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ARGENTINA AND THE ENFORCEMENT OF HUMAN RIGHTS CONVENTIONS

Editorial Tomás Jofré

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PROLOGUE

"Wherever men and women are persecuted because of their race, religion, or political views, that place must — at that moment — become the center of the universe."

Elie Wiesel.

In this quotation, the Holocaust survivor Elie Wiesel talks about our "Center of the Universe". Nevertheless, our center of the universe is Argentina, the country where we live, not necessarily a place of persecution and discrimination –as Eli Wiesel states-. Argentina is our home, and –despite some rare exceptions- we strongly believe that Human Rights are typically at the core of the Argentinean regulations.

It is from this "center of the universe" that we like to tackle some topics related to Human Rights and their enforcement.

This collective book is the result of hard work, which had been developed throughout 2019 by teachers and students of the "*Diplomatura en Inglés Jurídico para Derechos Humanos*", at *Universidad Católica de Cuyo sede San Luis*.

The idea was brought about during the "Diplomatura" and the creation of this book (Studying the content and the language of International covenants that affect Argentina, in English) has been exposed to the public eye in the JATIC, "*IV Jornadas Argentinas de Innovacion y Creatividad*" and can be read at the records of that Encounter. [1] Both the team of teachers

[1] JATIC Libro de Actas. https://jatic2019.ucaecemdp.edu.ar/actas.php

and the group of students came from two opposing realms: Linguistic and Legal.

We have made efforts to critically study (in English) different groups of international covenants. We are proud to say that, as final outcome, students have worked on the general topic “Argentina and the enforcement of international covenants”, resulting in a busy folder of a group of final works related to the Plain Language Movement, Rights of the Child, Social Security, Rights of the Disabled, Rights of the Elderly, Gender Equality, Employment and Environmental Law.

We want to thank *Universidad Católica de Cuyo sede San Luis* for this great opportunity to express our ideas. Additionally, we would also like to thank all the teachers of the “*Diplomatura*” (Mauricio Muñoz Luna, Andrea Belen Vargas, Daniela Zabala, Leonor Paez Logioia, and María José Gonzalez) from the bottom of our heart.

On the other hand, every author of this chapter has expressed the desire to thank their mentors and relatives for the continuous support, which is the fuel of our daily toil completion.

All in all, there is another quotation of the same great Elli Wiesel: “Human suffering anywhere concerns men and women everywhere.” We cannot remain aside of the suffering of any fellow inhabitant of our planet earth. To go forth in the necessary path of Human Rights, *that* is the aim of our book.

ARGENTINA AND THE ENFORCEMENT OF HUMAN RIGHTS CONVENTIONS.

CHAPTER ONE.

Argentina and the Human Rights Basics[2]

1. **Introduction**.

Human rights constitute the most important part of International Law. They imply basic values common to all cultures, and must be respected by countries worldwide.

Human rights are inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. At the basis of Human rights is the principle of equality and non-discrimination; this right is typically enshrined in every human rights instrument.

Human rights reflect the minimum standards necessary for people to live with dignity and equality. They give people the freedom to choose how they live, how they express themselves, and what kind of government they want to support, among many other things.

According to the United Nations, ***Human rights***: "*Ensure that a human being will be able to fully develop and use human qualities such as intelligence, talent, and conscience and satisfy his or her spiritual and other needs."*

Human rights also guarantee people the means necessary to satisfy their basic needs, such as food, housing, and education, so they can take full advantage of all opportunities.

Finally, by guaranteeing life, liberty, and security, human rights protect people against abuse by individuals and groups who are more powerful.

2. Human Rights and their effects:

Human rights are not just theoretical; they are recognized standards to which governments are to be held accountable

[2] Author of this chapter: Adela Perez del Viso.

Where governments resist or ignore one means of human rights enforcement, advocates can encourage or compel compliance through other mechanisms. Advocates can also use international human rights decisions and recommendations as part of their education and advocacy strategies.

3. **The "Bill of Human Rights"**:

The UDHR (Universal Declaration of Human Rights) was the first international document that spelled out the "basic civil, political, economic, social and cultural rights that all human beings should enjoy."

The UN General Assembly ratified the declaration unanimously on December 10, 1948. The vote to adopt the UDHR was considered a triumph as it unified diverse nations and conflicting political regimes.

At first, the UDHR was not legally binding, though it carried great moral weight.

In order to give the human rights listed in the UDHR the force of law, the United Nations drafted **two covenants**, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

It is said that the division of rights between these two treaties is artificial, a reflection of the global ideological divide during the Cold War.

Though politics prevented the creation of a unified treaty, the two covenants are interrelated, and the rights contained in one covenant are necessary to the fulfillment of the rights contained in the other.

Together, the UDHR, ICCPR, and ICESCR are known as the International Bill of Human Rights.

4. **Rights of the "Bill"**:

These treaties and declaration contain a comprehensive list of human rights that governments must respect and promote, including:

- Right to life;
- Equality;
- Security of person;
- Freedom from slavery;

- Freedom from arbitrary arrest/detention;
- Freedom of movement and residence;
- Due process of law;
- Freedom of opinion and expression;
- Freedom of association and assembly;
- Right to safe and healthy working conditions;
- Right to form trade unions and to strike;
- Right to adequate food, clothing, and housing;
- Right to education; and
- Right to health.

5. **The Core International Human Rights Treaties**:

The nine core International H.R.treaties (for U.N.) are as follows:

- International Convention on the Elimination of All Forms of Racial Discrimination CERD 1965
- International Covenant on Civil and Political Rights ICCPR 1966
- International Covenant on Economic, Social and Cultural Rights ICESCR 1966
- Convention on the Elimination of All Forms of Discrimination against Women CEDAW 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT 1984
- Convention on the Rights of the Child CRC 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families CRMW 1990
- Convention on the Rights of Persons with Disabilities CRPD 2006
- International Convention for the Protection of All Persons from Enforced Disappearance CED 2006

6. **Non – binding international declarations, principles and guidelines**:

In addition to creating international human rights treaty law, the United Nations expands the world's understanding of the scope and content of human rights by drafting non-binding

international standards that reflect international consensus on specific human rights issues, such as declarations, principles, and guidelines.

Examples of these instruments include:

- Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live;
- Declaration on the Rights of Indigenous Peoples;
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- Indigenous and Tribal Peoples Convention;11
- Standard Minimum Rules for the Treatment of Prisoners;
- United Nations Principles for Older Persons;
- Guiding Principles on Business and Human Rights; and United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

7. **Human Rights *Basic Tenets***:

There are five basic tenets underlying human rights as they apply to all people. These "tenets" imply that the Human Rights are…

- **Universal:** in that they belong to all people equally regardless of status. All people are born free and equal in dignity and rights.
- **Inalienable:** in that they may not be taken away or transferred. People still have human rights even when their governments violate those rights.
- **Interconnected:** because the fulfillment or violation of one right affects the fulfillment of all other rights.
- **Indivisible:** as no right can be treated in isolation. No one right is more important than another.
- **Non-discriminatory:** in that human rights should be respected without distinction, exclusion, restriction, or preference based on race, color, age, national or ethnic origin,

language, religion, sex, or any other status, which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms.

8. Enforceability of a Human Rights Treaty:

International Human Rights Law is contained in treaties, charters, conventions, and covenants.

Despite the different official names, all of these documents are considered “treaties.” They have the same effect under international law: the treaty *endorsement* is absolutely necessary to consider that this treaty is legally binding for each country.

Only after that *act of consent*, the country is really bound to protect the rights described on the text.

a. Types of consent: Accession and Ratification.

Countries have different methods for joining or consenting to be bound by multilateral human rights treaties.

Some countries use a process called ***accession*** which requires only one step—depositing the instrument of accession with the United Nations.

Other countries require a ***two-step process of signing and ratification***. For

Example, for the United States to become a party to a treaty, the President must first sign and then present it to the Senate, where two-thirds of the Senators must vote to ratify it.

Regardless of the method for ratifying a treaty, however, the end result is the same. Through accession or ratification, a country agrees to be legally

Bound by the terms of the treaty.

b. Types of consent: Reservations:

Countries that ratify treaties are allowed to enter reservations to those instruments.

Reservations are statements made by a country that modify the legal effect of certain provisions of the treaty. Entering a reservation allows a government to agree to most of a treaty, while excluding or limiting parts that might be controversial or unconstitutional in its own country.

The means by which an international treaty enters into national legislation differs depending

on the parliamentary system and national procedures. In some countries, the constitution or other legal provisions allow direct application of the treaty. In others, national legislation must be passed first to make the provisions of the treaty applicable.

Even after treaty ratification, however, the strongest protection for the rights of individuals is the creation of Domestic Law.

c. **The concept of Domestic Law**: [3]

There are two major concepts of Law:

- **International law**: the set of rules generally regarded and accepted in relations between nations. International law differs from state-based legal systems in that it is primarily applicable to countries rather than to individual citizens. International law establishes the framework and the criteria for identifying states as the principal actors in the international legal system
- **Domestic Law or state-based legal systems**. Domestic regulations come from the Congress or from other instances of power inside each Country. For the Human Rights principles, it is important to be applied into every country through Domestic regulations and Domestic Courts which seek to enforce Human Rights.

In some countries, a Constitution may provide fundamental, minimum human rights protections.

9. **The case of Argentina**:

In Argentina, there are two types of Constitutions, due to the Federal System: the National Constitution (1854- 1958- 1994) and the Provincial Constitutions. On those texts there is an array of Human Rights principles which might be considered Domestic Law- Human Rights:

- The principle of Equality (8, 16, N.C.)
- The principle of innocence and defense. (18 N.C.)
- Right to work and to think freely (14 and 14 *bis;* 19 N.C.)
- Freedom (15 N.C.)
- Right to hold property (18 N.C.)
- Prohibition of torture (18 N.C.)
- Right to a healthy environment (41 N.C.)

[3] Please consult: https://www.youtube.com/watch?v=saltKBZuaSU

10. **The Argentinean National Constitution Section 75 /22**:

This is an outstanding section of the Argentinean Nacional Constitution: Section 75/22. This particular section sets forth that the treaties and covenants have a higher position in the legal hierarchy. They are superior to mere Acts. Particularly, the section lists eleven instruments:

--The American Declaration of Human Rights.

--The Universal Declaration of Human Rights.

--The American Declaration of the rights and duties of the man. [4]

--The I.C.E.S.C.R. International Covenant on Economic, Social and Cultural rights. [5]

--The I.C.C.P.R. International Covenant on Civil and Political Rights.[6]

-- Their optional protocol.

--The Convention on the Prevention and Punishment of the Crime of Genocide.[7]

--The International Convention on the Elimination of all forms of Racial Discrimination.

--The C.E.D.A.W, Convention on the Elimination of all forms of Discrimination against Women. [8]

--The UNCAT, United Nation Convention against Torture. [9]

--The CRC, Convention on the Rights of the Child.

In relation to the latter treaties, Section 75/22 of the National Constitution states that they are at a Constitutional level, above the Acts.

Nevertheless, the same provision states that other Treaties may also be considered part of the National Constitution, as long as an Act is passed to consent the Treaty by the Congress, and with that extension. In order to do that, 2/3 of the whole Congress should vote

[4] Available at: https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf

[5] Available at: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

[6] Available at: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[7] Available at: https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf

[8] Available at: https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf

[9] Available at: https://en.wikipedia.org/wiki/United_Nations_Convention_against_Torture

positively. After that, the text of the Treaty is considered to bear constitutional hierarchy. [10]

11. **International Treaties incorporated to the Argentinean Constitutional hierarchy through an *Act***:

The International Treaties incorporated to the Argentinean Constitutional Text through this secondary process (Section 75/22 second part National Constitution) are, among others:

- International Convention for the Protection of all persons from enforced disappearance.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968)
- Convention on the Rights of Persons with Disabilities and Optional Protocol
- Inter-American Convention on Protecting the Human Rights of Older Persons (A-70) (OAS) - Nevertheless, it is still not on our constitutional text; there is the need of a different regulation to legally do that.

[10] In Spanish, the text is as follows: *"Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional".*

CHAPTER TWO:

Plain Language as a Requisite for an Effective Access to Justice [11]

"No defendant should face the Kafkaesque specter of an incomprehensible ritual which may terminate in punishment".

(Carrion v. The United States[12]).

Technical legal language and its complexity have been a matter of interest in the last few years. This chapter discusses the meaning of "plain language" and the features of legal language but, mostly, it stresses the fact that the use of plain language in the Law is not a whim or a matter of style, but a requirement for effective access to Justice that has bases in rules, laws, and court decisions.

1. Introduction

There is this scene in Victor Hugo's *The Hunchback of Notre Dame*, where La Esmeralda is taken to be judged for the murder of the man she loved. The scene develops as follows: La Esmeralda, after being tortured to force her to confess to the murder, and after actually confessing as a means to escape the torture, now sits before the judges. The courtroom is full, the noise is constant. The judges discuss with each other: they talk *about* the gipsy girl, but not *to* her. She cannot comprehend what they are saying, and they would not listen to her version of the events.

At this point, the man she was being judged for murdering, having healed satisfactorily from his wounds, and being now in perfect health, enters the courtroom. He had heard a trial was going to take place, but did not know the matter of the conflict was his death. The judges see him walk into the room, and briefly discuss whether they should close the case or carry on with it. At last, they decide that Justice was above the facts, and condemn La Esmeralda to be hung.

[11] Author of this chapter: Sworn Translator María Victoria Feito Torrez.
[12] Carrion v. United States. Available at: https://casetext.com/case/carrion-v-united-states-2

Victor Hugo wrote this novel—and this scene—to make a point about Medieval justice: If governments of any type exercise their power detached from the people, such exercise will lead to absurdities. This was one of the claims of the French Revolution, the context in which Hugo wrote *The Hunchback*. And even though our current social and political situation is different from that of the times before the Revolution, the scene in the novel is not completely foreign to us. More often than not, people who approach Justice to find a solution to their conflicts find instead that the first conflict they need to face is not understanding what Justice is telling them.

2. The Need for a Plainer Legal Language

2.1. What do we mean by "plain language"?

This work[13] points toward a need for a plainer legal language: a legal language that is not a wall between those seeking justice and justice itself. We, as Law professionals, have become increasingly comfortable with a type of technical language that excludes those who have not entered the classrooms of Law Schools. And we often fail to find a problem with the fact that non-professionals need a 'translator'—a lawyer—to explain the contents of the rules and laws to them.

However, in order to understand how we can knock down this linguistic wall between justice seekers and justice, we must understand what we mean by "plain language". "Plain language" refers to at least two things: a way of wording and structuring language, and an international association that supports the use of this language. The second will not be dealt with here, but a short Internet search will provide the reader with more than enough references.

Regarding the first, we are in presence of plain language when the discourse created is put in clear words and clear structures. It is evident that a legal text that states, for example:

"*Petitioners and, to a greater extent, their amici exhibit a different concern. They suggest*

[13] This work stems from another work on the subject I have written which, although in Spanish and from a different perspective, also points toward a need for a plainer language in the legal field. Please revise: "La violencia implícita del lenguaje jurídico: un obstáculo en el acceso a la justicia" (2019), *Revista Pensamiento Penal*, published on September 24, 2019 available at: http://www.pensamientopenal.com.ar/doctrina/48053-violencia-implicita-del-lenguaje-juridico-obstaculo-camino-al-acceso-justicia

that recognition of a screening role for the judge that allows for the exclusion of "invalid" evidence will sanction a stifling and repressive scientific orthodoxy, and will be inimical to the search for truth"[14]*.*

Definitely, the language used in this paragraph does not consist of clear words and structures. The justice seeker for whom this sentence was written cannot be expected to understand what it decides, and consequently cannot (by themselves) be used to satisfy their needs. Put in others words, if the Judiciary branch (or the Legislative branch, for that matter) use these ways of making their decisions be heard, we cannot talk of an effective access to Justice.

It follows that effective access to Justice does not only mean understanding the language used by judicial professionals. Mere comprehension does not translate in involvement with the Law. An effective access to Justice means that users of the Law can find in it what they need, understand what they find, and use it to satisfy their needs[15]. In *Notas sobre derecho y lenguaje*[16] [Notes on Law and Language], Carrió refers to this practical perspective of comprehension:

Rules and laws are composed of words with typical features of natural languages, or are defined in their terms, in that they authorize, prohibit or render certain human actions compulsory, and in that they give subjects and authorities behavioral standards. […] The current social function of Law would be extensively compromised if these norms were formulated in such manner that only a small group of initiated could comprehend them.

This means that if users of the Law could not act according to the contents of the Law, there would be no legality, but rather a mere appearance of legality—an empty shell.

This effective access is not a construction deduced from a doubtful interpretation of legal rules: it has bases on a number of rules. In Argentina, Section 16 of the Constitution establishes that all inhabitants are equal before the Law. A well-known idiom applies here: "If others do not have the rights I have, they are not rights, but privileges". If, then, only some people can understand legal language, and some (or most) people cannot, there is no

[14] U.S. Supreme "Court Daubert V. Merrell Dow Pharmaceuticals", Inc., 509 U.S. 579 (1993) 509 U.S. 579 William Daubert, et ux., Etc., et al., Petitioners V. Merrell Dow Pharmaceuticals, Inc. Certiorari to the United States Court Of Appeals For The Ninth Circuit No. 92-102 (1993).

[15] "Federal Plain Language Guidelines", available at: https://www.plainlanguage.gov/guidelines/

[16] Carrió, G. R. (1994) *Notas sobre derecho y lenguaje.* Buenos Aires: Lexis Nexis, Abeledo Perrot.

equality before the Law, but privileges in favor of those who can understand it.

Section 18 of the Argentinean Constitution states the inviolability of rights and defense in trial. Not understanding general rules that safeguard rights, not understanding that which is being said during a trial, and not understanding the particular norm the judge created for me is, as it will be shown in the development of this work, violating my rights and my defense in trial.

2.2. Origins and Bases for the Complexion of Legal language

When we look into legal language under the light of the effects the Law has in society, we understand that some degree of "technification"[17] is necessary. The reason behind this is that natural language, the one we use for our every-day activities and conversations, has several semantic and syntactic problems. We often find ourselves asking or giving further explanations as a result of a vague or ambiguous expression. The Law regulates important aspects of the lives of human beings, and hence it is expected to do so with the least amount of misunderstandings or misinterpretations. There is, then, a necessity for a language which uses terms whose meanings are well delimited. Delimited terms are not typical of natural languages, but of technical languages, therefore the necessity of some degree of *technification* in the field of Law.

In spite of this level of *technification*, language should remain accessible for justice seekers. However, practice has proven that in most cases, this technical language does more against justice seekers than in their benefit. It is often the case that the language used by some law professionals is not only difficult to understand for lay people, but also for other law professionals. This completely contradicts the basis of *technification*. Muñoz Machado (2017, 11) explains it as follows:

The result of all these stylistic features crystalizes in texts which turn out strange not only for the citizen for whom they are made, but also [turn out] difficult to follow for professionals, even with a cautious reading. This incomprehensible and hermetic character results

[17] I will use this term here as the equivalent of its Spanish counterpart *tecnificación*, which refers to terms taken from natural language, but artificially delimitated in their meaning to reduce the potential semantic problems they could bear. It should be noted that a "technified" term is not a synonym of an artificial term, for example the terms used in formal languages, in that its meaning does not operate in a binary fashion (i.e.: "belongs", "does not belong", "is", "is not", etc.) but with a wider range of signification, although not as wide as that of a term of natural language. It is, in sum, neither a term from natural language nor a term from formal language but a bit of both.

contradictory to its goal. If legal rules affect every sphere of the individual and social lives of citizens, it would be expectable that they are, at least, intelligible. An incomprehensible Justice cannot enjoy prestige, nor fulfill its function.

If the basis of *technification* behind legal language is that it produces less uncertainty regarding rights and obligations of those under the Law, but in practice it constitutes a wall between them and Justice, why do we insist in using it? Muñoz Machado seems to draft the beginning of an answer in the last sentence of the quote: Justice enjoys prestige, a prestige given to it by its professionals.

Maybe the confusion stems from believing that Justice is the most prestigious when it is the furthest from comprehension; the more exclusive of those who are not Law professionals, the better. More prestige, more power; and as Norman Fairclough[18] (2001, 73) states, language is the arena of social power struggle. It makes sense, then, that this pretention of prestige and power materializes in the use of an inaccessible language: placing legal language far from the reach of certain people deprives them of a means to exercise their social power.

2.3. Features of Legal Language that Make it Unnecessarily Complicated

We have discussed the necessity for legal terms to have more delimited meanings than the terms in natural language. The consequence is that what we mean when we use a word in daily conversation does not mean exactly the same in a legal context. Take, for example, the word “agree”. In everyday conversation, agreeing means simply concurring with someone, even if we do not share their viewpoint. Often we agree with what a person says as an act of politeness, but only sometimes our agreement implies concurrence *and* consent. In legal language, “agree” always implies consent, and this assumption has such weight that it modifies the liability between the persons involved.

