

Argentina's legal framework on reparations for victims of sex trafficking: an assessment in light of the UN Draft Principles.

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Introduction

Human trafficking is a problem in many countries in Latin America, including Argentina, which is a source, transit, and destination country for men, women, and children subjected to sex trafficking.¹ Victims exploited within the country include nationals as well as people from other Latin American countries. Some victims are subjected to sex trafficking in other countries, mostly Europe.² According to official numbers of the Ministry of Justice and Human Rights, since 2015, the number of reported cases in Argentina has increased, from 2,732 in 2015, to 3,256 in 2016.³ During only the first half of 2017, 1,446 cases were reported.⁴ The UN's 2016 Global Report on Trafficking in Persons shows that the most frequent detected form of exploitation in South America is sexual exploitation, with 57% of the victims in that category.⁵ According to the co-prosecutor of the Prosecution Department for Combating Human Trafficking and Exploitation (PROTEX), 70% of the cases on human trafficking that go to trial in Argentina are cases of sex trafficking, 99% of which involve women.⁶

In Argentina, human trafficking is prohibited and criminalized by No. 26.364⁷ (herein after, Human Trafficking Law or "HTL"), as modified by Law 26.842⁸ (herein after, Amended

¹ Cfr. U.S. Department of State, Trafficking in Persons Report 2017: Argentina, p. 67.

² *Ibid.*

³ Ministerio de Justicia y Derechos Humanos, Programa Nacional de Rescate y Acompañamiento a Personas Damnificadas por el Delito de Trata, available at <http://www.jus.gob.ar/noalatrata.aspx>.

⁴ *Ibid.*

⁵ UN Office on Drugs and Crime (UNODC), Global Report on Human Trafficking 2016, p. 97.

⁶ C. Camarano, "Víctimas rescatadas de la trata exigen una reparación económica al Estado para rehacer sus vidas", in *Ámbito Financiero*, 3 July 2017, available at <http://www.ambito.com/888650-victimas-rescatadas-de-la-trata-exigen-una-reparacion-economica-al-estado-para-rehacer-sus-vidas>

⁷ Law No. 26.364 (Human Trafficking Law), 29 April 2008, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/140000-144999/140100/norma.htm>.

⁸ Law No. 26.842 (Amended Human Trafficking Law), 26 December 2012, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/205000-209999/206554/norma.htm>. It is important to note

Human Trafficking Law or “AHTL”). In 2008, the National Trafficking Victims Rescue and Assistance Program was created, an office in charge of rescuing and assisting victims of human trafficking. By June 2017, the Program had managed to rescue 11.169 victims, 46% of which were victims of sexual exploitation.⁹ Despite these promising numbers, NGOs such as “Red Alto al Tráfico y la Trata” (RATTA) have been denouncing the insufficiency of public policies dedicated to assisting the victims, lack of free legal aid to help victims initiate the criminal and civil proceedings to obtain reparations, and a significant reduction in the number of victims rescued in comparison with the previous years.¹⁰ One of the greatest challenges regarding victims of human trafficking in the country is to provide adequate reparations and assistance to ensure that victims are not returned to their pre-existing positions or put at risk of being re-trafficked¹¹.

Argentina is a party to the Protocol of Palermo,¹² the American Convention on Human Rights (herein after “ACHR”),¹³ the Convention for the Elimination of all forms of Discrimination against Women (herein after “CEDAW Convention”)¹⁴ and the Inter-American Convention on the Prevention, Punishment and Eradication of violence against Women (herein

that the AHTL does not entirely replace the HTL, but rather modifies some of its articles. Since there is no complete official text of the HTL including the modifications made by the AHTL, throughout the article it will be necessary to refer both of them, since they are both applicable. Thus, the HTL will be referenced in relation to the provisions that were not modified by the AHTL, and the AHTL will be referenced whenever it modifies the HTL.

⁹ Ministerio de Justicia y Derechos Humanos, Programa Nacional de Rescate y Acompañamiento a Personas Damnificadas por el Delito de Trata, available at <http://www.jus.gob.ar/noalatrata.aspx>.

¹⁰ V. Camino, “La trata de personas es un crimen gravísimo contra los derechos humanos”, in *Télam*, 22 September 2017, available at <http://www.telam.com.ar/notas/201709/206363-la-trata-de-personas-es-un-crimen-gravissimo-contra-los-derechos-humanos.html>.

¹¹ V. Smink, “El camino sin retorno de las víctimas de la trata”, *BBC Mundo*, 18 December 2013, at http://www.bbc.com/mundo/noticias/2013/12/131218_argentina_trata_victimas_vs.

¹² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Approved by Law No. 25.632.

¹³ Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969. Approved by Law No. 23.054.

¹⁴ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Approved by Law No. 23.179.

after “Convention of Belem do Para”).¹⁵ Argentina’s legal framework to combat human trafficking includes the HTL, as amended by the AHTL, and its Regulatory Decree N° 111/2015 (herein after “Regulatory Decree”).¹⁶ Furthermore, a bill is currently being discussed which endeavors to provide economic reparations to victims of human trafficking: Bill No. 533/17 on Economic Reparations for Victims of Human Trafficking (herein after “HT Reparations Bill”),¹⁷ on reparations for victims of human trafficking which has been approved by the Senate and is currently under discussion in the Lower Chamber.

The purpose of this article is to determine whether Argentina’s current legal framework regarding reparations for victims of sex trafficking is compliant with international standards and, more specifically, with the UN Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons (herein after “UN Draft Basic Principles”).¹⁸ In this sense, it will be argued that, whereas Argentina’s legal framework is generally in compliance with the principles, the most important deficit is in the field of providing victims with access to adequate and effective remedies to obtain compensation. To that end, section 1 will outline Argentina’s international obligations regarding human trafficking; section 2 will detail the legal measures and public policies adopted by Argentina as a response to the problem of human trafficking; section 3 will analyze those measures in light of the UN Draft Basic Principles. Finally, it will be concluded that, in light of Argentina’s obligations to adopt legislative measures to give effect to the rights and freedoms recognized in the treaties to which the State is party,

¹⁵ Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”), 9 June 1994. Approved by Law No. 24.632.

¹⁶ Under Argentine law, there are three kinds of decrees: (i) executive or regulatory decrees; (ii) autonomous decrees; (iii) delegated decrees; and (iv) necessity and urgency decrees. Executive or regulatory decrees are regulated under Art. 99(2) of the Constitution, and are those that provide the necessary instructions to implement the laws passed by Congress. *Cfr.* Argentina’s Constitution, Art. 99(2), at https://www.constituteproject.org/constitution/Argentina_1994?lang=en.

¹⁷ Bill No. 533/2017, passed by Senate on 31 May 2017, available at <http://www.senado.gov.ar/parlamentario/comisiones/verExp/533.17/S/PL>.

¹⁸ UNGA, “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law”, A/RES/60/147, 21 March 2006.

Argentina's legislature has the obligation to modify the current legislation to make sure that victims of human trafficking have access to adequate and effective remedies, including compensation.

1. Argentina's international obligations regarding human trafficking.

Article 6 of the CEDAW Convention establishes the duty of all States to take appropriate measures, including legislation, to suppress all forms of traffic in women. General recommendation No. 19 of the CEDAW Committee, on violence against women, establishes that trafficking in women is a form of violence against women and states that "(e)ffective complaints procedures and remedies, including compensation, should be provided".¹⁹

The United Nations Convention against Transnational Organized Crime²⁰ was adopted by the UN General Assembly in 2002. The Convention is supplemented by three protocols: the Protocol of Palermo;²¹ the Protocol against the Smuggling of Migrants by Land, Sea and Air;²² and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.²³ Argentina became a party to the UN Convention against Transnational Organized Crime and the Protocol of Palermo in 2002, by means of Law No. 25.632.²⁴

The Protocol of Palermo established the first internationally binding definition of human trafficking. Article 3 of the Protocol defines trafficking in persons as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force

¹⁹ CEDAW Committee, General Recommendation No. 19 on violence against women, par. 24.i.

²⁰ UN General Assembly, United Nations Convention against Transnational Organized Crime, adopted by the General Assembly, 8 January 2001, A/RES/55/25.

²¹ *Supra* note 12.

²² UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

²³ UN General Assembly, Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime, 31 May 2001, A/RES/55/255.

²⁴ Law No. 25.632, 29 August 2002, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/77329/norma.htm>.

or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.²⁵ Thus, the IACHR has identified that the definition of trafficking of the Palermo Protocol comprises three elements: 1) acts, 2) commissive acts, and 3) further purposes.²⁶ The Palermo Protocol also provides that the consent of a victim of trafficking is irrelevant whenever the forms of coercion listed in Article 3 are present.²⁷ Finally, it states that the recruitment, transportation, transfer, harboring or receipt of a child for exploitation is considered trafficking, even if it does not involve any of the means established in Article 3(a).²⁸

In 2004, the UN Commission on Human Rights (now replaced by the UN Human Rights Council), issued Resolution 2004/110,²⁹ by means of which it decided to appoint a Special Rapporteur on trafficking in persons, especially in women and children. At the Human Rights Council’s 17th session, the Special Rapporteur presented a report on the right to an effective remedy in the context of trafficking in persons with recommendations to the States on how to fulfill their obligations.³⁰ As a response, the Human Rights Council issued Resolution 20/1, requesting the Office of the United Nations High Commissioner for Human Rights (UNHCHR) to organize, in close cooperation with the Special Rapporteur, consultations

²⁵ Protocol of Palermo, *supra* note 12, Art. 3.

