The opinions expressed in this publication are those of the author. Aldana Rohr contributed to this interview in her personal capacity. The views expressed are her own. They do not purport to reflect the opinions or views of the institutions she belongs to or works for.

1. Who is "*human*" in the concept of modern human rights?

I would say that all human beings, regardless of race, color, lineage, ethnicity; nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic trait; mental or physical health condition, including infectious-contagious condition and debilitating psychological condition; or any other condition are "human" in the concept of modern human rights. It is the scope adopted by the Inter-American Convention Against Racism, Racial Discrimination And Related Forms Of Intolerance (2013) and the Inter-American Convention against all Forms of Discrimination and Intolerance (2013).

2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncounted in the Constitution is conflicted with a constitutional right?

The National Constitution is the main source of Argentine law from which minimum guarantees and procedural principles emanate. According to it "*This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, are the supreme law of the Nation".* This mean that, at national level, the protection of a right can be regulated by the Constitution itself, by a national law or by a treaty.

The Republic of Argentina has a representative, republican, and federalist form of government. The system of government is presidential - which means, among other things, that the President is responsible for maintaining relations with international human rights bodies - and based on the separation of powers into executive, legislative and judicial branches. The country is organized into a federal system comprising 23 provincial States and the Autonomous City of Buenos Aires. Each Province enacts its own constitution, by which it must provide for its own administration of justice and municipal autonomy, and regulate the scope and content of its institutional, political, administrative, economic and financial system. Each Province has the authority to regulate the promotion and protection of

human rights, without prejudice to National Government's role in overall policy-setting and coordination[1].

Our legal system has been established as a monistic system, meaning that the incorporation of sources of international human rights law is automatic, once international treaties come into force internationally. The same happens with international customary law[2].

The normative basis for this assertion is directly found in constitutional norms "*This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, are the supreme law of the Nation; and the authorities of each Province are bound thereby, notwithstanding any provision to the contrary included in the provincial laws or constitutions…"*[3], and *"…treaties in accordance with the principles of public law laid down by this Constitution*"[4].

Before the last reform of the Constitution, which has held in 1994, there was no kind of hierarchical priority between national laws and treaties with foreign powers. It was clear that the Constitution was considered as the supreme law, as well as the preeminence of the federal norms over provincial ones. This lack of an explicit normative hierarchy left the determination of the prevailing legal standard in each particular case-law to the discretion of the Judiciary bodies. Notwithstanding, from the conjugation of sections 31 and 27 of the Constitution, it emerged that international treaties and national laws were ordered hierarchically below the Constitution. When treaties and laws were in contradiction, the principle *lex posterior derogat priori* used to be applied[5].

In 1992, the Supreme Court interpreted the application of section 27 of the Vienna Convention, concluding that it required of the organs of the Argentine government to give precedence to the treaty in cases of conflict with any national rule or even in cases where there is failure to make the (international) provision effective […][6].

The question of the prevailing normative hierarchy was expressly resolved with the latest amendments that arose from the 1994 Constitutional Convention, particularly with the incorporation of Section 75. 22, related to the Legislative Power scope. *" […] Treaties and concordats have a higher*

[1] A/HRC/WG.6/1/ARG/1 page 3
[2] Section 118 of National Constitution
[3] Section 31 of National Constitution.
[4] Section 27 of National Constitution.
[5] Martín y Cía. Ltda. S. A. c. Gobierno Nacional, Administración Gral. de Puertos, CSJN, 06/11/1963.
[6] Ekmekdjian Miguel A. c. Sofovich, Gerardoy otros, CSJN, 07/07/1992.

hierarchy than laws. The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child; in the full force of their provisions, they have constitutional status, do no repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein. They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each House. In order to attain constitutional hierarchy, the other treaties and conventions on human rights shall require the vote of two-thirds of all the members of each House, after their approval by Congress. [...]"[7].

The inclusion and special status reserved for certain human rights instruments in the constitutional text —including two "declarations"[8], that reflect customary law —gave them primacy over other treaties, and consequently over the laws of Congress. In the same way, so far, cconstitutional status has subsequently also been granted to the Inter-American Convention on the Forced Disappearance of Persons, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and Convention on the Rights of Persons with Disabilities[9].

