

THE MATANZA-RIACHUELO BASIN CASE: LESSONS IN ENVIRONMENTAL ACTIVISM FROM THE ARGENTINE SUPREME COURT AND CIVIL SOCIETY ORGANIZATIONS

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I. INTRODUCTION

The Matanza-Riachuelo Basin case presents the most important environmental judicial precedent in Argentina's history. This landmark decision by the Argentinean Supreme Court of Justice (hereinafter "Court" or "Supreme Court") commands government authorities to carry out a sanitation plan to improve the living conditions in the basin, recover the environment, and prevent further damage.¹

The history behind the decision can be traced back to the year 2000, when Beatriz Mendoza, a forty-seven-year-old social psychologist, started to work at a health center located in "Villa Inflamable,"² in the municipality of Avellaneda, Province of Buenos Aires. Beatriz Mendoza explained that she chose a job in that location because everything "was yet to be done."³ She was on point: studies confirmed that the neighboring industrial hub was one of the most polluted areas of the province, with severe health consequences for the families living there.⁴ Beatriz personally experienced how the toxic air and soil affect her nervous system.⁵ She filed, with seventeen neighbors and professionals, a collective damages claim before the Supreme Court of Justice, demanding judicial intervention in a complex case of human rights violations. The decision rendered by the Supreme Court on July 8, 2008, carries her name: *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros*

1. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/7/2008, "Mendoza, Beatriz c. Estado Nacional," Fallos (2008-331-1622).

2. "Villa" is a slum, an irregularly developed neighborhood that lacks basic public services and infrastructure; the name "Inflamable" which means "flammable," named after the neighboring chemical and industrial hub "Polo Petroquímico Dock Sud."

3. Javier Drovetto, *Beatriz Mendoza: "Demandamos al Estado para Convertir lo Dramático de Cuenca del Riachuelo en Política Pública"* [Beatriz Mendoza: "We Sue the State to Convert the Drama of the Riachuelo Basin into Public Policy"], REDACCIÓN (June 8, 2018), <https://www.redaccion.com.ar/beatriz-mendoza/>.

4. DEFENSOR DEL PUEBLO DE LA NACIÓN ET AL., INFORME ESPECIAL SOBRE LA CUENCA MATANZA RIACHUELO [SPECIAL REPORT ON THE MATANZA RIACHUELO BASIN] 210-12 (2003) [hereinafter 2003 OMBUDSMAN REPORT ON MATANZA-RIACHUELO BASIN], <http://www.farn.org.ar/wp-content/uploads/2020/06/Informe-especial-sobre-la-Cuenca-Matanza-Riachuelo-2003-1.pdf>.

5. Drovetto, *supra* note 3.

s/ daños y perjuicios (damages due to the environmental contamination of the Matanza-Riachuelo River), commonly referred to as the *Mendoza* case.⁶

The *Mendoza* case judgment served as a turning point not only for the sanitation of the basin, but also a decisive step in the development of a transformative public policy.⁷ However, the decision alone did not build public policy. This article argues that the stakeholders, authorities, and civil society organizations (or CSOs), should continue to foster institutional participation mechanisms for activists that set human rights standards and keep authorities accountable. The Matanza-Riachuelo Basin case illustrates how, when civil society actors have mechanisms to contribute and coordinate efforts that assist continuously in the improvement of authorities' plans, a holistic and transformative environmental policy is possible. CSOs successfully formulated the basin cleanup demand as a human rights issue, employing expert knowledge and diagnosis reports, and harnessed the political and public opinion on environmental issues. They also helped create an interjurisdictional basin authority and attained an institutional monitoring role for public policy implementation. The activism by the Supreme Court and CSOs was crucial in turning a collective damage claim into the most important environmental judicial decision in the court's history.

This article focuses on Argentina's multiple element approach to translating the legal duty established in the Constitution and ratified by the *Mendoza* case into a set of intertwined activism strategies for the protection of human rights. Lessons in environmental activism from the Matanza-Riachuelo Basin case⁸ are brought forward to identify their strengths and weaknesses, evaluate their effectiveness, and ultimately determine which ones can be used in the future.

While the legal basis for human rights protection is robust and judicial mechanisms are constitutionally warranted in Argentina, experts agree that this case presented special challenges since the legal protection was insufficient. According to the Center for Legal and Social Studies, one of the reasons why the intervention of the Supreme Court was crucial was the

6. CSJN, 8/7/2008, "Mendoza, Beatriz" Fallos (2008-331-1622).

7. Carolina Fairstein & Diego Morales, *En busca de soluciones judiciales para mejorar la calidad de vida de los habitantes de la cuenca Matanza-Riachuelo*, in CELS, INFORME ANUAL 2009, 333, 336 (2009), <https://www.cels.org.ar/web/wp-content/uploads/2016/06/IA2009-8-En-busca-de-soluciones-judiciales-para-mejorar-la-calidad-de-vida-de-los-habitantes-de-la-cuenca-Matanza-Riachuelo.pdf>. CELS (for the Spanish acronym Centro de Estudios Legales y Sociales) is one of the non-governmental organizations (or NGOs) accepted as a third-party to the *Mendoza* case.

8. This article considers the Matanza-Riachuelo Basin Case as the over-arching case. It includes key elements from the Supreme Court's *Mendoza* case and other relevant events that occurred before and after the judgment. The distinction is only methodological. Many authors and activists use the terms "Matanza-Riachuelo Basin case" and *Mendoza* case interchangeably.

necessity for political commitment to clean up the Matanza-Riachuelo river; this commitment would require authorities to plan, finance, and implement “long-lasting and sustainable interjurisdictional policies, based on a systemic and holistic diagnosis and approach to the problem.”⁹ The fragmentary and sporadic approach contributed to the 200-year delay in addressing the Matanza-Riachuelo river contamination.¹⁰

This article will proceed chronologically. Part II will begin in 2003 and examine the civil society and institutional activism that were key to building momentum toward the Supreme Court’s historic 2008 decision. Part III will focus on the Court’s enforcement mechanism after its July 8, 2008 decision; it will examine the victories, but also point out the limits of the activist role performed by the Court and civil society organizations from 2008 until today. Part IV will examine how stakeholders were successful at strengthening and reinforcing institutional mechanisms to allow them to actively hold authorities accountable in the development and implementation of a long-term environmental public policy for the Basin. Today, thirteen years after the *Mendoza* case decision, while there are still visible shortfalls in the basin cleanup, the lessons in environmental activism are relevant for current conflicts and ongoing struggles.

II. THE LEGAL BASIS FOR ENVIRONMENTAL CLAIMS FROM A HUMAN RIGHTS PERSPECTIVE

International law establishes a right to a healthy environment as a fundamental human right, and activists successfully formulated the Matanza-Riachuelo Basin cleanup demand based on the international human rights breach. That human rights approach meshed well with the positions developed by the Argentine constitutionalism and the Argentine Supreme Court starting in the early 2000s, which made the *Mendoza* decision possible. Part A focuses on the process of legal globalization of the environmental agenda that enabled the necessary constitutional legal protection. Part B describes the basin’s environmental problem and the public agenda momentum for the Supreme Court to regain its prestige by taking on the case. Part C dives into the Court’s rulings in 2006 and 2008, which resulted in the creation of a basin authority, a two-year participatory sanitation plan, and a monitoring system for the public policy implementation. Every step of the way, environmental activism taught a lesson.

Today, there is international expert agreement regarding the human rights obligations relating to the enjoyment of a safe, clean, healthy, and

9. Fairstein & Morales, *supra* note 7, at 336.

10. *Id.*

sustainable environment.¹¹ The global dispute regarding the strategies to confront the environmental crisis focuses on the way that authorities deal with it.¹² The global environmental agenda emerged through a process of “legal globalization” that resulted in the creation of local and international institutions, treaties, and legal frameworks establishing obligations on governments.¹³ This process was uneven amongst countries and regions. Argentina’s performance in taking on the environmental agenda was “erratic . . . and subsidiary to the general state policies.”¹⁴

Beatriz Mendoza’s story began in 2000, but the legal framework that enabled her claim started to solidify in the ‘70s around the world, and in the ‘90s in Argentina. The first United Nations Conference on the Environment held in Stockholm in 1972 marked a global agenda that was later adopted locally, closer in time to the second United Nations Conference in 1992.¹⁵ In 1991, Argentina created the Secretariat for Natural Resources and Human Development, reporting to the President. Its goal was to push forward a cross-cutting policy amongst all areas of government.¹⁶ Since the 1992 Rio Conference, in line with the principles adopted internationally,¹⁷ the legal framework for environmental protection in the country became robust and included constitutional protection.¹⁸

11. U.N. General Assembly, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H. Knox, A/HRC/25/53 (Dec. 30, 2013).

12. Andrés Scharager, *Conflicto social, ambientalización y crisis política: judicialización en la cuenca Matanza-Riachuelo, Argentina*, 64 *ECONOMÍA SOCIEDAD Y TERRITORIO*, 693, 700 (2020), <https://est.cmq.edu.mx/index.php/est/article/view/1566/1761>. While it is true that some exceptional world leaders have openly denied climate change, this paper adopts a human-rights perspective that recognizes the crisis and the need for urgent actions to protect the human rights of those mostly affected by the climate crisis. See, e.g., Ishaan Thadoor, *Bolsonaro, Trump and the Nationalists Ignoring Climate Disaster*, WASH. POST (Aug. 23, 2019), <https://www.washingtonpost.com/world/2019/08/23/bolsonaro-trump-nationalists-ignoring-climate-disaster/>.

13. Scharager, *supra* note 12, at 701; see also Lucas G. Christel & Ricardo A. Gutiérrez, *Making Rights Come Alive: Environmental Rights and Modes of Participation in Argentina*, 26 *J. ENV’T. & DEV.* 322, 327 (2017) (describing a process of “juridification”).

14. Scharager, *supra* note 12, at 701.

15. *Conferences / Environment and Sustainable Development*, UNITED NATIONS, <https://www.un.org/en/conferences/environment> (last visited Feb. 17, 2022).

16. Decree No. 2419/1991, Nov. 12, 1991, [27265] B.O. 3. The presidential decree considers, “[t]hat it is necessary to establish in the sphere of the Presidency of the Nation an Organism that guides, coordinates and arranges all that is conducive to the promotion of the environment.” (author’s translation).

17. U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol.I), annex I (Aug. 12, 1992).

18. The general law for the environment and the constitutional provisions are described in detail in this section. Between 2002 and 2010 legislation was passed to regulate dangerous

The 1994 Constitutional reform adopted Sections 41 and 43 of the Constitution to warrant constitutional supremacy and judicial protection of environmental rights. Section 41, in the “New Rights and Guarantees” chapter, states:

All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education¹⁹

The language in Section 41 adopts the sustainable development paradigm (“present generations are responsible for future generations’ environmental goods”).²⁰ Section 43 establishes a procedure for the

activities and protect the environment, such as: Integral Management of Industrial and Services Activities Wastes, Law No. 25612, July 25, 2002, [29950] B.O. 1; Management and Disposal of PCBs, Law No. 25670, Nov. 18, 2002, [30029] B.O. 2; Water Management Regime, Law No. 25688, Dec. 30, 2002, [30060] B.O. 2; Regime of Free Access to Environmental Public Information, Law No. 25831, Jan. 6, 2004, [30312] B.O. 1; Integral Management of Household Waste, Law No. 25916, Sept. 3, 2004, [30479] B.O. 1; Environmental Protection of Native Forests, Law No. 26331, Dec. 19, 2007, [31310] B.O. 2; Minimum Environmental Protection Standards to Control Burning Activities, Law No. 26562, Dec. 15, 2009, [31802] B.O. 7; Regime of Minimum Standards for the Preservation of Glaciers and the Periglacial Environment, Law No. 26639, Oct. 28, 2010, [32016] B.O. 7. Argentina also ratified international treaties on environmental protection: U.N. Framework Convention on Climate Change, *opened for signature* June 4, 1992, 1771 U.N.T.S. 107, Kyoto Protocol, *opened for signature* Mar. 16, 1998, 2302 U.N.T.S. 162, U.N. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, *opened for signature* Oct. 14, 1994, 1954 U.N.T.S. 3, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, *opened for signature* Mar. 23, 1989, 1673 U.N.T.S. 57, Montreal Protocol on Substances that Deplete the Ozone Layer, *opened for signature* Sept. 16, 1987, 1522 U.N.T.S. 3, Convention on Biological Diversity, *opened for signature* June 5, 1992, 1760 U.N.T.S. 79, Protocol on Environmental Protection to the Antarctic Treaty, Oct. 4, 1991, 2941 U.N.T.S. A-5778, Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, 996 U.N.T.S. 245, Vienna Convention on the Protection of the Ozone Layer, *opened for signature* Mar. 22, 1985, 1513 U.N.T.S. 293.

19. Art. 41, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.). Section 41 continues, “[t]he Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potentially dangerous wastes, and of radioactive ones, is forbidden.”

