

The interplay between rights:

Denial and neglect

Philip Alston

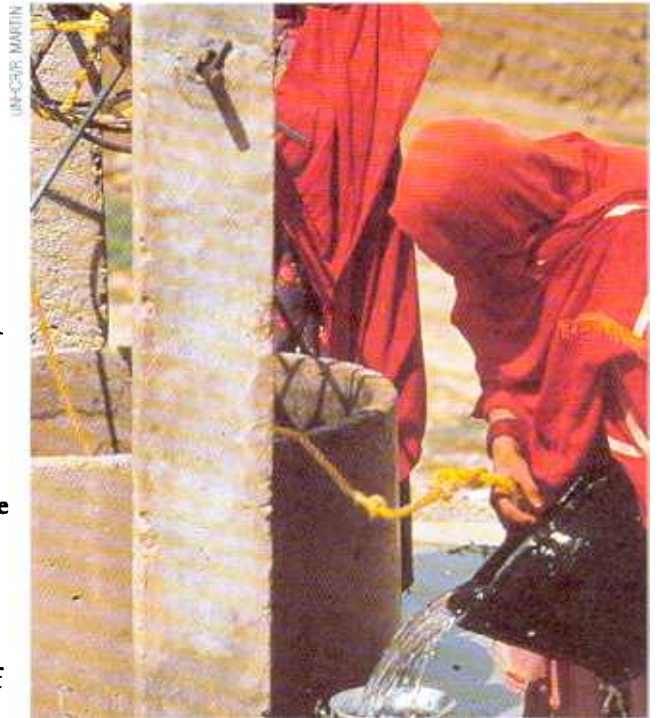
Chairman of the United Nations Committee on Economic, Social and Cultural Rights

Women refugees in Pakistan seek sanctuary from political persecution. For too long, economic, social and cultural rights have been ignored by the international community

International conferences and major anniversaries, such as Vienna 1993, are as much occasions to celebrate progress made and to seek its consolidation, as to map out new goals and strategies. But, at the risk of seeming unduly negative and pessimistic, it seems clear that the principal task of the Vienna Conference in relation to economic, social and cultural rights is to sound alarm bells warning of the large-scale, deeply ingrained, neglect of these rights over the past quarter of a century.

In terms of the philosophical, ethical, religious, ideological and other foundations of human rights, support for the notion that the two sets of rights are interdependent is widespread and is clearly reflected in international human rights instruments. Thus, the preamble to the Universal Declaration of Human Rights observes that 'the highest aspiration of the common people' is the 'advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want'. The Universal Declaration sought to respond to this aspiration by clearly recognizing both sets of rights and placing them on an equal footing.

Through their participation in UN endeavours, States began immediately to reflect this 'interplay' through the endorsement of various slogans. Thus, in the very early 1950s, when the two International Covenants were being drafted, the two sets of rights were said to have been 'interconnected and interdependent'. This phrase evolved in the 1960s and 1970s to recognize that the different categories were 'indivisible and interdependent'. Subsequently, linguistic preferences shifted so that some States had come by 1990 to prefer a reference to 'interrelatedness', while others insisted upon 'indivisibility'. But while the theory is sound, the current situation within the UN in relation to the interplay between the two sets of rights is characterized by an immense discrepancy between that theory and the practice. Although it has not infrequently been suggested that economic and social rights have come to dominate the human rights work of the UN, there is not a single important indicator of which I am aware which would show anything other than the relative neglect, and often also the absolute neglect, of economic, social and cultural rights in practice.



Whether one takes the number of resolutions adopted, the length and incisiveness of the relevant debates, the emphasis adopted in fact-finding, the focus of the studies undertaken, the emphasis in the Advisory Services Programme, the topics with which Fact Sheets and other forms of public information have been concerned, or some other measure, economic, social and cultural rights continue to be very highly neglected or ignored. This is not to deny the importance of the achievements that have been recorded, including, especially, the creation of the Committee on Economic, Social and Cultural Rights in 1987.