It is relevant to emphasize that with the ratification of the International Convention on the Protection of All Persons from Forced Disappearance, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the

[7] The mention of the hierarchy of treaties in section 75, related to the powers of Congress, has been criticized by the doctrine, as the first part of the Constitution address the question through its sections 27 and 31. The reason for this legislative technique can be found in the fact that the Constitutional Convention decided not to amend sections that composed the First Part of the National Constitution (sections 1 to 35). Indeed, it could have incorporated in the new part, with the new rights and guarantees contained in sections 36 to 43 (Act 24.309).

[8] Inter-American Court Of Human Rights Advisory Opinion Oc-10/89 July 14, 1989 Interpretation Of The American Declaration Of The Rights And Duties Of Man Within The Framework Of Article 64 Of The American Convention On Human Rights concluded that "47.That the Declaration is not a treaty does not, then, lead to the conclusion that it does not have legal effect, nor that the Court lacks the power to interpret it within the framework of the principles set out above"

[9] There are currently 14 international instruments which enjoy this status. By the agreed legislative constitutional procedure, the Inter-American Convention on Forced Disappearance of Persons (1996), Convention on Imprescriptibility of War Crimes and Crimes against Humanity (2003) and Convention on the Rights of Persons with Disabilities (2014) were incorporated in the group of human rights instruments with constitutional hierarchy.

Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol of the International Pact on Economic, Social and Cultural Rights, the Protocol of the Convention on the Rights of the Child on a communications procedure and the Inter-American Convention on Protecting the Human Rights of Older Persons, Argentina has ratified most of the existing international and regional human rights instruments.

3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided, or the must-reach aims? Are there any regulations in your legal system above international human rights standards? If there are, would you please explain?

I would say that one of the consequences of the constitutional status given to certain International Human Rights Instruments is the incorporation of human rights standards. The constitutional provision states "*in the full force of their provisions",* which means that to ensure the effectiveness of international instruments, local authorities should apply them in accordance with the interpretation given to them by human rights bodies in the exercise of their contentious or advisory jurisdiction.

Besides this, I would highlight that human rights law instruments should always be interpreted following the principle "pro personae"[10]. This principle was explained by the Inter American Court of Human Rights in these terms: "*Hence, if in the same situation both the American Convention and another international treaty are applicable, the rule most favorable to the individual must prevail. Considering that the Convention itself establishes that its provisions should not have a restrictive effect on the enjoyment of the rights guaranteed in other international instruments, it makes even less sense to invoke restrictions contained in those other international instruments, but which are not found in the Convention, to limit the exercise of the rights and freedoms that the latter recognize*[11]. This principle represents what has been called the "most favored individual clause"[12].

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[10] See Pinto, Mónica, El principio pro homine. Criterios de hermenéutica y pautas para la regulación de derechos humanos, p. 163.

[11]Advisory Opinion oc-5/85 of November 13, 1985 compulsory membership in an association prescribed by law for the practice of journalism (arts. 13 and 29 American Convention on Human Rights), §52)

[12] See Nikken Pedro, El concepto de los derechos humanos. Available at http://iidh-webserver.iidh.ed.cr/multic/UserFiles/Biblioteca/IIDH/2_2010/NivelEspecializado/Material_Educativo/Concepto_DDHH.htm.

At the regional level, the Inter- American Court of Human Rights has developed a doctrine, "the conventionality control", which was explained in these terms "*The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention"*[13].

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards? If it is, would you please explain?

Yes, it is. Firstly, access to jurisdiction enables individuals to get reparation when their human rights are violated. Secondly, Argentina has a diffuse control of constitutionality, which means any judiciary can declare the unconstitutionality of any law which contradicts constitutional rights, including those which are contemplated in the International Human Rights Instruments with constitutional status. In the last scenario, the challenged law could also be subject to a conventionality control as it was stated in the previous question.

In the National Report submitted in accordance with paragraph 15(A)Of The Annex To Human Rights Council Resolution 5/1 (2008), it was stated that "The constitutional status of human rights treaties facilitates access to justice, because with the constitutional reform it is now possible for any act of a federal or provincial public authority, in any of the three branches of government, that violates any provision of these treaties to be declared unconstitutional, without prejudice to any subsidiary remedies open to the inhabitants of Argentina in the human rights protection bodies within the regional and universal systems"[14].

