

Why are there 2 treaties; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)? Are there adequate justifications for their separate existence?

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Human rights are generally associated with human dignity, human flourishing and wellbeing. Human rights are argued to be possessed by all human beings simply by virtue of being humans¹. They are inherent entitlements that can be claimed, demanded, earned, enjoyed, given, asserted, insisted-on, secured, or even sometimes willingly waived by the rights holder². Human rights are generally considered to be 'universal,' 'indivisible,' 'inalienable'.³ The 'indivisible aspect' of human rights implies that they should be taken as a 'package' relating to a 'whole' range of entitlements in the political, civil, social, cultural, economic and all other aspects of life, all of which are interdependent and contribute to the over-all full and holistic enjoyment of the individual. The universal aspect of human rights means that human rights are held equally by all people on earth whatever their circumstances and wherever they live. They belong to each one of us regardless of ethnicity, race, sexuality, age, religion or political conviction. The inalienable character of human rights means that people are born with their rights which are innate and cannot just be taken away. Inherent dignity on the other hand relates to the worth of individuals as human beings deserving of respect.

The concept of human rights was not mentioned in the statute of the League of Nations. Human rights was first officially mention in the Charter of the United Nations where the U.N members reaffirmed their faith in the "fundamental human rights, in dignity and worth of the human person, in equal rights of men and women"⁴. The charter further talks about "equal rights"⁵and rights of self-determination⁶. However, substantial provisions and definitions of human rights were made in the Universal Declaration of Human Rights (UDHR, 1948) that made mention of rights in all aspects of social, economic, cultural and civil and political aspects of life such as rights to life and liberty of persons, freedom from arbitrary and detention, right to social security, right to work, right to education etcetera.⁷

¹ Upendra, Baxi (2002:5), *The Future of Human Rights*, Roopak Printers, Noida, India

² Peter, Jones (1996:46-68), *Rights: Issues in Political theories*, Macmillan, England

³ Darren, J. O. (2003:27), *Human Rights: An Introduction*, Person Education LTD, Malaysia; see also Thomas, P. 'The Right of Man' (1792) in Patrick Hayden (2001:95), *The Philosophy of Human Rights*, Paragon Issues in Philosophy, Paragon House, USA

Jeremy, Waldron. (1992), *Theories of Rights*, Oxford University press, UK

⁴ See for example paragraph 2 of the Charter of the United Nations, 1945.

⁵ See for example article 1(2) of *ibid*.

⁶ See article 55 of *ibid*

⁷ See for example article 3,9,22, 23,and 26 of the Universal Declaration of Human Rights, respectively.

In December 1966, the United Nations General Assembly, in-addition to the provisions of the Charter of the United Nations and the Universal Declaration Human Rights again adopted two (2) separate international human rights covenants; the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) each dealing with controversially different regimes of human rights, and each having different implementation mechanisms.⁸ The ICESCR was adopted to support the realisation of economic, social and cultural rights while the ICCPR on the other hand was adopted to enhance the realisation of civil and political rights. As it was initially observed, the UDHR enshrined the rights in all aspects of social, economic and political realms of life. Then, what could have made the UN General Assembly to adopt 2 (two) distinct covenants in 1966 each with different rights and implementation procedures? Was such an adoption necessary and justifiable? This essay attempts to provide the relevant answer. The present writer largely views the separation adoption of the ICESCR and ICCPR as waste of valuable resources as there seems to be limited convincing reasons to justify the separate adoption of the covenants under discussion.

In order to build adequate foundation for analysis, this essay has been divided in four (4) distinct parts. The first part looks at the substance/human rights provisions of the ICCPR and ICESCR while the second part addresses why the covenants were separated. The third part of the essay analyses the monitoring and the implementation procedures of the covenants and concurrently assesses whether such different implementation procedures were necessary. The last part of the essay makes reflection of observable similarities between the two covenants under discussion and ends with the personal opinion of the present writer who believes that the separate adoption of ICCPR and ICESCR were unnecessary.