But the reality stands in stark contrast. In the world in 1994 denials of the most fundamental of economic and social rights continue to take place on a massive scale which affects hundreds of millions of people. In addition, the enthusiastic embrace of free market economics in many countries has gone hand in hand with a further downgrading of the importance attached to the role of the State as the ultimate (but not necessarily the only or even the primary) guarantor of economic and social rights.

Various theoretical and conceptual objections to economic and social rights as human rights continue to be cited, even in UN debates. For present purposes, however, it must be assumed that the obligations undertaken by almost all States to promote economic, social and cultural rights have rendered these discussions moot. States have accepted clear obligations not only by virtue of ratification of the Covenant on Economic, Social and Cultural Rights or its regional counterparts but also through ratification of several of the other principal UN human

It is sad to reflect that in this day and age there are still individuals and groups of people in different parts of the world who are subjected to degrading and inhuman treatment. While there is general acceptance of the dignity and freedom of the human person, there are those who offend humanity in more ways than one, by subduing the will of others, by ignoring the right to self-respect, the right to life and the integrity of the human person, and the right to freedom of expression. I salute all those who endeavour to uphold these and other human rights with all their abilities.

H.E. Dr Censu Tabone
President
Malta

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A food shipment arrives in the Horn of Africa: freedom from fear is inseparable from freedom from want

rights instruments. Thus, it is inconceivable that a State Party could comply effectively or fully with its obligations under the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women or the Convention on the Rights of the Child without making progress in relation to the many economic, social and cultural rights recognized in each of these conventions.

But while the academic dimensions of the debate are of little relevance in the present context, it is instructive to review some of the factors that have facilitated, and perhaps even stimulated, the neglect of these rights. Pre-eminent among them was the impact of the Cold War and of the ideological struggles between Communism and Capitalism. This factor changed what was a rational and balanced debate between 1944 and 1947 (culminating in the adoption of the Universal Declaration) into a struggle that encouraged the taking of extreme positions and prevented objective consideration of the key issues raised by the concept of economic and social rights.

To a lesser extent, the North-South dimensions of the human rights debate have also created significant obstacles in relation to the consideration of economic and social rights. In the 1990s those issues will continue to be debated, but the discussion has already become far less ideologically doctrinaire and predictable and more open to reason and compromise.

One of the most important reasons for the neglect of economic, social and cultural rights within the overall human rights framework relates to the fact that their promotion and their effective factoring into broader policy equations require skills and expertise that are alien to what has been termed the normative-judicial model of human rights implementation. That model has significant shortcomings even in relation to some civil

and political rights, but it is one to which the human rights 'community' at national and international levels is firmly committed. That 'community' is dominated by lawyers whose tools are traditional legal reasoning, the use of legal institutions and techniques and the pursuit of familiar types of remedies such as administrative regulations, legislative programmes and court judgments.

Whether the alternative model is termed an 'access to justice' model or something else, some of its principal characteristics will inevitably be alien to this tradition. The result is that the human rights lawyers, the diplomatic representatives, the Secretariat officials and the representatives of non-governmental organizations (NGOs) who have come to dominate human rights discussions and forums will feel distinctly ill at ease and ill-equipped to deal with many of the most pressing issues arising from a concern with economic, social and cultural rights. As long as this circle of actors is not expanded, the prospects for undertaking the necessary reforms are very slim indeed.

The final reason for neglect, to which reference should be made in this context, is that the proposition that minimum core economic and social rights ought to be accorded to every individual is still almost automatically made subject by decision-makers to an economic calculus which will often culminate in various economically compelling reasons as to why such rights can simply *not* be recognized. The same sort of process was once applied to certain civil and political rights when it was argued, for example, that giving the vote to women was too costly, that giving the vote to illiterates was not rational because they were inevitably ill-informed, that allowing trade union rights at the expense of industrial harmony was economically ill-advised, that accused persons did not warrant the expense of a fair trial, and that rapid industrialization required unfettered central government control over all forms of political and economic decision-making. Over the past 50 years, all such arguments have been gradually rendered irrelevant by the firm and uncompromising commitment to the relevant values that has been both implicit and explicit in the acceptance of the basic principles of civil and political rights.