Something similar happens with the word “notice”. In everyday speech, we say we “notice” something even when we are not fully aware of what we are encountering. We say, for example, that we notice something from the corner of our eyes. It can hardly be sustained

[18] Fairclough, N. (2001) *Language and Power* (pp. 3, 68-76) London: Longman

that, in this way, noticing involves an act of willingness: a fully thought-out action. Yet, in legal language, to notice something means the person noticing made a voluntary effort to know the contents (and sometimes even the consequences) of that which is being noticed. Evidently, this affects the liability of the person.

Those justice seekers who approach the Law to solve their conflicts will often find such use of terms confusing. As I have mentioned, some of this delimitation of terms is necessary, and in benefit of justice seekers. This does not liberate Law professionals from explaining the meaning and extent of terms when justice seekers may find them confusing.

Another feature of legal language is the use of Latin terms. In most judgments, a person can find Latin terms such as "*per curiam*", "*in dubio pro reo*", "*certiorari*", "*ut supra*", "*ad hoc*", "*mens rea*", "*obiter dictum*", "*ratio decidendi*", "*in rem*", "*ex post facto*", and so on. Law professionals are very much used to these terms, to the point they forget they once struggled to understand them, and had to study and learn them.

The problem is, justice seekers do not spend enough time in contact in the Judiciary to justify learning (and using) these Latin terms, and therefore need clarifications when they are used. Some of the times, the use of these terms is justifiable, i.e.: when there is no equivalent in English, or when using a phrase to replace them would cause confusion. However, most of the times they can be paraphrased in plainer terms, or at least clarified between brackets.

Other features of legal language that render it unnecessarily complicated refer to the type of syntax used. It is common to find an extensive amount of passive voice ("The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted", "the judgment affirming his conviction is reversed", and "the case is remanded to the District Court"[19]). As a rule, active voice is easier to process than passive voice[20], and even though passive voice is sometimes necessary (i.e.: when there is a need to suppress the agent of the action), whenever possible, active voice should be used.

[19] All these examples were taken from "Dusky vs. the United States".
[20] Proof of this is that children's stories hardly ever use passive voice sentences. This is not to say that legal language should be "childish"; it should simply be more understandable.

Within the syntactic features, there is also a tendency to write long paragraphs composed of many subordinate clauses:

It is, therefore, by the Court CONSIDERED, ORDERED, and ADJUDGED that the prayer of the plaintiff for specific performance of the award of arbitrator, Robert A. Leflar, directing the reinstatement without loss of seniority of the employee Raymond Rigdon and further directing that the said Rigdon be paid back pay for the period commencing January 1, 1961, and running up to the day on which he is recalled to work, at the rate of his average earnings for a forty-hour week during the three months immediately preceding his discharge, be, and it hereby is, granted, and that the defendant, Virco Manufacturing Corporation be, and it hereby is, directed to abide by, perform, and carry out said award, and within ten days reinstate or offer to reinstate the said Rigdon in his employment without loss of seniority[21]*.*

It is evident that the clarity of such paragraphs is dubious. A plainer legal language should be written in shorter sentences. Accordingly, paragraphs should contain only one idea each.

Finally, some other complex (even archaic) features of legal language include the extensive use of modal verbs such as “may”, “might” and “shall”, and the use of gerunds as nouns (“the findings”, “the understanding”, “the proceedings”, “the resulting”, etc.).

[21] United Furniture Workers of America, AFL-CIO, local No. 395, plaintiff, v. Virco MFG. Corporation, Defendant. No. LR-61-C-96. United States District Court E. D. Arkansas, W. D. March 9, 1962. To be fair, this paragraph alone serves as example of all the features of legal language I have mentioned so far.

3. The Normative Source: National and International Bases for a Plain Language.

3.1. The Necessity for Plain Language in the Universal Declaration of Human Rights

We can find, within the international legal system, and within the Human Rights instruments recognized in the Argentinean Constitution as hierarchically equal to itself, Sections 1 and 2 of the Universal Declaration of Human Rights[22]. Section 1 states that dignity and rights have to be recognized for all human beings equally. If those with more formal instruction, or more economic resources have more access to Justice, and these advantages result in that they can seek and find in the Law that which they need and use it for their benefit while others cannot, we cannot talk about *equal* dignity and rights. There will be true equality when every person, regardless of their social, economic, educational, conditions has access to Justice. And for this, it is necessary a legal language every person can understand.

Likewise, Section 2 points out that there cannot be distinctions before the Law regarding conditions inherent to a person. However, in the impossibility of accessing Justice by themselves, there is an implicit distinction between those who can and those who cannot understand legal language.

3.2. The Necessity for Plain Language in the International Covenant on Civil and Political and Rights

Section 14 paragraph 3 subparagraphs a, d, e and f of the ICCPR[23] goes even further, and sustains that a person accused of criminal charges has the right to be informed why they

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[22] *Art. 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*
Art. 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

[23] *Sect. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

are being charged and for which crime, in a way they can understand it, even in detail. Evidently, merely informing this to them in their mother tongue is not enough. If the Law professional said, for example:

The certified point of law is whether the Court of Appeal may order a re-trial having quashed a conviction on the grounds of serious executive or prosecutorial misconduct, and, if so, in what circumstances. There is no doubt about the answer to the first part of the question since section 7(1) of the Criminal Appeal Act 1968 gives a discretion to the Court of Appeal to order a re-trial "if it appears to the Court that the interests of justice so require." (Maxwell, R. v., 2010)

One could hardly say that the person receiving this sentence was "informed promptly and in detail" about their case[24]. Subparagraph d states that the person charged is entitled to defend themselves personally. In this same sense, subparagraph adds that the person should be able to examine witnesses. Both activities would be hard—if not impossible—if the accused could not understand the charges against them in the first place: the technical terms of legal language leave a person as defenseless as la Esmeralda.

Subparagraph f grants the accused the right to an interpreter, in case of not understanding the language spoken in the Court. In my opinion, this rule can be interpreted in two senses: Strictly speaking, a person being charged of a crime must be assisted by a sworn translator when they cannot understand the language spoken in the place (country, state, area, etc.) where the Court is. In a broader sense, it grants the accused the right to be assisted by an "interpreter" able to explain to them in plain words what the Court says. If the aim of this rule is the right to a legal defense, and the legal defense includes and implies fully understanding every step of the process, both interpretations are equally acceptable.

3.3. The Necessity for Plain Language in the Covenant on Economic, Social and Cultural Rights

Similar to what is established in the ICCPR, Section 1 paragraph 3 and Section 2 paragraph

[24] I am somewhat vexed at the fact that I did not need to read several sentences to find a hard-to-comprehend passage. This extract actually comes from the very first sentence I found.

2 of the CESCR[25] highlight the self-determination and non-discrimination granted to human beings. Non-discrimination has been discussed above.

Regarding self-determination, a person cannot choose freely if they do not have a complete understanding of that which they are choosing. This has direct impact in the exercise of rights: one cannot choose how exercise one's rights if one cannot understand the language in which they are written. One cannot choose *whether* to exercise a right at all, if one cannot understand the contents of that right. And the contents are expressed in language.

3.4. The Necessity for Plain Language in the Inter American Convention on Human Rights

Section 8 paragraph 2 subparagraphs a, c, and d of the IACHR[26] reproduce what is stated in the ICCPR, about the necessity of being assisted by an interpreter and to defend themselves and communicate freely with an attorney. However, subparagraph c adds that the accused is guaranteed adequate means for the preparation of their defense. These "adequate means" include the comprehension of legal language, and for these means, such comprehension is essential.

[25] Sect. *1. 3.: The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations. Sect 2. 2.: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

[26] Sect *8 inc. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:*

a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

3.5. The Necessity for Plain Language in the Convention on the Elimination of all forms of Discrimination against Women

Finally, the recitals of the CEDAW state that women have—in relation to men—more obstacles in the exercise of their rights. This conveys that all of what has been said so far proves harder if the person against whom the charges are being pressed is a woman. Section 15 paragraphs 1 and 2[27] point out that women must, in every sense, be equal to men before the Law. The fact that an international covenant has to make this point explicit and clear shows that the inequality between men and women exists around the world, and that it must be eradicated[28].

3.6. The Necessity for Plain Language in Other Rules and Laws

Some local and international laws addressed specifically to judges highlight the importance or writing their decisions in plain language. Section 19 of the Iberoamerican Code of Judicial Ethics states that judges should express "in an ordered and clear manner, legally valid reasons, appropriate for justifying the decision." Section 27 further states: "Grounds should be expressed in a clear and concise style, without making use of unnecessary technical details and with a conciseness which is compatible with the full comprehension of the reasons explained."

Similarly, the Consultative Council of European Judges, in its "Framework for Global Action: Plan for Judges in Europe[29]", has included an appendix for "Main Action Areas for the Purposes of Establishing Priorities within The Global Action Program." Section V paragraph d points out that a practical application of the Rule of Law involves "accessibility, simplification and clarity of the language used by the courts in proceedings and decisions."

Likewise, the **Recommendation of the Committee of Ministers to Member States**

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[27] *Art. 15. 1.: States Parties shall accord to women equality with men before the law.*
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

[28] This conclusion can be deduced from a rule of legislative economy: It would not make sense to order a solution for a problem if the problem did not exist in the first place.

[29] Council of Europe, CCJE (2001) 24, Strasbourg, 12 February 2001, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680657eee

on Judges, regarding independence, efficiency and responsibilities, in its Chapter VII "Duties and Responsibilities", paragraph 63 states that "*judges should give clear reasons for their judgments in language which is clear and comprehensible.*"

The Committee has also referred to the necessity for judges to make their decisions known in a clear manner in the Recommendation No. R (87) 18, concerning the simplification of Criminal Justice. Here, section II, subsection c paragraph 2, regarding penal orders, mandates that judges inform the accused in a "clear and definite manner". Section III subsection d of the same document, in its paragraph 3 determines that the judge must explain to the jury members as clearly as possible the issues for decision and the law relevant to the case.

In Argentina, the efforts toward the use of clear language in the Judiciary and the Legislative are still timid. Section 3 of the Argentinean Civil and Commercial Code instructs judges to solve the controversies brought to them through a "reasonably based" decision. The term "reasonable" is vague enough to admit a potentially infinite number of bases. Some jurists have understood that reasonability includes clarity[30]. Section 42 of the National Constitution, referring to the rights of consumers, states that they should be offered "adequate and true information".

Clearly, if the Constituent believed this was necessary in the legal relation between sellers and consumers (i.e., parties in a private Law relation), it should be all the more necessary in the relations between subjects and the Judiciary. Section 36 paragraph 6 of the National Civil and Commercial Procedure Code specifies that judges must "clarify obscure concepts".

This implies that there should not be obscure concepts in the first place. Finally, in September of 2019, the Buenos Aires Supreme Court adhered to the Plain Language

[30] See, for example, Andruet A. S., "Lenguaje claro y motivaciones morales en las sentencias", C*omercio y Justicia*. July 26, 2017, available at: https://comercioyjusticia.info/blog/opinion/lenguaje-claro-y-motivaciones-morales-en-las-sentencias/; and González Zurro, G.D, "Sentencias en lenguaje claro", *Pensamiento Civil*. December 31, 2018, available at: http://www.pensamientocivil.com.ar/doctrina/3990-sentencias-lenguaje-claro

Network[31], which should influence not only the sentences of the Court but also the formation of future law professionals.

This rather long list of laws, rules, and treaties is meant to show that the local and international legal orders point toward an application of justice that includes plain language.

Put differently, when we assume that legislators are rational, we assume as well that the legal system they create has certain features: unity, hierarchy, cohesion, non-redundancy, among others. Cohesion implies two senses of the term: that rules and laws do not contradict each other[32], and that rules and laws—individually—do no contradict the general spirit of the legal order. This last sense is a bit more difficult to identify: it could happen that an individual rule does not contradict any other rules, but goes against the aims of the others. It could happen, for example, that all the rules and laws of the system point toward "consolidating peace" (an order given in the Preamble of the Argentinean Constitution), but a single, isolated rule aims at confronting two groups of people. From the harmonious interaction of these rules and norms, it can be deduced that access and understanding of the language used in legal contexts is necessary, and in accordance with the goals of the system. A language that guarantees the transparency of the public functions, the right to a defense, and the compliance of judicial decisions will bring justice seekers closer to justice.

The principle that transversally links all the cited rules is *favor debilis,* "in favor of the weakest". The Law is not blind to the social power differentials among people. Judges and legislators know that those with more social power are better placed before the Law. This principle constrains law professionals to find ways of balancing this maladjustment, and giving more tools to those with less power.

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[31] Suprema Corte de Buenos Aires web page, "Adhesión a la red de lenguaje claro", September 3, 2019, available at: http://www.scba.gov.ar/institucional/notayfotos.asp?expre=Adhesi%F3n%20a%20la%20Red%20de%20Lenguaje%20Claro&veradjuntos=no

[32] This means that two rules or laws assign the same behavior opposite deontic characters.

4. Case Study. Bases for Plain Language Written by Judges

4.1. About the Obligation of Providing a Translator for Assistance

Evidently, if the need for a plain language can be concluded from the interplay of rules and laws, there will be sentences where judges will stress this necessity. It is fairly easy to find sentences where judges have declared the nullity of an act or decision based on the fact that the accused did not understand the language spoken by the Court, and no translator was appointed to assist them. These cases highlight the accused's right to a fair trial and, as the international treaties mentioned state, to participate in the process.

One paradigmatic case in this sense was "Negrón v. New York".[33] Rogelio Negrón was a Puerto Rican immigrant with no understanding of English. He was charged for the murder of a fellow worker in 1970. Most of the trial developed in English, with rare occurrences of Spanish. Negron's court appointed lawyer did not speak Spanish. He was convicted for second-degree murder, but the Court of Appeals overturned the decision, based on Negrón's right to a fair trial.

The assertions made by the Court of Appeals about Negrón not understanding the language describe as well the lack of understanding that comes from not knowing legal language as a law professional. The Court found that to Negrón, and without the aid of a translator, "most of the trial must have been a babble of voices"[34], and that he "deserved more than to sit in total incomprehension as the trial proceeded"[35]. As mentioned above, what the Court essentially found is that the lack of knowledge of the English language put Negrón in a situation of disadvantage, and that this disadvantage should have forced the judges in the original cause to apply the principle *favor debilis*, and give Negrón some sort of "leverage" (through the aid of a translator) to better exercise his rights.

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[33] St.Johns University, School of Law. Negron v. State of New York. Available at: https://scholarship.law.stjohns.edu/lawreview/vol46/iss3/14/

[34] United States Court of Appeals, Second Circuit, United States ex Rel. Negron v. State of N.Y, 434 F.2d 386 (2d Cir. 1970) Decided Oct 15, 1970, page 2.

[35] *Íbid.*, page 3.

This was also found by the Court of Appeals in the case Reina Maraz[36], in Argentina. Reina Maraz is an immigrant from a small town in Bolivia. Her mother tongue is Kichwa, and by the time of the events, in 2010, she understood very little Spanish. The first part of the trial developed without an assisting translator: the Supreme Court in Buenos Aires has a list of official translators, but mostly for European languages, such as English, Italian, Portuguese and German. This list did not include translators in aboriginal languages, and the Court took over a year to appoint a translator in Kichwa. Reina Maraz spent this year (and a half) in prison, not sure of what charge was being held against her. When the translator was finally assigned, the first words Reina said to her were "I don't understand anything"[37].

The First Instance Tribunal convicted Reina for aggravated murder. The sentence was appealed, and in 2016, the Criminal Appealing Court found that the trial in First Instance had violated Reina's right to a fair trial. In its sentence, the Court referred to the Human Rights international instruments, and provided a defining aspect of discrimination: "[…] this logically implies that discrimination is not putting in context the particular circumstances of a certain person whose conception and socio-cultural formation is completely different to the main one in the sphere we occupy."

This means that judges have an obligation—arising from international instruments hierarchically equal to the Argentinean Constitution—of applying the principle *favor debilis*, considering with special emphasis personal circumstances that put justice seekers in disadvantage before Justice. Not considering Reina's lack of understanding, as well as Negrón's lack of understanding, constitutes discrimination by omission.

[36] "M. B., R s/ recurso de casación", Sala sexta del Tribunal de Casación Penal de la Provincia de Buenos Aires, December 29, 2016.
[37] Cecci, H. "Sin intérprete y en manos de la Justicia" [Without Interpreter and in the Hands of Justice], *Página/12*, October 14, 2013. Available at: https://www.pagina12.com.ar/diario/sociedad/3-231199-2013-10-14.html

4.2. Similarities with Cases Referring the Need to Understand Legal Language

All of the grounds for the decisions described above apply to the situation of not understanding legal English, in spite of speaking the language used by the Court. In the case Dusky vs. the United States, the Court of Appeals for the Eighth Circuit remanded the case to the District Court. The reason was that the judge's findings about Dusky's competency to stand trial lacked sufficient grounds of support. The District judge had based his decision in the fact that Dusky was well oriented time-and-space wise, and remembered some of the events. According to the Court of Appeals, this is not enough to prove Dusky's competency to stand the trial. The District judge should have proven "*whether he [Dusky] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him*[38]." The understanding of the proceedings is essential for the rights to adequate defense and fair trial. Evidently, the exercise of such rights would not be possible without a full understanding of that which was said to him.

The Argentinean Supreme Court has found in a similar way in the case "José María Orgeira"[39]. Mr. Orgeira had had a sentence deciding against his petition in First Instance. Given that the grounds for the decision were difficult to understand, he appealed the sentence. The decision made by the Court of Appeals was even more difficult to understand. Orgeira then files for a *Recurso Extraordinario Federal* (similar to a petition for Writ of Certiorati) before the Court of Appeals. The Court denied it, and Orgeira filed a motion for reconsideration of dismissal of petition. After all this Kafkaesque journey, the Argentinean Supreme Court analyzed the sentences, and especially the language used by the judges of the Court of Appeals. The Court concluded that such sentence threatened Orgeira's right to

[38] Dusky *v.* United States. On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit. No. 504, Misc. Decided April 18, 1960.
[39] "José María Orgeira" [1992]. Volume 1/1992 Corte Suprema de Justicia de la Nación (Argentinean Supreme Court of Justice).

defense:

Accordingly, the sentence not permitting to know the motives leading the quo tribunal to dispose the dismissal with prejudice must be revoked. The use of terms not existing in Spanish, added to a syntax that conspires against a clear understanding of the arguments, fail to minimally ground the decision.

The Court goes on to cite some examples of the problematic sentence[40]:

[..] After reflections that cannot be considered grounds for the decision, the tribunal concluded that "it results diaphanous that continuing the inquiry described this picture of situation, it does not only not query a finality useful for investigation, but rather it is not observed under which signs it could come to architectate (sic) the legal impression axis of the analysis, given that it is desirable that the inquisitive pretention does not reveal a motive as turbid as that which the impugnee comments about the background of the relations between the different branches of the Goyenas..".

The Court found that Orgeira could not defend himself of such assertions, and revoked the sentence.

4.3. Some Examples of Sentences in Plain Language

All of what has been said here so far, about the disadvantages resulting from a strict legal language, does not mean that law professionals should use either technical legal language or natural language. A fair golden mean should be possible, and some judges begin to understand this.

In Argentina, there have been, even though still very few, some sentences where judges have reserved a section to talk to those for whom the sentence is meant in a plain language. This is a valuable tool to accomplish both goals: a clear and efficient communication between law professionals and a way of bringing the justice seeker actually closer to Justice. Judge María Laura Dumpe, in charge of the Family Court No. 7 in Viedma, Province of Río

[40] The translation into English was done by me. The paragraph cited by the Supreme Court has been particularly painstaking to translate, since it does not make much sense in Spanish, thus the feeling that it does not make much sense in English. I have tried to translate it as closely as possible to the original. For reference, the original states: " (…) resulta diáfano que continuar la encuesta descripto este cuadro de situación, no sólo no consulta una finalidad útil de pesquisa, sino que no se observa bajo qué signos se pueda llegar a arquitectar (sic) el cuño legal eje del análisis, ya que es de desear que la pretensión inquisitiva no revele un motivo tan turbio como el que el impugnante comenta acerca del trasfondo de las relaciones entre las distintas ramas de los Goyena ... ".

Negro, wrote a sentence[41] containing a clause in plain language, with a simple explanation for the father of the child to understand his duties:

"…8) Next, and to facilitate the comprehension of what has been set forth here to C.N.P, I will dedicate this item to explain him in a simple way the decision made. This must be transcript in the court notice in bold characters and underlined, to facilitate its reading and comprehension.

Mr. P, an amount for child support has been established here in favor of your daughter, L.N.P. It consists of a monthly deposit of 30% of all your monthly earnings for any paid activity you carry on in a free of charge bank account opened in this file (…). To arrive to this amount, I have taken into account that you neglected L., not only regarding the amount of money the law orders you to pay, but also regarding giving her affection, walking her to school, helping her with her homework, attending to her health. In sum, you neglected her as a daughter, and that has an economic cost, since your attitude overcharges her mother (Ms. C.) (…). It must be clear to you that if Ms. C. files an appearance in this file and reports that you are not paying the amount fixed in this sentence, I can take different measures to make sure you pay the fee (…)".

