

ANSWERS

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

“Human” is every individual of the human species, regardless of age, capacity or disability, sex (and sexual or gender option), place of birth, race, religious choice or other preferences, including, among others, philosophical and ideological.

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 conflicted with a constitutional right?

In the Uruguayan system the solution results from article 72 of the Constitution: "The enumeration of rights, duties and guarantees made by the Constitution does not exclude others that are inherent to human personality or derive from the republican form of government". It is necessary and sufficient that a right be inherent in human personality or that derives from the republican form of government to recognize it as a right with constitutional hierarchy. It has been understood for the last twenty years that if the rights are included in international human rights treaties ratified by Uruguay, they could enter as rights with constitutional rank by article 72. Article 332 of the Constitution establishes the immediate application of the precepts of the Constitution that recognize rights to the individuals, even if the regulation has not been issued. “The precepts of the present Constitution that recognize rights to individuals (...) will not cease to be applied for lack of the respective regulation, but that this will be supplied by resorting to the foundations of analogous laws, general principles of law and generally accepted doctrines”.

If there is a conflict between rights expressly mentioned by the Constitution and rights that enter it by the opening clause of Article 72, for example by the Inter-American Convention on Human Rights, a conventionality control is carried out that determines the preference for the recognized right by the inter-American system. Naturally, in case the international protection to be superior to the national.

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?

In Uruguay, the rights included in international human rights treaties or in human rights declarations set minimum standards that can be exceeded by internal provisions.

In my country, some rights recognized by the Constitution, can be considered to give greater protection than that resulting from International Human Rights Law. An example: in terms of health: Article 44, paragraph 2, of the Constitution, compared with article 10 of the Protocol of San Salvador or with article 12 of the UN Covenant on Economic, Social and Cultural Rights: "The State will provide free means of prevention and assistance only to the destitute or lacking sufficient resources".

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

In the Uruguayan system, the jurisdiction is not in itself a competent actor to create law. Its role acquires importance in the interpretation and application of the Law when human rights standards are engaged. Advances in this matter are mainly due to the recent adoption by the Uruguayan judges of the jurisprudence of the Inter-American Court of Human Rights.

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? If your answer is yes, would you please explain?

The existence of articles 72 and 332 of the Constitution determines that, in principle, there are no values and problems not covered.

To them are added articles 7 "the inhabitants of the republic have the right to be protected in the enjoyment of their life, honor, freedom, security, work and property" and 8 "All persons are equal before the law, not recognizing another distinction between them but that of talents or virtues".

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

It is possible to verify some discrepancies between constitutional provisions and reality. For example, article 26 ("In no case shall prisons be allowed to mortify, and yes only to assure the accused and punished, chasing their reeducation, aptitude for work and crime prophylaxis"). The overpopulation of prisons determines that constitutional objectives are not met. Another example: constitution, article 45: "Every inhabitant of the Republic has the right to enjoy decent housing." Some realities does not agree with it.

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

In my opinion there are no such social realities in Uruguay.

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 they exist for example, the "amparo" action against acts of private persons violating human rights. This action is based on articles 7 and 72 of the Constitution and was regulated by law 16.011 of 1988. It is a quick and effective guarantee. They also apply civil and criminal ordinary legal means for the protection against acts of private persons.

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)?

In Uruguay there are some relevant groups with such characteristics but they coexist with others in a reasonable and peaceful integration.

I am not part of any of these groups.

It is necessary to keep in mind that in Uruguay, the Constitution guarantees by article 5 the freedom of cults and the non-confessionality of the State or secularity in religious matters. When requests by a group with such characteristics are raised, they are handled by the competent

authorities. For example, there is the traditional Jewish cemetery in the La Paz city and the future Muslim cemetery in the Soca city.

10. What is the definition of the notion “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?

The Uruguayan constitutional system does not expressly define the concept of minority. In my opinion, the solution can be achieved by constructing the concept through articles 8, 72 and 332 of the Constitution mentioned in previous answers. According to the Uruguayan Constitution, all inhabitants of the Republic, whether nationals or foreigners, whether citizens or non-citizens, are entitled to rights. I believe that in Uruguay the individual rights of minorities are inherent to human personality and the rights of the groups or collective derive from the republican form of government and that, in both cases, they are immediately applicable even if they are not regulated by law. In addition to the provisions resulting from the UN International Pacts of 1966 and the American Convention on Human Rights, Uruguay approved inter-national conventions, among them the UN Convention on the protection and promotion of the diversity of cultural expressions (law 18.068, of December 11, 2006); the Inter-American Convention against racism, racial discrimination and related intolerance (law 19.517, of September 21, 2017) and the Inter-American Convention against all forms of discrimination and intolerance (law 19.584, of December 28, 2017) that include forms of minority protection.

All national and international standards mentioned are effective
In Uruguay, various aspects related to minorities have been regulated through ordinary laws, in the case of transgender persons, afro descendants, etc.

In some other States, it would be desirable that at the constitutional level there is a express definition of minority rights.

I do not believe that the constitutional regulations that extend minority rights alone resolve conflicts between majorities and minorities, because other reasons are preferably compromised: cultural, historical, sociological, etc.

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 notion and concept of minority rights in International Law (Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities of 1992) can be complemented, improved and updated, after a quarter of a century has elapsed.

In the case of my country and by virtue of its peculiarities I do not consider it indispensable, because this is reasonably achieved by interpretation and application of the provisions of Uruguayan law and international treaties and conventions.

I believe that the reality of the Uruguayan State and its inhabitants are covered by existing concepts and their progressive interpretation. However, in the light of other situations, it may be considered prudent for International Law to be updated.

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

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