\) states that, except for parties that apply for and benefit from legal aid, the parties must bear their respective litigation costs.

Under the Brazilian Constitution\(^\text{83}\), every person who can prove that they have insufficient resources to pay for legal services is entitled to free legal assistance provided by the State. State-funded legal aid is available at both federal and state levels and to both Brazilian citizens and foreigners, regardless of whether they live in Brazil or elsewhere. No proof of eligibility is required in criminal cases. In the context of either civil or administrative cases, the applicant may be asked to show evidence of low income (if the person is employed), and/or membership of a protected group, to prove eligibility to receive legal aid\(^\text{84}\).

If the person is entitled to legal aid, the State has the duty to appoint a lawyer free of charge to ensure that the person’s constitutional right of access to justice is not denied. In such a situation, the Public Defender’s Office will be in charge of appointing a lawyer (also known as a “public defender”). In civil and criminal cases, legal aid takes the form of legal information, advice, assistance and representation in court\(^\text{85}\).

State-funded specialised legal aid services are provided to specific disadvantaged population groups, including children\(^\text{86}\). Article 206 of Law No. 8.069/1990\(^\text{87}\) (the Child and Adolescent Statute) provides that free and full legal assistance will be provided to all children and adolescents in need.


\(^{83}\) See Article 5 (LXXIV) of the Constitution, available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm


\(^{85}\) Ibid.

\(^{86}\) Ibid.

\(^{87}\) Available at: http://www.planalto.gov.br/ccivil_03/Leis/L8069.htm
III. REMEDIES
A. What remedies are courts empowered to impose in environmental cases?

i. Civil sanctions

Article 14 of Law No. 6.938/1981 states that, “without prejudice to the penalties established by federal, state and municipal laws”, penalties in environmental cases include fines, loss or restriction of tax incentives and benefits granted by the government, loss or suspension of participation in lines of credit in official credit institutions, the suspension of the wrongdoer’s activity. Article 14 (1) also stipulates that the wrongdoer will have to compensate or repair the damage caused to the environment and third parties as a result of his actions.

ii. Administrative sanctions

Both physical/natural and legal persons are subject to fines and warnings, and legal persons may also be subject to a suspension of activity.

According to Article 72 of Law No. 9.605/1998 (the Environmental Crimes Act), environmental administrative infractions are punished with the following sanctions: a) warning; b) simple fine; c) daily fine; d) seizure of animals, products and by-products of fauna and flora, instruments, items, equipment or vehicles of any nature used in the offence; e) destruction or disablement of the product; f) suspension of sale and manufacture of the product; g) work or activity embargo; h) demolition of works; i) partial or total suspension of activities; j) restriction of rights. The fine is the environmental administrative sanction of a pecuniary character whose value can vary from R$ 50.00 to R$ 50,000,000.00.

iii. Criminal sanctions

Physical/natural persons are subject to fines, community service or imprisonment, while legal persons are subject to fines, provision of services to the community or restrictions of rights (e.g. suspension of activities, prohibition against entering into new contracts with public authorities, prohibition on seeking donations, subsidies or subventions from public authorities etc.).

There is no insurance or indemnity that could protect a person from criminal liability.

88 Available at: http://www.planalto.gov.br/ccivil_03/leis/l6938.htm
90 Available at: http://www.planalto.gov.br/ccivil_03/leis/l9605.htm
91 Ibid.
B. What remedies have courts ordered in environmental cases to date?

There have been many judgments already in state and federal courts and the main remedy is to repair the damage.

In Maia Filho v. Federal Environmental Agency, the Superior Court of Justice upheld the federal environmental agency’s penalty for the use of fires in harvesting sugarcane, a practice that releases GHG emissions.

In the case Public Prosecutor’s Office v. Oliveira & Others, Sao Paulo’s state prosecutor sought to enjoin regional farmers from employing a low-tech form of sugar refining that involves burning sugar cane. Arguments against the practice included its harms to air quality, its release of greenhouse gas emissions, and its harmful effects on human health—particularly that of farm workers. Hearing the case on appeal, the Superior Court of Justice determined that burning should be permitted only in exceptional circumstances, and that sugar refining in general must be less polluting, even if that means being more capital-intensive.

