CHILDREN’S ACCESS TO JUSTICE FOR ENVIRONMENTAL RIGHTS | COTE D’IVOIRE
Acknowledgements

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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.
For more information about the project and what’s to come, please visit: https://home.crin.org/readlistenwatch/stories/a2j-launch

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?

The Constitution of Côte d’Ivoire\(^1\) includes the following provisions relating to environmental protections.

- The Preamble of the Constitution sets out a commitment in principle to “contributing to climate protection and to maintaining a healthy environment for future generations”.

- Article 27 provides that: “It is recognized that everyone throughout the national territory has the right to a healthy environment. The transit, importation or illegal storage and dumping of toxic waste on the national territory constitute crimes that are not subject to any statute of limitations.”

- Article 40 provides that: “The protection of the environment and the promotion of the quality of life are a duty for the community and for each natural or legal person. The State is committed to protecting its maritime space, its waterways, its natural parks as well as its historic sites and monuments against any form of degradation. The State and public communities take the necessary measures to safeguard the fauna and flora. Where there may be a risk of harm that could seriously and irreversibly affect the environment, the State and public communities are required to assess the potential harm and to adopt the necessary preventive measures by applying the precautionary principle.”

- Article 101 specifies that the law determines the fundamental principles of environmental protection and sustainable development.

- Article 124 and 125 also provide that the government may conclude association or integration agreements, including cooperation in environmental protection and management of natural resources.

In addition, Article 32 of the Constitution includes a commitment on behalf of the State to guaranteeing the specific needs of vulnerable persons, including to “take necessary measures to prevent the vulnerability of children, women, mothers, the elderly and persons with disabilities.”

Article 123 also specifies that “Upon their publication, treaties or agreements duly ratified have an authority superior to that of domestic laws, subject, with respect to each treaty or accord, to the exercise thereof by the other contracting party”. Côte d’Ivoire has ratified a series of Conventions related to the protection of the Environment.\(^2\)

There are very few decisions, related to waste and protection of forests, including:

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\(^2\) A list is available at: http://www.caidp.ci/uploads/05e5a562a6079e485033036a5d7dcf53.pdf
B. Have constitutional rights protections been applied by national courts with regards to environmental issues?

- Court of First Instance of Daloa, Sassandra section, Decision No 463 of 25 September 1996,
- Court of First Instance of Man, Decision No 599 PEN/14 of 4 November 2014,

Most of the cases are brought before the criminal judge, punishing behaviour, rather than adopting a preventive approach.  

Most of the cases are brought before the criminal judge, punishing behaviour, rather than adopting a preventive approach.

The Minister of Environment and Sustainable Development has commented that environmental constitutional rights and the Environmental Code have not been implemented because the magistrates may not be well-versed in environmental law issues and its application. To address this issue, the Ministry of Environment and Sustainable Development in collaboration with the Ministry of Justice, Human Rights and Public Liberties launched a training initiative in 2015 to build environmental knowledge among the magistrates in Côte d’Ivoire.

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

We have been unable to locate any decisions on the application of the concept of intergenerational equity by the national courts of Côte d’Ivoire.

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5 Ibid.
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 Environmental Code\(^6\) sets out the overarching environmental protection framework in Côte d’Ivoire. The Environmental Code is supplemented, among others, by the following decrees:

- Decree No. 96-894 of 8 November 1996 laying down rules and procedures for studies related to the environmental and social impact of development projects;
- Decree No. 97-393 of 9 July 1997 establishing and organising the National Environment Agency (ANDE);
- Decree No. 97-678 of 3 December 1997 on the protection of marine and lagoon environment against pollution;
- Decree No. 98-19 of 14 January 1998 establishing and organising the National Environment Fund (FNDE);
- Decree No. 98-42 of 28 January 1998 to organise the emergency plan against accidental pollution at sea, lagoon and coastal areas;
- Decree No. 98-43 of 28 January 1998 on classified installations for the protection of the environment; and
- Decree No. 98-38 of 28 January 1998 on hygiene measures in the workplace.

