



Through ground-breaking rulings, judges in Latin America are driving social change by ordering governments to restore and enforce human rights.

## JUDICIAL REVIEWS: AN INNOVATIVE MECHANISM TO ENFORCE HUMAN RIGHTS IN LATIN AMERICA

### SUMMARY

Due to persistent and systematic human rights violations, lawsuits have increasingly been brought before various Latin American courts. In some cases, courts have made pioneering rulings ordering governments to allocate budget resources and implement specific public policies aimed at enforcing and protecting human rights. This Brief focuses on three successful cases from Argentina, Colombia, and Mexico, where the judiciary made innovative rulings to restore and enforce the right to education, to an adequate policy for internally displaced people and to health, respectively. In particular, this Brief highlights the way that judicial reviews are transforming processes of justice in Latin America, including the role of judges as agents of social change and the importance of organised coalitions in providing legal support to victims. Since judicial reviews have evolved considerably in Latin America over recent years, human rights practitioners from other regions will likely benefit from learning about the particular characteristics of this phenomenon in Latin America.



### THE POTENTIAL OF JUDICIAL REVIEW FOR THE ENFORCEMENT OF HUMAN RIGHTS

Over recent decades, there has been enormous progress regarding the formal acknowledgement of human rights worldwide. Given that “all States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties”,<sup>1</sup> this creates legal obligations for them to respect, protect and enforce these rights. In addition, states have also made efforts to harmonise their domestic legal frameworks with international human rights standards.

Despite the formal recognition of human rights in constitutions and regional treaties, human rights violations persist. Latin America is no stranger to this challenge. In 2011, for example, nearly 29% of the population in Latin America (167 million people) were living in poverty<sup>2</sup> and deprived from enjoying basic economic, social and cultural rights. High levels of violence in countries such as Venezuela, El Salvador, Guatemala and Mexico, among others,<sup>3</sup> affects the

### KEY LESSONS LEARNED

Judicial rulings can provide an effective tool for enforcing and restoring human rights, particularly if they clearly specify the actions that the state should implement and a timeline for doing so.

Rulings are most likely to be fulfilled if the judiciary maintains the jurisdiction to monitor compliance and creates monitoring systems and mechanisms for public participation. Continuous monitoring by the court maintains pressure on the government to act, while participatory mechanisms ensure that plaintiffs and public agencies have a space for dialogue.

<sup>1</sup> Office of the High Commissioner for Human Rights' website, “What are Human Rights”, accessed 3 July 2013.

<sup>2</sup> Economic Commission for Latin America and the Caribbean (ECLAC). 2013. *Panorama Social de América Latina 2012 (Social Outlook of Latin America)*. ECLAC, Santiago de Chile.

<sup>3</sup> Malamud, C., Steinberg F. 2011. *Latin America: Economic and Political Outlook for 2011*. El Cano Royal Institute.



protection of civil, political, and environmental rights. In this context of persistent human rights violations, citizens have resorted to the judicial branch to achieve favourable rulings that enforce and restore the violated rights.

In legal and political practice, the legislative and executive branches have traditionally been the main actors in charge of designing public policies and allocating the budget.<sup>4</sup> The judiciary, then, is not seen as a legitimate actor who can create public policies or allocate spending. In recent decades, however, people in Latin American countries who considered that their human rights had been violated due to government inadequacy or inefficiency have increasingly resorted to the judiciary, which has made innovative rulings mandating the implementation of specific policies and the allocation of budget resources to restore and enforce human rights.

These types of judicial rulings are ground-breaking for two reasons. First, they not only acknowledge human rights violations, but also establish a set of specific actions that the government should implement to enforce and restore these rights. Second, the rulings establish that the court maintains jurisdiction over the cases, meaning the court can monitor and assess compliance with the rulings. Through these innovative rulings, the judiciary in many Latin American countries has emerged as a powerful actor of social change, and that has developed a practical and effective mechanism to enforce human rights.