20. *Id.*; *What is Education for Sustainable Development?*, UNITED NATIONS EDUC., SCI., & CULT. ORG. [UNESCO], <https://en.unesco.org/themes/education-sustainable-development/what-is-esd/> (“The concept of sustainable development was described by the 1987 Brundland

protection of the rights formulated in Section 41 by constitutionally granting the *acción de amparo*, a summary proceeding . . . about rights protecting the environment . . . [to] be filed by the damaged party, the ombudsman, and the associations which foster such ends”²¹

The Mendoza claim was filed under the 2002 Ley General del Ambiente (LGA) (General Law for the Environment),²² which legislated the procedure for claims of environmental damage as a right of collective incidence under the constitutional mandate to establish minimum protection standards. Citing Section 43 of the Constitution, the law grants standing to sue to the damaged party, the Ombudsman, and environmental NGOs. Other affected parties may be joined to the lawsuit as third parties.²³ It gives judges broad discretion to request evidence to determine actual damage, enabling them to exceed the requests of the parties.²⁴ The LGA was the legal basis for what is later described as *judicial activism* by the Supreme Court in both the 2006 and 2008 decisions. The LGA also sets a list of principles for the interpretation and implementation of environmental public policy²⁵ and further enumerates the tools for its design.²⁶

Understanding environmental rights as “the human right to clean air, water, and soil, not only for living citizens but also for future citizens,”²⁷ entails the recognition of three important characteristics that are especially evident in the Matanza-Riachuelo Basin Case. First, “environmental rights are collective rights”: they require adopting a sustainable development approach and affording broad standing to sue. Second, “environmental rights are a matter of justice”: those most affected by pollution and environmental risks are low-income communities, and their basic demands are access to housing with sewerage and clean water. Third, “environmental rights are concomitant with a number of procedural rights through which citizens and social organizations can secure or claim” their protection: they have the right to know, participate, and claim to translate the legal framework into reality.²⁸

The human-rights approach to environmental conflicts enables a complex analysis that appreciates the need to combat environmental harm in

Commission Report as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’”).

21. Art. 43, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

22. Law No. 25675, Ley General del Ambiente [LGA], Nov. 27, 2002, [30036] B.O. 2.

23. *Id.* art. 30.

24. *Id.* art. 32.

25. *Id.* art. 4 (the list includes the prevention and precautionary principles, intergenerational equity, progressivity, responsibility, sustainability, and cooperation, among others).

26. *Id.* art. 8.

27. Christel & Gutiérrez, *supra* note 13, at 328.

28. *Id.*

order to guarantee the enjoyment of human rights.²⁹ The case at hand presents a “fusion of social and environmental inequality” that presents a heightened level of risk to health and impacts life quality and life expectancy.³⁰

The LGA enshrines human rights obligations related to the environment, which comply with international law standards applicable to Argentina. Some of those principles are especially relevant for the purpose of this paper, as they are the tools used by stakeholders to push forward environmental activism.

First, states should provide for education and public awareness on environmental matters.³¹ The federal environmental policy should promote a change in social values and practices, which enable sustainable development and use environmental education as a tool.³² Environmental education is the basic instrument for the development of environmental consciousness amongst citizens.³³ States should also provide public access to environmental information.³⁴ The LGA sets as a goal for the federal environmental policy to organize and disseminate environmental information and to ensure that it is available, effective, and free.³⁵ Furthermore, the law demands the creation of a federal system of environmental information. It grants any citizen the right to obtain environmental information from authorities, and mandates annual reporting to Congress.³⁶

To avoid undertaking or authorizing actions with environmental impacts, e.g. construction projects or land management plans, which interfere with the full enjoyment of human rights, States should require prior assessment of the possible environmental impacts of proposed projects and policies, including potential effects on human rights,³⁷ with citizen participation.³⁸ Further, states should provide for and facilitate citizen participation in decision-making related to the environment, and take the

29. Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018) [hereinafter U.N. Special Report on Hum. Rts. Relating to Environment].

30. María Gabriela Merlinsky & Richard Stoller, *Mists of the Riachuelo: River Basins and Climate Change in Buenos Aires*, 43 LAT. AM. PERSPS. 43, 48-49 (2016).

31. U.N. Special Report on Hum. Rts. Relating to Environment, *supra* note 29.

32. Law No. 25675, Ley General del Ambiente [LGA], art. 2(h), Nov. 27, 2002, [30036] B.O. 2.

33. *Id.* arts. 8.4, 14, 15. More recently, Law No. 27.621 was passed to establish a plan for environmental education throughout the country. Decree No. 356/2021, Mar. 6, 2021, [34670] B.O. 8.

34. U.N. Special Report on Hum. Rts. Relating to Environment, *supra* note 29, at 11.

35. LGA, art. 2(i).

36. *Id.*; see also Law No. 25831, Jan. 6, 2004, [30312] B.O. 1.

37. U.N. Special Report on Hum. Rts. Relating to Environment, *supra* note 29, at 11-12.

38. LGA, arts. 8.2, 11-13, 21.

views of the public into account in every decision-making process.³⁹ Every citizen has a right to be consulted and informed on procedures related to the preservation and protection of the environment,⁴⁰ and authorities should institutionalize procedures for mandatory consultations or public hearings. While public opinions are not binding, the authorities should justify publicly if the final decision is against those opinions.⁴¹

The implementation of these tools requires access to effective remedies for violations of human rights, domestic laws relating to the environment,⁴² and constitutional provisions. Standing for environmental damage claims is broad, and judges have the discretion to order a wide range of remedies.⁴³ The law also establishes a presumption against the party causing harm if there is a violation of administrative environmental norms.⁴⁴ Finally, the LGA also ratified the creation of the Federal Council for the Environment (“COFEMA” for its Spanish acronym Consejo Federal de Medio Ambiente), as a “permanent body for the establishment and development of a coordinated environmental policy among the member states.”⁴⁵

Unlike other processes where the legal recognition of rights came about as a result of social demands,⁴⁶ the environmental issue was legally sanctioned first. Those rights gained social momentum only after a rising number of environmental conflicts emerged. Thus, activists found a legal basis to bring their case.⁴⁷ One author identifies a parallel process to legal

39. U.N. Special Report on Hum. Rts. Relating to Environment, *supra* note 29, at 12-13. The LGA promotes social participation in every decision-making process related to the environment. LGA, art. 2(c).

40. LGA, art. 19.

41. *Id.* arts. 20-21; *see also* Decree No. 1172/2003, Acceso a La Informacion Publica Decreto [Access to Public Information Decree], Dec. 3, 2003, [30291] B.O. 1.

42. U.N. Special Report on Hum. Rts. Relating to Environment, *supra* note 29, at 13.

43. LGA, arts. 30, 32.

44. *Id.* art. 29.

45. *Id.* art. 25. The COFEMA was first created through a memorandum of understanding, signed by provinces’ representatives on August 31, 1990; the 1993 Federal Environmental Pact is also a precedent, where all the country’s jurisdictions expressed their commitment with the 21 Principles adopted in Rio 1992, *see id.* annex II. Section 25 of the LGA ratifies these two agreements and introduces COFEMA to specific functions related to environmental education, the system of information, and environmental management.

46. For example, the right to abortion was enacted in 2020, after more than five years of the feminist movement efforts to put the issue in the public agenda. *See* Decree No. 516/2021, Aug. 13, 2021, [34725] B.O. 4.

47. Scharager, *supra* note 12, at 701. *See also* Christel & Gutiérrez, *supra* note 13, at 325-26 (“Unlike other cases in which social mobilization is a driving force of the constitutional enshrinement of environmental rights, no major evidence of social mobilization’ influence is found in the Argentine process. The addition of environmental rights to the Argentine constitution was to a large extent a party-driven process that took place after the 1983 return to democracy.”) (citation omitted).

institutionalization, where an increasing number of activities that exploit natural resources and directly impact local communities result in the emergence of environmental conflicts starting in 2003.⁴⁸ The Esquel community resistance to mining projects (2002-2003) is an excellent example of the success of social mobilization through protest, political pressure on authorities, delegitimization of public hearings, a referendum on the project, and finally, a legal prohibition of open-pit mining.⁴⁹

Access to environmental information, including quality data, consultation processes, and public hearings are valuable procedural rights, as long as there is a civil society to demand their implementation.⁵⁰ After the 2001 social, economic, and political crisis in Argentina, momentum for the *Mendoza* decision emerged.⁵¹ It resulted from the effort to restore the role of political institutions in the policy dispute after the rejection of the political class.⁵² Citizen participation mechanisms appeared as institutional tools for political legitimacy. The Supreme Court seized the opportunity created by the rise in environmental conflicts and the need to restore trust in the political system to provide unique legal precedent by hearing a complex case involving a severe violation of multiple human rights. The next section dives into the Matanza-Riachuelo Basin environmental degradation neglect by authorities and the new Court's need to reestablish its legitimacy. The following section describes civil society and other stakeholders' strategic use of institutional participation mechanisms and cooperation to harness a unique momentum for the tribunal to decide the case.

III. LESSONS IN ENVIRONMENTAL ACTIVISM: THE *MENDOZA* CASE

A. *Environmental Issues in the Public Agenda and the Matanza-Riachuelo Basin Crisis*

The Matanza-Riachuelo Basin extends through sixty-five kilometers, covering an area of 2,240 kilometers,² including the jurisdiction of the

48. Scharager, *supra* note 12, at 701.

49. *Id.* at 703.

50. See Christel & Gutiérrez, *supra* note 13, at 326. (“[e]nvironmental rights remained dormant for over a decade until the first enabling laws (including the LGA) were passed and an increasing number of environmental issues . . . came to the surface through different modes of participation”).

51. See generally CENTRO DE ESTUDIOS LEGALES Y SOCIALES [CELS], DERECHOS HUMANOS EN LA ARGENTINA INFORME 2002 [HUMAN RIGHTS IN ARGENTINA REPORT] (2002) [hereinafter 2002 HUMAN RIGHTS REPORT].

52. See José Esain, *Una Corte para el desarrollo sostenible*, in INFORME AMBIENTAL ANNUAL [ANNUAL ENVIRONMENTAL REPORT] 289, 299 (María Eugenia Di Paola et al. eds., 2009).

fourteen municipalities of the Buenos Aires Province, and part of the City of Buenos Aires. The value of river basins is undisputed, especially in the context of climate change, where the lack of freshwater requires attention to the preservation of natural conservation systems.⁵³ The Matanza-Riachuelo Basin begins in the Municipality of Cañuelas (higher basin), nurturing itself from twelve streams and two rivers (each of them is a sub-basin) that flow into the Río de la Plata.⁵⁴ The contamination of the basin is a result of an overall failure to adopt a sanitation policy—due to more than 200 years of uncontrolled slaughterhouse and industrial development—inadequate urban development planning, and a history of unfulfilled promises by authorities.⁵⁵ A large amount of the five million people that make up the basin population live in slums or precarious settlements that lack basic services.⁵⁶

The Matanza-Riachuelo basin is severely affected by a lack of sanitary infrastructure, including the absence of safe water and sewer connections, which generates ground and water contamination by filtration. A second source of contamination is dumping untreated waste that contains toxic metals by manufacturing plants.⁵⁷ A third source of contamination is open-air garbage dumps along the banks of the river.⁵⁸

The Matanza-Riachuelo Basin, especially the lower basin area, has historically been a scene of social conflict related to unequal access to housing and public services, among other claims, but they were never presented as an environmental issue.⁵⁹ During the '90s, together with the process of legal recognition of environmental rights, some initiatives approached the challenge of the basin sanitation from a public policy perspective. They all failed⁶⁰ due to the resource administration incapacity, jurisdictional incoordination, and overall lack of political will to build a long-term holistic approach to sanitation.⁶¹ The Executive Committee created for the implementation of the 1993 “thousand-day plan” to sanitize the basin

53. Merlinsky & Stoller, *supra* note 30, at 46.

54. See Scharager, *supra* note 12, at 707.

55. DEFENSOR DEL PUEBLO DE LA NACION [NAT'L OMBUDSMAN], DECIMO INFORME ANNUAL [TENTH ANNUAL REPORT] 33 (2003) [hereinafter OMBUDSMAN REPORT]; see also Merlinsky & Stoller, *supra* note 30, at 44.

56. Fairstein & Morales, *supra* note 7, at 333.

57. This is especially problematic in the Dock Sud industrial hub where flammable chemicals have been reported, sadly earning the neighboring settlement the name “Villa Inflamable.”

58. OMBUDSMAN REPORT, *supra* note 55, at 264; Merlinsky & Stoller, *supra* note 30, at 48.

59. Scharager, *supra* note 12, at 707.

60. OMBUDSMAN REPORT, *supra* note 55, at 265; Mariana Ferro, *Activismo Ambiental de los jueces y política del agua en la cuenca Matanza-Riachuelo, Argentina*, 23 SOCIEDAD Y AMBIENTE 1, 2-3 (2020).

61. OMBUDSMAN REPORT, *supra* note 55, at 265; Ferro, *supra* note 60, at 5.

lacked regulatory and police powers. It resulted in a lost opportunity that led civil society organizations to demand a very different approach when the 2006 Basin Authority was created.⁶²

Between the legal framework developed during the '90s and early 2000, and the 2006 Court ruling, two determining factors presented themselves in Argentina to build momentum for the Court's decision: the growing presence of environmental issues in the public agenda and the new institutional positioning of the Supreme Court.

