

**4. IN YOUR LEGAL SYSTEM, IS THE JURISDICTION AN ACTOR ITSELF TO MOVE FORWARD HUMAN RIGHTS STANDARDS?**

<p><b>4.1.</b> <b>Professor Dr. Carmen Thiele</b> - <b>Germany</b></p>	<p><i>Yes (+) especially the federal constitutional court has brought to life multiple human rights not written down in the constitution. (See also: Answer 2.)</i></p>
<p><b>4.2.</b> <b>Professor Juliano Benvindo</b> - <b>Brasil</b></p>	<p><i>Empirically, the Brazilian Supreme Court is seen as a reasonable actor in moving forward individual rights standards. It is, however, not that active when it comes to social rights, unlike other Courts in the region (especially Colombia).</i></p>
<p><b>4.3.</b> <b>Catherine Willis-Smith/LL.M</b> <b>Candidate</b> – <b>South Africa</b></p>	<p><i>The State must progressively realise certain socio-economic rights, as required by the Constitution (e.g. the section 27 right to have access to health care services, sufficient food and water, and social security). In terms of branches of government, the State is required to ‘take reasonable legislative and other measures’ meaning that the legislature can pass laws regulating access to basic rights such as housing and healthcare.</i></p> <p><i>The executive would consider the provision of services as well as things like social security (grants) in terms of their budget, and the judiciary is responsible for ensuring that both the legislature and the executive act in compliance with the Constitution, i.e. if the executive was doing nothing to further the provision of basic socio-economic rights like water and housing then the judiciary could hold them to their constitutional obligation to progressively realise those rights. However, the State has a discretion on how best to achieve the progressive realisation of these rights, i.e. the fact that the Constitution states ‘within available resources’ means that the State may use their resources as they see best, and provided they are complying with their constitutional obligations, the courts cannot interfere with the decisions made.</i></p>
<p><b>4.4.</b> <b>Dr. Marton SÜLYÖK</b> - <b>Jur.</b> <b>Hungary</b></p>	<p><i>If by jurisdiction, the question means court jurisprudence/judicial practice, then yes, courts take into account IHR commitments of Hungary and also those rights that are protected by the Fundamental Law. In the case of errors in this process causing a violation of someone’s constitutional rights protected in in the Fundamental Law, proceedings of the HCC can be initiated (constitutional complaints) that – if successful – lead to remedying the violation committed by the courts. (cf. <a href="http://www.hunconcourt.hu">www.hunconcourt.hu</a> on laws and procedures for constitutional complaints, and the Act CLI of 2011 on the Constitutional Court of Hungary)</i></p>

<p><b>4.5.</b> <b>Benjamin Danpullo,</b> <b>LL.M</b> - <b>Nigeria</b></p>	<p><i>Yes, the jurisdiction is an actor to promote human rights, but institution of the state like the Police, Army, and other para-military agencies are the core violators of peoples human rights.</i></p>
<p><b>4.6.</b> <b>Professor Dr. THIO Li-ann</b> - <b>Singapore</b></p>	<p><i>I don't understand the question</i> <i>Civil society activists use human rights language to advance their agendas.</i> <i>Government bodies present periodic reports to UN bodies and take note of recommendations.</i></p>
<p><b>4.7. Prof. Dr. iur Yiren Lin</b> - <b>Taiwan</b></p>	<p><i>Handelt es sich in Ihrem Rechtssystem, um Menschenrechtsnormen voranzubringen?</i></p> <p><i>Von der Struktur des Verfassungsgesetzbuches zu lesen, werden die Menschenrechtsnormen nach der Verfassung der Republik China, in Kraft getreten am 1. Dez. 1947, vorangestellt. Im Abschnitt I, Artikel 1 ist geregelt: „Die Republik China, begründet auf den Drei Volksprinzipien, ist eine demokratische Republik des Volkes, durch das Volk und für das Volk.“ Im Abschnitt II „Rechte und Pflichten des Volkes“ werden von Art. 7 bis Art. 23 wichtige Grundrechte und die Einschränkungbarkeit und Einschränkungsbedingungen vorgeschrieben. Danach sind die Abschnitt über Staatsorganisationen.</i></p>
<p><b>4.8.</b> <b>Dr. Sri Wahyun Kadir</b> - <b>Indonesia</b></p>	<p><i>Everything related to human rights must be promulgated and made rules, so jurisdiction is important. Without the laws and regulations, human rights will not be fulfilled and protected, so jurisdiction is the main problem. In addition, Indonesia adheres to a legal system that is principled to the need for a rule of law to run the country.</i></p>
<p><b>4.9.</b> <b>Professor Marina Calamo Specchia</b> - <b>Italy</b></p>	<p><i>Jurisprudence plays a fundamental role in the development of the protection of human rights: for example, the Court of Cassation (Englaro case, sent. 21748/2007) has recognized the right to end of life in cases of irreversible coma; the Constitutional Court (Cappato case, ord. 207/2018) obliges the legislator to statue the right to end of its life in the event of an irreversible and debilitating disease compatible with the principle of human dignity, requiring the regulation of assisted suicide to be amended.</i></p>
<p><b>4.10. Josef Martin Zielinski Flores</b> - <b>Peru</b></p>	<p><i>Actually - under my concept - I believe that the Judiciary should only limit itself to applying what is established in the rules on any matter. Already the existing norms have largely managed to objectify the administration of justice. This is the only thing that can guarantee us an objective vision of human rights in our country.</i></p>
<p><b>4.11.</b> <b>Dr. Martín Risso</b></p>	<p><i>It should be, but in general the judges adopt a very conservative position in the matter.</i></p>