²⁶ IACHR, Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the Inter-American Human Rights System, OEA/Ser.L/V/II.Doc. 46/15, 2015, par. 220.

²⁷ Palermo Protocol, *supra* note 12, Art. 3.

²⁸ *Ibid.*

²⁹ Human Rights Commission, Resolution 2004/110, 19 April 2004, UN Doc. E/CN.4/DEC/2004/110, at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=9780.

³⁰ Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, “The right to an effective remedy for trafficked persons”, 2011, UN Doc. A/HRC/17/35/Add.5, at <http://www.ohchr.org/EN/Issues/Trafficking/Pages/annual.aspx>.

with States, intergovernmental bodies and civil society organizations to discuss the Draft Basic Principles, and to submit a summary thereon to the Council at its twenty-sixth session.³¹ Although the UN draft basic principles are not binding and cannot be considered sources of international law in the terms of Article 38.1 of the Statute of the International Court of Justice,³² they represent an authoritative basis for States to interpret the content of their obligations to provide reparations for victims of human rights violations in the specific context of human trafficking.

The UN draft basic principles identify that victims of human trafficking have a right to an effective remedy, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. This is in line with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law (“UN Basic Principles”)³³ and the case-law of the Inter-American Court of Human Rights (IACtHR).³⁴

Moreover, Argentina is a party to the American Convention of Human Rights (ACHR).³⁵ Article 6 of the ACHR establishes that “no one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women”. The Inter-American Commission of Human Rights (IACHR) has established that Article 6 must be read in light of the definition of human trafficking contained in Article 3(1)

³¹ Human Rights Council, Resolution 20/1, 7 May 2012, UN Doc. A/HRC/20/L.1, at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ResDecStat.aspx>.

³² United Nations, Statute of the International Court of Justice, 18 April 1946, Art. 38.1.

³³ UNGA, “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law”, A/RES/60/147, 21 March 2006, par. 18. *See also* UN Commission on Human Rights, “Updated Set of principles for the protection and promotion of human rights through action to combat impunity”, E/CN.4/2005/102/Add.1, 8 February 2005, p. 17.

³⁴ IACtHR, Case of Loayza-Tamayo v. Peru, 27 November 1998 (Reparations and Costs), par. 85.

³⁵ Organization of American States (OAS), American Convention on Human Rights, “Pact of San Jose”, Costa Rica, 22 November 1969.

of the Protocol of Palermo.³⁶ Furthermore, Article 27 establishes that the prohibition on human trafficking contained in Article 6 cannot be suspended in time of war, public danger, or other emergency that threatens the independence or security of the State. The IACHR has considered the prohibition of human trafficking is customary and *jus cogens*.³⁷ Moreover, it has stated that human trafficking represents a violation of a multiple or continuous character, which is maintained until the victim is released.³⁸ Among the many rights that this practice violated, the IACHR has mentioned the right to life, the right to humane treatment, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and personal security, protection of one's honor and dignity, freedom of expression, the rights of the child, the right of women to a life free of violence, the right to private property, equal protection and access to justice.³⁹

Although not specifically related to human trafficking, the ACHR provides certain obligations of the States regarding human rights violations in general that are applicable to the case of human trafficking. Under Article 1(1) States have the obligation to respect and ensure the rights contained in the Convention. While the obligation to respect refers to the limits for the exercise of public authority, the obligation to ensure “implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights”.⁴⁰ Even when there is no proof of State involvement, the circumstance that

³⁶ IACHR, Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the Inter- American Human Rights System, OEA/Ser.L/V/II.Doc. 46/15, 2015, par. 221.

³⁷ IACHR, Report on Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia, OEA/Ser.L/V/II. Doc. 58, 2009, para. 54.

³⁸ IACHR, Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the Inter- American Human Rights System, OEA/Ser.L/V/II.Doc. 46/15, 2015, par. 222.

³⁹ IACHR, Report on Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia, OEA/Ser.L/V/II. Doc. 58, 2009, para. 58. *See also* IACHR,

⁴⁰ IACtHR, Case of Velásquez Rodríguez v. Honduras, 29 July 1988 (Merits), par. 165-166.

the State apparatus creates a climate of impunity violates Article 1(1).⁴¹ The State can breach its obligations under the ACHR by providing acquiescence to the actions of non-State actors,⁴² as well as by failing to investigate those crimes, which may constitute a form of aiding.⁴³

Under Article 1(1) of the ACHR, States have an obligation to prevent, investigate and punish any violation, and provide appropriate reparations.⁴⁴ Similarly, the UN Basic Principles establish that the obligation to respect, ensure respect for and implement international human rights law includes the duty to prevent and investigate violations, as well as the duty to provide access to justice and effective remedies to victims, including reparations.⁴⁵ The duty to prevent includes “all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages”.⁴⁶ The duty to investigate “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government”.⁴⁷ Article 1(1) also requires States to prosecute, try and punish those responsible for human rights violations.⁴⁸ This is both a duty of the State and a right of the victim’s family.⁴⁹

Regarding the duty to repair, under Article 10 of the ACHR, every person has the right to compensation in accordance with the law in the event he or she has been sentenced by a final

⁴¹ IACtHR, Case of Godínez Cruz v. Honduras, 20 January 1989 (Merits), par. 192.

⁴² IACtHR, Case of Blake v. Honduras, 24 January 1998 (Merits), par. 78.

⁴³ IACtHR, Case of Velásquez Rodríguez v. Honduras, 29 July 1988 (Merits), par. 177; Case of Radilla Pacheco v. Mexico, 23 November 2009 (Preliminary Objections, Merits, Reparations and Costs), par. 216.

⁴⁴ IACtHR, Case of Velásquez Rodríguez v. Honduras, 29 July 1988 (Merits), par. 165-166.

⁴⁵ UN Basic Principles, *supra* note 33.

⁴⁶ IACtHR, Case of Velásquez Rodríguez v. Honduras, 29 July 1988 (Merits), par. 175.

⁴⁷ *Ibid.*, par. 177.

⁴⁸ IACtHR, Case of Gómez Palomino v. Peru, 22 November 2005 (Merits, Reparations and Costs), par. 100.

⁴⁹ IACtHR, Case of González Medina and family v. Dominican Republic, 27 February 2012 (Preliminary Objections, Merits, Reparations and Costs), par. 208.

judgment through a miscarriage of justice.⁵⁰ Article 63(1) of the ACHR incorporates the principle according to which an illegal act attributable to the State involves the duty to provide reparations and to make the consequences of the violation cease.⁵¹ Furthermore, the IACtHR has held that the duty to ensure contained in Article 1(1) includes the duty to provide reparations for violations to the rights contained in the Convention.⁵² The duty to provide redress to victims of human rights violations is non-derogable, and the State has the obligation to “ensure that the reparation claims formulated by the victims of grave human rights violations and their next of kin do not encounter excessive procedural burdens or obstacles that could present an impediment or obstruction to the satisfaction of their rights.”⁵³ Measures of non-repetition in cases of gross human rights violations include the right of a society to know the truth, since it is also aimed at preventing future violations”.⁵⁴ Justice is another form of reparation and a measure of non-repetition, since it is proved that impunity usually leads to repetition of the violations.⁵⁵

Finally, under Article 2 of the ACHR, States have an obligation to take all necessary legislative or other measures to give effect to the rights recognized in the ACHR.⁵⁶ Article 2 ACHR requires that domestic law measures are effective according to the principle of *effet utile*; this means that the State must adopt all measures so that the provisions of the AHCR are

⁵⁰ OAS, American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm. Ratified by Mexico on 24 March 1981, Art. 10.

⁵¹ IACtHR, Case of Bulacio v. Argentina, 18 September 2003 (Merits, Reparations and Costs), par. 70.

⁵² IACtHR, Case of Velásquez Rodríguez v. Honduras, 29 July 1988 (Merits), par. 166.

⁵³ IACtHR, Case of La Rochela Massacre v. Colombia, 11 May 2007 (Merits, Reparations and Costs), para. 198.

⁵⁴ IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, 13 April 2000, para. 148.

⁵⁵ IACHR, “Situation of Human Rights in Mexico”, 31 December 2015, par. 63.

⁵⁶ OAS, American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm. Ratified by Mexico on 24 March 1981, Art. 2.

effectively fulfilled in its domestic legal systems⁵⁷ in such a manner that the protected guarantee is truly practical and effective.⁵⁸

Furthermore, human trafficking is included as one of the forms of violence against women according to Art. 2 of the Convention Belem do Pará on the prevention, punishment and eradication of violence against women (Convention of Belem do Pará).⁵⁹ The IACHR's Rapporteur on Rights of Women, Commissioner Margarette May Macaulay, has stressed that "(g)ender-based discrimination and sexism present in many countries in the region are factors that explain the disproportionate impact of human trafficking on women's victimization" and is a "manifestation of historically unequal power relations between women and men".⁶⁰ In this sense, the Convention establishes the duty of States "to establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies" (Art. 7.f) and "adopt such legislative or other measures as may be necessary" to give effect to the Convention (Art. 7.g).

