

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

In 1994 the Argentina's Constitution was reformed and incorporate in its article 75.22 eleven human rights treaties with constitutional hierarchy and form the constitutional block¹. Two of that treaties that belong to the Interamerican Human Right System are the American Declaration of Human Rights and the American Convention of Human Rights.

In 1948 the document that create the OEA was sign and with it de the American Declaration of Human Rights². That declaration is not binding for the states but was used by the Interamerican Comisión of Human Rights to interpret the state's obligations³.

In 1969 de states part of the OEA adopt and open to sign the American Convention of Human Rights, that entry into force in 1978, the 18th of July⁴. Nowadays 25 states are part of that instrument⁵.

The Commission has a lot of functions, one is to receive individual petitions. This system allows people or groups of persons to present cases to the Commission clamming a violation of one of the two human rights instruments mention⁶. The process could finish in the Commission or in the cases that a violation of the American Convention of Human Rights is claimed, if the state has accepted the competence, the Commission can send the case to the Cort⁷. The Convention only protects the human rights of human persons or a group of persons, but not of legal entities⁸. The petitions can only be presented against States⁹.

Article 1 of the American Convention establish: "1. *The States Parties to this Convention undertake to respect the rights and freedoms recognized here and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*2. *For the purposes of this Convention, "person" means every human being.*"¹⁰ Also, the article 4th said: "1. *Every person has the right to have his life respected. This right shall be*

¹ Art. 75.22, Argentinean Constitution.

² Rodríguez-Pinzón, D. and Martín, C. "The prohibition of torture and ill-treatment in the Interamerican Human Right System", Foreword by Claudio Grossman, Vice Chair of the United Nations Committee against Torture, October 2006, p. 28/9.

³ *Op. Cit.*

⁴ *Op. Cit.*

⁵ https://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm

⁶ Rodríguez-Pinzón, D. and Martín, C. "The prohibition of torture and ill-treatment in the Interamerican Human Right System", Foreword by Claudio Grossman, Vice Chair of the United Nations Committee against Torture, October 2006, p. 44.

⁷ *Op. Cit.*

⁸ *Op. Cit.* p. 66.

⁹ *Op. Cit.*

¹⁰ Art. 1, American Convention of Human Rights, adopted at San José, Costa Rica, 11/22/1969, at the Interamerican Specialized Conference on Human Rights, entry into force 07/18/1978.

protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”¹¹

In conclusion, the question is when we start to protect a person or when shall we consider a person exist.

Article 4th create doubts with the expression “in general”. Some doctrinaries thought that the right to juridical personality starts on the conception and others take that expression to allege that life and person are different concepts and the person is the one that has the right to life so, for example, abortion could be legal¹².

The Interamerican Court of Human Rights in the case “Artavia Murillo vs. Costa Rica” after analyzing all the debates of the American Convention, concluded that an embryo is not a person, so it is not protect by de Convention¹³.

Also the Convention of Children´s rights and the International Covenant of Civil and Political Rights - that have constitutional hierarchy - doesn´t recognize the right to life until the person is born¹⁴ and in this way resolve the case call “F.A.L.” our Supreme Court¹⁵.

Finally, our Civil and Commercial Code, that is below the Constitution, establish that a person will exist since its conception but it reserves rights and obligations for who is born with life¹⁶.

We can conclude that, the embryo has some kind of protection, but that doesn´t means that is a person. A person exist when it is born and since that moment has humans rights.

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 uncouncted in the Constitution is conflicted with a constitutional right?

Our constitution ruled in their article 31 and 75.24 the law hierarchy¹⁷. We first have the constitution and the human rights treaties announced in the

¹¹ Art. 4, American Convention of Human Rigths, adopted at San José, Costa Rica, 11/22/1969, at the Interamerican Specialized Conference on Human Rights, entry into force 07/18/1978.

¹² Red de Profesoras de la Facultad de Derecho, “Aborto: la marea verde desde el derecho”, Diteri, M. *El aborto desde la perspectiva del derecho internacional de los derechos humanos. El debate sucitado en nuestro país ¿hacia una posible adecuación?*, P. 107 y Herrera, M., *Legalización del aborto y derecho civil constitucionalizado y convencionalizado*, p. 127, Editores Sur, Buenos Aires, 2017.

