

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

On a rigorous, rational interrogation, it is hard to identify a defining, rights-attracting feature of being 'human' that cannot be identified in non-human living things. Human rights are not, for pragmatic and political reasons, subjected to this interrogation, and it is accepted simply that human rights attach to a 'person': a living thing that is of the species *homo sapiens*. This makes historical sense when human rights are seen as a claim or defence against the state, and it makes pragmatic sense for the social and political function that human rights have. But if human rights are analysed for internal coherence, any special claim that humans have to rights and freedoms, differently from claims that can be made for (and sometimes by) other living things, becomes problematic.

**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 Australia there are no explicit constitutional human rights protections. Human rights are the subject of executive discretion, legislative action, and common law principles. There is no formal provision for balancing conflicting rights, nor any accepted principles for doing so, in Australian law and public life. Conventional processes for assessing the proportionality of rights limiting measures are not widely understood or accepted in Australia.

**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?**

International Human Rights Documents in Australia have no formal significance. Australia's is a dualist system; even when Australia is a party to a treaty, the terms of the treaty have no domestic effect unless they are formally given effect by executive or legislative action. Australia has given little explicit effect to its human rights treaty obligations. Australian laws that give some effect to some treaty obligations, and aspects of Australia's laws may operate above international human rights standards, but that is not a matter of formal record or even relevance. Whether Australia's treaty obligations affect state conduct is discretionary and highly variable, often on the basis of political party policy. Australia's treaty obligations are a rhetorical tool for non-government human rights advocates.

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

Because Australia is a common law jurisdiction, judges have the capacity, through interpretation, to apply, deny, limit and expand rights that are in legislation or in the common law. The state is often a party to litigation in which rights are at stake. And the state, through both the legislature and the executive, can act so as to promote, limit or deny human rights. Whether and how it does so is a political issue.

**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?**

As a general observation, I don't think there are values and social issues – where human happiness and dignity are at stake – that are not addressed by international human rights treaties. Australia is not, however, a party to all those treaties and, as I said above, Australia has given little explicit effect to its human rights treaty obligations.

**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?**

As I said above, there is no constitutional protection of human rights in Australia. An aspect of the Australian Constitution that contradicts human rights is the provision that allows the federal government to make racially discriminatory laws (see section 25, and section 51(26) of the Australian Constitution).

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

Many aspects of Australian indigenous culture, and of the cultures of many migrant communities in Australia, are inconsistent with the individualistic nature of civil and political rights.

**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?**

The principal legal mechanisms to protect human rights if fundamental rights are violated by private persons are legislative, both provincial and federal; they include criminal laws, anti-discrimination laws, privacy laws, industrial laws, family and child protection laws, and cultural heritage laws.

Criminal laws are enforced by the state; they are not expressed in human rights terms but they have the effect of exposing a rights violator to punishment for denying or limiting certain civil human rights, such as liberty, right to freedom of movement, right to life and freedom from torture. Anti-discrimination laws are enforced by individual complaint to a state oversight agency or a tribunal. Industrial laws are enforced by state oversight, and individual complaint to a state oversight agency or a tribunal. Privacy laws are enforced by complaint to a state oversight agency. Family laws are given effect through private litigation. Child protection laws are enforced by state oversight, as are cultural heritage laws. These laws address what can be recognised as human rights, but are not usually expressed or treated as 'human rights' laws. Rather, they are domestic laws that operate on their own terms.

**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)?**

Australia calls itself a 'multi-cultural' society, and recognises and celebrates the cultural backgrounds of its many migrant populations: about 30% of the population were born in another country, and about 50% of the population are first or second generation migrants. Multiculturalism has been national policy for almost 50 years. More recently, in the past 20 or so years, Australia has been more willing to recognise and celebrate the cultures of its indigenous peoples. Recognition of diverse cultures is underpinned by national and provincial racial discrimination laws, and extends to extensive publicly-funded migrant support services, translation services and, for indigenous peoples, dedicated government programs across all aspects of life. Notably absent in Australia is any formal recognition of legal pluralism, except to a small extent in criminal and family matters for indigenous peoples. Australia's indigenous peoples suffer significant and widespread systemic disadvantage in all aspects of life, from education and life expectancy to workforce participation and rates of incarceration.

**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 Australian Constitution is a 19<sup>th</sup> century British document that does not explicitly identify 'minorities'. The Constitution does give the federal government the power to make laws in relation to people according to their

race, which has operated to identify minority races as a target for legislation, such as indigenous peoples. There is currently a political debate in Australia over whether and how to incorporate into the Constitution, and the national system of government, recognition and participation of indigenous peoples. The idea of 'minority' by reference to attributes other than race, eg sexual preference or disability, is recognised in anti-discrimination laws.

**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 of minority rights in Australia – in the way the term is used in international law – is principally a question of the rights of indigenous peoples. International human rights activity in the area of indigenous rights is of limited relevance in Australia; as I described above, Australia has given little explicit effect to its human rights treaty obligations, and those treaty obligations are a rhetorical tool for non-government human rights advocates.

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

In my view, the most significant current human rights problem in Australia is the situation of our indigenous peoples. Others would say it is the effects of climate change. The 'problem' is the unresolved dispossession of indigenous peoples of their land; the resulting loss of autonomy, culture, language, social structures; and the consequent daily violations of civil, political, social, economic and cultural rights.

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