2. Argentina's response: current legal framework, public policies and case-law

Argentina has a monist constitutional system with primacy of international over national law, where treaties in general are above laws, and most human rights treaties –those listed in Article 75.22 of the Constitution,⁶¹ as well as the ones that Congress decides to include in the future– have the same hierarchy as the Constitution. Furthermore, until recently the Supreme Court of Argentina had interpreted that, since both international human rights treaties

⁵⁷ IACtHR, Case of the "Juvenile Reeducation Institute" v. Paraguay, 2 September 2004 (Preliminary Objections, Merits, Reparations and Costs), par. 205; Case of La Cantuta v. Peru, 29 November 2006 (Merits, Reparations and Costs), par. 171.

⁵⁸ IACtHR, Case of Ivcher Bronstein v. Peru, 24 September 1999 (Competence), par. 37.

⁵⁹ Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 9 June 1994, Art. 2.

⁶⁰ IACHR, "In the World Day against Trafficking in Persons, the IACHR call on States to Adopt a Human Rights Approach in Response to the Diverse Forms of Human Trafficking", Press release, 31 July 2017, at http://www.oas.org/en/iachr/media_center/PReleases/2017/110.asp.

⁶¹ Argentina's Constitution, Art. 75.22, at https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en.

and the Constitution have the same hierarchy, they should be considered as a “constitutional block” which must be interpreted as a coherent and harmonious whole.⁶² Indeed, Article 75.22 establishes that those treaties “do not repeal any article in the First Part of this Constitution, and must be understood as complementary of the rights and guarantees recognized therein”. In *Monges*, the Supreme Court interpreted that this meant that the drafters of the Constitution had already checked that the treaties did not derogate any article of the Constitution and, therefore, that the harmony and coherence between those treaties and the Constitution was a constituent criterion; therefore, they cannot derogate any article of the Constitution and this contradiction should not be presumed.⁶³

Moreover, Art. 75.22 states that those treaties which have been given constitutional hierarchy shall be applied “under the conditions under which they are in force”, which the Supreme Court has interpreted to include the case-law of the international tribunals and other jurisdictions with competence to interpret them. Thus, for instance, the Supreme Court has considered that the ACHR has to be interpreted in light of the decisions of the IACtHR and even the recommendations of the IACHR.⁶⁴

⁶² Góngora Mera, M. (2007) “El Bloque de Constitucionalidad en Argentina y su relevancia en la lucha contra la impunidad”, *Centro de Derechos Humanos de Nuremberg*, at http://www.menschenrechte.org/wp-content/uploads/2009/11/Bloque_Constitucionalidad_Argentina_impunidad.pdf.

⁶³ *Cfr.* Supreme Court of Argentina, “*Monges, Analía M c/Universidad de Buenos Aires*”, 26 December 1996, par. 20-22.

⁶⁴ Some of the most important cases showing the Supreme Court’s position towards the organs of the Inter-American System of Human Rights are “*Espósito, Miguel Angel s/ incidente de prescripción de la acción penal promovido por su defensa*”, 23 December 2004, par. 6 (recognizing that under Article 68(1) ACHR the SCA had to subordinate the content of its decisions to the rulings of the IACtHR); “*Simón, Julio Héctor y otros s/ privación ilegítima de la libertad y otros. Causa N° 17.768C*”, 14 July 2005, par. 17 (ruling that both the IACtHR’s case law and the IACHR’s decisions were essential criteria for the interpretation of the obligations emanating from the ACHR); “*Mazzeo, Julio Lilo y otros s/ recurso de casación e inconstitucionalidad*”, 13 December 2007, par. 21 (applying the notion of conventionality control which must include not only the provisions of the ACHR but also the IACtHR’s rulings); “*Videla, Jorge Rafael y Massera, Emilio Eduardo s/recurso de casación*”, 31 August 2010, par. 8 (reaffirming the criterion adopted in *Mazzeo*); “*Rodríguez Pereyra C/ Ejército Nacional*”, 27 November 2012, par. 12 (stating that all judges have to exercise conventionality control *ex officio* and stating that it would be a contradiction to interpret that the Constitution, which gives constitutional hierarchy to the ACHR as part of its domestic law, does not allow judges to exercise conventionality control); “*Carranza Latrubesse c/ Estado Nacional*”, 6 August 2013, par. 3 (recognizing the obligatory nature of the IACHR’s reports under Article 51 ACHR and stating that if a State ratifies a human rights treaties such as the ACHR, it has the obligation to make its best efforts to apply the recommendations issued by organs such as the IACHR); “*Mohamed, Res. 477/15 – Exp. 4499/13*”, 25 March 2015, par. VI (stating that all organs of the State, including the SCA, are obliged to comply with the IACtHR’s decisions). Despite this clear jurisprudential trend, most recently the Supreme Court

In 2008, Argentina passed the HTL. The law established two types of trafficking: trafficking of persons under 18 and trafficking of persons over 18 years old. In both cases the typified acts (recruitment, transportation, harboring or receipt of persons) and the ulterior motive (exploitation) were identical; the difference was in the passive subject (children or adults) and in the commissive means. In this sense, whereas in the case of children no special commissive means was required, in the case of persons over 18 the law required deception, fraud, violence, threat or any means of intimidation or coercion, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having authority over the victim.

In 2012, the HTL was amended. The AHTL increased the penalties and changed the approach towards the definition, adopting the same criterion for children and adults, but establishing that trafficking of children will be an aggravating circumstance of the crime. In this sense, the new definition of human trafficking is “the offering, recruitment, transportation, receipt or harboring of persons for the purposes of exploitation, either within the territory of the nation as well as from and to other countries”.⁶⁵ The AHTL defined exploitation as any of the following acts, which might also constitute independent crimes from that of human trafficking: (a) any form of slavery or servitude; (b) forced labor or services, the exploitation of the prostitution of others or other forms of sexual exploitation; (c) child pornography or any kind of representation or show with such content; forced marriage or civil union; (d) removal of organs. The AHTL does not require any specific commissive means; on the contrary, those circumstances listed as commissive acts under the HTL (deception, fraud, etc.) are listed as

refused to implement a decision by the IACtHR in the case *Fontevicchia and D’Amicco*, arguing that the IACtHR’s orders were in excess of their remedial powers. *Cfr.* Supreme Court of Argentina, “Ministerio de Relaciones Exteriores y Culto s/ informe sentencia dictada en el caso ‘Fontevicchia y D’Amico vs. Argentina’ por la Corte Interamericana de Derechos Humanos”, 14 February 2017. *See also* J. Contesse, “Judicial Backlash in Inter-American Human Rights Law?”, March 2, 2017, available at <http://www.iconnectblog.com/2017/03/judicial-backlash-interamerican/>; V. Abramovich, “Comentarios sobre el ‘Caso Fontevicchia’”, 17 February 2017, available at <http://ijdh.unla.edu.ar/noticia/126/comentarios-sobre-el-caso-fontevicchia>.

⁶⁵ HTL, *supra* note 7.

aggravating circumstances under the AHTL. In this sense, the new definition extends to all victims the criterion adopted by the previous definition with regards to children, and expressly states that the consent of the victim of trafficking does not exempt the perpetrators from their criminal, civil and/or administrative responsibility. The U.S. Department of State 2017 Report on Trafficking in Persons has criticized this approach since it does not follow the definition established in the Palermo Protocol, noting that listing force, fraud and coercion as aggravating circumstances rather than elements of the crime makes it impossible to differentiate how many of the reported prosecutions were for trafficking as defined by international law.⁶⁶ In 2015, the Executive branch passed the HTL Regulatory Decree.⁶⁷

The HTL creates a series of institutions dedicated to the prevention and elimination of human trafficking, as well as to the protection and assistance of victims of that crime. Art. 21 creates the Executive Committee to Combat Human Trafficking and Exploitation and Protect and Assist the Victims Thereof, which is composed of representatives of the Ministries of Security, Justice and Human Rights, Social Development and Employment, and is in charge of coordinating the effort for the prevention and punishment of human trafficking and assistance of the victims. The Committee is in charge of carrying out the objectives of the National Program to Combat Human Trafficking and Exploitation and Protect and Assist the Victims Thereof, which are listed in Art. 22. Art. 23 establishes a synchronized system for reporting cases of human trafficking and designates the number 145 as a complaints hotline. The Committee's goals are set in a Biannual Work Plan, as provided by Art. 22.

As part of the National Program to Combat Human Trafficking and Exploitation, the Ministry of Justice and Human Rights established the National Trafficking Victims Rescue and

⁶⁶ U.S. Department of State, Trafficking in Persons Report 2017: Argentina, p. 66.

⁶⁷ Under Argentine law, there are three kinds of decrees: (i) executive or regulatory decrees; (ii) autonomous decrees; (iii) delegated decrees; and (iv) necessity and urgency decrees. Executive or regulatory decrees are regulated under Art. 99(2) of the Constitution, and are those that provide the necessary instructions to implement the laws passed by Congress. *Cfr.* Argentina's Constitution, Art. 99(2), at https://www.constituteproject.org/constitution/Argentina_1994?lang=en.