The purpose of this Brief is to illustrate the potential of judicial reviews for enforcing human rights by analysing successful cases from Argentina, Colombia and Mexico. These three cases were chosen because they are considered exemplary in terms of efficiency, innovativeness and results. This Brief was produced based on an extensive literature review and interviews with Latin American experts that have supported or brought cases before courts, or that have ruled on them.<sup>5</sup>

## JUDICIAL REVIEW AND THE RIGHT TO HEALTH IN MINI NUMA, MEXICO

### Background

Mini Numa is a small indigenous *mixteca* community of approximately 371 inhabitants located in the mountains of the Mexican state of Guerrero.<sup>6</sup> Mini Numa is part of the municipality of Metlatonoc, one of the poorest and most marginalised in the country. As is the case in most indigenous communities throughout Mexico, in 2007 Mini Numa did not have access to safe water, a drainage system, public transport or health care. A lack of basic services combined with high levels of poverty resulted in recurrent gastrointestinal diseases and malnutrition among the population, affecting mostly children. The sick patients of Mini Numa were mostly taken to the clinic in Metlatonoc, one and a half hours away on foot. In 2007, this clinic provided health services to over 15,000 people, but had unreliable electricity and water services, only served patients part-time, and was not a proper health facility (it was built in two carriages donated by a private charity organisation).<sup>7</sup> Consequently, many sick people from Mini Numa – particularly children – died from gastrointestinal diseases, which, if treated properly, are rarely fatal. By 2007, one in four children in Mini Numa died before the age of six.<sup>8</sup>

The struggle of Mini Numa’s inhabitants to ensure their right to health began in 2003, the year the government rejected the community’s petition for a public health facility, arguing there was a lack of physical space available to build it. In 2005 and using its own funds, the community built a structure to house the clinic and then requested the Provincial Ministry of Health to send a doctor to work there. In 2006 the government told the community, off the record, that it did not have financial resources to send a physician.<sup>9</sup>

<sup>4</sup> The legislative approves the budget and laws, while the executive drafts a budget law proposal and designs and implements public policies.

<sup>5</sup> Among the experts interviewed were: Jimena Ávalos, Human Rights Consultant and Lawyer; Sergio Chaparro, former member of *De Justicia* in Colombia; Horacio Corti, Judge of the City of Buenos Aires; Helena Hofbauer from the [International Budget Partnership](#); Diego Morales from the [Center for Legal and Social Studies \(CELS\)](#); Miguel Pulido, Executive Director of *Fundar*; Martín Sigal from the [Civil Association for Equality and Justice \(ACIJ\)](#) in Argentina; and César Rodríguez Garavito, Director of the Social Justice and Human Rights Programme and Founder Member of *De Justicia* in Colombia. Some of these interviews are included in the [ELLA Video: Judicial Control of Public Policies and Budget Allocations: Experiences from Argentina, Colombia and Mexico](#). The author would also like to thank María Sánchez de Tagle, *Fundar*’s Researcher in the Legal Strategies Department, for her valuable comments on this Brief.

<sup>6</sup> Acuña, J. M. 2007. [El Caso Mini Numa. Nuevos Rumbos para la Protección de los Derechos Sociales a través del Juicio de Amparo en México \(The Mini Numa Case. Routes for Protecting Social Rights Using the Writ of Amparo in Mexico\)](#). Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, Mexico City.

<sup>7</sup> Gutiérrez, R., Rivera, A. 2009. [El Caso Mini Numa: Un Litigio Estratégico para la Justiciabilidad de los Derechos Sociales y la No Discriminación en México \(The Mini Numa Case: A Strategic Litigation Case for the Justiciability of Social Rights and Non-discrimination in Mexico\)](#). *Revista de la Facultad de Derecho de México*, Issue 251 January–June.

<sup>8</sup> Acuña 2007, above n 6.

<sup>9</sup> *Ibid.*



### **The Case Arrives at Court**

After two failed attempts to establish a community health clinic, in May 2007 the community requested the help of the civil society organisation (CSO) *Centro de Derechos Humanos de La Montaña, Tlachinollan* (The Tlachinollan Mountain Human Rights Centre). With *Tlachinollan's* legal assistance, another petition was made and denied by the Provincial Ministry of Health, which argued that administrative guidelines prevented the government from building a clinic in communities with less than 2,500 inhabitants.<sup>10</sup>

In light of this response, in November 2007 five members of the Mini Numa community filed a *writ of amparo* before the court in the capital of Guerrero, arguing a violation of their right to health.<sup>11</sup> *Tlachinollan* also engaged with other human rights organisations, networks and the media to generate public support for the case. An injunction was also filed before the local human rights commission, which was granted and helped raise the profile of the lawsuit even further.