Plaintiffs have filed actions challenging government efforts to relax climate regulation, or “deregulate.” Cases of this type ultimately seek to retain more robust climate regulation, but they shift the typical roles of subnational governments and NGOs seeking more ambition from governments reluctant to act on climate change, and of governments seeking to defend affirmative decisions to deregulate. In Brazil, for example, at least three lawsuits have been filed against the government challenging decisions to annul regulations on timber harvesting and seeking to reactivate funds previously set aside to pay for efforts to combat Amazon.

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94 See for example: REsp 647.493/SC (Relator Ministro João Otávio de Noronha); REsp 1.644.195/SC and REsp 1.559.396/MG (Relator Ministro Herman Benjamin).

95 At the 2021 National Council of Justice, the Judicial Observatory for the Environment was launched: https://www.cnj.jus.br/observatorio/observatorio-meio-ambiente/ The Judicial Observatory for the Environment is a space for study, monitoring, research, programmes, projects and actions for the establishment of good practices, formulation of policies and implementation of projects and initiatives for the protection of the natural environment of the Legal Amazon through the judicial power and the justice system. The Observatory aims to become a reference centre in the monitoring and dissemination of data, information, comparative studies, prospective analyses, debates and scientific output. From this perspective, it is expected that the Observatory will become an influential think tank for the progression of knowledge and critical and constructive dialogues on the topic.


deforestation and climate change. In PSB et al. v. Brazil, four political parties filed an action alleging that the government has failed to properly administer the Amazon Fund, a mechanism created to combat deforestation in the Amazon. The parties allege that by disbanding the fund’s technical committee responsible for calculating deforestation and disbanding the fund’s governance body, the government has failed its constitutional duty to preserve ecological processes and to protect the natural environment. In June 2020, the Supreme Court accepted the lawsuit and directed the government to provide information on, among others, how it has managed the fund and activities related to the fund that have been implemented or suspended.

C. Are there any administrative authorities empowered to act on environmental complaints and if so, how are they empowered to respond to complaints?

The National Environment System (Sistema Nacional do Meio Ambiente, “SISNAMA”) is a framework created by the federal government and regulated under Federal Law No. 6.938 of 31 August 1981 to protect and improve environmental quality.

According to Article 6 of the Law, SISNAMA is constituted by: (i) the Government Council, responsible to advise the President of the Republic in the formulation of national policy and government guidelines for the environment and environmental resources; (ii) the Ministry of Environment, responsible for controlling and coordinating environmental national policy; (iii) executive bodies, including the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), as well as the Biodiversity Conservation Institute (ICMBio); (iii) the National Environment Council (CONAMA), which acts as advisory and deliberative body to assess and put forward policy guidelines; and (iv) State and local agencies, who are in charge of policy implementation.


See also Sam Cowie, Brazilian government taken to court for assault on environment, climate, 10 June 2020. Available at: https://news.mongabay.com/2020/06/brazilian-government-taken-to-court-for-assault-on-environment-climate/

99 UN Environment Programme, Global Climate Litigation Report: 2020 Status Review. Available at: https://we-docs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y

100 Available at: http://www.planalto.gov.br/ccivil_03/Leis/L6938.htm


Remedies
More specifically, environmental agencies periodically complete site inspections of potentially polluting companies and in case of any environmental damages and/or non-compliance, have the power to impose administrative sanctions, including warnings, fines and embargoes, and to ensure recovery of the environmental damages. In addition, such authorities also have the power to communicate any suspicion of an environmental crime to the Police and Public Prosecutor’s Offices. Moreover, environmental authorities can suspend or cancel a licence in case of a breach of environmental rules or of any conditions of the licence, or in the case of a severe environmental or health risk, or if false and/or missing information was provided during the environmental licensing process\textsuperscript{103}.

\textsuperscript{103} Global Legal Group, The International Comparative Legal Guide to Environment and Climate Change Law - Brazil, 2018. Available at: https://www.machadomeyer.com.br/images/noticias/ENV18_Chapter-5-Brazil.pdf
IV. CIVIL AND POLITICAL RIGHTS
Freedom of peaceful assembly

A. How is children’s right to engage in peaceful assembly, including protests, protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Under Article 5 (XVI) of the Constitution, “all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorisation, so long as they do not interfere with another meeting previously called for the same place, subject only to prior notice to the proper authority.”