Assistance Program, provides technical assistance and psychological support; and, from the moment of the corresponding search warrant, the program intervenes, using the 145 complaints hotline, in conjunction with the security forces to support victims until they are in a position to provide a witness statement in court, in articulation with that same ministry's National Witnesses Protection Program.

The HTL also creates a Federal Council to Combat the Human Trafficking and Exploitation and Protect and Assist the Victims Thereof (Art. 18). The Federal Council includes representatives of the Ministries of Justice and Human Rights, Security, Interior, International Affairs, Social Development and Employment, as well as representatives of the Senate and the Lower Chamber, the Judiciary, each of the provinces and the City of Buenos Aires, the Attorney's Office, the Federal Council on Children, Adolescence and Family, the Federal Council on Women, and three representatives of the civil society. The Federal Council, which is in charge of devising the strategy to combat human trafficking and supervising the Executive Committee, met for the first time on June 24, 2016.

Other relevant initiatives include the National Campaign to Prevent Human Trafficking, which produces posters, radio and audiovisual spots to address trafficking; the "Mecosur libre de trata" Initiative; the Victim Orientation, Support and Protection Unit (DOVIC), set up in 2014 to develop public policies for victims of trafficking and exploitation, child maltreatment and sexual abuse, gender violence and institutional violence; the creation of the Prosecution Department for Combating Human Trafficking and Exploitation (PROTEX), a specialized prosecution unit established in 2013 within the Public Prosecution Service; the Free Legal Assistance and Aid for Victims of Human Trafficking Program; and the Supreme Court's Judicial Registry on Human Trafficking, created in February 2016 to elaborate annual statistics on human trafficking.

Finally, it is necessary to note that, although in Argentina prostitution is not criminalized, the country has adopted an abolitionist model with regards to sex trafficking and prostitution, which is why it criminalizes the conduct of economically benefiting from the sexual activity of another person.⁶⁸ Given this abolitionist approach, which considers “sexual exploitation and commercial sex as contrary to human dignity and, recently, as a form of violence against women, which is why it proposes to eradicate prostitution”, labor laws do not apply to sex workers. In this sense, many organizations are requiring the regulation of sex work and the labor rights that would come with it.

Finally, human trafficking regulation in Argentina includes special laws regarding the prohibition and criminalization of the exploitation of child labor,⁶⁹ as well as Law No. 27.046, which requires that airports, bus and train stations, and other similar places, shall have a sign with the phrase “sexual exploitation of children and adolescents and human trafficking is severely punished in Argentina. Denounce it”.⁷⁰

3. Identifying shortcomings: Analysis of Argentina’s framework in light of the UN Draft Basic Principles.

The UN Draft Basic Principles provide a useful guideline to understand what the State’s international obligation to provide reparations for victims of human trafficking entails. In that sense, the following chart will detail Argentina’s domestic legislation compliance with the

⁶⁸ *Cfr.* Law No. 12.331, Art. 17, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/190000-194999/194957/norma.htm>.

⁶⁹ *See* Law No. 26.390, 4 June 2008, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/140000-144999/141792/norma.htm> (prohibiting child labor and protecting adolescent labor), and Law No. 26.847, 11 April 2013, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/210000-214999/210491/norma.htm> (criminalizing exploitation of child labor). For the purposes of this paper, these laws will not be analyzed since they refer to a particular category of victims (children), which is beyond the scope of this article, and also because they can be categorized as labor laws which, as explained *supra*, are not applicable to sex trafficking or sex workers.

⁷⁰ *Cfr.* Law No. 27.046, 23 December 2014, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/240000-244999/240451/norma.htm>.

principles. To that end, the entries under Argentinean legislation track the numeration of the Draft Basic Principles.

Principles A/HRC/26/18	Argentinean legislation
I. Rights and Obligations	<p>1. The HTL does not expressly state the victims’ right to reparations. However, Art. 6 of the HTL includes a series of measures of rehabilitation and satisfaction, such as the right to receive free psychological and medical attention, to guarantee the victim’s social reinsertion (Art. 6.b); the right to receive adequate housing, support, sufficient food and elements for personal hygiene (Art. 6.d); the right to receive training and assistance in the search for employment (Art. 6.f); the right to remain in the country, should the victim decide so, and to receive the necessary documents to that end (Art. 6.g); and the right to receive education (Art. 6.m). These rights are granted to the victims until they effectively achieve the corresponding reparations. Also, Art. 1716 of Argentina’s Civil and Commercial Code⁷¹ establishes that the violation of the duty not to harm gives rise to a duty to repair the damage caused, and Art. 1740 incorporates the principle of full reparation as the victim’s restitution to the situation previous to the harmful act. Furthermore, according to the Regulatory Decree, the HTL has to be interpreted and applied in harmony with the treaties that have been granted constitutional hierarchy under Art. 75.22 of the Constitution. In this sense, the HTL has to be complemented with Arts. 1 and 63.1 of the ACHR, which provide the State’s duty to provide reparations for human rights violations.</p> <p>2. Argentina provides remedies to nationals abroad, and to nationals and non-nationals victims of human trafficking who are in the territory. Regarding the provision of remedies when the State is responsible for the harm, Article 3 of Law No. 26.944 (State responsibility law)⁷² regulates the responsibility of the State for illicit actions or omissions. This includes both situations when the harm is directly attributable to the State, as well as when it failed to exercise due diligence. In 2016, a victim of human trafficking participated as <i>querellante</i> in the proceedings against her perpetrators and obtained compensation against them and the Municipality of Tierra del Fuego for lack of omissions that</p>

⁷¹ Law 26.944, Unified Civil and Commercial Code, Art. 1716, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm>.

⁷² Law No. 26.944 (State responsibility law), 7 August 2014, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/230000-234999/233216/norma.htm>.

	<p>caused a damage,⁷³ under the old Art. 1112 of the old Civil Code,⁷⁴ which states that when any action or omission by a state agent in the exercise of their duties which, by not complying with their legal obligations, causes a harm, entail the duty of the State to repair the damage. The HTL does not refer to all the forms of reparations included in the right to an effective remedy, but only lists a series of measures of rehabilitation and satisfaction. However, these forms can be applied by reference to international treaties which are directly enforceable and have constitutional hierarchy in the terms of Art. 75.22 of the Constitution, and which are referred to by the Regulatory Decree.</p> <ol style="list-style-type: none"> 3. According to Art. 6.e, victims of human trafficking have the right to receive free legal assistance and representation. 4. Although the HTL does not make any reference to the principle of non-discrimination, Art. 16 of the Constitution establishes that all persons are equal before the law. Furthermore, the prohibition of discrimination on arbitrary grounds is established in any international human rights treaties to which Argentina is a party and which, according to Art. 75.22 of the Constitution, have constitutional hierarchy and are directly applicable. Furthermore, the Regulatory Decree establishes that the HTL must be read in light of the international human rights treaties to which Argentina is a party, which contain the principle of non-discrimination. 5. The HTL indicates a number of substantive rights to which victims of human rights are entitled. Furthermore, under Argentina’s Unified Civil and Commercial Code, as well as under the Criminal Code,⁷⁵ victims have a number of procedural means to secure access to an effective remedy, such as the civil and criminal actions, and the agreements in the context of an abbreviated trial. Although the HTL does not explicitly state the right to an effective remedy from a victim-centered and human rights-based approach, the law states that its objective is to “implement measures for the prevention and criminalization of human trafficking, and to assist and protect the victims”. This objective must be read in light of the international human rights obligations of the State, in accordance with the Regulatory Decree. Also, Art. 22.h states that one
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⁷³ Tribunal Federal Oral de Tierra del Fuego, “Montoya, Pedro Eduardo y otros s/infracción Art. 145 bis – conforme Ley 26.842 – Querellante: S., A. K.”, 30 November 2016. In this case, the victim –a woman who had been subjected to sex trafficking– acted as *querellante* in the trial against her captors and sought civil damages. She also sued the municipal state for lack of prevention and for facilitating the exploitation. The tribunal condemned perpetrators Pedro Montoya to 7 years in prison plus a fine of Argentine pesos 70,000, Ivana Garcia to 3 years plus a fine of Argentine pesos 30,000, and Lucy Campos to 3 years. Most importantly, the tribunal ruled in favor of the victim in the civil damages case, and ordered the Municipality to pay 780,000 to the victim.

⁷⁴ In October 2014, Argentina replaced entirely its old Civil Code (law No. 340) for the new Unified Civil and Commercial Code, *supra* note 71. Although the Unified Civil and Commercial Code entered into force in August 2015, the Tribunal applied the old Civil Code, since the facts had occurred before the new Unified Code had entered into force.

⁷⁵ Law No. 11.179 (Criminal Code), at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>.

