

# Argentina: Enforcing a Legal Victory for Universal Access to Education

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# INTRODUCTION

The constitution of the City of Buenos Aires (the City) establishes a duty for the City government to provide all children between the ages of 45 days and five years with access to early education. Yet thousands have been denied this right. In 2006 a civil society organization, the Civil Association for Equality and Justice, known by its Spanish acronym ACIJ, used public litigation to pressure the City to meet its obligations. Five years later ACIJ and the City established an agreement that set out ambitious targets regarding opening up access to early education, work plans for infrastructure development, and budget obligations. Implementation of the agreement has been slow, but not without achievement.

This case study explores the progress of this case, drawing on interviews conducted with key stakeholders in 2014.<sup>1</sup> The main focus of this analysis is to reflect on ACIJ strategy in order to extract lessons for civil society organizations (CSOs) involved in public litigation.

## FROM CLASS ACTION LAWSUIT TO A ROUNDTABLE AGREEMENT 2006-2011

### THE ACIJ CLASS ACTION LAWSUIT

In 2006 ACIJ filed a class action lawsuit against the City, charging it with violating its constitutional obligation to guarantee universal access to early education. The City has a duty to guarantee and finance free secular public education for every child over 45 days old.<sup>2</sup> When the lawsuit was filed, more than 6,000 boys and girls between the ages of 45 days and five years were on waiting lists for an opening in a public school or kindergarten.<sup>3</sup>

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<sup>1</sup> See Appendix 1 for the list of interviewees.

<sup>2</sup> In Buenos Aires, education is a constitutional right. The City has an important and clearly defined set of obligations, including the requirement that the education system respects the principle of equal opportunities (Constitution of the City of Buenos Aires, Section 24). The constitution also establishes that budget items assigned to education must not be reallocated (Constitution of the City of Buenos Aires, Section 25).

<sup>3</sup> A description and assessment of the case can be found in Fernando Basch, "Children's Right to Early Education in the City of Buenos Aires: A Case Study on ACIJ's Class Action," International Budget Partnership, 2012, available at: <http://internationalbudget.org/publications/children%E2%80%99s-right-to-early-education-in-the-city-of-buenos-aires-a-case-study-on-acij%E2%80%99s-class-action>

## BOX 1: ABOUT ACIJ

ACIJ is a Buenos Aires based civil society organization (CSO) devoted to protecting the rights of disadvantaged groups and to strengthening democratic institutions. ACIJ was established in 2002, in the context of a major economic, social, and political crisis in Argentina. The organization started with only three young lawyers who soon became its co-directors. With its focus on monitoring the implementation of public budgets and strategic social rights litigation, ACIJ rapidly earned a reputation as a CSO of some significance in Buenos Aires.

After working with small teams of employees and volunteers for many years, and being mainly funded by international cooperation grants, ACIJ was able to grow slowly but in a sustained fashion. Its work is organized into five programs of action, one of which is Equality of Education.<sup>4,5</sup> It is mainly staffed by lawyers, and its strategies include advocacy campaigns, public interest litigation, participating in public debate through policy reform proposals, publishing watchdog reports, and disseminating relevant information to the public. Ten years after the creation of ACIJ, the three founding co-directors transferred the leadership of the organization to a younger group. This includes Dalile Antúnez, who is now the head of the team working with the early education case, following Martín Sigal's initial leadership. ACIJ is currently composed of its three co-directors and some 20 young team members and volunteers.

Source: [www.acij.org.ar](http://www.acij.org.ar)

In its class action lawsuit, ACIJ argued that the City had not complied with its constitutional obligation to guarantee and finance universal access to early education. This obligation had been systematically breached between 2002 and 2006, in which the number of children excluded from early education had increased by 37 percent. The shortage of openings was not due to a lack of resources and ACIJ proved that successive City administrations had been responsible for underspending the budget allocated to education infrastructure and facilities.

In August 2007 the court ruled in favor of ACIJ and instructed the City to develop concrete plans for remedying the situation. The City appealed against the ruling, arguing that the judiciary should not interfere in government affairs. However, the Court of Appeals upheld the original judgement in March 2008. This set the stage for a final appeal in the City's High Court. Behind the scenes however,

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<sup>4</sup> The other ACIJ programs are devoted to Community Legal Action, Anti-Corruption, Rights and Community Building in Urban Slums, and Strengthening Democratic Institutions.

<sup>5</sup> The Education Equality Program came into being in 2006 with the objective of helping to eradicate the structures and practices that make the poorest children suffer the lowest quality of education. In order to tackle educational inequality, ACIJ has carried out a diverse set of actions. Before resorting to litigation, the Association organized workshops on public education directed at promoting the first Education Law of the City — an activity that allowed it to connect with all relevant actors of the education community and to become an actor itself in public discussions on education reform. ACIJ also submitted a project bill to the legislature seeking to regulate procedures for the enrollment and registration of spaces so that the lack of information related to the shortage of school spaces was resolved. Moreover, ACIJ did community outreach, setting up cooperative networks with residents and grassroots organizations in urban slums, conducting information workshops, and channeling complaints regarding access to education to the appropriate authorities. This experience allowed ACIJ to learn about the problem of lack of school spaces for early education. Among other activities, ACIJ conducted a research project about the allocation and execution of budget resources for school infrastructure work from 2002 to 2008, the conclusions of which fed its litigation strategy.

dialogue was initiated between the opposing parties. Eight months later the City and the ACIJ presented their draft agreement to the High Court.

## THE CITY AND ACIJ REACH AN AGREEMENT

The draft agreement negotiated between ACIJ and the City during 2008 was legally executed in the Superior Tribunal of Justice (the highest court in the City of Buenos Aires) in February 2011. This took place at a public hearing convened by the court in response to a request from ACIJ. All the important role players in the education community participated in a public debate and gave their support to the agreement. The fact that the highest court in the City had never before held a public hearing signaled the event as an important achievement for the ACIJ.

In the agreement the City acknowledged that ACIJ's demands were legitimate and accepted its responsibility to develop and implement a sustainable work plan to meet all space needs for early education. That plan included specific deadlines and a commitment by the City to utilize the allocated budget resources. The agreement created two specific instruments aimed at facilitating its implementation: appointing a court auditor who would oversee and report on the execution of the work plan; and setting up a bimonthly working committee made up of representatives from both parties to monitor the implementation of the agreement and propose necessary corrective actions. The City also accepted other obligations, such as implementing a digital system to centralize and organize all information related to the demand for spaces.

