
Report

Latin American ESC Rights Strategic Litigation Workshop:

The challenge of implementation of court decisions

Bogotá, Colombia, February 7-8, 2013

I. Workshop background and goals

As is well known, judicial application of economic, social, and cultural rights (ESCR) has advanced considerably in Latin America, in that different domestic courts have issued favorable decisions in cases regarding these rights, and some international bodies (such as the Inter-American Commission on Human Rights) have demonstrated greater receptivity to the topic. These achievements have created a new challenge that has not been systematically and collectively explored: developing strategies to understand and promote the *implementation* of these decisions and deepen their positive *impacts* for the cause of ESCR.

For this reason, these issues were the focus of the global meeting of the ESCR-Net's Working Group on Justiciability, which took place in Bogotá, Colombia in 2010. Organized in collaboration with Dejusticia and the NCHR, the meeting brought together 71 academics, activists, donors, lawyers and judges from 19 countries and regions across the world. This meeting confirmed the strategic and analytic importance of implementation and the impact of decisions regarding ESCR.

The main recommendations discussed in the global meeting were (1) include questions regarding application during the litigation process; (2) undertake campaigns focused on governmental agencies responsible for implementation; (3) undertake public opinion campaigns; (4) seek allies among the government and civil society; (5) increase the political costs of non-compliance; (6) ensure the monitoring of the decision's implementation; (7) seek solutions that make use of existing institutions; and (8) propose indicators that are not absolute, but rather adaptable to the specific context.

Additionally, the organizations from around the world that were present encouraged the organization of smaller regional meetings on the topic, in order to develop strategies of collaboration between the organizations present. The first regional meeting of this type took place in Johannesburg in March, 2012. The Latin American workshop took place February 7-8, 2013 and had the following goals:

- Examine strategies to improve the implementation and impact of decisions regarding ESCR in Latin America.
- Discuss lessons in the implementation of decisions and identify cases to collectively support through regional and international advocacy.
- Create a space to discuss litigation strategies, including how those affected by governmental actions and social movements can have a more central role and how professionals can take advantage of regional and international solidarity.
- Develop concrete proposals to improve the implementation of ESCR case decisions that allow us to work collaboratively at a national and regional level.

II. Methodology of the Workshop

Given that the event was conceptualized as a workshop for reflection and collective action, the format was that of a strategic and participatory discussion group, building on cases and lessons brought by the participating organizations. For this same reason, we decided to limit the number of participants, in order to encourage a richer discussion, and be able to develop collective follow-up strategies for the region that were concrete, specific and practical. Thus, there were 19 representatives from 15 non-governmental organizations (NGO) in the region, including Dejusticia, CELS, Fundar, Conectas and ESCR-Net, among others.¹

To encourage dialogue and open discussion, the format was distinct from that which is normally used in this type of workshop, which concentrates on individual presentations of the participants. Rather, the sessions were structured as discussion groups or group interviews. Thus, they were focused on questions and postulations formulated by the moderator, who previously contacted the participants in order to obtain information regarding cases and lessons from the ESCR research, litigation and advocacy of their organizations. Based on that information and the discussion themes of the workshop, the moderator prepared a conversation guide to encourage discussion among the panel participants and the other workshop participants. In addition to encouraging an agile and participative dynamic, this format sought to maintain the focus of the discussions on concrete lessons and possible collaborative strategies to promote the

¹ Ver cuadro de participantes al final del informe

implementation and impact of binding decisions regarding ESCR. In some panels, this dynamic was reinforced through the use of brief audiovisual materials as conversation starters.

III. Conceptual issues, presentations, and case studies

The workshop focused on the following conceptual topics, which were discussed through the aforementioned collective discussions and presentations: (1) The challenge of implementation of ESCR decisions: lessons and questions from an analysis undertaken by Dejusticia, NCHR, and ESCR-Net in 2010; (2) Litigation strategies: lessons on judicial orders and remedies; (3) Strategies of political mobilization: lessons on articulation with social movements; (4) Public policy strategies and relationships with the State: lessons on translating decisions into public policies, and (5) Strategies for universal and regional systems. These topics were presented and analyzed through the a discussion of ESCR cases that have been brought by the participating organizations in their respective countries. These cases showed normative advances and challenges in the implementation of decisions regarding ESCR cases. The cases that were discussed from Argentina, Brazil, Colombia, Ecuador, Mexico, Paraguay, and Peru were illustrative of these advances and challenges. In this report, we briefly describe some of these cases.