	<p>of the duties of the Executive Committee is to promote knowledge on the problem human trafficking and elaborate teaching materials with a human rights and gender-based perspective.</p> <p>6. The HTL includes several examples of international and bilateral cooperation efforts to eliminate human trafficking. Art. 9 states that when the victims are Argentinian nationals abroad, the diplomatic representatives have the duty to carry out all necessary measures to guarantee the safety of the victims and accompany them in any proceedings before the foreign tribunals, as well as to make it possible for the victims to return to the country, if they so desire. Moreover, Art. 20 empowers the Federal Council to Combat the Human Trafficking and Exploitation and Protect and Assist the Victims Thereof to encourage cooperation between states and adopt bilateral and multilateral measures to assist the victims.</p>
<p>II. Access to the right to a remedy</p>	<p>7.</p> <p>a. Although not specifically provided for in the HTL, victims for human trafficking have access to civil and criminal proceedings to obtain remedies. Art. 5 of the HTL establishes any sanction or obstacle by virtue of their migratory status will not be applicable when violations of migratory law are a consequence of the criminal act of which they are victims.⁷⁶ Furthermore, Art. 6 states the right of victims to remain in the country if they so desire, and to obtain the necessary documents to that end. It also states that, in case it is pertinent, the victims will be informed of the possibility of applying for asylum under the terms of Law No. 26.165 (refugee Protection Law).⁷⁷</p> <p>b. Regarding identification of the victims, the Executive Committee to Combat Human Trafficking and Exploitation and Protect and Assist the Victims Thereof, created by Art. 21 of The HTL, coordinates the actions carried out by the different ministries and is in charge of devising the protocols and action plans to prevent and combat human trafficking (Art. 22.a); developing actions to enhance the State's capacity to detect, prosecute and dismantle trafficking networks (Art. 22.b); and training public servants from all institutions linked to the protection and assistance of victims, including the police and judiciary (Art. 22.j). The HTL also creates a synchronized reporting system and a toll-free phone line. The Executive Committee supervises the cases from the moment a possible case of trafficking is reported. Moreover, the Regulatory Decree establishes that the State will endeavor that, when organizing</p>

⁷⁶ In this sense, the law states clearly that such sanctions will not be applicable when the violations of the migratory law occurred involuntarily, as a consequence of the crime; however, it does not address what would happen if the victim entered the State voluntarily in violation of the migratory laws, and was later subjected to human trafficking.

⁷⁷ Law No. 26.165 (Refugee Protection Law), 28 November 2006, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/122609/norma.htm>.

	<p>operations for rescuing victims, the first contact will be carried out by specially trained agents that will accompany the police forces (Art. 6). Additionally, Art. 22.k establishes that the Executive Committee shall coordinate with public and private institutions which provide training for air attendants, pilots and other personnel for all means of transportation, with the aim to provide mandatory training on how to identify possible victims of trafficking among the passengers. Finally, the PROTEX issued a “Practical Guide for Searching Persons”, with detailed information on how to proceed when a person is missing, and specific proceedings for identifying potential victims of human trafficking.⁷⁸</p> <p>c. Art. 6.a of the HTL recognizes the right of victims to receive information of their rights in a language and form they can understand, so that the full access and exercise of their economic, social and cultural rights can be guaranteed. Art. 6.a of the Regulatory Decree further states that whenever the victim does not speak the national language, or suffers from a visual or hearing impediment, the State shall take all necessary measures to find a translator, to which end the State can sign collaboration agreements with universities and require the assistance of embassies.</p> <p>d. Art. 6 of the HTL guarantees the victims of trafficking a series of rights: right to free psychological and medical assistance, to adequate housing, material assistance, sufficient food, elements for personal hygiene, to receive training and assistance to find employment, free legal aid and representation in judicial, administrative and all proceedings, to receive protection for them and their families, to remain in the country and receive the necessary documentation, or to return to their country of origin if they so desired, and to receive education. These rights are granted to the victims until they effectively achieve the corresponding reparations and without regard to whether or not they are participating in the criminal proceedings as interested parties or <i>querellantes</i>.</p> <p>e. <i>Ibid.</i> Moreover, Art. 6.e.II of the Regulatory Decree states that free legal representation will be granted for all judicial proceedings, from the beginning of the criminal investigation until the end, as well as for the purposes of submitting the civil action to obtain compensation for the harm caused by the crime. According to Art. 5 of the HTL, victims of human trafficking shall not be punished for any crime that is the direct result of being a victim of human trafficking, including the penalties established by immigration law, whenever such breaches are the consequence of the actions undertaken as a victim.</p>
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⁷⁸ Ministerio Público Fiscal, Procuradoría de Trata y Explotación de Personas (PROTEX), Guía Práctica para la Búsqueda de Personas: Herramientas y recursos para diseñar la investigación ante la denuncia de desaparición de una persona, 2014, at http://www.mpf.gob.ar/protex/files/2014/09/Búsqueda_de_Personas.pdf.

	<p>f. Art. 6 grants the victims the right to stay in the country and acquire the necessary documentation.</p> <p>g. Although the HTL does not mention non-discrimination explicitly, Art. 16 of the Constitution establishes that all people in the territory of the nation shall be considered equal before the law. Moreover, the Regulatory Decree states that The HTL has to be read in light of Argentina's obligations under the international human rights treaties listed in Art. 75.22 of the Constitution, which includes the right to equal access to remedies. Furthermore, Art. 22 states that some of the duties of the Executive Committee are to organize dissemination and training activities on the problem of human trafficking from a human rights and gender-based perspective, taking into account the special circumstances of children and adolescents (Art. 22.g); to promote knowledge on the problem of human trafficking and develop training materials from a human rights and gender-based perspective (Art. 22.h); and to train specialized agents from all the agencies related to the protection and assistance to victims, as well as police and security forces and judicial officials in charge of prosecuting and investigating the cases (Art.22.j). Moreover, regarding the need to avoid trauma and re-victimization, Art. 250 <i>bis</i> of the Code of Criminal Procedure states that in the case of victims of sexual crimes younger than 16 years old any interview will be carried out by psychologists specialized in children and adolescents, and never directly by the tribunal or the parties, in an office with the necessary elements considering the age and stage of development of the victim. Also, whenever an inspection is ordered as an evidentiary measure, the child shall be accompanied by a designated psychologist, and can never be in the presence of the accused. Art. 250 <i>quater</i> states that, whenever possible, victims of human trafficking shall be interviewed by a psychologist designated by the tribunal, and never directly by the parties. Also, whenever possible the interview shall be performed in the Gesell Chamber. In that case, the interview shall be recorded, with the objective of avoiding the need to carry out the proceedings again and re-victimizing the person. Attorney General's Office Resolution No. 94/09⁷⁹ includes an orientation guide on how to interview victims of human trafficking and specific questions.</p> <p>h. Art. 6 of the HTL states that the rights of the victims of human trafficking are granted whether or not they decide to intervene in the criminal proceedings as <i>querellantes</i> or interested parties. However, in Argentina all the actions to obtain compensation depend on the victim's initiative and, even more, victims are usually forced to participate in the</p>
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⁷⁹ Attorney General's Office, Resolution No. 94/09, 11 August 2009, at <http://www.mpf.gov.ar/resoluciones/pgn/2009/pgn-0094-2009-001.pdf>.

	<p>criminal proceedings as <i>querellantes</i> to avoid delays, since the civil procedure takes longer.</p> <p>i. Art. 6.f of the HTL states the right of all victims to receive effective protection for them and their families against any kind of retaliation, to which end they can require any protective measure they consider appropriate, including their inclusion in the National Program for Witness Protection as regulated by Law No. 25.764 (National Witness Protection Law).⁸⁰ Art. 8 of the HTL established the right of victims and their families to privacy and confidentiality of their identity and any judicial proceeding.</p>
<p>III. Forms of the right to remedy</p>	<p>A. Restitution</p> <p>8. The HTL does not specifically address restitution. However, Art. 29 of the Criminal Code establishes, in relation to all crimes, that the condemnatory sentence may order restitution to the state previous to the commission of the crime, whenever possible, along with compensation for the material and moral damages caused to the victim. Moreover, Art. 1740 of the Unified Civil and Commercial Code incorporates the principle of full reparation, which is defined as the restitution of the victim to the situation previous to the harmful act.</p> <p>9.</p> <p>a. There is no specific mention to restoration of liberty, including the release of the victim from detention.</p> <p>b. The law does not specifically mention family life or reunification; however, Art. 6.h of the HTL gives the victims the right to decide whether they want to go back to their place of origin, and Art. 6.f extends protection against retaliation to the victims' family.</p> <p>c. Art. 6.h of the HTL states that victims have the right to return to their place of origin if they so desire, and in case that the victims are residing in the country as a consequence of the crime they shall be guaranteed the possibility to do so. Moreover, Art. 6.h of the Regulatory Decree states that, in those cases, the Ministry of Social Development shall provide everything necessary to make it possible for the victim to return, coordinating with the assistance agencies of the country of origin, so that their rights as victims continue to be protected. Furthermore, it states that children shall always be accompanied by specialized professionals.</p> <p>d. Art. 6.g of the HTL grants victims the right to remain in the country, should they so decide, and to receive the necessary documents to that end. Art. 6.g of the Regulatory Decree further states that in those cases the Ministry of Social Development and Interior and Transportation shall intervene to obtain the necessary documents for the victims. Also, Art. 6.g of the HTL expressly states that victims shall be informed of the</p>

⁸⁰ Law No. 25.764 (National Witness Protection Program), 12 August 2003, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/87581/norma.htm>.

possibility of applying for the status of refugee in accordance with the requirements of the HTL on refugees. The HTL gives victims who are applying for or granted the status of refugee a temporary residence, which can be extended indefinitely. The principle of *non-refoulement* is included in the HTL. Although resettlement in a third country is not expressly provided in the HTL, Art. 25.c of the Refugee Protection Law states that the National Commission for Refugees is in charge of coordinating the voluntary return and third-country resettlement processes.