<p><b>Ferrand Uruguay</b> –</p>	<p><i>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?</i></p> <p><i>In 2004 compatibility between the Uruguayan Constitution and the notion of the “block of human rights” was agreed. The latter implies considering, on an equal level, all human rights included in the Constitution and in the International Law (be it the universal ones-U.N.O-, or the regional ones- American Convention and derivative Protocols) and, in case there was a different regulation, the provisions that recognize the greater scope of rights or give said rights a greater guarantee, are the ones that should be applied.</i></p> <p><i>In this scheme, all values and human rights promoted by the U.N.O and the O.A.S are covered by constitutional and international regulations.</i></p> <p><i>This position was first postulated in 2004 and in October 2009 it was adopted by the Supreme Court of Justice (Ruling Num. 365/2009 final considering).</i></p>
<p><b>4.12. Professor Dr. Shinar Adam – Israel</b></p>	<p><i>Yes. Israel has very lax standing and justiciability requirements.</i></p>
<p><b>4.13. Assist. Professor Sombhojen Limbu – Nepal</b></p>	<p><i>Definitely, a group of community, victim, or concern party can file a case at extraordinary jurisdiction of Apex Court or High Courts of Nepal for protection and promotion of their human rights. State is an accountable to promote and protect human rights. Courts have one of many responsibilities to issue order the Government should accountable on HRs Issues. Our legal system is open and multi-party democratic system and The Constitution has guaranteed fundamental rights which have derived from Int. Human Rights documents.</i></p>
<p><b>4.14. Suzan Tavares da Silva – Portugal</b></p>	<p><i>Like in all legal orders where a Constitutional Courts is the Guardian of the Constitution it can sometimes move forward human rights standards, mainly in bioethical issues, but our Constitutional Court is not an activist Court.</i></p>
<p><b>4.15. Assist. Professor Zewdu Mengesha - Ethiopia</b></p>	<p><i>I am not clear with this question, if it is to mean that is the legal system do have a mechanism to move forward the human rights standards?, I will say that there are different institutions (actors) that work for the proper enforcements of the human rights standards. The ombudsman and the human right commission may be mentioned.</i></p>
<p><b>4.16. Dr. Alexander Kim - Russia</b></p>	<p><i>I don't think so.</i></p>

<p><b>4.17.</b> <b>Prof. Dr.</b> <b>Vasanthi</b> <b>Nimushakavi</b> <b>- India</b></p>	<p><i>Human rights can be enforced through the Fundamental Rights guaranteed in the Constitution of India, 1950. Article 32 of the Constitution guarantees a right to remedies, i.e. the enforcement of all fundamental rights by the Supreme Court of India. Fundamental rights cover most of the Human Rights standards. Any person can file a writ petition for the enforcement of fundamental rights of that person or any other person also. Public Interest Litigation has been accepted by the Supreme Court of India.</i></p>
<p><b>4.18.</b> <b>Massimiliano</b> <b>Buriassi</b> - <b>Italy</b></p>	<p><i>Si</i></p>
<p><b>4.19.</b> <b>Professor Dr.</b> <b>Ahmed</b> <b>Aubais</b> <b>Alfatlawi</b> - <b>Iraq</b></p>	
<p><b>4.20.</b> <b>Professor Dr.</b> <b>Hyungnam</b> <b>Kim</b> - <b>South</b> <b>Korea</b></p>	<p><i>Yes. Every Jurisdiction can be an actor to move forward human rights standards. Actually human rights standards became important standards in Korean Judiciary.</i></p>
<p><b>4.21.</b> <b>Associate</b> <b>Professor</b> <b>Tomáš Lálík,</b> <b>Ph.D</b> - <b>Roman</b> <b>Lysina, Ph.D</b> <b>Candidate</b> - <b>Slovakia</b></p>	<p><i>The question is unclear.</i></p>
<p><b>4.22.</b> <b>Professor Dr.</b> <b>Mohammad</b> <b>Javad Javid</b> - <b>Iran</b></p>	<p><i>According to limburg principle and Paris agreement for creating National institutions to protect human rights, as it must be free and independent from the other power branch I mean executive , judiciary and parliamentary, we have a council to protect , called institution of HR but under the provision of judiciary branch although from the legal point it is interpreted as the higher institution than all branches so its nature is far beyond three branches and required the three branches to prepare all HR report respecting in their jurisdiction in order to prepare a transparent report for UPR.</i></p>
<p><b>4.23.</b></p>	<p><i>Question 4: The government's role in advancing human rights</i></p>