Argentina

The right to education

As Dalile Antunez explained, in December 2008, the Civil Association for Equality and Justice (*Asociación Civil por la Igualdad y la Justicia, ACIJ*) filed an action of protection (*acción de amparo*) in representation of the thousands of children of Villa 31-31 Bis who attend primary schools located far from their homes and thus face serious difficulties in accessing their right to education. The lack of geographically close schools forces the majority of children that live in the Villa to travel long distances in order to attend school. The long distances are compounded by the fact that the internal roads of the Villa are difficult to transit, in particular during rainy periods, and that public transport does not enter the interior of the Villa. These difficulties seriously affect the children's ability to attend class, thus violating their right to education and equal opportunities.

In April 2009, the acting judge ordered a protective measure, which included that the government undertake adequate studies and provide free and accessible school transportation until the case was decided on the merits. On March 25, 2010, the court ruled in favor of the petitioners, and ordered the government to provide information to the court including the amount of micro-buses necessary for the school transportation needs of the children in the Villa. It also ordered the government to ensure the adequate provision of such a transportation service. However, at the end of 2010, the government itself recognized that 1,348 children still did not have access to school transportation. Thus, the city's court fined the government's Head of

Government of the Autonomous City of Buenos Aires, Mauricio Macri. The parties were notified of this decision on August 24, 2011.

The constant monitoring and support in the design of the necessary transportation network on the part of the ACIJ, together with its participation in the litigation stage, allowed for the eventual complete implementation of the decision.

The Case of Matanza Riachuelo

The other case from Argentina, the Case of Matanza Riachuelo, was presented by Diego Morales of the Center for Legal and Social Studies (*El Centro de Estudios Legales y Sociales, CELS*). The case involves a severely polluted watershed that passes through marginalized neighborhoods of Buenos Aires, creating a health risk to the zone's inhabitants. The Court established that the degradation of the basin had occurred over more than 100 years, but that no department of the country wanted to take responsibility for its rehabilitation. To find a solution for the pollution, the Court ordered that three political jurisdictions take responsibility, in conjunction with an inter-jurisdictional body that was created after the case was filed. The Court ordered that these entities create a program that fulfilled three objectives: (1) improved the quality of life of the inhabitant of the basin, which included around 3 million people; (2) rehabilitated the environment of the basin; and (3) prevented future harm. To grant flexibility to the governmental bodies with experience and knowledge, the Court gave very general orders. Nonetheless, it creates several options for compliance with these three objectives, as well as indicators that allow the Court and the public to follow the case.

In spite of the success that the Court had in this case, it has faced many challenges during the implementation of the decision. First, although the Court ordered a federal tribunal to monitor the case, this tribunal is not specialized in environmental issues, nor is it geographically close to the watershed, which limits its effectiveness. The decision regarding which tribunal would undertake follow-up of the case was the result of an evaluation of the number of cases each tribunal had. Additionally, later the judge was deposed for corruption, which indicates that some type of control over judges in such polemic cases is necessary.

Brazil

The Alyne Pimentel Case

In August 2011, the United Nations Committee for the Elimination of All Forms of Discrimination against Women (CEDAW) accepted the *Alyne Pimentel v. Brazil* Case. This case marked the first time a monitoring committee ruled in an individual complaint that discrimination in access to maternal healthcare was a violation of the State's obligations under international standards and CEDAW. According to Monica Arango and Luisa Cabal from the Center for Reproductive Rights (CRR), the State has started a dialogue with the petitioners, in which it has committed to fulfill the individual measures of reparation ordered, including

symbolic reparations. With respect to the measures of non-repetition, Brazil has undertaken some training and conferences. However, the major accomplishment of this case was the normative precedent established by the Committee, which recognized that protection against maternal mortality is a human right. Similarly, litigation in other areas of the world has used this case as precedent. However, an important challenge remains: the implementation of the public policy measures contained in the general recommendations issued by CEDAW, including the prioritization of “the prevention of unwanted pregnancy through family planning and sex education and [the reduction of] maternal mortality rates through safe motherhood services and prenatal assistance” (General Recommendation CEDAW n. 24, par. 31).