### **The Judge Decides**

At the time the Mini Numa's case came before the court, there were few rulings related to the protection and enforcement of economic, social and cultural rights in Mexico. In the Mexican legal tradition, courts did not tend to make decisions with budgetary or policy implications for cases of human rights, which is why the Mini Numa's ruling is considered ground-breaking.

After assessing the case, the judge ruled in favour of the plaintiffs on 11 July 2008, arguing that the provincial government had violated article four of the constitution which protects the right to health of every person in Mexican territory. A key element of this ruling is that the judge was specific about the actions that the government should implement to redress the violation. This contrasts with previous rulings in Mexico, in which the judge might only state the violation of a right, but not advance a particular path for the state to restore or protect it. In contrast, in the Mini

Numa ruling, the government was mandated to immediately staff and equip the clinic built by Mini Numa community members. The judge also ordered the government to build, staff and equip a proper health facility in Metlatonoc.<sup>12</sup> This is perhaps the most relevant aspect of this case, given that the judge extended the effects and benefits of the ruling to all inhabitants of Metlatonoc and Mini Numa, not only to the plaintiffs. This is important because before 2012, except for agricultural or labour-related cases, *writs of amparo* had to be filed by individuals and the ruling's effect only applied to those individuals. A final significant element of the ruling is that the judge warned the health authorities against arguing budgetary constraints to justify the non-fulfilment of a constitutional mandate, setting an important and powerful precedent for future cases regarding human rights in Mexico.<sup>13</sup>

## **JUDICIAL REVIEW AND THE RIGHT TO EDUCATION IN BUENOS AIRES, ARGENTINA**

### **Background**

The Argentinean constitution states that a free and fair system of education should ensure universal access to education.<sup>14</sup> In spite of this legal acknowledgement, in the period 2002-2007, there was a serious shortage of vacancies in early education schools and nurseries in the capital city, Buenos Aires. In 2006, for example, over 6,000 children were left without a school placement. This number increased to almost 8,000 by 2008<sup>15</sup> with over 50% of the children coming from poor and marginalised districts.<sup>16</sup>

In 2009, the [Civil Association for Equality and Justice](#) (ACIJ), an Argentinean CSO, conducted research to get an adequate picture of the right to education in the city.<sup>17</sup> As well as confirming the placement shortages, ACIJ's research showed that the government had been under-spending the budget allocated for early education over numerous years. Between 2002 and 2005, for example, 32% of the public funds allocated to the building and maintenance of early education infrastructure were not used.<sup>18</sup>

<sup>10</sup> Gutiérrez R., Salazar Ugarte, P. 2011. [Igualdad, No Discriminación y Derechos Sociales: Una Vinculación Virtuosa \(Equality, Non-discrimination and Social Rights: A Virtuous Relationship\)](#). Consejo Nacional para Prevenir la Discriminación, Mexico City.

<sup>11</sup> Tlachinollan Mountain Human Rights Centre. 2008. [Otorga Juez Federal Amparo a la Comunidad de Mini Numa que Exige su Derecho a la Salud \(Federal Judge Grants Writ of Amparo to Mini Numa Community Demanding its Right to Health\)](#). Online publication, accessed 3 July 2013.

<sup>12</sup> Gutiérrez *et al.* 2011, above n 10.

<sup>13</sup> Tlachinollan Mountain Human Rights Centre 2008, above n 11.

<sup>14</sup> Article 14 of the Argentinean constitution. The 24 provinces within Argentina have the prerogative to draft their own laws and regulations, as long as these are compatible with the national constitution.

<sup>15</sup> Civil Association for Equality and Justice (ACIJ). 2009. [La Discriminación Educativa en la Ciudad de Buenos Aires \(Educational Discrimination in the City of Buenos Aires\)](#). ACIJ, Buenos Aires.

<sup>16</sup> Basch, F. 2001. [Children's Right to Early Education in the City of Buenos Aires: A Case Study on ACIJ's Class Action](#). International Budget Partnership, Washington, DC.



