

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

The meaning of said question is not clear to me.

You can focus on the subject by pointing to the holders of human rights and in this respect a distinction must be made. In general, the inter-American system considers that only natural persons are holders of human rights. In Uruguay, on the other hand, it is accepted with some ease that legal persons of Private Law can also be holders of fundamental rights. In fact, the Constitution expressly recognizes rights to private entities: to educational and cultural institutions, to political parties and trade unions. In general, legal persons of Private Law are accepted as fundamental right holders.

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

Article 72 of our Constitution determines that rights that are not established by the express text but are inherent to the human personality or derive from the republican form of government, have Constitutional status as well.

In cases of contradiction between two human rights provisions, whatever the nature of the rule or its hierarchy or its source, the most favorable regulation should be applied, that is the regulation that gives the right more breadth, the one that offers the right a better guarantee. This is called the “preference guideline for regulations”.

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

The constitution has a catalog of minimum rights and minimum protection standards. That is, you can add more rights and improve protection standards, but not the opposite. In the inter-American Human Rights System the solution is the same. Sometimes the highest standards of protection are those of International Law but most of the times, the highest standards are provided by internal provisions. The most favorable rule is always applied. With the preference guideline for regulations, within the constitutional block of human rights, the normative hierarchy or the origin of the source of the provisions ceases to have an impact.

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

It should be, but in general the judges adopt a very conservative position in the matter.

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

In 2004 compatibility between the Uruguayan Constitution and the notion of the “block of human rights” was agreed. The latter implies considering, on an equal level, all human rights included in the Constitution and in the International Law (be it the universal ones-U.N.O-, or the regional ones-American Convention and derivative Protocols) and, in case there was a different regulation, the provisions that recognize the greater scope of rights or give said rights a greater guarantee, are the ones that should be applied.

In this scheme, all values and human rights promoted by the U.N.O and the O.A.S are covered by constitutional and international regulations.

This position was first postulated in 2004 and in October 2009 it was adopted by the Supreme Court of Justice (Ruling Num. 365/2009 final considering).

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

Although the standards of protection of human rights in Uruguay are usually among the best in Latin America, the State is included in the situation of an underdeveloped country with the corresponding budgetary limitations.

Economic, social, cultural and environmental rights, for budgetary reasons, are not fully satisfied in reality.

For example, a) in terms of health, although the coverage reaches the entire population, the service could be better and there are problems with the provision of high-cost medicines; b) in education, and despite a 100 percent literacy rate, some problems are appreciated; and c) the economic housing for the most unprotected sectors is where the greatest complications appear.

Finally, there is a very serious problem with the prisons (they are overcrowded, there is internal insecurity, etc.) that cannot be attributed to budgetary reasons, but to poor management.

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

No.

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

Uruguay is a Latin American country, a member of the Organization of American States, which has ratified all universal (UN) and regional (OAS) international documents and has submitted to the jurisdiction of the Inter-American Court of Human Rights. Therefore, it is fully aligned and consistent with the human rights contained in those instruments. There are no normative contradictions.

Likewise, the country has no indigenous populations whose regulations could be in contradiction with the abovementioned instruments.

Difficulties, as noted in the answer to question 6, are based on budgetary and economic development problems.

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

Yes. There are many guarantees for human rights that govern the actions of private persons. For example, the proceeding for relief, as a general guarantee, the habeas data action to protect the data of individuals in databases, etc.

As for the effectiveness of the proceeding of relief, after several years of good development, certain judgments have begun to be seen as involving a recoil in the matter. A reaction from the Judiciary is expected, although no one can venture what the situation will be like in the future.

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

Ten percent of the population is composed by minority groups mostly Afro-descendants. There are rules to protect them, but the reality is not the best.

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

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

There is no constitutional definition of minority. The protection of minorities in Uruguay has a constitutional basis but a legal development. The rights of the minorities must be regulated by general constitutional provisions and more specific legal dispositions. The constitutional regulation of minority rights is important but by itself it cannot solve the conflicts between majorities and minorities.

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

The question is very broad. The regulations exist, they seem enough, but difficulties appear in the application of said regulations.

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

The specific case: prison overcrowding.

Apart from this, and as it happens in underdeveloped countries, insufficient resources cause serious problems. This is where the main problem lies. Secondly, the lack of activism or decision of the judges conspires against the adequate protection of human rights.