The human rights provisions of the ICCPR and the ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) makes provisions for the realisation and protection of economic, social and cultural rights. The ICESCR has 31 articles that deal with different human rights provisions and implementation mechanisms. The rights enshrined includes: rights to work⁹, right to just and favourable conditions of work including minimum wage, decent living, safe and healthy working conditions, equal opportunities and promotion at place of work including rest, leisure and holiday.¹⁰ The ICESCR also makes provisions for right to social security and social insurance for individuals,¹¹ rights to protection of the family including rights to mother during and after child birth and for the protection of children from economic exploitation.¹² Other human rights provision in the ICESCR includes rights to adequate standard of living,¹³ right to health,¹⁴ rights to education¹⁵ and right to take part in one's culture¹⁶ among other rights therein. Currently, there are 159 parties to this covenant¹⁷

⁸ See the United Nations General Assembly Resolutions 2200A (XX1), 1966

⁹ See article 6 of the International Covenant on Economic, Social and Cultural Rights (1966)

¹⁰ See article 7 (a-d) of *ibid*

¹¹ See article 9 of *ibid*

¹² See article 10 (1-3) of *ibid*

¹³ See article 11 (1-2) of *ibid*

¹⁴ See article 12 of *ibid*

¹⁵ See article 13 of *ibid*

The International Covenant on Civil and Political Rights (ICCPR) on the other hand makes provisions for the realisation and protection of civil and political rights. The major human rights provisions in the covenant are contained in its articles 6-27 that provides for human rights such as rights such as right to life, freedom against torture, freedom from slavery and servitude, right to liberty and security of person, equality before the court and rights to peaceful assembly. Other provision includes freedom of association, right to family protection, citizenship rights, rights to equality before the law and rights of the minority¹⁸ among others.

It should be recalled that right from the onset, it was observed that all of the categories of rights enshrined in the ICCPR and ICESCR are basically an expansion of the rights provision in the UDHR. The rights enshrined in the International Covenant on Civil and Political Rights are basically an expansion of articles 1-21 of the Universal Declaration of Human Rights which covers rights such as rights to life, freedom against torture etcetera while those rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) are largely an expansion of articles 22 to 29 of Universal Declaration of Human Rights that deals with rights such as rights to employment, rights to education, rights to health and to adequate standard of living among others. If the provisions of the ICCPR and the ICESCR were once part of one international document, then what could account for their separate adoption and implementation procedures?

What scholars say about the separate adoption of the rights in the ICCPR and the ICESCR

There are no reasons given for the separate adoption of the covenants in their texts. Generally, scholars argue that it was the non-binding status of the Universal Declaration of Human Rights that led to the separate adoption of the ICESCR and ICCPR. It is being argued that it was the intention of the United Nations to develop legally binding human rights documents by 1948¹⁹ but due to 'time constraints' and 'fear' of developing a legally binding documents at a time when the world had not yet fully recovered from the shock of world war two, it was thought that the content would be highly influenced by the events at hand. Therefore, members settled for a declaration that combined both 'civil and political rights' and 'economic, social and cultural rights' with the anticipation that at a later date, more legal documents would be developed to provide the legal basis for the implementation of the civil and political rights and the economic, social and cultural rights²⁰ hence, the adoption of the ICCPR and ICESCR in 1966. It is being argued further that the members found it un-necessary to replicate the UDHR of 1948 and that it would be 'academically un-sound' to replicate an old document and in order to be more 'innovative' they opted for two separate documents that came in the form of the ICESCR and the ICCPR that was adopted in 1966.²¹ However, this argument appears too simplistic to justify the development of the two covenants under discussions. Whereas it could have been true that the UN members opted to have a legally binding document at some point after 1948, it could have still been possible to develop only one document instead of two.

¹⁶ See article 14 of *ibid*

¹⁷ See for example <http://www2.ohchr.org/english/bodies/ratification/3.htm>

¹⁸ See articles 6-27 of the International Covenant on Civil and Political Rights (1966) respectively.

