Litigating the right to education through budget analysis. The case of ACIJ in the City of Buenos Aires

Using Litigation for Budget Advocacy: IBP Online Workshop
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Facts addressed

- Shortage in school openings for initial-level education
  - Thousands of children excluded

- Budget underspending on schools’ infrastructure and maintenance

- Incremental tendency, under different administrations
Why litigation?

• Rights violation due to long-standing deficient public policy

• Political process proven insensitive to the problem
  – No answer to previous advocacy efforts
  – Same attitude from different administrations
  – No protection from actors within the education community
“External” Factors favoring litigation

• Robust legal framework
  – Extensive HHRR provisions at both the National Constitution and the Constitution of the City of Buenos Aires
  – Freedom of Information rules and procedures
  – Class actions

• Independent, activist judiciary

• High consensus over public value at issue
“Internal” factors favoring litigation

• Sophisticated team of lawyers experienced in:
  – Class actions
  – Budget analysis
  – FOI requests and litigation

• Good institutional connections with:
  – the education community
  – the media
Litigation strategy

• Substantive claim
  – State of affairs violated:
    • Right to Education
    • Right to Equal treatment
    • Right to Autonomy

• Procedural claim
  – Rights violations were produced by general, deficient public policy (same cause for multiple violations of individual rights). This state of affairs required collective, not individual solution.
    • Class action as procedural path.

• Evidence drivers:
  – Access to information
    • Requests
    • Litigation
  – Budget analysis
    • Budget allocation analyzed against budget spending
Budget analysis key role in framing arguments for court’s intervention in social rights litigation

- Core argument: rights violations due to budget underspending (Government violated the “maximum available resources” principle under int’l. human rights law)
- Budget allocation decisions were already made by political system (no judicial intrusion)
- Budget underspending was breaching political powers’ decision
- Problem was lack of execution, not a lack of agreement over need to improve school infrastructure
- Not a “political” case; no allocative decision to be made
Complementary strategies / other contributing factors

• Concomitant strategies:
  – Raising awareness
  – Obtaining media coverage
  – Gathering support from stakeholders and experts (amici curiae briefs)

• Other contributing factors?
  – Change in Government
  – Electoral calculations
ACIJ’s main achievements

• Government’s acknowledgement of ACIJ’s “legitimate demand”
  – Recognition of right’s extensive scope
  – Recognition of judicial role in the enforcement of public policies

• Agreed upon ambitious, detailed workplan for rights satisfaction
  – Opening new schools and improving existing ones
  – System for ongoing calculation of new infrastructure needs
  – Inclusion of specific budget items for schools works and explicit ban on reallocation
  – Monitoring mechanisms and duties of production and delivery of information
  – Deadlines
ACIJ’s main achievements

• Improved coordination with the Government and between different Government agencies

• Education policies publicly debated in the language of rights (public hearing before the City’s High Court)

• Budget analysis exposed as a gate to rights’ satisfaction and public policy assessment

• Valuable precedent for social rights litigation
… and what about the execution phase?

• Monitoring strategies are operative
  – Stakeholders roundtable with oversight capacities
  – Judicial monitor (special master)

• … but compliance still an issue

• From confrontation to cooperation… and back to confrontation?
Questions?

Many thanks!

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