

# CHILDREN'S ACCESS TO JUSTICE FOR ENVIRONMENTAL RIGHTS | ARGENTINA



# 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/access-to-environmental-justice>

# 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 Argentina<sup>1</sup> protects the right to a healthy environment under Part I, Chapter 2, “New Rights and Guarantees.” In Article 41, the Constitution recognises the right of all inhabitants and future generations to a healthy environment as follows:

“All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law.

The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.

The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions.

The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.”

Furthermore, Article 41 prescribes, in its fourth sentence, that governmental powers relating to the environment are divided between the federal government and the provincial states. The provinces are granted the power to legislate on environmental matters as is necessary to meet the minimum standards established by the federal government.

Regarding enforcement of environmental rights, Article 43 provides that injured parties, the Ombudsman and registered associations fostering or promoting environmental protection may file for summary proceedings concerning environmental rights. The Ombudsman, or “People’s Defender of the Nation of Argentina”, is an official charged with representing the interests of the public particularly against abuses or arbitrary decisions of the administrative branch of the government.<sup>2</sup>

While the Constitution protects environmental rights generally, it does not reference children’s rights specifically. Therefore, it can be concluded that children are afforded the same rights under the Constitution as other citizens. However, the Constitution—as established in Article 75(22)—grants constitutional authority to the United Nations Convention on the Rights of the Child and other international conventions, effectively extending international environmental rights protections.<sup>3</sup>

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1 Constitution of the Argentinian Nation 1994, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

English translation available at: <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf>

2 See the Ombudsman’s Office (Defensoría del Pueblo de la Nación), available at: <http://www.dpn.gob.ar/>

3 For example: Art. 24 (right to the enjoyment of the highest attainable standard of health) of the Convention on the Rights of the Child; Article 25 (right to adequate standard of living) of the Universal Declaration of Human Rights; and Articles 11(1) (right to adequate standard of living), 11(2) (right to be free from hunger) and 12 (right to the enjoyment of the highest attainable standard of health) of the International Covenant on Economic, Social and Cultural Rights.

## B. Have constitutional rights protections been applied by national courts with regards to environmental issues?

Constitutional rights protections have been applied by national courts, both at the federal and state level, with regard to environmental issues.

The highest judicial authority of Argentina, the Argentinian Supreme Court (the “Supreme Court”) stated in *Asociación Argentina de Abogados Ambientalistas de la Patagonia c. Provincia de Santa Cruz y Otro* that “the National Constitution clearly and decisively protects the environment and the Supreme Court has developed [Article 41 of the Constitution] in a way that allows for the existence of an environmental component of the rule of law.”<sup>4</sup> In this case, the Argentinian Association of Environmental Lawyers of Patagonia requested in a writ of “amparo” delaying the start of construction of two dams in the Province of Santa Cruz until an environmental impact assessment was conducted. A writ of “amparo” is a claim for the constitutional protection of an individual’s fundamental right against breaches of the right by actions of the government, a province, an administrative agency or other public body. In a subsequent decision, on 21 December 2016, the Court issued an injunction to temporarily suspend the construction project.<sup>5</sup>

Furthermore, in *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, the Supreme Court held that “[T]he protection of the environment means that each citizen must fulfil his or her duties with regard to the care of the [environment]. These duties correlate [with the fact] that those same citizens have to enjoy a healthy environment, for themselves and for future generations...The improvement or degradation of the environment benefits or harms the entire population, [the environment] is a good that belongs to the social sphere and transcends the individual, and from this derives the particular energy with which judges must act to make these constitutional mandates effective.”<sup>6</sup>

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4 National Supreme Court of Justice, *Asociación Argentina de Abogados Ambientalistas de la Patagonia c. Provincia de Santa Cruz y Otro / Amparo ambiental*, 26 April 2016. Available at: <https://jurisprudencia.mpd.gov.ar/Jurisprudencia/Asociaci%C3%B3n%20Argentina%20de%20Abogados%20Ambientalistas%20de%20la%20Patagonia%20c.%20Provincia%20de%20Santa%20Cruz%20y%20otro.pdf>

5 National Supreme Court of Justice, *Asociación Argentina de Abogados Ambientalistas de la Patagonia c. Provincia de Santa Cruz y Otro / Amparo ambiental*, 21 December 2016. Available at: <http://www.saij.gov.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-asociacion-argentina-abogados-ambientalistas-patagonia-provincia-santa-cruz-otro-amparo-ambiental-fa16000099-2016-12-21/123456789-990-0006-1ots-eupmocsollaf>

6 National Supreme Court of Justice, *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, 20 June 2006. Available at: <http://www.saij.gov.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-mendoza-beatriz-silvia-otros-estado-nacional-otros-danos-perjuicios-danos-derivados-contaminacion-ambiental-rio-matanza-riachuelo-fa06000248-2006-06-20/123456789-842-0006-0ots-eupmocsollaf>

A criminal court in Paraná specifically ruled on the environmental rights of children in *Honeker, José Mario; Visconti, César Martín Ramón; Rodríguez, Erminio Bernardo – Lesiones Leves Culposas Y Contaminación Ambiental S/ Recurso De Casación*.<sup>7</sup> In this case, the Chamber of Criminal Cassation (Cámara de Casación Penal) of Paraná (in the Entre Ríos Province) upheld a previous judgment that had found three individuals guilty of fumigating crops in a field near a school during school hours on 4 December 2014. The Court found that “it was fully demonstrated that the environment was contaminated with a product harmful to people’s health, the teacher and children inhaled the product and immediately saw their health affected.” The Court found that the individuals caused harm to the children’s health and the environment, and sentenced them to one year and six months in prison. However, the individuals did not have to serve the sentence effectively, but did so by “conditional compliance”, that is, in freedom, outside prison. The case was a step forward in protecting children’s rights to health and to a healthy environment, particularly as it relates to individual negligent conduct that was the cause of the harm. However, many schools in Argentina continue to face the same issues, as several crops near school grounds continue to be fumigated during school hours.<sup>8</sup>

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

As noted in part I.B., the Supreme Court has recognised the right of present and future generations to enjoy a healthy environment. The case *Majul, Julio Jesús c/ Municipalidad de Pueblo General Belgrano y otros s/ acción de amparo ambiental*<sup>9</sup> concerns specifically the concept of intergenerational equity in the context of environmental rights. In this case, the Supreme Court held that the federal government and provincial governments must guarantee the application of the principles of sustainability, precaution, prevention, rational use, *intergenerational equity*, progressivity and responsibility. In this case, the petitioner appealed a decision of the Superior Tribunal of Justice in the province of Entre Ríos in which the tribunal had declined to issue an injunction and order the reparation of environmental damage caused by a construction project in the Gualedaychú River. The Supreme Court emphasised that the province is in charge of the sustainable management and use of water basins and wetland systems.