The agreement between ACIJ and the City set high expectations. Whereas a judgment ordering the City to comply with the constitutional requirement to provide early education could have contained broadly defined obligations, the agreement that emerged included very specific goals that the City agreed to comply with in a short space of time.<sup>6</sup> This reflected the City's desire to put an end to the controversy after two unfavorable judicial decisions.<sup>7</sup>

When a stringent judgment is issued by the courts, there is always a question as to whether the sued party will be able to comply. But when the obligations are established by means of an agreement, it is reasonable to believe that compliance will follow. 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, the result potentially reflected the best of both scenarios: an agreement between the opposing parties with highly concrete obligations.

The agreement marked the beginning of an ambitious implementation phase involving an infrastructure work plan and complex budget and policy arrangements to be carried out and closely

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<sup>6</sup>Interviews with Martín Sigal and Dalile Antúnez, Damián Azrak, and Mariela Belski.

<sup>7</sup> Interview with Soledad Acuña.

monitored. ACIJ itself imagined that it would be hard for the City to fully comply.<sup>8</sup> Indeed, implementation difficulties are part and parcel of successful public interest litigation, and ACIJ's experience in this case offers valuable lessons for other CSOs that seek to take up litigation in the public interest.

## HAS THE CITY COMPLIED WITH THE TERMS OF THE AGREEMENT?

The City has been slow to comply with the agreement. The agreement was formalized in 2011 and there have been significant improvements: 1,139 new school spaces were opened, the public budget for school infrastructure is no longer underspent, and a new system of online registration has been created.<sup>9</sup> But the agreement has only been partially complied with. Significantly, the problem of a shortage of spaces for early education is still widespread: in 2014, 4,177 children lacked access to schools/public education and remained on waiting lists.<sup>10</sup>

While ACIJ members are satisfied with the overall improvement, they are also frustrated with the multiple shortcomings that have emerged in the execution of the agreement. What has been a serious problem is the under-performance of the working committee, or roundtable that was established to ensure oversight of progress toward compliance and to facilitate negotiated solutions to implementation problems. According to ACIJ, new strategies will clearly be required in order to achieve higher levels of improvement.<sup>11</sup> ACIJ's Director Dalile Antúnez said "the case had an important impact; there are reasons to be happy with what has been done, even though there have been many implementation failures in compliance with the work plan. We are aware that the agreement was very ambitious and that the balance overall is positive, but we still have to struggle in order to overcome current stalemate."<sup>12</sup>

The City representatives involved in the case also have mixed assessments of what has been achieved. They acknowledge that being closely monitored has encouraged their efforts to comply with the school infrastructure work plan. They also worked hard to produce more and better information, which is valuable for policy planning, and to improve coordination between different areas of City government, such as between the Ministry of Education and the Ministry of Social Development. Diego Marías, head of legal affairs at the Ministry of Education, said "the need to provide accurate and timely information about progress at the working roundtable made us heighten our attention in complying with the deadlines and work in a more coordinated fashion, for example with the Infrastructure Director."<sup>13</sup>

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<sup>8</sup> Interview with Dalile Antúnez.

<sup>9</sup> File documentation, City presentation dated 6 March 2014.

<sup>10</sup> File documentation, City presentation dated 6 March 2014.

<sup>11</sup> Interview with Dalile Antúnez.

<sup>12</sup> Interview with Dalile Antúnez.

<sup>13</sup> Interview with Diego Marías.

The City has also been frustrated with the dynamics of the working roundtable, which they describe as confrontational instead of collaborative.<sup>14</sup> As Soledad Acuña, Undersecretary of Educative Fairness at the Ministry of Education, said “the only objective pursued by ACIJ at the table was that of accountability; they only came to make sure that we complied with the judicial decisions they had achieved.”<sup>15</sup>

## THE CHALLENGE OF IMPLEMENTING THE AGREEMENT

### COMMITMENTS FROM THE CITY

The City’s main commitment was to design and implement a public policy guaranteeing enough spaces in the early education system for every child who wanted a place. This included:

1. To take action to progressively absorb the unsatisfied demand for spaces.
2. To implement an infrastructure plan comprising of 24 works.
3. To submit an additional plan by March 2011 with new works to be finished by the end of 2012.
4. To reassess the space shortage every year and adjust the infrastructure work plans accordingly.
5. To include in every year’s city budget the items required to cover the costs involved in complying with the infrastructure work plan and the corresponding increase in the number of teachers.

The execution of public interest cases can be more or less demanding according to whether the City must merely refrain from acting (when there is only a need to check that a prohibited behavior is not taking place), or whether the City must provide certain services or goods (when not only the provision of the services, but also their quality must be judged). Public interest attorneys often find it easier to identify when a right is being violated, than when the violation has been resolved. It can be difficult to specify which solutions actually remedy a violation and where to draw the line between a continuing violation and compliance.

During the execution of the agreement, ACIJ members found themselves facing situations that they had not expected, neither when filing the lawsuit nor when signing the agreement. Dalile Antúnez acknowledged that “although from the moment we signed the agreement, it was clear that there would be many implementation complications, I didn’t think that so many questions would appear in the way

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<sup>14</sup> Interviews with Diego Marías, Soledad Acuña and Marcela Goenaga.

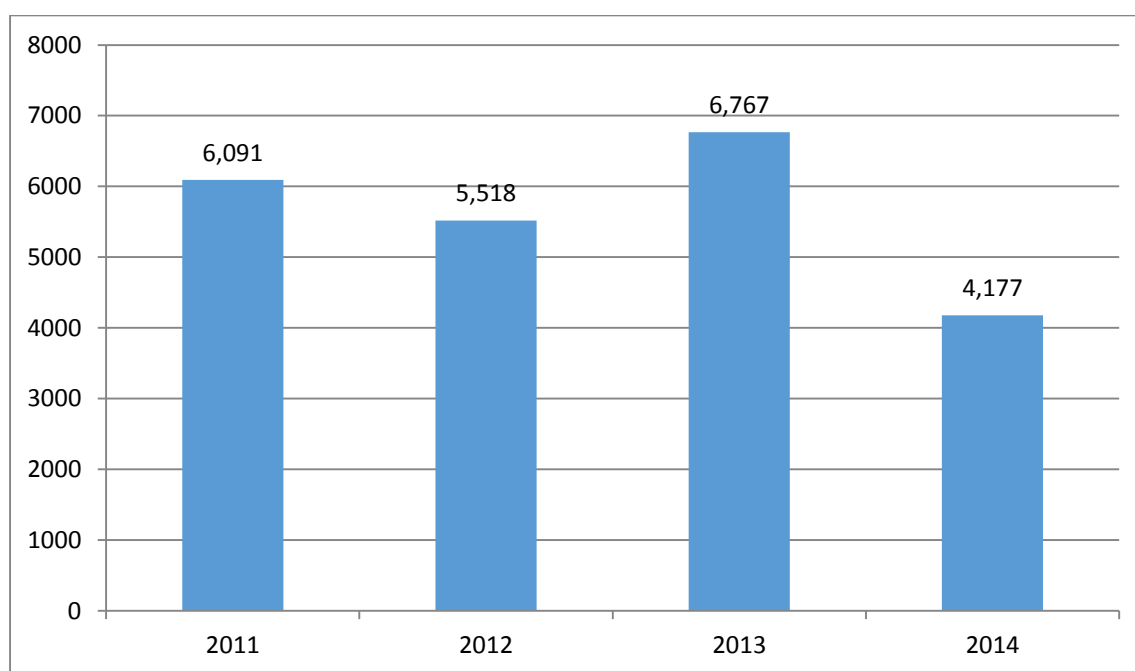
<sup>15</sup> Interview with Soledad Acuña.