The 1996 Environmental Code was reformed to adapt to new national and international requirements, including to address the current environmental challenges relating to coastal erosion, climate change and flooding\(^7\), and to align with the Paris Agreements, which Côte d’Ivoire has signed and ratified.\(^8\) In September 2019, a workshop was held between the Minister of Environment and Sustainable Development, the National Agency for Environment and Sustainable Development and the World Bank to discuss revisions to the Environmental Code. The Code was finalised at the end of September 2020.\(^9\) However, the Ivorian Parliament and promulgation have not yet validated the draft of the new Environmental Code for adoption.

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In addition to the Environmental Code, other Côte d’Ivoire’s legislation in relation to environmental protection includes the following:

- Law No. 88-651 of 7 July 1988 on protecting public health and the environment from the effects of toxic and nuclear industrial waste and harmful substances;
- Law No. 2014-427 of 14 of July 2014 on the Forest Code; and

Other legislative sources and decrees:

- Decree of 20 October 1926 regulating dangerous, unhealthy or inconvenient establishments;
- Decree No 74-526 on the distribution of taxes on dangerous, unhealthy or inconvenient establishments 1974;
- Decree No 91-662 establishing the Ivorian Centre for Antipollution (CIAPOL) 1991;
- Law No. 88-651 on the protection of public health and the environment against the effects of toxic and nuclear industrial waste and harmful substances 1988;

In 2018, the new Investment Code reinforced obligations towards companies to promote sustainable development. Article 36 introduced new requirements for investors to comply with...
laws and regulations in force relating to environmental protection and international standards.\textsuperscript{11}

**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?**

No specific national policy addressing childhood exposure to toxic substances has been identified from a research of publicly accessible resources.

**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?**

The government has developed an environmental information system to coordinate data collection for planning and decision-making purposes.\textsuperscript{12} The UN Environment Programme worked in collaboration with the National Commission REDD+ to develop a roadmap in 2018, in collaboration with the Minister of Environment and Sustainable Development and the CSRS, a Research Center established in 1951. It details objectives and strategies to develop the information system for environmental and social safeguards.\textsuperscript{13}

The country has also developed a “National Action Plan for the Reduction of Short-Lived Climate Pollutants”\textsuperscript{14} with the objective of making an inventory of emissions of short-lived climate pollutants and identifying measures to reduce emissions of these pollutants in Côte d’Ivoire.\textsuperscript{15} Specific sources of black carbon and methane were identified as priorities based on their mitigation potential and feasibility in the national context and measures were assigned as part


\textsuperscript{12} Climate Technology Centre & Network, “Development of an environmental information system - Côte d’Ivoire”, available at: https://www.ctc-n.org/system/files/dossier/3b/cotedivoire_impact_brief_environmental_information_system.pdf


\textsuperscript{15} Ibid, page 10.
of the planning for actions to reduce the priority of short-lived climate pollutants. Child specific factors do not, however, appear to have been taken into account specifically in the collection of information for this project.

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

No cases have been identified in which Côte d’Ivoire asserted extra-territorial jurisdiction for environmental issues from a review of publicly accessible electronic resources. The Probo Koala incident in August 2006 where a ship chartered by Trafigura, a Dutch international petroleum trader, illegally disposed waste at Abidjan gave rise to potential actions that may be taken by Ivory Coast against Trafigura, a Dutch entity, but a settlement was ultimately reached between both parties. On 13 February 2007 the government signed a settlement agreement with Trafigura pursuant to which it agreed to make a payment of $195 million to compensate the victims and to fund clean-up operations. As part of the settlement, the government agreed to waive any prosecutions or claims against Trafigura.