Darci Frigo, Terra de Direitos, Brazil

The Liberty Link Case

The second case from Brazil was related to transgenic food and was litigated by Terra de Direitos (Darci Frigo) in three Civil Public Actions (*Ações Civis Públicas*, ACP).

The first was filed in 2006 (ACP n. 2006.70.00.030708-0) and sought to impede the commercialization of Bayer’s Liberty Link corn before a public audience regarding its sale was held.

Given the success of the action, the government was forced to undertake the public hearing. Nonetheless, after the hearing, the government hastily approved the commercial sale of the transgenic corn. Thus, the case was complemented by a new ACP, n. 2007.70.00.015712-8, which sought to suspend the decision authorizing the commercial sale of Liberty Link corn. In 2007, an injunction was issued at the trial court level, thus suspending the authorization of commercial sale in certain parts of the country, until environmental impact and health studies were undertaken regarding transgenic seeds in the five principal biomes of Brazil. The decision was based on the protection of agro-biodiversity and the human right to adequate nutrition. A third ACP (n. 2007.70.00.015712-8) was filed in 2009, questioning the inadequacy of Brazilian laws to avoid contamination of traditional corn by transgenic corn. To politically strengthen the process, 24 civil society organizations focused on monitoring corn contamination formed the group “O Milho é Nosso!” This group led to the government’s decision to undertake a study in the Paraná state, which concluded that norms the governmental agency charged with monitoring transgenic products had developed were insufficient to avoid general contamination. Terra de Direitos filed a fourth ACP to suspend the planting of all transgenic corn. The court denied this request in the first instance, and Terra de Direitos has since appealed the decision.

The Affirmative Action Case

Flavia Annenberg (Conectas Derechos Humanos) described the third Brazilian case, which involved the filing of an action for breach of fundamental precepts (*Ação de Descumprimento de Preceito Fundamental*, ADPF n. 186) that questioned the constitutionality of affirmative actions for Afro-Brazilians in universities. In 2012, the Supreme Federal Tribunal of Brazil decided that affirmative actions were indeed constitutional, in a process that took years, and required a large number of public audiences with civil society organizations and *amici curiae* both for and against the policy of affirmative actions. One of the impacts of the decision was the 2012 adoption of Federal Law 12711, which establishes that federal universities must establish an admissions quota of 50 percent for students that graduate from public schools. Within that 50 percent, universities must also include a racial quota that adequately reflects the representation of Afro-Brazilians in each State. The decision also had an impact on the executive power, which formed a committee with representatives from the Ministry of Education, the Secretary of Policies for the Promotion of Racial Equality, the National Indian Foundation, and civil society in order to undertake monitoring of the law's implementation. Above all, the decision changed the political articulation in state universities, which became centers of discussion around affirmative action programs. For example, in the University São Paulo, the Commission Pro-Quotas (Comissão Pró Cotas) was created to pressure the university.

The successful strategy adopted by diverse civil society organizations, including Conectas, was to actively participate in public audiences and present *amici curiae*, which served not only to sensitize the judges on racial exclusion in higher education, but also was an opportunity to educate the society at large.

Colombia

Decision T-025 of 2004

Rodrigo Uprimny of Dejusticia presented an analysis of the implementation of the Colombian Constitutional Court's Decision T-025 of 2004, which declared a state of unconstitutionality with respect to the forced displacement crisis in the country. This crisis was due to both the internal armed conflict as well as economic pressures created above all by mining and palm plantations, which led to the displacement of between 4 and 5 million people in the country. The development of this case is interesting, given that it was not initially litigated strategically, but rather assumed that character during the implementation stage. The case arrived to the court in the form of various constitutional actions filed by many different people. The court decided to combine these actions, given that they all related to the situation of forced displacement in the country.

