

# COLOMBIA: Free education secured for 12 million children

## Summary

Part of a law which allowed the Colombian government to charge for primary education was deemed unconstitutional after a pair of Colombian lawyers, collaborating with the law faculty at New York's Cornell University and a coalition of civil society organisations, brought a direct challenge against its discriminatory provisions.

## Background

Many parents in Colombia were charged directly for the cost of their children's primary and secondary education until 2010, despite their government having ratified the UN Convention on the Rights of the Child in 1990. The Convention declares that signatories recognise the right to education, and [must make primary education free and compulsory](#) to all. It took the country 20 years to abolish primary school fees nationwide, becoming the last country in South America to do so.

The change was brought about after two lawyers, Professor Esteban Hoyos-Ceballos and Professor Camilo Castillo-Sánchez, worked with a team at Cornell Law School and a coalition of civil society organisations to bring a case to the country's Constitutional Court. Their constitutional challenge sought to highlight the disconnect between the government's obligations and its actions with regard to free and compulsory education at the primary level.

"In public institutions about 70 to 80 percent were charging fees for education, even at the primary level," explained Hoyos-Ceballos, "It's not a lot, it could be \$40 or \$50 or maybe less, but you have to consider that some of these children's families' income is not very much.

"If they have a better income they will send their kids to a private institution. A huge percentage of people don't have the money to send their kids to private schools but they were being charged at every level for this lower quality of education."

Colombia's decades-long internal conflict between the government and the Revolutionary Armed Forces of Colombia (FARC) provides the potential for injury, death or kidnapping in

many schools in rural areas of Colombia. Because of this schools often find themselves short of qualified staff and occasionally see students dropping out altogether, to join the fighters or flee their homes to escape the violence altogether.

FARC's routine activities include kidnapping, drug running and guerilla warfare against the state. Formed around the communist ideal of land reform the group has carried out attacks since it was [officially conceived in 1964](#), with contamination from a recent oil pipeline attack estimated to have [deprived 150,000 people of clean drinking water](#).

As well as those who join willingly, many children are forced to fight for the FARC, with estimates stating that in 2005 [children accounted for up to 30 percent of all FARC's forces](#). All of these children can be made to torture and execute captives and would expect the same treatment from their enemies if they were captured, or from their former allies if they ever tried to return home.

## Research

In 2008 Hoyos-Ceballos was studying for a Masters degree in Law at Cornell University and was brought onto the university's litigation team after signing up to the law school's human rights law clinic. The project that was first undertaken by the students at Cornell and the [Robert F. Kennedy Center](#) was a report focused on the education of marginalised populations of [Afro-descendants and indigenous peoples in Colombia](#).

After a fact-finding mission met with nearly 100 people, including Afro-Colombian and indigenous leaders, schoolteachers, and various public officials, it became clear that there were huge barriers to accessing education for many different groups of children in Colombia, with the imposition of fees being an especially large one.

The team later travelled to Bogota to take part in the launch of Colombia's Campaign on the Right to Free Education, organised by CLADE, and gave a presentation on the State's international legal obligations before an open session of the Colombian National Congress. During this visit and the students were shown the scale of the challenges to accessing free education in Colombia.

Castillo-Sánchez explained: "They met one child who lives in this region who can only come to school after five hours of walking through the middle of the jungle. It is very, very difficult. They must wake up at four in the morning to go to the school at 9am. It is also very common that one teacher is there for three or four grades."

In order to get justice when their fundamental rights are breached, Colombian citizens are able to bring what is known as a *tutela* case, by approaching a judge and explaining a way in which their rights are being violated.

These cases are treated urgently in the system and are often viewed sympathetically by judges, but do not set a precedent for subsequent cases elsewhere in the country. The fact

that tutela case were usually successful and did not set a precedent presented a major hurdle for the team at Cornell, which had hoped to proceed using a test case.

If they found a good example of a family that could not afford to send their child to school a tutela case would likely find a way to redress the individual situation without addressing the wider issue. This would also prevent a case being taken up at the Inter-American Court of Human Rights, as the team would not be able to say that domestic remedies had been exhausted if tutela cases were proving successful on an individual basis.

Every tutela case is registered with Colombia's Supreme Court, but it is up to the Supreme Court's judges themselves to decide whether or not they will comment on a case. They may also make a ruling to unify jurisprudence across the country's 32 departments, which are in turn made up of a total of 1,119 municipalities.

Every judge in the Colombian court system will rule on the same written laws, but because one department's case law does not have to be taken into account in another, decisions in different areas [can seem to conflict and both still be valid](#).

Without knowing if they would attract the attention of the Supreme Court, or if they would find a case that could be appealed to the Inter-American Court of Human Rights it seemed that the team would either have to bring so many test cases that the issue could not be ignored, or find a completely different approach.

Castillo-Sánchez was working as a lawyer at [human rights NGO Dejusticia](#) and acted as a legal advisor to the group of NGOs and professionals supporting the case, known as the Colombian Coalition for the Right to Education. This group was affiliated with the larger, South America-wide organisation [CLADE](#), which campaigns for the right to education in Latin America.

In Spring 2009, after several meetings, members of the coalition and the student team at Cornell agreed that directly challenging the constitutionality of article 183 of the General Education Law of 1994 was the best solution. Clause 183 stated that the government was allowed to charge fees for primary education but this conflicted with international agreements the State was bound to honour, which theoretically carry the same weight as the Constitution.

### **Arguing the case**

When the coalition was ready the challenge was launched, requesting that the Colombian Constitutional Court carry out a review of article 183, relying on three main arguments. First, the coalition reasoned that the article violated international laws and conventions, all relating to the right to free primary education, which Colombia had ratified. They claimed article 183 violated article 13 of the [International Covenant on Economic, Social and Cultural Rights](#),

article 13 of the [Protocol of San Salvador](#) and article 28 of the Convention on the Rights of the Child ([CRC](#)).