as to whether this or that City action meant compliance or not.”<sup>16</sup> For instance, ACIJ members had not expected “that the government would build modular classrooms as a solution to the lack of spaces.”<sup>17</sup>

## SLOW PROGRESS IN PROVIDING UNIVERSAL ACCESS TO EARLY EDUCATION

The infrastructure plan presented by the City at the time of the agreement included a commitment to build 19 new schools and improve five existing schools by the end of 2011 (less than one year). However, just five schools had been finished by this deadline, and only two of those were part of the work included in the infrastructure plan. As of 2014, 14 out of the 24 projects originally agreed to have been finished.<sup>18</sup> Of the ten unfinished works, five are being executed and five have either been interrupted or not yet been started.<sup>19</sup> The City’s performance in reducing the shortage of school spaces is reflected in the following graph.

**FIGURE 1. NUMBER OF CHILDREN WAITING FOR EDUCATION, 2011 TO 2014**



Source: Author’s calculations based on ACIJ report available at <http://acij.org.ar/blog/2014/02/13/falta-de-vacantes-en-nivel-inicial-un-problema-sin-resolver>

The obligations arising from the agreement between ACIJ and the City will be in force until the problem of lack of school spaces is finally addressed. However, both the Initial Education Director and the Ministry of Education’s Legal Director have questioned whether the situation will ever be resolved.<sup>20</sup> They claim that two different kinds of migration are steadily increasing the demand for

<sup>16</sup> Interview with Dalile Antúnez.

<sup>17</sup> Interview with Dalile Antúnez.

<sup>18</sup> Information presented by the City in the file in 6 March 2014.

<sup>19</sup> Interview with Marcela Goenaga.

<sup>20</sup> Interviews with Marcela Goenaga and Diego Marías.



school spaces in Buenos Aires. Territorial migration is increasing the demand from both neighboring provinces (as a consequence of the deterioration of their education systems) and neighboring countries (as a consequence of ordinary migration to Argentina and the City of Buenos Aires). System migration is increasing demand from families that move their children from private to public schools; as well as from previously “invisible” families that had not asked for a space until the opening of a new school within their area. In this way, the creation of a new school also creates new demand.<sup>21</sup>

For these reasons, the Legal Director of the Ministry of Education claims that “the problem of the lack of school spaces in initial education has no end. ACIJ and the government will have this topic on their agendas for the next 40 years.”<sup>22</sup> With regard to the agreement, he suggested less strict standards of compliance; for example, establishing that meeting 80 percent of the demand for spaces should be seen as full compliance.

The challenge that these arguments pose is that they can be used to reduce or dilute the City’s responsibilities. They can also be used to portray ACIJ members being overly idealistic in their pursuit of full compliance by the City and failing to really understand the complexities of public policy implementation. Implementation of the agreement faces natural challenges, such as the difficult task of finding suitable places for building new schools, or changes in the construction market that might delay the original plans or make them more expensive.<sup>23</sup> In some cases, progress was obstructed when credits and other financial resources flowing from the national budget to the City’s treasury were suspended.

In response to such obstacles, ACIJ needed to act strategically to show that it understood the implementation challenges faced by the City, and at the same time continue to demand the highest possible degree of compliance. ACIJ rejected the proposal to reduce the proportion of coverage demanded for compliance, as that would have constituted an abdication of their mission of protecting the constitutional right of children to access early education. But ACIJ did tolerate execution delays far longer than originally agreed, and accepted some of the arguments offered by the City to justify them.

ACIJ tried to show understanding for all reasonable arguments. For example, it is true that funds that were supposed to come from the federal budget were not received by the City government, at least in part because party politics. But ACIJ contested unreasonable obstructions. On one occasion ACIJ requested the City hold off on a plan to sell public buildings that it deemed of no public interest, and asked the court to order a technical study to assess whether such buildings could be used as schools.

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<sup>21</sup> Interviews with Marcela Goenaga and Soledad Acuña.

<sup>22</sup> Interview with Diego Marías.

<sup>23</sup> Interviews with Diego Marías and Marcela Goenaga.

This strategy did not succeed as ACIJ's requests were never answered and the buildings were finally sold.

The City offered two compromises which presented ACIJ with a dilemma regarding monitoring compliance. The first involved the establishment of early education spaces in social development centers under the authority of the Social Development Ministry, not the Education Ministry. The second involved the creation of the so-called modular, or container, classrooms.

## EDUCATION SERVICES AT SOCIAL DEVELOPMENT CENTERS: A NECESSARY TRANSITIONAL MEASURE?

As a provisional measure, the 2011 agreement accepted that, when there was not enough spaces, children could be assigned to centers run by community based organizations under the authority, economic support, and supervision of the Social Development Ministry. The agreement required that the ministry open ten new centers in 2011, which would also be under the supervision of the Ministry of Education. According to the agreement, children who were given a space in a social development center would still be considered as lacking school spaces and remain on the waiting list.

Social development centers and kindergartens provide different services. While the latter are principally devoted to initial education, which has mainly to do with generating enough stimulus for a child's development, the former are intended to both stimulate learning and compensate for social deprivations by offering food, care and emotional support. There were 17 childhood centers under the Social Development Ministry 2014. They provided around 735 spaces for children between 45 days and four years old, drawn mainly from the poorest districts of the city.

The Social Development Ministry contends that children belonging to the most vulnerable groups of the population should receive care and support in ways which are not offered in kindergartens, which are focused on providing education.<sup>24</sup> The Early Education Directorate of the Ministry of Education agrees, adding that the Ministry of Education monitors whether these centers comply with the minimum pedagogical standards.<sup>25</sup> The City wanted to regard this arrangement as a final policy solution and not as a transitional one that simply responds to the lack of openings in kindergartens. However, in order to reach an agreement with ACIJ it agreed to treat it as a transitional measure.<sup>26</sup>

ACIJ remains skeptical about whether social development centers are fit to provide proper developmental stimuli, and if they are at an acceptable level of compliance with the Ministry of Education's standards for initial education. Taking into account reports prepared by officials of the

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<sup>24</sup> Interview with Soledad Acuña.