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7 Chamber of Criminal Cassation, Paraná, no. 1, Honeker, José Mario; Visconti, César Martín Ramón; Rodríguez, Erminio Bernardo – *Lesiones Leves Culposas Y Contaminación Ambiental S/ Recurso De Casación*, 21 August 2018. Available at: <https://dpcuquantico.com/sitio/wp-content/uploads/2018/10/JURISPRUDENCIA-AMBIENTAL-11-10.pdf>

8 El País, *El gran problema de las escuelas fumigadas*, 23 January 2020. Available at: [https://elpais.com/elpais/2020/01/10/planeta\\_futuro/1578659137\\_361121.html](https://elpais.com/elpais/2020/01/10/planeta_futuro/1578659137_361121.html)

9 National Supreme Court of Justice, *Majul, Julio Jesús c/ Municipalidad de Pueblo General Belgrano y otros s/ acción de amparo ambiental*, 11 July 2019. Available at: <https://www.cij.gov.ar/nota-35126-Proteccion-de-los-humedales-en-un-fallo-de-la-Corte.html>

The Supreme Court noted that the wetlands play a vital role in flood control, storm protection and retention of sediments and pollutants. The Supreme Court sentenced the three individuals to a year and six months in prison. In applying this ruling, the Supreme Court made a clear decision to ensure environmental rights for future generations.

## **D. What legislation is in place to regulate environmental protection? Are there any proposals for legal reforms currently under review in the national legislature?**

Argentina has enacted several laws relating to environmental protection,<sup>10</sup> ranging from a general environmental law, to minimum standards regarding climate change, and standards regarding air, protected areas, forests, fauna, the use of biofuels, the management of hazardous waste etc.<sup>11</sup>

### **Law 25.675 – General Environmental Law**

Law 25.675 - General Environmental Law (*Ley General del Ambiente*) establishes the base parameters for all future legislation in the field of environmental protection and creates “minimum protection standards” as mentioned in Article 41 of the Constitution.<sup>12</sup> The term “minimum protection standards” is defined in Article 6 of Law 25.675:

- “It is understood by minimum protection standard, established in Article 41 of the National Constitution, any regulation that grants a uniform or common environmental protection for the whole national territory, and aims at imposing necessary conditions to ensure environmental protection. In its content, it must provide for the conditions necessary to guarantee the dynamics of ecological systems, maintain their carrying capacity and, in general, ensure environmental preservation and sustainable development.”

Congress passed Law 25.675 on 27 November 2002. Law 25.675 establishes the minimum standards required for all future legislation in the area of environmental protection, whether at the federal or provincial level. The legislation is organised into 16 main chapters and aims to protect the environment by guaranteeing education and citizen participation in environmental matters as well as controlling the impact and environmental damage caused by mankind.

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10 Compromiso Ambiental, Legislación Argentina, available at: <http://www.compromisoambiental.org/legislacion-argentina/#:~:text=Ley%2025.675%20%E2%80%9CLey%20General%20del,la%20implementaci%C3%B3n%20del%20desarrollo%20sustentable>

11 Senate, Principales leyes ambientales Argentinas, available at: <https://www.senado.gob.ar/upload/8314.pdf>

12 Law 25.675 - General Environmental Law, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/79980/norma.htm>

Law 25.675 is applicable in its entirety throughout the Argentinian territory and does not require any law of accession by local jurisdictions.

As stated in its Article 3, Law 25.675 serves as a guide in interpreting and applying specific environmental legislation. Law 25.675 contains guidelines as to how environmental policy should be carried out, key definitions for environmental policy and parameters on environmental damage caused by individuals or corporations. Article 28 of Law 25.675 establishes that:

- “Whoever causes environmental damage will be objectively responsible for restoring it to its previous state. If it is not technically feasible, the substitute compensation determined by the adjudicating body shall be deposited in the Environmental Compensation Fund... which shall be administered by the enforcement authority, without prejudice to other judicial actions that may correspond.”

Article 29 of Law 25.675 further states that a defendant accused of causing environmental damage will only be exempt from liability to the extent that such defendant (i) adopted measures aimed at preventing the harm and (2) the damage occurred through no fault of the defendant, but was caused by the sole fault of the victim or by a third party for whom the defendant is not liable.

### **Law 27.520 - Law of Minimum Standards for Adaptation to and Mitigation of Climate Change**

Law 27.520 of Minimum Standards for Adaptation to and Mitigation of Climate Change<sup>13</sup> (*Ley de Presupuestos Mínimos de Adaptación y Mitigación al Cambio Climático Global*), passed by Congress on 20 November 2019, is the latest development in Argentinian environmental protection. Article 2 describes the objectives of this law, which are to establish broad strategies, measures, policies and instruments related to the study of the impact of, vulnerability to and adaptation activities to climate change with the aim of guaranteeing a sustainable ecosystem.

Law 27.520 is divided into six different chapters: Chapter I establishes the definitions (Article 3) and general principles to be taken into account when establishing public policies in the field of environmental protection, such as prioritising the needs of vulnerable groups, or taking into account and integrating all private and public measures in the fight against climate change (Article 4). Chapter II creates the National Climate Change Cabinet and Advisory Council (*El Gabinete Nacional de Cambio Climático y El Consejo Asesor*), composed

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<sup>13</sup> Law 27.520 of Minimum Standards for Adaptation to and Mitigation of Climate Change, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333515/norma.htm>

of representatives from different ministries (the “Cabinet”). The Cabinet has a mandate to establish the joint implementation of climate legislation. Chapter III elaborates the Plan for Adaptation and Mitigation of Climate Change<sup>14</sup>, aimed at establishing a common framework for all future climate change policies. Chapter IV establishes that national jurisdictions and the Cabinet must implement minimum actions to adapt to climate change in order to protect human health, evaluate the impact of climate change on energy demands, establish a programme to protect coastal areas, etc. Chapter V establishes that national jurisdictions and the Cabinet must implement minimum actions to mitigate climate change such as implementing measures aimed at maximising energy efficiency, implementing and designing tax benefits for producers and consumers of goods that minimise the creation of greenhouse gases, coordinating research among universities and research institutions, etc. Chapter VI establishes that local jurisdictions must promote citizen participation and information on environmental matters.