This example shows a section of a sentence written to make it clear to the father of the girl what his obligations are. The clause is written in a plain enough language for the father not to object that he could not understand what was expected of him. Likewise, the language is plain enough for the mother to understand what her daughter's rights are, and how to exercise them. In this sentence, the mother of the girl could find in it what she was looking for, understand it, and use it for her needs. She could, in other words, have an effective access to Justice, without a wall in-between.

Another example, but from the Criminal Law field, was written by Dora Analía Antinori Asis, Criminal Sentence Enforcement judge at the *Juzgado de Ejecución Penal de la Séptima Circunscripción Judicial con asiento en la ciudad de Cruz del Eje* [Criminal Sentence Enforcement Court, 7th Judiciary Circuit, on the City of Cruz del Eje]. This sentence, addressed to a man who had been in prison and had served part of his conviction, explains that the man can continue serving his sentence at home, and the conditions under which

[41] Since sentences on family matters are not public in Argentina, I cannot provide a reference for this text. It was given to me by a judge who knows my interest for plain language.

this home arrest is granted:

Good morning, Mr. A... I have been reading all the papers sent by the Penitentiary Service. Considering that you have been behaving well, you will be allowed to leave prison under assisted liberty. For you to remain in liberty, you will have to fulfill the following conditions: 1) Live in your mom's house in (…). If you want to move, you will have to ask the Court for permission first; 2) You have to find a job; 3) You can't use drugs nor get drunk; 4) You can't be arrested again; (…)

These are only samples showing that it is possible for Justice to express itself in a language that does not exclude those who do not understand it, and that allows it to listen to those who do not speak it.

5. Conclusions and Recommendations

It is possible for law professionals to communicate in ways that do not isolate justice seekers; that do not give them the feeling that they are not heard (like it happened to La Esmeralda) and that do not harm their defense. Justice has ways of communicating with citizens in a comprehensible fashion. This accessibility does not necessarily neglect the precision and effectiveness the Law requires to reach its goals.

The difficult features of legal language—archaisms, Latin phrases, complex sentences, excess of passive voice, modal auxiliaries, strange words, etc.—can be worked out and replaced by plainer features. This is not only a matter of style; it is not only a way of writing: this is an order that can be deduced from rules, laws, and general principles of the legal order.

It is only partially true that the features of legal language are necessary to guarantee a more effective Justice. Languages are rich enough to always find new ways of expression: to further elaborate expressions to be inclusive not only of Law professionals but also of justice seekers and, by extension, of all the community.

The first step we should take, as professionals, toward a plain language in Law is eradicate from our minds that a complex legal language gives the legal profession prestige. It does not. Nothing in this world can be simultaneously incomprehensible and prestigious.

The second step is refraining ourselves from writing documents in "automatic" mode, and being conscious of the information we are trying to convey. It would be useful here to ask

ourselves, “Will the justice seeker understand this?” “Would I have understood this before Law school?” and if not, “How can I write this in a way that justice seekers—and the community—can use it for their needs?” Oftentimes the answer is a change in the vocabulary, some other times, a simpler syntax. And some other times, it is necessary—as we have seen above—to write a clause exclusively for them.

One third step would be taking this initiative to institutional contexts: Training court clerks and employees on how to write documents in plain language, and organizing classes and forums in bar associations, research institutes, and even within Courts. It is also necessary to teach new generations of lawyers—at Law schools—this perspective of legal language, and practicing with them the drafting of documents in plain language.

We should bear in mind that the legal system does not only have rules and laws, but also general principles, which are generic orders to achieve the most of something: the most of freedom, the most of equality, the most of justice. Principles keep the legal order together by orientating the aim of rules and decisions and, this way, maintaining cohesion as much as possible. General principles, those that can be concluded from the Constitution and the international treaties, make it clear that rules and decisions must be made in a language that is clear for justice seekers. An exclusively technical language means impeding the community from effectively accessing justice, but effectively accessing justice was the reason the Law was created in the first place.

CHAPTER THREE:

Social Security Rights for Children in Argentina.[42]

The purpose of this chapter is to provide a systematic and comprehensive analysis of a type of social security benefit set forth for children in Argentina. We will focus on the most prominent of them that is the AUH (Universal Child Allowance). To this end, the analysis on this subject will be carried out within the framework of the UN Convention on the Rights of the Child (CRC). In Argentina, the AUH is the most relevant social protection policy for children, this social protection policy is highly focused on the poorest strata of the population and varied studies and research on the subject have showed positive results in the impact that the same has on poverty, destitution and inequality.

1. Introduction. The Children´s Right Convention.

The CRC[43] is a United Nations international treaty that was approved on 20 November 1989. It comprises 54 Sections and throughout them, it recognizes that children are individuals with the right of full physical, mental and social development, and with the right to freely express their opinions. It is the first binding treaty at national and international level that brings together in a single text its civil, political, social, economic and cultural rights. The States that adhere to the convention are committed to complying with it. Accordingly, they undertake the obligation to align their normative framework with the principles of the CRC and to devote all necessary efforts to ensure that each child fully enjoys his or her rights.

This convention is developed or supplemented by optional protocols:

- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and the Use of Children in Pornography: Resolution A/RES/54/263 of 25 May 2000, entering into force on 18 January 2002. As of 28 November 2019, 176 states are party to the protocol and another 7 states have signed but not ratified it.
- The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Resolution A/RES/54/263 of 25 May 2000, entering into force

[42] Author of this chapter: María Fernanda Díaz.
[43] Available at: https://www.unicef.es/sites/unicef.es/files/comunicacion/ConvencionsobrelosDerechosdelNino.pdf

on 12 February 2002. As of 28 November 2019, 170 states are party to the protocol and another 10 states have signed but not ratified it.

- Optional Protocol to the Convention on the Rights of the Child concerning the Communication Procedure (which would allow children or their representatives to file individual complaints for violation of the rights of children): Resolution A/RES/66/138, entered into force in 2014. The protocol currently has 51 signatures and 46 ratifications.

The Convention on the Rights of the Child (CRC) is not only an international convention on human rights: it also forms a catalogue of rights expressing the legal norms used by legislators to legitimize systems of protection. The convention has been accepted in all nation-states worldwide, and by legislators who claim to promote legal development on a par with the normative spirit of the CRC. Therefore, the CRC is not only a slogan but a set of tools that expresses a normative order, that is, a 'know how' to legitimately protect children. This rule seeks to capture the normative spirit of human rights and the indivisibility of rights. CRC has become a benchmark in the development of child protection services, as a way of designing decision-making procedures, understanding what constitutes the integrity of the child, and developing professional and political practice.

The Convention typically divides children's rights into three categories: rights of protection, rights of provision and rights of participation (Hammarberg, 1990).

However, children's rights are indivisible and should not be seen separately or isolated from each other, but should be treated as holistic.

Section 43 of the Convention stipulates the creation of The Committee on the Rights of the Child, which is a United Nations agency that has the function of reviewing progress in fulfilling the obligations undertaken by States Parties that have ratified the Convention on the Rights of the Child. It also oversees the implementation of the two optional protocols to the Convention, publishes its interpretation of the content of human rights provisions, in the form of general comments on thematic and issues general debate.

It consists of 18 members spread over two chambers. Its members must be elected by States Parties, among their nationals, and carry out their functions in their personal capacity. A list of state-appointed persons are elected by secret ballot every four years.

States Parties undertake to submit to the Committee reports on the measures they take to give effect to the rights recognized in the Convention and on the progress made by the

measures taken.

The "**Supplementary, Shadow, Parallel or Alternative Report**" is a follow-up document prepared by civil society actors that addresses and critically analyses official government reports and resolutions.

Indeed, the Committee on the Rights of the Child also receives "shadow reports to the Convention", accepted by Section 45, which states that the same Committee may invite 'other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates'.

2. The CRC and Argentina.

Argentina ratified the CRC in 1990. Since 1994, the CRC text has been included in the National Constitution (Section 75/22 of the Constitution). Argentina also ratified the Optional Protocols.

In 2005, the Congress enacted Law N° 26061 on the Comprehensive Protection of the Rights of the Children and Adolescents, which created a General Protection System that considers girls, boys and adolescents as subjects with rights. This Law was regulated by Decree 415/2006.[44]

In particular, we will focus on Section 26, which provides that:

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Three types of obligations can be distinguished: respect, protection and compliance. It is necessary to make emphasis in this latter obligation because it includes the obligation to set up a **social security scheme**.

[44] Available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=115526

3. What is, in fact, "Social Security"?

Typically, there is a distinction between social welfare or social protection, social security and social assistance:

- Social Welfare or Social Protection: Is a more general and comprehensive term. It covers both social security and social assistance.
- Social Security: Covers allowances related to certain risks. These allowances are not intended to compensate for a potential state of need which could result from the risk itself.
- Social Assistance: Benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions.
- Social Insurance: Refers to a technique of providing social security benefits to workers and their families at the national level.

Whereas CRC Section 26 refers to social security, including social insurance, CRC Section 27 refers to material assistance in case of need.

4. Social Protection Systems: Cash Transfers Programs

As regards social protection, "Cash benefit programs for children" are considered essential tools. They play a key role in ensuring income security for families.

"Cash transfers" are the most common benefit schemes for children around the world. They are proven to have significant positive impact on families and children's lives but they should be combined with a broader set of social policies.

To ensure coverage for all children, some countries have established Universal Child Grants (UCGs) and similar programs. UCGs are programs that arise from national legislation to provide regular payments to all families with children. UCGs are paid in cash for the primary caregiver for children under 18 years. Other countries have child benefit programs that share some characteristics of the UCGs but do not meet the standards required, therefore these are considered quasi-universal child grants (qUCGs). There are three main types: short-term age-limited, affluence-tested and coordinated mixed schemes. (UNICEF, 2017-19)

5. Universal Coverage vs. Limited Coverage

A transfer scheme is Universal when the benefit is considered a right and is aimed at the entire population. It is selective when a specific or determined condition such as age, salary, etc. applies to determining eligibility. There are also systems that are mixed, that is, combine both criteria and are both universal and selective: All people within a given group are eligible regardless of their income.

Selectivity aims to exclude all those who are not poor, however, in most cases it has failed in this regard. Many countries have tried to reduce coverage and increase selectivity in order to increase the proportion of payments made to the lower sector on the income distribution scale, and while this helps to reduce type I errors (this is known to include people who should not benefit from the regime) type II errors (i.e. exclusion errors) are increased, resulting in an increase in the lack of assistance to those most in need. For instance, the United Kingdom, who had a UCG (Universal Child Grant) first paid in 1946, de-universalized it in 2012 by the Welfare Reform Act.

6. Conditional vs. Unconditional Programs

Cash transfers programs can also be classified depending on their design, in:

--Conditional Cash Transfer or Co-responsibility Transfer Programs (CCT) and

--Unconditional Cash Transfer (UCT) Programs.

"Overall, conditional cash transfers (CCT's) are payments made to households subject to the fulfillment of pre-defined conditionalities, such as sending their children to school or attending health checks. Unconditional cash transfers (UCT's) do not explicitly impose any obligations on the recipient in order to have access to the transfer." ((UNICEF), 2018)

The main argument in favor of conditional cash transfer schemes is that mothers, fathers or guardians would focus more on their own benefit rather than that of their children. For example, within the household parents decide to use the money in other things rather than in education, making their children drop out of school and go work instead.

Another argument is the lack of knowledge of the parents that causes them to make poor decisions. For example, parents with low educational level ignore the benefits of investment

in education.

In this context, conditionalities have the intention to make cash transfers something more than merely an allowance granted as economic aid for parents.

On the other hand, conditionalities could end up going against the spirit of this policy because, as we have previously stated, it would lead to an increase of exclusions errors and therefore, to a lack of assistance.
Also, in order to control compliance, it is required a vast amount of money and an administrative burden that would very probably result in cases of discrimination, clientelism, coverage mistakes, etc.

In addition, conditionalities open up space for arbitrariness in monitoring their compliance. (Vuolo, 2011)
There are certain assumptions in relation to unconditional transfer schemes, such as: transfers will be spent only in consumption, they create dependency and encourage laziness, they increase fecundity, etc. But these are not facts, on the contrary, evidence shows that cash transfers have a positive impact on poverty, food, health and access to education.

Beyond and above the previous arguments, the CRC clearly stablishes that all children and adolescents have the right to benefit from social security and States parties have an obligation to comply with and to **take the necessary measures to achieve the full realization of this right.** Therefore, **e**stablishing regressive or conditional policies to such right is not only inconsistent but also unconventional.

7. Social Protection in Argentina

--The Family Benefits - Regulatory Framework

The first family allowances were created in 1934. They consisted of maternal subsidies and benefits paid to children of workers of specific productive sectors. Later, in 1957, the first law created an integral system called the Family Allowance Fund for Workers of the Industry (*Caja de Asignaciones Familiares para el Personal de la Industria*). After that, other productive sectors were added, but all funds were for children under 18 years whose parents were formal workers.

In 1968, it was implemented a unification of the funds, remaining the administration independently by Subsidies and Family Allowances Funds (*Cajas de Subsidios y Asignaciones Familiares*).

In 1996, 24714 Act simplified the allowances scheme. In 2009, the AUH (Children´s universal transfer program; Asignación *Universal por Hijo*) was created, expanding the coverage of the allowances.

-- Enforceable Acts and regulations: [45]

- 23746 Act (1989): on pensions for mothers with more than seven children.
- 24714 Act (1996): on Family Allowances Scheme.
- Resolution No. 1976 (2006): on Plan NACER.
- Decree No. 1602 (2009): on the Universal Child Allowance.
- Decree No. 446 (2011): on the Universal Pregnancy Allowance.

These Acts and decrees regulate the social insurance and social assistance system.

--Scope of the law:

- Social insurance: Private-sector and federal public-sector employees, pensioners, temporary workers, and beneficiaries of work injury or unemployment programs.
- Exclusions: Self-employed persons.

Special system for household workers.

[45] Association, 2017.

Social assistance: Needy residents of Argentina and prisoners under certain conditions.

8. **The Universal Child Allowance for Social Protection- Final Words.**

The AUH (*Asignación Universal por hijo*) was created in October 2009 and implemented in November of that same year, through Decree no. 1602 and the Act n. 24.714.

It extended the coverage of contributory family allowances, in order to be inclusive of children of informal workers or domestic workers with incomes below the adjustable minimum living wage, of "*monotributistas*" (self-employed tax-payers), of unemployed persons and economically inactive workers without pension.

The AUH is a monthly conditional cash transfer run by the National Social Security Agency (ANSES) and paid to one of the parents or the guardian of each child or adolescent under 18 years of age, up to five children per household. If the child has a disability there is no age limit.

Of the total allowance, 80% is paid on a monthly basis to benefit recipients. To receive the remaining 20% the beneficiary must provide evidence of compliance with the conditionalities:

- For children under 5: Completion of the vaccination program and health checks.
- For school-age children: Certificate of school attendance.

Despite the significant increase in its scope and positive impact of the AUH, approximately a 1.6 million of children are still not under any scheme.

Barriers are caused mainly by the rigid eligibility criteria, difficulties to meet requirements, administrative limitations, etc.

The question is: To what extent poverty is being eradicated since the implementation of AUH? According to a study by Cetrángolo, Curcio and Maurizio,[46] in 2016, the AUH benefits were higher than the extreme poverty. All in all, the program has had a positive impact and has brought significant benefits.

[46] ANSES, Analisis de propuestas de mejora para ampliar la AUH, Estudio específico A by Oscar Cetrángolo, Javier Curcio, Ariela Goldschmit y Roxana Maurizio,
"Caracterización general, antecedentes y costo fiscal de eventuales reformas de la AUH - Oscar Cetrángolo, Javier Curcio, Ariela Goldschmit y Roxana Maurizio" Available at: https://www.argentina.gob.ar/sites/default/files/auh_web_0.pdf

The introduction of the AUH represents a substantial step forward in the face of the challenges of closing coverage gaps and the problems of poverty in Argentina. One of the most important results is that family allocation schemes have a very significant positive impact on indigence in children and adolescents and, to a lesser extent, on poverty. On the other hand, the coverage that would be achieved from the implementation of the AUH is virtually universal.

The AUH has been designed in direct connection with the social security contribution system, in the sense that it universalizes the system of family allowances for children of existing formal workers. The new configuration gives social protection a broader and more equitable structure by improving horizontal coverage contributing to form a social protection basis. As transfers have been designed with a conditional component to school attendance and health controls, they are in line with the trend of semi-conditional schemes.
"Despite the progress achieved in providing cash transfers to households with children, Argentina's current situation requires continued efforts to consolidate a comprehensive social protection system grounded in universal rights. One of the most important challenges is to achieve universal coverage since 13 % of children are still excluded from this type of social protection. Most are in households with the lowest incomes."

Considering this, it is imperative to modify the existing perspective of 'conditionality' to that of a truly universal right for children to access basic services.
Finally, it is important to consider that any social protection policy requires a comprehensive and modern monitoring and evaluation system that allows for the appropriate adjustments to be made in accordance with the situation in the economic cycle, the particularities of the labor market and the demographic changes experienced by the population.[47]

[47] ANSES, Analisis de propuestas de mejora para ampliar la AUH, Estudio específico A by Oscar Cetrángolo, Javier Curcio, Ariela Goldschmit y Roxana Maurizio,
"Caracterización general, antecedentes y costo fiscal de eventuales reformas de la AUH - Oscar Cetrángolo, Javier Curcio, Ariela Goldschmit y Roxana Maurizio" Available at: https://www.argentina.gob.ar/sites/default/files/auh_web_0.pdf

CHAPTER FOUR:

Social Security Agreements with reference to Argentina. [48]

The objective of this chapter is to reveal the importance of international human rights treaties and conventions in relation to the right to Social Security.

1. **Human rights treaties and their interaction with reality**

Human Rights imply basics values common to all cultures, and must be respected by countries worldwide. They are inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. Human Rights reflect the minimum standards necessary for people to live with dignity and equality. A Human Rights Treaty is an international agreement that imposes binding obligations to protect and promote rights and freedoms on States that officially accept it (commonly through ratification or accession). Those States are referred to as States Parties to the treaty.

States must protect against human rights abuse within their territory and/or jurisdiction by third parties. This requires taking appropriate steps to prevent, investigate, punish and redress abuse through effective policies, legislation, regulations and adjudications.

Regarding Social Security, this aspect was first mentioned in the social clauses of the Treaty of Versailles of 28 June 1919, in the Constitution of the International Labor Organization (ILO) and in the Declaration of Philadelphia of 10 May 1944. And it became a human right with the United Nations Universal Declaration of Human Rights of 10 December 1948 and the International Covenant on Economic, Social and Cultural Rights of 16 December 1966.

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. In relation to our matter, we must quote the following Sections:

Section 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

[48] Author of this chapter: MARICRUZ OJEDA.

Section 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights to the Non-Self-Governing and Trust Territories and individuals, including labor rights and the right to health, the right to education, and the right to an adequate standard of living.

Section 9.

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Social Security has also been mentioned in the United Nations Principles for Older Persons (1991), the Proclamation on Ageing (1992), the Political Declaration and Madrid International Plan of Action on Ageing (2002), as well as in various regional instruments, for example the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing (2003), the Brasilia Declaration (2007), the Plan of Action on the Health of Older Persons, including Active and Healthy Aging (2009) of the Pan American Health Organization, the Declaration of Commitment of Port of Spain (2009), and the San José Charter on the Rights of Older Persons in Latin America and the Caribbean (2012).

These instruments establish that the ideal of a free human being, free from fear and poverty can only be achieved if conditions are created that enable each individual to enjoy their economic, social, and cultural rights, as well as their civil and political rights.

2. Social Security Conventions.

2.1. **Introduction**

Social security is a human right which responds to the universal need for protection against certain life risks and social needs. Effective social security systems guarantee income security and health protection, thereby contributing to the prevention and reduction of poverty and inequality, and the promotion of social inclusion and human dignity. They do that through the provision of benefits, in cash or in kind, intended to ensure access to medical care and health services, as well as income security throughout the life cycle, particularly in the event of illness, unemployment, employment injury, maternity, family responsibilities, invalidity, loss of the family breadwinner, as well as during retirement and old age.

Therefore, social security systems constitute an important investment in the well-being of workers and the community as a whole, and facilitate access to education and vocational training, nutrition and essential goods and services. In relation with other policies, social security contributes to improving productivity and employability, and to economic development. For employers and enterprises, social security helps to maintain a stable workforce that can adapt to changes. Finally, it reinforces social cohesion and therefore contributes to building social peace, inclusive societies and a fair globalization by ensuring decent living conditions for all.

The Conventions and Recommendations which make up the ILO's standards framework on social security are unique: they set out minimum standards of protection to guide the development of benefit schemes and national social security systems, based on good practices from all regions of the world. They are based on the principle that there is no single model for social security, and that it is for each country to develop the required protection. For this purpose, they offer a range of options and flexibility clauses for the progressive achievement of the objective of the universal coverage of the population and of social risks through adequate benefit levels.

They also set out guidance on the design, financing, implementation, governance and evaluation of social security schemes and systems, in accordance with a rights-based approach.