Starting in 2003, environmental struggles began to reach the national agenda thanks to the Pulp Mills conflict with Uruguay, which succeeded in unprecedented visibility, compared to other municipal or provincial conflicts.⁶³ The conflict began when citizens of a Uruguayan locality located on the shores of the Uruguay River alerted Gualeguaychú citizens in the Argentinean shore about a project to build a pulp mill. Protests began, but the conflict escalated only two years later, when Uruguay granted permits for a second pump mill installation. The citizens organized themselves as the Gualeguaychú Environmental Citizen Assembly and the social mobilization of 40,000 neighbors in 2005 turned into 100,000 people on the streets by 2006.⁶⁴ In May 2004, Argentina filed a claim against Uruguay before the International Court of Justice for breach of international treaties for unilaterally granting pump mills authorization. The Argentinian President at the time, Nestor Kirchner, affirmed that the environmental cause was of *national interest* before thousands of protesters.⁶⁵

Meanwhile, in Buenos Aires, the most polluted river in the country remained absent from public scrutiny,⁶⁶ until the Supreme Court became involved to find transformative solutions that would combat the environmental decay and improve the living conditions of approximately five million people. The environmental agenda reaching the public eye was not, by itself, enough to create momentum. The second factor was the need to build a democratic and legitimate Supreme Court.

During the '90s the Supreme Court of Justice was at its lowest levels of legitimacy, publicly regarded as following President Menem's agenda. The court increased its membership from five to nine justices, whose designation

62. OMBUDSMAN REPORT, *supra* note 55, at 265; Ferro, *supra* note 60, at 14; Merlinsky & Stoller, *supra* note 30, at 47.

63. Scharager, *supra* note 12, at 706.

64. *Id.* at 704.

65. *Id.* at 704-05.

66. *Id.* at 706.

created the publicly known “automatic majority.”⁶⁷ After the 2001 crisis in Argentina,⁶⁸ the Supreme Court of Justice was under scrutiny by the public that was demanding its reform.⁶⁹ Citizens considered the Court to be co-responsible for the severe consequences of the institutional breakdown, which led to protests before the tribunal especially after the decision to legitimize the loss of small savers known as the “corralito.”⁷⁰ A group of non-governmental organizations—two of which acted as third parties in the *Mendoza* case—presented the social demands in a specific proposal for judicial reform.⁷¹ The document *A Court for Democracy*, publicly presented for the first time in January 2002, and reinforced in the 2003 update, was taken seriously by the recently elected authorities, who invited the authoring organizations to discuss its possible implementation.⁷² Nestor Kirchner’s government commitment to promote transparency and civil participation during the new Justices selection process culminated with the adoption of Presidential Decree 222/2003. It limited the executive discretionary power to designate Supreme Court members, imposing requirements of terms of experience, technical and moral fitness, gender diversity, federal

67. CENTRO DE ESTUDIOS LEGALES Y SOCIALES [CELS], DERECHOS HUMANOS EN LA ARGENTINA INFORME [HUMAN RIGHTS IN ARGENTINA REPORT] 84 (2004) [hereinafter 2004 HUMAN RIGHTS REPORT]; Alba M. Ruibal, *La sociedad civil en el proceso de reformas a la Corte Suprema Argentina*, 70 REVISTA MEXICANA DE SOCIOLOGIA 725, 734 (2008).

68. See generally 2002 HUMAN RIGHTS REPORT, *supra* note 51 (describing the multiple human rights aspects of the 2001 social, economic, and political crisis in the country: “[d]uring December 2001, Argentina experienced a series of events that marked its institutional and political history. In only fifteen days, the country had five presidents, consolidated its financial default, abandoned the rigid exchange rate policy it had maintained since 1991 and devalued the Argentine peso.”).

69. Ruibal, *supra* note 67; see also Leticia Barrera, *Performing the Court: Public Hearings and the Politics of Judicial Transparency in Argentina*, 37 POL. & LEGAL ANTHROPOLOGY REV. 326, 727 (2013).

70. Ruibal, *supra* note 67, at 742-43. The “corralito” was a dollar withdrawal restriction imposed on saving accounts that resulted in losses because the value of the peso was severely devalued. Those who deposited dollars would later withdraw the equivalent amount, but in pesos.

71. *Id.* at 738; see ASOCIACIÓN POR LOS DERECHOS CIVILES ET AL., UNA CORTE PARA LA DEMOCRACIA [A COURT FOR DEMOCRACY], https://www.cels.org.ar/web/wp-content/uploads/2017/07/corte_I.pdf (last visited Mar. 6, 2022); see ASOCIACIÓN POR LOS DERECHOS CIVILES ET AL., UNA CORTE PARA LA DEMOCRACIA II [A COURT FOR DEMOCRACY II], https://www.cels.org.ar/web/wp-content/uploads/2017/07/corte_II.pdf (last visited Mar. 6, 2022). The NGOs that authored the two documents were Asociación por los Derechos Civiles, Centro de Estudios Legales y Sociales (CELS), Fundación Poder Ciudadano, Fundación Ambiente y Recursos Naturales (FARN), Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP), and Unión de Usuarios y Consumidores.

72. Ruibal, *supra* note 67, at 738.

representation, and creating procedures for civil contribution to the process.⁷³ After three justices resigned and two others were removed, three new members of the Court were sworn in following the participatory procedure.⁷⁴

With its new composition, the Court established transparency and participation mechanisms for itself. Some of them were specifically demanded by civil society organizations in *A Court for Democracy*.⁷⁵ The Court, during this stage, took on the challenge to reduce the number of cases it heard and devote its resources to those that presented “institutional severity” or that would produce a precedent of sufficient relevance for lower courts.⁷⁶ The Court rebuilt itself, assuming a new role, based on a hybrid between the U.S. judicial review model and the European constitutional tribunal system.⁷⁷ In 2005, Ricardo Lorenzetti, an expert in Argentinean environmental law, was appointed to the Court.⁷⁸ In 2006, the government reduced the number of the Court’s members to five.⁷⁹

By 2006 the weight of the environmental cause on the public agenda was undisputed. While the pump mill conflict exhibited exemplary results of social mobilization, the Matanza-Riachuelo Basin was a portrayal of policy failure;⁸⁰ the Court saw the opportunity and seized it.

B. *Behind the Scenes: Social Activism*

Civil society organizations’ activism in support of the Matanza-Riachuelo Basin claim can be traced back to 2002, when the Association of Neighbors of La Boca filed several claims before the Federal Ombudsman Office.⁸¹ The Federal Ombudsman created a special investigation unit

73. Decree No. 222/2003, Jun. 19, 2003, [30175] B.O. 2; Art. 99.4, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.). The Senate also regulated its own procedure to give the two-third consent to presidential nominations for Justices.

74. Eugenio Raúl Zaffaroni, Elena Highton de Nolasco, and Carmen Argibay were the individuals who were sworn in.

75. See 2004 HUMAN RIGHTS REPORT, *supra* note 67, at 80; Ruibal, *supra* note 67, at 735; see also Barrera, *supra* note 69. Among the most noteworthy measures, the Court established the online publication of the Court’s decisions and uploading the files during the proceedings, as well as budgetary and personnel information, and regulated the amicus curiae and public hearings procedure.

76. Esain, *supra* note 52, at 300-01.

77. *Id.* at 299-300. According to Esain, the new composition broadened the democratic footing of the Tribunal. *Id.* at 300-01.

78. Scharager, *supra* note 12, at 714.

79. Law No. 26183, Dec. 15, 2006, [31055] B.O. 1.

80. Scharager, *supra* note 12, at 714.

81. See Paola Bergallo, *La causa “Mendoza”: una experiencia de judicialización cooperativa sobre el derecho a la salud*, in POR UNA JUSTICIA DIALÓGICA 245, 254 (Roberto

devoted to monitoring and systematizing the multiple claims on the same issue as a strategy to take on a deeper analysis of the basin case.⁸² Under the leadership of the Ombudsman Office, the 2003 Special Report on the Matanza-Riachuelo Basin was developed together with a group of organizations that were already involved in the Matanza-Riachuelo cause.⁸³ The main goals of this initiative were to diagnose the state of the Basin in all aspects; to prepare a report to reaffirm the seriousness of this problem and to reiterate the need for concrete measures by the competent authorities; and to suggest actions related to these urgent measures to restore the environment of the basin and thus, to preserve the health of the population through an adequate management of the natural resources.⁸⁴ The report also aimed to provide a useful resource of expert knowledge with the most up to date information in order to facilitate the future planning of concrete actions for the environmental recovery of the basin, analyze the legal consequences of competent authorities' actions, and evaluate the possibility of initiating judicial intervention if the report's recommendations were ignored.⁸⁵

Interestingly, even though the 2003 report considered litigation as a strategy, there was no agreement to resort to the Supreme Court amongst the civil society organizations and actors involved.⁸⁶ The report had wide coverage by the media, but its impact on competent authorities was poor.⁸⁷ In November 2005, an updated version of the Special Report also had a wide resonance with the media and public. It denounced the lack of leadership to implement an adequate public policy.⁸⁸ Once the action was filed by seventeen individuals, including citizens living in Villa Inflamable and health workers, but only after the 2006 Supreme Court certification of the case,

Gargarella ed., 2014). The Spanish name of the organization is Asociación de Vecinos de La Boca (AVLB). By 2002, this NGO had presented several claims before the Ombudsman office related to the conditions of the basin and the right to health of its inhabitants. *Id.*

82. Scharager, *supra* note 12, at 710-11.

83. 2003 OMBUDSMAN REPORT ON MATANZA-RIACHUELO BASIN, *supra* note 4, at 9. Seven organizations collaborated in writing the report: AVLB, CELS, the Adjunct Ombudsman for the City of Buenos Aires, FARN, the City Foundation, Poder Ciudadano (Citizen Power), and the Buenos Aires Regional School of the National Technological University. When the case reached the Supreme Court, the Federal Ombudsman Office, AVLB, CELS, and FARN were accepted as third parties to the case.

84. *Id.*

85. *Id.* at 10.

86. Bergallo, *supra* note 81, at 259.

87. *Id.* at 255; Laura Rocha, *Cuatro meses de promesas oficiales incumplidas*, LA NACION (Mar. 30, 2004), <https://www.lanacion.com.ar/sociedad/cuatro-meses-de-promesas-oficiales-incumplidas-nid587659/>.

88. María Valeria Berros, *Relatos sobre el río, el derecho de la cuenca Matanza – Riachuelo* [Stories about the river, the law of the Matanza–Riachuelo basin], 1 REVISTA DE DRECHO AMBIENTAL DE LA UNIVERSIDAD DE PALERMO 111, 117 (2012).

more actors—including those organizations that collaborated on the report—joined the case as third parties.

Paola Bergallo analyzes the *Mendoza* case as a “cooperative judicialization” experience where there is a lot to learn in terms of legal strategies for the fulfillment of the right to health.⁸⁹ She describes the report as an “extrajudicial legal mobilization experience” that evidences a process of articulation towards social accountability between the Ombudsman Office and civil society organizations.⁹⁰ In fact, these organizations and the extrajudicial demands for clear action items are “a special feature of the judicialization experience in *Mendoza* that is absent in the majority of other claims for the right to health.”⁹¹

It becomes evident that the level of pollution or environmental degradation is not enough for steering the course of decision-making.⁹² By observing institutional and contentious participation in Argentina, some authors argue that a combination of contentious strategies, including social protest, judicial litigation, and expert controversy, can be successful in putting an environmental claim on the public agenda and having an impact on social appropriation of environmental rights, to the point of transforming public policy.⁹³ The Matanza-Riachuelo Basin case illustrates how the judicial strategy was successful in setting the stage for the development of institutional mechanisms for long-term participation by the society.

C. *A Court for the Environment: Ensuring Public Policy Implementation Via Judicialization*

The Court issued its first judgment on June 20, 2006, affirming its jurisdiction over the collective interest claim to put an end to pollution, environmental remediation of the basin, and the prevention of future

89. Bergallo, *supra* note 81, at 254-59.

90. *Id.*

91. *Id.*

92. Christel & Gutiérrez, *supra* note 13, at 334.

93. *Id.*

Yet, we notice that institutionalized participation in Argentine environmental policy making has been rather inchoate, while the involvement of citizens and organizations in social protests and judicial litigations has been so far more effective. We do not argue that institutionalized participation is not important in enforcing environmental rights but rather that contentious participation is equally productive in putting environmental issues on the public agenda, in conveying the social reinterpretation of environmental rights, and—sometimes—in changing or steering the course of decision making. That is why we pay special attention to the connection between contentious and institutionalized modes of participation.

Id. See also Berros, *supra* note 88, at 118.

damage.⁹⁴ It left the individual monetary compensation claims to lower courts.⁹⁵ The decision to take on the case, as noted before, was deliberate. The Court brought the 2002 General Law for the Environment (Ley General Ambiente or LGA) to life, by issuing the first ruling, and instating itself as the “environmental”⁹⁶ or “activist Court” with a historic final sentence.⁹⁷ Sub-section 1 describes the creation of an interjurisdictional Basin Authority, boosted by the Court’s intervention; sub-section 2 focuses on the 2006 decision and subsequent public hearings that constitute a unique participatory process of public policy design; sub-section 3 reviews the final 2008 sentence that creates an institutional space for civil society participation to monitor the sanitation plan’s implementation. A combination of judicial and civil society activism transformed an initial damage claim into a transformative intervention to establish a public policy of sanitation.

1. The Basin Authority is Born

Jurisdictional fragmentation, regulatory dispersion, and lack of coordination are highlighted by most studies as the biggest obstacles that hinder a comprehensive approach to the basin territory.⁹⁸ Civil society organizations, especially those that presented the Special Report on the Matanza-Riachuelo Basin in 2003 and its update in 2005,⁹⁹ expressly demanded a basin authority to be created. The CSOs knew that the jurisdictional fragmentation could only be confronted with an interjurisdictional entity; one that facilitated coordination amongst the seventeen jurisdictions¹⁰⁰ and twenty-nine organisms with subject-matter

94. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 20/6/2006, “Mendoza, Beatriz c. Estado Nacional,” Fallos (2006-329-2316).