### **Decree 447/2019**

Decree 447/2019<sup>15</sup>, enacted in June 2019, requires public or private businesses and individuals that carry out activities posing a risk to the environment or to the country’s ecosystems to contract insurance for environmental damage and expands the financial instruments that meet the environmental insurance requirement.<sup>16</sup>

### **Bill 4339-D-2019**

In June of 2019, Congress introduced Bill (*Proyecto de Ley*) 4339-D-2019 to regulate the risk posed by chemical substances.<sup>17</sup> The purpose of the Bill is to establish a harmonised index at the national level of all chemicals produced in or imported into the territory, as well as to create mechanisms for the assessment and management of the risk posed by those chemicals.

While none of these laws specifically mention the protection of children, they do apply to all citizens equally.

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14 See: <https://www.argentina.gob.ar/ambiente/cambio-climatico/plan-nacional-mitigacion>

15 Decree 447/2019, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/324641/norma.htm>

16 The Library of Congress - Global Legal Monitor, Argentina: New Decree Requires Insurance to Cover Environmental Damage, 2019. Available at: <https://www.loc.gov/law/foreign-news/article/argentina-new-decree-requires-insurance-to-cover-environmental-damage/>

17 Bill 4339-D-2019, 13 September 2019. Available at: <https://www.hcdn.gob.ar/proyectos/proyecto.jsp?exp=4339-D-2019>

Law 27.566<sup>18</sup>, passed in 2020, incorporates into Argentinian legislation the Escazú Agreement,<sup>19</sup> the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. It incorporates very important norms on access to public environmental information, access to environmental justice, and protection of future generations.

The Argentinian Civil and Commercial Code<sup>20</sup> also contains a number of articles relevant to environmental protection, among them Article 14 (“The law does not protect the abusive exercise of individual rights when it may affect the environment and collective advocacy rights in general.”) and Article 240 (“The exercise of individual rights over property [...] must be compatible with collective advocacy rights. It must conform to the rules of national and local administrative law dictated in the public interest and must not affect the functioning or sustainability of the ecosystems of flora, fauna, biodiversity, water, cultural values, landscape, among others [...]”).

## **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?**

As noted in part I.D., Bill 4339-D-2019 was introduced by Congress to regulate the risk posed by chemical substances. The Bill is a step forward in addressing toxic substances at the national level, and comes a year after the Argentinian government created the office of Substances and Chemical Products within the Secretariat of Control and Environmental monitoring.<sup>21</sup> While it does not mention children specifically, the law applies to all citizens. Bill 4339-D-2019 creates the Chemical Assessment Committee (the “Committee”). The Committee will be in charge of defining the chemical substances to be assessed, evaluating their risk and establishing risk-management mechanisms, and evaluating analysis procedures for the chemicals identified.

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18 Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/343259/norma.htm>

19 Escazú Agreement, available in Spanish at: [https://repositorio.cepal.org/bitstream/handle/11362/43595/1/S1800429\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43595/1/S1800429_es.pdf) Available in English at: <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>

20 Civil and Commercial Code, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm>

21 United Nations Environment Programme, Chemicals and waste: bringing about change in Argentina, 7 February 2019. Available at: <https://www.unenvironment.org/news-and-stories/story/chemicals-and-waste-bringing-about-change-argentina>

Argentina's Ministry of Employment and Social Security has passed specific guidance in the form of administrative resolutions regarding toxic substances in employment.<sup>22</sup> Article 2 of Decree No. 351/79<sup>23</sup>, which regulates Law 19.587 ("Health and Safety at Work"), authorises the Ministry of Employment and Social Security to enact Resolutions modifying the values, conditions and requirements established in the legislation and in Decree 351/79.

Similarly, the Ministry of Health has issued guidance regarding toxic substances forbidden in Argentina.<sup>24</sup> The document summarises the legislation in place pertaining to specific types of chemicals. While specific legislation addressing exposure of children to toxic chemicals could not be located, some of the legislation addressing individual toxic substances includes guidelines relating to children. With regard to the chemicals Bendiocarb, Clorpirifos, Fenitroton and Propoxur, for example, a resolution of the Ministry of Health prohibits their use in disinfecting products and states that those products that contain these chemicals must have a child-proof mechanism. In the same resolution, the Ministry of Health also noted that the use of the chemical Ftalatos is forbidden in all children's toys and children's products such as pacifiers.

## **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?**

In 2019, the Argentinian government established the National Cabinet for Climate Change (*Gabinete Nacional de Cambio Climático*)<sup>25</sup>, which brings together 17 governmental entities' strategies to fight against, adapt to and integrate climate change in all future public policies.<sup>26</sup> The Cabinet established more ambitious goals regarding the reduction of emissions and is working with provincial authorities to develop a greenhouse gas emissions platform in order to measure and allocate emission rights to the different provinces.

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22 See Resolution No. 295/2003, Annex III, 21 November 2003. Available at: <https://www.argentina.gob.ar/normativa/recurso/32030/dto351-1979-anexo3/htm>

23 Decree 351/79, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/30000-34999/32030/texact.htm>

24 See: [https://www.fmed.uba.ar/sites/default/files/2018-03/0000001076cnt-2017\\_Quimicos\\_prohibidos\\_y\\_restringidos.pdf](https://www.fmed.uba.ar/sites/default/files/2018-03/0000001076cnt-2017_Quimicos_prohibidos_y_restringidos.pdf)

25 See details at: <https://www.argentina.gob.ar/ambiente/cambio-climatico/gabinete-nacional#:~:text=Su%20funci%C3%B3n%20principal%20es%20garantizar,vulnerables%20a%20los%20impactos%20clim%C3%A1ticos>

26 United Nations Development Programme in Latin America and the Caribbean [PNUDLAC], *Combatir el Cambio Climático para Mejorar Medios de Vida*, 28 January 2019. Available at: <https://undplac.exposure.co/combater-el-cambio-climatico-para-mejorar-medios-de-vida?more=true>

The government of Argentina also assessed its emission-intensive sectors such as energy, forestry and transport, and developed plans to mitigate emissions and introduce measures to adapt to climate change. In 2017, for example, the Ministry of Environment and Sustainable Development passed Resolution 797-E/2017.<sup>27</sup> The Resolution is aimed at automobile emissions, establishes guidelines for automobile manufacturers and importers, and has been developed by means of complementary resolutions ever since. Specific pollutant release and transfer registers or any child-specific factor relating to pollutant releases could not be located.