On 15 June 2011, the Federal Supreme Court (STF) ruled in favour of public demonstrations that defend the legalisation of drug use, like the Marijuana March (Marcha da Maconha). The Court held that the constitutional rights of freedom of assembly and freedom of expression must be respected. The Court also opined that the marches should not be considered crimes, because they do not foster or defend the use of drugs, but rather are designed to bring about a review of public policies.

In April 2018, the Supreme Court (STF) began hearings in case RE 806339, which concerns the scope of Article 5 (XVI) of the Constitution of Brazil. It subsequently decided, by majority of votes, that meetings or demonstrations in public places are allowed, regardless of prior official communication to the competent authorities.

Article 16 of Federal Law No. 8.069 of 13 July 1990 (the Child and Adolescent Statute - Estatuto da Criança e do Adolescente) provides that every child and adolescent is entitled to go, come and be in public places and community spaces, participate in family and community life without discrimination, and to participate in political life, according to law. Article 53 of the Child and Adolescent Statute provides that every child and adolescent has the right to organise and participate in student entities.

In addition to providing for protections in national law and case law, Brazil has ratified a number of international instruments which enshrine freedom of peaceful assembly. Article 15 of the Convention on the Rights of the Child (CRC) protects the rights to freedom of

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105 See: https://www.rightofassembly.info/country/brazil
106 See: http://stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idNoticia=458512
107 Available at: http://www.planalto.gov.br/ccivil_03/leis/l8069.htm
108 Available at: https://www.ohchr.org/en/professionalinterest/pages/crc.aspx
association and freedom of peaceful assembly. Brazil ratified the Optional Protocol on a Communications Procedure (OPIC), which allows the Committee on the Rights of the Child to receive and examine complaints by individuals or groups of individuals claiming to be victims of a violation of the rights of the child. Brazil is also a state party to the International Covenant on Civil and Political Rights (ICCPR). Article 21 governs the right of peaceful assembly. Brazil is a state party to the First Optional Protocol to the ICCPR, which allows individuals to petition the Human Rights Committee if they believe the state has violated their human rights as protected under the Covenant. Brazil is also a signatory to the Universal Declaration of Human Rights (UDHR). Article 20 (1) provides that “Everyone has the right to freedom of peaceful assembly.”

At the regional level, Brazil is a state party to the 1969 American Convention on Human Rights (ACHR). Article 15 enshrines the right of peaceful assembly. Brazil has accepted the competence/jurisdiction of the Inter-American Court of Human Rights to hear complaints by individuals in case their rights under the ACHR have been violated.

**B. Are there any legal limitations on the right of children to engage in peaceful assemblies?**

Article 139 (IV) of the Constitution provides that, during a state of siege, freedom of assembly may be suspended. In addition, under Article 5 (XVI) of the Constitution, “all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorization, so long as they do not interfere with another meeting previously called for the same place, subject only to prior notice to the proper authority.”

In 2013, Law No. 6.528/2013 was approved in the State of Rio de Janeiro. It established rules for public demonstrations and prohibited the use of masks in the State of Rio de Janeiro. The constitutionality of this law has been challenged before the Federal Supreme Court (ARE 905149).

There is no detailed legislation on the right of peaceful assembly or the policing of assemblies. Brazilian law does not restrict public meetings, demonstrations, and protests, but assemblies require advance notification. The exercise of the right does not depend upon the consent of public authorities. The justification for advance notification is to avoid two meetings at the same time.

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109 Available at: https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf

110 Available at: https://www.un.org/en/universal-declaration-human-rights/

111 Available at: https://treaties.un.org/doc/publication/uncts/volume%201144/volume-1144-i-17955-english.pdf

112 See: https://www.rightofassembly.info/country/brazil

same place (as one meeting could frustrate the other) and to guarantee other constitutionally important freedoms and rights, such as the right to freedom of movement and to public safety, which includes both the safety of the demonstrators and of the general population\textsuperscript{113}.

C. What penalties can be imposed on children for engaging in school strikes?

There do not seem to be any specific penalties set out in legislation that can be imposed on children for engaging in school strikes. Quite the opposite, as noted below, there is specific legislation protecting children from penalties. It is also worth noting that, formally, the Brazilian Constitution dictates that children under 18 years of age are not criminally responsible and are subject to the rules established in special legislation\textsuperscript{114}.