95. *Id.*

96. Esain, *supra* note 52, at 289. Esain divides the Court’s approach to environmental law matters into three periods, the “silence period” (until 2004), the “intermediate period” (2004-2006), and the “environmental Court period” which began with the June 20, 2006 decision.

97. *See* Ferro, *supra* note 60, at 14-15.

98. *Id.* at 22; Fairstein & Morales, *supra* note 7, at 335.

99. DEFENSOR DEL PUEBLO DE LA NACIÓN ET AL., INFORME ESPECIAL SOBRE LA CUENCA MATANZA-RIACHUELO [SPECIAL REPORT ON THE MATANZA-RIACHUELO BASIN], (2005) [hereinafter 2005 OMBUDSMAN REPORT ON THE MATANZA-RIACHUELO BASIN]. In this updated version, four new civil society actors joined the efforts: Greenpeace, Asociación Popular La Matanza, Fundación Metropolitana, and Universidad Nacional de La Matanza.

100. Arts. 121, 124, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.). The seventeen jurisdictions include the Federal Government, the Province of Buenos Aires, the City of Buenos Aires, and the fourteen Municipalities of the Province of Buenos Aires.

competence on the basin territory.¹⁰¹ The proposal for a basin authority identified key characteristics necessary for a successful policy implementation. It should have a legal form of an interjurisdictional treaty between all jurisdictions, including municipalities. Further, it should guarantee effective participation and representation of citizens, and ensure autonomy for decision-making and the capability of exercising police powers. Finally, the authority should involve local-level and civil society organizations, including municipalities, in decision-making processes.¹⁰² The 2005 updated Special Report analyzed the attempts to create such an entity and the reasons for the failure to reach an agreement.¹⁰³

The new court's decision to hear the case resulted in the creation of a basin authority. On November 15, 2006, Congress passed Law No. 26168¹⁰⁴ to create the Authority for the Matanza Riachuelo Basin, which commonly is referred to as the ACUMAR.¹⁰⁵ Three months earlier, all the jurisdictions involved in the water basin administration, signed an agreement in support of the law. After it was passed, the Province of Buenos Aires¹⁰⁶ and the City of Buenos Aires¹⁰⁷ endorsed it through their respective legislatures. The Supreme Court's involvement was the determining factor that broke the inertia and built the common ground for the necessary Basin authority.

ACUMAR is an interjurisdictional organism, within the structure of the Environment and Sustainable Development Secretariat.¹⁰⁸ The ACUMAR's eight member first composition included the head of the Secretariat acting as

101. Andrés M. Nápoli, *Una política de Estado para el Riachuelo*, in INFORME AMBIENTAL ANNUAL 175, 211 (María Eugenia Di Paola et al. eds., 2009); see also 2003 OMBUDSMAN REPORT ON MATANZA-RIACHUELO BASIN, *supra* note 4, at 69-70 (recommending the creation of a basin authority and describing, in great detail, the enormous number of jurisdictions, organisms, and norms applicable to the basin).

102. 2005 OMBUDSMAN REPORT ON THE MATANZA-RIACHUELO BASIN, *supra* note 99, at 25.

103. *Id.* at 19-26.

104. Law No. 26168, Dec. 4, 2006, [31047] B.O. 1 (establishing the Autoridad de Cuenca Matanza Riachuelo or ACUMAR).

105. Nápoli, *supra* note 101, at 211; Fairstein & Morales, *supra* note 7, at 348. The creation of ACUMAR as an interjurisdictional entity constitutes the first impactful remedy that the *Mendoza* case designed to improve the way Argentina conducted policy for the basin.

106. The Province of Buenos Aires joined by Law No. 13642, B.A., Feb. 21, 2007, <https://www.argentina.gob.ar/normativa/provincial/ley-13642-123456789-0abc-defg-246-3100bvorpyel/actualizacion>.

107. The City of Buenos Aires joined by Law No. 2217, C.A.B.A., Dec. 7, 2006, [2613] B.O. 8, <https://documentosboletinoficial.buenosaires.gob.ar/publico/20070126.pdf>.

108. Law No. 26168, Ley de la Cuenca Matanza Riachuelo [Matanza Riachuelo Basin Law], art. 1, Dec. 4, 2006 [31047] B.O. 1. In 2015, the Secretariat became the Ministry of Environment and Sustainable Development. In 2018, a ministerial reform relegated the Ministry to the Secretariat and assigned ACUMAR under the Ministry of Interior, Public Works and Housing. By the end of 2019, a ministerial reform divided the unit's functions, leaving ACUMAR under the Ministry of Public Works.

President, three representatives of the Federal Executive Power, two representatives of the Buenos Aires Province, and two representatives of the Autonomous City of Buenos Aires.¹⁰⁹ A Municipal Council, made up of a representative of each Municipality of the fourteen jurisdictions, was created to assist and advise the new authority.¹¹⁰ Following the demand for civil society involvement, the law also created a Social Participation Commission with advisory functions.¹¹¹ Further, the law ensured, unlike previous institutions and programs created for the basin sanitation,¹¹² that the basin authority had broad police powers to “regulate, control and promote industrial activities, the rendering of public services and any other activity with environmental impact in the basin” and to prevent further damage.¹¹³

Some of the NGOs involved in the *Mendoza* case criticized the choice to position the basin authority under the executive power orbit by law, instead of doing so through an inter-jurisdictional treaty, following the Special Report’s recommendations.¹¹⁴ While many of the Report’s recommendations were adopted in the Law, the merely consultative role given to municipalities was considered insufficient, in view of their direct involvement with the territory of the basin, their citizens, and their particular problems.¹¹⁵

The creation of a Social Participation Commission was a groundbreaking step in the institutionalization of a space for civil society to intervene.¹¹⁶ The Commission’s internal procedures were established by Resolution 1/2008 in the “Operating Regulations of the Social Participation

109. *Id.* art. 2. In 2017, Article 2 was modified to give the President the authority to designate the Presidency of ACUMAR.

110. *Id.* art. 3.

111. *Id.* art. 4.

112. Fairstein & Morales, *supra* note 7, at 349.

113. Law No. 26168, Ley de la Cuenca Matanza Riachuelo [Matanza Riachuelo Basin Law], arts. 5, 7, Dec. 4, 2006 [31047] B.O. 1. Article 5 provides:

In particular, the Authority is empowered to: a) Unify the applicable regime in matters of effluent discharges to receiving bodies of water and gaseous emissions; b) Plan the environmental management of the territory affected by the basin; c) To establish and collect fees for services rendered; d) To carry out any type of legal act or administrative procedure necessary or convenient to execute the Integral Plan for Pollution Control and Environmental Recomposition. e) To manage and administer, as a Central Executing Unit, the funds necessary to carry out the Integral Pollution Control and Environmental Recomposition Plan. (author’s translation).

Id. art. 5. Further, Article 7 grants preventive measures power in case of danger to the environment of the basin’s inhabitants. *Id.* art. 7.

114. Berros, *supra* note 88, at 126-27.

115. *Id.*; Nápoli, *supra* note 101, at 214-16.

116. Following Christel and Gutiérrez, institutionalizing space for public participation is a less contentious alternative to strategies like protests or judicial actions.

Commission of the Matanza Riachuelo Basin Authority”¹¹⁷ after a participative process for regulatory development.¹¹⁸

However, it is not clear if the Commission fulfilled its mandate. In its 2009 annual report, FARN’s President heavily criticized the Commission’s lack of activity, “[b]eyond the sanctioning of the above-mentioned regulation, ACUMAR has not carried out practically any type of activity aimed at integrating the participation of the citizens in the Sanitation Plan”.¹¹⁹ His concerns were voiced during the public hearings held by the Court between 2006 and 2007. Part III will dive deeper into the achievements and shortfalls of this necessary (but probably insufficient) basin authority.

2. Judicial Activism

The innovative participatory process that the Court subjected the *Mendoza* case to between 2006 and 2008 focused on two fundamental elements that are environmental human rights: access to quality information and civil society participation.¹²⁰ The Supreme Court’s involvement managed to obtain a Sanitation Plan presentation from the authorities and the creation of a basin authority as an interjurisdictional entity with police powers. It would also translate into a final sentence that was, after all, only the starting point.

The seventeen plaintiffs that filed the case before the Supreme Court of Justice, under its original and exclusive jurisdiction,¹²¹ sued the Federal Government, the Province of Buenos Aires, the Autonomous City of Buenos Aires and forty-four companies for collective incidence damage¹²² and personal injury as a result of the basin contamination. The Court decided to only rule on the collective incidence damage,¹²³ lacking sufficient factual

117. Resolution No. 1/2008, Aug. 11, 2008, [31476] B.O. 7.

118. Decree No. 1172/2003, Dec. 3, 2003, Annex V [30291] B.O. 1. The participative process for regulatory development was legally created in 2003 as a transparency institutional mechanism.

119. Nápoli, *supra* note 101, at 219-20.

120. Fairstein & Morales, *supra* note 7, at 338-39.

The Supreme Court of Justice dealt with the case in a novel way, in which the call for several informative public hearings and the activism deployed by the judges over the course of two years to organize the process, gather data on the basin’s problems and ensure the participation of all those involved were noteworthy.

Id. (author’s translation).

121. Art. 117, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

122. *Id.* art. 41; Law No. 25675, Ley General del Ambiente [LGA], art. 230, Nov. 27, 2002, [30036] B.O. 2.

123. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 20/6/2006, “Mendoza, Beatriz c. Estado Nacional,” Fallos (2006-329-2334 (given the contamination of interjurisdictional water resources and the federal and provincial governments as parties, as established in Section 7 LGA and Section 117 of the National Constitution)).

basis of essential aspects of the personal injury claim. The introductory brief was not based on updated studies, but on journalistic publications or reports submitted by various organizations several years ago.¹²⁴

Instead of rejecting the petition entirely, the Court adopted a proactive role and used the broad jurisdictional faculties, vested in it by the LGA,¹²⁵ to order sued companies to inform the Court of the liquids discharged into the river, their waste treatment systems, and the insurance employed.¹²⁶ It ordered the federal government, the Province of Buenos Aires, the City of Buenos Aires, and the COFEMA to present an integrated progressive plan,¹²⁷ with a schedule of interim and long-term goals. The plan was to consider “environmental territorial planning,”¹²⁸ “control over the development of anthropic activities,”¹²⁹ “environmental impact studies for the forty-four companies involved,”¹³⁰ “an environmental education program,”¹³¹ and “a public environmental information program.”¹³² Further, the Court summoned a public hearing for parties to present the information requested;¹³³ and to inform the plaintiffs about the government’s thirty-day deadline to provide further information.¹³⁴

The Federal Ombudsman Office asked to join the case as *amicus curiae* and to join the fourteen municipalities as defendants, but the Court rejected the petition. Nevertheless, they added the Ombudsman Office as a third party to the suit. Similarly, the Court rejected the same request regarding the municipalities by seven non-governmental organizations, and only joined as third parties those that expressly referred to environmental matters in their statutes. This is how, Fundación Ambiente y Recursos Naturales (FARN), Fundación Greenpeace Argentina, Centro de Estudios Legales y Sociales

124. *Id.* at 2335.

125. LGA, art. 32.

126. CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2335-36).

127. LGA, arts. 4-5.

128. *Id.* arts. 8-10; CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2336).

129. LGA, art. 10; CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2336) (citing LGA, art. 10 in terms of adequate use of environmental resources, to maximize production with minimum degradation, and promoting social participation in decisions on sustainable development).

130. CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2316).

131. LGA, art. 14; CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2336-37).

132. LGA, arts. 16, 18; CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2337).

133. CSJN, 20/6/2006, “Mendoza, Beatriz,” Fallos (2006-329-2337).

134. *Id.*

(CELS), and Asociación Vecinos de la Boca became third parties to the *Mendoza* case.¹³⁵

A fifth non-governmental organization, Asociación Ciudadana por los Derechos Humanos [Citizen Association for Human Rights], was accepted as a third party on March 20, 2007, and a group of seventy Lomas de Zamora neighbors obtained the last third-party authorization by the Court.¹³⁶ Finally, the intervening parties in the case were completed with the incorporation of the fourteen municipalities as defendants, but only after a request to broaden the original petition was filed by the plaintiffs.¹³⁷

Public Hearings

In that same decision, the Court adopted regulations for public hearings. Between the first June 20, 2006, decision and the final July 8, 2008 judgment, the Supreme Court developed a two-year participatory process of judicial public policy design. The first day of the first public hearing was devoted to the presentation of the Integral Plan for the Sanitation of the Matanza-Riachuelo Basin, by the Environment and Sustainable Development Secretary Romina Picolotti, and a short presentation by the plaintiffs.¹³⁸ On the second day of the first public hearing, the sued companies argued they had no responsibility for the basin contamination in providing simple services or innocuous activities, which was later rebutted during the NGO representative exposition (Andrés Napoli, representing FARN, CELS, and Greenpeace).¹³⁹ The Justices' questions were incisive, especially towards the companies¹⁴⁰ and government authorities after their poor presentation of the social and health aspects of the Sanitation Plan, as well as the strategies regarding companies' displacements and reconversion processes.¹⁴¹

When the Sanitation Plan was presented, the Court took on the challenge to produce further expert knowledge, inviting experts from the University of

135. Francisco Verbic, *El remedio estructural en la causa "Mendoza."* *Antecedentes, principales características y algunas cuestiones planteadas durante los primeros tres años de su implementación*, 43 FACULTAD DE CIENCIAS JURIDICAS Y SOCIALES 267, 271 (2013).