In a globalizing world, in which individuals are exposed to ever greater economic risks, it is

clear that a significant national and international policy of social protection can contribute to attenuating the many negative effects of crises. It was for this reason that the International Labor Conference adopted a new instrument in 2012: the Social Protection Floors Recommendation (No. 202). Moreover, the 2019 General Survey, focusing on universal social protection for life in dignity and health, prepared by the Committee of Experts, which will be examined by ILO constituents at the International Labor Conference in 2019, covers this Recommendation.

--Social Security (Minimum Standards) Convention, 1952 (No. 102): This Convention sets out minimum standard for the level of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits. To ensure that it could be applied in all national circumstances, the convention offers states the possibility of ratification by accepting at least three of its nine branches and of subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the convention. The level of minimum benefits can be determined with reference to the level of wages in the country concerned. Temporary exceptions may also be envisaged for countries whose economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the convention and the coverage of the benefits provided.

--Social Protection Floors Recommendation, 2012 (No. 202): This instrument provides guidance on introducing or maintaining social protection floors and on implementing social protection floors as part of strategies to extend higher levels of social security to as many people as possible, in accordance with the guidance set out in ILO social security standards.

2.2. **Ten basic principles**: According to the ILO social security standards, there are ten basic principles:

1. Universal coverage: Everybody should be guaranteed at least basic income security in old age.
2. Benefits as a right: Entitlements to pension benefits should be prescribed by national law. The law should specify the range, qualifying conditions and levels of the benefits as well as complaints and appeals procedures.
3. Protection against poverty: Pension systems should provide a reliable minimum

benefit guarantee that effectively protects people against poverty, vulnerability and social exclusion, and allows life in dignity.

4. Income security and adequacy: Older persons should live in basic income security at least at a nationally defined minimum level. Those with earnings equal to or lower than the reference wage should be guaranteed a pension of at least 40 per cent of their pre-retirement earnings after 30 years of contributions (as set out in ILO Convention No. 102).

5. Actuarial equivalence of social insurance contributions and pension levels: A minimum replacement rate for all contributors adequately reflecting the level of the contributions paid should be guaranteed.

6. Guarantee of a minimum rate of return on savings: The real value of contributions paid into savings schemes should be protected.

7. Gender equality and gender fairness: Pension policies should follow the principles of non-discrimination, gender equality and responsiveness to special needs. Benefit provisions should be gender-neutral and gender-fair for working parents.

8. Sound financing: Pension systems should be financed in a financially, fiscally and economically sustainable way with due regard to social justice, equity and social solidarity, aiming at avoiding uncertainty about their long-term viability.

9. Fiscal responsibility: Pension schemes should not crowd out the fiscal space for other social benefits. Pensions should form part of a national social security extension strategy aiming at closing gaps in protection through appropriate and effectively coordinated schemes, reflecting national priorities and fiscal capacities.

10. State responsibility: The State should remain the ultimate guarantor of the right to income security in old age and access to adequate pensions.

2.3. **Pension systems**:

Pension systems around the world, including social security systems and private sector arrangements, are now under more pressure than ever before. Significant ageing of the population in many countries is a fact of life. Yet this is not the only pressure point on our pension systems. Others include:

--The low-growth/low-interest economic environment which reduces the long-term benefit of compound interest, particularly affecting defined contribution arrangements.

--The increasing prevalence of defined contribution schemes and the related increased responsibility on individuals to understand the new arrangements.

--The lack of easy access to pension plans for some workers in both developed and developing economies, whether it be due to informal labor markets or the growing importance of “gig employment”.

--Government debt in some countries which affects the ability to pay benefits in pay-as-you-go systems while high household debt in other countries will affect the long term adequacy of the benefits provided.

--The need to develop sustainable and robust retirement income products as retirees seek more control and flexibility over their financial affairs.

As significant pension reform is being considered or implemented in many countries, it is important to understand the importance of the reciprocal rules in this area. Many of the challenges relating to ageing populations are similar around the world, irrespective of social, political, historical or economic influences. Further, the policy reforms needed to alleviate these challenges are also similar and relate to pension ages, encouraging people to work longer, the level of funding set aside for retirement, and some benefit design issues that reduce leakage of benefits before retirement. However, it should be noted that these desirable reforms are often not easy and may require long transition periods.

The provision of financial security in retirement is critical for both individuals and societies as most countries are now grappling with the social, economic and financial effects of ageing populations. The major causes of this demographic shift are declining birth rates and

increasing longevity. But it is not only the ageing populations that represent challenges for pension systems around the world. The current economic environment with historically low interest rates in many countries and reduced financial returns are placing additional financial pressures on existing retirement income systems.

Globalization has meant that many employees move from one country to another for fixed periods of time. Therefore, granting social security rights to migrant employees is of fundamental importance.

2.4. **"International social security Conventions" or "International security agreements":**

"International social security Conventions" or "International security agreements" can be defined as agreements on social security matters between two or more countries which establish reciprocal rules that people who have worked services in those countries must follow to obtain the benefits foreseen in the relevant legislation of each state subscribed to the agreement.

Expatriates who have developed duties in a Labor Relationship or are self-employed and have made the respective contributions to the social security systems of countries that are parties to a reciprocity agreement for retirement matters can request the recognition of their duties in order to receive benefits by the international agreement.

Consequently, these international agreements guarantee access to social security rights for certain employees who have worked in different countries. Otherwise, they would not be entitled to receive their retirement benefits, as they would have no evidence in their country of permanent residence of their years of service or social security payments.

Under such international agreements, expatriates are covered by old-age, disability, death and medical-care benefits, family allowance, work-related illness and accidents and benefits for funerals.

2.5. **The S.S. Agreements Principles**:

The International Social Security Agreements constitute a formal source of International Law and the Contracting States must comply with them, also respecting the general principles of law.

The basic principle is the territoriality of the contributions: any foreign worker who provides services in a country must contribute according to the laws of Social Security of that country. This principle is enshrined in all international conventions and agreements when they determine that the rights recognized by the legislation of each Contracting State reach not only national workers but also foreigners who have permanent residence in their territory, extending this recognition to their family group.

It is for this reason that it is necessary to coordinate laws for the cases of workers who have been subject to different laws, precisely because they have worked in different countries.

The intention of this instruments of coordination or reciprocity is to allow coordinated actions of the different national laws. Therefore, these rules leave intact the freedom of states to determine the principles or rules of their own national Social Security systems. National laws continue to be fully competent to determine the personal scope, benefits and requirements to obtain them. The agreements only apply in situations where there are elements in which both countries are involved to some extent.

It is important to notice that Social Security agreements usually cover the basic social security regimes, leaving aside the complementary coverage.

3. **Social security Agreements in Argentina**.

Argentina has entered into formal Social Security Totalization Agreements to prevent double taxation and allow cooperation between Argentina and overseas tax authorities in enforcing their respective tax laws.

— Bilateral treaties:

- Spain
- Portugal
- Italy

- Chile
- Colombia
- Greece
- France
- Peru
- Luxembourg
- Belgium
- Slovenia

— Multilateral treaties:

- Mercosur: Uruguay, Paraguay, Brazil.
- Ibero-American treaty: Bolivia, Brazil, Chile, Ecuador, El Salvador, Spain, Paraguay, Peru, Portugal and Uruguay.

3.1. **Applicable legislation**

The purpose of these rules is to avoid the complications that may arise from the simultaneous application of various social security systems and ensure that the person is not faced with a void in the law and therefore is not left without any coverage.

The main rule is that the person is covered by the social security legislation of the State in which he or she performs the lucrative activity.

3.2. Territoriality principle

Rights and obligations of any labor relationship performed in Argentina are governed by argentine law, regardless of where the employment agreement was executed or the nationality of the parties. This general rule is known as *Lex loci executionis* or the principle of territoriality.

Within this scope, all work in a labor relationship performed in Argentina is governed, in principle, by argentine labor law. Consequently, if the employee is assigned to render services abroad, argentine labor legislation is not applicable.

The principle of territoriality also applies to social security rules. Taking into account the fact that labor and social security laws are mandatory in Argentina (i.e., they cannot be modified by the parties, except for the benefit of the employee in the case of labor law), the

employment contract of an expatriate in Argentina is governed by argentine law.

3.3. Social security obligations and retirement benefits

Pursuant to Argentine labor law, employers and employees have certain obligations to make social security contributions for family allowance, medical services, pensions and unemployment benefit.

The percentage amounts for withholdings and contributions are based on the employee's gross remuneration and take into account the employer's main activity and income.

As regards retirement benefits, pursuant to the Retirement and Pension Act 24.241, all employees working in Argentina must be covered by the Argentine social security system.

According to Section 19 of the Act – and to be entitled to receive the retirement and additional benefits that result from it – the beneficiary must be:

- 65 years old in the case of men.
- 60 years old in the case of women.

In both cases, the beneficiary must provide evidence of 30 years of service and social security payments.

It is mandatory in Argentina to adhere to the retirement system, but there are certain exceptions. According to Section 4 of Law 24.241, professionals, research workers, scientists and technicians recruited abroad to work in Argentina for no more than two years on a one-off basis are exempt and do not need to contribute to the retirement system. To avail of this exemption, the employee must not have permanent residency in Argentina and be protected against the contingencies of old age, disability and death by the laws of his or her own country of permanent residence.

Argentina's retirement income system comprises a pay-as-you-go social security system together with voluntary occupational corporate and individual pension plans which may be offered through employer book reserves, insurance companies or pension trusts. The Argentinian system could be increased by:

- Raising the minimum pension available to the poorest aged individuals.
- Raising the level of household savings.
- Introducing tax incentives to encourage voluntary member contributions to increase retirement savings.

- Increasing coverage of employees in occupational pension schemes through automatic membership or enrolment, thereby increasing the level of contributions and assets.
- Introducing a minimum level of mandatory contributions into a retirement savings fund.
- Improving the regulatory requirements for the private pension system.

3.4. **Personal scope**

Social Security Agreements shall apply to workers who are or have been subject to the Social Security legislation of one or both Contracting Parties regardless of their nationality, as well as their successors or beneficiaries.

The workers of one of the Contracting Parties to whom the provisions of the Agreement apply shall be subject to the same obligations and shall have equal rights as the workers of the other Party, when they reside in the territory of the latter.

3.5. **Temporary transfers**

As said before, the worker of one of the Contracting Parties that performs professional, research, scientific, technical or management tasks and is sent by a company based in it to perform in the territory of the other Party, may continue to be governed by the legislation of

the first country, as long as the stay in the receiving country is no longer than 24 months.

Once this period has expired, the worker may continue to be governed by that legislation if the Competent Authority of the receiving country so authorizes.
In cases of extension, the agreement to continue applying the legislation of the State Party of origin will be granted by the Competent Authority of the country of destination and must be requested by the employer prior to the expiration date.

The certificate of transfer or displacement will be extended in Argentina by the National Social Security Administration (ANSES).
The certificate will be granted to the worker, who must keep it in order to prove his pension status in the country of destination.

From the temporary transfer a minimum period arises to apply International Agreements that is equal to one year.
This means that if the worker of a Contracting Party (country 1) has made contributions in another Contracting Party (country 2) for less than one year, although these contributions may be considered in the totalization in order to achieve eligibility and access to a social security benefit, country 2 will not grant any social security benefit for that period

3.6. **Procedure for totalization**

The Entity will take into account the insurance or contribution periods fulfilled in accordance with the legislation of the other Contracting Party, as long as they do not overlap. The double contribution invalidates the application of the Agreement.

The theoretical amount of the benefits to which the interested person would be entitled is determined considering as if all the totalized periods had been fulfilled in the country where the benefit is being requested (country 1).

Then, they will establish the effective amount by reducing the theoretical amount through the pro rata tempore mechanism:
Total benefit (theoretical) x pro rata tempore country 1 = amount in charge of country 1

(prorated)

3.7. **Minimum and maximum wages**

The minimum amounts guaranteed by the internal legislation of each State will serve as a basis for calculating the pro rata credit, when the basic credit is lower than that amount.
The maximum credit will be taken into account to determine the pro rata credit, if the basic credit or retirement base is superior to it.

4. **Case analysis**. **The case "Q. C., S. Y. v. Gobierno de la Ciudad de Buenos Aires – amparo[49]"**

In order to be practical, we will include a case which was filed in Buenos Aires. It was related to the Right to a Home, as part of Social Security rights, protected by the Constitution and different Social security Agreements.

4.1. **Facts**: The case is related to a complaint filed by Mrs. Q against the City Government, because the latter had denied her inclusion in some government housing programs and had not provided alternatives to leave the streets, where she was with her son. The claimant stated that this situation was in violation of the fundamental rights to health, dignity and housing of two persons, one of them a child.

Even though the complaint did not particularly address the issue of social security, this case was important because it refers to some international human rights treaties.

[49] Available at: http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--gobiernociudad-buenos-aires-amparo-fa12000045-2012-04-24/123456789-540-0002-1ots-eupmocsollaf

4.2. **Regulations at stake**:

The Constitution imposes that the State must provide the social security benefits, which are integral and inalienable (art. 14 bis).

The regulations that were taken into account in this case were the UDHR, the ICESCR, the National Constitution, the Buenos Aires City Constitution, and the Convention on the Rights of persons with disabilities.

The Court has repeatedly held that the National Constitution, as a legal norm, recognizes human rights so that they are effective and not illusory, since the obligation to regulate them cannot be for any purpose other than to give them all the content that they assign. Therefore, any law must guarantee the full enjoyment and exercise of the rights recognized by the Constitution and by the international treaties in force on human rights (*Fallos*: 327:3677; 332:2043).

"Guarantee" means much more than simply abstaining from adopting measures that could have negative repercussions.

Additionally, the normative duty assumed by Buenos Aires City Government in the matter had been expressly recognized by the (at that time) Minister of Social Development, María Eugenia Vidal.

It is pertinent to note that, under the Optional Protocol to the ICESCR (approved by Argentina by law 26.663) the United Nations Committee on Rights, Social and Cultural Rights has set a series of guidelines to establish how can be understood the commitment of the states "... to take measures to the maximum extent of the resources available to them ..." in order to programmatically achieve the full effectiveness of the recognized rights.

It is not about assessing the price of the service that the State pays, but rather assessing its quality in terms of adapting to the needs of case. In other words, the State's investment must be adequate, which does not depend solely on the amount it allocates, but fundamentally on the suitability of the expenditure to overcome the situation or alleviate it as much as possible.

To sum up, it should be noted that the fundamental rights that enshrine State obligations are subject to reasonableness control by the Judiciary.

The Court has repeatedly said that the National Constitution implies a legal norm and, as it recognizes rights, it does that so they are effective and not illusory, especially when a fundamental human right is under debate.

The ICESCR also imposes obligations on the States, in order to prevent their rights from becoming mere expressions of wishes. ICESCR Section 2 states, for instance: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

4.3. **The Court´s decision**:

In this case, the Argentinean Supreme Court has established that the measures of the State, complying with Human Rights (such as the ones discussed in the case) must be really effective; really **adequate to achieve** the purpose set forth by law. This assertion implies that the State must take into account the personal, social and economic different capacities of the inhabitants, and implement appropriate and conducive policies to ensure that everyone has the same opportunities.

Additionally, the Court has said that budgetary deficiencies cannot justify the breach of the National Constitution or international treaties, especially when it comes to fundamental rights.

The importance of this case is that it applies typical human rights recognized by international treaties.

5. **Conclusion**:

Globalization processes have produced an enormous growth in migration, and, as a consequence, the mobility of a universe of workers. For this reason, guaranteeing the rights related to the social security of migrant workers takes on an essential importance. With the objective of achieving a more effective and complete protection, the States enter into International Social Security Agreements that allow, among other things, to harmonize the

different systems that belong to each of the countries.

Consequently, these international agreements guarantee access to social security rights for certain employees who have worked in different countries. Otherwise, they would not be entitled to receive their retirement benefits.

To sum up, under such international agreements, expatriates are protected[50] from the difficulties posed by old-age, disability, death and medical-care benefits, family allowance, work-related illness and accidents and benefits for funerals.

[50] They are protected by the regulations of international treaties, such as ILO, UDHR and ICESCR, among others..

CHAPTER FIVE:

Rights of the Elderly in Argentina. [51]

Day by day, more cases of Human Rights are recognized, even though most of them are not fulfilled as they should. Human rights of older persons are no exception. These rights are contemplated in the Inter-American Convention on protecting the human rights of older persons. This is the first specific legal instrument, passed in 2015, in the field of human rights of Elderly; it seeks *to promote, protect and ensure recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons, in order to contribute to their full inclusion, integration, and participation in society.* [52] The aim of this particular chapter is to detect the flaws in the Argentine legal system that prevent the eradication of all forms of violence against the Elderly.

1. Introduction

In order to plunge into the subject matter, we must include some of the concepts that are going to help for a better comprehension.

One of the concepts is "**Older person**". "T*he definition of old age many times followed the same path as that in more developed countries, that is, the government sets the definition by stating a retirement age"*[53] and taking this into consideration the Inter-American Convention on Protecting the Human Rights of Older Persons defines "older person" as a *person aged 60 or older, except where legislation has determined a minimum age that is*

[51] Authors of this chapter: Abril Valentina Villafañe Calvo and Noelia Anabella Ruiz Moretti.

[52] Oas.org. (2019). Op cit.

[53] World Health Organization. (2019). Proposed working definition of an older person in Africa for the MDS Project. Accessed 7 Sep. 2019. Available at: https://www.who.int/healthinfo/survey/ageingdefnolder/en/

lesser or greater, provided that it is not over 65 years.[54]

The elders are a group of people that has to be protected by the law because of their **vulnerability**, most of them do not have a family (or even are abandoned by them), who can take care of their needs, such as medical check-ups or actions from the everyday life such as shopping at the grocery store or paying taxes.

2. **The International Law achievements.**

In 1980, it was clear that the Elderly were immersed in a situation characterized by the total lack of legal protection. Due to this lack of legal protection, the General Assembly of the United Nations convened the first World Assembly on *Ageing* in 1982.

2.1. **The Vienna International Plan of Action**.

As a result, the first document on the matter was issued. It lays the foundations for the rights of the elderly, the **Vienna International Plan of Action**. The Plan of Action deals both with issues affecting the ageing as individuals and those relating to the ageing of the population, examining sub-topics such as health and nutrition, housing and environment, the family, social welfare, income security and employment, and education. These humanitarian and developmental issues are examined with a view to the formulation of action programs at the regional, national and international levels. These programs include proposals for broad guidelines and general principles as to the ways in which the international community, Governments, other institutions and society at large can meet the challenge of the progressive ageing of societies and the needs of the elderly all over the world. In turn, the Action Plan shows great interest by introducing an obligation when talking about the insertion of the elderly into society, that is, the document strongly demands the situation of the elderly to not be considered separate from the overall socio-economic conditions prevailing in the society, adding that the elderly should be viewed as an integral part of the population and must be considered an important and necessary element in the development process at all levels within a given society.

[54] Oas.org. Available at: http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf [Accessed 7 Sep. 2019].

2.2. A **Second World Assembly on *Ageing*** was held twenty years later, in 2002, in order to assess the progress made by Member States during the intervening 20 years, in implementing the Vienna International Plan. The document that was born from this second assembly was called 'The Madrid International Plan of Action' and it offered a bold new agenda for handling the issue of ageing in the 21st-century, focusing on three priority areas: older persons and development; advancing health and well-being into old age, and ensuring enabling and supportive environments.

This was the first step taken by the international community in order to generate a series of documents containing guiding principles, or general criteria of legal interpretation.

3.3. **Inter-Governmental Regional Conference on Ageing in Latin America and the Caribbean:** It started in 2003, with the aim of building an institutional space, to discuss the need for elaboration and the content of an international convention on human rights for the elderly. As a result, a number of documents were created, such as the Brasilia Declaration, where participating States made a commitment to spare no effort to promote and protect the human rights and fundamental freedoms of all older persons, to work on the eradication of all forms of discrimination and violence, and to create networks for the protection of older persons to enforce their rights.

2.4. **Resolution 65/182**: In December 2010, the General Assembly of the United Nations, through Resolution 65/182, decided to establish an open-ended working group on Ageing, with the purpose of increasing the protection of the human rights of older persons by examining the existing international framework in this area and determining their potential shortcomings and how best to remedy them.

The international community remains compelled to solve two relevant problems affecting the rights of the elderly. On one hand it is necessary to provide guarantees that are valid for those universally declared rights; and on the other, it is urgent to achieve the improvement of its contents, articulating them, updating them, so that they do not become rigid in formulas and can be applied to specific cases, without becoming an empty sentence.

2.5. The **First Inter-American Convention on Protecting the Human Rights of Older**

Persons. In June of 2015, The Organization of American States (OAS) created and promulgated the Inter-American Convention on Protecting the Human Rights of Older Persons.

This document, binding on all countries that ratified it in their domestic law, is the first of its gender and is a milestone in the process of specifying the rights of the elderly.

The convention has a total of forty-one items structured in seven chapters. The first lays the groundwork for purpose, scope and definitions (incorporating innovative definitions as to which age discrimination in old age, older person, older person receiving long-term care services, among others).

The second chapter lists the general principles applied by the convention, these being such as the promotion and defense of human rights and fundamental freedoms of the appreciation of the eldest person, their role in society and contribution to the development, dignity, independence, prominence and autonomy of the eldest person together with his self-realization, gender equity and equality and life course approach, solidarity and strengthening of family and community protection, the approach differential for the effective enjoy of the rights of the eldest person, effective judicial protection, the responsibility of the State and the participation of the family and the community, full and productive integration of the eldest person within society, in addition to the care and attention, in accordance with their domestic legislation; as well as other principles found within Section three of the aforementioned Convention.