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17 Amnesty International and Greenpeace, “The toxic truth about a company called Trafigura, a ship called the Probo Koala, and the dumping of toxic waste in Côte d’Ivoire”, published in September 2012, available at: https://www.amnestyusa.org/files/afr310022012eng.pdf. Note that 30,000 claimants from Côte d’Ivoire filed a group action against Trafigura in the United Kingdom courts which also settled out of court for approximately $1,500 per claimant. The Dutch prosecutors also convicted Trafigura Beheer BV of exporting waste in violation of the European Waste Shipment Regulation, among other charges. Further details are set out in the report from Amnesty International and Greenpeace.

18 Ibid p. 9.
II. ACCESSING COURTS
A. How can environmental cases be brought before national courts?

The right of access to justice in environmental matters is based on the right of access to justice in general. Indeed, Article 6 of the Constitution specifies “Everyone has free and equal access to justice”19. As set out at Section I.A, the Constitution consecrates environmental law through Articles 27 and 40 of the Constitution. With regard to the general principles of environmental law, the universal aspects of these principles stand out.

Article 110 of the law N°96-766 of October 3, 1996 creating the Environmental Code, states that: “Local authorities, associations for the defence of the environment, regularly declared, or all persons, must seize the Competent National Authority before any proceedings before the courts and/or exercise the rights recognized by the civil party with regard to the facts constituting an offence under this law and causing direct or indirect damage to collective interests or environmental matters may be brought before the courts of ordinary law.”20 Indeed, the organisation of the Ivorian judicial system gives power to the courts of first instance to hear environmental litigation or litigation of waste for example.” Also, Article 33 of the Environmental Code, relating to the right to a healthy environment, states that “when a court rules on a request in this sense, it must take into consideration the state of scientific knowledge and the solutions adopted by other countries”.21

In addition, civil judges as well as criminal judges in Ivory Coast are competent to hear environmental cases. Article 5 of the Code of Civil, Commercial and Administrative Procedure22 provides that: “the courts of first instance and their detached sections hear all civil, commercial, administrative and fiscal cases for which jurisdiction is not expressly assigned to another jurisdiction due to the nature of the case”.

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21 Code of Environment, Article 33.
22 Code of Civil Procedure, Article 5.
B. What rules of standing apply in environmental cases?

Article 110 of the Environmental Code is worded broadly and allows actions to be brought by “local authorities, associations for the defence of the environment, regularly declared, or all persons (...)”. Therefore, anyone should be able to bring an action related to environmental harm, including individuals, groups of individuals or organisations, in accordance with the process as described below in paragraph (C) of Section III (Remedies).

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

According to Article 32 of the Constitution the State provides protection for children. The Code of Civil, Commercial and Administrative Procedure states that “Any natural or legal person, personally or through their legal or statutory representative, may ensure the defence of their interests before all courts”.

Thus, children or their representatives can challenge violations of their rights before the national courts. In Ivory Coast, children are defined as minors below the age of eighteen years. In all court proceedings, children, as previously defined, must be represented by an adult. In particular, parents (even if they are minors) are qualified to represent their children before the courts. However, acts of personal interest to minors over the age of sixteen, in particular those relating to their condition or which involve their natural person, may only be concluded with their consent.

Under the Minority Act, minors must be represented by either of the child’s parents, or the child’s guardian in the event both parents are deceased. Hence, in most legal systems including the Côte d’Ivoire system, minor children can only appeal to the judge through representation (parents, association, ad hoc administrators). Children can therefore file a civil claim via their parents or a children’s rights association acting on their behalf.
E. What limitation periods apply in environmental cases?

Article 109 of the Environmental Code states that “the prosecution of offences under this code follows the rules defined by the Code of Criminal Procedure”. In Ivorian law, the relevant limitation periods are one year for tickets, three years for misdemeanour’s and 10 years for crimes from the day they were committed.

The statute of limitation for compensation laid down by the rules of civil liability in Ivorian law may not align with the reality of pure ecological damage. Limitations by a fixed time period do not take into account the time it takes for nature to react and for degradations to manifest, which obey no temporal constraint. The limitation periods may, as a result, make bringing actions for compensation for damage to the environment difficult.