136. See Berros, *supra* note 88, at 121; Verbic *supra* note 135, at 272.

137. See Verbic *supra* note 135, at 272; Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/7/2008, "Mendoza, Beatriz c. Estado Nacional," Fallos (2008-331-1622,1629).

138. See Berros, *supra* note 88, at 122; CSJN, 8/7/2008, "Mendoza, Beatriz," Fallos (2008-331-1622, 1628).

139. A representative for the Asociación de Vecinos de La Boca and for the Federal Ombudsman Office also participated.

140. See Berros, *supra* note 88, at 123.

141. *Id.* at 124.

Buenos Aires (UBA) to evaluate it.¹⁴² The development of expert reports is a key tool for environmental claims, where a combination of social and economic determinants is in place simultaneously, and multiple systemic human rights violations are present. An interdisciplinary group of professors from multiple UBA schools developed a very critical report. The Plan lacked information on feasibility, its goals were unclear, and it didn't explain how relocations would be implemented, especially noting that there was no space for the affected communities to voice their demands and desires.¹⁴³ Some of the criticism focused on the lack of participation of basin citizens in the hearings and ignoring individual narratives of plaintiffs or others similarly situated, giving preference to an elevated legal discussion.¹⁴⁴

The second public hearing, held in February 2007, was devoted to the advancement of the Sanitation Plan implementation by Secretary Picolotti. The presentation was strongly influenced by the recent landmark creation of ACUMAR, which included the novel establishment of an institutional space for civil society participation.¹⁴⁵

During the third public hearing, the Sanitation Plan was reviewed in light of the observations done by UBA experts in their report. Justices expressed concerns regarding the basin authority's institutional stability over time, given the impossibility to ensure budgetary allocation beyond the yearly resources determined by Congress.¹⁴⁶ Plaintiffs and third parties' representatives further criticized the plan. They argued that it dealt with human health superficially and lacked technical precision, naturalizing the basin contamination.¹⁴⁷ In terms of participation and information, they complained about the recently created Participation Commission at ACUMAR has not been implemented.¹⁴⁸

Following the hearings and the expert report, the Court instructed ACUMAR and the defendant states to provide updated information regarding the state of water, air, and groundwater; a list of industries with polluting activities; relocations of citizens and industries; projects for the petrochemical hub; green credits; dump sites; river margin cleaning; drinking

142. CSJN, 8/7/2008, "Mendoza, Beatriz," Fallos (2008-331-1630).

143. See Berros, *supra* note 88, at 122-25. Similar concerns towards lack of participation were expressed by the Federal Ombudsman and the non-governmental organizations' representatives. *Id.* at 122.

144. MARIELA PUGA, LITIGO Y CAMBIO SOCIAL EN ARGENTINA Y COLOMBIA [LITIGATION AND SOCIAL CHANGE IN ARGENTINA AND COLOMBIA], 80, 82 (2012); see Berros, *supra* note 88, at 122.

145. See Berros, *supra* note 88, at 127.

146. *Id.* at 128.

147. *Id.* at 128-30.

148. *Id.* at 129.

water supply network; rainfall drainage; sewage sanitation; and the emergency health plan.¹⁴⁹

The fourth and final public hearing was held in November of 2007. Several stakeholders presented their conclusions, including Secretary Piccoloti, the National Treasury Attorney, and representatives for the City of Buenos Aires, the municipalities, and the sued companies.¹⁵⁰ Homero Bibiloni, a representative for the municipalities, objected to the legitimacy of non-governmental organizations in representing the interest of the millions that live in the territory of the basin.¹⁵¹ This position is especially relevant because Bibiloni was to replace Piccoloti and become the new Environment and Sustainable Development Secretary that would openly confront the non-governmental organizations involved in the implementation of the 2008 decision.¹⁵²

3. Information and Participation. A New Institutional Role for NGOs Within a Mixed Monitoring System.

The first novelty of the 2008 *Mendoza* decision was a ruling that determined the existence of a legal duty to combat contamination and obtain concrete results.¹⁵³ The judicial activism in the case was specifically enabled in Section 32 of the LGA. And, although the Justices proactively demanded authorities to create a plan and carry it out, they restrained themselves from violating the division of powers.¹⁵⁴ This delicate distinction was achieved through an “exhortative” ruling, where the Court noted a constitutional breach by omission and reminded the executive authorities what they should

149. See Nápoli, *supra* note 101, at 196; Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/7/2008, “Mendoza, Beatriz c. Estado Nacional,” Fallos (2008-331-1632).

150. See Berros, *supra* note 88, at 130.

151. *Id.* at 132-33. In his book, Bibiloni argues that the development of non-governmental organizations is a risk since they lack representativeness and groundwork, thus contributing to the reduction of the role of the state, in favor of their organizational interests. HOMERO MÁXIMO BIBILONI, AMBIENTE Y POLÍTICA: UNA VISIÓN INTEGRADORA PARA GESTIONES VIABLES 280-81 (2008), <https://libros.unlp.edu.ar/index.php/unlp/catalog/book/335>.

152. See Berros, *supra* note 88, at 133, 137; See Puga, *supra* note 144, at 74.

153. CSJN, 8/7/2008, “Mendoza, Beatriz,” Fallos (2008-331-1636); see Fairstein & Morales *supra* note 7, at 336.

154. CSJN, 8/7/2008, “Mendoza, Beatriz,” Fallos (2008-331-1634) (“the entity obliged to comply shall pursue the results and fulfill the mandates described in the objectives set forth herein, and it shall be within its powers to determine the procedures to carry them out . . .”) (author’s translation).

do to prevent further noncompliance.¹⁵⁵ The public policy that should be undertaken was only suggested by the Court, thus ensuring that it did not exceed the limits of its power.¹⁵⁶ The structure of the remedy built in the decision was analogized to the structural injunctions in the U.S. system.¹⁵⁷

The decision determined that ACUMAR would be the liable authority for the sanitation program implementation, “while keeping intact the primary responsibility of the Federal State, the Province of Buenos Aires and the Autonomous City of Buenos Aires.”¹⁵⁸ Next, the Court outlined the scope of the program, leaving the concrete results and a strict schedule for the implementation to the discretion of the competent authority.¹⁵⁹ For each program item with a deadline for the fulfillment, the Court established “a daily fine to be paid by the President of the Basin Authority” in case of non-compliance.¹⁶⁰

As previously noted, access to information and space for participation are two procedural rights, embodied in international standards and local regulations, necessary for accountability. The judicial decision emphasizes these legal obligations by demanding quality information production and publication by the basin authority, and by creating a novel mixed monitoring system for the execution of the judgment.

A Program for the Basin’s Sanitation. International Measurement System and Public Information

The Court states that the program employed must improve the quality of life of the basin’s inhabitants, restore the basin’s environment in all its components, and prevent future damage with a sufficient and reasonable

155. José Esain & Andrés Napoli, *Riachuelo: Habemus Sentencia*, JOSE ESAIN-CONSULTORIA JURIDICA DERECHO AMBIENTAL: COMENTARIO A LA SENTENCIA POR EL CASO RIACHUELO, <https://www.jose-esain.com.ar/2021/04/18/comentario-a-la-sentencia-por-el-caso-riachuelo-en-coautoria-con-andres-napoli/> (select “para descargar hacer click aquí” to access PDF) (last visited Mar. 6, 2022).

156. Néstor Cafferatta, *Sentencia colectiva ambiental en el caso Riachuelo*, 2 REVISTA DE DERECHO AMBIENTAL 141, 148 (2009) (“[A]fter accepting the evident state of things, responding to the ‘what is the scenario’ question, that entails a diagnosis of the extreme environmental degradation of the Matanza-Riachuelo Basin, and in light of the pathetic scene, the Court decides on the ‘what do we want’ question, setting goals to accomplish environmental recompositing; what it doesn’t say, to avoid jurisdictional excesses, is ‘how do we want it’”) (author’s translation).

157. See Verbic *supra* note 135, at 273.

158. CSJN, 8/7/2008, “Mendoza, Beatriz,” Fallos (2008-331-1635).

159. CSJN, 8/7/2008, “Mendoza, Beatriz,” Fallos (2008-331-1636); See Nápoli *supra* note 101, at 197.

160. CSJN, 8/7/2008, “Mendoza, Beatriz,” Fallos (2008-331-1636) (author’s translation).

degree of predictability.¹⁶¹ In order to keep the authority accountable for fulfilling these objectives, it should adopt one of the international measurement systems and “inform the competent court of the enforcement of this judgment within 90 (ninety) working days.”¹⁶² As part of the sanitation plan, the Court gave ACUMAR thirty days to organize a digital public information system, accessible to the general public, which would concisely present all of the updated data, reports, lists, schedules, costs, etc., requested in the 2007 resolution.¹⁶³

These first two orders for the sanitation program aimed to ensure quality participation and accountability after insufficient public information was provided to the Court during the judicial process, which transversally affected the other elements of the program.¹⁶⁴ The rest of the program framework sets strict deadlines for the basin authority to carry out activities related to the identification of contamination of industrial origin,¹⁶⁵ sanitation of dumpsites,¹⁶⁶ riverbank cleaning,¹⁶⁷ expansion of the drinking water

161. *Id.* at 1635-36.

162. *Id.* (author’s translation).

163. *Id.*

164. *Id.* at 1636.

165. *Id.* at 1636-37. Contamination of industrial origin: inspections of all industries within thirty days; identification of contaminating ones; intimation to all the companies identified as polluting agents that throw wastes, discharges, emissions to the Matanza-Riachuelo Basin, submission of the corresponding treatment plan within thirty days, to be analyzed by ACUMAR within sixty days; adoption of total or partial closure and/or relocation measures; three-month periodical presentation of the status of water and groundwater, as well as the air quality of the basin; presentation of the industrial reconversion and relocation project for the Dock Sud petrochemical hub, as well as the state of progress and estimated deadlines of the Program for urbanization of slums and precarious settlements. *Id.*

166. *Id.* at 1637-38. Ensuring measures to prevent the dumping of waste in illegal dumps in the basin within six months, eradicating them within one year and preventing the formation of new open-air dumps; order measures for the eradication of informal settlements along the dumps; implementation of an Integrated Solid Urban Waste Management Plan (GIRSU for its Spanish acronym—Gestión Integral de Residuos Sólidos Urbanos). *Id.*

167. *Id.* at 1637. The cleaning informed on the completion of the stage of rat extermination, cleaning and weeding and the progress of the project to transform the entire riverbank into a landscaped area, as provided in the Matanza-Riachuelo Basin Integral Plan, including compliance deadlines and budgets involved. *Id.*

supply network,¹⁶⁸ rainfall drainage,¹⁶⁹ and sewage sanitation,¹⁷⁰ and the Emergency Sanitary Plan.¹⁷¹

A Mixed Monitoring System

The mixed monitoring system for the judgment execution, also described as an “institutional microsystem,”¹⁷² is the result of the challenge created by fulfilling judicial orders,¹⁷³ especially when multiple human rights violations are intertwined and affect millions of people. The monitoring system “has triggered a supervised management [of public policy] whose main objective is to clean up and restore the Matanza-Riachuelo basin’s environment.”¹⁷⁴ In light of the foreseeable difficulties, the Court built this system to guarantee compliance with its order, the involvement of the public administration offices, the federal judicial power, in collaboration with non-governmental organizations.¹⁷⁵

Three components make up the monitoring system. First, the National Audit Office has “specific control over the allocation of funds and the budgetary execution of everything related to the [Sanitation] Plan.”¹⁷⁶ The Court affirmed that the case warranted this specific transparency effort and demanded ACUMAR secure budget items related to the sanitation program

168. *Id.* at 1638. The program description informed on the expansion plan of the collection, treatment and distribution of water supply carried out by the water sanitation and hydric development authorities, including foreseen programs until 2015. *Id.*

169. *Id.* The program description informed on the rainfall drainage plan, its current state, including foreseen programs until 2015. *Id.*

170. CSJN, 8/7/2008, “Mendoza, Beatriz,” Fallos (2008-331-1622, 1639) (reporting water sanitation authority’s progress, particularly with regard to the Berazategui and Riachuelo treatment plants).

171. *Id.* (carrying out socio-demographic maps and surveying environmental risk factors to determine health risk factors, population at risk, and baseline diagnosis for diseases in basin; using follow-up system to distinguish between diseases caused by different types of pollution and analysis; developing health programs according to diagnosis).

172. Cafferatta, *supra* note 156, at 149.

173. Nápoli, *supra* note 101, at 201 (“El esquema de control ideado por el máximo tribunal parte de reconocer las dificultades que frecuentemente impiden el cumplimiento efectivo de las obligaciones ordenadas a los poderes públicos en las sentencias, y que terminan por convertir a los mandatos de los tribunales en meras expresiones de voluntad.” [“The control scheme devised by the highest court starts from recognizing the difficulties that frequently prevent the effective fulfillment of the obligations ordered to the public powers in the sentences, and that end up turning the mandates of the courts into mere expressions of will.”] (author’s translation)).

174. *Id.* at 202 (author’s translation).

175. *Id.* at 183.

176. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/7/2008, “Mendoza, Beatriz c. Estado Nacional,” Fallos (2008-331-1622, 1641) (author’s translation).

implementation, to facilitate control.¹⁷⁷ Second, the civil monitoring committee (*cuervo colegiado*), comprised of representatives of the non-governmental organizations acting as third parties to the case, with the coordination of the Federal Ombudsman Office, was created to “strengthen citizen participation in the control of compliance with the [sanitation] program”. The Federal Ombudsman’s functional autonomy is a fundamental tool to ensure transparency. It also has the capacity to receive suggestions from citizens and process them appropriately.¹⁷⁸ Finally, the federal trial court of Quilmes was entrusted with the judgement enforcement supervision, as it holds exclusive jurisdiction for all matters associated with compliance and all cases related to collective environmental damage in the Matanza-Riachuelo basin. The lower court shall act as the revision authority in case of a judicial challenge to ACUMAR administrative acts. The federal court’s decisions in the case may be appealed directly to the Supreme Court.¹⁷⁹

This monitoring system joins other activism strategies that, combining horizontal and vertical accountability, foster cooperation amongst agencies and institutional spaces for social participation, producing a mutual stimulus effect to ensure control and push for state action.¹⁸⁰ Through the *Mendoza* case judgement, the Supreme Court broke the cycle of state inaction that had left the Matanza-Riachuelo basin unattended, by ensuring that a critical mass of stakeholders were equipped with a set of innovative monitoring tools for accountability.¹⁸¹ At that point, a whole new challenge would begin.

IV. LESSONS LEARNED THIRTEEN YEARS AFTER THE *MENDOZA* DECISION

The Center for Legal and Social Studies, a renowned human rights organization, third-party to the *Mendoza* case, and member of the monitoring committee, predicted that the challenge would begin the day after the judgment was rendered.¹⁸² The compliance with the court’s order depends to a large extent on the mutual efforts of the different actors, the cooperation among them, the strategies deployed simultaneously, and the Judiciary involvement to prevent the Matanza-Riachuelo basin from falling into

177. *Id.*

178. *Id.* (author’s translation).

179. *Id.* at 1643-45; *see also* Bergallo, *supra* note 81, at 263 (adding that Judge Armella’s recent appointment indicated likelihood of having more resources available for *Mendoza* judgement execution).

180. Bergallo, *supra* note 81, at 254-55, 263-64.

181. Andrés Nápoli & Javier García Espil, *Riachuelo: Hacer hoy pensando en la Cuenca del mañana*, INFORME AMBIENTAL ANNUAL 2011, 177, 184 (2011).

182. Fairstein & Morales, *supra* note 7, at 337.

oblivion again.¹⁸³ Indeed, in complex cases like this, where the solution to structural problems requires a profound transformation to ensure sustainable long-term state action, the judgment is a turning point that breaks the cycle of inaction, but usually opens the door to “a new and challenging stage.”¹⁸⁴

Lessons in environmental activism are drawn from careful observation, critical analysis, and sensitive reflection. This part looks at the achievements and limits of the activist strategies after the *Mendoza* judgment. Section A dives into the limits of the judiciary’s involvement, Section B focuses on civil society organizations, and Section C reaffirms the value of the institutional participatory mechanisms.

A. *The Limits of Judicial Activism*

Judge Armella, the head of the federal trial court of Quilmes, called for a hearing on July 23, 2008, initiating the monitoring of the fulfillment of the activities scheduled by the Supreme Court. To preserve the bilateral aspect of the process, he established that ACUMAR and the Federal Ombudsman Office were the two parties to the case.¹⁸⁵ From 2009 to 2011, Judge Armella produced more than thirty yearly interlocutory decisions, eviction orders, inspections, and relocations, imposing fines and continuously demanding the basin authority’s reports.¹⁸⁶

The active judicial role contrasted with the first years of the basin authority’s weakness. Even before the judgment was rendered, during the first two years of its work (2007-2009), stakeholders expressed their concern over the lack of resources and other institutional deficiencies.¹⁸⁷ The City of Buenos Aires and several municipalities felt unrepresented in the basin authority, thus failing to build consensus and coordination amongst fragmented jurisdictions, which was one of the main reasons why it was created.¹⁸⁸ The lack of technical and operational capacity to undertake the massive task assigned to ACUMAR was reflected in reports by the monitoring stakeholders, including the monitoring committee, and the National Audit Office. The last one reported underspending of ACUMAR’s budget.¹⁸⁹

183. *Id.* at 348.

184. *Id.*

185. Nápoli, *supra* note 101, at 203.

186. Bergallo, *supra* note 81, at 265.

187. Nápoli & Espil, *supra* note 181, at 185-86.

188. *Id.*

189. *Id.*

In its 2009 report,¹⁹⁰ the monitoring committee reviewed each element of the sanitation plan ordered by the Supreme Court, reporting on its achievements and shortfalls. Until 2010, there was no “international monitoring system.”¹⁹¹ ACUMAR reported that the first system was adopted in 2010 through Resolution 566,¹⁹² but the administrative act was not published.¹⁹³ The basin authority’s website published the judicial presentations, but the available information was insufficient to fulfill the public information mandate.¹⁹⁴ Reducing the industrial contamination was deemed poor and slow, especially in terms of factory inspections. By 2010, the authority had not approved any industrial reconversion plan, and the monitoring committee criticized the regulations adopted to limit industrial discharges.¹⁹⁵ The monitoring committee also criticized the lack of participatory spaces, which established their role with the Participation Commission’s duty to ensure citizen involvement.¹⁹⁶ Furthermore, the report concludes that small achievements contrast with the severe lack of quality information and institutional deficits to maintain control and fully diagnose the sanitation plan components.¹⁹⁷ Throughout the report, the monitoring committee highlighted the active judicial role in demanding basin authority’s action, but the poor results illustrate the insufficient impact of those orders.

In August of 2010, Judge Armella imposed a daily fine on the ACUMAR President.¹⁹⁸ His two-year mandate from December 2008 to December 2010, which began after the previous Secretary was removed, was marked by the impossibility to show substantial fulfillment of the *Mendoza* judgment.¹⁹⁹ After this severe sanction, stakeholders observed a positive change in building institutional capacity with the hopes that it would result in a better fulfillment of its obligations.²⁰⁰ By the end of 2010, the basin authority’s President was replaced again.²⁰¹

190. DEFENSOR DEL PUEBLO DE LA NACION ET AL., CUENCA MATANZA RIACHUELO, INFORME 2009 [REPORT ON MATANZA RIACHUELO BASIN] [hereinafter 2009 OMBUDSMAN REPORT].

191. *See id.*

192. Resolution No. 1234/2013, Dec. 23, 2013, [32806] B.O. 22 (explaining that Resolution 566 incorporated the first system in 2010).

193. *Id.*

194. 2009 OMBUDSMAN REPORT, *supra* note 190, at 12.

195. *Id.* at 16-17.

196. *Id.* at 47.

197. *See* 2009 OMBUDSMAN REPORT, *supra* note 190.

198. Nápoli & Espil, *supra* note 181, at 187.

199. *Id.*

200. *Id.*

201. *Riachuelo: Mussi toma la posta tras una historia de promesas incumplidas*, PERFIL (Dec. 29, 2010, 7:43 PM), <https://www.perfil.com/noticias/sociedad/-20101229-0019.phtml>.

While Judge Armella showed strong activist initiative, using his vested powers to demand governmental action, he was also involved in a corruption case related to ACUMAR contracts,²⁰² which resulted in his removal.²⁰³ This incident caused an impasse in the sanitation plan implementation,²⁰⁴ especially during the period of the corruption revelation (August 26, 2012), the Judge's removal by the Supreme Court (November 6, 2012),²⁰⁵ and the new assignment to two new trial courts (December 19, 2012).²⁰⁶ In the removal decision, the Court divided the supervision of the judgment execution—the Federal Trial Court of Morón kept most of the Sanitation Plan monitoring, while Federal Judge in the City of Buenos Aires was ordered to control the contracts related to water and sewage supply plans and urban solid waste management.²⁰⁷

Those shortfalls indicate the limits of judicial activism. While the basin sanitation process complexity requires a broad institutional framework to build consensus and commitment, the Supreme Court itself prevented the affected population from being able to participate as parties.²⁰⁸ By replacing Congress, which the Supreme Court had to do to activate public efforts to deal with the Matanza-Riachuelo basin conflict, it established procedural rules that might not always be the most efficient.²⁰⁹ The *Mendoza* case judgment has, at the moment, thirteen incidental proceedings in the Federal Court No. 12 of the City of Buenos Aires and fifteen more heard by the Federal Court of Morón,²¹⁰ arising from “various serious human rights

202. Horace Verbitsky, *Niembas del Riachuelo*, PÁGINA 12 (Aug. 26, 2012), <https://www.pagina12.com.ar/diario/elpais/1-201868-2012-08-26.html>.

203. Eduardo Videla, *Llegan los reemplazos de Armella*, PÁGINA 12 (Dec. 21, 2012), <https://www.pagina12.com.ar/diario/sociedad/3-210333-2012-12-21.html>.

204. Ferro, *supra* note 60, at 17.

205. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/7/2008, “Mendoza, Beatriz c. Estado Nacional,” Fallos (2008-331-1630).

206. Videla, *supra* note 203.

207. *Id.*

208. See Santiago Cané, *Un problema integral que demanda soluciones integrales* [An integral problem that demands solutions], 11 REVISTA INSTITUCIONAL DE LA DEFENSA PUBLICA 11, 15 (2021).

The judicial situation determined by the decisions of the Court itself, which only admits participation through the monitoring committee—made up of a very small group of organizations and currently without the presence of the National Ombudsman by decision of the Court itself—prevents in practice the population directly affected from being able to participate in the implementation of the judgment.

Id. at 16 (author's translation).

209. *Id.* at 15.

210. See *Especial Riachuelo: La Causa* [Riachuelo Special: The Cause] CENTRO DE INFORMACIÓN JUDICIAL, <https://www.cij.gov.ar/riachuelo.html> (last visited Feb. 18, 2022).

violations [that] are processed in an incidental manner with little connection to the main case file.”²¹¹

Sixteen years after the claim was filed, the Court remains silent on the legal responsibility of the companies that throw polluting discharges into the basin daily. When the Supreme Court decided to prioritize the development of the public policy through political institutions, it also decided to postpone the definition of private entity responsibility, which enables their lack of involvement and commitment to technically reconvert and ensure treatment of discharges.²¹² Furthermore, the consultative and relegated role of municipalities, observed by stakeholders when ACUMAR was created, is another limiting factor to the success of the sanitation plan.²¹³ If ACUMAR fails to act as a coordinating body amongst responsible jurisdictions, the entity becomes a shield for the federal, provincial, and municipal powers, receiving judicial orders and demands from the affected population instead of the respective government authorities.²¹⁴

B. The Limits of Civil Society Organizations’ Activism

One of the main limits of the CSO activism in the case is a result of the Court’s decision to constrain the composition of the monitoring committee to a group of “elite” NGOs to the detriment of the grassroots ones.²¹⁵ This process is described as “judicial expropriation.” While the phenomenon is true, the decision of the Court to give priority to the overall sanitation program instead of the individual monetary compensation is a novel approach for a complex case where the rights of millions throughout the basin are at stake.²¹⁶ Bibiloni, former President of ACUMAR, also questioned the non-territorial nature of these organizations, which impacted the space he gave the monitoring committee during his term.²¹⁷

211. Cané, *supra* note 208, at 16 (author’s translation).

212. See Nápoli, *supra* note 101, at 233; *see also* Cané, *supra* note 208, at 17 (explaining that the lack of information was the main pretext for the industries’ exemption from responsibility and, while the current data proves without a doubt that they are in fact responsible, the Court remains silent.).

213. See Berros, *supra* note 88, at 126-27; *see also* Nápoli, *supra* note 101, at 214-16.

214. Cané, *supra* note 208, at 17.

215. See Bergallo, *supra* note 81, at 22; *see also* Puga, *supra* note 144, at 80.

216. See Bergallo, *supra* note 81, at 23-24; *see also* Puga, *supra* note 144, at 80.

217. HOMERO MÁXIMO BIBILONI, AMBIENTE Y POLÍTICA: UNA VISIÓN INTEGRADORA PARA GESTIONES VIABLES 280-81 (2008), <https://libros.unlp.edu.ar/index.php/unlp/catalog/book/335>.

NGOs also face a structural problem to guarantee their continuous work in the area, given their budgetary restraints.²¹⁸ Their agendas may shift according to the funding sources that determine the funds allocation.²¹⁹ Furthermore, the Federal Ombudsman Office has not have an Ombudsman designated since 2009,²²⁰ and while an adjunct was appointed and the monitoring committee continues to work on the case, the legal structure envisioned by the Supreme Court's mixed monitoring system reveals its fragility.²²¹

Regardless of these limitations, the contribution of civil society organizations to the development of the *Mendoza* case, before and after the judicial decision, is undisputed. Periodical reports by the monitoring committee and other stakeholders produce valuable information, demand its publication, recommend improvements, and directly impact the policy implementation by ACUMAR and other relevant authorities. These contributions synergically combine with other public offices' initiatives such as the Prosecutor's Office,²²² the City of Buenos Aires Ombudsman Office,²²³ and the City of Buenos Aires Public Defender's Office.²²⁴

218. See Nápoli, *supra* note 101, at 208 (“we cannot overlook the fact that the task performed by the monitoring committee does not have resources that have been specifically provided for the performance of the task, taking into account that the Supreme Court ordered its creation without providing it with the necessary resources for its proper functioning, which is the reason why its members perform their activity ‘ad honorem.’”) (author’s translation).