¹³ Interamerican Court of Human Rights, Case Artavia Murillo vs. Costa Rica, sentence of 11/28/2012, parragraph 223.

¹⁴ Convention of Children´s rights, adopted by resolution 44/25 in the General Assembly the 11/20/1989, entry into force 09/02/1990 and International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) 12/16/1966, entry into force 03/23/1976.

¹⁵ Supreme Court of Justice, Case “F., A. L.”, 03/13/2012, Buenos Aires.

¹⁶ Art. 19 and 21, Argentinean Civil and Commercial Code, National Law 26.994.

article 75.22 or others approved by a special procedure, then other treaties, federal law, and finally other laws.

Article 33 said that declarations, rights and guarantees establish in the Constitution cannot be understood to deny other rights or guarantees not enumerate¹⁸.

Before the constitutional reform of 1994, our Supreme Court established in the “Ekmekdjian” case that a treaty could be violated not only because a contrary law, but also because the legislators don’t pronounce and that international law was over national law, because in another way the state could be internationally responsible, so the rules must apply directly¹⁹.

With the reform of 1994, the article 75.22 gives constitutional hierarchy to human rights treaties in their validity conditions and establish that they don’t repeal any article of the Constitution so they must be understood as complementary to the constitution²⁰. That means that the different courts have to analyzed both instruments in an harmonic way and in the way they were ratified and according the interpretation of the authorities design for that²¹.

Our Supreme Court have said that the constituents of 1994 decided that the some treaties have constitutional hierarchy considering in the conditions of their validity and that means that they have to be interpreted in the way that the international courts do²².

It is important to clarify that here in Argentina we have a diffuse and indirect control of constitutionality and conventionality, that means that a person must present a case in a court and that court may control the constitutionality of the law or the act²³. The last resort would be the Supreme Court but only if the case pass all the other instances²⁴.

In addition, the Interamerican Human Rights Court has said, in the same way that the European Human Rights Court did, that human rights treaties are life instruments, so their interpretation must be accord to the evolution and changes, in respect of the article 29 of the Convention²⁵.

A few years ago the present composition of the Argentinean Supreme Court in “Fonteviccia” case change the jurisprudence of the Court and try to set a

¹⁷ Art. 31 and 75.24, Argentinean Constitution.

¹⁸ Art. 33, Argentinean Constitution.

¹⁹ Supreme Court of Justice, Case “Ekmekdjian, Miguel Angel c/ Sofovich, Gerardo s/ recurso de heho”, setence of 07/07/1992.

²⁰ art. 75.22, Argentinean Constitution.

²¹ Interamerican Court of Human Rights, OC-1/82, 09/24/1982, “Other Treaties”, parr. 23 y 25 and OC- 23/17, 11/15/2017, about enviroment, parr.16.

²² Supreme Court of Justice, "Giroldi" Case, 1995, parr. 11.

²³ Bridart Campos, G. J., "Manual de la Constitución Reformada", Tomo I, quinta reimpresión, Buenos Aires, p. 359/372.

²⁴ *Op. Cit.*

²⁵ Interamerican Court of Human Right, Case “Atala Riffo and girls vs. Chile”, sentence of 02/24/2012, sec. N° 239, parr. 83.

limit to the Interamerican Human Rights System. In 2011 the Interamerican Human Rights Court decided that Argentina was responsible for the violation of the right of freedom of thought and expression and order to leave without effect a decision of the Supreme Court²⁶. The 14th of February the Court decided not to obey that decision because it understood that Argentina doesn't have the obligation to apply that kind of reparation and if they did they would violated other rights like legal security²⁷. Finally in the control sentence the Interamerican Court explain the obligation of the state and the different ways that it could accomplish²⁸. Finally, the 5th of December of 2017 the Supreme Court publish a resolution that said that his first sentence was declared opposite to the American Convention of Human Rights²⁹.

The first kind of decisions take off strength to international humans rights and their protection systems. Also it reduce the certainty that after a resolution of an international tribunal our state will obey that decision and will protect the human rights.

In addition five states, Argentina, Brasil, Colombia, Paraguay and Chile, made declaration in order to limit the power of the Interamerican System³⁰.

