

Argentina: Enforcing a Legal Victory for Universal Access to Education

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Full Case Study available at bit.ly/ACIJCaseStudy

In 2006 the Civil Association for Equality and Justice (ACIJ, for its acronym in Spanish) won a landmark class action suit against the government of the City of Buenos Aires for its failure to guarantee the constitutional right to universal access to early education. Yet the legal victory was just the beginning of a long and difficult campaign to ensure enforcement of the court ruling.

Though the government eventually settled the class action suit by signing a binding agreement with specific commitments and a clear timetable, it did not fully comply with its court-mandated responsibilities.

This case study describes how ACIJ has managed its strategy to ensure the government has complied with the agreement. Difficulties in implementation are part and parcel of successful public interest litigation, and ACIJ's experience in this case offers valuable lessons for other civil society organizations (CSOs) that seek to take up litigation in the public interest.

THE ISSUE: A COURT VICTORY, BUT POOR COMPLIANCE

ACIJ was founded in 2002, when Argentina was in the midst of a major economic crisis. Resources were scarce when social needs were highest, putting intense political pressure on budget allocation. ACIJ wanted to help ensure that the marginalization of disadvantaged groups was not exacerbated in this period.

Founded by a group of three young lawyers, ACIJ quickly found a niche strategy based on monitoring the execution of public budgets and employing strategic litigation to uphold social rights. With support from international grants, the group gradually expanded its efforts on issues such as corruption, education, and the rights of the disabled.

According to the Constitution of the City of Buenos Aires (the City), the government has a duty to provide free, secular public education for every child between the ages of 45 days and five years. It also stipulates that budget items assigned to education cannot be reallocated. ACIJ was concerned that the City was not living up to its constitutional obligations.

From 2002 to 2009 a growing shortage of early education facilities prevented thousands of children from beginning their education. Every year demand grew, yet no new early education facilities were added and existing schools struggled with overcrowded classrooms. Between 2002 and 2006 the number of children excluded from early education increased by 37 percent. By 2006, when ACIJ first filed its lawsuit against the city government, 6,047 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 city's six most affluent districts. Using Argentina's Freedom of Information Act to obtain the necessary data, ACIJ demonstrated that the city had consistently underspent its budget for early education facilities from 2002 to 2005. After failed attempts to persuade the government on this issue, ACIJ decided to sue the city into action.

Public interest litigation can be performed either with or without extensive popular support, and with or without the support of the very groups it seeks to represent. ACIJ opted for the latter path in the beginning of the case; it submitted the class action without securing the affected community's support.

From a legal standpoint the results were excellent. ACIJ successfully argued in front of two courts that the underspending of the budget constituted a breach in the government's responsibilities. The lawsuit culminated in an agreement with the Government of Buenos Aires before the city's highest court.¹ In the agreement, the City acknowledged that ACIJ's demands were legitimate and accepted its responsibility for carrying out a sustainable work plan to meet all space needs for early education. That plan included specific deadlines and a commitment to guarantee the required budget resources. The government also accepted other instrumental obligations, such as implementing a digital system to centralize and systematize all information related to the demand for spaces, establishing a working roundtable or committee for information sharing and policy discussion, and appointing a special chairperson in charge of monitoring the execution of the work plan.

¹ The Case Study reports on the lawsuit itself are available here: <http://internationalbudget.org/publications/childrens-right-to-early-education-in-the-city-of-buenos-aires-a-case-study-on-acijs-class-action/>

A court judgment ordering the government to meet the constitutional requirement to provide early education might have left questions about how the government would comply. By contrast, when such lawsuits are settled by means of an agreement, it is reasonable to believe that compliance will follow. Indeed, public-interest litigants have come to believe that a limited but concrete agreement is better than a more ambitious but non-executable judgment. In this case, ACIJ had the best of both scenarios. Motivated by the government's desire to put an end to the controversy after two unfavorable judicial decisions, the final agreement was both ambitious and concrete, including detailed goals on a tight timeline.

In fact, the agreement was so ambitious that even ACIJ members imagined it would be hard for the government to fully comply. These concerns proved well founded as the agreement marked the beginning of a long, hard implementation phase that is the subject of this case study.

THE CAMPAIGN

Among other goals, Buenos Aires was expected to build new schools, expand existing ones, submit a future infrastructure plan, hire new teachers, and include the items required to cover the cost of infrastructure expansion in each year's budget, along with other costs needed to gradually eliminate the long waiting list of young pupils.

The key mechanism for monitoring the implementation of the agreement was a roundtable, or committee, comprised of representatives from ACIJ and relevant government departments such as the Ministry of Education. Meetings were to be held every two months to allow the government to provide information about progress on the agreement's goals and to provide a forum to discuss policy solutions for the obstacles and difficulties that might arise.

But the roundtable never worked like a forum for collaboration as ACIJ expected; instead, interactions quickly became tense and contentious, undermining ACIJ's ability to monitor the agreement. ACIJ contends that government officials refused its information requests at the roundtable and rejected its legitimacy in discussing policy issues. Government officials complained that ACIJ seemed determined to prove noncompliance instead of building a constructive dialogue. The roundtable became dominated by discussions about whether the government had provided timely, accurate, and up-to-date information.

And when the two sides were arguing over the provisions of the agreement, they were debating the meaning of compliance. The government contended that many families do not ask for space

until a new school opens in their area, and that building new schools effectively stokes new demand, creating a moving target. By virtue of this, the legal director for the Ministry of Education suggested that meeting 80 percent of demand would constitute full compliance. ACIJ tried to find a delicate balance in moments such as these, demonstrating they understood the challenges faced by the government while striving to demand the highest possible degree of compliance.