[13] I/A Court H.R., Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 124.
[14]A/HRC/WG.6/1/ARG/1. Available at https://documents-dds ny.un.org/doc/UNDOC/GEN/G08/116/92/PDF/G0811692.pdf?OpenElement

The National Constitution is the main source of Argentine law from which all rules related to the organization of the judicial branch emanate. The administration of justice is a right granted at both, national and provincial level. Each Province enacts its own Constitution in accordance with the principles, declarations and guarantees of the National Constitution "ensuring its administration of justice"[15].

The Federal Government has a constitutional mandate to exercise and distribute justice through its ordinary courts, which requires, among other things, organizing the government apparatus for the purpose of guaranteeing the free and full exercise of human rights recognized in various international instruments to all persons subject to their jurisdiction[16].

The Judicial Power of the Nation is vested in a Supreme Court and in such lower courts as Congress may constitute in the territory of the Nation[17]. The Supreme Court and the lower Courts of the Nation are empowered to hear and decide all cases arising under the Constitution and the laws of the Nation, with the exception made in section 75, subsection 12, and under the treaties made with foreign nations; cases concerning ambassadors, public ministers and foreign consuls; cases related to admiralty and maritime jurisdiction; matters in which the Nation shall be a party; actions arising between two or more Provinces, between one Province and the inhabitants of another Province, between the inhabitants of different Provinces, and between one Province or the inhabitants thereof against a foreign state or citizen[18]. In the aforementioned cases the Supreme Court shall have appellate jurisdiction, with such regulations and exceptions as Congress may prescribe; but in all matters concerning foreign ambassadors, ministers and consuls, and in those in which a Province shall be a party, the Court has original and exclusive jurisdiction[19]. Therefore, as there is no Constitutional Court, the constitutional control is diffuse.

For instance, the Supreme Court of Argentina adopted the "Brasilia Regulations Regarding Access to Justice for Vulnerable People" which are designed to guarantee effective access to justice for vulnerable people, without any discrimination, so that said persons can make full use of judicial system services, and moreover, promote the implementation of public policies designed to guarantee adequate technical-legal counsel for vulnerable people. These guidelines were adopted by the Supreme Court through agreement 05/2009 (AC CSJN 05/2009).

[15] Sections 5 and 123 of the National Constitution.
[16] Velásquez Rodríguez vs. Honduras, Inter-American Court of Human Rights, 29/07/1988.
[17] Section 108 of National Constitution.
[18] Section 116 of National Constitution.
[19] Section 117 of National Constitution.

At the regional level, Argentina has accepted the Inter American Court´s contentious jurisdiction which enables individuals or group of individuals subject to Argentine jurisdiction to bring cases against it. However, according to the rules of the Court's own competence, those cases must first be processed by the *Inter American* Commission on Human Rights.

8. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?

There is a constitutional judicial remedy, which can be used against public or private persons.

At the Constitutional Level, section 43 states " *Any person shall file a prompt and summary proceeding regarding constitutional guarantees, provided there is no other legal remedy, against any act or omission of the public authorities or individuals which currently or imminently may damage, limit, modify or threaten rights and guarantees recognized by this Constitution, treaties or laws, with open arbitrariness or illegality. In such case, the judge may declare that the act or omission is based on an unconstitutional rule.*

This summary proceeding against any form of discrimination regarding rights protecting the environment, competition, users and consumers, as well as about rights of general public interest, shall be filed by the damaged party, the ombudsman and the associations which foster such ends registered according to a law determining their requirements and organization forms.

Any person may file this action to obtain information regarding data about himself and their purpose, registered in public records or data bases, or in private ones intended to supply information; and in case of false data or discrimination, this action may be filed to request the suppression, rectification, confidentiality or updating of said data. The secret nature of the sources of journalistic information shall not be impaired.

When the right damaged, limited, modified, or threatened affects physical liberty, or in case of an illegitimate worsening of procedures or conditions of detention, or of forced missing of persons, the action of habeas corpus shall be filed by the party concerned or by any other person on his behalf, and the judge shall immediately make a decision even under state of siege".

This remedy is also contemplated in the Inter American Convention of Human Rights as a "simple and prompt recourse or any other effective recourse […] against acts that violate fundamental rights of people

recognized by the Constitution or Laws of the state concerned or by this Convention…"[20].

9. Are there groups in your country who have their own national, ethnical, religious and linguistic identities? Could you please give some information about them (especially if you feel yourself one of them)?