### The Case and the Ruling

In light of these findings, in December 2006, ACIJ decided to file a lawsuit against the City of Buenos Aires. The lawsuit argued that the right to education, equality and personal autonomy had been violated for many years and, thus, immediate actions were needed to stop and reverse this situation.<sup>19</sup> ACIJ also launched a media campaign to disseminate the arguments behind the lawsuit widely among citizens, academics, other CSOs and human rights networks. The aim was to put pressure on the government and the judicial branch, get the issue on the public agenda and, ultimately, obtain a favourable ruling.

In August 2007, the court ruled in favour of ACIJ with the judge acknowledging the violation of the right to education protected in the constitution. The court ordered the government to “submit detailed information about all public works being carried out and projects for new works directed at satisfying the existing space demands, mandating that none of the plans should reach completion after 2010”.<sup>20</sup>

Ordering the government to implement short-term actions to create early school vacancies was indeed a progressive move by the court. The government appealed the resolution arguing, among other things, that the judicial branch was interfering in areas that it was not allowed to. In March 2008, the court of appeal confirmed the ruling.<sup>21</sup>

When the lawsuit finally arrived at the local High Court of Justice, the government and ACIJ, encouraged by the court, decided to draft an agreement in which the government acknowledged the problem and committed to building new facilities to meet the shortage and prioritising those districts with higher demand. The agreement also includes a commitment to allocate sufficient budget resources for the implementation of these actions, to prevent future shortages,<sup>22</sup> and to hold a bimonthly roundtable for monitoring progress.<sup>23</sup> A public hearing was held to discuss the agreement in early 2011, providing a space for interested

stakeholders to voice their opinions. The High Court of Justice appointed itself as the actor responsible for following up on the agreement and retained the power to intervene should either party breach the contract. This is a key and innovative element of the case, since in general judges in Latin America do not establish monitoring systems to check progress on the fulfilment of their rulings.

## JUDICIAL REVIEW, FORCED DISPLACEMENT AND HUMAN RIGHTS IN COLOMBIA

### Background

For several decades, Colombia experienced an armed conflict that forced many people to leave their families, home towns and lands. As a result, Colombia has the second largest number of internally displaced people (IDPs) in the world.<sup>24</sup> It is estimated that at least 8% of the country’s population was displaced over the last two decades and 11% of cultivable land was taken away from the legitimate owners by paramilitary groups and the *guerrillas*.<sup>25</sup> Once displaced, most of these people face situations of exclusion, poverty and marginalisation, and many lack access to health care, education and other social services. Through laws, programmes and policies, the legislative and executive branches attempted to assist IDPs. However, over the years it became evident that these actions had not been effective and had failed to reach the wide majority of victims.

### The Case and the Decision

Over the years, IDPs went to the courts arguing that government policies failed to guarantee their human rights, which according to Colombian Law 387 on Forced Displacement, include non-discrimination, family-reunification, return to birthplace and socio-economic stability, among others.<sup>26</sup> Before 2004, 108 lawsuits on forced displacement were filed in 22 cities by 1,150 families.

<sup>17</sup> Gathering and analysing this amount of information was time-consuming and difficult. What is more, initially, the government did not provide ACIJ with the information requested and the organisation had to go to the courts to get it.

<sup>18</sup> Basch 2001, above n 16.

<sup>19</sup> Gherardi N., Zibecchi C. 2011 [El Derecho al Cuidado: ¿Una Nueva Cuestión Social Ante los Tribunales de Justicia de Argentina?](#) (The Right To Care: A New Social Matter Before the Justice Courts Of Argentina?). *Revista Política* 49(1): 107-138.

<sup>20</sup> Basch 2001, above n 16.

<sup>21</sup> Poder Judicial de la Ciudad Autónoma de Buenos Aires, Ministerio Público, Asesoría General Titular. 2009. [Dictamen Autos: Expte. N 6529/09 “Asociación Civil por la Igualdad y la Justicia c/GCBA s/Ajmparo \(art 14 CCABA\). \(Judicial File on ACIJ’s lawsuit\)](#). Asesoría General Titular, Buenos Aires.

<sup>22</sup> Videla, E. 2011. [Un Acuerdo para no Perder el Juicio \(An Agreement to Avoid Losing the Trial\)](#). *Diario Página 12*. Online publication, accessed 3 July 2013.