¹⁹ See for example the UN General Assembly Resolution 217, III, 1948.

²⁰ See for example the UN General Assembly Resolution 543 (VI), paragraph 1, 1952.

²¹ See for example Rhona K.M. Smith (2007:41), Textbook on International Human Rights, 3rd Edition, oxford University press, UK.

Therefore, this argument does not provide an adequate justification for the development of ICCPR and the ICESCR as separate human rights covenants.

Some people argue that the two covenants under discussions were adopted separately because there was need to separate 'genuine' human rights from 'non-genuine' human rights. According to this debate, the economic, social and cultural rights enshrined in the ICESCR are not genuine human rights while the civil and political rights enshrined in the ICCPR are the 'real and genuine' human rights. The claims made to deny that the economic, social and cultural rights are not genuine rights and that they deserved to be separated from the civil and political rights are based on the allegation that they have failed to meet the test-criterion for genuine human rights. Maurine Cranston²² for example developed three test-criteria that all genuine human rights must meet. According to Maurice Cranston, real human rights must meet the 'Practicability' test. According to this test, genuine human rights must entail duties and those that cannot have duties cannot be considered human rights. However, people can only have duties on what is possible. Given the economic conditions in Asia, Africa and South America, it was considered impossible for their governments to meet and provide an adequate standard of living. Therefore, the economic rights failed to meet the first test of practicability. By contrast, the traditional civil rights such as freedom from association require little more than restraint from their government and are therefore practicable in all societies. The second test of genuine human rights according to Maurice is 'universality'. A genuine right must be genuinely universal if it is to qualify as human rights. In order for it to be universal, it must be a right for all people. However, economic rights such as a right to periodic holiday with pay are claims that can only be made by the working classes against their employers. Therefore, such economic rights do not qualify as genuine human rights. On the other hand, civil and political rights such as right to life are claimed to be universal. Finally, the third test that genuine human right should meet according to Maurice is 'paramount importance'. Traditional civil rights are argued to represent fundamental demand for justice whereas rights to holiday are argued to less important.²³ Thus, an economic right fails to meet all the test criteria for genuine human rights as developed by Maurice Cranston. Thus, it was considered important to separate the less genuine human rights from the genuine human rights hence, the development of the ICCPR and the ICESCR as two separate covenants.

However, the above argument does not provide any justificatory basis as well. If indeed the reason for the existence of ICCPR and ICESCR was based on the pressure of separating 'genuine human rights' from 'less genuine human' rights, then it was a fallacy and waste of resources because in reality, there is nothing like genuine and non genuine human rights. It is immaterial to argue that the right to food for example fails to meet the objective criteria for paramount importance. In reality, food is one of the most important human rights without which no human being can survive. Given the circumstances in which much of the world's poor population lives, access to food and other material items are of much greater importance than some of the civil rights such as freedom of worship. Moreover all human rights are in the modern world considered equal and are treated with the respects that they deserved. Therefore, this argument for the separate existence of the human rights covenants under discussion does not provide a justificatory for the separation of the

²² See for example Maurice Cranston (1967;159), *Human Rights: Real and Supposed*, reprinted in Patrick Hayden (2001:163-168), *The Philosophy of Human Rights*, Paragon Issues in Philosophy, USA

²³ *Ibid*, page 168

covenants. More over to claim that the right for social security is not a universal right because not everyone benefits from it is rather like claiming that the right to fair trial is not universal because it is operative only for those who find themselves accused.²⁴