- e. The HTL does not expressly provide recognition of the victim's legal identity and citizenship.
- f. Art. 6.d of the HTL states that victims have the right to receive training and assistance in finding employment; however, it does not make reference to any measure for restoration of the victims' employment.
- g. Art. 6 of the HTL lists several rights that victims of human trafficking have, which are aimed at their social integration, which apply all victims, both nationals and repatriated.
- h. The HTL does not refer to restitution of the victims' property; however, Art. 29 of the Criminal Code states that victims of crimes are entitled to restitution. Moreover, Art. 23 states that the product of confiscation of the property used to perpetrate the crime, or the product thereof, shall be destined to the State, except for the right of restitution of the victims.

B. Compensation

- 10. Although the HTL does not refer to the right of victims to obtain compensation, Art. 29 of the Criminal Code states that victims of crimes are entitled to restitution and compensation, and Art. 1740 of the Unified Civil and Commercial Code states that victims are entitled to receive full reparation.
- 11. Although not all of the forms of compensation included in Principle 11 are expressly listed in the Unified Civil and Commercial Code, Art. 1740 makes reference to the principle of full reparation, which requires returning the victim to the situation previous to the harmful act. Furthermore, Art. 1738 states that compensation shall include all material damages, including the any loss or diminution in the victims' assets or property, damages for lost opportunities and loss of earnings, as well as non-monetary damages resulting from the violation of the fundamental rights, their physical integrity, mental or physical health, emotional distress, pain or suffering, and interference in their life project. Therefore, although the Unified Civil and Commercial Code does not use the same language as Principle 11, it can be concluded that all forms of compensation are included within the notion of full reparation.

12. In Argentina, the actions to obtain compensation depend on the initiative of the victim, both in the civil and criminal spheres. In other words, unless the victim initiates the proceedings, no economic reparations are available. This is particularly problematic in the case of victims of human trafficking, given the vulnerable position in which they are. In this context, the victims are required to seek legal aid, to pay certain fees, and to carry out a long and sometimes risky litigation process. This means that many victims do not use the judicial actions available to obtain reparations. Even when they do, victims sometimes find additional obstacles when judges apply the law in a restrictive way, without due regard to their vulnerable condition and the fact that victims have a human right to access to remedies. Victims can access compensation through any of these three options: an independent civil action, a claim for compensation in the context of a criminal proceeding where they participate as *querellantes*, and a compensation agreement in the context of a criminal abbreviated trial. Moreover, as noted *supra*, labor laws cannot be used as a means to obtain compensation under Argentine law.

13.

a. Victims of human trafficking can sue offenders for civil damages. Art. 1716 of the Unified Civil and Commercial Code states that the violation of the duty not to harm entails an obligation to repair the harm caused. According to Art. 1174, the civil action for damages resulting from a crime is independent from the criminal action; this means that, even if the victims are not *querellantes* in the criminal proceedings, they can initiate the civil action to obtain reparations. However, whenever the same facts are being discussed in both civil and criminal jurisdictions, Art. 1175 states that the civil judge cannot issue a decision until the criminal judge's decision is firm in order to avoid incongruent decisions within the same legal system. This means that it usually takes a very long time for victims to be able to obtain reparations through this action since criminal proceedings are usually lengthy. Therefore, by delaying the civil decision until one is reached in the criminal proceeding, the victim's right to an effective remedy might be impaired.

b. Victims of human trafficking can claim damages as part of the criminal proceedings, whenever they are intervening as interested parties or *querellantes*. Art. 1774 of the Unified Civil and Commercial Code states that a victim might participate in the criminal proceedings as an interested party (*querellante*) and file the civil action before the same judge in charge of the criminal case. In this sense, Art. 29 of the Criminal Code states that the criminal judge can decide, along with the sentence, to order compensation for the material and moral damages as well as restitution. Although this solution presents an advantage in that it does

not require the victim to wait until the criminal judge has issued a decision to initiate the civil proceedings, it still presents some problems since compensation still depends on the initiative of the victim and their decision to participate in the criminal proceedings. This is particularly problematic in the case of victims of human trafficking, given the vulnerable position in which they are. Victims are usually afraid of facing their perpetrators and might choose not to pursue compensation if that requires them to file a suit against them. Moreover, the victims are required to seek legal aid, to pay certain fees, and to have the will to carry out a long and sometimes risky litigation process. This means that many victims do not use the judicial actions available to obtain compensation.

Although this might seem an effective remedy, it requires the victim to acquire legal representation, pay fees and be involved in the criminal proceedings. Moreover, victims are usually afraid of facing their perpetrators and might choose not to pursue compensation if that requires them to file a suit against them. In this sense, another option is to reach a compensation agreement in the context of an abbreviated trial and have the judge approve it. Abbreviated trials, regulated by Art. 431 *bis* of the Criminal Procedure Code, are a form of negotiated justice, by which the defendant, with the consent of the public prosecutor, admits to the facts and his or her involvement in them, and in exchange obtains a reduction of his or her sentence. This presents the advantage that it does not require victims to act as *querellantes*, since it is the Prosecutor who is entitled to negotiate on behalf of the victim. However, in some cases judges are not willing to approve the agreements.

In “Quiroga, José Luis y otros s/recurso de casación”, the Prosecutor challenged the decision of an oral court which found the defendants guilty of the crime of human trafficking, but did not approve the reparations agreement signed by the parties as part of the agreement for an abbreviated trial. The court had considered that the imposition of the duty to provide compensation was contrary to the principle of legality, since the crime, as typified in Art. 127 of the Criminal Code (modified by Law No. 26.842), did not require the defendant to offer economic reparation for the victims. Therefore, it concluded that the victims had to obtain reparations through the corresponding action (which, in this case, was the independent civil action identified as the first option). The Prosecutor complained that the tribunal did not take into account that the compensation offering was an essential part of the agreement for the abbreviated trial and the choice of the punishment the Prosecution proposed the tribunal. The Prosecutor also noted that given the special characteristics of this crime, the victims are in a state of vulnerability that requires an immediate and effective response by the State, which in

no case can impose additional obstacles to their access to justice nor a denial of their rights as victims. Experience shows that once they are rescued, victims of human trafficking are not able to face the events of a criminal process, since they have more urgent priorities or do not have the necessary means to file a judicial complaint to obtain compensation. Furthermore, many of them have been subjected by their perpetrators, who have limited not only their freedom but also their autonomy and ability to make decisions. Victims are usually scared to file a complaint against their perpetrators. That is why it is essential to grant them access to a simple and inexpensive mechanism that will allow them to obtain full reparation. In this sense, he remarked that the decision would be contrary to Argentina's obligations under Art. 6.6 of the Palermo Protocol, and the principles established in UN General Assembly Resolution 40/34.⁸¹ The Court decided to overturn the previous decision and homologate the agreement, stating that the correct interpretation of the law was not that it breached the principle of legality, but rather that it was a form of compensation instead of an additional penalty, which the court had the power to decide.⁸²

- c. Under Argentinean law, there is no fund for compensating the victims. Art. 27 of the HTL makes reference to a fund for the direct assistance of the victims of human trafficking, which shall be administered by the Federal Council. However, Art. 27 has not been made operative by the Regulatory Decree or any other norm, and has not been implemented.
- d. Art. 27 of The HTL states that states that the product of the confiscations carried out under this law shall be directed to a fund for the direct assistance of the victims of human trafficking, which shall be administered by the Federal Council. However, as explained *supra*, Art. 27 has not been made operative by the Regulatory Decree or any other norm, and has not been implemented. In that sense, Art. 27 must be read in light of Art. 23 of the Criminal Code, which states that the property used to commit crimes or which is the product of such crimes shall be confiscated and given to the State, except for the rights of restitution or compensation of the victims and other third parties. More specifically, in relation to the confiscation of property acquired in connection to the crime of human trafficking, Art. 23 states that such property shall be destined to fund programs to assist the victims. Moreover, Art. 29 of the Criminal Code states that the sentence may order restitution and compensation of the damages caused to the victims, and Art. 30 states

⁸¹ UNGA Res. 40/34, named "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", states that "(o)ffenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims" (Principle 8), and that "(g)overnments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions" (Principle 9).

⁸² Cámara Federal de Casación Penal, Sala II, "Quiroga, José Luis y otros s/recurso de casación", April 2017.

that the duty to pay compensation has preference before any other obligation acquired by the defendant after the commission of the crime, before the confiscation of the property obtained as a product of the crime, and before any fine. In this sense, the law is not clear as to what the destination of the property confiscated shall be in the absence of the victims' assistance funds. In "Quiroga, José Luis y otros s/recurso de casación" and "Gorosito, Mario Ariel y otros s/ infracción Art. 145bis – conforme ley 26.842– y Art. 17 ley 12.331", the court considered that such property should be destined to provide reparations for the victims.

e. There is no mention in the HTL to the enforcement of reparation judgments.

