



Research at the World Bank

A brief from the Development Research Group

Courting Social Justice in Health and Education

Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World is the first systematic and comparative effort to document the impact of courts on policy making across the developing world. Five country cases—Brazil, India, Indonesia, Nigeria and South Africa—explore the courts’ involvement in the enforcement of social and economic rights in the areas of health and education. The authors elaborate and test theories that might account for the varying levels of legalization across countries and policy areas and for the differential impact of legalization on the actual distribution of health care and education services.

How much legal mobilization for social and economic rights is there?

The number of health and education rights court cases per million people in the five countries shows Brazil has litigation rates orders of magnitude higher than the four comparator countries (table). Most of this discrepancy stems from pharmaceutical cases where the courts routinely award free and expensive medications to several thousands litigants each year. Outside Brazil, social and economic rights cases in which courts order the government to provide a good or service to a plaintiff are not as common. More typical are cases demanding governmental regulation of privately or subnationally provided services, or changes in the legal obligations of private providers.

A closer look at cases within countries suggests that legalization of demands for economic and social rights may not be serving the interests of the poor. There are

more cases in the South and Southeast of Brazil than in the Northeast and more in Delhi and the South of India than in the poorer BIMARU states (Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh). There are also more cases addressing university education, largely a middle-class concern, than primary education.

Legal mobilization for social and economic rights is higher in some places but not others

Previous accounts have argued that a legal support structure, typically a public interest, civil society organization modeled on the American Civil Liberties Union in the United States, is indispensable. This book argues that a civil society support structure is not necessary. Most of the cases in Brazil, for example, are brought forward by private lawyers. In some cases non-governmental organizations are strategic about *not* developing a legal support structure because the courts are hostile to their claims. Rather it is the presence of judicial receptivity that seems to spur the formation of legal demand structures specific to the particular institutional and legal landscape in which litigants find themselves.

Legal strategies have had a direct impact on access to health and education services

The Indian Supreme Court played a critical role in the enforcement of air pollution regulations, which lowered respirable suspended particulate matter in the 1990s, and in the recent expansion of a mid-day meals program, which has increased school enrollments among girls. The South African Constitutional Court issued rulings accelerating the roll-out of policies for both the

Number of health and education rights cases, per million population

	Brazil*	India	Indonesia	South Africa	Nigeria	Total
Health						
Regulation	0.03	0.05	0	0	0	0.08
Provision	103.37	0.01	0	0.05	0	103.42
Obligation	15.81	0.05	0.01	0.02	0.07	15.95
Total Health	119.21	0.10	0.012	0.07	0.07	119.46
Education						
Regulation	0.53	0.01	0	0.07	0.02	0.63
Provision	4.29	0.01	0.02	0.14	0.02	4.48
Obligation	0	0.08	0	0.05	0.08	0.20
Total Education	4.82	0.10	0.02	0.25	0.11	5.30
Grand Total	124.03	0.20	0.03	0.32	0.18	124.76

*The states of Rio de Janeiro, Rio Grande do Sul, Goias, Bahia and Distrito Federal.

prevention of maternal-to-child HIV transmission and treatment for AIDS patients.

Legal strategies can be direct, indirect, and have very different distributional impacts

An example of *direct effects* on litigants includes medications for mostly middle-class litigants in Brazil. An example of *direct effects* for non-litigants includes a new school policy that may benefit not only litigants but also other families enrolled in the school. An example of an *indirect effect internal* to the legal system includes the early AIDS cases in Brazil which facilitated future cases on other diseases. Finally, an example of an *indirect effect external* to the legal system includes cases where the government generalizes a court decision by changing policy.

The number of people whose lives have been significantly affected by the legalization of demands for health and education rights by country, according to the type of case, has been relatively higher in Brazil, India, and South Africa than in Indonesia and Nigeria (see figures). Brazil is not the outlier it appears to be if one relies only on a count of cases because, in comparison to India and South Africa, it has a lower share of collective or class action cases, whose effects are felt much more widely than individual cases (see table). The data show that the effects of health cases dwarf the effects of education cases in all jurisdictions. Also, with the exception of health in Brazil and education in Indonesia, the impact of claims for direct government provision is lower than that of demands for regulation or changes in private obligations.

The indirect effects of court cases have more potential to benefit the poor, who generally do not have the resources to litigate themselves

The poor are more likely to benefit when they share the interests of the middle-class litigants (e.g., clean air, infectious diseases, and public hospitals) or collective claims are brought on their behalf. This suggests that efforts to promote legal procedures to facilitate collective claims and universalize the particular policies adjudicated in courts—a la Brazil's *ação civil pública*, India's Public Interest Litigation, South Africa's binding precedent, and Indonesia's abstract challenges to legislation—will be more effective provided judges are receptive, or at least not hostile, to claims on behalf of the poor. Legal strategies seem to be producing measurable impacts on access to health care and education, but questions remain about the distribution of those

Figure 1: Impact of health cases in each jurisdiction, by type of case

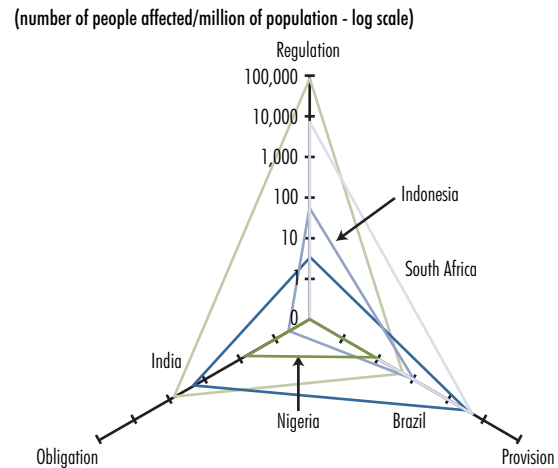
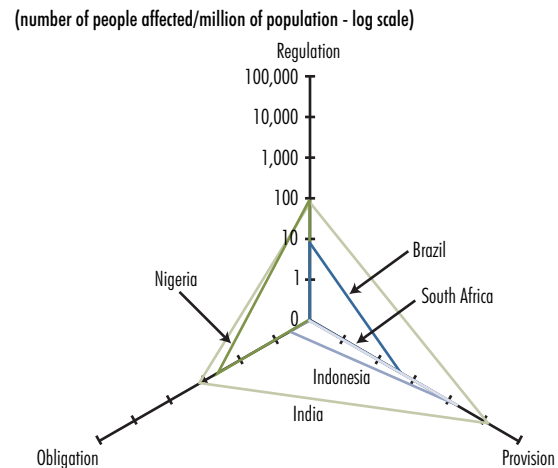


Figure 2: Impact of education cases in each jurisdiction, by type of case



benefits and their impact on democracy and bureaucratic accountability.

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Further Reading

Varun Gauri and Daniel Brinks, eds. Forthcoming. *Court-ing Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge University Press.