<p><b>Professor Dr. Adrienne Stone</b> - <b>Australia</b></p>	<p><i>Australian governments, both national and subnational, are involved in advancing human rights in several ways. First, Parliaments can advance human rights by enacting rights-protective legislation. Examples include the three state- and territory-level statutory charters of rights and the federal legislation requiring scrutiny of bills against international human rights treaties.</i></p> <p><i>Secondly, the national government and each state or territory government has a human rights commission, whose functions include promoting public understanding and acceptance of human rights.</i></p> <p><i>Finally, the national government plays a role in promoting human rights at international forums. For instance, Australia was recently elected to serve on the United Nations Human Rights Council from 2018–2020. But this is not to say that Australia has always agreed with the views of international human rights treaty bodies, nor that Australia has fully implemented international human rights standards in its domestic law.</i></p>
<p><b>4.24.</b> <b>Professor Dr. Mark Tushnet</b> - <b>USA</b></p>	
<p><b>4.25.</b> <b>Professor em. Dr. iur Reinhard Mußgnug</b> - <b>Germany</b></p>	<p><i>In Germany the Federal Constitutional Court, the Constitutional Courts of the “Länder” (the states) and the Administrative Courts care for an efficient protection of Human Rights, due to the constitutionally safeguarded independence and impartiality of these courts and also due to Art. 19 sec. 4 of the Basic Law: “Should any person’s right be violated by public authority, recourse to the court shall be open to him.” – the so called “Rechtswegklausel” (clause of judicial protection).</i></p>
<p><b>4.26.</b> <b>Professor Dr. Mabid Ali Mohammed Al-Jarhi</b> - <b>Egypt</b></p>	<p><i>Egypt has no independent judiciary. Judges are appointed by the military ruler as president.</i></p>
<p><b>4.27.</b> <b>Assoc. Professor Dr. Patrick</b></p>	<p><i>I’m not quite sure I understand this question.</i></p> <p><i>Because there is no constitutional scheme of rights, rights standards are established under ordinary legislation which requires the parliament (and the government, given that Australia has Westminster-style cabinet government) to enact it.</i></p>

<b>Emerton</b> - <b>Australia</b>	<p><i>The constitutional doctrines that perform some of the functions that other jurisdictions tackle through rights mechanisms have been established by the High Court of Australia (which is the supreme court of the country in all matters – civil law, criminal law, public/government law and constitutional law) based on its interpretation and application of the Australian Constitution, and in particular those provisions which provide for electoral democracy and which establish a national judicial system.</i></p>
<b>4.28.</b> <b>Professor Dr.</b> <b>Hajer</b> <b>Gueldich</b> - <b>Tunis</b>	<p><i>Yes it is. The jurisdictions in Tunisia keep working on protecting human rights if threatened. They have the authority to enforce them.</i></p> <p><i>Besides, jurisprudence is a material source of law, which can benefit the improvement of our laws whenever discovered contrary to human rights and present a tangible opportunity to right them.</i></p> <p><i>However, this depends on the background of the judge, if he is modern or conservative one. His interpretation of the law can be open or conservative, it depends on the situation and the Context. It is important to recall the article 102 of the Tunisian Constitution which stipulates: "The judiciary is independent. It ensures the administration of justice, the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms.</i></p> <p><i>Judges are independent with the law being the sole authority over them in discharging their functions". It is to say how important principles as independence, neutrality and objectivity are in the process of justice.</i></p> <p><i>Finally, the role of the Constitutional Court (not created yet) will be crucial in order to enhance the application of the Laws in the field of Human rights and Liberties. This Court will be the guardian of Democracy, of the state of Law and of the best application of the International standards of International Human law in Tunisia. For instance, the Interim Commission for the Review of the Constitutionality of Laws is the one responsible for that, till the creation of the Constitutional court.</i></p>
<b>4.29.</b> <b>Asst.</b> <b>Professor</b> <b>Narender</b> <b>Nagarwal</b> - <b>India</b>	<p><i>Ans: In all sort of human rights violation cases, an individual has the right to approach the high court or Supreme Court through writ jurisdiction. In many cases, justice has been done and exemplary orders were passed by the courts. Again, the issue is how many victims can approach the high court or Supreme Court as the cost of litigation is high in India. Further, lakhs of cases are pending for disposal in Supreme Court. Judicial delay is one of the deprivations of human rights in India, justice delay is justice denied in fact. The backlogs of cases before the various high courts are reported to be around more than twenty lakhs (unconfirmed). To enforce human rights or violation of any constitutional rights, an individual can also approach to the other quasi-judicial forum like National Commission for Minorities, National Commission for Scheduled Castes, National Human Rights Commission etc. These quasi-judicial bodies have all India</i></p>