<sup>25</sup> Interview with Marcela Goenaga.

<sup>26</sup> Interviews with Soledad Acuña and Diego Marías.

Public Ministry and the Ministry of Education, ACIJ has pointed out that some of these centers function in environments are incompatible with young children. This includes centers providing support to homeless people, drug addicts, and violent offenders. ACIJ also points out that some centers have directors who lack a degree in education, have no specialists in pedagogy, lack pedagogical tools and materials, or have inadequate space for children to take part in recreational activities.<sup>27</sup>

ACIJ claims that social care should be pursued without compromising education, and without generating a discriminatory practice that creates stereotypes from early childhood and thus reinforces structural inequality. In ACIJ's view, the use of social development centers instead of kindergartens is "segregationist," because it separates and stereotypes the poor.<sup>28</sup> According to ACIJ's former Director of Education Equality, Roberto Amette, "the education provided by social development centers is education for poor people; it is not a progressive policy."<sup>29</sup>

However, ACIJ did not reject or challenge the use of social development centers for children lacking access to kindergartens. For parents struggling to find an opening in the early education system for their children, the priority is to have access to one place or another. Being unable to send children to school at all creates a number of additional family problems and compromises the parents' ability to work.<sup>30</sup> ACIJ agrees that, as a provisional measure, accepting children who cannot access kindergartens into social development centers ameliorates the problem created by the shortage of schools.<sup>31</sup> Dalile Antúnez pointed out, "we had an internal debate; each of us had his or her own individual position regarding this. Nevertheless, we all agreed that we couldn't challenge that the social development centers were a solution to the problem of lack of school spaces; possibly a questionable one, but a solution at the end, especially to the parents of the children whose rights were breached."<sup>32</sup>

ACIJ staff continue to debate whether to change their strategy toward the City's use of social development centers, and are beginning to challenge it more aggressively.<sup>33</sup> The problem they face is that the agreement didn't specify how long it is acceptable for the City to continue implementing this provisional measure.<sup>34</sup> But the more the practice consolidates itself, the more segregationist it will be.

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<sup>27</sup> ACIJ, "Falta de vacantes escolares en el nivel inicial de la Ciudad de Buenos Aires," 2013, p. 22. Available at: <http://acij.org.ar/blog/2013/03/09/informe-sobre-la-falta-de-vacantes-en-el-nivel-inicial-de-educacion/>.

<sup>28</sup> Interviews with Dalile Antúnez and Roberto Amette.

<sup>29</sup> Interview with Roberto Amette.

<sup>30</sup> Interviews with Dalile Antúnez and Ernesto Golomb.

<sup>31</sup> Interview with Dalile Antúnez.

<sup>32</sup> Interview with Dalile Antúnez.

<sup>33</sup> Interview with Dalile Antúnez.

<sup>34</sup> Interview with Dalile Antúnez.

## MODULAR CLASSROOMS: A TECHNICAL SOLUTION OR A SOCIAL PROBLEM?

In 2013 the City decided to create new school spaces by introducing modular classrooms built with low-quality materials that can be easily transported from one place to another. Modular classrooms were brought into existing schools; or else put together to establish totally new modular schools. This was a way for the City to quickly and cheaply create new school spaces.<sup>35</sup>

This initiative was widely publicized in the media and criticized by parent associations. Parent groups claimed that it introduced a discriminatory distinction between students who used these classrooms and those who did not. With regard to the modular classrooms introduced in already established schools, parents claimed that the school facilities, such as toilets and recreation spaces, were not prepared for the increased numbers of students. The electrocution of a worker in one of these modular classrooms strengthened the outcry, which led to a judicial decision ordering the City to withdraw the new structures. This ruling was later overturned on appeal.<sup>36</sup>

The introduction of modular classrooms and schools to address the shortage of spaces was particularly challenging to ACIJ. Since this option was not considered in the agreement nor in the original work plan, ACIJ had to assess whether it was in accordance with the City's obligations.

Parent associations and teacher unions rapidly mobilized against the new measure, arguing that children sent to modular classrooms were victims of discrimination because they were sent to worse, less safe classrooms.<sup>37</sup> Yet these arguments were not solidly supported by evidence. Why are modular classrooms less safe than the others? Why does the use of cheaper materials mean worse educational conditions? Further, the classrooms could be considered a step in the right direction as they were introduced to increase the number of school spaces.

ACIJ did not want to take a position in absence of a technical assessment. Roberto Amette, former ACIJ Education Coordinator, commented that "we had to be very careful about the way we approach the subject. We couldn't despise so easily a place where a lot of children that had been suffering lack of school space would now be able to study. We couldn't do that without proper technical arguments."<sup>38</sup> After internal discussions, ACIJ decided to defer to the decision of the special master appointed in the case to oversee the implementation of the work plan.

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<sup>35</sup> Interview with Dalile Antúnez.

<sup>36</sup> See <http://www.telam.com.ar/notas/201406/67017-gobierno-porteno-aulas-container.html>

<sup>37</sup> Interview with Ernesto Golomb.

<sup>38</sup> Interview with Roberto Amette.

This deferral to a third party ultimately worked against ACIJ's goals, because the special master never made a report on the issue. In a new procedural shortcoming, he refused to submit his conclusions because he alleged that, after two years of work, he was not paid what he deserved.<sup>39</sup>

The strategy of deferring to expert technical opinions was reasonable. Public interest litigants, and even organizations specialized in education, are not necessarily well placed to assess construction. However, awaiting expert opinion can slow down the process. More important, it can also delegitimize the organization in the policy debate that its own legal action brought to public attention. As former Director of Initial Education, Marcela Goenaga noted, it could be argued that the CSO is requesting school spaces but cannot tell what type of school spaces it is requesting.<sup>40</sup> It may also make the organization lose control over the case; the discussions governing the execution phase can be reframed as being no longer in terms of rights but in terms of architecture or engineering.

ACIJ did consider an alternative to deferring to the special master's expert opinion. The organization procuring an expert opinion of its own, by appointing or hiring an expert witness in the case. This option was rejected because it was too costly.<sup>41</sup>

## THE ROUNDTABLE: NOT A MEETING OF MINDS BUT A KNOCKING OF HEADS!

The agreement between ACIJ and the City was initially thought of as the beginning of a phase of cooperative work between the two parties. The process of jointly developing the agreement and creating a roundtable working committee to monitor progress and deal with shortcomings supported this optimism. However, persistent noncompliance on the part of the City, and a lack of cooperation within the roundtable, moved ACIJ from a collaborative to a confrontational stance toward the City.

