

Helpdesk Research Report: Poor people's rights and successful legal actions

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Query: Please provide case studies of how poor people, or civil society acting on their behalf, have successfully claimed their human rights through legal mechanisms. The case studies should describe the legal actions successfully taken on a rights issue (as used in combination with other types of social mobilisation), and the short- and long-term impact these actions have had for poor people on the issue considered. Cases should focus on hard law mechanisms. If possible, the cases should cover a range of human rights and a broad geographical scope, with cases on sub-Saharan Africa and Asia focused on human rights claims at the national level.

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1. Overview

Landmark rulings by South Africa's Constitutional Court in favour of poor people's social and economic rights since the 1990s have drawn widespread attention to the law as a tool for realising poor people's rights and tackling the underlying systemic problems in a way that empowers individuals and communities. But while there has been broad support for using the law to implement poor people's rights, there have also been debates and doubts about the actual impact of such practices, even when they obtain a positive ruling from a court. This is important especially given the heavy investment of funds, time and skills legal action can require.

This report focuses on hard law, national level legal mechanisms¹, and economic, social and cultural rights in relation to poverty. The best-documented cases that emerged from the academic literature are about South Africa, India, Brazil, Argentina and Colombia, but two well-documented South African cases were excluded from this report as they were already well-known to the requester. The three cases documented here were selected based on the availability of strong literature, and on diversity with regard to the human rights and legal systems covered.

Section 2 of the report will present a general overview of the literature on poor people's rights claims. The following sections present the three cases studied: the right to food in India, the right to health in Brazil, and sexual and reproductive rights in Mexico.

2. General literature on poor people's rights claims

There is a very large body of literature about poor people's rights claims through legal and non-legal means in the South. For the purpose of this report, a segment of this literature was reviewed in relation to rights claims for the poor that use hard law (often cited references on this topic include: Banik, 2008; Gargarella et al., 2006; Gauri & Brinks, 2008; UNESCO, 2011). When thinking about this issue, an important point to keep in mind is that framing situations as rights issues and then choosing to use legal means to pursue action are both steps that are not automatic in many societies, especially for the poor. In particular, in the South, access to and use of formal legal systems may be difficult, risky, costly, irrelevant or ineffective, and therefore not a path poor people wish to take. When it is taken, legal success is far from guaranteed for poor people trying to have courts uphold their rights. Indeed, the broader literature emphasises that the language, tools, institutions and actors of law can, depending on the context and power dynamics, be empowering or disempowering for the poor. Besides, legal mechanisms include not only hard law (such as courts), but also soft law (such as parliamentary oversight, administrative and independent bodies such as ombudspersons), as well as informal and non-State justice systems.

As a result, even when problems are framed as rights issues, a great variety of approaches to claims may be adopted, from non-legal to legal means. Indeed, tactics that use law are often employed either in combination with other actions such as social mobilisation, or through third parties making claims on behalf of poor people. Moreover, broader social changes may affect the trajectory of legal actions for poor people's rights at all stages. For that reason, it is difficult to identify what has made a legal action for poor people's rights succeed in courts and have an impact: when many actions were carried out in a campaign, untangling which action led specifically to what outcome is challenging. In addition, it may be difficult to identify precisely what success in a legal action means, beyond the immediate winning of a case (Gloppen, 2008, 24). Similarly, impact can mean very different things to practitioners and academics – for example, there is a difference between wanting to have quantitative data about whether a litigation led to a decrease in the number of persons who do not have food, and wanting to understand through ethnography how participating in a litigation affects the self-definition of individuals and social movements, and yet both questions relate to impact. Some authors have offered frameworks to analyse the causalities and impact at play under these complex conditions (e.g. Gloppen, 2008; Gauri & Gloppen, 2012).

Even when such complexity is taken into account and operationalised, there remain debates about the findings and conclusions. Based on the broader literature researched in preparation of this report,

¹ There are also many case studies on litigation for poor people's rights in regional human rights court, in Africa, the Americas and Europe, and its impact.

there appears to be no consensus, but rather fierce debates, among academics, practitioners and policymakers about whether successful legal action for poor people's rights makes a significant difference, or whether energy and money should be better spent elsewhere (see for example the exchanges on the value and impact of health rights litigation between Schrecker et al., 2010; Reubi, 2011; Schrecker et al., 2011). Indeed, authors provide solid documentation supporting opposite conclusions about the question (see for instance Brinks D. M. & Gauri, 2012; Hirschl & Rosevear, 2012). Nonetheless, emerging from such exchanges, specific case studies or comparative works have started to provide ground well-established findings, if not interpretations (for an example of synthesis and lessons learnt, Langford, 2009).

