



TAKING THE STATE TO COURT:

The Center for Legal and Social Studies Uses Strategic Litigation to Access Public Information and Advance Human Rights in Argentina

The Open Budget Survey 2008, an independent analysis of national budget transparency and accountability in 85 countries, shows that governments around the world withhold a substantial amount of information about how they collect and spend public funds. In many countries governments also provide very little of the information needed to evaluate spending for and outcomes of specific public programs, making it very difficult for individuals and civil society organizations (CSOs) to advocate for better public policies.

Argentina offers a compelling example of how civil society can increase access to the information needed to be effective advocates. Argentina scores 56 out of 100 on the Open Budget Index 2008 (OBI)—a comparative measure of budget transparency based on a subset of questions from the Survey—indicating that the government provides the public with some, albeit incomplete, information on the central government’s budget and financial activities during the course of the budget year.¹ In addition to failing to provide comprehensive and timely information on the national budget, Argentina has weak Freedom of Information laws—there are some local laws that guarantee access to information but there is no such law at the national level—limiting the ability of the public to demand access to information that the government chooses not release.²

The Center for Legal and Social Studies (CELS), a non-governmental human rights organization that sprang from the struggle against state violence in Argentina in the late 1970s, has developed an innovative approach to overcoming this challenge—strategic litigation—using international legal instruments and provisions to demand access to government information by defining that access as a human right. CELS’ work also demonstrates the link between the right to information and the realization of other human rights.

Defining Access to Information as a Human Right

CELS holds that access to information is a right in itself and, therefore, a *de facto* state obligation that should not depend on the existence of a Freedom of Information law. Defining access to information as a right has allowed CELS’ legal team to demand and eventually obtain information from a diverse set of government agencies by taking them to court, as provided for in international legal frameworks that have been signed and ratified by Argentina.³

¹ For more information on the Open Budget Index 2008 and Argentina’s performance, see www.openbudgetindex.org.

² Argentina does not have a Law of Access to Public Information, although there is a presidential decree that guarantees access. However, the decree only applies to the National Executive Government and is not upheld in many instances.

³ CELS sees the right to information as intrinsically linked to economic, social, and cultural rights. It is thus important to underscore that Argentina is one of many countries that are bound to the ESCR convention just by signing. See http://www.escr-net.org/resources_more/resources_more_show.htm?doc_id=425510.

CELS' work expands the widely held definition of human rights and sheds light on a sometimes overlooked aspect of access to information and transparency. That is, governments have an obligation to not only provide information but also to produce information on the quality of policies that affect people's well being and the realization of their rights. "Access to information is a fundamental right recognized in several international legal instruments, which enables citizens to participate in the analysis and formulation of effective public policies that respond to human rights obligations acquired by the state," explains Andrea Pochack, adjunct executive director of CELS. "We understand access to information as part of a *full package of rights*, with the difference that the right to information as a human right entails the protection and fulfillment of other rights."

Linking the right to access government information to other human rights demonstrates the significance of transparency for improving government accountability. CELS' work also shows how civil society can play an active role in improving government transparency, and how this can improve the implementation of public policies.

Linking the Right to Information to Other Human Rights

A recent case demonstrates the impact of CELS' work. According to an investigation by CELS, the grave economic crisis that hit Argentina in the early 2000s led to a substantial increase in cases of child malnutrition and child mortality throughout the country, including in the capital city of Buenos Aires. The local government in Buenos Aires rejected CELS' findings, claiming that "there were no reported cases of malnutrition."

To prove their case against the government and ensure the protection of the rights of children and their families, CELS and other social organizations demanded malnutrition statistics from several local government offices, such as the local Ministry of Health, municipal hospitals, and other health-related establishments. In most cases, the request for information was denied, or only partial documentation on malnutrition cases was provided. This led CELS to take legal action against the local Ministry of Health, based on a violation of the local Access to Information law (Law 104).

When confronted with legal action, the local Ministry of Health acknowledged the existence of a Nutritional Vigilance Program but argued that as it was still in the implementation phase it had not yet produced any data. The ministry also admitted that in 2002 it had ordered a survey on the incidence of malnutrition, which had found "an increased prevalence of low weight amongst children," and accepted that their data was outdated and incomplete.⁴ The court reprimanded the ministry for failing to provide CELS the information it had requested. As a result of the litigation, the ministry recognized that its failure to produce adequate information compromised its ability to develop an effective strategy to fulfill the rights to food and health of the city's children.

This case provides two critical lessons. First, it shows how CSOs can use existing Freedom of Information laws, in this case at the local level, to get the information they need to be effective advocates. Second, and most important, the case underscores the role of access to information as a guarantor of other human rights.

⁴ Centro de Estudios Legales y Sociales (CELS), "*La Lucha por el Derecho*", (Editorial Siglo XXI, Argentina: 2008), p.61.

Establishing Legal Precedents

An earlier case demonstrates CELS' success in establishing legal precedents around access to information and making effective use of international covenants. In 1996, as part of its Institutional Violence and Citizen Security Program, CELS requested information from the federal police on the number of policemen killed or injured on duty between 1989 and 1995, as well as statistics on detentions made in 1995, especially those related to identity verification. For months the police department ignored the request.

The police department's silence translated in legal terms into a tacit denial of information on behalf of the Ministry of Interior Affairs, which manages the police. CELS took the police department to court, arguing that its lack of response was a violation of the public's right to search for and obtain information contained in the government's archives and public documents, as well as a violation of the principle of transparency and accountability.⁵ Further, CELS argued that the denial of the central object in dispute—information—also limited the right to investigate the political actions of the State, which demands of them an obligation to collaborate as the solicited information represents an issue of social interest.”⁶

One year later the Court of Administrative and Contentious Affairs ruled in favor of CELS. The court compelled the police department to provide the requested information, arguing that “civil society groups like CELS had active legitimacy to act against the state and demand the right of access to information as their goal was to obtain information relevant not only to their research but to issues pertaining to human rights and dignity.”⁷

This ruling set at least two important legal precedents in terms of access to information in Argentina. First, it affirmed the existence of a right to public information based on the principle of equity, by which citizens and civil society organizations are entitled to access public information for “purposes of public interest.” Second, the decision confirmed that litigation was an appropriate and effective means to obtain government-related information in the absence of adequate Freedom of Information laws. More generally, this case illustrates the value of using international covenants in cases where there is no domestic equivalent.

The ability of the public to access comprehensive, timely, and useful information on government budgets, policies, and programs is a critical factor in holding governments accountable and strengthening public policies. In the context of public budgets, transparency can have profound implications for successful poverty reduction efforts—by ensuring that scarce resources are spent effectively and efficiently.

CELS' innovative approach provides an excellent example of how defining access information as a human right can be used to overcome such barriers as the lack of Freedom of Information laws and to increase communication between citizens and governments. CELS' work expands our understanding of rights and sheds light on a sometimes overlooked aspect of access to information and transparency—its importance to the realization of other rights.

⁵ CELS: 2008, p.57.

⁶ *Ibid*, p.57-58.

⁷ *Op cit*.

The elaboration of this case study is based on documents provided to the IBP by CELS, in particular “La Lucha por el Derecho” as well as on interviews with CELS’ staff members Andrea Pochak, adjunct executive director of CELS; Diego Morales, director of the Program for Litigation and Legal Defense; and Pilar Arcidiacono, director of the Program on Economic, Social and Cultural Rights. We greatly appreciate their disposition and time in helping us elaborate this piece.

For more information on CELS go to www.cels.org.ar.