C. Rehabilitation and recovery

14. Art. 6 of the HTL establishes that victims of human trafficking have the right to a series of means necessary for their rehabilitation and recovery until they have effective access to reparations, including medical and psychological care, legal aid, adequate housing, food, material assistance, health and education services and linguistic support.

15. Art. 6 of the HTL states that the right of victims to the means necessary for their rehabilitation and recovery is not dependent on their participation as complainants or *querellantes* in the criminal proceedings.

D. Satisfaction

16. Satisfaction is not included as one of the forms of reparation under the HTL; however, Art. 1740 of the Unified Civil and Commercial Code states the right of any person who has suffered from a harmful act to access full reparation.

17.

a. The HTL does not specifically address cessation. However, Art. 29 of the Criminal Code establishes, in relation to all crimes, that the condemnatory sentence may order restitution to the state previous to the commission of the crime, whenever possible, which necessarily includes the cessation of the violation. Moreover, Art. 1740 of the Unified Civil and Commercial Code incorporates the principle of full reparation, which is defined as the restitution of the victim to the situation previous to the harmful act, and includes cessation.

b. Although the HTL does not expressly address verification of the facts and full disclosure of the truth, Art. 6 grants the victims access to free legal aid and representation in all stages of the proceedings (Art. 6.e), to testify under protection and special care (Art. 6.f and i), to be heard in all stages of the proceedings (Art. 6.k), and to the protection of their identity and privacy (Art. 6.l and 8).

c. The HTL does not require an official declaration or a judicial decision restoring the dignity, reputation and the rights of the victims.

	<p>d. The HTL does not require public apologies.</p> <p>e. The HTL criminalizes human trafficking and establishes the penalties for that crime.</p> <p>E. Guarantees of non-repetition</p> <p>18. The HTL does not specifically address guarantees of non-repetition.</p> <p>a. The HTL criminalizes human trafficking, grants the victims free legal aid and representation as well as protective measures, while the Regulatory Decree states that the State can participate as <i>querellante</i> in the investigations.</p> <p>b. The HTL provides victims with all necessary protective measures, including safe return, temporary residence, and assistance.</p> <p>c. Art. 22.j of the HTL states that the Executive Committee shall provide specialized training on the problem of human trafficking to public servants from all institutions linked to the protection and assistance of victims, including the police and judiciary, from a human rights and gender-based perspective.</p> <p>d. The HTL does not include any provision directed to strengthen the independence of the judiciary.</p> <p>e. Art. 22 of the HTL states that some of the duties of the Executive Committee are to organize dissemination and training activities on the problem of human trafficking from a human rights and gender-based perspective, taking into account the special circumstances of children and adolescents (Art. 22.g); to promote knowledge on the problem of human trafficking and develop training materials from a human rights and gender-based perspective (Art. 22.h); and to train specialized agents from all the agencies related to the protection and assistance to victims, as well as police and security forces and judicial officials in charge of prosecuting and investigating the cases (Art.22.j). Regarding measures to put an end to the dissemination of messages and images that promote or encourage sexual exploitation, Decree No. 936/2011 (Eradication of Sexual Exploitation)⁸³ prohibits any publicity offering sexual services, with the aim of preventing the crime of sex trafficking and to gradually eliminate all forms of discrimination against women (Art. 1). The Eradication of Sexual Exploitation Decree establishes the Sex Trade Advertisements Monitoring Office, which is in charge of monitoring the graphic media and imposing the required penalties (Art. 3).</p> <p>f. Although the HTL does not expressly refer to poverty, gender inequality and discrimination as root causes of human trafficking, several provisions of the law promote training and developing public policies from a human rights and gender-based perspective. The Eradication of Sexual Exploitation Decree expressly refers to discrimination against</p>
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⁸³ Decree No. 936/2011 (Eradication of Sexual Exploitation), 5 July 2011, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/184133/norma.htm>.

	<p>women as one of the root causes of human trafficking. Moreover, the Executive Committee created by Art. 22 of the HTL is in charge of administering a National Data Registry on human trafficking that will serve as a permanent and efficient system of information and qualitative and quantitative monitoring. The Committee shall prepare reports with information it might find useful to combat these crimes and assist the victims. The Federal Council created by Art. 20, in turn, is in charge of devising a strategy to combat human trafficking, participating in the design of effective public policies, and promoting the production of investigation on the problem of human trafficking.</p> <p>g. Art. 22.k of the HTL establishes that the Executive Committee shall coordinate with public and private institutions which provide training for air attendants, pilots and other personnel for all means of transportation, with the aim to provide mandatory training on how to identify possible victims of trafficking among the passengers.</p> <p>h. The HTL does not include any provision regarding the protection of legal, medical, health-care and other related professionals and human rights defenders who assist victims of human trafficking.</p>
<p>IV. Right to Remedy for Child Victims of Trafficking</p>	<p>19. The Federal Council on Childhood, Adolescence and Family passed the “Guidelines for the application of the Protocol on the Assistance of Victims of Human Trafficking and Child Sexual Exploitation”.⁸⁴</p> <p>a. The Guidelines expressly state that any services or actions involving children must have their informed consent, according to their stage of development and autonomy and with due regard to the best interest of the child. Moreover, the principle of the primacy of the best interest of the child is included in the Convention on the Rights of the Child, to which Argentina is a party. The Guidelines do not state that in case of doubt the person shall be presumed to be a child.</p> <p>b. The Guidelines state that victims shall be given information about their rights and possible assistance in a language they can understand.</p> <p>c. The Guidelines state that the State has the duty to guarantee victims access to justice in order to achieve reparations without discrimination.</p> <p>d. Art. 6 of the HTL grants victims all forms of assistance listed in Principle 18.d. Moreover, Art. 6.n states that whenever the victim is a child, they shall be guaranteed that such proceedings take into account the special needs they have, stating that the measures of protection will not restrict their rights and guarantees.</p> <p>e. The HTL does not expressly provide for specialized training on children; however, several provisions refer to the need to train public officials</p>

⁸⁴ Federal Council on Childhood, Adolescence and Family, Guidelines for the application of the Protocol on the Assistance of Victims of Human Trafficking and Child Sexual Exploitation, 29 December 2008, *Boletín Oficial de la República Argentina* No. 31.561.

	dealing with victims from a human rights and gender-based perspective, which of course includes the rights of children.
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As a result of the analysis, it would seem that, although Argentina's domestic legal framework is generally in compliance with the UN Draft Basic Principles, the most important shortcomings are in the realm of compensation and economic assistance. Indeed, The HTL creates a fund for the assistance of victims which has never been regulated or implemented. Furthermore, The HTL does not make reference to the right of victims to obtain compensation. Although they might be able to obtain compensation through civil or criminal actions, such actions do not comply with the international standards. Indeed, in the case of independent civil actions, victims are forced to wait until the criminal judge's decision is firm, which might take years, in order to have a decision in the civil proceedings, which can then be appealed and take many more years to be firm, and even more to be executed. Moreover, victims are required to get legal representation, whereas in the case of a reparations agreement, the victim is not a party and, therefore, is represented by the Prosecutor.

Moreover, in addition to these legal obstacles it is necessary to take into account certain implementation problems, such as the lack of implementation of the provisions regarding free legal aid for victims to initiate proceedings against the perpetrators and obtain economic reparations, or the fact that implementation of the assistance services in the different provinces has been uneven, leading to the result that in many provinces there are no specialized teams as required by the HTL.⁸⁵

Argentina is obliged to provide victims of human rights violations with an adequate and effective remedy, as provided by Art. 25 ACHR. According to the IACtHR, "adequate domestic remedies are those which are suitable to address an infringement of a legal right";

⁸⁵ *Cfr.* . Camino, "La trata de personas es un crimen gravísimo contra los derechos humanos", in *Télam*, 22 September 2017, available at <http://www.telam.com.ar/notas/201709/206363-la-trata-de-personas-es-un-crimen-gravisimo-contra-los-derechos-humanos.html>.

whereas effective remedies are those “capable of producing the result for which it was designed”.⁸⁶ Moreover, Art. 25 ACHR has to be read in light of the guarantees of due process contained in Art. 8 ACHR, which means that, in order to be effective, remedies must be prompt.⁸⁷ In its first case on human trafficking, the IACtHR stated that remedies must be adequate, effective, provide a prompt response and be exhaustive in light of their objective, that is, to identify those responsible for the human rights violations and to repair the victims.⁸⁸ In the same line, the PROTEX has acknowledged that victims must not be subjected to unnecessary procedural steps or requirements that might generate re-victimization, and that the State has to make sure that its domestic legislation grants victims a special attention and care so that the judicial and administrative proceedings destined to achieve justice and reparations do not lead to a new trauma.⁸⁹

In this case, it is clear that, given the particular state of vulnerability of victims of human trafficking, as well as the risk that they will be re-victimized, the civil action cannot be considered an effective and adequate remedy, as provided by the IACtHR’s case law. Moreover, the criminal *querella* is not an adequate option since it requires the participation of the victim in the criminal proceedings, which is against principle 7(i) of the UN Draft Basic Principles, which states that access to remedies should not be dependent upon the victims’ capacity or willingness to cooperate in legal proceedings. Although the compensation agreement in the context of an abbreviated trial could be an adequate response, this option is only available in some cases, and moreover, many judges do not apply it, since this option is not expressly provided by law, but results from an interpretation of the interaction of several provisions.