Finally, one element that strongly emerges from the literature is the value of comparative studies, across types of rights, across countries and across legal forms (even within 'hard law' mechanisms, there are great legal and institutional variations among countries, with different legal traditions and different historical, political, social and economic backgrounds). For example, the cases most studied regard countries where courts are already quite well institutionalised – so there is a bias in the availability of literature, connected in good part with the major differences in judicial strength. Not only are there gaps in the literature and differences among judicial institutionalisation; there are also differences in the use of litigation (for example, in the brief research conducted for this report, there was little evidence of any rights litigation in some countries – often, the same countries that have a weakly institutionalised judiciary).

3. The right to food - India

Actions taken

Significant parts of the Indian population have lacked food security and nutrition, and the problem of hunger has a long history in the country. In addition, the food and nutrition programmes put into place by public authorities have not always ensured that the poorest benefit (Haddad et al., 2012). Against this backdrop, 'a combination of civic and judicial activism' for the realisation of the right to food has developed over the past ten years and achieved remarkable success with Indian courts, including the Supreme Court (Haddad et al., 2012, 2). Those sustained actions of litigation and follow-up on implementation and compliance have been part of larger campaigns for this right, known as the right to food campaign.

One pioneering case opened the doors to subsequent litigation and engagement with judicial follow-up of enforcement: 'In April 2001, the Rajasthan unit of the People's Union of Civil Liberties (PUCL) filed a writ petition in the Supreme Court of India demanding that the large stocks of food grains in government godowns be used to feed people impoverished by extended drought in the state.' (Hassan, 2011, 1) The initial PUCL writ petition cited 'endemic malnourishment, widespread starvation, and frequent hunger deaths'. It 'critiqued the Public Distribution System, the paucity of drought relief works, non-implementation of food welfare schemes, and demanded food-aid and employment for drought-affected households' (Hassan, 2011, 3). The core legal basis for this claim and later ones has been the Indian Constitution, particularly article 21 on the right to life and article 47 on the State duty to improve nutrition and the standard of living for the people.

The impact of the legal action

In the landmark PUCL case, the Supreme Court 'ruled that it was the duty of the government to ensure no one went hungry. That ruling has been followed up by the Court issuing a series of interim orders, defining rights and entitlements over food and related services, all keeping the poorest as their focus.' (Hassan, 2011, 1) When public authorities stated they were already doing what was needed, the PUCL and the Right to Food Campaign (a civil society network of organisations that includes non-governmental organisations, trade unions and grassroots movements across India) presented information to establish the 'flaws and gaps in the coverage and implementation of these programmes' (Mander, 2012, 17-18). A series of lawsuits and engagement with court-supervised enforcement of the rulings have since 'helped elaborate an important socioeconomic right, and progressively made segments of it judiciable' (Haddad et al., 2012, 2).

In the process, the Supreme Court established the right to food, and specified and monitored the means through which the State is to deliver on its obligations. As Mander points out, the Supreme Court took four steps in the past ten years to move toward implementation of the right to food (cited in Haddad et al., 2012, 2):

1. The Court turned eight food, livelihood and social security programmes into entitlements (Mander cited in Haddad et al., 2012, 2), paving the way for an enforceable right to food (Mander, 2012, 18).
2. The Court appointed Special Commissioners to independently monitor the implementation of its orders, identify gaps and make suggestions (Mander cited in Haddad et al., 2012, 2; Hassan, 2011, 1; Mander, 2012, 18). Commissioners have linked up to national, state and local resources and alliances, particularly the Right to Food Campaign, to enhance the breadth and depth of their reporting (Hassan, 2011, 4-5).
3. The Court expanded 'the content and modes of implementation of the various schemes which it had converted into entitlements'. For instance, the Court mandated high-quality school meals to be served in public primary schools, and ordered that preference be given to Dalit cooks in order to teach about equality. In several cases relating to the implementation of the schemes, Court decisions were informed by and the result of political struggles against public and private interests which had wanted to use the Court-mandated orientations for their own purposes. In the course of these struggles, pro-poor coalitions formed and grew. (Mander, 2012, 18)
4. Finally, the Court ordered many of schemes to be universalised within defined timeframes, leading to many-fold expansion of the programmes. The Court refused to restrict enforcement on account of 'fiscal feasibility': it accepted 'no caveats' on either revenue sources or actual resources raised (Mander, 2012, 19).

