

Argentina: Claiming the Right to Education with Budget Analysis and Litigation

The Constitution of the City of Buenos Aires states that the government must guarantee and fund a public and free education system that provides equal opportunities for every child older than 45 days. The Constitution also says that budget items allocated to education cannot be reallocated for other purposes.

However between 2002 and 2009 the shortage of early education facilities prevented thousands of children from beginning their education. Demand for education for young children increased but no new early education facilities were added. By 2008 almost 8,000 children were excluded. More than half of the excluded children lived in the city's six poorest districts, and less than 15 percent lived in the six wealthiest districts.

The nongovernmental organization, Civil Association for Equality and Justice (ACIJ), became aware of the problem through its other education work in urban slums. The organization gathered testimonies and evidence, issued a report that included information on budget spending, and produced a film to raise public awareness of the problem. It also prepared a draft bill aimed at resolving some of the problems.

Government did not respond to these actions. Therefore, in 2006 ACIJ filed a class-action suit. ACIJ was founded by lawyers, and therefore had legal expertise and experience in litigation. For the case on early education it used its previous research on budget allocation and spending to strengthen the legal arguments.

ACIJ had two main arguments.

- It argued that children were denied their right to early education because of a shortage of spaces at schools. This violated both the right to early education and the right to equal treatment because the shortage was worse in the poorer parts of the city.
- It argued that the government had been underspending budget allocated to school infrastructure and maintenance. The money was thus available, but not being used to meet the need and fulfill the right.

ACIJ faced the problem that the necessary budget information was not publicly available. The organization therefore used the city's Freedom of Information Act. It requested information about the total number of existing schools offering early education, the number of students who had applied for early schooling between 2001 and 2006, and the number of children placed on waiting lists in each school. It also requested information about all budget allocations to school infrastructure between 2001 and 2005, and detailed spending data on construction and maintenance for these years.

At first the government refused to provide the data, but in 2006 the court forced government to do so. The data provided allowed ACIJ to prove that for five years the city's government had failed to spend the budget allocated for infrastructure, building, and maintenance of early education facilities. ACIJ showed that between 2002 and 2005 an average of 32 percent of the allocated budget had not been spent. ACIJ asked the court to order the government to comply with its constitutional obligations and to design and implement urgent measures to correct the situation.

In its counter-argument, the city government pointed to a number of infrastructure works being done in respect of school facilities. However, it did not try to refute the budget analysis.

In August 2007 the court found in favor of ACIJ. It said that government had failed to guarantee early education. It said that the court could not tell government how to comply with its obligations, but it could (and did) order government to prepare and submit a plan showing how it would do so.

The city government appealed against the court finding. While the High Court was making its decision, ACIJ had discussions with government. These discussions were encouraged by a Ministry official who believed it would be good to reach agreement outside the courts. Also at this time a new Minister of Education took office and the new Minister was more willing to discuss a solution. The High Court encouraged the dialogue.

After seven months of negotiations, ACIJ and government presented a draft agreement to the High Court. The city government agreed to take action to meet all space needs at existing early educational facilities, and to prioritize districts with the highest demand. Government also agreed to a work plan to create new spaces. Deadlines were set for both these aspects. Government also agreed to ensure that adequate budget was allocated to fulfill the promises. In response to ACIJ's request, the High Court organized a public hearing to discuss the agreement. The hearing gathered all relevant actors in the education community and support for the draft agreement was almost unanimous.