<sup>23</sup> Blanck, E. 2012. [Niñez, Adolescencia y Salud Mental en la Ciudad de Buenos Aires. Informe Anual de Gestión del Ministerio Público Tutelar 2011 \(Childhood, Adolescence and Mental Health in the City of Buenos Aires. Annual Management Report of the General Attorney’s Office\)](#). Ministerio Público Titular, Buenos Aires.

<sup>24</sup> Internal Displacement Monitoring Centre (IDCM). 2010. [Internal Displacement: Global Overview of Trends and Developments in 2009](#). IDMC, Geneva.

<sup>25</sup> Uprimny Yepes, R., Camilo Sánchez N. 2010. Juzgar y Medir: El Uso de Indicadores de Derechos Humanos por la Corte Constitucional Colombiana (Judge and Measure: The Use of Human Rights Indicators by the Colombian Constitutional Court). In: Abramovich V., Pautassi L. (eds). *La Medición de Derechos en las Políticas Sociales (Measuring Rights in Social Policies)*. Editores, Buenos Aires.

<sup>26</sup> República de Colombia. 1997. [Ley 387 de 1997](#) (Law 387 of 1997). República de Colombia, Bogota. See in particular Articles 2 and 3.



In 2004, taking into account that forced displacement was a critical and recurrent issue brought before courts, the Constitutional Court decided to provide an effective solution to it through the T-025 ruling. For this ruling, the court made use of a legal mechanism called the “Unconstitutional State of Affairs”, which allows the court to declare that “there is a massive and persistent human rights violation associated with systemic failures in state action”<sup>27</sup> and, thus, there is a need to formulate a ruling to solve this structural problem.

The court stated that the public policy implemented was incoherent, insufficient and not grounded adequately in human rights standards. In its ruling, the court drew attention to various critical problems, including that 57% of the registered IDPs were not getting emergency humanitarian help and there was no reliable public data on the number of IDPs.<sup>28</sup>

The court, therefore, ordered the government to implement a series of measures to solve the broader structural problems faced by IDPs, and in particular to ensure their access to food, health, housing, education and land.<sup>29</sup>

The court stressed that public policy would need to be designed in a transparent and participatory way in order to enable stakeholder participation. The ruling also ordered state agencies to make projections of the public funds required for these actions and to allocate the necessary resources accordingly.

Finally, to ensure that the government would comply with this ruling, the court implemented a monitoring system<sup>30</sup> which was used to assess public policy against human rights indicators developed by the court.<sup>31</sup> From 2004 to 2010, the court carried out 84 monitoring assessments of the ruling and held 14 public hearings to inform, discuss and evaluate the outcomes of the government’s actions.<sup>32</sup> The hearings were attended by many stakeholders and proved to be effective spaces for participation and dialogue.

## REFLECTING ON THE CASES: TRANSFORMING THE ROLE OF THE JUDICIARY

The cases described in this Brief provide several interesting reflections on the ways in which the judiciary can enforce and restore human rights:

- The judiciary took an innovative and leading role in enforcing rights. Previously courts would acknowledge the violation of a human right but did not make resolutions mandating the government to implement specific policy actions; the cases from Argentina, Colombia and Mexico therefore demonstrate a radical transformation in the behaviour of the judiciary. Increasingly, judges are driving social change and intervening in arenas where historically they would not have done so.
- In all three cases, the judiciary ruled that budget or administrative limitations did not constitute a valid justification for government failure to guarantee human rights. Thus, governments were ordered to find the resources to implement policies and actions that would restore these rights.
- The rulings also set out specific actions and a timeline for compliance. In Argentina and Colombia, the courts also maintained the jurisdiction to monitor progress via newly created monitoring systems.<sup>33</sup> Backed with meaningful monitoring systems, these rulings are leading to real change in policy and in the lives of Latin Americans.<sup>34</sup> This trend is perhaps most visible in judicial intervention in cases that address structural issues, such as widespread violations of socioeconomic rights.<sup>35</sup>
- The judiciary in the three cases analysed created mechanisms for ensuring effective victim and stakeholder participation, such as the public hearings held in the Argentinean and Colombian cases. Finally, judges ordered actions that would benefit the whole group of people affected by the situation and not only the plaintiffs. In the Colombian case, for example, the court used a legal figure to find a structural solution to the problem.