219. BIBILONI, *supra* note 217, at 281.

220. See 55 *Organizaciones piden al Congreso por la designación del Defensor del Pueblo*, ASOCIACIÓN CIVIL POR LA IGUALDAD Y LA JUSTICIA (Aug. 31, 2016), <https://acij.org.ar/55-organizaciones-piden-al-congreso-por-la-designacion-del-defensor-del-pueblo/>; see also María Eugenia Gago & Tristán Gómez Zavaglia, *El Defensor del Pueblo de la Nación: entre el olvido, la intención y la desidia* [*The Ombudsman of the Nation: between oblivion, intention and laziness*], SISTEMA ARGENTINO DE INFORMACION JURIDICA ¶ 4, <http://www.saij.gov.ar/maria-eugenia-gago-defensor-pueblo-nacion-entre-olvido-intencion-desidia-dacf200022/123456789-0abc-defg2200-02fcanirtcod?&o=334&f=Total%7CFecha%7CEstado%20de%20Vigencia%5B5%2C1%5D%7C Tema%7COrganismo%5B5%2C1%5D%7CAutor%5B5%2C1%5D%7CJuridicci%F3n%5B5%2C1%5D%7CTribunal%5B5%2C1%5D%7CPublicaci%F3n%5B5%2C1%5D%7CColecci%F3n%20tem%El%5B5%2C1%5D%7CTipo%20de%20Documento/Doctrina&t=9727>.

221. Ferro, *supra* note 60, at 18.

222. *A 13 años del fallo “Mendoza,” el Ministerio Público Fiscal presenta sus acciones más relevantes*, FISCALES (Aug. 7, 2021), <https://www.fiscales.gov.ar/procuracion-general/a-13-anos-del-fallo-mendoza-el-ministerio-publico-fiscal-presenta-sus-acciones-mas-relevantes/>.

223. See, e.g., *Causa Matanza Riachuelo: 13 años, 13 testimonios*, DEFENSORIA DEL PUEBLO (July 8, 2021), <https://defensoria.org.ar/noticias/causa-matanza-riachuelo-13-anos-13-testimonios/> (showcasing publications and participation in the development of the Matanza-Riachuelo case).

224. See, e.g., *Se reúne el consejo federal de defensores y asesores generales de la Republica Argentina*, MINISTERIO PÚBLICO DE LA DEFENSA, <https://www.mpd.gov.ar/index.php/noticias-feed/5655-se-reunio-el-consejo-federal-de-defensores-y-asesores-generales-de-la-republica-argentina-3> (noting the public defender's participation in public hearings).

By 2015, a new monitoring committee report presented the achievements and shortfalls of the *Mendoza* judgment execution.²²⁵ The report recognized advancements in the sanitation plan, but still observed a lack of overall planning with an environmental perspective and disagreements amongst stakeholders' reporting in the case regarding the state of the basin. The monitoring committee reported being an active participant during the implementation of the *Mendoza* judgment, filing more than 250 briefs with opinions and demands before the courts, assisting with 110 hearings, and conducting 320 meetings.²²⁶ It actively promoted access to public information and social participation that impacted the development of the judicial procedure and the overall sanitation plan.²²⁷ Amongst its achievements, the demand for a more active social participation commission observed during the first years resulted in a shift of policy at ACUMAR. It began implementing its regulations by calling for local-level meetings during 2010,²²⁸ which would slowly consolidate in the following years, in the form of roundtables.²²⁹ Participation of grassroots initiatives and citizens in spaces for social deliberation and information has been an ongoing practice, especially regarding the slow housing development and the impact of long-term sanitation works.²³⁰

225. DEFENSOR DEL PUEBLO DE LA NACIÓN ET AL., INFORME ESPECIAL A SIETE AÑOS DEL FALLO DE LA CORTE SUPREMA DE JUSTICIA DE LA NACIÓN QUE PERSIGUE MEJORAR LA CALIDAD DE VIDA DE LA POBLACIÓN, RECOMPONER EL AMBIENTE Y PREVENIR NUEVOS DAÑOS EN LA CUENCA MATANZA RIACHUELO (2015), http://www.dpn.gob.ar/documentos/20160304_30775_556677.pdf.

226. *Id.* at 3-4.

227. *Id.*

228. Nápoli & Espil, *supra* note 181, at 204.

229. "Roundtables" are spaces for diverse stakeholders to meet, especially local-level civil society organizations and affected citizens, with the relevant authorities to discuss, get information, approach their demands and suggestions for the implementation of public policy. See *Comisión de Participación Social [Social Participation Commission]*, ACUMAR, <https://www.acumar.gob.ar/participacion-social/> (last visited Mar. 20, 2022); see also Romina Olejarczyk, *Conflictos (y ausencia de conflictos) en las relocalizaciones del Matanza-Riachuelo. Reflexiones preliminares en un municipio de la cuenca media [Conflicts (and absence of conflicts) in the relocations of Matanza-Riachuelo. Preliminary reflections in a municipality of the middle basin]*, 17 GEOGRAFICANDO (2021), <https://doi.org/10.24215/2346898Xe094> (reporting a case study analysis of the conflicts in housing relocation and describing the functioning of territorial roundtables).

230. Roundtables are reported regularly, at least since 2015, in the annual report mandated by Law No. 26168, Ley de la Cuenca Matanza Riachuelo [Matanza Riachuelo Basin Law], arts. 8, Dec. 4, 2006 [31047] B.O. 1. ACUMAR, INFORME ANUAL LEY 26.168, 52 (2015), <https://www.acumar.gob.ar/wp-content/uploads/2016/12/Informe-HCN-Acumar-2015.pdf>; ACUMAR, INFORME ANUAL LEY 26.168, 56 (2017), <https://www.acumar.gob.ar/wp-content/uploads/2016/12/Anuario-Gestion-ACUMAR-2017.pdf>; ACUMAR, INFORME ANUAL LEY 26.168, 41 (2018),

In terms of access to information, the July 2017 report of the organizations that comprise the monitoring committee was devastating.²³¹ They observed that the entity's website was deficient—it lacked updated information, had several broken links, and overall failed to comply with the public information standards set by the Supreme Court.²³²

A 2016 change in government, which meant the same political party would govern the three jurisdictions responsible for the basin's cleanup, had no impact on coordination results, contrary to the NGOs' expectations.²³³ The repeated flaws in terms of “institutional volatility” were evidenced by multiple changes in authorities, including three different presidents in eighteen months.²³⁴ More recently, the 2019 FARN report pondered achievements and shortfalls regarding the Court's decision implementation after its ten-year anniversary.²³⁵ FARN's Executive Director highlighted the waste removal work, sanitary control, and sewage infrastructure, and mentioned the value of the information produced to ensure that the public policy and decision-making are data-oriented.²³⁶ However, after the latest Supreme Court public hearing, the tribunal noted shortfalls in the fulfillment of the Plan's goals, ordered a new schedule of deadlines, and mentioned the weaknesses of the monitoring system.²³⁷

The technical and rational approach focused on large infrastructure projects that are interdependent, time consuming, and impact the citizens'

Congreso-2018.pdf; ACUMAR, INFORME ANUAL DE GESTIÓN 2019, 47 (2019), <https://www.acumar.gob.ar/wp-content/uploads/2016/12/INFORME-ANUAL-DE-GESTIO%CC%81N-2019-LEY-26.168-ART.-8.pdf>; ACUMAR, INFORME DE GESTIÓN ANUAL AL CONGRESO DE LA NACIÓN ARGENTINA 16-19 (2020), <https://www.acumar.gob.ar/transparencia/informes-congreso/>.

231. FUNDACIÓN AMBIENTE AND NATURAL RESOURCES (FARN) ET AL., 9 AÑOS DEL FALLO DE LA CORTE. UNA POLÍTICA DE ESTADO TODAVÍA AUSENTE [9 YEARS AFTER THE COURT RULING. A STATE POLICY STILL ABSENT] 4-5 (2017).

232. *Id.*

233. *Id.* at 3.

234. *Id.*

235. Andrés Nápoli, *Riachuelo: a diez años del fallo de la Corte Suprema de Justicia, aún queda mucho por hacer*, in INFORME AMBIENTAL 2019, 193 (Ana Di Pangraccio et al. eds., 2019).

236. *Id.* at 194-95.

237. *Tras la audiencia pública en la causa Riachuelo, la Corte advirtió deficiencias en el cumplimiento del plan de saneamiento y requirió que en 30 días se establezcan plazos ciertos y fundados de cumplimiento de los objetivos de la sentencia* [After the public hearing in the Riachuelo case, the Court noted deficiencies in compliance with the sanitation plan and required that within thirty days certain and well-founded deadlines be established for compliance with the objectives of the judgment] CENTRO DE INFORMACIÓN JUDICIAL (Apr. 13, 2018), <https://www.cij.gov.ar/nota-29861-Tras-la-audiencia-p-blica-en-la-causa-Riachuelo--la-Corte-advirti--deficiencias-en-el-cumplimiento-del-plan-de-saneamiento-y-requiri--que-en-30-d-as-se-establezcan-plazos-ciertos-y-fundados-de-cumplimiento-de-los-objetivos-de-la-sentencia.html>.

ability to observe short-term progress when there are urgent sanitary needs.²³⁸ One of the consequences of the detachment of citizenship with the public policy is the lack of appropriation of rights-holders of the transformations that are directly aimed toward them. In that sense, spaces for citizen participation to voice their concerns are essential parts of the appropriation process.²³⁹

Thirteen years after the judgment, an undisputed achievement has been the “elevation of the environmental question to the level of public concern and policy,” inclusion of the environmental problems in the civil society organizations’ agenda and strengthening social understanding of natural resources as common goods.²⁴⁰

C. Coordinated Efforts: Institutional Participation Mechanisms to Contribute to the Environmental Agenda

The Supreme Court’s judgment in the *Mendoza* case has consolidated the notion of procedural rights as essential components of an environmental public policy. Procedural rights, which enable civil society to channel demands through institutional mechanisms, bring the “right to know, participate and claim” to live.²⁴¹ Throughout the case development (2006-2008) until the final judgment (July 8, 2008) and beyond, the interdependent nature of access to information and participation rights with the human right to a healthy environment has become increasingly evident.

Public hearings, in this sense, were born during the 2006-2008 period, with an innovative regulation invented by then recently renewed Supreme Court. After the four public hearings to build a case to reach the final sentence, the Court again called for this participatory reunion in 2011,²⁴²

238. Cané, *supra* note 208, at 11-16.

239. Horacio Corti, *Editorial*, 11 REVISTA INSTITUCIONAL DE LA DEFENSA PUBLICA 7, 7-8 (2021); *see also* Leonel Bazan et al., *Reflexiones a 10 años de la sentencia del caso Mendoza/Riachuelo. Relatoria de encuentros coorganizadas por el CDH-UBA y el IJDH-UNLA* [Reflections 10 years after the judgment in the Mendoza/Riachuelo case. Report of meetings co-organized by the HRC-UBA and the IJDH-UNLA], 11 REVISTA INSTITUCIONAL DE LA DEFENSA PUBLICA, 33, 33-48 (2021).

240. Merlinsky & Stoller, *supra* note 30, at 49 (author’s translation).

241. Christel & Gutierrez, *supra* note 13, at 328.

242. *Se Realizo una Audiencia Publica Ante la Corte por la Causa Riachuelo* [A public hearing was held for the Riachuelo Cause], CENTRO DE INFORMACIÓN JUDICIAL (Mar. 16, 2011), <https://www.cij.gov.ar/nota-6420-Se-realiz-una-audiencia-p-blica-ante-la-Corte-por-la-causa-Riachuelo.html>.

2012,²⁴³ 2016,²⁴⁴ and 2018.²⁴⁵ The Court indicated the shortfalls in the implementation of the *Mendoza* judgment, highlighting the persistent underspending of the assigned budget—reported by the National Audit Office for 2016—and deemed the monitoring system to be insufficient to verify the fulfillment of the Sanitation Plan’s goals.²⁴⁶

ACUMAR, through the Social Participation Commission, carried out six public hearings to promote citizen involvement in public policy decisions.²⁴⁷ The topics brought to the hearings, as well as the results, were somewhat erratic. In 2012, the hearing was devoted to the presentation of the Master Plan for the Integral Management of Urban Solid Waste, but the records do not include a Final Report nor a response to the participant’s concerns, as mandated by the applicable regulation.²⁴⁸ In 2016, the public hearing was held to update the Integral Plan for the basin sanitation, originally presented by ACUMAR in 2010.²⁴⁹ In this case, the procedure was fully complied with, but the resulting document was frequently criticized. Regardless of its shortfalls, the 2016 Plan included specific lines of action related to

243. *Causa Riachuelo: se realizó una audiencia pública ante la Corte Suprema [Riachuelo case: a public hearing was held before the Supreme Court]*, CENTRO DE INFORMACIÓN JUDICIAL (Oct. 11, 2012), <https://www.cij.gov.ar/nota-10002-Causa-Riachuelo--se-realiz--una-audiencia-p-blica-ante-la-Corte-Suprema.html>; see also *Causa Riachuelo: La Corte Suprema de Justicia Reanuda la Audiencia Pública [Riachuelo Cause: The Supreme Court of Justice Resumed the Public Hearing]*, CENTRO DE INFORMACIÓN JUDICIAL (Oct. 25, 2012), <https://www.cij.gov.ar/nota-10070-Causa-Riachuelo--la-Corte-Suprema-de-Justicia-reanud--la-audiencia-p-blica.html>; *Causa Riachuelo: La Corte Suprema de Justicia Reanuda la Audiencia Pública [Riachuelo Cause: The Public Hearing Before the Supreme Court of Justice Has Ended]*, CENTRO DE INFORMACIÓN JUDICIAL (Nov. 1, 2012), <https://www.cij.gov.ar/nota-10157-Causa-Riachuelo--finaliz--la-audiencia-p-blica-ante-la-Corte-Suprema.html>.