Chapter Three sets out the General Duties of States parties, they must take a number of measures to achieve the safeguarding of human rights and the fundamental freedom of the elderly, such measures are listed in Section four, which begins by implying that states should take measures to prevent, punish and eradicate practices contrary to the convention, such as isolation, abandonment, prolonged physical fasteners, overcrowding, community expulsions, denial of nutrition, infantilization, inadequate or disproportionate medical treatment, including all medical treatments that are cruel, inhuman or degrading abuse or punishment that violates the safety and integrity of the eldest person; as well as adopting and strengthening all legislative, administrative, judicial, budgetary and other budget funds,

including adequate access to justice for the purpose stake ensure that the eldest person is treated differently and preferentially in all areas. Another duty that is stated and the States parties have to fulfill is the promotion of public institutions specialized in the protection and encouragement of the rights of the eldest person and their integral development along with the promotion of the wider participation of civil society and other social actors, in individual of the eldest person in the development, implementation and control of public policies and legislation aimed at the implementation of the Inter-American Convention on the Protection of the Human Rights of the Elderly.

The fourth chapter contains the essence of the document, which is the enunciation of the different protected rights, these being such as the right to life and dignity in old age, the right to independence and autonomy, the right to security and live without any violence, the right to social security, accessibility and personal mobility, among others.

Chapter Five features a part of Awareness-Raising, in which States parties accept a number of conditions that will make the convention have a purpose in its application in reality and are not words that are taken away by the wind.

As for the last chapters, the document embodies a number of convention monitoring mechanisms and means of protection, leaving the seventh chapter for general provisions.

3. The right to Old Age

From a juridical-sociological point of view, the creation of the law of old age is linking to a democratic and social phenomenon which is global and **multigenerational ageing**. This specialty is an attempt at a comprehensive response, in the face of the growing demand for strengthening, inclusion and protection of people because they are long-lived and located in the last stage of life. Some of the particularities that characterize this sector of the population derive from the impoverishment and exclusion of the economic system that they often suffer from. Others are associated with loneliness, identity crisis and *gerontolescencia* (a concept that aims to capture the spirit of these people who, after age 65, are still in full vital and work).

Ms. Maria Dabove, a specialist on Elder´s Rights, has written some Sections for the Latin American magazine of Bioethics. There, she states a sentence that really “marks reality”. She sets out a strong perspective, by saying that: “Today, the old age puts us before a new legal challenge: to understand our injustices regarding this stage of life, and to solve them”.

This accurate phrase suggests the reason why a discussion opens up on the principle of equality and non-discrimination, giving him a look that spans these new legal figures in pursuit of an acknowledgement of the particularities of this vulnerable group.

The right to old age was shaped, as Maria Dabove points out, thanks to the contribution of Bioethics (branch of ethics dedicated to providing the principles for the most appropriate behavior of the human being with regard to life, both of human life and of the rest of living beings, as well as to the environment in which acceptable conditions can occur for it).

With the parameters of Bioethics, the relationship between the legal system and the elderly can be strengthened, in terms of these placed in conditions of social vulnerability to other individuals, to the regimen itself, and in the face of other circumstances. The right to old age includes the study of **five main issues** inspired by **Resolution 46/91 on the United Nations Principles for Older Persons**, adopted by the United Nations General Assembly on 16 December 1991.

These five issues are as follows:

1. Age discrimination, vulnerability and legal capacity of the elderly.

2. Human rights relating to self-determination, freedom and property in old age.

3. Human rights of participation concerning family, social inclusion and political participation.

4. Social rights based on the demands of material equality of older people

5. The protection and guarantee systems to ensure access to justice for this group.

As human rights are born in the modern age and developed in a process of specialization of these rights, initiated by the United Nations from the age of fifty, the right of old age is also heir to the initial models of rights, from which internalization and generalization were

possible. This is how the right to old age is presented today as the result of a mixture between the abstract conception of the human being of modernity and the most drastic version of the contemporary, a figure of the eldest person is seen not only from a biological point of view but also from a cultural and historical point of view.

4. ***Multigenerationism*** **and the Right of the Elderly**

Multigenerationism is a democratic phenomenon characterized by population, economic or cultural traits. From a population point of view, it refers to the coexistence of four, three or two generations of people. In terms of economics, *multigenerationism* unfolds as a process of increasing dependence, one of the losses that the elderly in becoming one must face is the cessation of their lucrative work activities. And from a cultural point of view, it refers to each generation creating in its being a way of understanding life different from the other, with different codes of coexistence and diverse political experiences.

Multigenerationism enters the law and impacts many legal institutions, especially those linked to family law, such as the right of food between relatives, guardianship and adoption, among others. Since the elders are a fragile group in the face of these situations, they bear the greatest weight of the negative legal consequences of this phenomenon.

Since the relationship between family law and *multigenerationism* was established, the next part is to know that in history there are three models of family legal responsibility between old age. The totalitarian model, the "abstentions model" and the paternalistic model. [55]

The totalitarian model is born in Antiquity and remains until the Middle Age. This develops on different assumptions, which affirm the existence of a strong or authority state, a society with low life expectancy divided into classes, a rigid family structure and a stereotyping concept of old age, reaching this stage meant being a sacred subject or it was simply a synonym of decrepitude, decay of the body and human soul. In the totalitarian model, the operating system of family legal responsibility worked in order to ensure the survival of the group, i.e. each subject occupies a place and fulfills a corresponding function for the same

[55] Classification by Maria I. Davobe in her Section ''*Derecho y Multigeneracionismo: los nuevos desafios de la responsabilidad juridica familiar en la vejez*'', published in ''*Revista de Derecho de Familia*'', Buenos Aires, 2008.

purpose.

The abstention's model is born in modernity, which brings with it the phenomenon of new social classes, the bourgeoisie and the proletariat, these inserted into a model of capitalist economy. Because of this the family will act as an important economic factor, leading to a historic stage of production in the small family workshop. As old age will be the object of contempt and marginalization for being synonyms of futility. In this system two operational principles of legal responsibility will become formally effective, with regard to the care of the elderly; on the one hand the principle of family responsibility in care matters (children and grandchildren were expressly obliged to provide food and care to their elders, parents or grandparents), and on the other, the state obligation to provide public relief is established in subsidiary form.

The paternalistic model makes its first appearance along with the social constitutionalism and welfare state of the twentieth century, giving way to new forms of social and institutional organization and new concepts of old age. The operating system of this model was based on assistances principles that intervened and advanced on family life. Family responsibility will be shared with the state action who will act through the development of constitutionally assumed public policies, thus being born a novel protective source that families will be able to count on, and this is the right to social security. This right will establish the first pensions and retirements, taking a bit out the burden that the economically active family group held in the other models.

The current situation is divided by two models, on the one hand we find the residual or liquid model and on the other we find the community model.

In the liquid model of family legal responsibility in old age, a double discourse is observed. On the one hand, the need to strengthen and empower the elderly is recognized. On the other hand, it is transformed and diluted values that used to find solidity and contention in families.

Instead, the community model advocates the active participation of states through the execution and creation of equal-egalitarian public policies that develop the sense of belonging of the elderly to the family and social group, that support attitudes of non-

discrimination, and participatory inclusion.

For Maria Dabove no model manages to satisfy the problematic that multigenerationism imposes on family legal responsibility, the first to prioritize a hypocritical individualism and the second for lacking formal juridical sources truly operational. This author is quite right to say that being a universally sized phenomenon (since it crosses children, young people, the elderly, rich, poor) demands substantive, sustainable and humanist legal solutions.

5. Old Age and Discrimination.

In order to fully enter this issue, it is convenient to stipulate that discrimination is meant. Discrimination, according to Maria Davobe, is an authoritarian distinction, constituting unequal legal relations (valuable or dis-valuable).

If the Argentine legal order is observed as regards this subtopic it had a small legal loophole when it comes to sanctioning Act 23.592 (National Act aimed at Sanctioning the Execution of Discriminatory Acts), which in its first Section stipulates what acts are discriminatory, deputing it as those in which someone arbitrarily prevents, obstructs, restricts or in any way impair the full exercise on equal bases of the fundamental rights and guarantees recognized in Argentina's Constitution. For the purposes of the Section, discriminatory acts or omissions determined on grounds such as race, religion, nationality, language, political or trade union opinion, sex, economic position, social condition or physical characteristics are particularly listed. Clearly from reading this Section it can be seen that the legislator, in this case, did not take age into account as a cause of discrimination, which is remarkable since situations of the type describing the Section are frequently suffered by older people.

In view of this, if a mention is to be made towards the law of Employment Contract (Law number 20,744) sanctioned in Argentina in 1976, which in Section 17 (seventeen) speaks about discrimination in the employment environment, incorporating in the list the reason of age. While it is a Section that is a resource for those elderly who are discriminated against in this field, it is noted that in the remaining others Argentine law leaves much to be desired. As a result, there is also no widespread social awareness of these issues. The lack of social awareness means that the existence of certain discriminatory acts by age is eventually observed as normal, without Argentine society realizing it and being able to say anything

about it.

As for the international community, with the creation of the Inter-American Convention on Protecting the Human Rights of Older Persons they made a breakthrough in conceptual matters, incorporating in Section two the definition of age discrimination. **Age discrimination in old age** is any distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life. This part can be said that mark a before and after in terms of age discrimination, however they still emphasize the recurring problems that the elderly suffer in their roles of victims of discrimination in relation to vulnerability poverty and isolation. These factors have built the development of ageism, which is the prejudice or discrimination on the grounds of a person's age.

On the issue of age discrimination, prevail negative and disqualifying **stereotypes**. Mostly older people are linked to disease, intellectual deficit, economic dependence and the absence of link with today. These negative interpretations of old age have a decisive and detrimental impact on the quality and life expectancy, as they affect the possibilities and mood of older people, destabilize their immune system and increase the propensity to contract diseases. The image that older adults have of themselves is also affected by these internalized stereotypes that diminish their self-esteem and self-efficacy, even leading them to self-exclude from the groups to which they belong.

Discrimination in this field can materialize in a variety of ways: it can occur through the representation of older people as **vulnerable** and dependent individuals, or lack of communication, either in different areas of society or in the context of the family itself. Discrimination and mistreatment of older people predisposes this population to feel estranged from social expectations and ideals, and often they themselves behave on the basis of these stereotypes.

It is important that Argentine society, and everyone, is attentive to these **prejudices** and stereotypes that affect the elderly so that in the not too distant future the paradigm can be changed and the elderly can live in a healthy environment in terms of all point of view.

6. Argentina and the Rights of Older Persons.

In the Argentinean law, this group of people this group of people who have been named during this work are protected by Section 14 bis of the National Constitution which declares that *the State shall grant the benefits of social security, which shall be of an integral nature and may not be waived. In particular, the laws shall establish: (...) adjustable retirements and pensions.*[56]

In addition, we can find an incentive to legislate and enlarge the legal system by the Section 75 subsection 23 (seventy-five subsection twenty-three), which refers to legislating and promoting positive measures to guarantee true equal opportunities and treatment, the full benefit and exercise of the rights recognized by the Argentine Constitution and by the international treaties on human rights in force, particularly referring to children, women, **the aged**, and disabled persons.

Given this, the enactment of new laws aimed at protecting the elderly or the implementation of some of the measures required by the Inter-American Convention on Protecting the Human Rights of Older Persons was not observed. In contrast, the Argentine State has enacted laws that violate human rights, such as pension reform in Argentina, it is a reform of the pension and retirement system promoted during the presidency of Mauricio Macri in December 2017. The reform reaches retirees and pensioners, among others and *it implies a reduction of 3% of the average retirements for 2018 and 8% for 2019, with a budget cut in social security of ARS 72,000 million for the fiscal year 2018.*[57]

One of the most serious topics in this situation is the denial of justice, and the repeated violations by a State Agency called “Anses,” against the right of hundreds of thousands of citizens who are forced to litigate with very few possibilities of reparation due to their advanced age and the more than slow administration of justice, ending their life as ~~a~~ pariahs

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[56] Biblioteca.jus.gov.ar. (2012). Argentina Constitution. [online] Available at: http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf [Accessed 29 Oct. 2019].

[57] Es.wikipedia.org. (2017). Reforma previsional en Argentina de 2017. [online] Available at: https://es.wikipedia.org/wiki/Reforma_previsional_en_Argentina_de_2017#Reacciones_internacionales [Accessed 28 Oct. 2019].

with their human rights violated repeatedly and without due protection from the Magistracy.

The Argentine Civil and Commercial Code sanctioned in 2015 that modifies the old Civil Code incorporating new paradigms, says vaguely about the rights of the elderly, even though one of the great advances it brought with it was the process of transformation of the “Private Law” under the influence of the Constitution. This process has implied the adaptation of certain institutes to the International Human Rights instruments that Argentina had previously ratified.

The Civil and Commercial Code, on section 671, mentions the “duties of children with respect to their parents”. It states that the descendant has "to provide parents with their own collaboration of their age and development and to care for them or other ancestors in all circumstances of life in which their help is necessary". The mention is very poor, as it only speaks of "all the circumstances of life".

There are also rules on food provision, visitation rights to grandchildren, against family violence (24417 Act, which provides protection to the elderly against specific acts of mistreatment) and a few more institutions that connect the elderly with their family environment, but as noted, its mention leaves much to be desired within the Argentine legal system.

At a national level, the Resolution 753/2007 was passed with the aim of creating the National Active Aging and Health Program for Older Adults, this program aims to contribute to the achievement of active and healthy ageing through the promotion of health promotion and primary health care for older adults, human resources training, research support and the development of integrated services for fragile and dependent old age, according to the scope and modalities established the following Sections of the resolution. While some of these purposes were (and are) important to the older group, such as promoting the development of integrated services for fragile and dependent old age and influencing health providers about advocacy and prevention programs and strategies for older adults, the reality is that the last newsletter offered by this institution is from 2016 implying that its implementation is not safe enough for what is being sought within the scope of protection of the rights of the elderly.

The Autonomous City of Buenos Aires issued in 2016 the 5420 Act on Prevention and Protection against Child Abuse and Integral Mistreatment of Older Adults, it constitutes an advance in the legislation on the rights of the Elderly. The law means for abuse or mistreatment of Older Adults any action or omission that causes harm to them, whether intentional or the result of negligent action and that threatens their general well-being, in violation of fights. This type of behavior can be committed both by the family group, as well as by caregivers, persons close to them, cohabitant or not, or by institutions, both public and private. It includes physical, psychological, sexual, economic, institutional, environmental abuse, etc. (according to Arts. 2, 4, and 5 of Act 5420).

The object of the Act, as set out in Section 8 thereof, is:

12. Prevent abuse or abuse behaviors through community awareness, empowerment of older adults, strengthening existing networks, and building new social ties.
13. Remove negative prejudices and stereotypes about older adults.
14. Promote intergenerational activities, avoid isolation.
15. Provide comprehensive protection, from an interdisciplinary perspective, to older adults who have been abused or abused or are in extreme vulnerability, in order to ensure their physical, psychological, economic and Social.
16. Avoid the re-victimization of older adults, eliminating overlapping interventions and streamlining the necessary procedures to guarantee them access to justice.
17. Minimize damage resulting from abuse, abuse, neglect.

The law also establishes actions to be promoted, such as:

2) Training of caregivers;

3) Dictation of courses and meeting spaces for older adults, whose resolution is automatic their self-esteem and autonomy, let them know their rights, promote their potential, challenge or create bonds and networks, avoid isolation, etc.;

4) Implementation of intergenerational activities; among others. (Art./ Section/ Section10)

It also establishes the guidelines to be followed by the Judiciary when dealing with cases of violence against the elderly, such as: a) ensuring simple procedures for the establishment of complaints and follow-up of actions by older adults; (b) generate accessible and agile channels for the establishment of complaints by public officials, in cases where there is an obligation to report; c) articulate actions in conjunction with the specific area of the Executive Branch, created by this law, ensuring an expeditious communication. (Art. / Section12)

Following with the subject it is necessary to incorporate the view that the Argentine legal order has regarding the restrictions of capacity and how that is connected with the rights of the elderly, because of the paradigm shift this matter was affected by the modification and unification of the Argentine Civil and Commercial Code.

It is known that the increase in age is accompanied in many cases by a progressive, albeit in others of a surreptitious dependence, which can be both physical and psychic. Old age, by itself, is not synonymous with disease, even when it involves decreasing powers of the person, but it reflects the need to assist them in certain cases to avoid abuse from their environment.

In fact, the “Civil and Commercial Code” has introduced developments around the issue of capacity constraints, following the standards imposed by international treaties. Among the most important changes around this, are the introduction of the principle of progressivity to capacity constraints, the implementation of support systems, and the right of the person to be heard and to indicate who wants their support to be. Quite a step forward in the matter, since in those cases where the elderly person requires, you can use this support system, which is much more respectful of human rights and autonomy of the individual, rather than the disability. To a better comprehension, the declaration of disability is an institute to which we must resort only in the most serious cases, in which the person is completely unable to externalize their will.

Argentina still has a hard work to carry out in terms of legislating and establishing policies around the protection of the elderly, not only related to the eradication of all forms of violence, but also in terms of health, labor, pension, discrimination, etcetera.

7. **Conclusion**

Rudolph Von Ihering, a German Philosopher, argues that “Every law in the world must have been acquired by the struggle”. Therefore, those rights which are so clear and indispensable today, are in fact the result of the struggle within a society. It is assumed that either the people or the individual as a subject of law, have accomplished and defended those rights that cost so much to consecrate.

Taking these wise words as a premise, retirees, workers, youth and even children must think that we will all arrive at the age of retirement in the future. For that reason, the Elders ‘rights that are now violated, are the rights that we all must defend so as not to lose.

It is quite important to support an effective and efficient legal order, which allows the interconnection between different rights and benefits. We must interpret them in a “holistic way”, without losing sight of what their aim is.

Yet, Argentina has passed through a long way as it can be seen today, from the regulations of the National Constitution and other Acts already passed. Still, sometimes our society appears to be full of prejudices and stereotypes related to old age.

The Law has the obligation to place the Older Persons in the correct community, space and time, strengthening their position and enforcing their rights, even before other citizens and the State and Government.

CHAPTER SIX:

Argentina and the rights of the Disabled [58]

This chapter will describe the barriers people with disabilities often encounter in Argentina, particularly in the province of Jujuy. The purpose of this is to give a clear description of the three main types of barriers. *Social barriers* which deal with prejudices, ideology, discrimination and exclusion; *legal barriers* which deal with difficulties in achieving facilities, mainstream services (means of transport, public facilities, etc.); and *bureaucratic barriers* which deal with difficulties to access to the benefits and economic care.

1. Introduction.

The Universal Declaration of Human rights and other Human Rights Treaties provide protection which should be applied to all persons. However, people with disabilities have remained largely "invisible" unable to enjoy the full range of human rights. However, the convention on the Rights of Persons with disabilities signaled a paradigm shift from traditional charity-oriented, medical-based approaches to disability to one based on human rights.

People with disabilities face a lot of difficulties in participating in society every day. These difficulties may be label barriers. According to Oxford dictionary a barrier is an object like a fence that prevents people from moving forward from one place to another. Considering this definition, it can be interpreted as something that does not allow anyone to advance or achieve their goal, their objectives or benefits that would be granted to them. Another definition given by the Oxford dictionary is that a barrier can be a problem, rule or situation that prevents somebody from doing something or that make something impossible. This means that a barrier denies people´s rights such as to be included in the general school system, to be employed, to live independently in the community, to move freely, to vote, to participate in sport and cultural activities, to enjoy social protection to access justice, to

[58] Authors of this chapter: Melina Daniela Cabrera, Jorge Cari y Ana Valeria Orlando. Jujuy, Argentina.

choose medical treatment and to enter into legal commitments.

One of the most difficult aspects of law is dealing with impairment issues. In order to have an idea of the different problems people with disabilities have to deal with is the unsuccessful implementation of such in the medical and social system. In order to contextualize this, a description of the political issues in the public health system in San Salvador de Jujuy will be taken into account and developed so as to depict the difficulties a person with disabilities has to face in order to access the public health care system as well as its benefits. An overall view will be done so as to show the whole scene disabled people have to face.

2. Concept of social barriers.

This type of barrier is closed related to society´s concepts and ideas about people with disabilities. From these ideas people behave and address persons with disabilities, discriminating and incorporating barriers that restrict them from participating in society on an equal basis with others every day. Although the Convention on the Rights of Persons with Disabilities (CRPD onwards) signaled a paradigm shift in the interpretation and perception of people with disabilities; there is a lot to do in order to evolve in addressing people with disabilities.

Former UN High Commissioner for Human Rights, Louise Arbour, has said: *"The celebration of diversity and the empowerment of the individual are essential human rights messages. The Convention embodies and clearly conveys these messages by envisaging a fully active role in society for persons with disabilities."*

Considering these words, it is possible to see that the Convention signaled a paradigm shift so disability is a social construct, not a medical condition. According to this new paradigm and concept, what the normal and pathological are will be considered to give a definition of disability.