Pursuant to Article 5 of the Child and Adolescent Statute, “no child or adolescent must be the object of any form of negligence, discrimination, exploitation, violence, cruelty, or oppression, and any attempt, by action or omission, to violate the fundamental rights of a child or adolescent must be punished according to the law”. In addition, Article 18-A of the Child and Adolescent Statute provides that “children and adolescents are entitled to be educated and cared for without the use of physical punishment or cruel or degrading treatment as forms of correction, discipline, education or any other pretext, by their parents, by the members of their extended family, by persons responsible for them, by public officials implementing social and educational measures or by any other person entrusted with taking care of them or treating, educating or protecting them”. Article 18-B of the Child and Adolescent Statute provides for a range of measures to ensure implementation of the prohibition, including referral to a family protection programme, referral for guidance, and warning, in addition to any other legal measures that may be taken, and for the promotion of permanent educational campaigns, ongoing professional education and training and a range of other actions to support non-violent parenting, education and conflict resolution (Article 70-A).

\textsuperscript{113} See: https://www.rightofassembly.info/country/brazil
\textsuperscript{114} Art. 288 of the Constitution. See also, to the same effect, Art. 27, Title III, General Part, Penal Code of Brazil, available at: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848compilado.htm

Civil And Political Rights
Freedom of expression

A. How is children’s right to freedom of expression protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Article 5 of the Constitution of Brazil sets out the following protections related to freedom of expression:

- No one shall be compelled to do or refrain from doing something except by force of law;
- Manifestation of thought is free, but anonymity is forbidden;
- The right of reply is assured, in proportion to the offence, as well as compensation for pecuniary or moral damages or damages to reputation;
- Expression of intellectual, artistic, scientific, and communication activity is free, independent of any censorship or licence;
- Personal intimacy, private life, honour and reputation are inviolable, guaranteeing the right to compensation for pecuniary or moral damages resulting from the violation thereof;
- The exercise of any job, trade or profession is free, observing the professional qualifications that the law establishes;
- Access to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity.

Article 206 of the Constitution also establishes the principles to be used as the basis for education, which include freedom to learn, teach, research, and express thoughts, art, and knowledge. Further, Article 220 of the Constitution provides that the expression of thoughts, creation, speech, and information, through whatever form, process or vehicle, must not be subject to any restrictions, observing the provisions of the Constitution.

As mentioned above, the Federal Supreme Court (STF) held that freedom of expression must be respected when it ruled in favour of public demonstrations that defend the legalisation of drug use.\(^{115}\)

Article 16 of the Child and Adolescent Statute provides that every child and adolescent is entitled to their opinion and expression, and to participate in political life.

In addition to providing for protections in national law and case law, Brazil has ratified a number of international conventions which enshrine freedom of expression. Brazil is a state party to the CRC, which protects children’s freedom of expression in Article 13. As mentioned above, Brazil has ratified OPIC, which allows the Committee on the Rights of the Child to hear complaints that a child’s rights have been violated. Brazil is also a party to the ICCPR, which enshrines the right to freedom of expression in Article 19. As previously mentioned, Brazil is a state party to the First Optional Protocol to the ICCPR, which allows individuals to petition the Human Rights Committee if they believe the state has violated their human rights as protected under the Covenant. Brazil is also a signatory to the UDHR, which protects freedom of opinion and expression in Article 19.

At the regional level, Brazil is a state party to the ACHR, which enshrines freedom of thought and expression in Article 13. As mentioned above, Brazil has accepted the competence/jurisdiction of the Inter-American Court of Human Rights to hear complaints by individuals in case their rights under the ACHR have been violated.

B. Are there any legal limits or restrictions on the right to freedom of expression that specifically apply to children?

Under national legislation, there are no legal limits or restrictions that apply specifically to children.

Freedom of association

A. How is children’s right to freedom of association protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Article 5 of the Constitution of Brazil sets out the following protections related to freedom of association:

- There is total freedom of association for lawful purposes, but any paramilitary association is prohibited;
- Creation of associations and, as set forth in law, of cooperatives, requires no authorisation, prohibiting state interference in their operations;
- Associations may be compulsorily dissolved or their activities suspended only by a judicial decision, which in the former case must be a final and unappealable decision (trânsito em julgado);
- No one can be compelled to join an association or to remain in one;
• When expressly authorised, associations have standing to represent their members judicially and extrajudicially.

As mentioned above, Article 16 of the Child and Adolescent Statute provides that every child and adolescent is entitled to go, come and be in public places and community spaces, participate in family and community life without discrimination, and to participate in political life, according to law. Article 53 provides that every child and adolescent has the right to organise and participate in student entities.