In declaring a general state of unconstitutionality, the Court granted general, very broad measures, essentially ordering the State to take action to harmonize the reality of displaced people with constitutional and human rights standards. Given the importance of the issue, the

Court decided to retain jurisdiction over the case in order to ensure compliance with its orders. Due to the complexity of the issue, the Court decided to create a monitoring commission, which included NGOs with experience in forced displacement issues, universities, academics, churches, and other members of civil society. This commission had greater capacity and technical knowledge than the Court to analyze and respond to State reports regarding measures and advances that it had made to comply with the Court's decision. Dejusticia formed part of this monitoring commission.

Currently the situation of internally displaced persons has greatly increased, although it continues to be precarious at best, and involves many human rights violations. Nonetheless, aside from the direct impacts that the decision had on the situation of displaced people, it has also had more generalized societal impacts. For example, the issue of displacement was no longer considered a sad, but unavoidable catastrophe, but rather an issue of human rights that required reparations and a response from the State. Additionally, through the commission, the Court managed to create a space that was representative and that included academic knowledge within an institution of judicial interlocation.

Decision T-628 of 2012

Jomary Ortegón of the Colombian NGO, José Alvear Restrepo Lawyers Collective (*Colectivo de Abogados José Alvear Restrepo*, CAJAR) filed a case regarding a “community mother” in Colombia who lost her job when she was diagnosed as HIV positive. Jomary highlighted the connection between certain traditional gender roles and the lack of recognition by State of labor rights of the community mothers. CAJAR and the Center for Popular Education and Research (*Centro de Investigación y Educación Popular*, CINEP), within the framework of formation in which the Fundación Lila Mujer participated as the petitioner, received a favorable decision from the Constitutional Court. This decision ordered the Colombian Institute of Family Well-Being to respect labor rights, including minimum wage, of community mothers. The decision also determined that the condition of carrying HIV or suffering from AIDS is protected information under the right to privacy. The individual case has an important normative impact in relation to the more than 70,000 community mothers in Colombia.

Ecuador

The Sarayaku Case



Luisa Cabal (CRR, U.S.), Mario Melo (Pachamama Foundation, Ecuador), Juan Carlos Ruiz (IDL, Peru)

Mario Melo of the Pachamama Foundation presented the [Sarayaku](#) Case from Ecuador. The Kichwa People of Sarayaku is one of the oldest settlements of the indigenous Kichwa People in the Pastaza province of the Ecuadorian Amazon, and includes approximately 1,300 people. In 1996, Ecuador signed a contract for the exploration of hydrocarbons and the exploitation of crude oil between the State Oil Company of Ecuador (*Empresa Estatal de Petróleos del Ecuador*, PETROECUADOR) and the consortium formed by the General Company of Copmbustibles (*Compañía General de Combustibles*, CGC), a subsidiary of Chevron, located in Argentina, and the company Petrolera Ecuador San Jorge S.A.

Between 2002 and 2003, GCG, with the help of Ecuador's army, entered the Sarayaku people's territory in order to undertake seismic exploration, without the permission and against the will of the Sarayaku people. They placed almost 1.5 tons of explosives within the territory. This illegal entry also caused the destruction of sacred sites and led to confrontations between the Sarayaku people and company agents, as well as the army. The case was taken to the Inter-American System for the Protection of Human Rights. In 2012, the Inter-American Court ordered Ecuador to remove the explosives from the Sarayaku territory. Additionally, the State must carry out an adequate, effective, and complete consultation before undertaking natural resource extraction projects within the Sarayaku's land. It must also carry out mandatory classes regarding the rights of indigenous peoples, geared toward state agents involved with indigenous peoples, and organize a public event to recognize its responsibility for the violations. Finally, the Court established that the State must pay \$90,000 USD in material damages and \$1,250,000 USD in moral damages to the Sarayaku people. The Ecuadorian government has publically recognized its responsibility for the violations, but has also passed the Executive Decree No. 1247 of July 19, 2012, which regulates the right to prior consultation, and, in the words of the Sarayaku and various indigenous organizations, attempts to reduce the consultation to a mere formality of socialization or information, thereby ignoring the decision of the Inter-American Court of Human rights in the Sarayaku Case.