In its responses, the Court addressed State obligations and provisions for specific population groups. This is a very important aspect given how inequalities and identity-based discrimination are linked to the violation of the right to food, notably with regard to socioeconomic class, caste and *Adivasi* groups, childhood and old age, and gender (Haddad et al., 2012, 3; Mander, 2012, 19-20).

According to Hassan, 'the policy environment the Court's rulings have facilitated, and the civil society mobilisation they spawned, helped create the conditions to push the central government to introduce a range of social protection programmes – including provision of subsidised food-grain for the needy; feeding schemes for the destitute; school feeding programmes; mother and child nutrition programmes; and programmes guaranteeing employment to all those in rural areas who wanted work.' (Hassan, 2011, 1) Furthermore, as a result of the cumulative case law and court orders, and of

sustained social mobilisation, the federal government is now preparing a National Food Security Bill (Haddad et al., 2012, 2). The precedents set by the Court have been transformative in terms of 'voice' for poor people and for social actors mobilising on the issue (Haddad et al., 2012, 3) and the Court has also taken up cases relating to other human rights, for example on the right to shelter (Mander, 2012, 19). Mander (2012, 19) states that the Supreme Court's orders 'have improved significantly the food security of literally millions of people living with hunger.'

However, empirical data on the impact of the right to food cases on the ability of the poor to actually enjoy or demand their right suggests that results are mixed' (Hassan, 2011, 6). Limitations and problems in terms of impact have included the following.

- The Commissioners' limited authority and resources to enforce interim orders with non-complying states. This particularly affects the poorest and most discriminated groups who suffer from hunger (Hassan, 2011, 6-11).
- The very limited accountability that the PUCL case or the Commissioners could build: in the end, the Supreme Court, Commissioners, their advisors and the Right to Food campaign networks cannot ensure that governments are held fully accountable and that individuals' rights are not violated (Hassan, 2011, 6). Indeed, authors like Saxena emphasise that effective enforcement of court rulings for the poor will depend not just on laws, but also on actual practices in government food and nutrition policies and programmes: agricultural development, Targeted Public Distribution System (TPDS), Integrated Child Development Services (ICDS) and the Mid Day Meal (MDM) Scheme (cited in Haddad et al., 2012, 2).
- Legislative and judicial gains risk being undermined by 'stresses and strains' such as food price rises, food price volatility and climate change (cited in Haddad et al., 2012, 5). Those challenges need to be integrated into State responses for the achievements made to be sustained.
- Dominant media representations of the legal activism for the right to food are lacking or poor, in part due to activists' lack of adaptation to how media operates in picking up and reporting stories (Guha Thakurta and Chaturvedi cited in Haddad et al., 2012, 4-5).

Successful legal action on the right to food in India over the past ten years has not put an end to hunger in the country and there are still major shortcomings in laws, policies and programmes in terms of realising this right for all. Nonetheless, litigation, backed up by a sustained campaign at federal and State levels, appears to have created significant results in several major areas – legal, political and social – and produced conditions and dynamics favourable to continued engagement and campaigning that combine legal and social means to realise the right to food.

4. The right to health - Brazil

The actions taken

Since the 1990s, many HIV-infected Brazilians have received treatment 'due to court orders and not through federal, state, or municipal government programs, which are very large but not fully comprehensive due to resource limitations.' This model for accessing drugs has gradually extended to the treatment of many other diseases. There are now at least 40,000 lawsuits yearly against the Brazilian government in which plaintiffs very successfully claim access to drugs based on the right to health. (Ferraz, 2011, 1651-1652)