One of the groups in my country who have their own identity are indigenous communities. According to statistics conducted by the National Statistics and Census Institute, between 2004 and 2005, there were 600,329 indigenous persons in the country[21]. In 2010, the National Census provided updated its data, stating that there was an indigenous population of 955,032 people, representing 2.4% of the total population. However, criteria and parameters that were followed were questioned by indigenous peoples, human rights and indigenous organizations.

The National Institute of Indigenous Affairs —which is responsible for designing and implementing policies to benefit indigenous peoples— stated there is a great diversity of indigenous people's groups in Argentina, up to 33-34 of them. There are about 35 distinct officially recognized indigenous peoples that hold specific constitutional rights at a federal level and in various provinces. However, there is no consensus about these figures and some indigenous organizations estimate the number to be around 38 distinctive groups.

Concerning the rights of Indigenous Peoples, the Constitutional Reform of 1994 introduced significant changes to the former section 67 subsection 15 which imposed on the Congress the duty to "*preserve the peaceful relations with the Indians and promote their conversion to Catholicism*". This former provision constituted *per se* a violation of their human rights protected by constitutional and international norms. After the aforementioned reform, the constitutional rights of Indigenous Peoples are enshrined on section 75 subsection 17, which grants the Congress the following powers: "*To recognize the ethnic and cultural pre-existence of Indigenous Peoples in Argentina; to ensure respect for their identity and their right to bilingual and intercultural education; to recognize the legal status of their communities, and the communal possession and ownership of the lands they traditionally*

[20] Section 25 of the Inter American Convention of Human Rights.

[21] See Supplementary Survey of Indigenous Peoples in 2006. Available at http://www.indec.mecon.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99

occupy[22]*; to regulate the provision of other suitable lands sufficient for human development, which shall not be alienable, transferable or subject to taxes or embargoes; and to ensure their participation in the management of their natural resources and other interests affecting them. The provinces can exercise these powers concurrently.*

Besides this and among the powers of the Congress section 75, subsection 19 allows it to: "*enact laws protecting the cultural identity and plurality*".

These provisions illustrate a new paradigm of protection of cultural diversity[23] with constitutional status. Indigenous Peoples and communities are now viewed as collective subjects, who hold a special protection and demand the adoption of concrete measures to enable them to live and pass on their own cultural identity to future generations.

Within the federal structure established by section 75, subsection 17, of the Constitution, Congress has the authority to pass the laws necessary for the minimum protection of the rights of Indigenous Peoples, while the provinces can enact supplementary norms offering greater protection. Since the constitutional reforms concerning Indigenous Peoples are relatively recent, many aspects of the division of powers between the federal and provincial governments are still being determined[24].

Some Provinces have also established constitutional norms on indigenous matters: Buenos Aires, Chaco, Chubut, Entre Ríos, Formosa, Jujuy, La Pampa, Neuquén, Salta, Río Negro and Tucumán. Many of them also have specific laws pertaining to various indigenous issues. Some of these laws are of a general nature, covering a number of issues related to Indigenous Peoples, while others focus on a specific topic such as land allocation or the establishment of registries or institutions for Indigenous Communities[25].

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[22] In 2006, in the light of repeated land conflicts between the supposed owners of private property and indigenous communities in various parts of the country, Congress enacted Act No. 26160. The Act suspended evictions of indigenous communities for four years and charged INAI with the task of conducting a "technical-legal cadastral survey of the situation regarding ownership of the land occupied by indigenous communities" (art. 3). The time limit set out in Act No. 26160 is extended until 2021.

[23] For instance, the National Education Act No. 26206 of 2006 establishes intercultural bilingual education in order to guarantee the constitutional right of indigenous peoples to an education that promotes indigenous cultures and languages. Act No. 25517 of 2001 provides for the return of the mortal remains of indigenous persons held in museums or in public or private collections to indigenous communities that claim them. Act No. 26522 of 2010 on Audiovisual Communication Services recognizes the right of indigenous peoples to identity-based communication, providing in particular for the establishment of radio stations within indigenous communities.