3. The "normal" and the "pathological".

In Argentina, the Act 22431 on "Integral System of Protection for People with Disabilities" establishes in its first section that a system of comprehensive protection for people with disabilities, tending to assure them of their medical care, education, and social security, as

well as granting them franchises and incentives that will allow them to neutralize the disadvantage that the disability provokes them and gives them the opportunity, through their effort, to play in the community a role equivalent to that of *"normal"* people.

Before continuing, it would be necessary to answer this question:

What is "normal"?

We will do it through the work developed by Georges Canguilhem about the Normal and Pathological. To develop these concepts Kevin Gotkin, in his paper, reads: The Normal and the Pathological written by Canguilhem, and outstands that Canguilhem claims that *The Normal and the Pathological* predates the social model of disability. Canguilhem writes about the notion of disability,

"For an invalid, there exists, in the end, the possibility of some activity and an honorable social role. But a human being's forced limitation to a unique and invariable condition is judged pejoratively in terms of the normal human ideal, which is the potential and deliberate adaptation to every condition imaginable."

Kevin Gotkin continues quoting Canguilhem who offers a further extension of this reasoning that might give it an even firmer base. What he calls "biological normativity" is his essential gambit in defining the pathological as a truly distinct category from the normal. He says that those with genetic abnormalities nonetheless sustain in their bodies; they have their own norms. Here he draws crucially a Darwinian notion of selection as a constant negotiation between an organism and the environment. He writes,

"If biological norms exist it is because life, as not only subject to the environment but also as an institution of its own environment, thereby posits values not only in the environment but also in the organism itself. This is what we call biological normativity."

Canguilhem, embracing a holistic complexity of each body's relation to its own norms, exposes a logical fallacy in how medicine understands deviation. If we extend this into disability studies as an argument with social and political consequences, we might say that insofar as people live in accordance with norms that they determine, "disability" loses its

specificity as a process during which individuals adapt to their environments.

Canguilhem says that “normal” means the possibility to establish norms and to be able to change them. Canguillen, in his thesis, includes some states considered pathological by others inside the limits of normal. This is possible if these states can express a relationship between their norm and the person´s singular life. He does not speak about social norms; he speaks about the possibility that anyone has to establish their own norms and can change them. He speaks about singular and personal norms that are connected to their functionality. If those norms are functional to the person, we can say that that person is normal.

If those norms are not functional to the person and produce them a lot of suffering, it can be said that that person has pathology because their norm is not functional to them and produces suffering. In other words, pathology is suffering. Canguilhem agreed with Henry Ey´s definition of Normal. Henry Ey says that Normal is not an average correlated to a social concept. It is not a judgement of reality but it is a value judgement.

This means that the normal does not really exist because it is a value judgment. *Normal is not an average*; it is a singular perspective; although there is a tendency to consider what most people think of as normal. What is called an illness will be established by the patient's *own appreciation* and the dominant ideas in society.

As a result it can be said that disability is an evolving concept and results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective full and effective participation in society on an equal basis with others. If the norms persons with disabilities have are functional (that they do not produce suffering) to them, it is said that they are normal.

4. **Prejudice and Social Barriers**.

According to Tatum (1999) “prejudice is a preconceived judgement or opinion, usually based on limited information. Tatum (1999) considers that we all have prejudices, not because we want them, but because we are constantly exposed to misinformation about others. It is very common to feel afraid of the people's differences. It is believed that human beings are determined by an average which says who is normal and what certain traits they should

have to be considered part of the society or not. Besides, if they do not follow the society's own perspective of what normal is, these people are not included in the society´s life.

On the other hand, it is true that working with heterogeneous groups implies greater effort; however, working with different people, with their own perspectives, different realities and conditions means that we are considering each person´s singularity. Looking at each person as unique, with their own norms, their own rules, and their own singularity implies the recognition of their norms which help them to be functional for them, to be normal. If we just want to address every person with our own perspective, we will never empower people´s singularity. Besides, we will always consider people under the statistical idea that they should follow some characteristics to be normal, characteristics embedded in the idea that all of us belong to a society ruled by an average.

We know that the protection guaranteed in human rights treaties and grounded in the Universal Declaration of Human Rights should apply to all. However, people with disabilities have remained largely “invisible”. The new concept and paradigm will deal with the idea that working on people´s singularity will show the society that everyone exists. It means that we should learn about people´s own norms and rules. Besides, we all have disabilities at some point. We are not able to do everything, we are good at some activities but bad at some others. So we should always consider people´s singularity.

5. **Legal Barriers**.

Luckily, nowadays there are many conventions and treaties that protect people with disabilities. Thanks to all of these international and local agreements, inequality among this group is not as noticeable as it was years ago. Each citizen in the world should be benefited with the same rights and freedom despise the place where they live as the Convention on the Rights of Persons with Disabilities states disabled people’s principles, benefits and rights to live freely and properly in their country.

The Preamble of this Convention clearly states that even the countries which have taken part and accepted the Convention on the rights of Disabled People, do not completely fulfill its implications. For this reason, it is mandatory for this nation to make all the necessary changes to do it. It is in every person the right to fight for their rights especially for those who

cannot do it on their own. Furthermore, it is extremely important that the United Nations regulate and control the implementations this convention complies.

"(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world"…

Living freely and properly means to be able to move from place to place independently, to work in a place where we feel not only comfortable but productive, to take participation in politics, to enjoy leisure activities, to study a career we feel suitable for, to feel protected by the justice and state, and to access to the possibility to acquire our own goods. Although all these things or purposes may be shared by everyone, each person may have their own preferences pursuing their objectives but within their own singularity. In other words, the main purpose of this Convention is to guarantee that each person within their own singularity may live freely.

6. **Bureaucratic Barriers**.

As in any Law, there are always some barriers in the application of the rights. In this case, there are bureaucratic barriers: the difficulties to access all the benefits the Law implies, with particular emphasis on the difficulties to access the economic care in Argentina.

It is important to highlight that palliative care exists in Argentina only since the 1980s. Several factors contributed to its emergence. To start with, the World Health Organization committed itself to promoting the recognition of certain diseases world-wide. Secondly, the development of a public health system was mandatory and it was included in the government policy as such. Because of this many foreigners come to our country in order to gain access to it. This causes an overuse of the system and as a result it collapses at times.

Taking into account the Convention on the Rights of the Disabled (CRPD), all the states who are part of the UN commit themselves to ensure and promote the rights of disabled people without any distinction for their disability. In the case of Argentina, it is supposed to adopt all

types of measures in order to make real their rights. For this reason, the government has developed a way to provide disabled people the access to it called the "*Certificado Único de Discapacidad*" or *CUD* for short. This is a document 2that certifies a person's disability and grants access to rights and health services from the State. It is supposed to be valid although the country according to national laws 22431 and 24901. An evaluative commission is in charge of certifying the disability. The process is free of charge and voluntary. It is meant to cover 100% of health care including medicine, equipment, diseases treatments as well as rehabilitation therapy. As regards mobility, it provides free of charge transfers in public transport, toll exemptions as well as parking. Another important benefit is the family allowances which consist of an annual economic help for every disabled child in a family as well as a scholar economic help. This system has some steps to follow, first the person or tutor has to look for certain papers such as certificates, medical reports and studies so as to ask for a shift with the evaluation committee.

The barriers in this system are the difficulty for some people to get a shift or to get the necessary documentation for the evaluation committee. Some persons live far away from the place they have to do the paperwork so it is difficult for them to access the CUD benefits.

Moreover, according to the CRDP it is mandatory for the government to take an active part in the investigation and development of equipment and services to satisfy disabled people' specific needs as well as to improve the technological devices and support for every public hospital so as to provide access to those who are in need of it.

Taking this into account, the situation in our country is totally different from what it should be since the economic situation has reduced the economic support for investigation and distribution of technological devices for public hospitals all throughout the country. This causes many people cannot be given the proper attention.

Furthermore, another important aspect from this Covent is that information be also accessible including electronic devices and technological support meant to assist people as stated here, a disabled person:

"Must be provided with access to in-home, residential and community support services needed to live in the community, including personal assistance (which can include advocacy

support)”

In our country and especially in our province, if information is not well spread the support services are the less important; for this reason many people do not gain access to all the benefits promoted with the *CUD*.

Section 14 may also require that positive measures are taken to allocate financial resources to persons with psychosocial and intellectual disabilities who require a high level of support, so that they are neither confined in institutions nor confined in their own home. In our province, the mental institutions are in really precarious conditions and thus people who suffer mental diseases cannot get a good attention.

CRPD Section 19 provides that persons with disabilities:

“Have the right to live in the community with choices equal to others”

Certainly, in the province of Jujuy, Argentina, such choices are not equal for disabled people, since the Government do not take the necessary measures to grant everybody to live with the proper conditions. There are many institutions that need to reorganize the entrances and structure to guarantee the access for disabled people.

7. Conclusion.

Even though there still exist many barriers which make a certain group of people suffer inequality, a group of benefits arouse from different conventions and agreements which have brought a “*paradigm shift,*” not only from the *legal* but also and mainly from a *social point of view*. Although we, as human beings, have not completely changed our perspective yet, the new recognition of the Rights of the Disabled has marked a starting point, leaving a mist of positive changes around the world. It is not just the responsibility of the State.

The society has to fulfill all the benefits established in the Convention for every human being, considering their uniqueness and singularity, and highlighting their liberty and security. This

would be effectively achieved if States and Society promote or reformulate policies, plans, programs and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities.

CHAPTER SEVEN:

Argentina and the enforcement of the CEDAW Convention.

In Argentina, the progress in the field of gender policy (in accordance with the Convention for the Elimination of Discrimination against Women (CEDAW)[59]), has led to substantial changes, new Acts and regulations at all levels. One year ago, the "Micaela Act" was passed. That Act implies mandatory gender training for everybody in power, which would foster greater protection of women all over the country.

1. Introduction

In Argentina, during the last part of 2019, some Acts that allow the protection of gender, and of women at different levels of the State have been passed.

In this context, an Agreement was also signed: The Council of the Judiciary of the National Judicial Power, the Supreme Court of Justice of the Nation[60] and the National Institute of Women, signed an agreement for **compulsory training in gender and violence against women.** The agreement applies to people who usually perform a public function at all levels and hierarchies in the Executive, Legislative and Judicial branches of the Nation, in compliance with Act No. 27,499 called "Micaela" and, the Convention for the Elimination of

[59] Act 26.485. (2009). Comprehensive Protection Law to prevent, punish and eradicate violence against women in the areas where they develop their interpersonal relationships. Retrieved from http://www.cnm.gov.ar/LegNacional/Ley_26485_decreto_1011.pdf ; United Nations. (1979). Convention for the Elimination of all forms of Discrimination against Women (CEDAW). Retrieved from http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm; Organization of American States. (1994). Inter-American Convention to Prevent, Punish and Eradicate Violence against Women. Resolution SEP 170/2019. Protocol of Action, Orientation, Approach and Eradication of Gender Violence in the field of work of the National Public Administration. Official Gazette of the Argentine Republic, June 10, 2019. Retrieved from https://www.boletinoficial.gob.ar/detalleAviso/primera/209546/20190612

[60] The S.C.J. of the Nation is the highest court of the Argentine Republic. Maximum body within one of the three powers of the State and its mission is to ensure the supremacy of the Constitution and be its final interpreter, Because Argentina is a federal state, there are national courts and provincial courts in the country (art. 5 of the National Constitution). Source https://www.csjn.gov.ar/institucional/historia-de-la-corte-suprema/el-tribunal

Discrimination Against Woman[61] (CEDAW).

Likewise, as a breakthrough of the Gender Issue, the Public Regulations that apply to the appointment process of Judges at national level have been profoundly reformed: Now, there is an "examination agenda", (evaluation of candidates under the gender perspective). Along with that, there is a women "quota" that has to be fulfilled in the integration of lists for magistrates.

We will analyse that in detail: the Micaela Act, the gender policy implementation, the Monitoring offices, and finally, the aims and expectations of their implementation at work level.

2. **The "Micela Act": history and reasons**.

To understand what we are talking about, one must ask for the meaning of this particular name, the "Micaela Act".

"Micaela" was "Micaela García", a 21-year-old girl who was killed in Gualeguay (Entre Ríos) by a man who already had a criminal record for rape[62].

The newspapers[63] said at that time that "the crime of Micaela García caused great commotion in the country. The young woman, who was 21 years old, was an active participant of *#Niunamenos*, a Movement against gender-based violence, in favour of women's rights. He was a native of Concepción del Uruguay, but lived in Gualeguay, where she was studying at the University in order to become a Gymnastic Teacher.

The young woman disappeared on April 1, 2017. A week later, they found her body under a tree, in a field called Six Robles, near a public road.

The police arrested Sebastián Wagner, who confessed to raping the girl and was sentenced to life imprisonment. There was another man, Néstor Pavón, who pleaded not guilty and

[61] The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that oversees the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW is composed of 23 experts on women's rights from all over the world. Source: https://www.ohchr.org/SP/HRBodies/CEDAW/Pages/CEDAWIndex.aspx - https://www.ohchr.org/SP/ProfessionalInterest/Pages/CEDAW.aspx

[62] Simple Law> Justice and human rights> Micaela Law - Training in gender and violence against women. Sitio web: http://www.derechofacil.gob.ar/leysimple/ley-micaela-capacitacion-en-genero-y-violencia-contra-las-mujeres/

[63] La Nación, social section, "El crimen de Micaela García". The murder of Micaela García: the case that moved Gualeguay. July 30, 2018. https://www.lanacion.com.ar/sociedad/el-asesinato-de-micaela-garcia-el-caso-que-conmovio-a-gualeguay-nid2157687

said that the only thing he did was lend the car to Wagner. Nevertheless, according to Wagner, Pavón did committed rape, too, and it was Pavón who in fact hanged Micaela.
The sentence that convicted Wagner led to another great controversy:
At the time of the rape and murder, Sebastian Wagner, the murderer, should have been behind bars, convicted of the rape of two girls. He should have been in prison and not "free". He was on the street because the "judge of Executions" of Entre Ríos Dr. Carlos Rossi had granted him the *benefit of probation* despite the fact that there were opinions against that. It was really outrageous.
As a result, the Nacional Congress passed and Act on January 10, 2019: the "Micaela Act of Mandatory Gender Training" that applies to all public servants in all levels of the State.[64]. The Act regulates mandatory training programmes and courses throughout the country, with the aim of training all the people who work in the public service, whatever their level or hierarchy, in the three powers of the State. The topic relates to gender issues and violence against wome

3. **The women's office and the National Supreme Court:**

The Office of Women (OM)[65] was created in 2009 by the Supreme Court of Justice of the Nation (CSJN) with the aim of promoting the gender perspective in institutional planning and in internal processes, in order to achieve gender equity, both for those who use the justice system and for those who work in it.
To achieve this objective, that Office has been developing strategies, aimed at eliminating sexist biases and gender barriers. It tries to improve the access to justice for women and the full exercise of rights through an effective and effective service.
Today, there is a Public Network of similar agencies in many of the Courts and Federal and National Chambers, which denotes an assessment of gender equality and the firm decision to apply public policies that allow an adequate response of Justice.[66]

[64] Micaela Law on Mandatory Training in Gender for All People Who Integrate the Three Powers of the State. Act n. 27499.
http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/318666/norma.htm
[65] Institutional site of the Women's Office (OM)) https://www.csjn.gov.ar/om/institucional.do
[66] The Office of Women of the Supreme Court of Justice of the Nation was conceived with a federal imprint that values and optimizes the potential, initiatives and proposals of the jurisdictions of justice throughout the country aimed at achieving equality. http://servicios.csjn.gov.ar/EnlaceOMs/

Although the Offices are autonomous, it is necessary to work together as a liaison between all the country's agencies to integrate efforts and optimize resources and tools for greater efficiency in fulfilling the common constitutional mandate, that is, the incorporation of the gender perspective in Justice.

Actions developed by the Women's Office -OM-[67]:

a. Development of Diagnostics: The "Oficina de la Mujer" or Women Agency, develops surveys to identify behaviors, decisions, procedures that perpetuate gender inequality and prevent or impede women's access to justice.

b. Awareness and Training: The Office carries out workshops and other training activities on issues related to women's rights.

c. Preparation of Projects: The Office prepares Projects and Bills to achieve gender changes.

d. Communication and Dissemination: The Office is responsible for communication of policies. It also works in a coordinated manner with the high provincial courts of justice and with the highest courts of justice.

e. Monitoring of Jurisdictional Activity: The Office acts on the needs and deficiencies of judicial bodies to adequately comply with international commitments on the subject, in order to ensure that judicial activity is adapted to regulatory requirements through the jurisprudence base and from the analysis that derives from it.

4. **The Interactive Platform**:

In turn, the Women's Office[68] offers an interactive guide[69] designed to facilitate access and knowledge to international standards and other documents prepared by organizations of the regional and universal human rights system on women's rights. It contains a broad categorization of women's rights, which then leads to more specific subcategories containing the various documents mentioned, allowing the rapid search for international norms or standards on a specific topic.

The guide aims to be a tool for the promotion of human rights instruments linked to women, for which it is expected to make adjustments based on the collaboration in this first edition

[67] https://www.csjn.gov.ar/om/institucional.do

[68] The Office of Women of the Supreme Court of Justice of the Nation is in charge of the Vice President, Dr. Elena I. Highton de Nolasco

[69] https://www.csjn.gov.ar/om/guia_ddmm/index.html

of various women's offices in Argentina. Likewise, its update is planned through articulation with the respective international organizations.

Some of the rights that are postulated in it are[70]: i) the right to non-discrimination; ii) right to life without violence; iii) rights of women in vulnerable situations; iv) right to effective judicial protection; v) political rights; vi) right to education, culture and social life; vii) right to work and social security; viii) sexual, reproductive and health rights; ix) civil and economic rights; x) right to non-discrimination in the family.

5. Gender policy within the framework of CEDAW.

a. **International articulation**:

The Women's Office also works in coordination with the Judicial Powers of Bolivia, Chile, Cuba, El Salvador, Mexico, Paraguay, Peru and Uruguay, the Gender Equality Commission of the Council of Europe and the Inter-American Commission of Women (CIM)[71].

The programs developed by the National Supreme Court Women Office have been considered "Good Practices" by the OAS[72] and have had the support of the UN[73].

Every year, on March 1, the concept of "Zero discrimination" is celebrated. This 2020 the theme was: "Zero Discrimination with women and girls".

It is a universal day by nature that has nothing to do with HIV or health aspects, and seeks to draw attention to issues related to discrimination.

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[70] Regulatory sources: a) Convention on the Elimination of All Forms of Discrimination against Women -CEDAW- - https://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm ;
b) Inter-American Convention to prevent, punish and eradicate violence against women (Belem do Para) http://www.oas.org/juridico/spanish/tratados/a-61.html
c) Gender-based violence is included in the definition of discrimination of the ACHR. CEDAW, Violence against women, general recommendation No. 19 (11th session, 1992). Inter-American Court of Human Rights (I / A Court HR), resolutions related to the gender issue. https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm-sp.htm#recom19
d) MESECVI, Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, Sept 19, 2014. http://www.oas.org/es/mesecvi/docs/CEVI11-Declaration-ES.pdf
e) IACHR, Women in the face of violence and discrimination arising from the armed conflict in Colombia.

[71] Established in 1928, the Inter-American Commission of Women (CIM) was the first intergovernmental body created to ensure the recognition of women's human rights. Source: http://www.oas.org/es/cim/nosotros.asp

[72] The Organization of American States was created in 1948 when the OAS Charter that entered into force in December 1951 was signed in Bogotá, Colombia. Subsequently, the Charter was amended by the Protocol of Buenos Aires, signed in 1967, which entered into force in February 1970. Source: http://www.oas.org/es/

[73] The United Nations was officially born on 10/24/1945, after the majority of the 51 signatory Member States of the founding document of the Organization, the UN Charter, ratified it. Source: https://www.un.org/es/

b. **National and Federal Articulation**:

The OM (Women´s office) also takes measures in relation to the rest of the jurisdictions of the country.

To be effective, the Office's task requires cooperation in the judicial sphere at the national, provincial and federal levels. For this reason, it has promoted and supported the decision of the Superior Courts of Justice at the provincial level and of the National and Federal Chambers to create Women's Offices at a local level, since it is considered to contribute to the achievement of common objectives, respecting the idiosyncrasy and autonomy of each jurisdiction.

The National Supreme Court of Justice, through the Office of Women (OM), has signed several agreements with other organs in order to spread the enforcement of their programs, optimize resources and share pieces of knowledge.

Through these agreements, training courses have been taken by employees in different agencies: the Public Ministry of Defense of the Nation[74]; the Attorney General's Office[75]; the Public Prosecutor's Office of the City of Buenos Aires[76]; the National Council of Scientific and Technical Research CONICET)[77], the Argentine Journalism Forum (FOPEA)[78]; and the Center for Justice and International Law (CEJIL)[79], among other institutions.

6. Mandatory training courses and other gender- protection measures:

[74] The Public Ministry of Defense is an institution for the defense and protection of human rights that guarantees access to justice and comprehensive legal assistance, in individual and collective cases, in accordance with the principles, functions and provisions established in Act 27149.