For over ten years, the Brazilian judiciary, led by its Supreme Federal Tribunal, has consistently adopted an 'assertive stance' in the adjudication of health rights cases, addressing the content of these rights and issuing mandatory injunctions 'to compel the state to immediately provide the corresponding goods and services to litigants'. (Ferraz, 2011, 1645) Hoffmann and Bentes characterise litigation in Brazil on health rights as follows: Brazil 'has experienced exponential growth in the rate of litigation over health rights [...]. Most of the demands are individual demands, for specific health-care-related goods and services and are concentrated in the more developed states, such as Rio de Janeiro and Rio Grande do Sul. The courts have been very open to these individual claims and much less willing to accept collective claims'. As a result, the prosecutor's office has come to increasingly 'rely on negotiation under the threat of litigation to shape and motivate policy development.' (Hoffmann & Bentes, 2008, 101)

For NGOs focusing on HIV/AIDS, which primarily represent poor claimants, litigation strategies have focused 'on the federal level closest to the locality of the plaintiff as well as the one with which the best relations are enjoyed.' Individual actions are perceived as a far most successful venue, as public class actions 'receive much higher judicial scrutiny, are less likely to be successful, and may even risk a backlash from a judiciary otherwise sympathetic to individual actions.' NGOs often 'have a semi-institutionalized relationship' with the Prosecutor's Office, including information sharing and mutual 'litigation encouragement' (Hoffmann & Bentes, 2008, 114-115).

The courts tend to decide health rights cases on the basis of the right to life or, less frequently, the right to health, as well as the guarantee of personal dignity in the Constitution. Courts have also founded their decisions on a range of complementary arguments. This includes stating that fundamental rights, human dignity and 'humane democracy' 'prevail over administrative or budgetary norms, that certain fundamental social'. Courts have upheld that fundamental social rights are justiciable in ordinary tribunals, and their realisation through legal action not in infringement upon the separation of powers. (Hoffmann & Bentes, 2008, 120)

However, while constitutional, judicial and legal conditions make litigation on health as a social right possible, the scope and reach of litigation are channelled and constrained by formal, institutional and cultural factors (Hoffmann & Bentes, 2008, 101-109). Health policy involves 'a complex, intricate network of entities, spanning all three levels of government' and 'frequently suffers from mismanagement and inefficiency' so that patients have difficulty navigating the bureaucracy and claiming their rights (Hoffmann & Bentes, 2008, 109). Weaknesses in some legal venues have concentrated legal action into the State and Federal Prosecutor's Office, which has discretion in decisions to take up cases, and in practice, this Office tends not to take up cases that involve poor persons but rather middle class claimants. There is also considerable variation from one Office to another in terms of which types of cases are accepted. There is also a scarcity of public or private providers of access to justice supporting poor plaintiffs (Hoffmann & Bentes, 2008, 111-115; da Silva & Terrazas, 2011). 'The mere existence of a legal framework, or, conversely, the inadequacy of basic services, is not enough to bring about a social rights–litigation revolution.' (Hoffmann & Bentes, 2008, 111)

By contrast, pharmaceutical companies 'have been able to push litigation for medicines in their portfolio via their ordinary relationship with physicians who prescribe their products or confirm such prescriptions as expert witnesses, as well as via induced media coverage' (Hoffmann & Bentes, 2008, 114-115). Even some NGOs litigating for health rights have partnered with such companies (Hoffmann & Bentes, 2008, 114-115).

The impact of the legal action

The greatest successes for health rights litigation are in Brazil's 'highly influential and highly successful HIV/AIDS policy mobilization'. NGOs have 'assumed the double roles of social service providers and interest groups, with legal action frequently representing a point of convergence between the two'. But NGOs working specifically on this issue have been isolated and no major other NGO actors on health rights have consistently and sustainably followed onto that path. (Hoffmann & Bentes, 2008, 114-115)

The impact of HIV/AIDS litigation has mostly been on policy administration, rather than on policy creation. In policy administration or implementation, the pioneering cases show that litigation can work 'as a signaling mechanism for demand in new medicines, and, hence, for the expansion of an existing public policy. Once a certain litigation density has been reached, public authorities tend to seek cover' by including the medicine among the approved ones. Later on, once a medicine had been approved, litigation has served 'as a corrective for negligence on the part of public authorities' in the distribution. The flip side is that public authorities would sometimes wait for judicial mandates before acting on implementation. (Hoffmann & Bentes, 2008, 134-136)