From the perspective of the City's representatives in the project, ACIJ's attitude was always insensitive to the fact that the City has many responsibilities besides complying with the agreement. This perceived attitude eroded the possibility of building bonds of trust.<sup>42</sup> As Diego Marías from the Ministry of Education pointed out "there are several contingencies to take into account about any given governmental plan. Complainants against the government have to be empathetic to understand contextual limitations, and therefore create a space to dialogue."<sup>43</sup>

The agreement between ACIJ and the City created a roundtable, or working committee, in charge of monitoring its execution and proposing policy adjustments. This committee was to be composed of

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<sup>39</sup> Interview with Dalile Antúnez.

<sup>40</sup> This point was made by Marcela Goenaga.

<sup>41</sup> Interview with Dalile Antunez.

<sup>42</sup> Interview with Diego Marías.

<sup>43</sup> Interview with Diego Marías.

representatives of the Ministry of Education, the Ministry of Social Development, ACIJ, and the Public Ministry in charge of children's affairs.<sup>44</sup> Meetings were to be held every two months. The City committed itself to produce and circulate information about progress in the execution of the work plan, the remaining children on waiting lists, and other relevant data at least five days in advance of each meeting.

Thus the roundtable was initially conceived as an instrument of collaboration and accountability through which the City would provide information to ACIJ and other interested parties and discuss solutions for obstacles and difficulties that emerged. As a former official of the Public Ministry put it "the main objective of the committee was to use the space to solve conflicts."<sup>45</sup>

However, it was clear early on that the roundtable would not work as anticipated. According to ACIJ, instead of sharing information and engaging in a constructive dialogue, the City refused requests for information and denied ACIJ any role in discussing solutions.<sup>46</sup> In the City's view, ACIJ's purpose in the committee seemed to be asking for information so as to prove noncompliance instead of building a constructive dialogue and showing understanding for the City's constraints.

Soledad Acuña, the City's Undersecretary of Educative Fairness, believes that the development of the roundtable was "a chronicle of an announced death." In her opinion, a constructive dialogue between the parties was impossible because of the lack of equality between them (in terms of institutional hierarchy and authority). She regrets that "ACIJ's only mission at the committee was to see that what they had achieved in the judicial process was complied with" instead of being receptive to the City's reasons for any deviations, and engaging in a constructive dialogue about policy issues beyond the agreement's specific goals.<sup>47</sup>

But ACIJ's mission to seek proof of compliance with the agreement does not seem unreasonable in light of the fact that they had to resort to litigation in order to procure constitutional rights. If not for the litigation, the City would have never committed to increasing school spaces. Indeed, it was the very essence of the roundtable to provide a space for accountability, where the City's progress with its new commitments could be overseen.

According to Acuña the roundtable was doomed to fail because it was a judicially created space. She believes it may have worked better if the process had been developed outside the judicial system. "An oversight committee is a judicial instance where all parties will monitor compliance of each party's role

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<sup>44</sup> The agreement also stated that the City's Ombudsman could be invited to join. He was invited but never took part in the meetings in the belief that the case did not involve him. This viewpoint is hard to understand given that the children and families that would benefit from the case are part of "the people" that the Ombudsman has the mission to defend and protect. But it shows that the idea of establishing an oversight committee was so innovative that it may have been misunderstood even by the stakeholders.

<sup>45</sup> Interview with Damián Azrak.

<sup>46</sup> Interview with Dalile Antúnez.

<sup>47</sup> Interview with Soledad Acuña.

in the case,” she argues. “ACIJ arrived at the meetings with the prejudice that what we did (as the Social Development Ministry) was not good enough.”<sup>48</sup> Curiously, although created under an agreement that had been promoted by the City’s High Court, there was no judicial presence at the working roundtable. Indeed, this lack of a judicial presence seemed to ACIJ members to be one of the reasons why the roundtable failed.

The City officials’ criticism of ACIJ’s attitude in the roundtable seems to ignore the fact that the City had committed itself to fulfilling its responsibility to provide universal access to early education after failing to do so, and that ACIJ requests for accountability were part of an agreed mechanism. Furthermore, it is clear from some of the City officials’ comments during the interviews for this case study, that government officials do not recognize the central role that the judiciary can play in facilitating and ensuring accountability of government in a democracy.

Members of the roundtable agree that the dynamic at the meetings was usually tense. The City’s representatives would not recognize ACIJ’s legitimacy to discuss policy issues on the grounds that ACIJ members are not elected to represent any constituents. As Acuña argued, “CSOs don’t have elective legitimacy. Where does the power of the judiciary come from to tell the executive power what to do on the grounds of a complaint made by a non-representative entity such as a CSO? If they want to change the City’s policies, they should form a political party and win the elections.”<sup>49</sup>

Against this backdrop, ACIJ’s representatives emphasized the City’s obligations and their failure to provide accurate, clear, and timely information. “There was no other way to reach information on the progress of the work plan than at the roundtable meetings. But the City always presented incomplete information and with delays. Therefore, it was really hard for us to have real knowledge of how compliance with the agreement was going.”<sup>50</sup>

The former Director of Initial Education for the City thinks that the bimonthly frequency of the meetings worked against the roundtable’s success. She argued that two months is too short of a period for assessing progress, given the magnitude of the infrastructure works that are carried out, so that in most meetings there was no good news to report.<sup>51</sup> She also pointed out that, because the meetings were held every two months, the dynamics soon became repetitive and tedious. She said “we repeated the same information already in the hands of ACIJ. And this methodology was carried out for four years.”<sup>52</sup>

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<sup>48</sup> Interview with Soledad Acuña.

<sup>49</sup> Interview with Soledad Acuña.

<sup>50</sup> Interview with Dalile Antúnez.

<sup>51</sup> Interview with Diego Marías.

<sup>52</sup> Interview with Marcela Goenaga.

The constant discussions about whether the City's information was timely, accurate, and up-to-date, became repetitive. This frustrated all parties and made them feel that they were wasting their time. Former Public Ministry official Damián Azrak said that, especially in the last days of the committee, he considered the meetings useless.<sup>53</sup> Since the dialogue never went beyond challenging the provision of information, distrust rather than cooperation dominated the roundtable proceedings and there was never space to engage in enriching discussions.<sup>54</sup>

A typical meeting came to follow a set script. ACIJ members would request information and ask questions of the City's representatives. They, in turn, would feel that their only reason for being there was to give explanations about their degree of compliance with the agreement. They soon became frustrated about the purpose of the roundtable. The meetings had become a knocking of heads instead of a meeting of minds. The City's legal head emphasizes that the roundtable should have been a space for dialogue, in which they could explain the challenges that the administration faced and receive understanding from their counterparts.<sup>55</sup> ACIJ, on the other hand, claims that such dialogue was never promoted by the City, which simply withheld information and challenged ACIJ's authority to make them accountable from the beginning.