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

Article 118 of the Argentinian Constitution establishes the principle of Universal Jurisdiction<sup>28</sup>; Article 1 of the Argentinian Penal Code<sup>29</sup> limits Argentina's jurisdiction and establishes the territoriality principle, limiting Argentina's authority to crimes committed in Argentina or whose effects are felt in Argentina. Instances in which Argentina has exercised extra-territorial jurisdiction for environmental issues or any further guidance to that regard could not be located.

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<sup>27</sup> Resolution 797-E/2017, available at: <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-797-2017-287339/texto>

<sup>28</sup> Art. 118 of the Constitution reads: "The trial of all ordinary criminal cases not arising from the right to impeach granted to the House of Deputies, shall be decided by jury once this institution is established in the Nation. The trial shall be held in the province where the crime has been committed; but when committed outside the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law."

<sup>29</sup> Penal Code, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>

## **II. ACCESSING COURTS**



## A. How can environmental cases be brought before national courts?

Environmental statutes in Argentina generally impose some form of administrative sanctions, but civil and criminal liability can also apply independent of administrative penalties.<sup>30</sup>

In Argentina, all civil cases can be initiated when a party files a demand in civil court.<sup>31</sup> This applies to environmental cases as well. A demand in a civil case must be in writing and include:

1. The name and address of the claimant;
2. The name and address of the defendant;
3. The demand, designating it with all exactness;
4. The facts on which it is based, clearly explained;
5. The right exposed succinctly, avoiding unnecessary repetitions; and
6. The request in clear and positive terms.<sup>32</sup>

Additionally, the demand “must specify the amount claimed”<sup>33</sup> except in the limited circumstance where it is not possible for the claimant to determine the specific amount, whether due to (i) the circumstances of the case, or (ii) because the estimate depends on variable elements not yet fixed and the demand was essential to avoid the prescription of the action.

Criminal cases can take the form of a public action or a private action. Court proceedings for public actions are generally initiated by the Prosecution Ministry, while private actions are initiated by filing a complaint.<sup>34</sup> In the case of environmental harm, a criminal case can be brought under the Penal Code for a variety of different kinds of environmental harm or damage.

Generally, an environmental statute will explicitly outline criminal liability and penalties. For example, Articles 55 and 56 of Law 24.051 lay out the different ranges of prison terms for various violations of the law.<sup>35</sup>

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30 See Art. 29 of Law 25.675 General Environmental Law. See also Art. 48 of Law 24.051 Hazardous Waste, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/450/texact.htm>

31 Art. 330 of the Civil and Commercial Code of Procedure, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16547/texact.htm>

32 Ibid.

33 Ibid.

34 See Arts. 25 and 27 of the Criminal Procedure Code, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/319681/norma.htm>

35 Arts. 55-56 of Law 24.051 Hazardous Waste

The Penal Code might incorporate the specific criminal penalties of an environmental law or have existing penalties that can be applied to conduct outlined in an environmental statute. An example of the criminal penalties being incorporated into the Penal Code is Law 25.612, with Article 51 stating that “The present chapter on environmental crimes shall be incorporated into the National Penal Code, as complementary law.”<sup>36</sup> An example of existing penalties being applied is in Article 55 of Law 24.051, which states that “the penalties established in Article 200 of the Penal Code, will apply to those who, using the waste referred to in this law, will poison, adulterate or contaminate in a dangerous way for health, the soil, the water, the atmosphere or the environment in general.”<sup>37</sup> Furthermore, Article 58 of Law 24.051 states: “The Federal Justice will be competent to know the penal actions that derive from the present law.”<sup>38</sup>

For constitutional cases, Article 43 of the Constitution provides that injured parties, the Ombudsman and associations fostering or promoting environmental protection (registered according to a law determining their requirements and organisation forms) may file for summary proceedings concerning environmental rights.

## **B. What rules of standing apply in environmental cases?**

Individuals and groups of individuals can bring cases related to environmental harm, including class actions. While our research could not confirm whether organisations could bring suit related to environmental harm, specifically, companies have legal standing in Argentina and are permitted to bring civil cases in court as a general matter.<sup>39</sup>

Article 43 of the Constitution provides that injured parties, the Ombudsman and associations fostering or promoting environmental protection (registered according to a law determining their requirements and organisation forms) may file for summary proceedings concerning environmental rights.

In criminal cases, Article 84 of the Federal Criminal Procedure Code establishes the right of victims to file complaints.<sup>40</sup> Article 88 of the same code further defines legal standing: “Any person who considers himself / herself to be offended by a crime of private action shall have the right to file a complaint and to jointly exercise the compensatory civil action.”

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36 Art. 51 of Law 25.612 Integral Management of Industrial Waste and Services, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/76349/norma.htm>

37 Art. 55 of Law 24.051 Hazardous Waste.

38 Art. 58 of Law 24.051 Hazardous Waste.

39 Baker McKenzie, Doing Business in Argentina, 2017. Available at: [https://www.bakermckenzie.com/-/media/files/insight/publications/2017/04/bk\\_dbi\\_argentina\\_2017.pdf?la=en](https://www.bakermckenzie.com/-/media/files/insight/publications/2017/04/bk_dbi_argentina_2017.pdf?la=en)

40 Federal Criminal Procedure Code, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/319681/norma.htm>

Any person affected by environmental damage (for example, contamination of land by a neighbouring industry) has legal standing to claim remediation of their own property and, in addition, the remediation of the entire environment affected.<sup>41</sup>

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

Rules of standing do not appear to differ when children are the complainants. As noted above, any person affected by the alleged environmental damage has legal standing. The Civil and Commercial Code states that “every human person has the aptitude to be the holder of legal rights and duties.”<sup>42</sup> The procedural difference to note is that children generally exercise their legal rights through a parent or other designated representative.<sup>43</sup> However, there could potentially be scenarios where a court would allow a child (called a “minor” if under the age of 18) to represent themselves, as the Civil and Commercial Code states: “the one that has sufficient age and degree of maturity can carry out by themselves the acts that are allowed by the legal system.”<sup>44</sup>

### **D. What is the burden and standard of proof for allegations of personal injury as a result of toxic exposure?**

Specific burden and standard of proof for allegations of personal injury related to toxic exposure could not be located. For civil and commercial matters, the Civil and Commercial Code imposes a duty on the judge to rule on matters “by means of a reasonably founded decision.”<sup>45</sup> The Federal Criminal Procedure Code includes a procedural guarantee of “in dubio pro reo” ([when] in doubt, for the accused), suggesting a general criminal standard of proof that prevents conviction when there is doubt to the defendant’s guilt.<sup>46</sup> Therefore, the burden of proof in a criminal case is higher than in a civil matter, since the accused is presumed innocent until proven guilty.