At least two other issues that emerged during this period attest further to the challenge of pursuing a rights agenda within the complexity of implementation. The first relates to the provisional measure of placing children on the waiting list into social development centers, which are located in the city's poorest districts and offer services such as food, care, and emotional support intended to compensate for social deprivations in those areas. But there is much controversy over whether these centers are fit for providing initial education to small children. Some of the centers are frequented by homeless people and adults seeking drug rehabilitation. The centers also have other shortcomings relative to early-education institutions: they tend to have staff with lower levels of pedagogical training and lack recreational facilities appropriate for children. Despite concerns, the ACIJ did not challenge the use of these centers as a provisional measure out of a recognition that for many parents being unable to send children to some form of daycare would complicate their chances to work.

The government's decision to create school spaces through the use of modular classrooms raised a similar challenge. Modules are rooms built with low-cost (and low-quality) materials that can be easily assembled in existing schools or in new locations. The government was enthusiastic about modular classrooms as a faster, cheaper means of achieving its objectives, but the decision elicited criticism from parent associations and the media. ACIJ decided to wait for a third-party expert to deliver a judgment on whether the use of modular classrooms compromised the educational experience of the children. However, the expert's report was never delivered and ACIJ never assumed a strong position on the matter.

Meanwhile, the government was not complying with number of the agreement's requirements, including the commitment to submit its future infrastructure work plan, and the commitment related to adequate and transparent budgeting. In the 2015 budget, for example, there was no specific budget item assigned to educational infrastructure. This was in clear violation of the agreement's stipulations.

After three frustrating years of trying to navigate these complicated issues through the dysfunctional roundtable, ACIJ decided to try a new approach. ACIJ first attempted to bring its

growing concerns directly to the education minister. When he refused to receive them, they went to the press with their grievances. Faced with the potential of critical press, the education minister finally agreed to meet with ACIJ. Following the meeting, the government began to provide better information to ACIJ, but only briefly. ACIJ also attempted to lobby legislators, but to no avail. They decided to address the government's lack of compliance with a more aggressive and multi-faceted advocacy strategy.

First, they requested a series of hearings before the judge who was tasked with monitoring the case. That eventually persuaded the government to submit its future infrastructure work plan in 2014, three years late. They also continued to remind legislators of the government's failure to budget adequately and transparently for the expansion of early-education facilities and services. Simultaneously, ACIJ developed an online petition to pressure legislators. That was when the situation began to change.

In November 2014 Judge Mántaras ordered the government to explain in detail which budget items were directed at complying with the infrastructure work plan in the agreement. Although the City did not respond to that order, during the legislative debate an amendment to the yearly project bill was introduced to increase the budget for education infrastructure by 60 million pesos (a 30 percent increase).

TACTICS USED BY THE CAMPAIGN

- Participating in a roundtable tasked with monitoring the agreement settling a class action lawsuit.
- Lobbying the Minister of Education and using the media to exert pressure on the executive.
- Lobbying the legislative branch with specific demands for ensuring the government's compliance with budgetary commitments to education.
- Using judicial oversight hearings to pressure the government and the legislature into compliance.
- Using online petitions to strengthen advocacy efforts directed at the legislative branch.

CHANGES DUE TO THE CAMPAIGN

Four years after ACIJ's initial court victory, Buenos Aires' early school system accommodates 1,139 more students, the public budget for school infrastructure is no longer underspent, and a new system of online registration has been created. But the government continues to violate several aspects of the agreement, and many thousands of young children remain out of school as they await their place in the City's oversubscribed early educational system.

ACIJ campaigners have also been heartened by the 30 percent increase in the educational infrastructure budget, though it is still difficult to say precisely which factor was decisive in this most recent victory. A year before the increase ACIJ had begun its new three-pronged advocacy strategy of using legislative advocacy, judicial oversight, and the online petition. This, it seems, may have made a difference. But the timing was crucial, coming less than a year before new local and national elections. It is possible that the government could no longer afford to ignore the ACIJ, the courts, and the people of Buenos Aires.

ACIJ hopes to deepen its impact by building upon the success of its new strategy. One idea they are exploring is to work with citizens to make specific requests to the courts with regard to the shortage of spaces on a neighborhood-by-neighborhood basis. This, ACIJ believes, will make it easier to mobilize citizen pressure and raise the political cost to the government for flouting its responsibilities.

OUTCOMES RELATED TO THE CAMPAIGN

- Buenos Aires can now accommodate 1,139 more students in its early education schools.
- The budget for school infrastructure is no longer underspent.
- A new system of online registration has been created.
- The legislator passed a 30 percent increase in the educational infrastructure budget.

CONCLUSION

The ACIJ case illustrates many of the challenges that human rights activities and CSOs face when choosing the path of litigation to achieve public policy reform. It particularly highlights the challenge of the execution phase, and that a range of different advocacy strategies might be

necessary even after a decisive legal victory. The roundtable, conceived as a primary mechanism for enforcing the agreement, did not serve its oversight function. CSOs engaged in public interests litigation need to consider a possible advocacy strategy for long-term engagement beyond the courts.

While public engagement may not be necessary for a legal victory, the case illustrates that it might be for ensuring enforcement. ACIJ is now increasingly looking at how it can better mobilize the public to sustain political pressure for change in Buenos Aires' educational system.

The future of the case, and its lasting impact, is uncertain. But, as ACIJ continues to test new strategies for legal activism and community engagement, recent results provide some reason for optimism.