The Sarayaku Case was one of the cases selected during the workshop for implementation support from Dejusticia and ESCR-Net. This selection was made for at least two reasons: The monitoring of the process by the Pachamama Foundation and the special leadership power of the Sarayaku community. Given this leadership role, there is great potential for the creation of a participatory implementation process.

Mexico

The right to water

In April, 2012, the Second Appellate Court of the Eighteenth Circuit Court, based in Cuernavaca, Morelos, published the first favorable decision regarding the right to water in Mexico. Maria Silvia Emanuelli of the Latin American Office of the Habitat International Coalition (HIC-AL), headquartered in Mexico, described the litigation process implemented by her organization in coordination with a collective of lawyers and academics. This litigation was filed in the name of four low-income women from la Colonia Ampliación Tres de Mayo (Alpuyeca, Morelos) who did not have access to the city's water supply. In the decision regarding action of protection number 381/2011, the Court established that the lack of water constituted a violation of the human right to water, which has been recognized since 2012, in Article 4 of the Mexican Constitution. With respect to the service, the Court established that public authorities cannot allege unjustified reasons for failing to fulfill their constitutional obligations. Finally, the Court established that responsible authorities must grant access to potable water and water treatment, and must provide minimum required levels through pipes.

Thanks to the pressure created by the decision, the responsible municipal authority built the water system, thus benefitting 100 families. However, the decision, which is currently in the implementation phase, has not been fully complied with, given that water is only available in these houses four hours a week. Thus, the lawyers who brought the case are arguing that the right to water includes the availability of water, an argument that could have impacts across the country. This exercise includes important challenges, given that Mexico has yet to adopt secondary legislation to implement the right to water included in the constitutional reform. Thus, the debate regarding availability and access to water has focused almost exclusively on international human rights treaties that address the issue, which are quite general. It is possible that the case could reach the Supreme Court of Justice.

To address the problem of lack of availability, HIC-AL supported the four petitioners of the case in the purchase of materials to build cisterns in order to trap rainwater and store as much water as possible from the water supply system. As part of the context in which this case developed, it is important to note that Mexican media discussed the case widely. In a February 2012 event called the "International Forum on the Justiciability of Economic, Social and Cultural Rights in the Framework of the Constitutional Reform of Human Rights in Mexico," the President of the Court explicitly mentioned this case as one of the few litigated cases on ESCR in the country. Finally, it is worth mentioning that the positive decision is probably due to the efforts undertaken by the Court to sensitize the judges to human rights issues.

The right to health

In addition to the HIC case, Miguel Pulido of Fundar presented some creative strategies employed by his organization during a campaign for access to health services and social security in Mexico City. The case, which involved the active participation of those affected by the

excluding policy of the government, faced several principal challenges, including the fear of the affected people of losing their jobs; convincing Fundar's financiers of the value of a very innovative campaign, which included powerful pictures and declarations of ill people who did not receive coverage from the health system; and the need to connect the court ruling with actual structural changes in public policies. According to Miguel, a key point of the process was to find and make public proof that the government did have funds to improve access to health care, but that this access was not among the administration's priorities.

Paraguay

The right to land



Victor Abramovich (UNLA, Argentina), Silvia Emanuelli (HIC, Mexico), Darci Frigo (Terra de Direitos, Brazil), Mónica Arango (CRR, Colombia), Camilo Sánchez (Dejusticia, Colombia), Dalile Antúnez (ACIJ, Argentina), Oscar Ayala (Tierra Viva, Paraguay)

Oscar Ayala of Tierraviva discussed three cases from Paraguay: [Yakye Axa Indigenous Community](#) (2005), [Sawhoyamaxa Indigenous Community](#) (2006), and [Xákmok Kásek Indigenous Community](#) (2010). The three cases were decided in favor of the petitioners by the Inter-American Court of Human Rights, which ordered the restitution of the communities' ancestral territories and the payment of compensation for material and immaterial losses. The cases can be analyzed in relation to the common challenges they faced during the implementation process. In *Yakye Axa*, the negotiations between the government and the community led to the government's offer of alternative lands.