244. *Riachuelo: Se Realizo una Audiencia Publica Para Conocer el Avance del Plan de Saneamiento Ordenado por la Corte Suprema [Riachuelo: A Public Hearing Was Held to Learn the Progress of the Sanitation Plan Ordered by the Supreme Court of Justice]*, CENTRO DE INFORMACIÓN JUDICIAL (Nov. 30, 2016), <https://www.cij.gov.ar/nota-23965-Riachuelo--se-realiz--una-audiencia-p-blica-para-conocer-el-avance-del-plan-de-saneamiento-ordenado-por-la-Corte-Suprema.html>.

245. *Se Realizo una Audiencia Publica ante la Corte Suprema por la Causa Riachuelo [A Public Hearing was Held before the Supreme Court of Justice for the Riachuelo Cause]*, CENTRO DE INFORMACIÓN JUDICIAL (Mar. 14, 2018), <https://www.cij.gov.ar/nota-29417-Se-realiz--una-audiencia-p-blica-ante-la-Corte-Suprema-por-la-causa-Riachuelo.html>.

246. See CENTRO DE INFORMACIÓN JUDICIAL, *supra* note 237.

247. See generally *Audiencia Publicas [Public Hearings]*, ACUMAR, <https://www.acumar.gov.ar/participacion-social/audiencias-publicas/> (last visited Feb. 18, 2022).

248. See *Audiencia Publica 2012 [Public Hearing 2012]*, ACUMAR (May 29, 2012), <https://www.acumar.gov.ar/participacion-social/audiencias-publicas/2012-2/>.

249. See *Audiencia Publica 2016 [Public Hearing 2016]*, ACUMAR (Nov. 16, 2016), <https://www.acumar.gov.ar/participacion-social/audiencias-publicas/audiencia-publica-2016/>; see also ACUMAR, PLAN INTEGRAL DE SANEAMIENTO AMBIENTAL ACTUALIZACION PISA 2016 [COMPREHENSIVE ENVIRONMENTAL SANITATION PLAN PISA 2016 UPDATE] 18 (2016).

participation and access to public information.²⁵⁰ In 2017, a public hearing was held in the municipality of Almirante Brown to promote participation in the drafting of a Protocol for the development of relocation and reurbanization processes of slums and precarious settlements in the basin.²⁵¹ In 2019, the public hearing called for participants to contribute to three lines of action in relation to the main contamination sources of the basin: industry, sewage, and solid urban waste.²⁵² Recently, a new public hearing was held to publicly review the monitoring system that had been updated—without participation—in 2013 and 2017 by the Basin Authority.²⁵³

The institutional role of NGOs in the monitoring committee has been described throughout this article, citing to the numerous reports on their substantial role during the judgement's execution period. Furthermore, many of those same organizations, and other stakeholders, have exercised their right to request public information from the basin authority, which increasingly improved its response performance.²⁵⁴ The response rate was close to zero until 2014, when a visible increase both in requests and responses began and continues to grow until today.²⁵⁵

In terms of the current situation of the basin, official data reported through the monitoring system shows an exponential increase in access to safe water between 2009 and 2019, reaching 78.5%.²⁵⁶ By 2019, only 51.8% of the basin population has been connected to sewage collection network

250. PLAN INTEGRAL DE SANEAMIENTO AMBIENTAL ACTUALIZACION PISA 2016, *supra* note 249, at 192 (describing local-level roundtables and the need to better systematize the information regarding their development).

251. See *Audiencia Pública 2017* [*Public Hearing 2017*], ACUMAR (Dec. 14, 2017), <https://www.acumar.gob.ar/participacion-social/audiencias-publicas/audiencia-publica-2017/>; see Resolution No. 420-E/2017, Dec. 15, 2017, [33777] B.O. 62.

252. See *Audiencia Pública 2019* [*Public Hearing 2019*], ACUMAR (Sept. 2019), <https://www.acumar.gob.ar/participacion-social/audiencias-publicas/audiencia-publica-2019/>.

253. See *ACUMAR Realizo una Audiencia Pública para Discutir el Sistema de Indicadores* [*ACUMAR Held a Public Hearing to Discuss the Indicators System*], ACUMAR (Sept. 24, 2021), <https://www.acumar.gob.ar/ultimas-noticias/realizamos-la-audiencia-publica-discutir-nuevo-sistema-indicadores/>; *Informe Final de Audiencia Pública* [*Final Report of Public Hearing*], ACUMAR (Sept. 24, 2021), <https://www.acumar.gob.ar/participacion-social/audiencias-publicas/audiencia-publica-2019/>.

254. *Respuesta a requerimientos de información pública, Sistema de Indicadores* [*Response to Public Information Requirements*], ACUMAR (Oct. 20, 2021), <https://www.acumar.gob.ar/indicadores/respuesta-requerimientos-informacion-publica-ambiental/>.

255. *Id.*

256. *Población incorporada al área con servicio de red de agua potable* [*Population Incorporated into the Area with Drinking Water Network Service*] ACUMAR (July 20, 2021), <https://www.acumar.gob.ar/indicadores/poblacion-incorporada-al-area-servicio-red-agua-potable/>.

services.²⁵⁷ The resources invested in sanitation have increased yearly,²⁵⁸ as well as the removal of waste that impacts the state of the basin margins.²⁵⁹ Out of the 1,771 housing solutions established in 2010 as a goal, only 4,977 have been finished, 3,458 are being developed, 1,734 are being designed, and 7,602 are reported without advancement.²⁶⁰ The monitoring system has been criticized by experts as insufficient in order to reflect the level of execution of the *Mendoza* judgment.²⁶¹ Although the current system was validated by the execution judge, experts argue the system lacks a human rights perspective, which means it does not measure the real impact on the fulfillment of basin citizen's rights.²⁶² Several public hearing speakers followed this line of argument, taking advantage of the space provided by the review process convened by the basin authority to voice concerns regarding the monitoring system indicators.²⁶³

The ongoing challenge to keep the issue alive, keep authorities accountable, collaborate in the implementation of public policy, and maintain the environmental agenda present in the public arena, finds useful tools in activism in institutional participation mechanisms.

V. CONCLUSION: REINFORCING INSTITUTIONAL MECHANISMS FOR LONG-TERM PUBLIC POLICY

One of the major lessons from the case is that civil society organizations enhance their impact when they use institutional mechanisms to file their claims. The road traveled by civil society organizations until the Supreme

257. *Población incorporada al servicio de red cloacal* [Population Incorporated into the Sewage Network Service], ACUMAR (July. 20, 2021), <https://www.acumar.gob.ar/indicadores/poblacion-incorporada-al-area-servicio-red-cloacal/>.

258. *See Inversión en Plan de Saneamiento Ambiental* [Investment in the Environmental Sanitation Plan], ACUMAR (Apr. 20, 2021), <https://www.acumar.gob.ar/indicadores/inversion-plan-integral-saneamiento-ambiental/>.

259. *See Estado del Mantenimiento de las Márgenes* [Maintenance Status], ACUMAR (July 20, 2021), <https://www.acumar.gob.ar/indicadores/estado-del-mantenimiento-las-margenes-2/>; *see also Basurales Remanentes de la Línea de Base, por Tipología* [Landfills remaining from the Baseline, by Typology], ACUMAR (Oct. 20, 2021), <https://www.acumar.gob.ar/indicadores/basurales-remanentes-la-linea-base-tipologia/>.

260. *Relación al Plan de Viviendas 2010* [Housing Solutions in Relation to the 2010 Housing Plan], ACUMAR (Oct. 20, 2021), <https://www.acumar.gob.ar/indicadores/soluciones-habitacionales-relacion-al-plan-viviendas-2010/>.

261. Jorge Sambeth et al., *Medición de Mandas Judiciales. Un Abordaje Interdisciplinario en la Cuenca Matanza-Riachuelo*, 11 REVISTA INSTITUCIONAL DE LA DEFENSA PÚBLICA 75, 76 (2021).

262. *Id.* at 80.

263. *See Audiencia Pública 2021* [Public Hearing 2021], ACUMAR (Sept. 24, 2021), <https://www.acumar.gob.ar/participacion-social/audiencias-publicas/audiencia-publica-2021/>.

Court rendered its final judgment was not in solitude, and the contribution of other governmental agencies, such as the Ombudsman Office, proved essential in channeling the long-standing claim. The judicial power alone was also unable or unwilling to devote its tools to solve the complex case of multiple and historic human rights violations. It proved capable of transforming the reality only when other variables—historic, mediatic, political, social, and legal—set the stage.

In *Mendoza*, this sentiment is especially evident in the way the Federal Ombudsman Office took an organization's presentation, and later called on other organizations to put together a strong diagnosis report. A documented record of the Matanza-Riachuelo basin critical state was necessary for the court to build its case, beginning a process of documentation and information production that continues to actively support public policy implementation.

Current environmental conflicts illustrate the undisputed value of the Matanza-Riachuelo Basin case lessons. When environmental issues are in the public debate, the active participation of civil society through institutionalized mechanisms can bring about valuable results. Civil society's activism in the Offshore Seismic Acquisition Campaign, which involved the exploration on Argentinean shores for oil by foreign companies, succeeded in temporarily suspending the process of granting authorizations after actively participating in the public hearing called for by the Environment and Sustainable Development Ministry.²⁶⁴ Furthermore, issues that have not yet reached the general public's attention, or remain distant from public eye, use the language of institutional mechanisms to expose their deficiencies. For example, environmental activists performed a "self-convened public

264. Resolution No. 16/2021, Sept. 23, 2021, [34756] B.O. 36. Interestingly, the hegemonic media described the event as an internal governmental conflict that limits the country's development, while environmental sources described it as a success. Pedro Gianello, *Otra Interna en el Gobierno: En el Gabinete Dicen que Juan Cabandí Pone en Peligro un Proyecto Petrolero* [Another intern in the Government: in the Cabinet they say that Juan Cabandí endangers an oil project], CLARÍN (July 7, 2021), https://www.clarin.com/politica/interna-gobierno-gabinete-dicen-juan-cabandie-pone-peligro-proyecto-petrolero_0_0kTJXNWvT.html; see also *El Mar Argentino, Salvado por Los Esfuerzos de la Sociedad Civil* [The Argentine Sea, saved by the efforts of civil society], 350.ORG (July 7, 2021), <https://350.org/es/el-mar-argentino-salvado-por-los-esfuerzos-de-la-sociedad-civil/>. On December 30, 2021 the government finally authorized a company to begin exploration, raising public protest against the initiative and bringing to the national agenda the debate regarding the development burden on the environment, Bruno Perrone, *Protestas y Debates por la Exploración Petrolera en la Costa Atlántica* [Protests and Debates over Oil Exploration on the Atlantic Coast], PAGINA 12 (Jan. 5, 2022), <https://www.pagina12.com.ar/393452-protestas-y-debates-por-la-exploracion-petrolera-en-la-costa>.

hearing”²⁶⁵ on a pig farm project that was not open to citizen discussion, and whose revelation led the government authorities to delay the initiative.²⁶⁶

When public institutions create participation mechanisms to channel public demands, they invite the society to contribute to the development of a more accurate and efficient public policy, as long as there is an authority ready to listen. The Supreme Court, back in 2006, was ready. More than a decade after that milestone, the ongoing participation of civil society, judicial activism, and multiple stakeholders’ involvement in keeping the authorities accountable, have undoubtedly contributed to keeping the Mendoza-Riachuelo cause alive. Beatriz Mendoza, now a public official at the Municipality of Avellaneda,²⁶⁷ is a living proof of the everlasting commitment of those who fight for (environmental) justice.

265. *Sobre la Audiencia*, AUDIENCIAS PUBLICAS, <https://audienciaspublicas.com/sobre-la-audiencia/> (last visited Mar. 6, 2022).

266. Agustina Grasso, *Cancillería Atraso el Acuerdo de Producción Porcina Para China Hasta Noviembre* [Foreign Ministry Delays the Pork Production Agreement for China Until November], PERFIL (Aug. 31, 2020), <https://www.perfil.com/noticias/ecologia/cancilleria-atraso-acuerdo-produccion-porcina-para-china-hasta-noviembre-2020.phtml>; see also Claudia Regina Martínez, *Acuerdo Porcino con China: Cientos de Personas Participaron en Una Audiencia Pública Autoconvocada* [Pork Agreement with China: Hundreds of People Participated in a Self-Convened Public Hearing], EL DIARIO AR (Sept. 17, 2021, 1:16 PM), https://www.eldiarioar.com/sociedad/medio-ambiente/acuerdo-porcino-china-cientos-personas-participaron-audiencia-publica-autoconvocada_1_8312717.html.

267. Drovetto, *supra* note 3.