F. Is legal aid available in environmental cases? If so, under what circumstances?

The National Bar Association of Lawyers provides free legal assistance. Furthermore, in 2016, Decree No 2016-781 introduced a major innovation, establishing legal aid offices in 36 courts to facilitate citizens’ access to justice.

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III. REMEDIES
A. What remedies are courts empowered to impose in environmental cases?

Remedies available under Ivorian law include compensation for ecological damage through the application of the rules of civil liability and environmental liability imposed under the Environmental Code. The key difficulty in this redress method is the determination of the quantum of damages. It is difficult generally for judges to quantify the monetary value to ecological damage, which is not of a pecuniary nature. One approach is the lump sum method, which consists in fixing a lump sum substitution amount for the natural elements destroyed. Another approach is to opt for an assessment based on the costs incurred for the remediation, for example to remediate the site polluted by the dumping of waste. In any event, the difficulty remains since the substantive questions are that of the market value of the elements of nature.  

B. What remedies have courts ordered in environmental cases to date?

The scarcity of litigation limits the scope for courts and judges to develop case law on remedies available in environmental cases including, on how ecological damage would be quantified. For example, the administrative Chamber of the Supreme Court of Côte d’Ivoire, has not yet received a claim concerning an infringement of environmental law. Therefore, it has not yet had to apply or identify general environmental principles.

In the rare occasion that an environmental matter is brought before a court in Côte d’Ivoire following the Probo Koala’s incident as mentioned above, the Ivorian Court did not consider remedies appropriate for the waste dumped around the city of Abidjan because only the criminal actions proceeded to trial – the government agreed to waive all prosecution and claims after a settlement was reached with Trafigura. Two individuals were convicted of poisoning charges and charges relating to breaches of public health and environmental laws (or of being an accessory thereto), but neither of these individuals are employees of Trafigura. Also, when the opportunity was given to the judges of the Daloa Court of Appeal to rule on the damage to the environment, the latter preferred to avoid the question by reclassifying the degradation of the soil and the environment in violation of a property right.

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

Articles 108, 109 and 110 of the Environmental Code sets out the framework for environmental complaints to be made to the relevant national authority, i.e. the Ministry of Environment, which is empowered under Article 108 to settle damage claims to the environment or breaches of the Code. Referral to the Ministry of Environment is required to be made first before any legal action can be instituted pursuant to Article 110 of the Environmental Code. This process has its advantages, both for the parties and for the administration of justice, but may result in fewer actions being brought before Ivorian courts and limited development of case law by judges in relation to waste or environmental matters.  

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?

Article 20 of the Constitution states that “Freedoms of association, assembly and peaceful demonstration are guaranteed by law”. Since the Constitution is applicable to all citizens, including children, the articles cited above, and in particular Article 20 protects children’s right to engage in peaceful assembly.

Côte d’Ivoire ratified the 1966 International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) which guarantee the right of peaceful assembly. Côte d’Ivoire is also 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.

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

There are no limitations based on the Constitution. According to Article 21 of the ICCPR the right to freedom of assembly should be limited only by restrictions that are not only in conformity with the law, but also necessary for national security, public safety, order and for the protection of health or morals or the freedom of others.

Article 185 of the Penal Code states that any person who prevents or disperses a regularly declared demonstration or procession shall be punished by one to six months of imprisonment.

However, some reports highlighted that peaceful meetings organised by civil society organisations and groups are regularly prohibited or dispersed by the police and gendarmerie, which do use excessive force, especially during election periods.36

35 Article 21 of the ICCPR and Article 15 of the CRC.
C. What penalties can be imposed on children for engaging in school strikes?