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41 Federico S Deyá, Marval, O’Farrell & Mairal, Environmental law and practice in Argentina: overview, Practical Law Country Q&A, 2012. Available at: <https://uk.practicallaw.thomsonreuters.com/8-500-1340?transitionType=Default&contextData=%28sc.Default%29>

42 Art. 22 of the Civil and Commercial Code.

43 Art. 26 of the Civil and Commercial Code.

44 Ibid.

45 Art. 3 of the Civil and Commercial Code.

46 Art. 11 of the Criminal Procedure Code.

## E. What limitation periods apply in environmental cases?

A specific statute of limitations for environmental cases could not be located. However, in Argentina the Civil and Commercial Code contains a general statute of limitations of five years.<sup>47</sup> Certain provisions in the laws are also fixed - for example, once established, the national air pollutant levels cannot be changed for three years at a time.<sup>48</sup>

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

Law 26.061 on the Comprehensive Protection of the Rights of Children and Adolescents provides a procedural guarantee that every child has the right “to be assisted by a lawyer preferably specialised in childhood and adolescence matters from the beginning of the judicial or administrative procedure.”<sup>49</sup> Whether in a civil or criminal case, if a child lacks financial resources, the State is required to provide an attorney to the child.<sup>50</sup>

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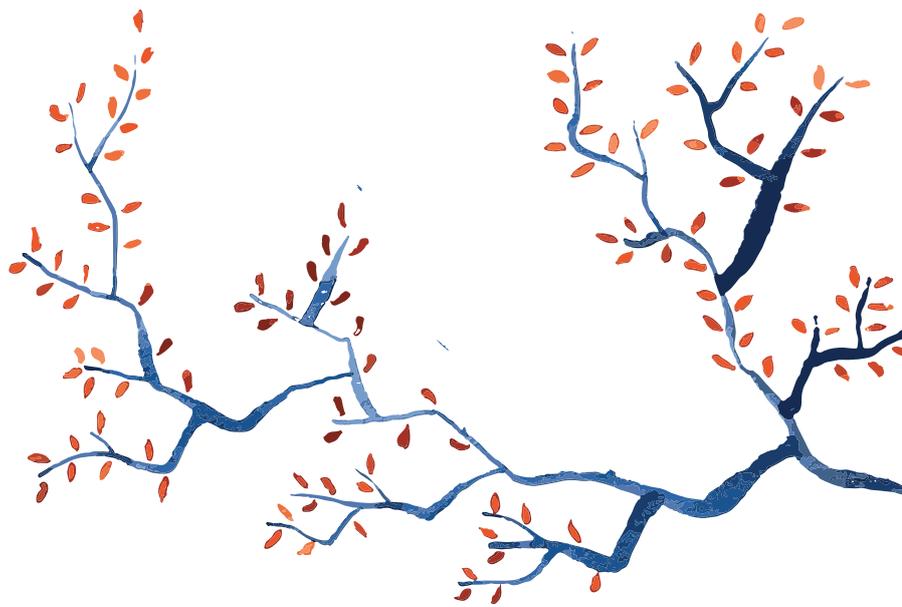
47 See Art. 2560 of Civil and Commercial Code.

48 See Art. 5 of Annex I of Law 20.284 Plan for the Prevention of Critical Air Pollution Situations, available at: <https://www.argentina.gob.ar/normativa/nacional/ley-20284-40167/texto>

49 Art. 27(c) of Law 26.061, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/110000-114999/110778/norma.htm>

50 Ibid.

# III. REMEDIES



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

In Argentina, the court remedies available vary depending on the type of environmental issue.

### Air Pollution

Law 20.284 regulates air pollution under federal jurisdiction, however it is the responsibility of local health authorities to set the maximum emission levels for varying sources of pollutants.<sup>51</sup> In general, the primary measure for air pollution is to mitigate the damage caused and provide some form of remediation. Violations of this law will result in sanctions such as: fines, temporary or definitive closure of the pollutant source, temporary or definitive disqualification of the movement permit in the case of air, land, sea or river transport units.<sup>52</sup>

At the provincial level, remedies can range from monetary fines to the complete closing of the facilities producing emissions and causing the pollution.<sup>53</sup> For example, Buenos Aires's provincial regulations related to air pollution allow fines ranging from ARS344 to ARS344,000.<sup>54</sup> Authorities in Buenos Aires can also order the partial/complete closure of non-compliant facilities.<sup>55</sup>

### Asbestos

Although asbestos is a common environmental hazard in many parts of the world, Argentina does not have any regulation that provides specific remedies related to the improper use of asbestos.<sup>56</sup>

### Contaminated Land

For land contamination, fines and closure are generally applied regardless of the civil or criminal liability of the defendant.<sup>57</sup> Law 24.051 allows administrative fines up to

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51 Law 20.284 Plan for the Prevention of Critical Air Pollution Situations, available at: <https://www.argentina.gob.ar/normativa/nacional/ley-20284-40167/texto>

52 Art. 26 of Law 20.284 Plan for the Prevention of Critical Air Pollution Situations

53 Federico S Deyá, Marval, O'Farrell & Mairal, Environmental law and practice in Argentina: overview, Practical Law Country Q&A, 2012. Available at: <https://uk.practicallaw.thomsonreuters.com/8-500-1340?transitionType=Default&contextData=%28sc.Default%29>

54 Ibid.

55 Ibid.

56 Ibid.

57 Art. 49 of Law 24.051 Hazardous Waste, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/450/texact.htm>

ARS500,000 and the closure of facilities causing the contamination for up to one year.<sup>58</sup> Additionally, for cases involving the contamination of land, a person can seek remediation of the entire adversely affected environment, not just their personal property.<sup>59</sup>

## Environmental Impact Assessments and Declarations

In general, companies are required to obtain an Environmental Impact Declaration before starting any project that might have an adverse effect on the environment. Violating this requirement can result in fines, injunctions to halt work, or even the actual demolition or dismantling of the works performed without authorisation.<sup>60</sup> For example, in Buenos Aires, remedies have included fines of up to ARS1,000,000 and suspension of all activities related to the unauthorised project.<sup>61</sup>

## Hazardous Waste and Water Pollution

In general, administrative remedies can range from monetary fines to the complete closing of the facilities causing the pollution related to Hazardous Waste and Water Pollution.<sup>62</sup> One example would be Law 24.051, which allows administrative fines up to ARS500,000.<sup>63</sup> In addition to administrative remedies, courts can order civil or criminal remedies.<sup>64</sup> In the event that the water pollution resulted in a death, criminal liability can include a prison sentence of 10 to 25 years.<sup>65</sup>

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58 Ibid.

