

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

As far as my knowledge goes, I understand human as any person. Human rights could affect directly or indirectly anyone. The difficult question is whether the concept of "human" also embraces the embryo, which is one strong argument especially for pro-life movements. My sincere opinion is that it does not embrace it. Human rights should be directly connected to anyone that lives or has lived and there should be a direct correlation with the concept of personality (which varies across jurisdictions). Immaterial objects or animals and plants in general could, by some means, also be embraced by such a concept, though the discussion here goes much farther and has its own complexities.

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

The Brazilian Constitution of 1988 has one of the most extensive list of human rights in the world. The whole Article 5, with its seventy-two clauses, is oriented to human rights and the mechanisms to protect them. Other parts of the Constitution are also aimed at protecting social rights (Art. 7, for example). In such a configuration, it is quite rare to find the type of conflict between unenumerated rights and those that are found in the constitutional text. Moreover, when this happen, usually the Supreme Court will interpret this unenumerated right in a way that is embraced by an enumerated right. By the same token, the Brazilian Supreme Court has historically been quite open to hypotheses that, in principle, did not seem to be part of our constitutional system, interpreting them as embraced by one or other clause.

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?

According to the Brazilian Constitution (art. 5, § 3), international human rights documents, once approved by Congress according to the rules of constitutional amendments, are deemed as constitutional amendments:

"...international human rights treaties and conventions which are approved in each house of the national congress, in two rounds of voting,

by three fifths of the votes of the respective members shall be equivalent to constitutional amendments.”

In the case of not being approved according to such a rule, but by simple majority, the Supreme Court has already ruled that it has *supralegal status*, which means that, in case of a conflict with an ordinary legislation, the international treaty prevails.

In any case, there is naturally a gap between many of clauses of international treaties establishing minimal standards and what occurs in reality. Some areas Brazil has already achieved the so-called minimal standards, but there are a plenty of international treaties Brazil has signed which are currently just must-reach aims, and not yet a reality.

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards?

Empirically, the Brazilian Supreme Court is seen as a reasonable actor in moving forward individual rights standards. It is, however, not that active when it comes to social rights, unlike other Courts in the region (especially Colombia).

5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights?

There are certainly human rights that are not covered by human rights documents and need to be protected under the concept of human rights. This happens, especially, in what is currently deemed as human rights based on the new developments which were not foreseen or understood as such at the time of the Constituent Assembly in 1987-1988. This is because, as mentioned before, the Brazilian extensive, broad and open bill of rights and the fact that Brazil joins some important international human rights documents fill much of the possible gap na eventual value or an issue might bring. Most of the time Courts will interpret such values or issues as if they were embraced by a more general enumerated human rights, especially in a context where the Constitution easily allows for such an avenue.

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

Not of my knowledge.

7. 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. The Constitution and the Procedural Civil Code sets up a whole system of actions and mechanisms to be used as a way to protect human rights. Especially with the Constitution of 1988, which set up such rights as a fundamental core of the democratic system in Brazil, the premise that, besides such rights, instruments should be strengthened and created to protect them gained momentum. In reality, though, there are many difficulties in making them as effective as they should, but it is undeniable that, in comparison to previous constitutional moments in Brazil, there has been some progress.

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

I'm not sure if I understood the question, but, as far as I could, there are certainly social realities that contract such international human rights concept based on individualism. See, for example, the case of indigeneus people whose societies are based on collective solidarity instead of individual success. This certainly applies to Brazilian reality.

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

Inequality, inequality, inequality.