Beyond the successful cases on HIV/AIDS medicine, the impact of health rights litigation in Brazil is difficult to ascertain and contested. Legal action has made a difference to some plaintiffs, but 'there is a considerable compliance problem. One reason is the formalistic style of rights-conceding decisions, which, by and large, do not contain specific implementation instructions to the public authority in question.' Even when a lawsuit is successful, such rulings leave it up to the plaintiff to seek enforcement, but enforcement actions often have no effect or are not implemented at all. The 'attrition' poor people then face from health institutions often ends up with them not receiving medicine the court ruling granted them. As a result, 'enforcement action frequently takes an informal route by, for example, personalizing their case vis-à-vis the public authority in question.' In addition, 'the fact that the judiciary is, increasingly, an intermediary in the provision of basic health and education services in itself conditions the conduct of public authorities and improves their compliance record'. Yet, the judiciary does not function 'as a straightforward distribution mechanism generating an output symmetric to its input.' Likewise, there are some indirect effects internal to the legal system in that threatened and settled litigation have happened. But since those mechanisms do not set any public precedent, the general impact for the right to health of the poor is limited. Another phenomenon that has developed is 'queue-jumping': there has been a 'massive concession of preliminary injunctions granting medicines or treatment on pain of heavy daily fines for noncompliance'. This impacts vulnerable groups negatively and mostly benefits middle class claimants. (Hoffmann & Bentes, 2008, 133-136)

Litigation on health rights in Brazil has also contributed to greater and wider rights awareness among the population. There is also 'a slow but perceptible change in the attitudes and practices of public administrators, more oriented toward preventing litigation in the first place by generating effective outputs.' (Hoffmann & Bentes, 2008, 141) Specifically the following have been identified.

- Successful individual action for access to medicines and treatment, both by middle class and poor plaintiffs, have greater numerical importance and success rates (though middle class plaintiffs have better chances of obtaining compliance); this model, therefore, has the largest financial and potentially policy-changing impact.
- The HIV/AIDS drugs model, in which individual legal actions brought by a social movement 'acts as a semi-institutionalized feedback mechanism' on drug inclusion. It is highly

successful, with winning rulings but also generally no compliance problems, because of the special nature of the Brazilian HIV/AIDS programme.

- The emerging negotiated settlement model effectively introduces general solutions 'through the back door and, being joint judicial-executive action, has the greatest direct and immediate impact on policy formation'. (Hoffmann & Bentes, 2008, 144)

However, 'state-funded legal services are problematic for many underprivileged communities, especially in Bahia, or in rural areas. NGOs have, by and large, not undertaken direct public class action litigation, except in the area of HIV/AIDS and on behalf of a few other rather narrowly drawn categories of medical patients. Much of the slack is taken up by the Ministério Público, which does not, however, have a clear mechanism for public input or accountability. Middle class groups, however, have ready access to legal professionals to pursue individual claims.' (Hoffmann & Bentes, 2008, 115). In addition, poor plaintiffs are much less in control of the process and 'usually have to wait considerably longer for a positive outcome' than middle class claimants (Hoffmann & Bentes, 2008, 142).

Indeed, Ferraz points to qualitative and quantitative evidence of the lack of redistributive effects of health rights litigation and to the systemic bias toward granting rights to middle and upper class plaintiffs to the budgetary detriment of the poor. He therefore argues 'against social rights justiciability as a potential vehicle for protecting the rights of the poor in highly unequal and inegalitarian countries', even if courts were genuinely willing to help the poor (Ferraz, 2011, 1647, 1660-1662).

Ferraz contends that empirical data shows health rights litigation has not benefitted the poor. He argues this stems from four interrelated problems (Ferraz, 2011, 1646, 1663-1667).

1. 'When pushed to enforce some social rights assertively, courts have a tendency (and an incentive) to misinterpret these rights in an absolutist and individualistic manner'.
2. This in turn favours litigants ('often a privileged minority') over the rest of the population.
3. With limited state resources, 'litigation is likely to produce reallocation from comprehensive programs aimed at the general population to these privileged litigating minorities'
4. In countries 'with intermediate levels of economic development and, importantly, with a historically high degree of economic and social inequality', courts mandating structural and massive redistribution to fulfil basic rights for all would find moral nor political consensus and render any such court rulings meaningless (Ferraz, 2011, 1663-1667).