⁸⁶IACtHR, Case of Velásquez Rodríguez v. Honduras, 29 July 1988 (Merits), par. 64 and 66.

⁸⁷ Burgorgue-Larsen, L. (2011) *The Inter-American Court of Human Rights: Case Law and Commentary*, p. 686.

⁸⁸ Par. 395

⁸⁹ PROTEX, “La trata de personas con fines de explotación laboral. Estrategias para la detección e investigación del delito”, December 2017, p. 71, at http://www.mpf.gob.ar/protex/files/2018/02/Informe_Protex_Trata_de_personas_2018.pdf.

In this sense, on May 2017, the Senate passed the HT Reparations Bill.⁹⁰ The explanatory note that accompanies the proposed bill explains that the particular dynamics of the problem of human trafficking requires congressmen to tackle it from an integral perspective, promoting and strengthening the strategies and public policies destined to the assistance of the victims. It also notes that most victims of this crime have a history of violated rights and vulnerability, and that, if the state does not pay attention to the stage after the victim is identified and rescued, it is impossible to prevent future re-victimization, since victims will be once again exposed to the situation of vulnerability that made them victims of that crime. Although the HT Reparations Bill correctly identifies the shortcomings of the current legislation, the solution the bill proposes does not follow the approach suggested by the UN Draft Basic Principles.

Indeed, the HT Reparations Bill proposes to establish a non-contributive pension for 10 years to all victims of sex trafficking, whenever the criminal conviction is firm. The bill states that this pension shall be independent of any other reparation received, and victims shall have two years since the conviction to require it. The initiative does not solve the immediate need for assistance, and delays any kind of compensation until after the criminal conviction is firm. In this sense, the only achievement of the law is that it does not require victims to participate as *querellantes* in order to be able to obtain reparations immediately after the conviction, or to wait for a lengthy civil proceeding in addition to the criminal one. However, it still does not address the immediate need for assistance that victims have after they have been rescued. Moreover, the pension is only a subsistence income that in no way can replace the full reparation to which victims are entitled, as the very same bill acknowledges. In this sense, it

⁹⁰ Argentina's Senate, "POR UNANIMIDAD, EL SENADO APROBÓ CON CAMBIOS EL PROYECTO DE LEY DE PROTECCIÓN A VÍCTIMAS DE DELITOS", Press Release, 31 May 2017, at <http://www.senado.gov.ar/prensa/15171/noticias>. It is necessary to remark that, under Argentina's law, a bill becomes a law with the approval of both the Senate and the Lower Chamber, as well as promulgation by the Executive. Approval of Bill No. 533/2017 is still pending before the Lower Chamber, which is why it is not binding yet.

would have been better to focus on (a) the implementation of the fund created by the HTL, and (b) an effective judicial remedy that will allow victims to access reparations in the context of the criminal proceedings without having to act as *querellantes*. Additionally, a good idea would be to expressly include compensation agreements in the context of abbreviated trials as a form of reparation, so that this option is not left to the interpretation of each judge.

4. Conclusion

The UN Draft Basic Principles are not sources of international law in the terms of Art. 38.1 of the Statute of the International Court of Justice. Instead, they could be considered “soft law”, that is to say, non-binding instruments or documents whose “importance within the general framework of international legal development is such that particular attention requires to be paid to it”.⁹¹ In this sense, the UN Draft Basic Principles are a “living tool for practitioners in their daily anti-trafficking work”, and represent an authoritative guideline of what the right to an effective remedy requires for victims of human trafficking.

As it was noted above, the right to an effective remedy is included in many international treaties to which Argentina is a party, including Art. 25 ACHR. According to the IACtHR, all States party to the ACHR have the obligation to exercise conventionality control. This theory, although not contained in the text of the ACHR, was created by the IACtHR⁹² in the case *Almonacid v. Chile*, where it held that

“when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects

⁹¹ Shaw, M. (2008) *International Law*, p. 117.

⁹² P. González Domínguez (2017) “La Doctrina del Control de Convencionalidad a la luz del Principio de Subsidiariedad”, *Estudios Constitucionales*, Vol. 15(1), pp. 55-98, p. 67.

since their inception. In other words, the Judiciary must exercise a sort of ‘conventionality control’ between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.”⁹³

Moreover, conventionality control is an obligation that every organ of the State has to create, interpret and apply every norm *ex officio* in conformity with the ACHR and the interpretations of that the IACtHR makes, and to abstain from applying the domestic rules when there is a manifest incompatibility.⁹⁴ This means that not only the Executive, but also Congress and the Judiciary have the obligation to adopt all measures to make sure that Argentina complies with its obligations under Art. 25 ACHR to provide effective remedies.

Accordingly, a first implication that can be derived from that conclusion is that legislator have the duty to take measures, including passing laws, to make sure that Argentina’s legal framework is in compliance with its international obligations. To do so, Congress should specifically look at the UN Draft Basic Principles, not as a binding instrument, but rather as a tool that will allow it to adapt the domestic legislation so that it can guarantee access to an adequate, effective and prompt remedy for victims of human rights violations. Consequently, it is imperative that Congress:

(1) Takes all necessary measures to implement the administrative fund established in the HTL, as well as any other form of administrative compensation and/or emergency economic assistance;

⁹³ IACtHR, *Almonacid v. Chile*, 26 September 2006 (Preliminary Objections, Merits, Reparations and Costs), par. 124.

⁹⁴ *Ibid.*, p. 66, referring to E. Ferrer MacGregor (2014) “Control de convencionalidad (sede interna)”, in E. Ferrer MacGregor, F. Martínez Ramírez, F. & G. Figueroa Mejía (eds.), *Diccionario de derecho procesal constitucional y convencional*, Vol. I, p. 233.

(2) Takes all necessary measures to guarantee victims of human trafficking access to an adequate, effective and prompt remedy that takes into account their particular vulnerability and avoid re-victimization, and do not require victims' participation in order to obtain compensation;

(3) Takes all necessary measures to allow compensation agreements in the context of abbreviated trials in cases of human trafficking; and

(4) Take all necessary measures to ensure that an adequate budget is granted to the programs which provide for the assistance of victims of human trafficking.

Moreover, a second implication is that judges also have the obligation to adopt measures to guarantee victims of human rights access to effective remedies. The IACHR has expressed that “(i)n order to address human trafficking, the involvement of the Judiciary System as well as other levels of government and the private sector has to be reinforced”.⁹⁵ This means that, especially in a country such as Argentina, with a strong monism where most international human rights treaties are directly applicable and have the same hierarchy as the Constitution, judges can interpret and apply those provisions contained in international human rights treaties which are self-executive, within their competence, even if Congress does not take steps to modify the domestic legislation. Consequently, judges must:

(1) Apply the UN Draft Basic Principles as an authoritative guideline to interpret the content of the right to an effective remedy under international human rights law, in light of the *pro homine* principle⁹⁶ and the principle of *effet utile*;⁹⁷ and

⁹⁵ IACHR, “In the World Day against Trafficking in Persons, the IACHR call on States to Adopt a Human Rights Approach in Response to the Diverse Forms of Human Trafficking”, Press release, 31 July 2017, at http://www.oas.org/en/iachr/media_center/PReleases/2017/110.asp.

⁹⁶ The *pro homine* principle is an hermeneutic principle that states that the rule that is most favorable to the protection of human rights should applied, and is contained in Art. 29 ACHR. *Cfr.* Pinto, M. (1997) “El principio pro homine. Criterios de hermenéutica y pautas para la regulación de los derechos humanos”, in Abregú, M. y Courtis, C. (eds.), *La aplicación de los tratados sobre derechos humanos por los tribunales locales*, p. 163.

⁹⁷ Under Article 2 ACHR, States have an obligation to take all necessary legislative or other measure to give effect to the rights recognized in the ACHR. The IACtHR has interpreted that Article 2 ACHR requires that domestic law measures are effective according to the principle of *effet utile*; this means that the State must adopt all measures so that the provisions of the ACHR are effectively fulfilled in its domestic legal systems in such a

(2) Allow compensation agreements concluded in the context of abbreviated trials.

Finally, the Executive must:

(1) Take all necessary measures to implement the administrative fund established in the HTL; and

(2) Take all necessary measures to ensure that an adequate budget is granted to the programs which provide for the assistance of victims of human trafficking.

Argentina has adopted many measures in order to eradicate human trafficking. However, in order to achieve this objective, it is imperative to adopt measures to make sure that those victims that are rescued are adequately repaired. This is both a requirement of justice, as well as a necessary measure to assure non-repetition.

manner that the protected guarantee is truly practical and effective. *Cfr.* IACtHR, Case of the “Juvenile Reeducation Institute” v. Paraguay, 2 September 2004 (Preliminary Objections, Merits, Reparations and Costs), par. 205; Case of La Cantuta v. Peru, 29 November 2006 (Merits, Reparations and Costs), par. 171; Case of Ivcher Bronstein v. Peru, 24 September 1999 (Competence), par. 37.