59 Federico S Deyá, Marval, O'Farrell & Mairal, Environmental law and practice in Argentina: overview, Practical Law Country Q&A, 2012. Available at: <https://uk.practicallaw.thomsonreuters.com/8-500-1340?transitionType=Default&contextData=%28sc.Default%29>

60 Ibid.

61 Ibid.

62 Ibid.

63 Art. 49 of Law 24.051 Hazardous Waste, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/450/texact.htm>

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65 Art. 55 of Law 24.051 Hazardous Waste, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/450/texact.htm>

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

In relation to environmental cases, courts have ordered remedies ranging from fines to imprisonment. Below is a short survey of recent court cases which exemplify the range of remedies courts have ordered.

- In *Comunidad del Pueblo Diaguita de Andalgalá c/ Provincia de Catamarca y otros s/ amparo ambiental*, the Court suspended all activity related to the mineral mining project while a comprehensive impact study could be completed.<sup>66</sup>
- In *Asociación Argentina de Abogados Ambientalistas de la Patagonia c. Provincia de Santa Cruz y Otro*, the Court issued an injunction to temporarily suspend all activity related to the construction of two dams.<sup>67</sup>
- In *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, the Court issued a comprehensive order that required regular inspections, closure of all facilities found to be non-compliant, the development of a regional environmental health plan, and continued supervision by Federal authorities as well as ongoing judicial supervision.<sup>68</sup> Additionally, any violation of the comprehensive order would result in a range of fines.<sup>69</sup>
- In *Bernardo – Lesiones Leves Culposas Y Contaminación Ambiental S/ Recurso De Casación*, three individuals were found guilty of fumigating crops in a field near a school during school hours and sentenced to 18 months in prison.<sup>70</sup> However, the individuals did not have to serve the sentence effectively, but did so by “conditional compliance”, that is, in freedom, outside prison.

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66 National Supreme Court of Justice, *Comunidad del Pueblo Diaguita de Andalgalá c/ Provincia de Catamarca y otros s/ amparo ambiental*, 17 April 2012. Available at: [https://www.ecolex.org/details/court-decision/comunidad-del-pueblo-diaguita-de-andalgalá-c-provincia-de-catamarca-y-otros-s-amparo-ambiental-4524fd48-1346-49f4-882c-6c32b4b73681/?q=&type=court\\_decision&xcountry=Argentina&xdate\\_min=&xdate\\_max=](https://www.ecolex.org/details/court-decision/comunidad-del-pueblo-diaguita-de-andalgalá-c-provincia-de-catamarca-y-otros-s-amparo-ambiental-4524fd48-1346-49f4-882c-6c32b4b73681/?q=&type=court_decision&xcountry=Argentina&xdate_min=&xdate_max=)

67 National Supreme Court of Justice, *Asociación Argentina de Abogados Ambientalistas de la Patagonia c. Provincia de Santa Cruz y Otro / Amparo ambiental*, 21 December 2016. Available at: <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-asociacion-argentina-abogados-ambientalistas-patagonia-provincia-santa-cruz-otro-amparo-ambiental-fa16000099-2016-12-21/123456789-990-0006-1ots-eupmocsollaf>

68 National Supreme Court of Justice, *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, 20 June 2006. Available at: <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-mendoza-beatriz-silvia-otros-estado-nacional-otros-danos-perjuicios-danos-derivados-contaminacion-ambiental-rio-matanza-riachuelo-fa06000248-2006-06-20/123456789-842-0006-0ots-eupmocsollaf>

69 Ibid.

70 Chamber of Criminal Cassation, Paraná, no. 1, Honeker, José Mario; Visconti, César Martín Ramón; Rodríguez, Erminio Bernardo – *Lesiones Leves Culposas Y Contaminación Ambiental S/ Recurso De Casación*, 21 August 2018. Available at: <https://dpcuquantico.com/sitio/wp-content/uploads/2018/10/JURISPRUDENCIA-AMBIENTAL-11-10.pdf>

## 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 Government is entitled to sanction the minimum budget for environmental protection without affecting local and provincial jurisdictions.<sup>71</sup> The National Congress has the faculty of legislating on environmental matters through the civil, commercial, criminal, mining, labour and social security codes it is entitled to sanction. Local courts are in charge of applying said sanctions to things or people under their jurisdictions.<sup>72</sup>

Specific administrative agencies that have the authority to respond to complaints could not be identified. However, the regulatory scheme suggests that there are administrative agencies that have the power to act when environmental issues are present, whether or not in direct response to a complaint. For example, in land contamination cases, fines are generally applied regardless of the civil or criminal liability of the defendant, which suggests a court finding liability and then imposing fines is not always necessary.<sup>73</sup> Additionally, in *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, part of the ongoing compliance monitoring ordered by the court included the involvement of ombudspersons and other authorities, suggesting that entities besides the courts play a role in enforcement and responding to complaints or issues.<sup>74</sup>

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71 Gisela Monge Roffarello, et. al, A Research Guide to the Argentine Legal System, available at: [https://www.nyulawglobal.org/globalex/Argentina1.html#\\_Environmental\\_Legal\\_Framework\\_in%20Ar](https://www.nyulawglobal.org/globalex/Argentina1.html#_Environmental_Legal_Framework_in%20Ar)

72 Ibid.

73 Federico S Deyá, Marval, O'Farrell & Mairal, Environmental law and practice in Argentina: overview, Practical Law Country Q&A, 2012. Available at: <https://uk.practicallaw.thomsonreuters.com/8-500-1340?transitionType=Default&contextData=%28sc.Default%29>