[75] The Public Prosecutor's Office is a fundamental part in the administration of justice, composed of the Judiciary (composed of judges, judges, officials, civil servants, employees and employees) and the Public Ministries: Prosecutor and Defense.Source: https://www.mpf.gob.ar/que-es-el-mpf/

[76] The City Attorney's Office and the Public Prosecutor's Office are the same institution. In the Contentious Administrative and Tax jurisdiction, the Prosecutors provide the Judge with a qualified opinion when the observance of the laws or the enforcement of public order are compromised. Source: : https://www.fiscalias.gob.ar/mision-y-funciones/

[77] CONICET is the main body dedicated to the promotion of science and technology in Argentina. Currently, more than 10,000 researchers, more than 11,000 doctoral and postdoctoral fellows, more than 2,600 technicians and research support professionals and approximately 1,500 administrators work in the organization. Source: https://www.conicet.gov.ar/

[78] The Argentine Journalism Forum (FOPEA) was born in 2002 as a space for reflection, dialogue and promotion of the quality of journalism, created by a group of media professionals and teachers. Source: https://www.fopea.org/sobre-fopea/origenes-y-objetivos/

[79] Center for Justice and International Law. CEJIL began its work by focusing attention on the defense of civil and political rights. CEJIL has located four offices in strategic points of the Americas, each office directs subregional programs: • Buenos Aires, Argentina: Program for Bolivia and the Southern Cone; • Rio de Janeiro, Brazil: program for Brazil; • San José, Costa Rica: Source: https://www.cejil.org/

In the field of National Public Administration -APN-, through INAP[80], gender training courses have also been implemented. In this sense, what is sought is to integrate the gender approach into government agencies contributing to the development and implementation of institutional guidelines, aimed at promoting equal opportunities.

Violence against women is a social problem that arises due to different causes. All of them must be addressed in a transdisciplinary way. Effective interventions must employ diverse methods (for example, media campaigns combined with group training on gender equality; training for government and non-government agencies; articulations with key actors, among others) and various levels (social, community, family / relational, and individual), complementary to each other.

It is important to raise awareness about violence against women as a manifestation of the discrimination that affects them, their magnitude, their negative consequences for societies as a whole. However, it is not enough to become aware, but permanent training and awareness actions should be offered as an option and an obligation, to all public servants.

Nowadays, there are new regulations:

-- Resolution 4/2020[81], whereby it was decided to approve the modifications of the Judicial School Regulations, where the objectives of the School are established, the training of magistrates and officials on the subject of gender and violence against women; the organization of courses and workshops among others.

-- Resolution 289/2019[82] -modified by Resolution 291 / 2019-, the draft modification to the Regulation of Public Competitions of Opposition and Background for the appointment of magistrates of the Judicial Power of the Nation, presented by Dr. Graciela Camaño. The

[80] National Institute of Public Administration. It leads the training of all public servants through programs that allow them acquire knowledge for professional development. Act 20173 Creation of the National Institute of Public Administration. Decree 170/2017 Hierarchy of the National Institute of Public Administration. Resolution N ° 300 - E / 2017 INAP Coordinations. Functions. Ministry of Modernization. Administrative Decision No. 339/2017 Organizational Structure. Source: https://capacitacion.inap.gob.ar/ , https://capacitacion.inap.gob.ar/actividad/ley-micaela-capacitacion-en-la-tematica-de-genero-y-violencia-contra-las-mujeres/

[81] Resolution 4/2020 of 02/20/2020 of the Judicial Power of the Nation Council of the Magistracy. Date of publication in the Official Gazette: 02/28/2020 https://www.boletinoficial.gob.ar/detalleAviso/primera/225998/20200228

[82] Resolution 289/2019 of 03/10/2019, of the Judicial Power of the Nation Council of the Magistracy, published in the Official Gazette on 10/10/2019. https://www.boletinoficial.gob.ar/detalleAviso/primera/218580/20191010 and Resolution 291/2019, of 25/20/2019, published on 11/01/2019 https://www.boletinoficial.gob.ar/detalleAviso/primera/220449/20191101

gender perspective was included as an evaluation point for the aspiring magistrates, in accordance with the provisions of the international treaties.

-- Resolution 269/2019[83], with an amendment to the Regulation of Public Contests for the appointment of magistrates in the Judicial Power of the Nation, presented by Dr. Marina Sanchez Herrero, in which Section 7 requires the previous training course on gender perspective, dictated by universities and / or the OM and / or Judicial School.

-- Resolution 266/2019[84], regarding the participation of women in the lists of magistrates, ensuring the participation of women in the social and political life of the country in the three powers.

7. Gender map of the Argentinean Judicial System.

On the website of the Office of Women of the Supreme Court of Justice of the Nation, there are interactive gender maps that relate to the whole country of rgentina. This tool allows to observe the distribution by gender of the positions of the Justice System of the Argentine Republic.[85].

The gender map contains data from the following offices:

-- the National Supreme Court

--The provincial High Courts;

--the Congress of the Nation.

--The Public Prosecutor and Defense Ministries of the Nation and the provinces

-- the Provincial and National “Consejos de la Magistratura”.

[83] Resolution 269/2019, of 10/3/2019 of the Judicial Power of the Nation Council of the Magistracy, published in the Official Gazette on 09/10/2019 https://www.boletinoficial.gob.ar/detalleAviso/primera/218486/20191009

[84] Resolution 266/2019 of 03/10/2019, of the Judicial Power of the Nation Council of the Magistracy, published in the Official Gazette on 10/10/2019 https://www.boletinoficial.gob.ar/detalleAviso/primera/218579/20191010

[85] Available at: https://om.csjn.gob.ar/mapagenero/login/mostrarLogin.html;jsessionid=ubSXD8rVS7V1IxLQR4X911pPLzk_kFe28Azd5qkTDgh4UQPDMk7T!-989934269

8. **International Landmark cases reviews on the subject**.

We can study some Landmark Cases related to Gender Issues, some of them in connection to Argentina:

a) The definition of discrimination against women includes violence based on sex, that is, violence directed against women (i) because it is a woman or (ii) because it affects it disproportionately. Likewise (…) violence against women is a form of discrimination that seriously prevents them from enjoying rights and freedoms on an equal footing with men.[86]

b) Violence against women constitutes a form of discrimination and (...) the State violated the duty of non-discrimination contained in article 1.1 of the Convention. It is possible to associate the subordination of women to practices based on socially dominant and socially persistent gender stereotypes, conditions that are aggravated when stereotypes are reflected, implicitly or explicitly, in policies and practices, particularly in the reasoning and language of the authorities of judicial police (…) The creation and use of stereotypes becomes one of the causes and consequences of gender violence against women.[87]

c) The concept of indirect discrimination (…) implies that a seemingly neutral norm or practice has particularly negative repercussions on a person or group with certain characteristics… a law that is applied impartially can have a discriminatory effect if they are not taken in consideration the particular circumstances of the people to whom it applies. The prohibition of IVF [in vitro fertilization] can affect both men and women and can produce disproportionate impacts differentiated by the existence of stereotypes and prejudices in society. (...) In many societies infertility is attributed largely and disproportionately to women, due to the persistent gender stereotype that defines women as the basic creator of the family (...) the personal suffering of the infertile woman. It is exacerbated and can lead to the instability of marriage, domestic violence, stigmatization and even ostracism. While infertility can affect men and women, the use of assisted reproduction technologies is especially related to the body of women. Although the IVF ban is not expressly directed towards

[86] / A Court HR, Case of Inés Fernández Ortega v. Mexico, judgment of August 30, 2010, Series C-215, paragraph 130 http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_esp.pdf

[87] I / A Court HR, Case of González et al. ("Cotton Field") v. Mexico, judgment of November 16, 2009, Series C-205, paragraph 401/2. http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf

women, and therefore appears neutral, it has a disproportionate negative impact on them. The right to privacy and reproductive freedom is related to the right to access the medical technology necessary to exercise that right. (…) The right of access to the highest and most effective scientific progress for the exercise of reproductive autonomy and The possibility of forming a family derives the right to access the best health services in reproductive assistance techniques, and, consequently, the prohibition of disproportionate and unnecessary restrictions of de jure or de facto to exercise the corresponding reproductive decisions in each person. [88]

d) A case of discrimination related to sexual orientation: There is a case where a lesbian woman faced deportation to her country of origin, in Bangladesh, because homosexuality is criminalized there. The CEDAW Committee considered that situation as a violation of Article 7 CEDAW.[89]

e) In a case where a woman from Gambia was abused by her husband, and the daughter they have in common also suffers abuse and constant exposure to pornographic material. The committee considers that there has been a violation of Art. 2, (b), (c), (d), (e) and (f), art. 5 (a), art. 16 (c), (d) and (f) in relation to art. 1 and 3 of CEDAW.[90]

f) A case related to the Argentine State and the penitentiary authorities of the Federal Government: In that case, women had to suffer vaginal reviews when visiting any Unit of the Federal Penitentiary Service. There was declared they had violated the rights of those women, protected by the Convention American on Human Rights. The Commission acknowledged the measures taken by the Argentine State to modify its prison system. The Commission also concluded in Report No. 16/95 that, in order to establish the legitimacy of a vaginal revision or inspection, in a particular case, it is necessary to verify these requirements: 1) it must be absolutely necessary to achieve the objective legitimate in the specific case; 2) there should be no alternative measure; 3) It should, in principle, be

[88] I / A Court HR, Case of Artavia Murillo et al. ("In vitro fertilization") vs. Costa Rica, judgment of November 28, 2012 (preliminary objections, merits, reparations and costs), Series C-257, paragraph 286, 294/99. http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf

[89] CEDAW, case M.I. v. Sweden. Communication 2149/2012. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F108%2FD%2F2149%2F2012&Lang=es

[90] CEDAW, case of Isatou Jallow v. c / Bulgaria. Communication 32/2011. http://www2.ohchr.org/english/law/docs/CEDAW-C-52-D-32-2011_sp.pdf

authorized by court order; and 4) The measure must be performed only by health professionals.[91]

g) The Inter-American Court of Human Rights finds that a concept of family is really not determined in the American Convention. “Family” is not a closed concept. In this regard, the Court states that the concept of family life is not limited only to marriage and must include other de facto family ties where the parties have common life outside of marriage.[92]

9. Conclusion.

The participation of women in social, political and labor relations is really scarce compared to the occupation of men in decision-making positions. The Gender Map of Justice Argentina, carried out by the Office of Women shows a shortage of women in outstanding positions, and an important gap that highlights the need to take action in order to reach equality at all levels; it will ensure the development of peace and democracy.

The Gender Map has made visible many issues, from violence, vertical segregation and the disparity of equality. In situations of inequality, it is necessary to participate actively for greater possibilities of access: to education, to work, to health, to protection and also, to access to hierarchical positions.

In a recent report, it was pointed out that “women's work, education and resources were the path to equality in the guarantee of economic, social and cultural rights.” The Inter-American Court of Human Rights have stated that “women's access to greater educational opportunities and training does not translate into a discrimination-free career path”.

Changes are not easy to make. They do not come from one day to the next one. Changes must be taken step by step.

These actions are materialized through public policies that study the vulnerable groups and provide the same opportunities to all people.

“The road to gender equality is not a technocratic goal: it is a political process. It requires a new way of thinking, in which stereotypes about women and men leave room for a new

[91] IACHR, Case X and Y, REPORT No. 38/96 CASE 10.506 ARGENTINA October 15, 1996, paragraphs 112 to 114. https://www.cidh.oas.org/annualrep/96span/Argentina10506.htm

[92] I / A Court HR, Case: Atala Riffo and girls vs. Chile, judgment dated February 24, 2012, (merits, reparations and costs), Series C-239, paragraph 142. http://corteidh.or.cr/docs/casos/articulos/seriec_239_esp.pdf

philosophy that recognizes all people, regardless of their sex, as essential agents for change.[93]" Promoting gender equality implies that the needs and rights of both women and men constitute an integral dimension in the design, implementation, and monitoring of development cooperation actions[94].

Thanks to the National Quota Law No. 24.012 / 91[95], Argentina has advanced in these years in providing greater participation to women. Argentina also became the first country in the world to adopt the minimum quotas as a *positive measure* to ensure the participation of women in high positions.

"The human rights treaties, by acquiring constitutional hierarchy, enriched the system of rights of the constitutions and thus principles such as that of 'non-discrimination' become directly constitutional. In this way, the judicial channel is open for women and their organizations to demand compliance with the standards set forth in the conventions, and the possibility of reporting to international organizations against acts of discrimination or breach of real equality of opportunities or the incorrect application of positive action measures"[96].

Human development is the process of expanding the real freedoms enjoyed by people […] But freedoms also depend on other determinants, such as social and economic institutions (for example, education and medical care services), as well as political and human rights"[97].

The different degrees of progress in relation to gender equality at a local level show that there is still a long way to go, especially in terms of strengthening State capacities for the effective implementation of public policies aimed at reducing gender gaps.[98] That is why it

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[93] UNDP - Human Development Report, 1995. Cited in Challenges for gender equality in Argentina. - 1st ed. - Buenos Aires: United Nations Development Program - UNDP, 2008. 80 p .; 30x21 cm ISBN 978-987-22328-9-4. Source: https://www.undp.org/content/dam/argentina/Publications/G%C3%A9nero/undp_ar%20Desafiosigualdaddegeneroweb.pdf

[94] Cit. Martínez, Carlos Felipe - Resident Representative, UNDP. Challenges for gender equality in Argentina. - 1st ed. - Buenos Aires: United Nations Development Program - UNDP- 2008.

[95] Act 24.012 on women's quotas was sanctioned on November 6, 1991, whereby it was determined that at least 30% of the lists of candidates presenting the parties in the elections were occupied by women. National Electoral Code Replaces article 60 of Decree No. 2135/93. Sanctioned: November 6, 1991. Promulgated in fact: November 29, 1991. http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/411/norma.htm

[96] Birgin, Haydée, Faur, Eleonor and Bergallo, Paola; 2003. A conceptual framework of Human Rights for the programming of UNIFEM, Mexico, UNIFEM.

[97] Sen, Amartya. Development and freedom, Buenos Aires, Editorial Planeta, 1999.

[98] Benavente Riquelme, María Cristina and Valdés Barrientos, Alejandra, "Public policies for gender equality: a contribution to the autonomy of women", ECLAC Books, No. 130 (LC / G.2620-P), Santiago de Chile, Economic Commission for Latin America and the Caribbean (ECLAC), 2014. https://repositorio.cepal.org/bitstream/handle/11362/37226/1/S1420372_es.pdf

is very necessary to take action. We must do it, *Now*.

CHAPTER EIGHT:

Environmental Law in relation to Argentina and the Botnia case.[99]

Argentina and Uruguay have faced a conflict due to the installation of the Orion (Botnia) "Pulp Mill". The main claim before the International Court of Justice, on the part of Argentina was raised regarding the breach of the procedural but also substantial obligations demanded by the 1975 Statute document, which regulates the rational use of the Uruguay River. The International Court ruled on it with a conciliatory judgment, but without treating the substance that was born regarding the incidence that each state has through its actions to cooperate in order to promote environmental care through a positive result to all the international community.

1. **Introduction**.

Around 2005, there was a conflict between Argentina and Uruguay, which was caused by the installation of a pulp mill on the banks of the Uruguay River of the Finnish firm UPM – Kymmene located in Fray Bentos and Gualeguaychu.

The initial problem arose because Argentina was concerned about the environmental impact and the effects that its territory suffered due to the installation of this pulp mill.

Therefore, the International Court of Justice, as the principal judicial organ of the United Nations Organization, understands that Uruguay failed to comply with the obligations resulting from the Uruguay River Statute of 1975, but nonetheless there was no penalty that would result in the Completion of the activity of the pulp mill as well as nothing was raised regarding the obligations of Uruguay to install the plant to establish a true study of the environmental impact that would result in a rational and due use of the Uruguay River on which this conflict is .

2. **The controversies between States**.

[99] Author of this chapter Andrea Vanessa Cabaña

It all started in 2006 when Argentina sued Uruguay against the ICJ arguing that the installation of two cellulose plants is highly contaminated for the Argentine territory and that its implementation, has been carried out in violation of the obligations of the Uruguay river statute. The controversy finally lay on the Orion plant, In addition to requesting an order to prevent its installation.

In response, Uruguay also demanded Argentina before MERCOSUR, determining that it had not avoided the roadblocks of the mobilization of environmental groups who demanded a correct evaluation of the environmental impact by cutting and manifesting, Zazrin the three international bridges that unite Argentina and Uruguay. Too, the route cuts, made by thousands of Argentines, hindered the free movement of goods and services between the two territories causing even economic consequences. Finally, the ad hoc tribunal took the claims, then ruled on the mass roadblocks determining that Argentina did not take the necessary measures to avoid this and in turn established that it was not competent to decide on future conduct tending to somehow promote route cuts of the parts.

All of this leads us to consider the need to focus on the judgment of the ICJ, focusing on the fact that international environmental law is very important, is a legal good for humanity and deserves to be respected and protected as the basis of the fundamental human right.

Cellulose production is an activity that has displaced throughout the world. In Latin America, 1.5 million tons of paper and cardboard are consumed and of them 400 thousand tons of daily paper, the main countries being Brazil, Uruguay and Chile and on a smaller scale like Paraguay and Colombia. -

Attentive to the requirements worldwide, Uruguay had begun negotiations to install pulp mills near Fray Bentos and were an excellent opportunity for the economic and social development of Uruguay, generating even a good opportunity for jobs and movement of the economy of the country and too a positive impact on the quality of life of the Uruguayans of the place.

In 2003, Uruguay, through the Ministry of Housing, Planning and Environment, granted the authorization to the company prior to conducting an environmental and audience impact study to listen to the population about their opinion. Then ministry through an extraordinary

meeting through the information and consultation procedure, stating that Argentina had no right to question a national matter.

Between 2005 and 2006 the activity of the environmentalists of Gualeguaychu was intense to stop all this. However, before the authorization of the Botnia Company, the problem intensified and the lawsuit was formally initiated before the competent authority in 2006 before the Secretariat of the Court alleging the violation that the Oriental Republic of Uruguay had committed regarding the status of the Uruguay River signed on February 26, 1975. The petition was communicated to the government of Uruguay.

Both Argentina and Uruguay submitted attached documents, attached videos showing the observations made by each party in said lawsuit and their replies.

Also, using the provisions of Section 31 of the Statute of the Court that says “The magistrates of the same nationality of each of the litigating parties shall retain their right to participate in the hearing of the business known to the Court. 2. if the Court includes among the magistrates of knowledge one of the nationality of one of the parties, any other party may designate a person of its choice so that take a seat as a magistrate ...” Argentina appointed Mr. Raul Vinuesa and Uruguay to Mr. Santiago Torres Bernardez.

Then by means of an ordinance the dates for the presentation of the report and the counter memory were set respectively on January 15, 2007 and July 20, 2007, which were attached in a timely manner.

In addition, the governments of Uruguay and Argentina reached an agreement to produce new documents, which were notified to the Court and approved for submission in the periods between June 16, 2009 and June 17, 2009.

Finally, the parties went to the respective oral hearings determining the final conclusions they developed on 14th September, 2009 and 2nd October 2009, presents allegations, in which they participated for Argentina S. Exc. Sra. Susana Ruiz Cerutti, Sr. Alan Pellet, Sr.Philippe Sands, Sr. Howard Wheater, Sra. Laurence Boisson de Chazournes, Sr.Marcelo Kohen, Sr.Alan Beraud, Sr. Juan Carlos Colombo, Sr. Daniel Muller, S. Exc. And Uruguay Sr. Carlos Gianelli, Sr. Alan Boyle, Sr. Paul S. Reichler, Sr. Neil McCubbin, Sr. Stephen C.

McCaffrey Sr. Lawrence H. Martin, Sr. Luigi Condorelli. Both parties presented their arguments and finally the International Court of Justice then its analysis is pronounced on April 20, 2010. The Court in its judgment dealt with three main issues: the scope of its jurisdiction, the alleged violation of the procedural obligations incorporated in the 1975 Statute and the alleged violation of the substantive obligations included in the same instrument.

3. Legal background

The bilateral treaty concluded on April 7, 1961, in Montevideo determines the borders between Argentina and Uruguay, establishing a navigation regime and a statute of the use of the river in order to avoid water pollution, which was agreed on February 26, 1975 in the city of Salto Oriental Republic of Uruguay, whose first Section reads: “Purposes and Definitions Section 1 - The parties agree to this statute, in compliance with the provisions of art. 7º of the Treaty of Limits in the Uruguay River of April 7, 1961, in order to establish the necessary common mechanisms for the optimal and rational use of the Uruguay River, and in strict observance of the emerging rights and obligations of the treaties and others international commitments in force for any of the parties. ” This international treaty acquires legal entity for our country on September 7, 1976, under the presidency of Jorge Rafael Videla, by national Act 21413 and by Uruguay law 14521.

In turn, in said treaty, the parties specifically agreed that the signatory countries undertake to protect and conserve the aquatic environment and take responsibility for the activities of natural or legal persons that they may carry out, generating considerable environmental damage.