	<i>jurisdictions, can pass any order as deem fit and proper. I admit that these quasi-judicial bodies headed by political appointees and rarely pass any order that may cause uncomfortable situations for the government; hence reforms are indeed vital to strengthen our institutional framework.</i>
<b>4.30.</b> <b>Professor</b> <b>Gerd</b> <b>Oberleitner</b> - <b>Austria</b>	<i>Basic rights are invoked in courts and are subject to the review of the Constitutional Court. For more information:</i> <a href="https://www.vfgh.gv.at/downloads/VfGH_Broschuere_eng_barrierefrei_Final.pdf">https://www.vfgh.gv.at/downloads/VfGH Broschuere eng barrierefrei Final.pdf</a> <i>and</i> <a href="https://www.vfgh.gv.at/verfassungsgerichtshof/rechtsgrundlagen/fundamental_rights.en.html">https://www.vfgh.gv.at/verfassungsgerichtshof/rechtsgrundlagen/fundamental rights.en.html</a>
<b>4.31.</b> <b>Professor Dr.</b> <b>Adnan</b> <b>Oweida</b> - <b>Jordan</b>	<i>I do not know the question needs more clarification</i>
<b>4.32.</b> <b>Dr. Andres</b> <b>Cervantes</b> <b>Valarezo</b> - <b>Ecuador</b>	<i>In my opinion, it could be affirmed that the Constitutional Court of Ecuador is, as an institution, a fundamental actor for the development of human rights. For example, this court has guaranteed the right of same-sex persons to marry; noted that people with catastrophic diseases should enjoy health protection even when the medicines they require are not in the basic table designed by public authorities; that certain foreigners cannot be discriminated on the grounds of nationality in order to establish requirements that are impossible to achieve for entering the country because they are refugees, among others important rulings. I believe that one of the fundamental aspects that make this type of decisions possible has to do with the immobility of the judges, because according to the constitution they cannot be subject to impeachment or removed from office on the basis of the content of their rulings.</i>
<b>4.33.</b> <b>Asst.</b> <b>Professor Dr.</b> <b>Manal Totry-</b> <b>Jubran</b> - <b>Israel</b>	<i>Since until 1992 there were no basic rights, the Judiciary system was indeed a leading actor in implementing human rights standards such as freedom of speech, freedom of religion, freedom of movement and most importantly equality.</i>
<b>4.34.</b> <b>Dr.</b> <b>Maria Paula</b> <b>Garat</b> - <b>Uruguay</b>	<i>The jurisdiction plays an important role in human rights standards. However, the development is still in a beginning step.</i>

