

Economic and Social Rights in the U.S.

Presentation to High Commissioner for Human Rights, Louise Arbour, June 7, 2007

Hello and thank you for this opportunity. I am Cathy Albisa the Executive Director of the National Economic and Social Rights Initiative, an organization that seeks to integrate international economic and social rights standards into U.S. policy and practice, particularly in partnership with grassroots communities.

I would like to begin by expressing our profound gratitude for your ongoing and eloquent support of economic and social rights. You have expressed your concern that legal protections for these rights are considerably weaker than civil and political rights, and that is certainly the case in the U.S. You have argued that they should be integrated into a range of human rights approaches, including transitional justice and peace processes. You have also stated that human rights are a product of struggle, and that is what we are engaging in here in the U.S. — a struggle to legitimate economic and social rights in order to create concrete vehicles for implementation.

Because the U.S. government is famously reluctant to recognize economic and social rights, both domestically and internationally, this struggle in the U.S. has relevance both for people within and outside our borders. Our hopes are that if we build these concepts into our own legal and political system, it will ultimately confer a benefit for all people. A scenario where the U.S. government becomes a force for the protection of economic and social rights might present a dramatically and improved global landscape. With deference to the time limitations, I will provide a very cursory assessment of economic, social and cultural rights in the U.S.

In the Courts:

As in Canada, your home country, we operate within a federal system. Economic and social rights are notably absent from our national constitution, with the exception of the right to property. Supreme Court jurisprudence offers some limited protection through due process guarantees and prohibitions on discrimination. Even with regard to property rights there has been some controversy engendered by the supreme court ruling in *Kelo v. City of New London Conn.*, where the Supreme Court upheld a locality's eminent domain power to confiscate property from mid and low-income residents so that private developers could further the broad goal of economic development. This has created widespread concern in communities. Regarding sub national constitutions, almost every state constitution recognizes the right to education, and there has been considerable litigation in this arena both around discrimination in funding and the adequacy of funding. Far fewer state constitutions recognize rights such as housing, welfare, and health. For example, eight state constitutions mention health in some way, and there have been limited rulings on these issues.

Legislation:

There is a vast array of legislation that touches on economic and social rights issues. Rarely, if ever, is there recognition that the issues being addressed are rights. There are efforts emerging to this effect, however. There are a number of innovative local and state level resolutions that call for protection of specific rights or call for study of whether state legislation meets human rights standards. It is also worth noting that the governor of Illinois recently issued a press release stating that health and education were fundamental human rights.

Social Movements:

There has been a sharp increase within U.S. social movements in awareness, interest and commitment to promoting international economic and social rights. This trend, first observed in the mid-90's, has accelerated dramatically. There is still much to be done to fully integrate this perspective into domestic advocacy, but this arena appears very promising.

General Public:

In the general public, recent focus groups conducted by the Opportunity Agenda reveal some surprising and interesting things. First, most people in the last round of focus groups clearly considered economic and social rights a core part of human rights. Second, they supported those rights but only to the extent that they saw the government as a "protector" and not a "provider". In other words, the public supports the obligations to respect and protect, but is far more ambivalent, if not outright hostile, to the obligation to fulfill. Yet, there are contradictions as the vast majority of people in the U.S. support the notion, according other polls, that the government has the responsibility to ensure that healthcare is affordable to all, and a strong majority support a universal public system of health insurance.

While I would very much like to continue this conversation, I will stop here as my time is up. And I thank you again for this opportunity.