In addition to providing for protections in national law and case law, Brazil has ratified a number of international conventions which protect freedom of association. Brazil is a state party to the CRC, which protects children’s freedom of association in Article 15. As mentioned above, Brazil has ratified OPIC, which allows the Committee on the Rights of the Child to hear complaints that a child’s rights have been violated. Brazil is also a party to the ICCPR, which enshrines the right to freedom of expression in Article 22. As previously mentioned, Brazil is a state party to the First Optional Protocol to the ICCPR, which allows individuals to petition the Human Rights Committee if they believe the state has violated their human rights as protected under the Covenant. Brazil is also a signatory to the UDHR. Article 20 provides that “(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.”

At the regional level, Brazil is a state party to the ACHR, which protects the right to freedom of association in Article 16. As mentioned above, Brazil has accepted the competence/jurisdiction of the Inter-American Court of Human Rights to hear complaints by individuals in case their rights under the ACHR have been violated.

**B. Are there any legal limits or restrictions on the right to association that specifically apply to children?**

Under national legislation, there are no legal limits or restrictions that apply specifically to children.
Access to information

A. How is children’s right to access information protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Under Article 5 (XIV) of the Constitution of Brazil, access to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity. Article 206 (II) of the Constitution also establishes the principles to be used as the basis for education, including freedom to research.

Article 71 of the Child and Adolescent Statute provides that every child and adolescent has the right to information, culture, leisure, sports, entertainment, shows and products and services that respect their peculiar condition as a person in development.

B. Are there any legal limits or restrictions on the right to access information that apply specifically to children?

There are no formal legal restrictions on the right of children to access information, though it is worth noting that the Article 17 of the Child and Adolescent Statute asserts the right to the “inviolability of the physical, psychological and moral integrity of the child and adolescent, encompassing the preservation of the image, identity, autonomy, values, ideas and beliefs, spaces and personal objects”. Under the General Data Protection Law, organisations may process children’s information only with the consent of the parent or legal guardian, or as required by law. Children are considered as anyone below the age of 12.

C. Does the national curriculum for schools include environmental education?

Brazil is recognized as an international leader in thought, policy and practice in the field of environmental education.

Article 225 (1) (VI) of the Constitution stipulates that it is the responsibility of the Government to promote environmental education at all levels of teaching and public awareness of the need to preserve the environment. Additionally, Article 2 (X) of Federal Law No. 6.938 of 31 August 1981 states that the National Environmental Policy aims to promote environmental

117 Art. 2 of the Child and Adolescent Statute
118 UNESCO, Not just hot air: putting climate change education into practice, 2015, p. 38. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000233083
119 Available at: http://www.planalto.gov.br/ccivil_03/Leis/L6938.htm
education at all levels of education, including community education, aiming to enable the community to participate actively in the defence of the environment. Furthermore, Article 2 of Federal Law No. 9.795 of 27 April 1999 established that environmental education “is an essential and permanent component of national education and must be present in an articulated manner, at all levels and modalities of the educational process, both formally and informally.”

In 1999, the National Environmental Education Policy (PNEA) was established, requiring that the formal education sector treat environmental education in an interdisciplinary manner, not just as a stand-alone topic. Since then, environmental education in Brazil has been the joint responsibility of the Coordination Unit for Environmental Education at the Ministry of Education and an environmental education division of the Ministry of the Environment.

A 2010 review found that the PNEA did not provide guidelines for climate change adaptation. While the practice of environmental education is mainstreamed in the primary education system, there are still limited learning opportunities for teachers, educators and local communities to incorporate more complex themes as these emerge.

The National Plan on Climate Change (2008) includes the Sustainable Schools Programme, which calls upon the Ministry of Education to increase the adaptive capacity and climate change resilience of schools. This includes upgrading school and university infrastructure, improving school management, increasing teacher education and introducing climate change into the curricula and learning materials.

At the school level, the children and youth conferences “Let’s take care of Brazil” and “Let’s take care of the Planet” involve millions of people debating climate change education and sustainability in schools all over the country.

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120 Available at: http://www.planalto.gov.br/ccivil_03/leis/L9795.htm
121 UNESCO, Not just hot air: putting climate change education into practice, 2015, p. 38. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000233083
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