The case study of São Paulo conducted by da Silva and Terrazas (2011) presents detailed evidence on this problem. The authors show that the fair treatment of poor and privileged litigants and successful litigation by poor people for medications in themselves do not mean the litigation outcomes benefit the less privileged. Instead, the outcomes benefit those who have better access to information, including better access to health, education, and legal services. Moreover, courts are largely 'not an institutional voice for the poor'. The justiciability of social rights 'has fallen short as means of rendering certain public services more democratic and accessible. On the contrary, the benefits of such justiciability are mostly enjoyed by those whose interests are already at least partially considered in the political process and who simply use the judiciary as an additional forum to better protect these interests' (da Silva & Terrazas, 2011, 848-849).

Finally, there is a risk of backlash. The pioneer cases on access to HIV/AIDS drugs, with the first action brought in 1996, have been followed by a massive number of cases on access to medicines, which 'have become a real concern for public authorities, not least as the claimed medicines now range from diapers to Viagra and include many high-cost items for rare diseases' (Hoffmann &

Bentes, 2008, 122). Indeed, 'the political system is beginning to respond to this increasing judicial input. Discontent with the growing budgetary impact of health rights litigation, as well as the de facto judicial administration of a number of health and education policies has been mounting among executive agencies on all federal levels for some time. This has crystallized into some initial steps aimed at curbing litigation and its effects.' (Hoffmann & Bentes, 2008, 136-137)

Hoffmann and Bentes conclude that litigation is having a strong impact, but 'with mixed consequences for democracy and distributive justice' (Hoffmann & Bentes, 2008, 101).

5. Sexual and reproductive rights – Mexico

The actions taken

Mexico City has witnessed a dramatic change in its abortion laws between the late 1990s and the late 2000s. Where Mexico City used to have the most restrictive abortion legislation of all Mexican states, it now allows abortion on request during the first 12 weeks of pregnancy and mandates free health services in public city hospitals. Where previous legislation was phrased in the rhetoric of honour and public morality, the new one is framed in 'the language of sexual and reproductive rights, education, equality, dignity, and autonomy' (Madrazo, 2009, 266). There had been mobilisations for reproductive rights for several decades in Mexico, and in the most recent phase those campaigns included successful litigation (Sanchez Fuentes & Elliott-Buettner, 2008, 347) and two key Supreme Court cases.

In 2000, a reform law known as the *Ley Robles* expanded exceptions to a criminal law prohibition of induced abortion, increasing the number of socially accepted reasons why a woman should be allowed to terminate a pregnancy. The law was challenged on grounds related to the fetal constitutional right to life, but the Court ruled in 2002 in favour of the constitutionality of the law, deeming that the reform did not authorise the taking of life, but merely authorised that 'once the criminal act takes place no sanction be applied'. (Madrazo, 2009, 266-267)

In 2007, Mexico City's Legislative Assembly passed a law allowing for a broader right to access abortion without criminal penalties (Madrazo, 2009, 266-267). Within a month, the reforms were challenged by the President of Mexico's National Human Rights Commission (CNDH) and the Attorney General of the Federal Government. The President of the CNDH acted on his own authority, and half the members of the CNDH disagreed openly with the claim of unconstitutionality when they appeared before the Supreme Court. The legal challenge was again based on the view that the reforms violated the foetus's right to life, and in 2008, the Supreme Court ruled the reforms constitutional, this time finding no constitutional grounds to claim that a foetus has a right to life and 'no constitutional obligation to protect the foetus specifically through criminal law'. In its commentary, the Court described the decriminalisation of abortion as 'ideal' for safeguarding women's rights. It also indicated that, 'even if the protection of the fetus was pursued, criminalization did not ensure the proper development of gestation given the social context, and that it did, in fact, perpetuate discrimination against women' (Madrazo, 2009, 269).