<p><b>4.35.</b>  <b>Professor</b>  <b>Luis G.</b>  <b>Francheschi -</b>  <b>Kenya</b></p>	<p><i>Under the 2010 Constitution, the Judiciary acquired true independence, both de iure and de facto. This independence, coupled with the fact that any person in Kenya has locus standi for public interest matters, have made the courts quite powerful in the push for fair administrative action and discharge of public duties. The government is under the constant watch of the courts, and courts have nullified election (including presidential elections), budget decisions, expenditure projects, abuses of office, etc. There is still a long way to go due to the fact that in several instances the government has defied court orders, but more and more we see in the courts a way to make our government accountable. Moreover, various state-created bodies move forward human rights standards. The most prominent state created body that agitates for human rights standards is the Kenya National Commission on Human Rights (KNCHR) which is an independent constitutional commission. The mandate of the Commission is quite ample. There are also hundreds of NGOs which have a recognised status and reputation. Generally, the Government respects them.</i></p>
<p><b>4.36.</b>  <b>Professor</b>  <b>Hugh Corder</b>  <b>- South Africa</b></p>	<p><i>NOT EXACTLY SURE WHAT THIS QUESTION MEANS, BUT IF IT IS ASKING WHETHER THE COURTS ARE ABLE TO PROMOTE HUMAN RIGHTS STANDARDS THEN THE ANSWER IS POSITIVE, SEE SECTION 39 OF THE CONSTITUTION, WHICH REQUIRES THE JUDGES TO PROMOTE THE VALUES OF THE BILL OF RIGHTS IN ANY INTERPRETATION OF THE LAW WHICH THEY UNDERTAKE.</i></p>
<p><b>4.37.</b>  <b>Asst.</b>  <b>Professor</b>  <b>Umar Rashid</b>  <b>- Pakistan</b></p>	<p><i>Ans) I am unable to understand this question. If you are asking whether individuals can bring cases raising human rights issue, then the answer is yes. Some of the most important cases expanding the scope of Constitutional rights have been brought by individuals trying to protect/enforce their rights. There have also been instance of public interest litigation where members of civil society have initiated public interest litigation to further the protection of fundamental human rights. In addition, the Supreme Court itself has taken cognizance of certain issues under its suo motu powers, and these decisions have played an important role in expanding the scope of fundamental human rights.</i></p>
<p><b>4.38.</b>  <b>Assist.</b>  <b>Professor</b>  <b>Simon</b>  <b>Alexander</b>  <b>Wood -</b>  <b>Malaysia</b></p>	<p><i>the jurisdiction itself is not really an actor given that it does not promote international standards although occasional judge's have made positive moves however often these have been overturned by judges in higher courts</i></p>
<p><b>4.39.</b>  <b>Professor</b></p>	<p><i>The professor has chosen not to publish her answers.</i></p>

<b>Merris Amos-UK</b>	
<b>4.40. Ştefan Bogrea - PhD student at human rights law / Advocate - Romania</b>	<p><i>If by jurisdiction you mean the jurisdictional system of the Courts in general, in a way, yes. Meaning, that if we also include the Constitutional Court, the jurisdictional system is capable of defining the human rights standards on a case to case basis, and, consequently, expand the human rights protection.</i></p>
<b>4.41. Asst. Professor Dr. Cristina Tomulet - Romania</b>	<p><i>I believe that jurisdiction should be the most important actor responsible for moving forward human rights standards. To this end, on the basis of article 20 paragraph (2) of the Romanian Constitution, which I cited above, judges have the legal competence to apply international human rights treaties in spite of contrary national legislation.</i></p> <p><i>Given the fact that the European Court of Human Rights is the official interpreter of the European Convention, which is the most important human rights treaty applicable in the Romanian legal system, it follows that national judges also have the competence to apply the Court's case-law in spite of contrary national legislation. However, due to a deficient mindset of subservience to the state and due to a misunderstanding of the principle of separation of powers, judges usually avoid going against national law by applying the hierarchically superior human rights standards. At the same time, it is important to underline that most of the human rights violations in Romania are not caused by deficient legislation, but by deficient practices. In many cases, judges are not impeded by legislation to award damages, for example, in case of a human right violation. However, there is a prevalent reluctance to do so due to the communist mindset still existing in the judicial system which causes the judges to avoid holding the state accountable for its failures. For example, in the case of Florea v. Romania, even though the applicant suffered inhumane treatment due to overcrowding in prison and being exposed for 23 out of 24 hours a day to passive smoking, which led to his hospitalisation for three periods of time in a row, the national court rejected his request for compensation stating that there is no causal connection between his lung illnesses and the exposure to passive smoking, even though a medical report to that effect existed. In my opinion, the restrictive interpretation of the concept of causality in this case was the result of the mindset described above.</i></p> <p><i>In conclusion, jurisdiction does not play a sufficient role in moving forward human rights standards in Romania. I surely hope the next generations of judges will change that.</i></p>