Some people argue that the existence of ICCPR and ICESCR was made to reflect the 'generations of rights'. According to this school of thoughts, the current human rights that are in existence have evolved over different periods of time and that it is important to document and portray them according to their 'evolution phase' so as to take care of historical facts and realities. Thus, the civil and political rights are argued to be 'first generation' rights. These rights are argued to have emanated from the natural laws and natural rights. Rights to life, rights to liberty for example are argued to emanate from the will of God and nature. These rights in the modern world are argued to owe their existence to the French Declaration of the Right of Man (1791) and to the American Declaration of Independence in 1877. The economic, social and cultural rights on the other hand are argued to be 'second generation' rights. These rights are argued to have evolved in the late industrial period due to modern advocacy for welfare of workers and the poor. Thus, it is argued that the ICCPR was developed to reflect the first generation rights while the ICESCR was adopted to reflect the second generation of rights hence, the existence of the two covenants under discussion. Indeed it is being argued that the differences between the first generation of rights and the second generation was not un-noticed by those responsible for the drafting of the UDHR. This could probably explain why the civil and political rights were put in article 1-21, while the economic, social and political rights were put between articles 22-29 to reflect the generation of rights.²⁵

However, this argument also does not appear justificatory enough to have warranted the development of ICCPR and ICESCR as separate document. What is the relevance of portraying the age in which a right developed? If that was considered crucial, then the members of the UN would not have combined the generations of rights just like they did in the UDHR in 1948. If the separate development of ICCPR and ICESCR was intended to reflect the generations of rights, then why does the ICCPR contain the right to self-determination which is generally considered as 3rd generation rights?²⁶ This definitely underscores the relevance of this argument to justify the existence of ICCPR and ICESCR as separate international covenants.

Moreover there are further arguments that the economic, social and cultural rights were adopted separately from the civil and political rights because the economic, social and cultural rights are not "justicable" while the civil and political rights more 'justicable'. The argument here is that members wanted to separate 'justicable' rights from 'non-justicable'. The economic, social and cultural rights such as rights to adequate food, clothing or shelter etc it is being argued that they cannot easily take their violators to court because by their very nature; it is difficult to determine who is responsible for their non-enjoyment. Thus, in order to enhance rapid enforcement of human rights, it was considered important to separate the justicable civil and political rights from the non-justicable economic, social and cultural rights hence, the development of two covenants in 1966²⁷. However, if

²⁴ See for example Peter Jones (1994:159), *Rights: Issues in Political Theory*, Macmillan, UK

²⁵ See for example Maurice Cranston (1967), *Human Rights: Real and Supposed*, reprinted in Patrick Hayden (2001:167), *The Philosophy of Human Rights*, Paragon Issues in Philosophy, USA

²⁶ See for example article one of both the ICCPR and ICESCR

²⁷ See for example Louis Henkin (1994:152), *Human Rights: An Agenda for Next Century*, *American Journal of International Law's Study in Transnational Legal Policy*, No.26

the world wanted justiciable, then it was just a matter of legislating and making the economic, social and cultural rights justiciable as well. Again, if that was the drive for the separate adoption of the ICCPR and ICESCR, then the idea was flawed. Human right by their nature does not solely require court decisions, legal reasoning or use of legal institutions. Human rights are moral issues as well. Finally, however, the idea of justiciable and non-justiciable here does not convince since both ICESCR and ICCPR are legal documents.

Finally in this last subsection the ideological differences between the communist countries and the western capitalist countries, in addition to the cold war tensions, are also argued to have contributed to the separate development of the ICESCR and the ICCPR. As Louis Henkin observed, the Civil and Political rights were more heavily emphasized in liberal-democratic western countries while economic and social rights were more aggressively advocated by the Communist countries.²⁸ The communist countries are reported to have argued that economic and social rights had priority over civil and political while the capitalist countries argued the reverse that civil rights and political rights are more important. Some commentators argue that the communist arguments were probably a disguised by Soviet Union to cover up its disregard for and violation of basic civil and political rights. All in all however, irrespective of the different ideological perspectives of that time, what is clear is that the ideological differences changed what was a rational debate between 1944-1948 leading to the initial adoption of the universal declaration to a struggle that encouraged the taking of extreme position that prevented objective considerations of the key issues raised by the concept of economic, social and cultural rights.