Secondly their arguments turned to the fact that Colombian courts had previously recognised the right to free education, but that jurisprudence on the matter was not unified across the country. They asked the Court to interpret the country's laws in line with its previous rulings, on the right to an education that is both free and compulsory.

Thirdly they stated that the authors of the Constitution intended primary education to be free and submitted a discussion on the matter from the Constitutional National Assembly in 1991 which clearly showed the importance of education the nation's founders.

After they submitted their case the coalition was shocked to find a new ally in their cause - the country's Ministry of Education. A weak party structure and a culture of coalition politics in Colombia means that government ministries do not always present a united front. Hoyos-Ceballos said that while he did not expect the Ministry's support he had seen cases before where government departments argued against one another in the courts, especially when upholding human rights standards or international law was involved.

## **Outcome**

The Court's decision was announced in May 2010. It unanimously ruled that public primary schools across Colombia had to stop charging fees for tuition and that all rules to the contrary were repealed, with immediate effect. It also noted that the country had an obligation to progress towards provision of free secondary and higher education further down the line, in line with the duties laid out in the Convention on the Rights of the Child.

In [their reasoning](#) the judges cited the initial petition repeatedly and referred both to international and Colombian laws mentioned in the coalition's argument. However, the Court stopped short of demanding all costs associated with education be paid for by the State. While tuition fees were outlawed in public schools, the costs of books, food and travel were not addressed and were assumed to still lie with the child's family.

Despite this omission the decision reaffirmed the fact that Colombian law must be interpreted in line with ratified human rights treaties and cemented the right to free, compulsory primary education in Colombia. Hoyos-Ceballos and Castillo-Sánchez were both disappointed that non-tuition costs were not mentioned but agreed that the case was an important milestone in the battle for education regardless.

Hoyos-Ceballos said: "Many times the kind of work we do ends up in a nice decision but, many times, law clinics do not follow up after these decisions, and this is key. They should understand that the struggle for a right does not just end with a court decision."

This was quickly demonstrated as, at first, the government did nothing to enforce the ruling, allowing each department to implement its own response. As departments took up the

responsibility resulting from the decision under popular pressure the State sprung into action.

“In the beginning the government didn’t do much but then [in 2011 they issued a decree](#) saying they would comply with the decision of the court,” said Hoyos-Ceballos, “They said that according to this they would not charge for primary or secondary education. It went even further than we expected.”

Castillo-Sánchez added: “For me it was interesting because the Constitutional Court said primary education, and the government added another six years of free education on to that.

“I think the government took some important steps toward guaranteeing the right to education but for me the whole thing of free education is not only to not have tuition fees in public schools. You must guarantee the books or the food in the schools and things like that. For me the government doesn’t have free education, it’s just free tuition.”

## **Impact**

More than [12 million students](#) are now guaranteed an education free of fees thanks to the result of this case. However, the failure of the government and the Constitutional Court to mention indirect costs of education meant that for now, the main achievement of the coalition’s case would be the phase-out of fees from both primary and secondary education.

This proved very successful, as once the government took up the cause the groundswell of public opinion made it easy to follow through. The implementation of the new system was so popular that the President pointed to it as a key success of his term when seeking reelection.

Hoyos-Ceballos explained that there are still campaigns for the government to address the other costs associated with education including books, buses, meals and uniforms, but these are more disparate than the groups that the coalition put together around the initial case.

To an extent this may be due to the fact that the government has been steadily funnelling more money into education, even if this money is not being used as effectively as it could be to reduce the cost of education to a child’s parents.

In a 2014 report [conducted by CLADE](#) 34 percent of families said they were putting more than 30 percent of their monthly income towards paying for the education of their children, 17 percent of absent children were missing school due to costs and nine percent of children had no access to education at all. Their research also revealed that 34 percent of teachers supplied some of the teaching material for the students they taught from their own salaries, while 87 percent said they didn’t have enough funding to appropriately teach all of their students.

The situation is even worse for indigenous people, a group Castillo-Sánchez went on to represent after the Constitutional Court decision in 2010. The Nasa people, [harassed by](#)

[FARC](#), cut off from the world by poor infrastructure and abandoned by the government claimed that their children's right to education was being ignored.

They argued that the [continued charging of tuition fees](#), the lack of specialist teachers and resources in their native language combined with near non-existent infrastructure was condemning their culture to oblivion, as their children would not be able to learn about their history or practices. These obstacles meant that while Nasa children could attend school in theory it was logistically impossible.

Castillo-Sánchez, a lawyer with two teachers for parents, understood the need for education in their community and after two unsuccessful tutela cases took their petition to the Constitutional Court. It was [selected for review in April 2013](#) and was ultimately successful, with judges agreeing that the government had violated the Constitution by neglecting the Nasa people's right to education, and by extension, their right to survive.

"In the Constitutional Court there were many children's letters and sketches. It was very nice and some were from the indigenous children, which made people cry in the court, when they saw how important education was to these people.

"I know teachers in the rural schools who feel that they must stay with the kids, even when the army and FARC are fighting. Even with the military forces, like say in some cases, soldiers in the schools, and it was very, very dangerous for kids."

Explaining what drew him to the case Castillo-Sánchez added: "I know many intelligent indigenous kids and they don't have the chance to use their education. It's my country and it's my people so I'm trying to make things better than they are at the moment.

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### Further information

- Read CRIN's case summary of [Decision C-376/10](#)
- Find out more about [strategic litigation](#)
- See CRIN's country page on [Colombia](#)
- Read CRIN's report on [access to justice for children in Colombia](#)

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