<sup>27</sup> Rodríguez Garavito, C. 2011. [Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America](#). *Texas Law Review* 89(7): 1669-1698.

<sup>28</sup> Rodríguez Garavito, C., Rodríguez Franco, D. 2010. [Cortes y Cambio Social. Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia \(Courts and Social Change. How the Constitutional Court Transformed Forced Displacement in Colombia\)](#). Colección Dejusticia, Bogotá.

<sup>29</sup> Ibid.

<sup>30</sup> Uprimny *et al.* 2010, above n 25.

<sup>31</sup> Interview with Sergio Chaparro, former member of *DeJusticia*, Colombia, held 20 February 2013.

<sup>32</sup> Rodríguez Garavito *et al.* 2010, above n 28.

<sup>33</sup> Uprimny Yepes *et al.* 2010, above n 25.

<sup>34</sup> Rodríguez-Garavito 2011, above n 27.

<sup>35</sup> Ibid.





## OTHER EXPERIENCES OF JUDICIAL REVIEW IN LATIN AMERICA

There are other rulings in the region that also have one or two of the key innovative features of the rulings analysed in this Brief: a clear set of actions to remedy the situation is ordered; a monitoring system is established; or spaces to enable stakeholder participation are created. Table 1 presents a summary of these cases:

**Table 1: Experiences of Judicial Review in Latin America**

Country	Year	Right	Case	Court Ruling
Argentina <sup>36</sup>	2002	Health	Two patients supported by the Centre for Legal and Social Studies (CELS) filed a <i>writ of amparo</i> demanding that the state provide HIV/AIDS patients with the medicines needed for their treatment, since the Ministry of Health had stopped providing them.	<ul style="list-style-type: none"> <li>The medicines should be provided to patients immediately</li> <li>Within two days, the state should adopt the necessary measures to ensure the provision of these medicines to all HIV/AIDS patients</li> <li>A judicial oversight mechanism was created to monitor state's compliance with the ruling</li> </ul>
Argentina <sup>37</sup>	2008	Environment	The case argued that the contamination and degradation of the Matanza Riachuelo river basin threatened environmental sustainability and people's lives.	<ul style="list-style-type: none"> <li>The state at all levels is responsible for contamination of the basin</li> <li>Federal, provincial and local officials should design and implement a plan to clean it up</li> <li>A basin authority must be created to implement this plan</li> </ul>
Colombia <sup>38</sup>	1998	Prisoners' rights	The Colombian Constitutional Court considered that prison overcrowding violated prisoners' basic rights and declared the situation as an "Unconstitutional State of Affairs".	<ul style="list-style-type: none"> <li>Within three months, the government must formulate a comprehensive plan for the renovation of existing prisons and the construction of new ones</li> <li>This plan must be executed within a four-year period</li> <li>In four years, the government should ensure that detainees under trial are not placed in the same prisons as convicted detainees</li> </ul>
Venezuela <sup>39</sup>	2002	Housing	A group of plaintiffs claimed that the interest rates of the private loans they accessed to buy their homes were excessive	<ul style="list-style-type: none"> <li>The excessive rates of these loans violated peoples' right to housing</li> <li>The ruling banned this type of credit, suspended the interest payments and voided the contract clauses related to the calculation of interest rates</li> <li>It suggested a specific procedure to restructure the loans</li> <li>The Central Bank of Venezuela must come up with a fair interest rate to calculate the pending debts</li> </ul>

To learn more about judicial review for human rights in Latin America, see the [ELLA Video: Judicial Control of Public Policies and Budget Allocations: Experiences from Argentina, Colombia and Mexico](#)

<sup>36</sup> Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies - CELS). *Amparos Colectivos para la Provisión de Medicamentos del VIH/ SIDA - Casos A.V. y C.M. y IOMA (Collective Writs of Amparo for the Provision of Medicines for HIV/AIDS: Cases A.V., C.M. and IOMA)*. CELS, Buenos Aires.

<sup>37</sup> Argentinean Supreme Court Ruling. 2008. *Mendoza et al. vs. el Estado Nacional: Daños Derivados de la Contaminación del Río Matanza-Riachuelo (Mendoza et al. vs. The National State Regarding the Environmental Contamination of Río Matanza-Riachuelo)*. Argentinean Supreme Court, Buenos Aires. Staveland-Sæter, K. 2012. *Can Litigation Clean Rivers? Assessing the Policy Impact of "the Mendoza Case" In Argentina*. Chr. Michelsen Institute, Bergen.