So far, this essay has discussed various reasons advanced to help explain the separate adoption of the ICCPR and ICESCR. Many of the arguments are not satisfactory. At this moment, the essay will focus on the implementation procedure of the two covenants to assess the similarities and differences in implementation procedures so as to gauge whether their separate implementation procedures are justifiable.

An analysis of the implementation procedures

In the ICCPR, a Human Rights Committee, an independent body of 18 experts is established.²⁹ The Committee in addition to considering periodic reports from states³⁰ have the competence to receive and consider inter-state complaints on a party to the covenants who is accused of violating the provisions of the covenants and (if) that state-party to the covenant accepts the competence of the committee to receive and consider such a communication.³¹ This is in contrast with the implementation function of the Committee on Economic, Social and Cultural Rights established in 1985 by the UN Economic and Social Council (ECOSOC) to support the implementation of the ICESCR. The Committee under ICESCR do not have the competence to receive inter-state complaints. Instead, they merely monitor the implementation of ICESCR and provide technical support to states on legislative and policy issues related to the ICESCR.³² As to why the Committee on the Economic, Social and Cultural rights do not have the capacity to hear interstate complaints, no explanations

²⁸ See *ibid*, page 152-153.

²⁹ See article 28 (1) of the international Covenant on Civil and Political rights (1966)

³⁰ See article 40 (ii) and (iv) of *ibid*

³¹ See article 41 (1) of *ibid*

³² See UN OHCHR Fact Sheet No.16 (Rev. 1) On The Committee on Economic, Social and Cultural Rights.

have been given in the text of the covenants. However, it is probable that most states do feel guilty of not doing enough to contribute to the realisation of economic, social and cultural rights and probably that states feared making a provision that would make them culpable.

Another area of differences in the implementation procedure between the ICCPR and the ICESCR is that under the first Optional Protocol of the ICCPR, the Human Rights Committee has the power to hear Individual complaints from people who allege that their rights have been violated.³³ No such provisions however exist in the terms of reference for the Committee on Economic, Social and Cultural rights.³⁴ Thus, it is not possible for individuals or groups who feel that their rights under the ICESCR Covenant have been violated to submit formal complaints to the Committee. The absence of such procedure places significant constraints on the ability of the Committee to develop jurisprudence or case-law and, of course, greatly limits the chances of victims of abuses of the Covenant obtaining international redress.³⁵ Again, just like it was noted in paragraph above, it is probable that most member states were anticipating large number complaints from citizens especially the poor people. This position again does not provide satisfactory explanation for the separate implementation procedures of the two international covenants under discussion. Some people argue that it is because of the “unjusticiable” nature of the economic, social and cultural rights that the committee have not been given the power to hear individual complaints. This reasoning alone also is not valid. There are numerous arguments supporting the adoption of a complaints procedure under the ICESCR. These include for example the need for improved enjoyment by people of economic, social and cultural rights; a strengthening of international accountability of States parties; increased congruence in the legal standing and seriousness accorded to both International Covenants; a refinement of the rights and duties emerging from the provisions of the International Covenant on Economic, Social and Cultural Rights; and a structural and concrete affirmation of the indivisibility and interdependence of all human rights. It is also argued that such a procedure would encourage States parties to provide similar remedies at the local and national levels.³⁶

The human rights provisions in the ICESCR are suppose to be realised through ‘progressive’ mechanism. Under the provisions of the ICESCR, “*state parties are oblique to undertake steps individually or collectively, and through technical assistance and cooperation with the view to progressively achieving and making full realisation of the rights therein*”³⁷. On the other hand, nothing about the ‘progressive measures’ have been mentioned in the ICCPR. Instead, state parties are oblique to take the ‘*necessary step*’ for the realisation of the rights therein.³⁸ This could probably imply that the realisations of the rights in the ICCPR rights are suppose to be instant.