The domestic rules apply equally to all citizens, irrespective of age. According to domestic law, assemblies and demonstrations must be announced in advance but the organisers are not formally required to obtain authorisation. If the public authorities determine that an assembly may threaten law and order, they can prohibit it.\(^{37}\)

According to the 1981 Penal Code, any armed gathering in a public place is prohibited as is any gathering that may “disturb public peace”. Anyone who refuses to abide by an order to disperse may be punished with a term of imprisonment of between two months and one year. The penalty increases to up to three years if an unarmed person is part of an armed gathering that refuses to disperse. Failure to make an accurate notification of a demonstration on the public highway is punishable by a heavy fine and incarceration for a period of up to six months. Any person participating in an unlawful demonstration may be imprisoned for a similar period.

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 19 of the Constitution protects the right to freedom of expression of all citizens. It states that “Freedom of thought and freedom of expression, particularly, freedom of conscience, of philosophical and religious conviction or of worship are guaranteed to everyone.” It further states that “Everyone has the right to express and disseminate their ideas freely.”

Article 11 paragraph 2 of the 1995 Education Act guarantees freedom of expression in the school environment. However, some reports highlighted that children do not have opportunities to share their voices.\(^{38}\)

Article 13 of the CRC guarantees the freedom of expression. In its recommendations, the CRC Committee encourages the State party to promote and facilitate, within the family and in schools, courts and administrative bodies, respect for the views of children and their participation in all matters affecting them, in accordance with their age and maturity.\(^{39}\)

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\(^{37}\) For more detail on penalties for illegal gatherings, see the 1981 Penal Code of Côte d’Ivoire, available at: https://www.refworld.org/docid/3ae6b5860.html


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 20 of the Constitution guarantees the right to freedom of association. Article 2 of the 1960 Law relating to associations states that: “associations of persons may be formed freely”. The procedure for setting up an association is detailed in chapter II. After the toxic waste dumping in August 2006 in Ivory Coast, several victims’ associations have freely formed to obtain compensation for the damage suffered. These include, among others:

- The Union of Toxic Waste Victims of Abidjan and Suburbs (UVDTAB)
- The National Coordination of Toxic Waste Victims (CNVDT).

AFHON_Côte d’Ivoire, a youth environmental association was also created in 2011 to promote environment and sustainable development.

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

Children are not able to directly create an association, which requires civil majority, and need to be represented by an adult. The process was facilitated in 2010 by the Ministry of Family, Women and Social Affairs to support the recognition of Communities Children’s Groups. In its alternative report to the CRC Committee, the Forum of Child Welfare NGOs and Associations highlighted that the legal incapacity of the child is still an obstacle to formalising and empowering children’s organisations.

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40 See: http://climatdeveloppement.org/lrcd/afhon-cote-divoire/


42 Forum des ONG et associations d’aide à l’enfance en difficulté, op. cit.

Civil and Political Rights
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?

Article 18 of the Constitution states that “Citizens have the right to information and access to public documents, under the conditions prescribed by law”. This is applicable to all citizens including children. Law No 2004-643 on the press regime provides specific provisions to protect children and youth against any forms of abuse and violence.

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

No such restrictions applying only to children have been identified so far.

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

Protection of the environment and sustainable development are part of the curriculum in primary and secondary schools. Through the years children gain additional knowledge. This includes celebrating the National Day of the Environment, being involved in an Environmental Club, learning more about the Environmental Code and consequences of forestry on the environment. Environment is considered as a life skills.43

In secondary schools, students deepen their knowledge on this specific issue, with case studies and ways to preserve the environment, and development of specific strategies. Later in their studies and depending on their specializations, students continue to acquire knowledge incl. understanding the impact of oil or mining exploitation on the environment.44

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43 See: Direction de la Pédagogie et de la formation continue, programmes for primary schools are available at: https://dpfc-ci.net/?page_id=289
44 See: Direction de la Pédagogie et de la formation continue, programmes for primary schools are available at: https://dpfc-ci.net/?page_id=283
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