[24] Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya Addendum
The situation of indigenous peoples in Argentina (A/HRC/21/47/Add.2)

[25] Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya Addendum
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Generally, Provincial Constitutions[26] expressly recognize and guarantee: the pre-existence of indigenous peoples; ethnic and cultural identity, including respect for their traditions, beliefs and lifestyles; the possession and ownership of the lands they traditionally occupy[27]; the legal status of their communities and organizations; the creation of a special register of indigenous communities and organizations; the right to bilingual and intercultural education; the right to participation in the protection, preservation, restoration of natural resources and other interests that affect them and their sustainable development and the right to recovery and preservation of their patrimony and cultural heritage.

On the other hand, other provincial constitutions do not include a specific clause of recognition. San Juan, Tierra del Fuego and Cordoba have provincial laws even though they do not hold recognition provisions in their provincial constitutions.

The Inter American Commission of Human Rights (IACHR) granted precautionary measures for the members of the Lof Paichil Antriao community of the Mapuche indigenous people, asking the State of Argentina to adopt the necessary measures to prevent alteration of the Rewe —sacred place— located on the property that is the object of the litigation[28]. The IACHR also requested that the State adopt the necessary measures to look after the health of the families of the community that are displaced in areas adjacent to the disputed territory in order to guarantee their well-being[29].

The IACHR also granted precautionary measures for the members of the Qom Navogoh indigenous community of "La Primavera", in the Province of Formosa, Argentina. It asked the Argentine State to adopt necessary

[26] Province of Buenos Aires (Section 36, inc. 9), Province of Chaco (section 37), Province of Entre Ríos (section 33), Province of La Pampa, Province of Chubut (Section 34), Province of Formosa (Section 79). Province of Salta (Section15), Province of Tucumán (Section 149), Province of Río Negro (Section 42). After the constitutional reform of 1986, the Province of Jujuy is committed to protect indigenous people through appropriate legislation leading to their integration and economic and social progress (Section 50). The Province of Salta recognizes their own communities and their organizations in order to obtain legal personality and capacity to act in administrative and judicial bodies. The Provincial Government is committed to create mechanisms for both indigenous and non-indigenous residents which grant them effective participation.

[27] It means their immediate community ownership of the land they traditionally occupied and the ones granted in reserve. It provides for the delivery of other suitable and sufficient lands for human development, which will be awarded as historical reparation, free from all charges. They will be indefeasible, inalienable indivisible, and nontransferable to third parties. None of them is allowed to be sold, transmitted or subject to charges or seizures. It includes their right to participation in the management of natural resources within the lands they occupy and other interests that affect them.

[28] In addition, the IACHR asked the State to take the necessary steps to guarantee that members of the Lof Paichil Antriao community who need to access the Rewe to practice their rituals may do so without police forces or other public or private security or surveillance groups hindering their access or their stay for whatever time they wish, and without episodes of violence, attacks, harassment, or threats on the part of the police of other security groups.

[29] Lof Paichil Antriao Community of the Mapuche Indigenous People vs. Argentina, Precautionary Measure 269/08, IACHR, 06/04/2011.

measures to guarantee the life and physical integrity of the members of the indigenous community against possible threats, attacks, or acts of harassment on the part of members of the police, law enforcement officers, or other State agents, as well as to implement necessary measures so that Félix Díaz and his family can return to the community under safe conditions[30].

ILO Convention 169 and other universal human rights instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also in force.

With respect to the obligations emerging from any ILO Convention, the Supreme Court has stated "that when Argentina Republic ratifies an international treaty, it requires that its judicial and administrative bodies implement the provisions the treaty contemplates, provided it contains sufficiently concrete descriptions that enable its 'immediate implementation' [...]...Thus, ratification of an agreement [...] implies the obligation to 'give effect to' its provisions"[31].
Regarding the direct applicability of Convention N° 169, the aforementioned "should be 'presumed' although it cannot be sustained for all clauses". Regarding clauses 8 (3); 9 (2), among others, "they are, instead, directly applicable, there is no need to transform them into a domestic law or to adopt any measure"[32].

12. What you think is the most current human rights problem in your country?

One of the most current human rights problems in my country is violence against women and girls.

[30] Qom Navogoh Indigenous Community of "La Primavera" vs. Argentina, Precautionary Measure 404/10, IACHR, 21/04/2011.
[31] Díaz, Paulo Vicente vs. Maltería y Cervecería Quilmes S.A., CSJN, 19/07/2013.
[32] Opinion of Dr. Germán J. Bidart Campos to the query of the Neuquén Mapuche Community