Admittedly, it is true that the implementation of some of the rights in the ICESCR requires more time. Example, right to adequate standard of living, including adequate food, clothing and housing

³³ See article 1 of the 1st Optional to the International Covenant on Civil and Political Rights (1966)

³⁴ See section 8 of opcit

³⁵ See section 8 of opcit

³⁶ See section 8 of opcit.

³⁷ See for example article 2(1) of the International Covenant on Economic, Social and Cultural Rights (1966)

³⁸ See for example article 2(2) of the international Covenant on Civil and Political Rights (1966)

requires continuous improvement just like it is mentioned in the covenant³⁹. Indeed poverty eradication can take even up to more than 50 years. Similarly, the realisation of the rights to adequate health care and education etcetera too appears to significantly require extended period of time for their realisation.

However, it should be noted that longer term realisation of human rights is not only a challenge to the economic, social and cultural rights. Indeed even the civil and political rights requires substantial period of time for their realisation. Example, since the UDHR in 1948 and the ICCPR in 1966, mass violation of the civil and political rights still persists in countries of the world. See for example the Washington Post press report for the existence of mass torture of the Iraqi prisoners of war by the US Government⁴⁰. Other civil and political crimes like genocide, killing, forceful military services including abduction still persist in many countries of the world. This is a confirmation that both the civil and political rights and the economic, social and cultural rights requires extended period of time. If seen from this perspective, then the reason for the separate development of the covenant was a waste of time and resources.

Similarly, there also exists the argument that the implementation the ICCPR requires limited or sometimes no resources at all while the implementation of the ICESCR that requires large amount of resources. It is being argued for instance that respecting freedom of religion, thoughts and conscience seems to require very limited or no resources at all. Similarly, restraining from torture, restraining from arbitrary arrest of individuals etcetera appears to require very limited resources at all. Conversely, the realisation of economic rights such as rights to food, education, health etcetera appears to require more resources than their counterparts listed above. Indeed it is being argued that it was considered important to develop two separate international documents in order to reflect those that require more resources towards their implementation (that is the ICESCR) and those that does not require much resources (that is the ICCPR). However, this argument in itself is not convincing because the implementation of all human rights requires resources. The implementation of the rights in the ICCPR for instance requires institutions such as the court, police, army, parliament, civil servants pay, etcetera all of which requires resources as well.

Some observable similarities in the substance and procedures of the ICESCR and the ICCPR

In-spite of the salient differences observed between the substances and procedures of the ICCPR and the ICESCR, there are quite some substantial similarities as well.

The preambles of both the ICESCR and ICCPR are basically more or less the same. Paragraph one of the preambles of both covenants recognises “...*the principle proclaimed in the Charter of the United Nations*”. Paragraph 2 of both covenants recognises that “rights derive from *the inherent dignity and of equal and inalienable rights of all human persons*”. Paragraph 3 of both covenants recognise “*in accordance with the Universal Declaration of Human Rights the ideal of a free human being enjoying civil and political freedom.....that can only be achieved if conditions are created whereby everyone may enjoy his civil and political as well as his economic, social and political rights*”. Similarly, both covenants realise the special “*duties of individual to other individuals and to community to which he*

³⁹ See for example article 11 (1) and (2) of opcit

⁴⁰ See for example <http://www.washingtonpost.com/wp-dyn/articles/A40411-2005Feb20.html>

lives” as necessary for the promotion and observance of the rights recognised in the covenants⁴¹. From an analysis of the preambles of both the ICCPR and ICESCR one gets the impression that the two covenants share a similar aspiration of achieving the provisions of the charter of the United Nations and the universal rights enshrined in the UDHR.

In the main text, both the ICESCR and the ICCPR recognises the rights of all people to self-determination. Article 1 of both covenants provides that *“All people have the rights of self-determination. By virtue of those rights they freely determine their political status and freely pursue their economic, social and cultural developments”*.⁴² Similarly, the right to non-discrimination is equally protected in both covenants. In the ICCPR, non-discrimination is protected in article 2 (1) while in the ICESCR it is protected in article 2 (2).