After three years of little impact, the roundtable had lost all its appeal. The story of this working committee shows that, when positions between claimant and City move from collaboration to distrust, the parties grow frustrated with their counterpart's claims and take their own positions to their extremes. If a cooperative approach is not possible, pressure became the only way to make the City comply, and this was achieved through the threat of media exposure, community pressure and intervention from the judiciary. The roundtable has not met since February 2014, but the City's accountability has improved.

## ACIJ FORCES GREATER COMPLIANCE WITH ITS NEW STRATEGIES

After three years, all of the members of the working roundtable — ACIJ members, City officials, and Public Ministry representatives — felt that it had become pointless. ACIJ decided to no longer participate in the committee since they felt that their legitimacy to make requests was continually called into question by the City and they had never been given accurate information to assess and work with.<sup>56</sup> After dropping out of the committee ACIJ decided to shift their strategy.

First, ACIJ tried to bring their concerns to the Minister of Education, Esteban Bullrich. Initially rebuffed, they spoke to the media to denounce the City for not fulfilling its obligations under the agreement.

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<sup>53</sup> Interview with Damián Azrak.

<sup>54</sup> Interview with Damián Azrak.

<sup>55</sup> Interview with Diego Mariás.

<sup>56</sup> Interview with Roberto Amette.



Once Minister Bullrich received a call from a journalist asking him to confirm or deny the information provided by ACIJ, he invited ACIJ to a meeting. Media exposure would inevitably have produced negative public opinion, because the problem involved education and questioned either the City's competence or integrity in not complying with its own commitments.<sup>57</sup> Minister Bullrich probably wanted to avoid hostile media coverage because he had only recently been appointed and because local and national elections were approaching. The mere threat of adverse media coverage was effective enough to focus the minister's attention on ACIJ's claims.<sup>58</sup> Although the meeting was positive, and the information provision to the working roundtable improved in the following months, its usefulness decreased over time.

ACIJ then chose a new strategy. Dalile Antúnez argued "we needed to change the dynamic of the table because it was no longer working. The City was not responding to our demands, and we didn't have accurate information."<sup>59</sup> ACIJ moved its attention from the roundtable as a means of engagement with the City and began to request hearings with the monitoring judge. The original monitoring judge who signed of the agreement was replaced by Judge Pablo Mántaras in March 2013. Judge Pablo Mántaras' wide knowledge of the case and active participation quickly impressed ACIJ, encouraging them to reevaluate their strategy and shift to monitoring the execution of the agreement through judicial hearings rather than through the working roundtable.

ACIJ's change in strategy was partially successful, since at the judicial hearings the judge did require the City to comply with its duties relating to the provision of information. Moreover, the City's practice at the roundtable's meetings of ignoring ACIJ's challenges without being sanctioned changed as well. Under specific judicial orders, the City's compliance with information provision obligations improved.<sup>60</sup>

## JUDICIAL INTERVENTION AND A PUBLIC CAMPAIGN TO FORCE THE CITY TO COMPLY

Along with the unresolved problem of school shortages, the City had for years failed to comply with its commitment to submit a work plan for additional infrastructure. Feeling that the initial agreed plan for creating more spaces was not enough to meet the demand, the City had held back.

The additional work plan should have been submitted by March 2011, yet it wasn't until March 2014 — almost two years after the work was meant to have been completed — that the plan was actually submitted. In the meantime, ACIJ made multiple requests, first at the working roundtable and later to

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<sup>57</sup> Interviews with Carlos Savoia and Raquel San Martín, journalists of national newspapers (*Clarín* and *La Nación*, respectively).

<sup>58</sup> Interview with Dalile Antúnez.

<sup>59</sup> Interview with Damián Azrak.

<sup>60</sup> Interview with Dalile Antúnez; Interview with Roberto Amette; File documents.

the judge. When ACIJ received a positive response from the judge in February 2014, the City submitted the additional plan.

The additional plan called for the creation of 12 new schools and the improvement of 11 buildings, creating approximately 1,750 new school spaces. In ACIJ's view, however, this plan was incomplete and lacking in important details. It includes infrastructure works planned to be carried out from 2014 to 2017, but with no mention of the specific locations, the amount of funds that will be allocated, or the opening of any administrative file that could be tracked. Instead of calling a meeting of the roundtable, ACIJ decided to request that the judge reject the plan and order the City to improve it. At the time of writing the request is still pending.

ACIJ's shift in approach can also be observed in relation to the City's partial compliance with its commitments relating to budget arrangements for school infrastructure and for increasing the number of teachers. The agreement established that the City had to include in every year's budget law the items required to cover the costs involved in both compliance with the infrastructure work plan, and for employing the corresponding number of teachers.

According to ACIJ, specific budget items allocated to the infrastructure work plan have been included in the annual budget for some years but not for others, and for certain works but not for all. Moreover, there has been less detail than required by the agreement.<sup>61</sup> Each year, ACIJ assesses the budget project bill that is sent to the City's legislature. When no budget items are included in compliance with the agreement, ACIJ requests the City's legislators to comply with the agreement. Such requests have never been met by the legislature.

In the 2015 budget project bill, not only was there no specific budget item allocated to the infrastructure work plan, but there was no specific budget item for education infrastructure in general. Tired of repeated lack of compliance, ACIJ took action on three different fronts. It continued making contact with the legislators in order to request that they to comply with the agreement's obligations, and added two other initiatives.<sup>62</sup> When the project bill for the 2015 annual budget was sent to the legislature in September 2014, ACIJ requested the monitoring judge to remind legislators of the City's commitment to detail in every budget law the budget items related to the work plan.

Simultaneously, ACIJ developed an online petition to engage the community in requesting legislators to adapt the budget bill in compliance with the agreement. "It was necessary to give visibility to our request; otherwise they would continue ignoring us," explained Nicolás Schujman of ACIJ. The campaign was called *Ni un chico sin escuela* (No child out of school), and was promoted along with a community-based organization called *Familias x la escuela pública* (Parents for Public Education), an

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<sup>61</sup> Interview with Dalile Antúnez and Diego María, and interview with Emilia Mamberti.

<sup>62</sup> Interview with Nicolás Schujman.

association of parents that got involved in the case through its opposition to a problematic new online school registration system.<sup>63</sup> The ACIJ campaign was broadcast through a virtual platform facilitated by the organization Change.org, and it gathered more than 20,000 signatures before the parliamentary debate on 12 December 2014.<sup>64</sup>

This three-pronged strategy met with some success. In late November 2014, in an unprecedented decision involving the judiciary in the legislative debate over budget allocation, Judge Mántaras ordered the City to explain and detail which budget items allocated in the project bill were directed at complying with the infrastructure work plan in the agreement.<sup>65</sup> Although the City has not yet responded to that order, the parliamentary debate introduced an amendment to the project bill, increasing the budget for education infrastructure by 30 percent, or 60 million pesos.<sup>66</sup> Less than a year before local and national elections (in which the City's major will run for national president), the City could not afford to ignore pressure from both the courts and the people.

## ENGAGING THE AFFECTED COMMUNITY

ACIJ's engagement with the community affected by a lack of access to early education was important for two reasons. First, ACIJ needed to consult with the community in order to understand the views of parents and be sensitive to this in developing their own strategies. ACIJ didn't need to ask parents whether having their children excluded from school was violating their rights or not. That was obvious, and it was a constitutional and legal matter. So they didn't need to go through a consultation process with the affected community before filing the lawsuit.

ACIJ did, however, need to consult those who were affected in order to check on the impact of those "gray" solutions advanced by the City. The issues relating to the use of modular classrooms and the use of social development centers to create early education spaces for children show how important it was for ACIJ to learn about the parents' viewpoints. Although they followed the parents' position with

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<sup>63</sup> The implementation of a new unique, computer-based system for registering children for early education was part of the agreement that ACIJ reached with the City. The objective was twofold: to improve and centralize the existing information on schools spaces, its allocation, and children in waiting lists; and to improve transparency and reduce arbitrary registration decisions that were favored by the decentralized, "manual" system run by the school directors that had been in place for 20 years. Although well intentioned, the system introduced by the City in November 2013 was badly implemented: it was not able to deal with the amount of online demands it received and soon collapsed. Many parents were unable to complete the registration process and went to school to do it personally, giving place to the duplication and even triplication of requests and preventing the system from allocating spaces according to priority standards. The City said that the new system favored an increase in the registration rates, giving place to an unexpected demand. The Minister of Education stated that it had "facilitated access to public school to many more people" (Esteban Bullrich declaration on February 4, 2014 to the newspaper *La Nación*. Full article available at: <http://www.lanacion.com.ar/1661185-esteban-bullrich-mauricio-macri-tiene-a-disposicion-mi-renuncia-pero-no-me-la-pide>). As a result of the increased demand and the operational failures, hundreds of children were removed from their previously assigned schools or from schools altogether. This created a public scandal of massive proportions. City representatives claim that they have taken notice of the difficulties they faced in 2014 and that they are making all necessary adjustments in order to implement the system successfully and without trouble in 2015 (interview held with Marcela Goenaga).

<sup>64</sup> The campaign is available at: <https://www.change.org/p/esteban-bullrich-incluyan-presupuesto-para-que-ning%C3%BA-chico-se-queda-sin-escuela>.

<sup>65</sup> File documentation, 27 November 2014.

<sup>66</sup> Information available at: <http://acij.org.ar/blog/2014/12/12/los-legisladores-de-la-ciudad-incorporaron-60-millones-para-obras-en-escuelas/>

regard to modular classrooms and not in respect to the social development centers, ACIJ learned that it needed to know the parents' views in order to make informed decisions.

Second, the execution phase of the agreement between the City and ACIJ showed that neither a public commitment from the City to comply with a right, nor a judicial order guarantees the actual implementation of the remedy. To make a reluctant City comply, it was important to mobilize community support.

Public interest litigation is often initiated without canvassing extensive popular support, even in the situation where the City's disregard of the rights of a minority or a disadvantaged group is being challenged. When ACIJ submitted the class action lawsuit in 2006, it did so without securing the affected community's support. Although it had excellent litigation results, the ACIJ could have achieved better City compliance with the agreement if it had built stronger community support from the start. This is an important strategic question that ACIJ must consider for its future work.

It is very likely that a lack of pressure from the public was major factor allowing the City to drag its feet on implementing the agreement. Four years after the establishment of the agreement there were still a number of obligations that the City had not met, and the number of children on waiting lists remains very high. What forced the City into greater compliance, particularly with local and national elections looming, was the emergence of organized public pressure. Public interest litigants, such as the ACIJ and others, which do not represent constituencies, can do well to mobilize community support. This adds political legitimacy to their cause.

Community mobilization served ACIJ well. The *Ni un chico sin escuela* campaign was a success, as was ACIJ dialogue and partnership with *Familias x la escuela public*. Unsurprisingly, City officials criticized ACIJ for "doing politics" in a blatant way through their community outreach when they visited neighborhoods and told parents that they have rights to claim against the City.<sup>67</sup> ACIJ is considering the significant value of a strategy that mobilizes community pressure behind public litigation.<sup>68, 69</sup> Roberto Amette, former Coordinator of the Education Program at ACIJ, said "for the government, the 'cost' of breaching the obligations of the agreement has been low, almost inexistent. We have to make the problem more visible."<sup>70</sup>

ACIJ is embarking on another interesting strategy that combines citizen engagement with legal pressure. It is planning to make specific requests to the court with regard to the shortage of spaces on a neighborhood basis. This could bring more speedy resolution because the issues will be more

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<sup>67</sup> Interview with Soledad Acuña.

<sup>68</sup> Interview with Dalile Antúnez.

<sup>69</sup> Dalile Antúnez pointed out that this methodology is used in other areas of the CSO, such as 'Villas' because it is easier to reach the people. But even there, it is not that fully explored yet.

<sup>70</sup> Interview with Roberto Amette.

localized and limited, and is likely to attract higher levels of interest from families and parent associations in each neighborhood. As María Emilia Mamberti, a member of ACIJ explained “by limiting the scope of schools by neighborhood, it is simpler to reveal to the affected community the lack of compliance by the City.”<sup>71</sup>

## STRATEGIC LESSONS FOR ACIJ

The 2011 agreement between ACIJ and the City established ambitious commitments directed at improving access to early education in the City of Buenos Aires. Four years later we see that there has been positive change, though not as much as envisaged by the agreement. Children between 45 days and five years old who are unable to attend school are still counted by thousands. Does this mean that the City has not complied with the agreement? No. The City did make progress, although not as speedily or extensively as it committed to. Many new spaces for children were created and waiting lists have been shortened. As a direct result of the ACIJ public litigation there is now greater public awareness about the issue, better coordination within government agencies, and improvements in the system for school registration.

It has been nine years since ACIJ launched its class action lawsuit against the City in an attempt to force the authorities to meet their constitutional and legal commitment to provide universal access to early education. There have been many lessons learned by all parties. For ACIJ it is important that these lessons become integrated into future strategic planning.

## BUILDING THE CAPACITY FOR SUSTAINING A LONG TERM ENGAGEMENT

Structural reform is a long-term process. Litigation that enforces such reform will always take time and the implementation of any judicial instruction, policy reform, or agreement can go on forever. The ACIJ case against the City was filed in December 2006. This reflective study is being written between October and December 2014, and ACIJ is still struggling with the execution of an agreement reached at the beginning of 2011 that established final deadlines by 2012. It is very hard to foresee when the execution phase will reach an end or whether it ever will.

This scenario presents specific challenges to litigants regarding the need to sustain the effort and the need to anticipate changes in circumstances. CSOs in Argentina are usually funded by donor funded projects. Litigation cases are brought up in the context of such projects. The problem is that the projects' funds are time-limited, while the unfolding experiences of cases are not. Cases as big as ACIJ's case on initial-level education demand a high level of dedication and substantial resources for many years. This kind of public interest litigation often results in long-term execution phases. It is

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<sup>71</sup> Interview with María Emilia Mamberti.

therefore important that CSOs engaging in this type of litigation should envisage a sustainable strategy, including plans for long-term funding.

Ideally, ACIJ would have full-time team, or at least one full-time staff member, devoted to the case. Unfortunately, neither has been possible. This works against the organization's capacity to carry out a number of strategies that would improve its ability to monitor and enforce City compliance. This includes visiting the premises of all infrastructure works; hiring experts in school infrastructure to better assess the City's performance; engaging with community-based organizations to mobilize support for enforcing City compliance; doing research on how social development centers work and exploring the gap between them and Ministry of Education schools in their impact in children; identifying and critiquing City allocation of public funds to projects that are of a lower priority than education; and designing and implementing new communication strategies including producing videos and multimedia campaigns for raising awareness.

## ADAPTING TO CHANGING CIRCUMSTANCES

Inevitably, a long drawn out process of implementation will witness a number of changes in the circumstances that existed when the case was originally filed or an agreement made. Organizations should ideally be able to anticipate potential shifts in conditions, or obstacles that might arise. This awareness will help them to relate to their strategic choices with flexibility and even preempt delayed responses or missed opportunities. Unexpected positive developments are also possible and will always be welcome.

During the time of ACIJ's legal engagement with the City, there have been two national elections and two local elections. Relevant authorities changed multiple times at the City (three education ministries passed during the case), the judge in charge of the case and monitoring the agreement changed three times, and the head of the Public Ministry in charge of children's affairs also changed by the end of 2013.

ACIJ directorship and staff members went through major changes as well. The three co-directors leading ACIJ since its foundation stepped down one year after the agreement with the City was signed. The staff has also changed a lot over the last four years, which is common for most CSOs in Argentina.

Thus sustainability is not only linked to adequate funding, but also to planning and adapting to changing circumstances and stakeholders. Internally, as the case of ACIJ shows, organizations may need to adapt to staff changes. This can require special coordination efforts in order to sustain consistent work on the case and maintain communication with partners and stakeholders. There is a flipside to the multiple obstacles posed by the long duration of execution processes. The long

implementation phase of structural reform litigation provides grounds for optimism when the case is not making progress, a change in circumstances or authorities may even reinvigorate the case. As one of the co-directors of ACIJ put it, “if your claim is well founded in rights, a twist of luck may always be around the corner; you should never give up.”<sup>72</sup>

## ATTENTION TO STRATEGY

This case study illustrates many of the challenges that human rights activists and CSOs face when choosing the path of litigation to achieve public policy reform. The experience shows that many of the obstacles that ACIJ faced when trying to achieve implementation of the agreement are common challenges in the execution phase of public interest litigation. It suggests that a range of strategies are necessary if the desired reforms in City policy are to be effective. This is especially the case in social rights litigation that places demands on the City to produce major changes in policies relating to service delivery. The lessons that ACIJ has learned should prove valuable to other cases involving similar public interest litigation.

Among the main lessons relates to the failure of the roundtable as an oversight mechanism. The experience in this case shows that such forums should be tailored and used to build trust and promote cooperation, rather than just be used for accountability purposes. It also shows that a judicial presence should be maintained in order to provide all the parties with legitimacy at the table.

ACIJ also learned the value of citizen engagement and community mobilization, and that this could be useful to develop at an early stage in public interest litigation. Coupled with media exposure and public campaigning, community mobilization should be recognized as an effective strategy for putting pressure on political actors.

The future of the case is uncertain. ACIJ continues to test new strategies of reaching out for more judicial and community engagement, and recent results provide some reason for optimism. Ten years after filing their lawsuit, ACIJ members know they must be ready to take advantage of any such chance.

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<sup>72</sup> Interview with Dalile Antunez.

## ANNEX: LIST OF INTERVIEWEES

Soledad Acuña, Undersecretary of Educative Fairness at the Ministry of Education of the Government of the City of Buenos Aires, former Undersecretary of the Social Development Ministry. Interview date: 29 September 2014.

Roberto Amette, former Coordinator of the Education Program at ACIJ. Interview date: 16 September 2014.

Dalile Antúnez, Co-director of ACIJ. Interview dates: 7 August 2014, 28 August 2014, 11 September 2014, 10 October 2014, 24 October 2014, and 19 November 2014.

Damián Azrak, former Secretary at the Public Ministry for Children Affairs of the City of Buenos Aires (2009 to 2014). Interview date: 11 September 2014.

Mariela Belski, Executive Director, Amnesty International Argentina. Interview date: 18 September 2014.

Marcela Goenaga, Initial Education Director at the Ministry of Education of the City of Buenos Aires. Interview date: 12 September 2014.

Ernesto Golomb, member of "Parents for Public Education". Interview date: 10 October 2014.

María Emilia Mamberti, ACIJ team member. Interview dates: 28 August 2014, 22 September 2014, and 4 December 2014.

Diego Marías, Litigation Director of the Ministry of Education of the City of Buenos Aires. Interview date: 25 September 2014.

Werner Pertot, journalist at *Página/12* newspaper. Interview date: 2 October 2014.

Raquel San Martín, journalist at *La Nación* newspaper. Interview date: 7 October 2014.

Claudio Savoia, journalist at *Clarín* newspaper. Interview date: 22 September 2014.

Martín Sigal, former Co-director and founding member of ACIJ. Interview date: 6 August 2014.

Nicolás Schujman, ACIJ team member. Interview date: 4 and 19 December 2014.