

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

EVERY HUMAN BEING, OF WHATEVER AGE OR STATUS. Some rights will clearly not apply to some people, given their age (e g the right to vote), but every person has the right to dignity, life, and equality, at the very least. Those in prison also retain rights, although they may sacrifice some e g freedom of movement.

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 uncounted in the Constitution is interfering with a constitutional right?

THE GENERAL APPROACH OF THE SOUTH AFRICAN LEGAL SYSTEM WOULD BE TO ACCORD A HIGHER STATUS TO THOSE RIGHTS PROTECTED IN THE BILL OF RIGHTS IN CHAPTER 2 OF THE 1996 CONSTITUTION. THIS DOES NOT MEAN THAT RIGHTS RECOGNISED IN LAW LOSE THEIR STATUS AS SUCH; IT JUST MEANS THAT, DEPENDING ON THE CONTEXT, THEY MAY HAVE TO GIVE WAY TO RIGHTS RECOGNISED IN THE CONSTITUTION.

3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims?

IT IS A DIFFICULT TO GIVE A COMPLETE AND AUTHORITATIVE ANSWER TO THIS QUESTION, WITHOUT A GREAT DEAL OF ADDITIONAL WORK: BUT IT SHOULD BE NOTED THAT SECTIONS 231 AND 232 OF THE CONSTITUTION RECOGNISE THE BINDING EFFECT OF INTERNATIONAL AGREEMENTS, SUBJECT TO CERTAIN CONDITIONS, AS WELL AS CUSTOMARY INTERNATIONAL LAW, ON SOUTH AFRICAN LAW. I THINK THAT AS A GENERAL STATEMENT IT COULD FAIRLY BE SAID THAT SOUTH AFRICAN CONSTITUTIONAL LAW HAS DEVELOPED IN MOST INSTANCES BEYOND THE MINIMUM STANDARDS SET OUT IN INTERNATIONAL HUMAN RIGHTS LAW.

Are there any regulations in your legal system above international human rights standards?

YES, AS MENTIONED, THERE ARE SEVERAL INSTANCES OF DOMESTIC LAW EXCEEDING THE STANDARDS OF INTERNATIONAL HUMAN RIGHTS LAW.

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

NOT EXACTLY SURE WHAT THIS QUESTION MEANS, BUT IF IT IS ASKING WHETHER THE COURTS ARE ABLE TO PROMOTE HUMAN RIGHTS STANDARDS THEN THE ANSWER IS POSITIVE, SEE SECTION 39 OF THE

CONSTITUTION, WHICH REQUIRES THE JUDGES TO PROMOTE THE VALUES OF THE BILL OF RIGHTS IN ANY INTERPRETATION OF THE LAW WHICH THEY UNDERTAKE.

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?

SOUTH AFRICA HAD THE BENEFIT OF LEARNING FROM THE EXPERIENCE AND MISTAKES OF MANY OTHER JURISDICTIONS IN THE DRAFTING OF ITS BILL OF RIGHTS. I WOULD SAY THAT THE BILL COVERS ALMOST ALL RECOGNISED HUMAN RIGHTS.

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

THE RIGHT TO EQUALITY IS ONE SUCH RIGHT; GIVEN THE GROSSLY UNJUST AND UNEQUAL HISTORY OF SOUTH AFRICA, IT IS TAKING A VERY LONG TIME TO REALISE THE RIGHT TO EQUALITY OFR MOST SOUTH AFRICANS. PROGRESS HAS BENE MADE, BUT MUCH MORE NEEDS TO BE MADE.

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, THE BILL OF RIGHTS IS "HORIZONTALLY" OPERATIONAL, NOT ONLY VERTICALLY BEWTEEN THE STATE AND THE INDIVIDUAL, BUT ALSO BETWEEN PRIVATE INDIVIDUALS. THIS AGAIN DEPENDS ON THE CONTEXT, AND IS SUBJECT TO THE INTERPRETATION OF A COURT OF LAW, SEE SECTION 8 (2) TO (4).

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

I AM NOT SURE WHAT IS BEING ASKED; BUT IF THIS IS A REFERENCE TO GROUP RIGHTS, THEN THERE IS ONE UINSTANCE IN WHICH THE BILL OF ROGHTS PROVIDES FOR GROUP RIGHTS, AND THAT IS SECTION 31, WHICH GIVES CERTAIN RIGHTS TO "CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES". BUT SUCH RIGHTS MAY NOT BE EXERCISED INCONSISTENTLY WITH OTHER RIGHTS IN THE BILL OF RIGHTS. TRADITIONAL LAW AND LEADERSHIP ARE ALSO RECOGNISED IN CHAPTER 12 OF THE CONSTITUTION, BUT ALSO NOT IN CONFLICT WITH THE BILL OF RIGHTS, BUT THIS IS AN AREA IN WHICH TRADITIONS STILL DENY RIGHTS TO SOME EXTENT.

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

YES THERE ARE: IN TERMS OF RACE, GENDER, LANGUAGE, RELIGION, ETHNICITY, ETC ETC. GIVEN THE PAST OF THIS COUNTRY, RACE IS PROBABLY THE MOST SIGNIFICANT FACTOR. GOVERNMENT IS GENERALLY TRYING TO RESOLVE SUCH DIFFERENCES, BUT PROGRESS IS SLOW, AND NEGATIVELY AFFECTED BY CORRUPTION.

10. What is the definition of the notion “minority” according to your constitutional system? What do you think about it? 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?

‘MINORITY’ IS NOT A CONCEPT KNOWN TO OUR CONSTITUTION, FOR GOOD REASON. POLITICAL EXPLOITATION OF ETHNIC AND RACIAL DIFFERENCES WAS EXPLOITED POLITICALLY BY THE APARTHEID REGIME TO CREATE A ‘NATION OF MINORITIES’, SO THAT THE ‘WHITE MINORITY’ COULD CLAIM POLITICAL DOMINATION. SO I REGARD ANY USE OF THE NOTION OF MINORITIES IN THE CONSTITUTIONAL AREA AS SUSPECT.

11. What do you think on the notion and the concept of minority rights in international law? Could it 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, from the view of peoples?

I HAVE IN EFFECT ANSWERED THESE QUESTIONS ABOVE. WHILE IT MAY BE APPROPRIATE AND JUST TO USE THE CONCEPT OF ‘MINORITIES’ IN OTHER COUNTRIES, IT WON’T BE ACCEPTABLE POLITICALLY IN SOUTH AFRICA, GIVEN THE PAST EXPERIENCE.

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

THE ACHIEVEMENT OF SOCIO-ECONOMIC EQUALITY, AND THE COMBATTING OF POVERTY.