74 National Supreme Court of Justice, *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, 20 June 2006. Available at: <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-mendoza-beatriz-silvia-otros-estado-nacional-otros-danos-perjuicios-danos-derivados-contaminacion-ambiental-rio-matanza-riachuelo-fa06000248-2006-06-20/123456789-842-0006-0ots-eupmocsollaf>

# **IV. CIVIL AND POLITICAL RIGHTS**



The Constitution contains several relevant provisions with respect to children's rights. Article 75(23) grants Congress the power to legislate and promote "positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognised by this Constitution and by the international treaties on human rights in force, particularly referring to children (...)." <sup>75</sup> Section 75(22) grants Congress the power to "approve or reject treaties concluded with other nations and international organisations." The subsequent list of treaties includes the Convention on the Rights of the Child (the "CRC"). <sup>76</sup> Section 75(22) goes on to specify that the treaties, "in the full force of their provisions... have constitutional hierarchy," although they "do not repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognised herein." <sup>77</sup>

Law 23.849 <sup>78</sup> from 1990 approved the CRC, which the General Assembly of the United Nations in New York City adopted in 1989, and Argentina incorporated into its National Constitution in 1994.

Law 26.061 on the Comprehensive Protection of the Rights of Children and Adolescents affords children the rights guaranteed to them in the national system of laws and in the international treaties to which Argentina is a party. This law outlines guidelines for public policy-making with regard to children, and creates governmental positions to oversee these protections on the national, federal, and provincial levels. <sup>79</sup>

Argentina is a party to the American Convention on Human Rights (ACHR) <sup>80</sup>. Article 19 of the ACHR states that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

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75 See original text in Spanish at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

See English translation at: <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf>

76 Ibid.

77 Ibid.

78 Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/249/norma.htm>

79 See: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/110000-114999/110778/norma.htm>

80 Available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

## 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?**

Article 15 of the CRC recognises the right of children to freedom of peaceful assembly. Furthermore, during consideration of Argentina’s reports regarding its implementation of the CRC in May 2018, the United Nations Committee on the Rights of the Child (the “Committee”) asked the State how it would “safeguard the freedom of assembly for children and adolescents, and ensure their access to information and the Internet,” as well as what measures were in place “to protect them from harmful information.”<sup>81</sup> In response, Argentina’s representative to the UN Office in Geneva stated that 20 out of 24 states in Argentina had their own laws in place for the “comprehensive protection of children’s rights.”<sup>82</sup> He reported that the government had taken steps to improve the implementation of policy by improving communication between different programmes and the Social Policy Council, which would thereby improve monitoring of progress.<sup>83</sup> The representative did not provide more specific information to the Committee.

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

There are no significant legal limitations on the rights of children to engage in peaceful assemblies. Article 15 of the CRC specifically states that “[n]o restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (“ordre public”), the protection of public health or morals or the protection of the rights and freedoms of others.”

Regarding the ACHR, Argentina submitted a request for the Inter-American Court to expound upon Article 19 of the Convention (“Rights of the Child”). The Court issued an advisory opinion in 2014 that established that in order to impose a restriction on the rights guaranteed

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81 UN Human Rights Office of the High Commissioner, Committee on the Rights of the Child considers report of Argentina, 15 May 2018. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23088&LangID=E>.

82 Ibid.

83 Ibid.

by the ACHR, said restriction must be necessary in a democratic society.<sup>84</sup> That standard requires that the restriction “complies with the requirements of (a) suitability; (b) necessity, and (c) proportionality.”<sup>85</sup> However, while the court wrote the opinion in the context of migration, it reaffirmed the validity of the American Convention, which specifically protects the right of assembly in Article 15.

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

It is not clear from publicly available information to what extent the government allows children to be punished for engaging in school strikes. However, news reports provided specific examples of types of charges that the government has filed against peaceful street protesters—without reference to age—including “instigating protesters to commit crimes” and sedition, defined as “publicly mobilising to prevent implementation of national or provincial laws or resolutions of national or public officials.”<sup>86</sup> Sedition carries with it a penalty of up to four years imprisonment.<sup>87</sup>

## **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?**

The CRC provides multiple protections for children’s right to freedom of expression. Primarily, Article 2 of the CRC affirms that “[p]arties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion,” and that the parties “shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

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84 Advisory Opinion AO-21/14 of 19 August 2014 on the Rights and Guarantees of Children in the Context of Migration and/or in need of International Protection, see: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_21_esp.pdf)

85 Ibid.

86 Human Rights Watch, World Report 2017: Argentina. Available at: <https://www.hrw.org/world-report/2017/country-chapters/argentina#>

87 Arts. 229-30 of the Criminal Code.

Article 13 of the CRC affirms children’s right to freedom of expression, including “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”

Article 19 of Law 26.061 states that “[g]irls, boys and adolescents have the right to freedom,” which includes the right to: “a) Have their own ideas, beliefs or religious worship according to the development of their faculties and with the limitations and guarantees enshrined by the legal system and exercise [this right] under the guidance of their parents, guardians, legal representatives or those responsible for them; b) Express their opinion in the areas of their daily life, especially in the family, the community and the school; c) Express their opinion as users of all public services and, given the limitations of the law, in all judicial and administrative processes that may affect their rights.”

Article 24 of Law 26.061 protects the right of children to be heard, by guaranteeing that they can “[p]articipate and freely express their opinion in matters that concern them and interest them,” and “[t]hat their opinions are taken into account according to their maturity and development.” The article goes on to specify that “[t]his right extends to all areas in which children and adolescents operate; among themselves, at the state, family, community, social, school, scientific, cultural, sports and recreational levels.”

The U.S. State Department 2019 Country Report on Human Rights Practices in Argentina<sup>88</sup> confirmed that “[t]he constitution provides for freedom of speech, including for the press, and the government generally respected this right.” Furthermore, it confirmed generally that “[i]ndependent media were active and expressed a wide variety of views without restriction.”

Without specific mention of children, Article 14 of the Constitution protects freedom of expression. In conjunction with Article 75(23), children would presumably receive this protection too.<sup>89</sup> Additionally, the Penal Code criminalises public intimidation.<sup>90</sup>

Finally, Article 13 of the ACHR protects freedom of thought and expression from restrictions “by indirect methods or means... or by any other means tending to impede the communication and circulation of ideas and opinions.”