<sup>38</sup> Rodríguez-Garavito 2011, above n 27; and Sepúlveda, M., Rodríguez-Garavito, C. 2008. Colombia: La Corte Constitucional y su Contribución a la Justicia Social (Colombia: The Constitutional Court and its Contribution to Social Justice). In: Langford, M. (ed). 2008. *Teoría y Jurisprudencia de los Derechos Sociales: Tendencias Emergentes en el Derecho Internacional y Comparado (Theory and Jurisprudence of Social Rights: Emergent Trends in International and Comparative Law)*. Universidad de los Andes-Siglo del Hombre Editores, Bogotá.

<sup>39</sup> González, E. 2008. Venezuela: Un Camino Distinto Hacia la Justicia Social (Venezuela: A Different Path Towards Social Justice). In: Langford 2008, above n 38.

# CONTEXTUAL FACTORS

# ENABLING FACILITATING THE TRANSFORMATION OF JUDICIAL REVIEW



A key feature of transitions from authoritarian to democratic regimes in most Latin American countries has been constitutional reform. More recently, these reforms have aimed at deepening democracy beyond free and fair elections and towards achieving social justice through the safeguarding of human rights. Most Latin American countries have signed and ratified international and regional human rights treaties and many of these rights are enshrined in national constitutions and secondary laws. This formal acknowledgment of rights has provided a firm basis for cases against human rights violations since plaintiffs have been able to show that governments are legally committed to protecting their rights. Constitutional reforms have also given more autonomy to the judiciary, which has opened up room for the creation of new legal mechanisms<sup>40</sup> to enforce rulings.<sup>41</sup> All this, in turn, has led to some broader structural changes in Latin American countries which are improving the protection and enforcement of citizens' rights.

Behind the cases brought to court, civil society groups have played a unique and essential role supporting victims of human rights violations. Latin American CSOs possess broad knowledge

of national and international law and have assisted victims to present strong legal arguments in *writs of amparo* or injunctions. In the three cases presented in this Brief, CSOs also helped to mobilise other actors such as the media, academia and other CSOs in order to generate political and public support. It is also worth highlighting the technical expertise that CSOs provide in terms of gathering and analysing large amounts of information in order to assess human rights violations.

The fact that legal systems in Latin America have a mechanism for individuals to take a human rights violation case to court has been critical. In 2012, the Mexican Writ of Amparo Law was reformed, after which it became possible for a *writ of amparo* to be filed by a collective group and for the ruling to apply to all members.

Finally, the role of judges themselves has been key. In countries such as Argentina, Brazil, Colombia, Mexico or Venezuela, judges are starting to see themselves as actors of social change and are contesting the traditional legal view by making rulings with budgetary or policy implications mandating the executive or legislative to implement certain actions.

<sup>40</sup> "The State of Unconstitutional Things" analysed in the case of Colombia is an example of such mechanisms.

<sup>41</sup> Uprimny, R. 2001. [The Recent Transformation of Constitutional Law In Latin America: Trends And Challenges](#). *Texas Law Review* 89(7): 1587-1609; and Meili, S. 2009. [Staying Alive: Public Interest Law in Contemporary Latin America](#). University of Minnesota, Minneapolis.

## LESSONS LEARNED

- 1 Judicial rulings can provide an effective tool for enforcing and restoring human rights, particularly if they clearly specify the actions that the state should implement and a timeline for doing so.
- 2 Rulings are most likely to be fulfilled if the judiciary maintains the jurisdiction to monitor compliance and creates monitoring systems and mechanisms
- 3 *Writs of amparo* or injunctions are more likely to be compelling if they are grounded in strong legal arguments for public participation. Continuous monitoring by the court maintains pressure on the government to act, while participatory mechanisms ensure that plaintiffs and public agencies have a space for dialogue.
- 4 Social mobilisation and support can put pressure on the judiciary and get human rights onto the public agenda, enhancing the chances of a favourable ruling. of human rights violations and in sound evidence of the nature and impact of these violations.

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