The community accepted the offer in 2011, and the State obtained the alternative lands in the beginning of 2012. However, as of February 2013, the lands had still not been titled in the name of the community. In *Sawhoyamaxa*, there were several meetings between the government and the current owner of the ancestral lands of the community. The community rejected the possibility of accepting alternative lands, and they have not found a solution to date. Finally, in *Xakmok Kasek*, the government has not taken any action to comply with the decision. Tierraviva has monitored the process with great detail and sent its recommendations to the State, including the establishment of mixed implementation committees, and the creation of plans and community development funds.

The three cases from Paraguay were selected during the meeting to receive the support of Dejusticia and ESCR-Net for three reasons: the detailed monitoring of Tierraviva that will facilitate our work, the opportunities for comparisons of distinct cases with a similar context, and the emblematic nature of the cases for the region.

Peru

The right to water

Juan Ruíz Molleda, of the Institute of Legal Defense in Peru presented the challenges involved in litigation and implementation of a case regarding the Majes Siguanas II project, which involves the construction of a dam and irrigation projects. The population of Espinar, whose right to water would be seriously affected by the project, opposed the plan. Various governmental leaders have accused the Espinar population of opposing development and progress, even though the Resolution N° 507-2010-ANA (2010) of the National Water Authority expressly recognizes that there is a water deficit of 12.88 million cubic meters in the area. In recent years, a protective measure was granted that ordered the suspension of the bidding of the Project, and, later, various court orders demanded the suspension of the project's execution. The Constitutional Tribunal has ordered that a new and definitive technical study of comprehensive water balance be undertaken, providing that the National Water Authority will undertake this study. It also invalidated the Environmental Impact Assessment of the Angostura Dam. However, the Tribunal never ordered the government to consult with the Espinar community, and the project has continued. According to the IDL, the Constitutional Tribunal failed to protect the rights to water and prior consultation of indigenous communities, recognized in the ILO Convention 169 and applied to peasant communities in Peru since 1995. IDL has continued its monitoring process of the case, seeking the recognition of the right to water and prior consultation.

Challenges and future strategies

Regional Challenges

Through the discussions, the participants identified various regional challenges to the implementation of decisions in ESCR cases. These challenges can be organized according to various topics: (1) case selection, (2) the needs of the petitioners and victims of ESCR violations, (3) how to measure the impact of decisions in ESCR cases, and (4) how to strategically articulate and organize social movements regarding ESCR issues.

Difficulties the participants identified in case selection included the following:

- Is it worth it to focus on large cases or would it be better to focus on more common cases? (*Cesar Rodríguez*)
- What should be done regarding cyclical cases, that is, cases where all other opportunities have failed? (*Silvia Emanuelli y Luisa Cabal*)

In relation to the needs of petitioners and victims of ESCR violations, the participants mentioned the following concerns:

- What should be done when affected groups fear retaliation? (*Miguel Pulido*)
- What strategies should be adopted to make the urgency of social movements compatible with the long implementation process? (*Juan Ruíz Molleda, Luisa Cabal, Oscar Ayala*)
- What strategies should be adopted to ensure that vulnerable groups within social movements have a voice in consultation processes? (*Daniela Ikawa*)
- What should be done when the community or affected group determines different priorities than the NGO bringing the case? (*Victor Abramovich*)

With respect to fractures and complications within social movements, the participants identified the following challenges:

- When should international actors get involved? (*Luisa Cabal*)
- What strategies should be adopted to deal with different positions regarding priorities (for example, in litigation and implementation strategies) within social movements? (*Daniela Ikawa*)
- What strategies should be adopted to articulate movements and form coalitions when dialogue does not exist? (*Luisa Cabal*)

In relation to the possibility of measuring the impacts of ESCR case decisions and undertaking monitoring of them, the participants mentioned the following concerns:

- How to measure the effects of governmental ESCR programs? (*Victor Abramovich*)
- How to broaden the tradition monitoring system of cases in the Inter-American System to address collective rights? (*Victor Abramovich*)
- Should the focus be on the process or the necessary results? (*Diego Morales y Cesar Rodriguez*)
- How to address donor questions regarding direct impact of decisions given the complicated and disparate nature of the impact of ESCR cases? Is there still a need to seek changes in normative precedents? (*Luisa Cabal*)

Strategies

To respond to the aforementioned challenges, the participants developed many suggestions to undertake collective actions to improve the implementation of decisions in ESCR cases. Several of these are mentioned below.

A strategy that appeared several times during the discussions was to increase the use of media and alliances to generate pressure on the government:

- Combine legal strategies with those involving media, alliances, and civil society (*Luisa Cabal, Ximena Andión, y Victor Abramovich*).

- Use different campaigns, such as public demonstrations and press coverage, in order to guarantee structural rights that are difficult to implement (*Miguel Pulido*).

Many participants suggested working with judges and governmental agents responsible for carrying out decisions, in order to sensitize them to ESCR issues and generate pressure:

- Sensitization of governmental agencies responsible for implementation, members of the IACHR, and relevant UN committees (*Luisa Cabal, Ximena Andión, y Victor Abramovich*).
- Work with the judges hearing the case in order to sensitize them to the issues and encourage a dialogue with social movements (*Darci Frigo*).
- Support judges that decide cases so that they do so in a way that is coherent with human rights and ensures the legitimacy of the monitoring process by using public hearings and mixed commissions (government, civil society, experts, judges, etc.) for monitoring (*Rodrigo Uprimny*).
- Focus on the communication between governmental agencies to guarantee the complete implementation of decisions (*Victor Abramovich*).

Other strategies that were mentioned have to do with encouraging and improving the participation of victims and civil society in the implementation process:

- Work with NGOs that are viewed as less conflictive when conflict prohibits implementation (*Darci Frigo*).
- Contribute to the construction of a broader critical mass (*Miguel Pulido*).
- Guarantee the presence of gender equality in consultation processes, create different discussion spaces within the movement for women and men (*Ximena Andión*).
- Help affected groups participate anonymously or publicly during the process (*Miguel Pulido*).

The participants also recognized that the lack of information with respect to ESCR decisions is a common challenge and that there are steps that can be taken to improve knowledge regarding jurisprudence and ESCR cases:

- Research implementation laws (*Victor Abramovich*).
- Spread information regarding jurisprudence of ESCR cases, using the [Caselaw Database of the ESCR-Net](#) and [Canal Justicia of Dejusticia](#) as examples.

Participants also proposed litigation strategies that may improve the implementation of decisions in ESCR cases:

Field Code Changed

Field Code Changed

- Use preventative habeas corpus so that the State does not continue to violate the rights of human rights defenders (*Juan Ruíz Molleda*).
- Consider the goals of litigation and desired remedies from the start of the litigation (*Ximena Andión*).
- During case selection, consider what remedies are being sought, and what types of mechanisms the judges could use to undertake effective monitoring of the case (*Julieta Rossi*).
- Consider the State's capacity to fulfill the desired changes when selecting a case (*Julieta Rossi*).

Further, the participants provided ideas regarding how to measure the impacts of decisions in ESCR cases:

- Evaluate the effectiveness of existing public programs to support courts that decide on specific, effective remedies (*Victor Abramovich*).
- Monitor implementation at a local level through interdisciplinary, technical, and independent monitoring committees (without the participation of the petitioners) (*Cesar Rodriguez, Miguel Pulido, Victor Abramovich, Luisa Cabal*).
- Monitor implementation through roundtables with the participation of civil society and the State (*Víctor Abramovich*).
- Undertake periodic meetings regarding implementation of ESCR decisions (*Ximena Andión*).
- Analyze indicators of programs and policies for structural issues (*Ximena Andión*).
- Present comparisons among various budgets and spending of the government, in order to highlight its priorities (*Miguel Pulido*).
- Seek strategies that combine experts with technical knowledge regarding the right in question. In general, litigants do not have this capacity, given that they are lawyers and not political scientists, sociologists, economists or public health experts, who do have the knowledge, capacity, and experience to implement the changes and policies necessary (*Julieta Rossi*).