<p><b>4.42.</b> <b>Professor Dr. Mahendra P. Singh - India</b></p>	<p><i>The enactment of the Protection of Human Rights Act 1993 have regionalized and expanded many aspects of human rights. The Act provided for the constitution of the National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights. The appropriate division of jurisdiction among regional and national institution in India have led to the strengthening and proliferation of human rights performance in the country</i></p>
<p><b>4.43.</b> <b>Professor Dr. Stephanie Wattier - Belgium</b></p>	<p><i>S.W.: Yes, it is, and especially regarding the case law of the Constitutional Court. For instance, an important part of the system of filiation has been criticized and censored by the Constitutional Court. As consequence, the Belgian legislator has had to correct and adapt the legal system to meet the international obligations underlined by the Court.</i></p>
<p><b>4.44.</b> <b>Dr. Malika Tastanova M. Narikyev - Kazakhstan</b></p>	<p><i>The professor has chosen not to publish her answers.</i></p>
<p><b>4.45.</b> <b>Professor Dr. Jasna Baksic - Bosnia and Herzegovina</b></p>	<p><i>Ustavni sud BiH donijeo je važnu Odluku o konstitutivnosti naroda (Biošnjaka, Hrvata I Srba) na čitavoj teritoriji BiH izvedeći ovaj princip jednakosti konstitutivnih naroda iz preambule Ustava BiH. Na osnovu te odluke izvršene su izmjene ustava Republike Srpske pa su osim Srba konstitutivni Bošnjaci I Hrvati a u FBiH osim Bošnjaka I Hrvata konstitutivnost je priznata I Srbima. Na osnovu toga došlo je do proporcionalne političke zastupljenosti konstitutivnih naroda I u entitetima a ne samo na državnom nivou.</i></p> <p><i>Ostali (ustavni termin za građana koji nisu pripadnici konstitutivnih naroda) I građani BiH ostali su u političkom smislu nezastupljeni u pojedinim državnim organima (Predsjedništvo I Dom naroda Parlamentarne skupštine BiH) . To je bilo predmet apelacije pred Evropskim sudom za ljudska prava- predmeti Sejdić, Finci vs BiH, Zornić vs BiH, Polav vs BiH I poslednja nedavno podnešena Pudarić vs BiH. Evropski sud za ljudska prava odredio je da su norme Ustava BiH o političkom predstavljanju diskriminatorne I odlučio u korist apelanata a protiv BiH nalažući joj da diskriminatorne odredbe uskladi sa EKLJP. Ove presude do sada nisu provedene jer zadiru u suštinu politick pravnog Sistema BiH I ruše ekskluzivitet ukonstitutivnih naroda</i></p>
<p><b>4.46.</b> <b>Assist. Professor Dr. Iwona Wroblewska - Poland</b></p>	<p><i>Courts are the most important state body for the protection of individual rights and freedoms. Their decisions shape a certain level of this protection. Of course, judges, like any other state authority in Poland (Article 7 of the Constitution) act on the basis and within the limits of the law, but the can develop and raise standards of the protection of human rights by interpretation. It is difficult to formulate one general</i></p>

	<p><i>conclusion on the overall jurisdiction. Certainly, the Constitutional Tribunal played here a crucial role. In the period of provisional constitution (1989-1997), when the provisions of acts temporarily creating the constitution lacked many regulations regarding rights and freedoms, the CT derived them from the principle of the rule of law. They were so-called material elements of the rule of law (implicite principles): the right to life, the principle of protection of human dignity, the principle of proportionality, the right of access to a court, the right to privacy. His jurisprudence influenced the future regulation of the 1997 Constitution, to which text those rules was explicitly introduced. So, the Constitutional Tribunal played an important role in raising the standard of human rights protection in Poland.</i></p>
<p><b>4.47.</b> <b>Professor Kwadwo Appiagyei-Atua - Gana</b></p>	<p><i>Sorry but the question is not clear.</i></p>
<p><b>4.48.</b> <b>Paidamwoyo Mukumbiri - Zimbabwe</b></p>	<p><i>I failed to understand this question.</i></p>
<p><b>4.49.</b> <b>Professor Dr. Helen Irving - Australia</b></p>	<p><i>Do you mean the judiciary? The judiciary plays a role in Victoria (an Australian State) in reviewing Victorian State legislation (but only where a challenge arises) under the Victorian Charter of Human Rights and Responsibilities (2006). The Victorian courts are empowered under this Act to make a declaration of incompatibility between a law and a right or rights that are protected under the Act. A declaration of incompatibility does not overturn the law, however. The State of Queensland has a similar Human Rights Act (2019), with similar judicial powers; the Australian Commonwealth Territory (ACT) also has a similar Act – the Human Rights Act (2004) - which gives similar power to the ACT courts. In other Australian States, and at the federal level, there is no ‘Human Rights Act’ (although there are anti-discrimination Acts, as described above); the courts at the federal level and in States without a human rights Act exercise judicial review (as in my answer above) but do not test laws against human rights.</i></p>
<p><b>4.50.</b>     <b>Dr. Faridah Jalil - Malaysia</b></p>	<p><i>I don’t understand the question.</i></p>
<p><b>4.51.</b>     <b>Dr. Tatiana</b></p>	<p><i>Sorry, I don’t quite understand the question...</i></p>

<b>Khramova - Russia</b>	
<b>4.52. Eduardo G. Esteve Gallicchio - Uruguay</b>	<p><i>In the Uruguayan system, the jurisdiction is not in itself a competent actor to create law. Its role acquires importance in the interpretation and application of the Law when human rights standards are engaged. Advances in this matter are mainly due to the recent adoption by the Uruguayan judges of the jurisprudence of the Inter-American Court of Human Rights.</i></p>
<b>4.53. Dr. Aldana Rohr - Argentina</b>	<p><i>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.</i></p> <p><i>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”<sup>1</sup>.</i></p> <p><i>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”<sup>2</sup>.</i></p> <p><i>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<sup>3</sup>.</i></p>

<sup>1</sup>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>

<sup>2</sup> Sections 5 and 123 of the National Constitution.