It has been 40 years since the American Commission of Human Rights visit our country during the last military and civil government³¹. That visit was very important to show what was happening in our country and to start to weaken the military government³². Of course, nowadays we don't have the same problems that we did at that time, but we have new ones according to our times, like pourness, inequality, discrimination because our nationality, gender or sexual orientation, refugees, and a lot more, so we need to increase the importance of the Interamerican System in order to protect persons from the States Power.

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?

²⁶ Interamerican Court of Human Right, Case "Fontevicchia and D'amico vs. Argentina", sentence of 11/28/2011, sec. N° 238.

²⁷ Supreme Court of Justice, "Ministerio de Relaciones Exteriores y Culto s/ Sentencia dictada en el caso Fontevicchia D'amito vs. Argentina por la Corte Interamericana de Derechos Humanos", 02/14/2017, par. 7 and next.

²⁸ Interamerican Court of Human Right, Case "Fontevicchia and D'amico vs. Argentina", control sentence of 10/18/2017.

²⁹ Argentinian Supreme Court of Justice, Resolution 4015/2017, 12/5/2017.

³⁰ Chancellery of Chile, press realese, 04/23/2019 and the answer of 43 academics in Mexico, 05/09/2019.

³¹ <https://www.pagina12.com.ar/216885-a-cuarenta-anos-de-la-visita-de-la-cidh>

³² *Op. Cit.*

In my opinion, most of human rights instruments are written in a way that allows the states ratify and apply them and also, to adapt the treaties to the changes over time.

Because of that, usually it is necessary that the organs with competence to interpret that instruments make standards to understand how to apply them. One example is the Interamerican Human Rights Court. The article 64 of the American Convention of Human Rights allow the member states of the Organization to consult the Court regarding the interpretation of the Convention or other treaties concerning the protection of human rights³³. If the states don't respect and apply this standards may be responsible because of violate their international obligation.

Fortunately, apart from the National Constitution we have others constitutions and laws that guarantee the human rights. The Constitution of Buenos Aires City establish in chapter nine, articles 36 to 38 the gender equality and takes the obligation to make public politics to modify stereotyped sociocultural patterns according "Belem Do Para" Convention³⁴. In the same way, in 2009, the congress approve Law 26.485 of integral protection for prevention, sanction and elimination of violence against woman³⁵. In article 3 the law establish that the rights protected are the ones recognized by the Convention to eliminate discrimination against women, the Interamerican Convention to prevent, sanction and eliminate violence against women and Child Rights Conventions³⁶. Like this law our country have a lots of laws to guarantee human rights, the problem is that sometimes the law is not accompanied by public politics or statistics to know what actually happened and to modify and guarantee human rights, so minorities need the judicial branch to achieved them.

Here a lot of No Governmental Organizations use what is called strategic litigation. They use a case, that can have one or more actors, to show the state failure and to suggest a solution, a judiciary case turns into a politic accion³⁷. One recent example is the case of "Melchor Romero". In that case, the NGO called CELS - where I've been voluntary - present a writ of protection in defense of the people that were hospitalized in the psychiatric hospital, "Melchor Romero", because of the systematic violation of their human rights and with the objective of implement the National Law of

³³ Art. 64, American Convention of Human Rigths, adopted at San José, Costa Rica, 11/22/1969, at the Interamerican Specialized Conference on Human Rights, entry into force 07/18/1978.

³⁴ Arts. 36 to 38 Buenos Aires City Constitution.

³⁵ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/150000-154999/152155/norma.htm>

³⁶ Art. 3, National Law 26.485, Integral protection for prevention, sanction and elimination of violence against woman, sanction in 2009, the 11 of march, and entry into force the first of april of the same year.

³⁷ CELS, "La lucha por el derecho" ,Siglo veintiuno editores, Buenos Aires, 2008.

Mental Health³⁸. The violations denounced were, the excessive use of medication, lack of food, lack of right medical treatments, danger in the building and rapes³⁹.

In 2018, when the ONU'S special narratable of torture come to visit our country said that he was worried about the situation of the Hospital and of the patients that live in not dignify conditions.⁴⁰ That was one of the results of the appeal, that an international organization knows the situation and exert pressure.

Also it permits to work in a different way, civil organizations and the government work together to make changes and finally this year the government gives 23 million of pesos to achieve outsourcing the inmates⁴¹.

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

Continuing with the answer write above I will explain what means that strategic litigation is a way to do politics. It is a fundamentally resource and tool to protect human rights and to influence in the government agenda⁴².

The possibility that gives our constitution to present a writ protection, individual and collective, has been used strategically and has been of a big usefulness to guarantee the civil participation⁴³.

The states have international and national obligations to guarantee human rights and NGO use the judiciary way to protect effectively the human rights recognized by the state⁴⁴. This is the way that the NGOs convert the litigation in a politic action⁴⁵.

In Latin American Countries the democratic institutions are weak, so this kind of appeals not only permit to stop the abuse or violations committed by the states, they also achieve to change or make public politics to guarantee people rights⁴⁶.

The judiciary process is only one tool more the NGOs have. In most of the cases this tool is used with others like public mobilizations, law projects, etc⁴⁷. Also because our judiciary system is the continental one, so the

³⁸ CELS, "[El litigio de reforma estructural como herramienta para la implementación de la Ley Nacional de Salud Mental: el caso Melchor Romero y la protección de los grupos vulnerables](#)", 1/12/2016.

³⁹ *Op. Cit.*

⁴⁰ <https://www.cels.org.ar/web/2018/04/la-argentina-es-responsable-de-una-generalizada-persistente-y-seria-violacion-de-la-convencion-contra-la-tortura/>

⁴¹ <https://www.cels.org.ar/web/2019/04/melchor-romero-el-estado-provincial-comprometio-23-millones-de-pesos-para-la-externacion-de-personas-manicomializadas/>

⁴² CELS, "La lucha por el derecho", Siglo veintiuno editores, Buenos Aires, 2008, p. 17.

⁴³ *Op. Cit.* p. 19.

⁴⁴ *Op. Cit.* p. 20.

⁴⁵ *Op. Cit.*

⁴⁶ *Op. Cit.*, p. 20 to 25.

⁴⁷ *Op. Cit.* P. 28.

precedents are not obligatory for other judges and they are only valid for the persons and the specific case⁴⁸. Of course the decisions of the Supreme Court are more important, but they are not binding too⁴⁹.

The only problem is that nowadays don't exist an specific regulation for this kind of process to regulate them and make them more transparent and the judges have the possibility to choose if they allow the action and if they do what kind of solutions they apply or the time that they take to resolve.

5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights? If your answer is yes, would you please explain?

Argentina has ratified more than 51 treaties and protocols of human right⁵⁰, some of them had constitutional hierarchy (art. 75.22 of the National Constitution⁵¹) and the other are above the law (art. 75.24 of the NC⁵²) so it is very difficult not to find a right that is not covered by human rights documents. It doesn't mean that our country respect all the human rights establish in that treaties, like I said in the answer before, our weak institutions make very difficult to implementate and guarantee rights. But what I think is most important is that we and the civil organizations, have tools to guarantee them.

Also, the treaties are not the only legal source that exist in international law of human rights⁵³. We also have the customary and the principles of human rights⁵⁴. This plurality of sources make necessary to compatibilize the rights that they protect⁵⁵. The *pro homine* principle is the guideline standard that may be use because it establish that in human rights law we have to apply the most extend and with extensive interpretation rule because the objective

⁴⁸ *Op. Cit.* P. 30.

⁴⁹ *Op. Cit.*

⁵⁰ <http://www.saij.gob.ar/resultados.jsp?r=moreLikeThis%28id-infojus%2C%20numero-zorma%5E4%2C%20tipo-documento%5E4%2C%20titulo%5E4%2C%20jurisdiccion%2C%20tesauro%2C%20provincia%2C%20tribunal%2C%20organismo%2C%20autor%2C%20texto%5E0.5%29%3Aderechos%20humanos&o=0&p=25&f=Total%7CFecha%7CEstado%20de%20Vigencia%5B5%2C1%5D%7CTema/Derecho%20internacional/derecho%20i nternacional%20p%FAblico/derecho%20de%20los%20tratados/tratados%20internacionales%5B2%2C1%5D%7 COrganismo%5B5%2C1%5D%7CAutor%5B5%2C1%5D%7CJuridicci%F3n%5B5%2C1%5D%7CTribunal% 5B5%2C1%5D%7CPublicaci%F3n%5B5%2C1%5D%7CColecci%F3n%20tem%Eltica%5B5%2C1%5D%7CT ipo%20de%20Documento/Legislaci%F3n/Ley/Tratado&s=fecha-rango|DESC&v=colapsada>

⁵¹ art. 75.22, Argentinean Constitution.

⁵² art. 75.24, Argentinean Constitution.

⁵³ Abramovich, V., Bobino, N y Curtis C., "La aplicación de los tratados de derechos humanos en el ámbito local", Pinto, M., *El principio pro homine. Criterios de hermenéutica y pautas para la regulación de los derechos humanos*, Buenos Aires, Argentina, 2004, P. 163/4.

⁵⁴ *Op. Cit.*

⁵⁵ *Op. Cit.*

is the person protection⁵⁶. This rule is also recognize in a lot of human rights treaties⁵⁷.

The Interamerican Comision of Human Rights recognize the advances of the state, and in comparison with other regional states Argentina is the one that respect and guarantee the most, also because it is in a better economic position than other countries⁵⁸.

In the other hand, the Commission emphasize the challenges of the state: the law project of collective procediments, the right to protest, sexual and reproductive rights of women, sexual education, the conflicts between native people and the government authorities, the economic situation and how it impacts in the human rights, particularly in the child's rights, the expulsions of migrants and the detention conditions⁵⁹. In the same way were the last recommendations of the different committees of United Nations⁶⁰.

6. Are there such human right regulations in the legal system of your country that is protected by the constitution but contradicts social reality and justice?

My objective in this answers was to show you that Argentina is a country in the Latin American Region, and also we can affirm in the world, that has recognized and ratified a lot of instruments of humans rights and although they are important tools that we have to fight and the success during human rights are still not effective. The reality contradicts this international position. A there are a lot of groups in a vulnerable situation and that suffer discrimination. Persons with a non normative gender or sexual orientation are victims of violence from particulars and also the authorities. Sexual Education Law is not apply in all the territory of the state to change that reality. Every 30 hours a woman die victim of gender violence and because we cannot get legal abortion. Migrants are in risk, now we have decree 70/2017 that changed the migrants law and allow the authorities to expulse them without guaranteeing their human rights and they are discriminated.

⁵⁶ *Op. Cit.*

⁵⁷ *Op. Cit.*

⁵⁸ Interamerican Comision of Human Rights, Anual Report 2018, Chapter IV: Situation of the human rights in the countries, Argentina, 2018, p. 268/9.

⁵⁹ *Op. Cit.*

⁶⁰ Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares, Observaciones finales sobre el segundo informe periódico de la Argentina, CMW/C/ARG/CO/2, 13 de septiembre de 2019; Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Argentina, E/C.12/ARG/CO/4, 1 November 2018; Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Argentina, CRC/C/ARG/CO/5-6, 1 October 2018; Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Argentina, CAT/C/ARG/CO/5-6, 24 May 2017 and others.

Authorities don't respect the native people and their rights also recognized in our constitution. People in jails is increasing and they live in terrible conditions in opposition to human dignity, they are torture. Poorness in Argentina is only expanding so the minimum level of human rights is not guarantee and when the human rights defender want to make a pacific protest they are repressed by the police.

7. Are there any social realities contradicting international human rights concept based on individualism?

Rights recognized by the Constitution and the international treaties are not absolute. They may be able to be limited and regulated so the state can apply and guarantee them and also to not oppose with another rights⁶¹.

All the rights guarantee in the Constitution and in Human Rights Treaties with constitutional hierarchy have the same hierarchy so when there is a conflict between them the judges must deliberate how to protect each one⁶². The American Convention of Human Rights establish in its article 32 that: *“The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society”*⁶³ This interpretation and application must always be made in respect of the principle *pro homine*⁶⁴.

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?

Yes, our constitution establish different tools to guarantee human rights. Professor Ferreyra enumerate some of this mechanism in his book Constitutional Basics:

- (i) The guarantee of jurisdiction access and procedimentales guarantees (arts. 17 and 18 NC and 8 and 25 of de American Convention of Humaxn Rights).
- (ii) Constitutional action of amparo (arts. 43 NC and 25 CADH) that protects in a quickly way every fundamental rights that were violated;

⁶¹ Bridart Campos, G. J. , "Manual de la Constitución Reformada", Tomo I, quinta reimpresión, Buenos Aires, p. 493.

⁶² *Op. Cit.* p. 494.

⁶³ Art. 7, American Convention of Human Rights, adopted at San José, Costa Rica, 11/22/1969, at the Interamerican Specialized Conference on Human Rights, entry into force 07/18/1978.

⁶⁴ Abramovich, V., Bobino, N y Courtis C., “La aplicación de los tratados de derechos humanos en el ámbito local”, Pinto, M., *El principio pro homine. Criterios de hermenéutica y pautas para la regulación de los derechos humanos*, Buenos Aires, Argentina, 2004, P. 163/4.

- (iii) Constitutional action of hábeas data (art. 43 NC) that protects the right to be informed and our private information.
- (iv) Constitutional Action of hábeas corpus (art. 43 NC) that protects our right of freedom.
- (v) Popular action in defence of the Constitution (art. 33 NC).
- (vi) Amicus curiae (art. 33 NC).
- (vii) The prohibition of violated people residence and private papers, privacy (art. 18 NC).
- (viii) Establish and impartial judges (art. 18 NC).
- (ix) Constitutional appeals and others appeals
- (x) The authority of the people defensor (art. 86 NC)⁶⁵.

The most used action is the amparo. Article 43 of our National Constitution establish that, anyone can interpose this quickly action, if there don't exist another more appropriate judicial remedy, against any act or omission of public authorities or particulars, that in that moment, violated, limit, change or threaten, in an illegal way, rights or guarantees recognized by the constitution or other treaties⁶⁶. This kind of action is used by civil organization to guarantee rights and for strategic litigation. The problem is that sometimes, although it is a fast remedy, it takes more time that it's need or the authorities don't reply, what turns difficult to make effective the resolution.

Also if a crime is committed people can go to the police or the prosecutor and reported it. Then an investigation is going to start to find who is the responsible for that crime and if the prosecutor or the judge find him or her, after a trial, a judge decide if he or she is guilty or not, respecting all the criminal process guarantees.

Finally, if any of these two procedures authorities don't respect the process guarantees or don't give and answer to the victims we could always use the international remedies.

Article 44 of the American Convention of Human Rights establish that any person or group of persons, not governmental recognized entities can present to the Interamerican Commission petitions or denunciate violations to the American Convention of Human Rights done by a state part of the Convention⁶⁷.

The is not a 4th instance or an appeal instance. People has to respect some conditions if they want that the Commission accept their petitions. Article 46 establish that to admit the petitions, according articles 44 and 45 of the

⁶⁵ Ferreyra, G. R, "Fundamentos constitucionales", Lección III, *Sobre la Constitución, Concepto, Composición y Mecanismos*, Ediar, 2013, p. 372.

⁶⁶ Art. 43, Argentinean Constitution.

⁶⁷ Art. 44, American Convention of Human Rights, adopted at Costa Rica, 11/22/1969, entry into force 07/18/1978.

same instrument, the petitioner shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment; c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition⁶⁸. The provisions of paragraphs a and b shall not be applicable when: a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies⁶⁹.

It is truth that the Interamerican process takes a lot of time, 10 years for the Commission, if it admit the case, and another 10 to the Court to resolve the case (although they have another remedies like precautionary measures or public audients that can be applied in less time) but like I exposed in answer number two, these international systems are important to protect people of possible violations committed by the states.

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)?

Our National Constitution does not recognize political or judicial autonomy to the natives communities that live in our country, like other constitutions in the continent do, for example in Ecuador and Bolivia⁷⁰.

Art. 75. 17 of our National Constitution recognize the ethnic and cultural preexistence of the native groups and because of that establish that it must be guarantee the respect to their identity, their right to intercultural and

⁶⁸ Art. 46, American Convention of Human Rights, adopted at Costa Rica, 11/22/1969, entry into force 07/18/1978.

⁶⁹ Art. 47, American Convention of Human Rights, adopted at Costa Rica, 11/22/1969, entry into force 07/18/1978.

⁷⁰ Benente, M., "Las deudas y promesas incumplidas de la reforma constitucional de 1994. A 25 años", Zimerman, S., Rojas, M. y Capurro Robles, F., *Los derechos de los pueblos indigenas en Argentina post reforma constitucional de 1994: una relación en conflicto y en cuestión*, 1a ed. - José C. Paz : Edunpaz, 2019, p. 440.

Linguistic education, recognized the legal status of their communities and the possession of the territories that they have and the obligation to give them other part of the territory if they need it⁷¹. Territory in this cases cannot be disposable, transmissible or liable to liens or liens and their participation in the decisions related to natural resources or other interest must be asegregate⁷². Also, this rights are protected by the human rights treaties incorporated by article 75.22 to the constitutional system⁷³, like the International Convention on the Elimination of All Forms of Racial Discrimination⁷⁴ and other instruments like the Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities⁷⁵ and the American Declaration on the Rights of Indigenous Peoples⁷⁶.

In the 2000s, Argentina ratified Convention N° 169 of the IOW. This instrument complements the constitutional system because it establish the obligation to respect de special relation between the natives communities and the land, the right to property and the community right to the lands⁷⁷. It also establish the obligation to protect the natural resources in that land, to guarantee the rights to work and study⁷⁸.

Although this national and internationals obligations Argentina does not have much laws to protect effectively this rights. We have the national law, N° 23302, sanctioned in 1985, before we ratified all the human rights treaties and because of that it contradicted a lot of standards of human rights⁷⁹. Another law is the number 26160, sanctioned in the 2006s, that declare the territorial emergency of native communities and stop the execution of sentences or acts that will put out natives communities of the lands that they historically occupied and the state assumed the obligation of count and enroll the territories⁸⁰. After this law the state create the National Program of Territorial Survey⁸¹. The law was extended by laws numbers,

⁷¹ Art. 75.17, Argentina National Constitution.

⁷² Art. 75.17, Argentina National Constitution.

⁷³ Art. 75.22, Argentina National Constitution.

⁷⁴ The International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, ratified by Argentina in 1968.

⁷⁵ Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, Approved by the General Assembly in its resolution 47/135 of December 18, 1992.

⁷⁶ AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE, AG / RES. 2888 (XLVI-O / 16), approved at the second plenary session, held on June 14, 2016.

⁷⁷ Benente, M., "Las deudas y promesas incumplidas de la reforma constitucional de 1994. A 25 años", Zimerman, S., Rojas, M. y Capurro Robles, F., *Los derechos de los pueblos indigenas en Argentina post reforma constitucional de 1994: una relación en conflicto y en cuestión*, 1a ed. - José C. Paz : Edunpaz, 2019, p. 440/1.

⁷⁸ *Op. Cit.*

⁷⁹ *Op. Cit.*

⁸⁰ *Op. Cit. P. 444.*

⁸¹ *Op. Cit.*

26554, 26894 and 27400⁸². Actually the suspension of the eviction period governs up to 2021⁸³.

The lack of implementation of this laws and education in the respect of human rights make all this recognitions not effective. Despite in this last years the fights and the rights of the native communities began to become more visible, the conflicts increase because of mining, oil, forestry projects and economic interest in native territories and with the acquiescence of the state, and sometimes the collaboration, communities are evicted from their territories⁸⁴. Actually, the first case about territorial rights of the native communities against Argentina is in the Interamerican Court of Human Rights, called “Lhaka Honhat”.⁸⁵

Also, other international committees remarked that the native communities suffered the most structural poorness in the country and that their basic rights are not guaranteed⁸⁶ and the judiciary power works to delegitimize the fight for their rights and to criminalized the people of the communities⁸⁷.

In my case, I am not part of them. I am grand daughter of jewish european immigrants that arrived in this country before the second world war escaping from the Nazis. Now I am the third generation of immigrants, I am Argentinean, but the people that migrated recently to this country is also criminalized.

10. What is the definition of the notion “minority” according to your constitutional system? What is your opinion on this concept? Do you think that minority rights should be protected broadly by the constitutional level? Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?

Our constitution recognized in their article 75.23 that some groups are more vulnerable than others and need and special protection to make their equality effective⁸⁸. Specifically it obligates the congress to legislate and promote legislation and actions to guarantee the real equality of opportunities and treatment and the effectively exercise of rights of children, woman, ancients and persons with disabilities⁸⁹.

⁸² *Op. Cit. P. 445.*

⁸³ *Op. Cit. P. 445.*

⁸⁴ *Op. Cit. 439.*

⁸⁵ *Op. Cit. 443.*

⁸⁶ *Op. Cit. 438.*

⁸⁷ *Op. Cit. 452.*

⁸⁸ Art. 75.23 National Constitution.

⁸⁹ *Op. Cit.*

Our democratic states were based on the rights of liberty and equality. But for a lot of years that equality was only formal. One of the first steps to change this formal to real equality was the constitutional reform of 1994 that incorporates article 75.23 to the text and others like 75.17 and 75.22.

In conclusion, the new constitution recognizes that in reality there are differences between some groups and to make equality real the state has to make positive actions and discrimination will exist only if the action is not reasonable⁹⁰.

Also, article 1 of the American Convention of Human Rights prohibits any discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition⁹¹. As article 2 of the International Covenant on Civil and Political Rights⁹².

These changes demonstrate an evolution between a classic definition of equality to a real one that requires from the state, not to be “neutral”, to make positive action to protect some groups that were historically and structurally discriminated⁹³. That groups are in a disadvantage situation so they require positive actions from the state to change it⁹⁴.

I don't think that here we have a problem of majorities or minorities, here the number doesn't care. Sometimes poor people, migrants, women, children, are majority in number but not in power and that's what this kind of legislations and recognitions try to show and change. The law is not made out of context, so if we want to change reality and make equal effective we have to understand and see what is happening around us and that some groups of people are historically and structurally discriminated by the society with the acquiescence of the state so we need an active state to change that instability and convert formal equality in real one so that we all can enjoy our human rights.

11. What do you think on the notion and the concept of minority rights in international law? Could the international regulations/treatments be a response to the reality and problems of the peoples in your country? In other words, do they cover the reality in your country from the view of the state and the view of peoples?

⁹⁰ Bridart Campos, G. J. , Manual de la Constitución Reformada, Tomo I, quinta reimpression, Buenos Aires, p. 532/3.

⁹¹ Art. 1.1, American Convention of Human Rights, adopted at San José, Costa Rica, 11/22/1969, at the Interamerican Specialized Conference on Human Rights, entry into force 07/18/1978.

⁹² Art. 2, International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) 12/16/1966, entry into force 03/23/1976.

⁹³ Abramovich, V., *Responsabilidad estatal por violencia de género: comentarios sobre el caso “Campo Algodonero” en la Corte Interamericana de Derechos Humanos*.

⁹⁴ *Op. Cit.*

I am always optimistic with international law. I know that the international system has a lot of defects but I think it is always better that it exist than that it does not. It is important to evaluate and criticize the system to continue building it but if we destroy it we will not have the necessary tools to protect people of the violations of their human rights.

Like I said some answers before, sometimes international or regional systems are very slow and appear too late and of course they appear always after the violation occur, but they are important to give people the security that they are not left in the hand of their states that in most cases are the ones that violate human rights.

In the other hand, reparations allow the states not only to repair the victims, also to make changes that prevent human rights violations in the future and finally this kind of actions go with another that help to make visible violations.

In Argentina international and regional systems showed what was happening during the last civil and military dictatorship. Recently they show the importance to legislate abortion and to protect immigrants. With this kind of statements and international standards we have more tools to fight for protect our human rights and if it is necessary we will appeal to these international systems.

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

Nowadays the most current human rights problems in my country are the one related with economic, social and cultural right, almost 40% of the people in Argentina are poor. But that is not the only problem, discrimination and violence against women, people with not normative sexual orientation or gender identity, immigrants, is increasing. The number of people in jail is increasing too and the live conditions in jail are against human dignity.