Additionally, many suggestions were focused on the Inter-American System of Human Rights Protection:

- Create a guide for the Court regarding how decision monitoring has operated in various cases, and request a hearing during compliance procedures (*Oscar Ayala y Mario Melo*).
- Meet with the Commission regarding how to improve implementation of recommendations (*Victor Abramovich*).

- File *amici* in the System for several cases, suggesting execution mechanisms. The Court is interested in information regarding the implementation of decisions (*Victor Abramovich y Ximena Andión*).
- Request public hearings with the Court regarding compliance with decisions (*Victor Abramovich*).
- Compile research regarding the implementation of recommendations and decisions of the Commission and the Court (*Victor Abramovich*).

Next Steps



Diego Morales (CELS, Argentina), Cesar Rodríguez (Dejusticia, Colombia), Miguel Pulido (Fundar, Mexico)

One of the principal goals of the workshop was to select concrete cases whose implementation could be supported by ESCR-Net, with a leading role of Dejusticia. Four cases were chosen by the participants. [The Yakye Axa Indigenous Community](#) (2005), [Sawhoyamaya Indigenous Community](#) (2006), [La Comunidad Indígena Xákmok Kásek Indigenous Community](#) (2010), and [Indigenous People Kichwa de Sarayaku](#) (2012). The cases involve decisions of the Inter-American Court of Human rights against Paraguay (the first three cases) and Ecuador (the last case).

In 2013, the implementation project of the four cases will focus on an *in loco* research regarding monitoring mechanisms, including dialogical mechanisms, and implementation strategies. If we manage to obtain more resources, the project will continue with: (1) a conversation with the Inter-American Commission and Court regarding recommendations for the creation of monitoring committees, which can take the form of formal hearings before the two regional bodies; (2) the presentation of *amici curiae* with respect to the implementation of the Court's decisions; and (3) a proposal to establish a monitoring commission, to oversee implementation measures.

Also, in order to back up the proposal on implementation strategies for the selected cases and start preparing the conversation with and the petition for hearings to the Inter-American Commission and Court, Dejusticia will carry out a systematic study on implementation mechanisms in comparative and international law. Partly supported by Dejusticia through other funding sources, the research project will formulate specific recommendations for the selected cases and produce a draft report for participant organizations to submit to the Commission and the Court in support of their petition.

Participants in the Latin American Regional Workshop:

Name	Organization	Country
Víctor Abramovich	Human Rights Center of the National University of Lanús (UNLA)	Argentina
Ximena Andion	Equis	Mexico
Flavia Annenberg	Conectas	Brazil
Dalile Antunez	Civil Association for Equality and Justice	Argentina
Oscar Ayala	Tierraviva	Paraguay
Luisa Cabal	Center for Reproductive Rights (CRR)	Colombia/USA
María Emanuelli Silvia	Habitat International Coalition (HIC)	Mexico
Darci Frigo	Terra de Direitos	Brazil
Daniela Ikawa	ESCR-Net	Brazil/USA
Mario Melo	Pachamama Foundation	Ecuador
Diego Morales	Center for Legal and Social Studies (CELS)	Argentina
Vivian Newman Pont	Center for the Study of Law, Justice and Society (Dejusticia)	Colombia
Jomary Ortegón	Colectivo de Abogados José Alvear Restrepo (CAJAR)	Colombia
Miguel Pulido	Fundar	Mexico
Cesar Rodríguez	Dejusticia	Colombia
Julieta Rossi	Human Rights Center of the National University of Lanús (UNLA)	Argentina
Juan Carlos Ruíz Molleda	Institute of Legal Defense (IDL)	Peru
Camilo Sánchez	Dejusticia	Colombia
Rodrigo Uprimny	Dejusticia	Colombia

This workshop was possible thanks to the support of:

