

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?

<p>10.1. Professor Dr. Carmen Thiele - Germany</p>	
<p>10.2. Professor Juliano Benvindo - Brasil</p>	
<p>10.3. Catherine Willis-Smith/LL.M Candidate – South Africa</p>	
<p>10.4. Dr. Jur. Marton Sulyok - Hungary</p>	
<p>10.5. Benjamin Danpullo, LL.M - Nigeria</p>	
<p>10.6. Professor Dr. Thio Li-ann - Singapore</p>	
<p>10.7. Prof. Dr. iur Yiren Lin - Taiwan</p>	
<p>10.8. Dr. Sri Wahyun Kadir - Indonesia</p>	<p><i>There is no mention of the word minority or majority in the Indonesian constitution. This word was born only because of mention of it from media. All are equal before the law and have the same human rights by the government. If a case occurs, then that case is only a case that does not represent the views of society as a whole. Even if the case occurs, it is usually a matter of religious sentiment, then this is quickly resolved by the government so that there is no turmoil. And now, it seems that Indonesian people are very mature in accepting everything that happens. After the reform order since 1998, the cases that occur can still be tolerated. Even though in 2017, there was a large demonstration of a religious case, but the community</i></p>

	<p><i>could very flexibly accept and conduct demonstrations politely and finally the government could finish it well.</i></p> <p><i>Do you think that minority rights should be protected broadly by the constitutional level?</i></p> <p><i>There is nothing that needs to be changed because in the Indonesian Constitution, everything is the same. Even if there is a case, then it does not describe the whole of Indonesia. Everywhere in the world various cases also occur, however, of course it also cannot draw conclusions about something that happened.</i></p> <p><i>Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?</i></p> <p><i>As far as I know, everyone has the same human rights and the same in the eyes of the law. Personally, I have never seen minority rights overlooked. It's just that if there really is a case, then that needs further deepening.</i></p> <p><i>When it comes to making new rules, the Government and the Members of the House have certainly thought about it. Everyone has the same rights, whoever it is. However, at this time, it may not satisfy all parties, however, it does not mean that the government does not pay attention to all rights.</i></p>
<p>10.9. Professor Marina Calamo Specchia - Italy</p>	<p><i>The concept of minority, understood in its most elementary semantic aspects, expresses the idea of a relationship between a quantitatively larger entity and a quantitatively smaller entity: no matter who is on either side, since the terms of the relationship can change and invert depending on the assumptions on which the analysis is based, that is to say the historical period of reference, the form of state and the ethical-social relationships that underlie it, and so on.</i></p> <p><i>The protection of the foreigner necessarily passes through the regulation of the discrimination factors of the minority situation, not being able to resolve the conflicts but being able to regulate the manifestations and identify the criteria of conduct and the differentiated evaluation parameters: in this aspect the notion of minority, although constituting a unitary typology, it breaks down into several sub-types according to the discrimination from time to time considered (religion, culture, language, race), so that the phenomenon of the minority is articulated in reality in a plurality of minority conditions.</i></p>

<p>10.10. Josef Martin Zielinski Flores - Peru</p>	<p><i>There is no specific constitutional legislation on minorities in Peru.</i></p>
<p>10.11. Dr. Martín Risso Ferrand – Uruguay</p>	<p><i>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.</i></p>
<p>10.12. Professor Dr. Shinar Adam – Israel</p>	<p><i>There is no legal or accepted definition of minority. On the whole the system does not hinge on the status of minority to be accorded individual rights. Minority status is taken into account in cases dealing with equality. It is doubtful that only constitutional protection (or broader protection) will solve all the tensions between Jews and Arabs in Israel, or the tensions between seculars and religious Jews.</i></p>
<p>10.13. Assist. Professor Sombhojen Limbu – Nepal</p>	<p><i>Who are minority according to the Constitution of Nepal is those who have been excluded the mainstream of national development for long periods, discriminate based on culture, religious, geographical, caste, ethnicity, languages, because of backward due to lack of education, poverty and social practices. Such all groups constitute under minority. They all have their special constitutional rights such as positive discrimination, inclusion policy, gender balance in top positions, inclusive electrical models etc. However we have needed to wait performance of The Govt. either they follow such constitutional provisions for them or not.</i></p>
<p>10.14. Suzan Tavares da Silva –Portugal</p>	<p><i>We don't have a great tradition on minority's rights questions. Romans are, perhaps, the most significant community that can be considered a minority, but there are mostly full integrated although some issues can arise on roman's marriages and also on roman girls' education, it is more a social issue than a legal or constitutional one. We also have large communities of black people, coming from the colonialist period, but many are Portuguese citizens and there are also fully integrated, although some troubles can arise from Lisbon urban neighborhoods. Although these troubles are, in most cases, criminal issues related to drug's traffic, that can also be</i></p>

	<i>explained by some societal problems, and they are common problems of developed societies and not minority issues.</i>
10.15. Assist. Professor Zewdu Mengesha - Ethiopia	<i>No clear definition is stated by the FDRE Constitution. There should exist a protection for this margin of the society. Yes, I feel that the Constitution should clearly articulate the protection that should be provided for such groups. This may not be a solution. The solution should be integrating the majority and minority without affecting their respective right.</i>
10.16. Dr. Alexander Kim - Russia	<i>We have a number of understandings about minority- national, religious, social and other. Many national minorities have a number of further rights, it`s no problem for majority.</i>
10.17. Prof. Dr. Vasanthi Nimushakavi - India	
10.18. Massimiliano Buriassi - Italy	
10.19. Professor Dr. Ahmed Aubais Alfatlawi - Iraq	<i>The Constitution of Iraq does not define the term minority, but rather it is mentioned in general as one of the components of the Iraqi community, which the Constitution guaranteed to protect it in accordance with the law. I think it is better to protect the minorities, and stated in the constitution to prevent marginalization or exclusion, The mention of minorities in the constitution would prevent ethnic or national conflict and would lead to the peaceful coexistence of the Iraqi people.</i>
10.20. Professor Dr. Hyungnam Kim - South Korea	<i>According to Article 11, Clause 1 of Korean Constitution, “All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.” Right now the Korean Constitutional strictly declares the principle of equality which is from Article 11, Clause 1 of Constitution on every minority case. So there will be no problem.</i>
10.21. Associate Professor Tomáš Lalík, Ph.D -	<i>There is no legal definition of minority in Slovakia. Hence, it must be interpreted with the generous approach – mostly based on the feeling of a person concerned. Minority is a group</i>

<p>Roman Lysina, Ph.D Candidate - Slovakia</p>	<p><i>of people belonging to other, than majoritarian (Slovak) nationality.</i></p> <p><i>Yes, I agree with the statement, that minorities should be protected broadly on the constitutional level. However, these rights must than be exercisable in practice. E.g. state should provide funding, prepare proper legal framework etc.</i></p> <p><i>There are no major conflicts between majority and minorities in Slovakia. Some conflicts between Slovaks and Hungarians were purposely built in the past by politics, not reflecting the social reality. Nowadays, only few individuals engage in these conflicts.</i></p> <p><i>Another conflicts that occasionally pops up is the conflict between Slovaks and Roma minority. However, the origin of this conflict doesn't lie in the scope of the minority rights, but rather in failing or non-existing social programs for providing proper education and job opportunities for this minority. Hence, this minority has become vulnerable in some regions.</i></p>
<p>10.22. Professor Dr. Mohammad Javid - Iran</p>	<p><i>In Islam, in this way; minorities of Muslim in other countries are under respect of the rule of that country. But Muslims as a majority in their own territory have their own rights and sharia however they respect the minorities rights. Minorities in islamic Iran are those have formal religions that islam and Iran recognize them . Such as Judaism, Christians and Zoroastrian. Therefore , these three enumerated in the Constitution of iran ,set in Principle 13 of the Constitution of Iran are recognized but in Principle 20 mentioned the equal rights for all people in the nation both men and women. In principle 26 freedom of syndicate abd political, and etc are determined for minorities. In Iran country, for these group some positive affirmations have been accomplished and presupposed for them according to the Constitution, thus some defenfens of justice and equity believe this affirmation toward minorities is the cruelty to the majority of Muslims in theit own nation.</i></p>
<p>10.23. Professor Dr. Adrienne Stone - Australia</p>	<p><i>Bkz answer 5</i></p>

<p>10.24. Professor Dr. Mark Tushnet - USA</p>	<p><i>In general, "minority" is defined in the United States primarily by a history of oppressive treatment (which correlated strongly with statistical minority status, but is not the same).</i></p>
<p>10.25. Professor em. Dr. iur Reinhard Mußgnug - Germany</p>	<p><i>Germany hadn't any minority problems because its religious and linguistic minorities are small and don't cause severe problems. Therefore the German Constitution 1949 hadn't any reason to deal with minority questions or define the notion "minority". This begins to change with the immigration of refugees and migrants from Africa and Asia. But it is too early to cope with the arise of new minorities on the level of the Constitution.</i></p>
<p>10.26. Professor Dr. Mabid Ali Mohammed Al-Jarhi - Egypt</p>	<p><i>Christians in Egypt consider using Shari'ah as a source of legislation threatening, although the constituton makes their own religious rules a source of civil law applied to their personal affairs. The problem is that Christian churches do not agree on a unified personal law controlling marriage, divorce and inheritance for them. There is an intentional lack of understanding that Shari'ah does not discriminate against non Muslems. in addition, Christians object to liberalizing laws allowing for political freedom as they are wary of mass conversion into Islam.</i></p>
<p>10.27. Assoc. Professor Dr. Patrick Emerton - Australia</p>	<p><i>Australia does not have a constitutional notion of "minorities". There is a legislative power to make national laws that specially effect the members of particular races. This was envisaged, when included in the Constitution in 1901, as a power that might be needed to deal with non-white people in Australia. It has not been used in that fashion, however, and today it is used only to create special laws for Indigenous peoples. Some of those laws confer benefits, but others impose special requirements.</i></p>
<p>10.28. Professor Dr. Hajer Gueldich - Tunis</p>	
<p>10.29.</p>	<p><i>Ans: The word "minority" has not been defined in the Constitution of India. But there is the reference of religious and linguistic minorities under Article 29 and 30 of the Constitution</i></p>

**Asst. Professor
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India**

of India. India inherited the concept of minorities before independence and the efforts of our founding fathers of the Indian Constitution can't be sidelined. The Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities and finally British Government conceded the genuine demands of religious and linguistic freedom to India's religious and ethnic minorities. Similarly, the Sapru Committee Report (1945) is another example of how the mainstream political class of Indian Freedom Movement were concerned about the protection of minorities' rights. The word 'minority' is not defined in the constitution but literally, it means "religious and linguistic" group who are in a non-dominant position. It is a relative term and is referred to, to represent the smaller of two numbers, sections or group called "majority". In that sense, there may be political minority, a religious minority, linguistic minority etc. Article 29, 30, 350a, 350B of the Indian Constitution use the word "minority" and its plural forms but did not define it. The Supreme Court of India in TMA Pai Foundation v. State of Karnataka 2002 has held that for the purpose of Article 30 of the Indian constitution, a minority-whether linguistic or religious is determinable with reference to a state and not by taking into consideration the population of the country as a whole.

Indian constitution encompasses provisions that emphasize complete legal equality of its citizens regardless of their religion and creed and prohibits any kind of religion-based discrimination. It also provides safeguards-albeit limited ones-to religious minorities' communities. Nevertheless, minorities face discrimination and persecution due to the combination of overly broad or ill-defined laws, an inefficient criminal justice system and a lack of jurisprudential consistency. Moreover, the state and national laws in India do not comply with international freedom of religion or belief, including Article 18 of UDHR, 1948 and Article 18 of ICCPR, 1966. It is interesting to note that we have national level organization for the protection of minorities rights, but nobody is aware about UN Declaration on Freedom of Ethnic, Religious and Linguistic Minorities 1992. In particular, since 2014, hate crime, social boycotts, assault, and mob lynching have been escalated dramatically against minorities especially against Muslims. In recent years,

	<p><i>religious minorities have witnessed a deterioration of their rights. It is sad that the Indian government at both provincial and national level- often ignores its constitutional commitments to protect the rights of religious minorities. Violence against the religious minorities, discrimination, mob lynching, forced conversions and environments with increased instances of harassment and intimidation of religious minorities are not new phenomena in India, as they occurred since 1947, but since 2014 hate crime, social boycotts, assaults and mob lynching have escalated dramatically at regular interval in very high speed. Hence India faces serious challenges to both its pluralistic traditions and its religious minorities.</i></p> <p><i>The Constitution of India fully protects the minorities' rights under Article 25, 29, 30 and its core principle of secularism. I think any new provision in the Constitution for the protection of minorities would not help as it will further divide the society on communal line. The need of the hour is to develop effective law enforcement mechanisms in case of crime against minorities. The mass-awareness programmes should be initiated about why we should cherish our secularism, diversity, pluralism and multi-cultural society. The majority community (Hindus) must come forward to ensure a secular, safe and secure society. Any special treatment to minorities would give a further increase to conflicts between minorities and majorities. There are legal and constitutional provisions for the protection and welfare of minorities.</i></p>
<p>10.30. Professor Gerd Oberleitner - Austria</p>	<p><i>Under Section 1 Paragraph 2 of the Ethnic Groups Act, ethnic groups are understood as "such groups of Austrian citizens living in parts of the Federal territory and having a language other than German as mother tongue and having traditions of their own." Minority rights contribute to peaceful and inclusive societies.</i></p>
<p>10.31. Professor Dr. Adnan Oweida - Jordan</p>	<p><i>not know</i></p>
<p>10.32. Dr. Andres Cervantes Valarezo - Ecuador</p>	<p><i>A complex notion of constitutional democracy such as that developed by Professor Luigi Ferrajoli, but also by Ernesto Garzón Valdés or Norberto Bobbio has two dimensions: formal</i></p>

and substantive. The formal dimension of democracy is based on negative freedom rights (not being tortured, freedom of expression, property, right to vote, among others) and the possibility of electing a government in a democratic manner. However, the substantial notion of democracy implies that no majority, however overwhelming it may be, can repeal the rights of minorities. In addition, only by guaranteeing social and economic rights is possible to achieve a real democracy in contexts such as Latin America where societies are characterized by poverty, inequality and exclusion. This reality justifies the judicial review as a guarantee of the rule of law for the weakest.

In that sense, having a constitutionalized catalog of minority rights is very useful because they establish, at least, minimum standards that cannot be transgressed by private persons or by the State. Likewise, having a catalog of minority rights implies that the legislator has a duty "to legislate for them as well". The Ecuadorian Constitution does not incorporate the concept of "minorities" but rather the concept of "vulnerable groups", which in my opinion seems very appropriate. It is not a quantitative issue but a qualitative one, think of slavery or the global migration crisis, for example. These groups of people are treated arbitrarily and unfairly not because they are not numerous but rather because they have been historically discriminated.

In addition, the concept of vulnerability is broader and allows greater protection of rights by exceeding the limited criteria of discrimination. In this sense, Article 34 of the Constitution of Ecuador (2008) provides: "the elderly, girls, boys and adolescents, pregnant women, persons with disabilities, persons deprived of liberty and those who suffer from catastrophic or highly complex diseases, will receive priority and specialized attention in the public and private spheres. The same priority attention will be given to people at risk, victims of domestic and sexual violence, child abuse, natural or anthropogenic disasters. The State will provide special protection to persons in a condition of double vulnerability". The constitution also recognizes the vulnerability situation of migrants and establishes a special catalog of rights.

<p>10.33. Asst. Professor Dr. Manal Totry-Jubran - Israel</p>	<p><i>There is no definition of a minority in the constitution (there is no constitution).</i></p> <p><i>I do believe that minority rights should be protected under the constitution but together with other liberal rights of individuals within the minority. There should be a balance in the protection of groups and individual rights.</i></p>
<p>10.34. Dr. Maria Paula Garat - Uruguay</p>	<p><i>There is not an explicit definition of "minority". But some minorities are specially protected, also with affirmative actions. In my opinion the concept is very important for constitutional issues and for constitutional regulations, in which minorities shall be protected.</i></p>
<p>10.35. Professor Luis G. Francheschi - Kenya</p>	<p><i>In the Kenyan Constitution, the term 'minorities' is not explicitly used; however this bears a close correlation with the term 'marginalized group' which is provided for in the constitution. This has a socio-historical reason. Minorities here were usually privileged, for example, white settlers, the rich elite, the political class, etc. The term marginalized group was chosen as it portrays in a more accurate manner what is intended to when the world refers to minorities. Marginalized group is defined as a group of people who because of laws or practices before on or after the effective date were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4) (including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.) In Kenya, the concept of marginalised groups is important as it recognises the disadvantages faced by certain groups and the law aims to remedy such disadvantages.</i></p>
<p>10.36. Professor Hugh Corder - South Africa</p>	<p><i>'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.</i></p>

<p>10.37. Asst. Professor Umar Rashid - Pakistan</p>	<p><i>Ans) Minorities are mentioned in the preamble of the Constitution, in the Objective Resolution (made substantive part of the Constitution under article 2A) and in Article 36 (Chapter on Principles of Policy, which does not bind in the same way that Chapter on Fundamental Rights does). The Constitution considers anyone not belonging to the Islamic Faith as a minority. Other groups are not considered minorities (such as ethnic or linguistic groups) by the Constitution. These articles in addition to the fundamental right to religion (article 20) provide for protection of the 'legitimate rights and interests of minorities'. There is no such comparable right for other types of minorities, though the preamble and section 37 provide for protection and promotion of the interest of backwards classes and areas.</i></p> <p><i>Constitutional regulation alone would not be sufficient to provide adequate protection to minorities. It is an important part of such protection, but would also require a change in the social and political sensibilities of the people, so that they understand the importance of upholding minority rights. It would also require that both the government and lower courts are vigilant in protecting the rights of such groups.</i></p>
<p>10.38. Assist. Professor Simon Alexander Wood - Malaysia</p>	<p><i>there is no definition of minority within the constitution although there are definitions of certain ethnic groups that have specific rights affected by the constitution the concepts used have worked adequately since independence, although some groups particularly the orang asli deserve stronger constitutional protection as they have been unable to obtain effective economic and civil rights</i></p>
<p>10.39. Professor Merris Amos-UK</p>	<p><i>The professor has chosen not to publish her answers.</i></p>
<p>10.40. Ştefan Bogrea - PhD student at human rights law / Advocate - Romania</p>	<p><i>The Constitution does not expressly define national minorities but does grant certain specific constitutional rights to minorities as they are defined by national law standards.</i></p> <p><i>This is a very good system, since it grants the most important rights at the constitutional level, thereby guaranteeing their efficiency.</i></p>

	<p><i>Given the extent of the infra-constitutional legislation that protects minorities in Romania, I see no need to broaden the constitutional protection of minority rights.</i></p>
<p>10.41. Asst. Professor Dr. Cristina Tomulet - Romania</p>	<p><i>The concept of minority is not defined as such in the Constitution of Romania, even though it is mentioned in certain articles, as we previously showed. Neither is it defined in any other laws. Regarding national minorities, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages were ratified by Romania in 1995 and 2007. However, these instruments do not contain an explicit definition of the concept of minority, adopting a pragmatic approach regarding the concept in question.</i></p> <p><i>Regarding the second question, in my opinion, the concept of minority should not exist in a human rights paradigm, given the fact that according to the paradigm in question no person is fundamentally different from another in terms of his/her intrinsic value. Even though people are different from many perspectives, those differences do not justify, in my opinion, their separation in distinct categories. Each person has its own individuality, whether it is ethnical, religious, linguistic or of another nature, and is equal to other persons, who possess the same unique qualities. However, we do not live in an ideal world, but in a world full of judgment, which is why people separate themselves in majorities and minorities. Given the fact that the majority sometimes has the tendency to dominate the minorities, the latter developed a resistance towards the majority in order to preserve their rights related to the distinctive features of the group. In this context, I believe that in a democratic society it is important to pay attention to the protection of minority rights, given the aforementioned dominating tendency of the majority. However, this protection should not be excessive, becoming in its turn a form of discrimination towards the members of the majority.</i></p> <p><i>Regarding the third question, I do not believe that a very broad protection of minority rights at the constitutional level is critical to ensure the effectivity of the protection in question. I think that constitutional provisions should be more focused on protecting human rights in general. As I said earlier, in an</i></p>

	<p><i>idealist society towards which we should strive, special protection of minorities should not exist. Each and every person should be protected by the Constitution in an equal manner. However, given the fact that there are special problems to be regulated, such as the right to be educated in one own's mother tongue in the case of national minorities, additional protection of the minorities should be regulated by law.</i></p> <p><i>Regarding the last question, I believe that in most cases, in which there is a sufficient human rights protection for the minorities at the constitutional level or at the legal level, constitutional regulations broadening the rights of minorities would not solve the conflicts between majorities and minorities. I believe those conflicts stem most of all from judgmental mindsets and not from lack of legal protection. That is why I believe that the conflicts in question can be surpassed by education and learning tolerance towards persons that are perceived as different.</i></p>
<p>10.42. Professor Dr. Mahendra P. Singh - India</p>	<p><i>Minorities are generally those sections of people who are less in number and evidently stand distinct and are vulnerable people. The physical or cultural characteristics of these people are singled out from the majority producing inequality and collective violence. In India the Constitution safeguards the rights and privileges of the minorities. The word 'minority' or its plural form is used in the Constitution in some Articles such as Articles 30, 350A to 350B but has not been defined anywhere exhaustively though the courts have laid down a general proposition that in an area where the law applies for certain purposes such as religion or language persons who are less than 50 percent in that area could be designated as minorities.</i></p> <p><i>In a democratic country like India there exist tensions and insecurities amongst the minority due to domination of the majority. From mob lynching to communal riots, from manual scavenging to denial of basic human rights, the minorities have been subjugated and sometimes conquered by majoritarianism. But our constitutional arrangements allow the minorities to petition constitutional safeguards for protecting their rights and privileges.</i></p>

<p>10.43. Professor Dr. Stephanie Wattier - Belgium</p>	<p><i>S.W.: there is no official definition of “minority” in Belgian constitutional Law. However, some groups are constitutionality protected because of their “de facto” situation of minority. This is the case of French-speaking persons at the federal level of Belgium. There are considered as a linguistic minority compared to the Flemish people. Therefore, specific protective mechanisms are established in the Constitution (for instance, enhanced majorities are required in each linguistic group of the Parliament for the vote of special laws).</i></p>
<p>10.44. Dr. Malika Tastanova M. Narikyev - Kazakhstan</p>	<p><i>The professor has chosen not to publish her answers.</i></p>
<p>10.45. Professor Dr. Jasna Baksic - Bosnia and Herzegovina</p>	<p><i>U Bosni I Hercegovini koncepti većine I manjine su dinamičke kategorije I zavise od teritorije, brojčane zastupljenosti, političke I ideološke orijentacije, polne pripadnosti I seksualne orijentacije, religijske pripadnosti I političkog opredjeljenja. Najteža je manjinska pozicija bez obzira o kojoj vrsti manjine je riječ . Manjinska pozicija jednog od konstitutivnih naroda na teritoriji na kojoj živi druga dominantna većina, manjinska ideološka pozicija u odnosu na dominantnu političku matricu, manjinska pozicija žena, nacionalnih manjina u odnosu na realnu distribuciju moći u društvu, manjinska spolna orijentacija bez obzira na ostale identiteta u odnosu na tradicionalne vrijednosti I opredjeljenja društva. Ljudska prava u BiH su procjepu između prava ustavno-zakonskog priznavanja sa jedne I mogućnosti uživanja I zaštite sa druge strane.</i></p>
<p>10.46. Assist. Professor Dr. Iwona Wroblewska - Poland</p>	<p><i>Neither the Constitution nor other normative acts in Poland refer to the concept of minority in a sense other than national and ethnic. In Poland recently one can notice in the public space the promotion of intolerance to everything that differs from the archetype of the "real Pole", that is the heterosexual Catholic patriot. One can notice the reluctance of a large part of the society towards sexual minorities. The atmosphere is heated by the ruling right-wing and populist party and the church.</i></p>
<p>10.47. Professor Kwadwo Appiagyei- Atua - Ghana</p>	<p><i>Ghana’s constitution does not directly recognize minority rights. Minority rights are meant to protect groups who have non-dominant status in the society and are discriminated</i></p>

	<p><i>against on grounds of descent, national, ethnic or racial identity. Ghana does not strictly have a minority rights issue in the country. One can, however, talk about discrimination based on ethnicity that certain groups of people from the northern part of the country who are uneducated face when they migrate to the southern part of the country to seek greener pastures. However, there is a provision in the constitution that prohibits discrimination and promotes affirmative action, which could be used to promote 'minority rights' issues in the country.</i></p>
<p>10.48. Paidamwoyo Mukumbiri - Zimbabwe</p>	<p><i>The Constitution does not define what constitutes minority rights but simply protects the right to equality. Further minority languages are protected by the Constitution which recognizes all languages and provides that all languages are equal.</i></p>
<p>10.49. Professor Dr. Helen Irving - Australia</p>	<p><i>Minorities are not recognized in Australia's Constitution (except in a regional sense: the numerically small States get equal representation in the Australian Senate with the numerically larger States). Social and cultural minorities (eg persons with disability) are recognized in the anti-discrimination law, described above. The proposal for constitutional recognition of Aboriginal and Torres Strait Islanders is a major, controversial issue at present. It is too early to say whether such recognition would help relations between this minority and the Australian non-Indigenous majority.</i></p>
<p>10.50. Dr. Faridah Jalil - Malaysia</p>	<p><i>We don't have the notion of 'minority' in our Constitution. The Constitution divides the citizen as Malay, other races and natives. But de facto, other races (Chinese and Indian), and natives of Sabah & Sarawak, so as the aboriginal is considered as minority.</i></p> <p><i>Do you think that minority rights should be protected broadly by the constitutional level?</i></p> <p><i>Yes, it should be broadly protected. In general, Art 8, that guarantees right to equality need to be further expanded by having more legislations to protect equal rights.</i></p> <p><i>Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?</i></p> <p><i>Not necessarily.</i></p>

<p>10.51. Dr. Tatiana Khramova - Russia</p>	<p><i>As for cultural and ethnic minorities, see question 9. In law, there is no direct definition of the term, although the Constitution mentions the term “national minority” (Articles 71,72). Of course, broadening the constitutional protection of minority rights could help to ensure the rights of minority groups, but a lot depends also on the position of the Constitutional Court, as well as on the willingness of the legislator to enforce minority rights. With LGBT rights, for example, there is great resistance both in the Constitutional Court, and in Parliament (and also in the society at large).</i></p>
<p>10.52. Eduardo G. Esteva Gallicchio - Uruguay</p>	<p><i>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.</i></p> <p><i>All national and international standards mentioned are effective</i></p> <p><i>In Uruguay, various aspects related to minorities have been regulated through ordinary laws, in the case of transgender persons, afro descendants, etc.</i></p>

	<p><i>In some other States, it would be desirable that at the constitutional level there is a express definition of minority rights.</i></p> <p><i>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.</i></p>
<p>10.53. Dr. Aldana Rohr - Argentina</p>	
<p>10.54. Roman Schuppli - Switzerland</p>	<p><i>The Federal Constitution places the individual at the centre of the protection of fundamental rights; a group-related segmentation of elementary rights is not indicated. Unlike other constitutions, the constitution therefore does not enshrine minority or similar group rights and does not even provide for a definition of the term. Selected cantonal constitutions, on the other hand, mention the notion of minorities (e.g. Art. 4 Verfassung des Kantons Bern). According to the interpretative declaration to Framework Convention for the Protection of National Minorities the Swiss Confederation defines "national minorities" as "those groups of persons who are numerically smaller than the rest of the population of the country or of a canton, whose members have Swiss citizenship, who maintain old, solid and lasting ties with the Swiss Confederation and who are motivated by the will to preserve together what constitutes their identity, in particular their culture, their traditions, their religion or their language." In autumn 2016, the Swiss Confederation has recognised the Swiss Jeni and Sinti as a national minority – regardless of whether they live in a mobile or sedentary environment. In 1998, the Swiss Confederation has designated the "Travellers" with Swiss citizenship as a recognised national minority. The Federal Council rejected the recognition of the Roma in June 2018.</i></p> <p><i>This does not mean that the Federal Constitution does not take into account the protection needs of linguistic, religious and other minorities; the prohibition of discrimination, the freedom of language, and the freedom of belief and conscience grant protection to members of vulnerable groups in particular.</i></p>

	<i>(Partly excerpt from KIENER REGINA, Grundrechte in der Bundesverfassung, in: Verfassungsrecht der Schweiz, 2. Ed., forthcoming)</i>
10.55. Dr. Ljubomir Frckoski – Macedonia	<i>Kitabını göndermiştir.</i>
10.56. Assoc. Professor Juan Pablo Beca F. - Chile	<i>The constitutional system does not consider minorities, although it should. Therefore, minority rights should be protected. Individuals belonging to a minority groups have their rights protected, but there is not any protection for the group itself. This may contribute to solve conflicts, but is not a magical solution.</i>
10.57. Professor Simon Rice - Australia	<i>The Australian Constitution is a 19th 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.</i>
10.58. Dr. Renata Bedö - Hungary	
10.59. Damir Banović - Bosnia and Herzegovina	<i>According to the Law on national minorities, “a national minority (...) shall be a part of the population-citizens of Bosnia and Herzegovina that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics. I think is an acceptable concept. Quite broad to encompass different minority groups. The perception is a solid, beside the right to full political participation. I don’t think the emphasis should be put on the protection, but more on the implementation and enforcement.</i>

<p>10.60. Dr. Lilla Berkes, PhD candidate) - Hungary</p>	<p><i>It depends on what kind of minority we are talking about. The Basic Law does not have a definition but if we are talking about national minorities, according to the Act CLXXIX of 2011 on the rights of national minorities “ethnic groups resident in Hungary for at least one century, who are in a numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities are considered national minorities.” Because they are considered to be constituent parts of the State which means they are part of the political community, it is given that they are protected on the constitutional level. But overall the answer depends on how much the State wants to accommodate minority groups and how strong the claims of the minority groups are. The level of accommodation depends on certain elements: historical background (whether you need to justify them morally for example)</i></p> <p><i>Other minority groups are protected by non-discrimination: According to the Basic Law of Hungary, Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. There is also equality before the law.</i></p>
<p>10.61. Professor Dr. iur. Jorge León - Peru</p>	<p><i>En el Perú, la noción de minoría se encuentra relacionada principalmente con el concepto de democracia plural, que se entiende como el consenso de las mayorías con pleno respeto frente al disenso de las minorías. Asimismo, de manera específica se han identificado determinados grupos que históricamente han sido vulnerables por motivos de origen, raza, sexo, idioma, religión, opinión o condición económica a los cuales también se les asocia con la noción de minorías¹. Considero que el Perú ha reconocido constitucionalmente un concepto amplio y garantista de lo que son las minorías para que se pueda procurar una especial protección constitucional y legal sobre ellas.</i></p>

¹ <http://www.tc.gob.pe/jurisprudencia/2016/06040-2015-AA.pdf>

	<p><i>Cuando la Constitución agrega en su artículo 2.2. el término “de cualquier otra índole” permite comprender la importancia de la Constitución en el tiempo y tener en consideración que las minorías, por una cuestión de hecho, pueden pasar a formar parte de un grupo mayoritario o viceversa. Esto se ajusta tanto a la Declaración de las Naciones Unidas como a la misma Convención Americana sobre Derechos Humanos. En esta línea, es sumamente importante que el derecho de las minorías tenga un rango constitucional, a efectos de darles una especial protección a las mismas. Finalmente, considero que las mayorías y minorías son partes inherentes del sistema democrático. Esto quiere decir que el problema sobre las minorías es que tienen menos oportunidades y derechos en comparación con las mayorías.</i></p>
<p>10.62. Professor Thierry Rambaud – France</p>	<p><i>An article was sent by the Professor.</i></p>
<p>10.63. Mario Campora - Melisa Szlajen - Argentina</p>	<p><i>Our constitution recognized in their article 75.23 that some groups are more vulnerable than others and need and special protection to make their equality effective². Specifically it obligates the congress to legislate and promote legislation and actions to guarantee the real equality of opportunities and treatment and the effectively exercise of rights of children, woman, ancients and persons with disabilities³.</i></p> <p><i>Our democratic states were based on the rights of liberty and equality. But for lot of years that equality was only formal. One of the first steps to change this formal to real equality was the constitutional reform of 1994 that incorporates article 75.23 to the text and others like 75.17 and 75.22.</i></p> <p><i>In conclusion, the new constitution recognize that in reality there are difference between some groups and for make equality real the state has to make positive actions and discrimination will exist only if the action is not reasonable⁴.</i></p> <p><i>Also, article 1 of the American Convention of Human Rights prohibits any discrimination based on race, color, sex, language, religion, political or other opinion, national or social</i></p>

² Art. 75.23 National Constitution.

³ *Op. Cit.*

⁴ Bridart Campos, G. J. , Manual de la Constitución Reformada, Tomo I, quinta reimpression, Buenos Aires, p. 532/3.

	<p><i>origin, economic status, birth, or any other social condition</i>⁵. As article 2 of the International Covenant on Civil and Political Rights⁶.</p> <p><i>This changes demonstrate an evolution between a classic definition of equality to a real one that require from the state, not to be “neutral”, to make positive action to protect some groups that were historically and structurally discriminated⁷. That groups are in a disadvantage situation so they require positive actions from the state to change it⁸.</i></p> <p><i>I don't think that here we have a problem of majorities or minorities, here the number doesn't care. Sometimes poor people, migrants, woman, children, are majority in number but not in power and that's what this king of legislations and recognitions try to show and change. The law is not make out of context, so if we want to change reality and make equal effective we have to understand and see what is happening around us and that some groups of people are historically and structurally discriminated by the society with the acquiescence of the state so we need and active state to change that instability and convert formal equality in real one so that we all can enjoy our human rights.</i></p>
<p>10.64. Dr. Alaa Nafea Kttafah - Iraq</p>	<p><i>ج/ الاقليات او الاقلية هم مجموعة من المواطنين الساكنين في العراق منذ عصور ليس بغرض التغيير الديمغرافي وانما هم متواجدين اصلا كجزء من الشعب . واعتقد ان الدستور العراقي لسنة 2005 قد اشار لمفهوم الاقليات وضمن لهم حقوق في اطار الدولة العراقية سواء من حيث المواطنة والتعليم والصحة والسكن واللغة وممارسة الشعائر الخاصة فضلا عن المشاركة السياسية . اما لمدى كفاية التنظيم الدستوري لحقوق الاقليات في ضمان عدم النزاع فاعتقد انه مرتبط بارادة القائمين على السلطة .</i></p>
<p>10.65. Professor Silvina Ramirez - Argentina</p>	<p><i>El concepto de “minoría” es equívoco. Por lo general, es asociado a grupos desaventajados o sectores vulnerables, pero no deben ser entendido como un término asociado a lo cuantitativo. Sin embargo, desde mi perspectiva es una noción que no colabora para transformar la situación de esas</i></p>

⁵ Art. 1.1, American Convention of Human Rights, adopted at San José, Costa Rica, 11/22/1969, at the Interamerican Specialized Conference on Human Rights, entry into force 07/18/1978.

⁶ Art. 2, International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) 12/16/1966, entry into force 03/23/1976.

⁷ Abramovich, V., *Responsabilidad estatal por violencia de género: comentarios sobre el caso “Campo Algodonero” en la Corte Interamericana de Derechos Humanos.*

⁸ *Op. Cit.*

	<p><i>personas, porque los coloca en una suerte de situación de subordinación.</i></p> <p><i>Dicho lo cual, considero que deben existir regulaciones constitucionales que garanticen la protección de los derechos de ciertos pueblos indígenas o grupos específicos.</i></p>
10.66. Agnieszka Bień-Kacała - Poland	<i>The professor has chosen not to publish her answers</i>
10.67. Professor Dr. Claire Breen - Australia	
10.68. Marwan Al-Moders - Bahrain	<i>The Professor has send articles.</i>
10. 69. Dhia Al Uyun - Indonesia	<p><i>Minoritas adalah sekumpulan orang yang berbeda di masyarakat, dan secara sosial politik terpinggirkan.</i></p> <p><i>Opini saya, diskriminasi tidak saja diterima oleh minoritas melainkan juga mayoritas. Mayoritas merasakan diskriminasi akibat kekuasaan dan stakeholder negara serta pemimpin agama yang melegalkan diskriminasi. Pada Jaman penjajahan Belanda, mayoritas umat islam mengalami diskriminasi karena dipaksakan untuk mengikuti hukum perdata barat.</i></p>