Therefore, both countries and since the signing of treaty as a guarantee were always committed to caring for the environment, manifesting a position of social commitment, since the environment compromises all humanity and its reversible damage or not, is generating of large-scale responsibilities.

This purpose was questioned when the cellulose plants began to be authorized. The next cellulose plant belonging to the society Botnia S.A. and Botnia Fray Bentos, both created for the purpose of installing the Orion plant, which is currently in operation, on the left bank the

Uruguay river.

Uruguay did not realized the prior consultation established in Section seven on statute that say: “The Party that projects the construction of new channels, the modification or significant alteration of the existing ones or the performance of any other works of sufficient entity to affect navigation, the River regime or the quality of its waters, shall communicate it to the Commission, which shall summarily determine, and within a maximum period of thirty days, whether the project may cause significant damage to the other Party. If this is resolved or a decision is not reached, the interested Party must notify the project to the other Party through the same Commission The notification shall include the essential aspects of the work and, if applicable, the mode of its operation and the other technical data that allow the notified Party to make an assessment of the effect likely that the work will cause navigation, the regime of the River or the quality of its waters."

Both countries negotiated before the commission and also before the specially created high-level Argentine Uruguayan technical group in order to reach an agreement that finally proved insufficient.

4. The “Administrative Commission of the Uruguay River” (CARU).

The administrative commission of the Uruguay River constitutes a “modern and advanced instrument for the administration of a shared water resource” and it was born with the purpose of observing the fulfillment of the purposes and objectives of the statute.

In the present case, Uruguay did not present the previous consultant before this organism and the CIJ sentenced this act, the commission would be pronounced about the project and his sensibility for the parts. Thus, Uruguay did not comply with notifications to Argentina and proceeded to authorize the establishment of cellulose plants.

In other words, the purpose of the administrative commission of the Uruguay River was to ensure the cooperation between the two countries, promoting sustainable development as a principle. But this purpose was completely unfulfilled by the actions of Uruguay. The commission had to provide prevention of pollution and control of the resources. This is reflected in the first Section of the statute that establishes its objective or aim, which results

from the protection of the environment, an effective administration through a reasonable balance of rights and obligations.

However, the CARU acted as far as it could, since Uruguay did not comply with the provisions of the statute. The CARU failed.

5. **The International Court of Justice decision and its naïve "conciliatory spirit"**.

These were the judges in charge: Mr. Peter Tomka, Abdul G. Kornoma, Awn Shawkat Al-Khasawneh, Bruno Simma, Ronny Abraham, Kenneth Keith, Bernando Sepúlveda Amor, Mohamed Bennouna, Leonid Skotnikov, Antonio Ausgusto Cancado Trindade, Abdulqawi Yasuf y Christopher John Greewood, Santiago Torres Bernandez and Raul Vinuesa. They pronounced the sentence, expressly ordering the enforcement of procedural obligations and substantial obligations. To do this, they took the claims of both countries and analyzing them according to the interpretation of the Vienna Convent Section 31 that say:

"**General Rules of interpretation**: 1. a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) Any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended."

In turn, through its final ruling –without any appeal-, the Court states that the procedural obligation for prior consultation should be carried out as soon as the project has been prepared for the purpose of analyzing whether it could cause sensitive damage to the other party, in turn, fact that it was not provided to the commission even in the face of repeated requests that it made because it considered that the presentations that had been made were insufficient respect the environmental aforementioned impact, the obligation due by Section 7, first paragraph of the 1975 Statute was not fulfilled.

“Section 7. If one Party plans to construct new channels, substantially modify or alter existing ones or carry out any other works which are liable to affect navigation, or the quality of its waters, it shall notify the Commission, which shall determine on a preliminary basis and within a maximum period of 30 days whether the plan might cause significant damage to the other Party.

If the Commission finds this to be the case or if a decision cannot be reached in that regard, the Party concerned shall notify the other Party of the plan through the said Commission.

Such notification shall describe the main aspects of the work and, where appropriate, how it is to be carried out and shall include any other technical date that will enable the notified Party to assess the probable impact of such works on navigation or the quality of its waters. “

In addition, the third paragraph of the Section mandates the essential aspects of the entire work project and technical aspects to allow the evaluation indicating the possible environmental impact of the water. It is undeniable to determine that this procedural obligation is an essential part, of specific compliance, and cooperative among the states.

The case is that Uruguay presented these studies after having already granted the environmental authorizations to the CMB (ENCE) and Orion (BOTNIA) plants, and the constructions of the plants were carried out before all the negotiations that were attempted were finalized, therefore directly denied the Argentina, the possibility of issuing on the impact it could have for the area that was affected. On the other hand, Uruguay's intention was linked to between both countries, also certainly omitted by Uruguay and not extensible to the BOTNIA project.

The high-level technical group, created as another attempt to resolve the substantive conflict between the parties as a cooperator of the CARU agency through their respective foreign ministries, initiated an exchange of information and the monitoring of consequences that matter the operation of plants of cellulose that are built in the Oriental Republic of Uruguay nothing resulted to that effect, because if there is negotiation it must have the same positive effect with the actions of the parties from a fervent commitment to action, therefore the Court interpreted that the creation of this group, could not be interpreted to repeal other planned obligations of the nature of the Statute.

6. **The environmental impact according to Argentina**

The real purpose of Argentina to reject the actions of Uruguay, was raised for an environmental reason. Argentina was deeply touched by the environmental pollution of its waters and territories, stemming from the installation of the pulp mill. Argentina specifically claimed that Uruguay had violated the following obligations: the obligation to contribute to the optimum and rational utilization of the river, the obligation to ensure that the management of the soil and woodland does not impair the regime of the river or the quality of its waters, the obligation to co- ordinate measures to avoid changes in the ecological balance and the obligation to prevent pollution and preserve the aquatic environment.

Therefore, from the outset a detailed study of the environmental impact of the "*pasteras*" and their consequences was required, as well as a permanent control over the quality of their production.

On the other hand, this conflict had repercussions at international level, since it focused and carrying in analyses on the principles established by the ONU such as principle that say "States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith." As well as the different treaties and conventions that have been established due the environment in general, determining a reasonable use of international watercourses such as Convention of the Law of the Non navigational Uses of International Watercourses.

In the sentence, The ICJ indicated that Uruguay failed to comply with procedural obligations,

but not substantial ones, since Uruguay had fulfilled its evaluation of the environmental impact and the popular consultations on citizens of Gualeguaychú. Unsatisfied with the situation, Argentina alleged that these studies were incomplete. Also the environmentalists manifested that there were always in Uruguay problems such as the lack of effective sustainable management policies, implementation failures in existing environmental policies, the excessive use of chemicals in the soil, the use of fertilizers, afforestation plans, the increasing pollution of water and lack of economic and technical resources.

As a consequence, the Court, recalling the final purpose of the Statute and trying to reconcile wills stated “is of the view that the attainment of such an objective requires “a balance between the Parties’ rights and needs to use the river for economic and commercial activities on the one hand, and the obligation to protect it from any damage to the environment that may be caused by such activities, on the other” and for that reason to Sections 27, 36 and 41 of statute, these Sections regulate the proper use of the river and the states parties must resort to the CARU as a mediating agency, however when verifying the present case, the position of the International Court did not represent the solution of the real problem and its main axis is the environment and his care, although the obligation to make an environmental impact assessment materialized in these cases, it is important to note that Argentina with an environmentalist spirit, also resorted to general international law citing international agreements such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, the 1971 Ramsar Convention on Wetlands of International Importance, the 1992 United Nations Convention on Biological Diversity, and the 2001 Stockholm Convention on Persistent Organic Compounds Of international importance, the 1992 United Nations Convention on biological diversity and the 2001 Stockholm Convention on Persistent Organic Compounds, in order that the ICJ could carry out a comprehensive analysis of the case however, it proved insufficient without going further the Section 21 of Watercouses Convention was of central concern to the Court’s deliberation on the substantive issues in this case, and this Section clearly says “require States to "individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse" and, further, to "consult with a view to arriving at mutually agreeable measures and methods" including the setting of joint water-quality objectives and criteria, establishing techniques and practices to address pollution, and

establishing lists of water polluting substances to be controlled2 . These renowned Sections in the sentence should be pronounced with the same force.

7. **Joint dissenting opinion of Judges Al –Khasawneh and Simma. Simple logic.**

As both judges stated, the court evaluated in detail the procedural obligations, however it did not take into consideration the essential points to verify whether the start to an obvious negative environmental impact occurred with the actions of Uruguay. So manifested the Court on its own is not in a position adequately to assess and weigh complex scientific evidence of the type presented by the Parties. To refer to only a few instances pertinent for our case, a court of justice can- not assess, without the assistance of experts, claims as to whether two or three-dimensional modelling is the best or even appropriate practice in evaluating the hydrodynamics of a river, or what role an Acoustic Doppler Current Profiler can play in such an evaluation. It is the method used, perhaps too simple for the scope of the present case, the Court is called upon "to assess the relevance and the weight of the evidence produced in so far as is necessary for the determination of the issues which it finds it essential to resolve" .

The Court had a passive attitude towards this conflict, perhaps fearful of having to take effective measures that would lead to great economic or social damages.

Finally, I would like to end this paragraph with an opinion that is worth emphasizing:

"It is the responsibility of the Court, after having given careful consideration to all the evidence placed before it by the Parties, to determine which facts must be considered relevant, to assess their probative value, and to draw conclusions from them as appropriate".

8. **Argentinean Environmental awareness**

The case between Argentina and Uruguay represents a humanitarian environmental matter. It represents an applicable model for similar cases, however it should be deepened in terms of the human right to a healthy and balanced environment, worthy of the balance of people's lives, the environmental good is a collective good, located in the social sphere and that causes for all rights and obligations.

In general terms, environmental law, which is a basis for environmental sustainability and includes the human being as its main actor,

Therefore, and taking into account the opinion of those who occupy an ideal position to apply to its resolution, the fact that has created an environmental conflict is a quite “social” matter; and must be a generator of collective actions

Something to remark is the birth of the urban and environmental Assembly of Gualeguaychu. It was born under the slogan “**No to the wastebaskets**”. This slogan and the whole Assembly have displayed measures for intense awareness through the media, projecting their arguments as the most solid before the public opinion.

It is clear that mechanisms for popular participation should be promoted, among a framework of public policies. The construction of this kind of citizenship will have very positive effects on society as a whole. On the one hand, it will favor an active social fabric. On the other hand, it will get public agents used to articulate their actions with others in society. Therefore, Argentina, will be quite aware of its natural resources, since its national constitution in Section 41 that says:

“All inhabitants enjoy the right to a healthy, balanced environment, suitable for human development and for productive activities to meet present needs without compromising those of future generations; and they have a duty to preserve it. Environmental damage will primarily generate the obligation to recompose, as established by law.

The authorities shall provide for the protection of this right, for the rational use of natural

resources, for the preservation of natural and cultural heritage and for biological diversity, and for environmental information and education.

It is up to the Nation to dictate the norms that contain the minimum protection budgets, and to the provinces, those necessary to complement them, without them altering the local jurisdictions.

The entry into the national territory of current or potentially hazardous waste and radioactive waste is prohibited."

It is worth mentioning that this Section was born with the reform of the national constitution in 1994, in the chapter on new rights and guarantees. Therefore, it represents the environmental conscience of our people, with the conscious idea of the duty to preserve the environment.

Taking this regulation into account is how the Argentine people had activated all the resources they had available once this situation exploded. Additionally, the Argentine general Act of Environment, 25.675, comes to establish the minimum budgets for the achievement of a sustainable management of the environment. That is why Argentina's commitment to the environment is unmatched and in the case of paper mills, Argentina could not remain indifferent to this situation. The Supreme Court of Justice in the ruling "Mendoza Beatriz Silvia and others c / National State and other s / damages" has determined that "the improvement or degradation of the environment benefits or harms the entire population, because it is a good that belongs to the sphere social ... and from there the judges must act to enforce these constitutional mandates".

Guillermo Arnaud has stated a very prominent opinion of the active and important participation in Stockholm of the representative delegate of Uruguay, together with the action of [100]the argentine delegation, to approve, among others, the text stating that "states have the sovereign right to exploit their own resources you are in application of your own environmental policy and the obligation to ensure that the activities carried out within your jurisdiction or under your control do not harm the environment of other states or areas

[100] Ambassador Guillermo Arnaud.

outside of any national jurisdiction.

That is the reason why Gualeguaychú did not grant the "Social License" to BOTNIA.[101] The population of Argentina joined forces to urge environmental awareness throughout the whole region.

9. **Conclusion**

In 1975, when the treaty between Argentina and Uruguay was signed, it constituted an important boost in environmental matters. However, the lukewarm judgment, rather than being conciliatory, had the effect of leaving the international community quite disoriented. With this conflict, we have lost a unique possibility to define a common policy that would establish strict environmental guidelines, aimed at maximizing the ecological damage that these companies can cause to all of us.

The International Court of Justice in its arguments set aside important Environmental regulations and focused only on a technicality which has not contributed at all to the criteria at hand, with respect to the environment.

Therefore, this International Court of Justice (ICJ) ruling cannot be the subject of any future reference in Environmental Law, since, definitely, the concept of Environmental Law and its implication in this case in human rights is not duly rooted on Justice and Equality.

[101] The Social License is the right that residents must have to accept or not the installation of industries that compulsively modify the projected social and economic model for the region (Public dissemination document of the Environmental Citizen Assembly of Gualeguaychú).

CHAPTER NINE. [102]

Argentina and the realm of Employment Law

"I believe in the dignity of labor, whether with head or hand. I believe that the world owes no man a living but that it owes every man an opportunity to make a living". John D. Rockefeller

"Social Justice is the great final aim of Men and Peoples. Definitely, there will not be Social Justice where there is Social Exploitation. Social Justice is our ultimate hope for Peace." Dr. Norberto Centeno, Argentina.[103]

Throughout history, is has been seen that every human being has to dedicate his or her life to a activities which provide them not only the satisfaction of their basic physical needs of food, clothing, and shelter but also the possibility to feel useful and productive as a member of society. It is exactly that sense of satisfaction which helps people build their dignity. That is the realm of work. That is the realm of Employment law.

1. **Introduction**.

In Argentina, Section 14 bis of the National Constitution establishes a number of workers'

[102] By Astor, Adriana Delfina, with the extensive and inestimable cooperation of Mr. Cari, Ms. Cabrera and Ms. Llanes, from Province of Jujuy.
[103] See Lopez, Jose Ignacio, Norberto Centeno, la Vida por los Trabajadores, Universidad de La Plata, available at: https://perio.unlp.edu.ar/archivoperio/node//4338

rights, including dignified and equitable working conditions; limited working hours; paid rest and vacations; fair remuneration; minimum vital and adjustable wage; equal pay for equal work; participation in the profits of enterprises, with control of production and collaboration in the management; protection against arbitrary dismissal; stability of the civil servant; free and democratic labour union organization.

Section 14 bis N.C. also guarantees Trade Union Rights to enter into collective bargaining, to resort to conciliation and arbitration, the right to strike, and the protection of union representatives.

Unfortunately, the opportunity to have access to equal and fair conditions when accessing a job might not always be converted into facts. It's been a long way to reach to this point when Argentinian workers may rely on a National Employment Act (Act number 20744) which helps them work in the most suitable conditions and to claim to be heard when appealing for their rights as workers. Fights for these rights have taken place from the times of the Industrial Revolution and still continue nowadays.

2. **Terms and definitions in the Argentinean Employment Act**.

According to social standards, all productive human activity, whether manual, technical, intellectual, artistic or recreational, may be construed as "work".

Through time, societies have evolved and therefore have been organized according to their own culture, customs, languages, races, etc. and ever since everything that men have achieved has been done with great effort, in other words with their own work. At the beginning of times, man himself manufactured his tools in order to work the land and so the craftsmen emerged thus it can be stated that in all manifestations of human evolution work was present.

As the time passed by, man started to become aware of the value of his work and began to demand salary and environmental conditions according to the risks he might have in his daily tasks.

Through time, a systematic organization of work emerged as well as social classes. This

marked the division between those who ruled and directed the economy and those who were ruled and had to work in order to have a way of living and survive. The complex organization of work resulted in the creation of a hierarchy of supervisors. Business empires emerged and brought many changes not only to man but also to the economic system.

In the case of Argentina, the Employment Contract Act 20.744 in Section 5 declares that a Company ("Empresa") is meant as "the organization of people and materials regulated by a supervisor in order to achieve economic or beneficial rewards".

On the other hand, an "Employer" is understood as the "person who runs the business itself, or by means of other people with which workers relate to in a hierarchy way of involvement, whatever their participation may be in the direction and ruling of the company. Moreover, in Section 6 the Act refers to the idea of "Facility" ("Establecimiento") as the technical unit meant to achieve the company objectives.

3.**The "Work" World and the concept of *Mobbing* in Argentina**.

Man learned to associate "work" to the idea of achieving better and faster results for his life. Some men contribute with their ideas and others with the use of their skills. Therefore, the "idea of what work is" implies not only a means to build things but also to make utensils and ultimately to obtain sustenance and personal progress. Jobs varied. The activities implied in the work performed have been divided and diagrammed.

The psychologist David Blustein stated that "work is a primary factor in the well-being of people". This author shows how across cultures, work plays a central role in the lives of individuals and how the world of work can either promote well-being or lead to distress, depending on the nature of the work and the interaction between the individual and the work environment. Regarding this point, it is important to highlight the need for a good work environment for the individual welfare and how good working relationships may help to enhance productivity or lead to lack of interest, cooperation or benefits for the persons involved in a certain task.

Connected with that, and following Blunstain again, it has been stated that work provides a means by which individuals can fulfill the following three basic human needs:

1) survival and power,

2) social connection, and

3) self determination and well-being.

Nowadays, in many courtrooms of Argentina, the word “Mobbing” (even in English; thus, the term “Mobbing” is used as “harassment”) is frequently being heard in different disputes. It is quite common to hear people complain about not having a good or healthy relationship with their co-workers and, in most of the cases, these situations lead to serious stress or physical damage. Unfortunately, in most of the cases these situations are being caused because of their sex or gender. The International Labor Organization (ILO) in its Convention n. 190 on “Violence and Harassment”, states in its Section 1:

(a) the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

(b) the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

Argentina has not yet ratified this convention and its ratification was proposed by current President Anibal Fernandez in his opening speech on March 1st at Congress. This ratification will undoubtedly be of great importance for all workers in our country, especially women workers.

4. **Workers’ Rights**

Undoubtedly, workers have rights. They have to be reckoned by the law and the society. In our country, the Employment Law Act 20744 has established in section 7 that the regulations contained in 20744 Act are imperatives, and that they cannot be changed by the parties unless in favor of the workers.

Additionally, Section 44 sets out that any contract or clause in infringement of 20744 Act is considered void and null.

In accordance to Employment Act 20744, in Argentina there will be an "Employment relationship" whenever a person is obliged to perform acts, do any kind of work for another person, who provides payment. What is special in Argentina is that workers do not need to enter into a signed contract, to be considered "a worker". When the dependence relationship exists, there is an Employment relationship, equally valid. In that case, the employer will be responsible for the legal obligations for workers as regards contributions for ANSES (*Administración Nacional de Seguridad Social*) and social security.

Despite this, there are still many companies which fail to keep up with all the legal obligations under the Employment Law, and thus they do not provide workers with a good salary or even the safety standards. For this reason, many employees may still suffer different kinds of problems (such as health, economic and security issues, etc).

5. **Conclusion**.

To enjoy "decent work conditions" constitutes a human right as it is included in Section 23 of the Universal Declaration for Human Rights in 1948, ratified by Argentina, and present in Section 75 part 22 of the National Constitution.

Taking this into consideration, we can declare, in accordance with Section 23 of the Universal Declaration for Human Rights, that each individual has the right to choose the work he is more suitable in. Each individual has the right to get a fair salary and good working conditions.

This will allow every man and woman to have a decent life and to live with dignity.

Thanks to the effort of our ancestors, nowadays workers can enjoy and make use of such rights. For example, a worker has the right to demand a healthy environment and suitable conditions for a proper development of his tasks, as well as the use of appropriate clothing, special equipment, harnesses, etc. (everything he needs to do his job in a safety condition).

Not only should he enjoy protection within the workplace but also he would have social

protection as well, that is to say to have medical insurance for him and his family. Moreover, he should be compensated with corresponding unemployment and compensation insurance in case he loses his job. Furthermore, workers have the right to associate with their respective unions and to go on strike when it is necessary. Such demonstrations must be respected when the claims are fair, for example, the opposition to job precariousness, commonly called “junk contracts” in which workers are severed rights having to work in precarious conditions, with low wages and no social benefits.

All in all, everyone has the right to equal opportunities of work, whether male or female, regardless of race, religion, culture. In particular, protection should be demanded for children so that they are not victims of labour exploitation of any kind. When the companies provide fair working conditions and salaries, workers will no longer complain.

In Argentina, the 20744 Act has been a breakthrough in this path, but, unfortunately, some things still need to be changed, commencing with the businessmen point of view, the type of approach that only prioritizes profits and revenues, forgetting that “the idea of work ” should subordinate itself to human happiness and not the other way round.

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