In both cases, coalitions of actors supporting reproductive and women's rights participated in the legal conflicts. For example, Mexican NGO GIRE (Information Group on Reproductive Choice, a non-profit NGO established in 1992) worked on coordinating *amicus curae* briefs from national NGOs, as well as international groups such as Catholics for Choice, the Centre for Reproductive Rights, Engender

Health, the Guttmacher Institute and Women's Link Worldwide, among others (Sanchez Fuentes & Elliott-Buettner, 2008, 357). The movements for reproductive rights drew on 'the existence of an active, well-informed, and influential critical mass of women's rights activists' and were strategic in timing their reform pushes for after elections, when pressure on politicians was lower. In 2007, campaigners took advantage of the fact that Mexico City was then ruled by 'a broad and stable left-wing and liberal legislative coalition led by the majority party, which allowed for the marginalization of the right-wing party's position' (Madrazo, 2009, 269).

The impact of the legal action

The immediate result was to decriminalise abortion during the first trimester. Closely associated with this development, robust legislation was developed 'enhancing family planning, respect for sexual and reproductive rights and prevention of unwanted pregnancies'. In addition, Mexico City's Ministry of Health implemented a 'widely accessible program of abortion on request'. Madrazo considers such a provision of safe, accessible abortion for a population of the size of Mexico City a noteworthy development in public health, given the volume and impact of such a programme 'in a diverse, politically plural society'. He observes that 'the daunting task of reorienting a health system, and mobilizing so many human, material, and economic resources so quickly, has met with seemingly surprising success' (Madrazo, 2009, 269).

Consistent patterns in the decade-long trajectory include 'the gradual and constant exclusion of public morality from the language and thrust of the law'; the emergence of women's consent as a determinant factor to be taken into account by the law; and sexual and reproductive health and rights becoming the core consideration in criminal and administrative abortion laws (Madrazo, 2009, 269). Public acceptance of abortion rights has broadened and taken hold across a broad range of social groups in Mexico City, as demonstrated by opinion surveys in 2007, 2008 and 2009 (Wilson et al., 2011).

Beyond Mexico City, however, there has been a backlash against abortion rights in most other Mexican States. After the 2008 Supreme Court ruling, initiatives were introduced in several state congresses to restrict or forbid abortion (Madrazo, 2009, 269) and by 2010, 17 of Mexico's 32 states had introduced such Constitutional reforms. Feminist groups 'have tried to have the constitutional amendments overturned by the Supreme Court', without success by 2010 – appeals had been unsuccessful or still pending (Mills, 2010, 433). Indeed, Mills argues that decentralisation is paradoxically what enabled both the passing of the law in Mexico City and the backlash in the rest of the country (Mills, 2010, 433).

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Case studies

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7. Additional information

Key websites

Center for Economic and Social Rights - National Enforcement - Legal Enforcement
<http://cesr.org/section.php?id=191>

Governance and Social Development Resource Centre
Crichton, J. (2012). Human Rights. Topic Guide. GSDRC. Retrieved on 11 February 2013 from <http://www.gsdrc.org/go/topic-guides/human-rights>

Crichton, J., Scott, Z., Haider, H. (2012). Justice. Topic Guide. GSDRC. Retrieved on 11 February 2013 from <http://www.gsdrc.org/go/topic-guides/justice>

Interights – The International Centre for the Legal Protection of Human Rights
<http://www.interights.org/home/index.html>

International Network for Economic, Social and Cultural Rights
<http://www.escr-net.org/index.php>
Adjudication of Economic, Social and Cultural Rights
<http://www.escr-net.org/docs/i/465879>

Namati – Innovations in Legal Empowerment
<http://www.namati.org/>

OHCHR. Special Rapporteur on extreme poverty and human rights
<http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>

Open Society Justice Initiative
<http://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative>

Stephen Golub – Legal Empowerment and International Development – Resources
<http://www.stephengolub.org/other-resources.html>

UNDP – Democratic Governance – Focus Areas (incl. Initiative on Legal Empowerment of the Poor; Rule of Law & Access to Justice; Human Rights)
http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas.html

World Bank - Justice for the Poor (J4P)

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTJUSFORPOOR/0,,menuPK:3282947~pagePK:149018~piPK:149093~theSitePK:3282787,00.html>

Experts consulted

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Stephen Golub, international development scholar and consultant

Prof. Malcolm Langford, University of Oslo (and Co-Coordinator for the Adjudication of Economic, Social and Cultural Rights at the International Network for Economic, Social and Cultural Rights)

Prof. Rachel Murray, Professor of International Human Rights, University of Bristol Law School

Melissa Upreti, Regional Director for Asia, Center for Reproductive Rights

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