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88 United States Department of State, Country Reports on Human Rights Practices: Argentina, 2019. Available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/argentina/>

89 Art. 75(23) states that Congress is empowered “to legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognised by the Constitution and by the international treaties on human rights in force, particularly referring to children (...).”

90 See Arts. 211-212 of the Penal Code.

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

Article 13 of the CRC states that the exercise of the right to freedom of expression “may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

Article 19 of Law 26.061 states that there are limits on the right to freedom of expression in accordance with the current legal system, and that “[t]he deprivation of personal liberty, understood as locating the girl, boy or adolescent in a place where they cannot leave of their own free will, must be carried out in accordance with current regulations.”

More generally, the same restrictions for adults in the Constitution likely also apply to children. The Supreme Court clarified that a restriction may be valid if it “(1) is established by law, in precise terms, (2) has a legitimate aim, and (3) meets the needs of a democratic society and is proportionate.”<sup>91</sup>

## **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 15 of the CRC recognises children’s right to freedom of association. The CRC itself does not elaborate on this point beyond stating that, akin to its protection for the right to freedom of assembly, “[n]o restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Article 23 of Law 26.061 also specifically provides for the right of free association, stating that: “[g]irls, boys and adolescents have the right to associate freely with other people, for social,

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<sup>91</sup> Centro de Estudios en Libertad de Expresión y Acceso a la Información, Tendencias en libertad de expresión en Argentina, March 2018. Available at: [https://www.palermo.edu/cele/pdf/Libertad\\_de\\_expresion\\_en\\_Argentina.pdf](https://www.palermo.edu/cele/pdf/Libertad_de_expresion_en_Argentina.pdf)

cultural, sports, recreational, religious, political, labour or any other purposes, provided they are lawful and in accordance with current legislation. This right includes, especially, the right to: a) Be part of associations, including their governing bodies; b) Promote and establish associations made up exclusively of girls, boys, adolescents or both, in accordance with the law.”

Without specific reference to children, the ACHR also protects the freedom of association in Article 16.

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

Overall, the government does not appear to significantly limit children’s right to association. However, there are a few limitations.

Article 15 of the CRC states that the same restrictions that apply to children’s right to assembly also apply to their right to association.

Article 16 of the ACHR states that freedom of association “shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others,” and that “[t]he provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.”

There is not much public information available about governmental restrictions on the right of association with respect to children specifically. However, incidents of forceful dispersion of protesters provide some evidence of the general status of this right in Argentina. On one hand, the US State Department report noted that “the constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.”<sup>92</sup> On the other hand, “[l]ocal NGOs, including the Center for Legal and Social Studies (CELS), expressed concerns that the Ministry of Security imposed restrictions on the right to peaceful protest and assembly.”<sup>93</sup> For example, “[c]ases remained pending against 20 protesters for violence that occurred during the 2017 demonstrations against pension reform, which injured 160 persons, including 88 police officers.”<sup>94</sup>

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92 Available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/argentina/>

93 Ibid.

94 Ibid.

## 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 17 of the CRC states that “[p]arties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”

There is little public information available regarding the right to access information for children specifically. However, the US State Department report took note that “[t]he government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.”<sup>95</sup> In September 2017, Argentina passed “[t]he Law on the Right of Access to Public Information,” which is broad in “the list of institutions legally bound to respond to requests for access to information: besides the various branches of the state, it includes companies, political parties, trade unions, universities and any private entity to which public funds have been allocated, including public service concessionaires.”<sup>96</sup>

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

Article 17 of the CRC promotes the “development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being (...).” There is insufficient public information available to draw conclusions about the extent to which Argentina implemented this provision.

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95 Ibid.

96 Daniel Gutman, Finally, Argentina Has a Law on Access to Public Information, 28 September 2017. Available at: <http://www.ipsnews.net/2017/09/finally-argentina-law-access-public-information/#:~:text=The%20Law%20on%20the%20Right,29>. See Law 27.275 on the Right of Access to Public Information, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm> Note also Law 25.831 on the Free Access to Public Information about the Environment, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/91548/norma.htm>

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

The government passed a new Federal Law on Education in 2006<sup>97</sup>, which established a Federal Council of Education, “comprised of provincial education ministers, the education minister of the Federal Capital Buenos Aires, and the National education minister,” and gave it the ability to set “broad educational goals for the entire country.”<sup>98</sup> The national curriculum calls for all provinces “to fully implement new curricula in compliance with national guidelines and offer at least the ten main streams set forward by the Federal Education Council by 2019,” which include “Agriculture and Environment” and “Natural Sciences,” among others.<sup>99</sup> Teachers also have access to materials on the environment from state websites.<sup>100</sup> There are variations across the different provinces, but the topic is present in multiple curricula.<sup>101</sup>

It should also be noted that Article 15 of Law 26.061 provides that “[g]irls, boys and adolescents have the right to free public education, attending to their integral development, their preparation for the exercise of citizenship, their training for democratic coexistence and work, respecting their cultural identity and language of origin, their freedom of creation and the maximum development of their individual competences; strengthening the values of solidarity, respect for human rights, tolerance, cultural identity and conservation of the environment.”

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97 Available at: <https://www.argentina.gob.ar/sites/default/files/ley-de-educ-nac-58ac89392ea4c.pdf>

98 Hugo Chavez, Rodrigo Agrelo and Cara Stillings Candal, *Balancing Freedom, Autonomy and Accountability in Education: Volume 3*, 2012 (Charles E. Glenn & Jan De Groof)

99 Carlos Monroy, *Education in Argentina*, 8 May 2018. Available at: <https://wenr.wes.org/2018/05/education-in-argentina>

100 See didactic materials at: <https://www.argentina.gob.ar/educacion/materiales-didacticos>

101 See, for example, *Diseño Curricular: Agro y Ambiente*, available at: [https://www.buenosaires.gob.ar/areas/educacion/recursos/NES-CO-agro-y-ambiente\\_w.pdf](https://www.buenosaires.gob.ar/areas/educacion/recursos/NES-CO-agro-y-ambiente_w.pdf) See also *Diseño Curricular de la Educación Secundaria: Orientación Agro y Ambiente*, available at: <https://www.igualdadycalidadcba.gov.ar/SIPEC-CBA/publicaciones/EducacionSecundaria/LISTO%20PDF/ORIENTACION%20AGRO%20Y%20AMBIENTE.pdf>



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