

MC491-82-3-3

To: Rhonda and Celina
From: Luisa Diaz
RE: Draft on Socio/Economic Rights for The South African Const.
Date: 11/23/92

Please note that this draft is not a completed draft for reasons that I'll explain in class while going over it. I didn't do a spell check and omitted citations.

A) Socio/Economic Rights shall be part of the Right to Life art. of the const. draft.

-A const. that purports to guarantee a right to life must also guarantee socio/economic rights within this right. These rights are integral part of each other and thus inseparable. I intend to explain the symbiotic relationship of the two.

-Failure to recognize such rights as part of the right to life, will result in the nullification of the right to life itself.

-Labeling socio/economic rights within the right to life is imperative. Such labeling will give the socio/economic rights a place in the constitutional hierarchy thus increasing the pressure for their practical purpose.

B)Consequences of Having a Constitution That Does Not Protect or Include/Economic Rights as Rights.

-Other rights in the Constitution w/ be in danger of becoming mere words in a paper. Like our own Constitution. What good would it be to have freedom of speech if a person does not have a right to an education. The same goes with the right to life, if you don't have The right to food, an education or health care.

-Having such rights, promotes social stability.

-give a cost benefit analysis argument to my position. Use the U.S. model to support your position, then compare it with the German Const. and its impact on the German society.

-Explain the DeShaney result and the need to prevent such results in South Africa.

-Explain also the City of City of Joliet result as well.

C) Right To Life Is A Human Right. Socio/Economic Rights Being An Intricate Part Of the Right To Life, Are Also To Be Regarded As Human Rights.

(i) Arguments Against it.

-It is impossible to recognize these rights as rights because most government are not able to provide them.

-Recongizing them as rights will encourage a repressive governments to "denigrate civil and political rights." These governments, would deny their citizens civil and political rights to promote economic/social rights. Cite examples of communist countries.

-Economic and social rights are ideological in nature.

-To recognize them as rights it is necessary to spend money. The state will be require to act. Civil and political rights don't req. the state to spend significantly in order to implement them. They don't impose a duty on the state act.

-White South African may fear that the Consequences of having socio/economic rights will result in a rapid assumption of political dominance by black majority.

D) Counter Arguments to the above:

-Political and civil rights are inadequate to assure equality.

-Individual freedom can't exist without economic security (see Roosevelt's State of the Union Address p.363 book)

-Civil and political rights do require governments to act and spend in order to implement them. Give examples in the U.S. for the right to counsel (6th amendment). The Constitution does not say that the state has to provide an attorney, yet the state provides one if the person can't afford to retain counsel. Countries that have had to respect civil and political rights, have had to enact new laws and set up committees to make sure that these rights are respected. All of these implementations require the government to spend.

-Give examples of state constitutions that do provide for some recognition of socio/economic rights. Look at NY and Goldberg v. Kelly.

-Since South Africa is using the German Const. as a model, look at this Const. (look at Positive and Negative Constitutional Rights by David P. Currie. He did an analysis of our const. which only recognizes positive rights and compared with the German which guarantees a lot of the things we don't.)

-Assure White South African that their own socio and economic rights will be also protected.

-Though the recognition of these rights will require the state to spend a lot more than recognizing civil and political rights, the result will be social stability. give the example of Costa Rica, Sweden and any other country that will be helpful to consider.

-Give examples of the US jails and the so called "riots." As being one of the consequences that a country faces when it does not guarantee to its people the true right to life(as one that encompasses socio/economic rights.)

-Also give examples of the social programs established while the Johnson administration as an example that wealth sharing produces social stability.

- Since the implementation of these rights are costly, request or propose to appeal to the international community for help.

E) Considering that these rights are recognized, how do we enforce them and make them justiciable.

-Enforceability and Justiciability of these rights will depend on how they are phrased in the const. Decisions have to be made as to how the wording will appear (will it read that "respect for social and economic rights or will it say something like: the "State has to provide the means necessary for a person to be able to achieve a standard of living which will guarantee the right to life or something similar. I have to work more at this.)

-Enforceability can only be achieved if we don't bureaucratize the system. One way to avoid that is by training common people to run these administrative agencies. Again look at how other countries deal with it.

If the country has ratified any of the int. treaties th
formed to deal with the problem of development (Cove
Economic, Social and Cultural Rights) request that guidelines
convention are followed

-The justifiability issue has to be dealt similarly. In other
words, the person to decide whether the socio and economic rights of
a person have been denied must be someone who will be sensitive
Perhaps someone who is elected by the people (I have points to be
considered on this as well. Perhaps the agency or court that would
make such determination should be composed of a panel. I'll give
my input on this in class.

Another point I would like to develop is once they are
recognized how much will contribute enough?

[Handwritten signature]
Barbara

[Faint handwritten notes]

If the country has signed any of the treaties that were formed to deal with the problems of development (Covenant on Economic, Social and Cultural Rights) request that guidelines of the convention are followed.

-The justiciability issue, has to be dealt similarly. In other words, the person to decide whether the socio and economic rights of a person have been denied, must be someone who will be sensitive. Perhaps someone who is elected by the people (I have points to be considered on this as well.) Perhaps the agency or court that would make such determination should be composed of a panel.) I'll give my input on this in class.

F)another point I would like to develop is once they are recognized how much will constitute enough.

↓ Progressive implementation
Baseline?

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...

[Handwritten signature]
Samuel E. ...

Framework of the country
Sources: local and international - minimalist approach
Separate US sources from international
Develop defence cases (US)
x US critic

Another point: ...
recognized how much ...

Baseline?