In terms of monitoring and implementation, both covenants emphasises reports. In the ICESCR, states parties undertook to submit reports on the measures they have adopted and the progress made in achieving the observance of the rights recognised therein. All the reports in ICESCR are submitted to the Secretary General of the United Nations for further management⁴³. Similarly, in the ICCPR, state parties undertook to submit reports on the measures they have adopted which give effect to the rights recognised therein. All reports in the ICCPR just like it is in the ICESCR are also submitted to the Secretary General of the United Nations for further management.⁴⁴ Since both covenants emphasise reports, it would still be possible to track the progress made in their realisation even if the covenants were to be combined.

It should be noted that human rights are universal and indivisible. The separation of the two covenants under discussion undermines the indivisibility aspects of human rights. The indivisible aspect of human rights signifies that human rights should be taken as a ‘package’ or as a ‘whole’ and not as ‘different parts. Human rights relate to a range of entitlements in the political, civil, social, cultural, and economic and all other aspects of life that are interdependent and contribute to the full and holistic enjoyment of all rights by the individual.⁴⁵ Indeed as the third paragraph of the preambles of both the ICCPR and the ICESCR emphasise, the economic, social and cultural rights are interdependence with the civil and political rights, each set of right aiding in the achievement of the other. This argument support the view that the covenants should actually been combined as human rights are interdependence. Indeed the universal nature of human rights is emphasised in the Universal Declaration of Human Rights (1948), human rights are universal⁴⁶ and the Vienna Declaration and Programme of Actions which clearly states that;

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States,

⁴¹ See for example paragraph 5 of the preamble of ibid

⁴² See for example article 1(1) of ibid

⁴³ See for example article 16 (1) and 16 (2 a) of the ICESCR

⁴⁴ See for example article 40 (1) and 40 (20) of the ICCPR

⁴⁵ See for example Darren J O’byrne (2003:27), Human Rights: An Introduction, Person Education LTD, Malaysia.

⁴⁶ See for example the last paragraph of the preamble of the Universal Declaration of Human Rights, 1948.

*regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*⁴⁷

Indeed today, there is a growing awareness of interrelatedness of rights and the need to see them as human rights other than different parts of rights. Example there is increasing tendency to see the rights to education or at least the rights to literacy as an adjunct to and perhaps part of basic political rights. The right to vote becomes more complicated to illiterates as they cannot 'tick' the ballot paper, read political programme and the complementariness of the outcome of social rights such as education comes to support the interrelatedness and complementariness of human rights. More over the civil rights to non-discrimination can be quintessentially expanded into one that is capable of embracing large part of the economic and social rights⁴⁸

General observation and final analysis

In view of the discussions undertaken and some of the existing commonalities between the ICCPR and the ICESCR, it is the considered opinion of the present writer that a lot of valuable time and financial resources were lost developing 2 separate covenants that should have been combined. As the history of human rights discussed above informs us, both the economic, social and cultural rights and the civil and political rights were once part of one universal right enshrined in the UDHR. This signifies that indeed there was a chance for the General Assembly in 1966 to do the same with what was done in 1948 (i.e. combine the human rights). Indeed as it has been observed, most of the rationale for the separate adoption of the covenants are really flimsy issues or issues that were politically influenced than by any valid academic and legal considerations. The issues of 'justiciability' and 'non-justiciability' do not hold as these are matter of legal choice. As it was also noted above, human rights are indivisible and universal. The ICCPR and the ICESCR as they currently exist undermines this principle as they are divided human rights into 2 sets.

⁴⁷ Vienna Declaration and Programme of Action (Part 1, paragraph.5), adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF. 157/24 (Part 1), chap. III) in UN OHCHR Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights, <http://www.unhchr.ch/html/menu6/2/fs16.htm>

⁴⁸ See for example Phillip Alston (1994:137), Economic and Social Rights, in Louis Henkin (1994), Human Rights: An Agenda for Next Century, American Journal of International Law's Study in Transnational Legal Policy, No.26

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