<sup>3</sup> Velásquez Rodríguez vs. Honduras, Inter-American Court of Human Rights, 29/07/1988.

	<p><i>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<sup>4</sup>. 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<sup>5</sup>. 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<sup>6</sup>. Therefore, as there is no Constitutional Court, the constitutional control is diffuse.</i></p> <p><i>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).</i></p> <p><i>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.</i></p>
<p><b>4.54. Roman Schuppli - Switzerland</b></p>	<p><i>The Swiss catalogue of fundamental rights is the historical result of a gradual and dialogical process. The key role in this development has been played by the Federal Supreme Court since the second half of the 19th century. It has specified the protective contents of written fundamental rights, enriched them with new contents, derived unwritten guarantees from the constitution, and later implemented the practice of the European Court of Human Rights. For instance, contemporary provisions of the Swiss catalogue of fundamental right, such as the prohibition of arbitrariness, the right to a fair hearing or the right to legal aid, were derived from Art. 4 of the Federal Constitution of 1874 ("All Swiss are equal before the law"). Unwritten guarantees</i></p>

<sup>4</sup> Section 108 of National Constitution.

<sup>5</sup> Section 116 of National Constitution.

<sup>6</sup> Section 117 of National Constitution.

	<p><i>recognised by the Federal Supreme Court include the freedom of expression (1962), the guarantee of ownership (1969) or the freedom of assembly (1970). Through this jurisprudence, which was geared towards concretisation, supplementation and creation of rights, cantonal and international protective contents were woven into the fundamental rights material of the Federal Constitution, condensing it, modernising it and extending it by numerous facets.</i></p> <p><i>(Excerpt from KIENER REGINA, Grundrechte in der Bundesverfassung, in: Verfassungsrecht der Schweiz, 2. Ed., forthcoming)</i></p>
<p><b>4.55. Dr. Ljubomir Frckoski – Macedonia</b></p>	<p><i>The Professor has send a book.</i></p>
<p><b>4.56. Assoc. Professor Juan Pablo Beca F. - Chile</b></p>	<p><i>In the last five years or so I would say it is, specially when ot began to do conventionality control, mandated by the Interamerican Human Rights Court.</i></p>
<p><b>4.57. Professor Simon Rice - Australia</b></p>	<p><i>Because Australia is a common law jurisdiction, judges have the capacity, through interpretation, to apply, deny, limit and expand rights that are in legislation or in the common law. The state is often a party to litigation in which rights are at stake. And the state, through both the legislature and the executive, can act so as to promote, limit or deny human rights. Whether and how it does so is a political issue.</i></p>
<p><b>4.58. Dr. Renata Bedö - Hungary</b></p>	
<p><b>4.59. Damir Banović - Bosnia and Herzegovina</b></p>	<p><i>I am not sure if I understand what does this mean? If it means that the Constitutional Court can move forward human rights standards, I would say yes. The Court does it via evolutive and creative interpretation. But also the European Court for Human Rights in the cases where Bosnia and Herzegovina has been hold responsible for violations of human rights (e.g. Sjedić and Finci vs. Bosnia and Herzegovina; Zornić vs. Bosnia and Herzegovina, etc.)</i></p>
<p><b>4.60. Dr. Lilla Berkes, PhD candidate) - Hungary</b></p>	<p><i>Courts (and other actors) shall interpret the text of laws they are applying in a case in accordance with the Basic Law.<sup>7</sup> Because the sole authentic interpreter of the constitution is the Constitutional Court, all the actors need to follow the practice of the Constitutional Court, too. If there is no decision they can refer to, they can interpret</i></p>

<sup>7</sup> Basic Law Article 28 In the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble of that law and the justification of the proposal for or for amending the law. When interpreting the Fundamental Law or laws, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good.

	<i>the Basic Law in their own way, so in some way they can move forward the human rights standards but in the end, the last word is of the Constitutional Court's.</i>
<b>4.61.</b> <b>Professor Dr.</b> <b>iur. Jorge</b> <b>León - Peru</b>	<i>Sí, en la jurisdicción peruana tanto el Tribunal Constitucional como el Poder Judicial disponen de vías procesales para la garantía y protección de los derechos humanos. A través de ellos se ha reinterpretado los derechos reconocidos en la Constitución y en el marco de los Tratados de Derechos Humanos, así como se ha realizado un control convencional de los actos del Estado.</i> <i>Se puede mencionar el caso del control convencional que realizó un juzgado ordinario<sup>8</sup> de un indulto otorgado por un ex Presidente de la República. Más tarde, se determinó que el ejercicio efectivo de la facultad presidencial para otorgar gracias presidenciales, debió tener en cuenta no sólo el derecho nacional, sino también las obligaciones que se derivan de la sentencia de fondo del Caso Barrios Altos vs. Perú y aquellas que derivan de la condición del Perú como Estado parte de la Convención Americana de Derechos Humanos.</i>
<b>4.62.</b> <b>Professor</b> <b>Thierry</b> <b>Rambaud –</b> <b>France</b>	<i>An article was sent by the Professor.</i>
<b>4.63. Mario</b> <b>Campora -</b> <b>Melisa</b> <b>Szlajen -</b> <b>Argentina</b>	<i>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 agenda<sup>9</sup>.</i> <i>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 participation<sup>10</sup>.</i> <i>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 state<sup>11</sup>. This is the way that the NGOs convert the litigation in a politic action<sup>12</sup>.</i> <i>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 rights<sup>13</sup>.</i> <i>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, etc<sup>14</sup>. Also because our</i>

<sup>8</sup> Juzgado Supremo de Investigación Preparatoria de la Corte Suprema de la República.

<sup>9</sup> CELS, "La lucha por el derecho", Siglo veintiuno editores, Buenos Aires, 2008, p. 17.

<sup>10</sup> *Op. Cit.* p. 19.

<sup>11</sup> *Op. Cit.* p. 20.

<sup>12</sup> *Op. Cit.*

<sup>13</sup> *Op. Cit.*, p. 20 to 25.

<sup>14</sup> *Op. Cit.* P. 28.

	<p><i>judiciary system is the continental one, so the precedents are not obligatory for other judges and they are only valid for the persons and the specific case<sup>15</sup>. Of course the decisions of the Supreme Court are more important, but they are not binding too<sup>16</sup>.</i></p> <p><i>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.</i></p>
<p><b>4.64. Dr. Alaa Nafea Kttafah - Iraq</b></p>	<p>ج / ان القضاء يلعب في العراق دور مهم في حماية حقوق الانسان ، فمن دون مغالاة ان القضاء العراقي بعد عام 2005 اخذ يهتم باتباع الاجراءات القضائية المنصوص عليها والمتضمنه كفالة حقوق المتهم ومراعاة الجوانب الانسانية في سير الاجراءات ، ولاننكر ان هذا الانسيفا للمعايير الدولية لحقوق الانسان ارتبط بفضل المنظمات المعنية بحماية الحقوق والوعي العام الذي جاء بعد انتشار وسائل التكنولوجيا الحديثة والاعلام الحر في رصد انتهاكات الحقوق .</p>
<p><b>4.65. Professor Silvina Ramirez - Argentina</b></p>	<p><i>Como explicaba en la respuesta anterior, efectivamente "la jurisdicción" es un actor relevante para garantizar derechos humanos. A pesar de que las sentencias son ambivalentes, y muchas veces no refuerzan el cumplimiento de derechos, existe por otra parte una gran expectativa de que las carencias de políticas públicas en esta material serán subsanados –suplidos- por el sector judicial.</i></p>
<p><b>4.66. Agnieszka Bień-Kacała - Poland</b></p>	<p><i>The professor has chosen not to publish her answers.</i></p>
<p><b>4.67. Professor Dr. Claire Breen - Australia</b></p>	
<p><b>4.68. Marwan Al-Moders - Bahrain</b></p>	<p><i>The Professor has send articles.</i></p>
<p><b>4.69. Dhia Al Uyun - Indonesia</b></p>	<p><i>Hak Asasi Manusia tidak dilaksanakan sesuai standart. Hal ini karena</i></p> <ul style="list-style-type: none"> <li>- <i>Stereotype hak asasi manusia yang dianggap ilmu yang berasal dari Barat</i></li> <li>- <i>Persepsi penegak hukum yang belum berpihak pada hak-hak masyarakat</i></li> </ul> <p><i>Kondisi penegak hukum yang terjebak dalam formalism birokrasi</i></p>

<sup>15</sup> *Op. Cit. P. 30.*

<sup>16</sup> *Op. Cit.*