But decision-makers have still not been able to bring themselves to accept the equivalent proposition to the effect that the recognition of economic, social and cultural rights puts the question of whether these rights should be accorded beyond the realm of debate, especially on the grounds of some anticipated negative impact in economic terms. In effect, individual States and the international

Mexico adds its voice to the demand of peoples and the governments of the world for a deeper respect and observance of human rights. Mexico has reaffirmed its clear commitment in this matter through a reform of its penal codes, with the creation of a National Commission of Human Rights - which is now inscribed in our constitution - that has become the nation's Ombudsman. As a country, we declare ourselves in favour of a global environment that promotes respect for human rights; an environment that combines cultural differences and national sovereignties with global consensus, all within an atmosphere of peaceful co-existence.

H.E. Carlos Salinas de Gortari
President
The United Mexican States

Young girls in the Philippines show their traditional

rights are important human rights

Men discuss digging a well in a Senegalese village democracy and development go hand in hand



FROM GULING/PANOS



BERNIE HARTELEY/PANOS

community as a whole have made a commitment to the realization of those rights, and that commitment must not be read as being contingent upon a demonstration that it is economically or otherwise profitable or rewarding for the Government (or the society as a whole) to accord those rights.

Indeed, just as there will be occasions when rational, and perhaps even altruistic, individuals might be able to make a powerful case for the suppression of free speech, for the deferral of elections, for the imposition of limitations upon trade unions and political parties, so too will there be many arguments (although predominantly of an economic nature in this case) against feeding (some of) the starving, educating (some of) the illiterates, or providing primary health care to the ill and vulnerable. But the elevation of these values to human rights status must, as an absolute minimum, mean that they, and whatever measures are necessary to secure their realization, are not negotiable. That is not to say that there is not enormous room for debate as to the best policies for achieving the desired objectives, but simply that the objectives themselves are not open to refutation on economic rationalist or other grounds.

The following proposals constitute a 10-point plan, adoption of which would attest to the determination of States and the international community to take economic, social and

cultural rights seriously. Until these or similar proposals are adopted, talk of the 'interplay' or 'indivisibility' of the two sets of rights will remain entirely at the level of mere aspiration.

1. An abiding commitment to the realization of economic, social and cultural rights should immediately be affirmed at all levels.

Very few States have made a clear, unambiguous statement of commitment to the realization of economic, social and cultural rights at the national level. Most have done so in the international arena, for international consumption, but not domestically. For the purpose of making such a statement, the vital and indispensable ingredient is recognition of the status of these rights as human rights.

Any such reaffirmation, must, if it is genuinely motivated, be accompanied by an education and public information programme focusing on these rights. An enormous amount remains to be done in this regard by the United Nations itself.

2. Universal ratification of the Covenant on Economic, Social and Cultural Rights should be sought.

The fact that over 60 States have failed to ratify the Covenant is to be regretted. Among those are some States which have frequently invoked international human rights standards vis-à-vis other States and some which have urged that much greater attention be paid to economic, social and cultural rights.

3. Expertise on economic, social and cultural rights must be developed urgently within the UN Centre for Human Rights.

The possibility of developing an effective programme for the promotion of economic, social and cultural rights in the context of UN activities is deeply undermined by the absence of a single official with any particular expertise in these rights. While the UN Centre for Human Rights is already radically understaffed, and is being subject to steadily increasing demands, it is nevertheless imperative that economic, social and cultural rights be specifically addressed in future staffing arrangements.

4. States must develop means by which economic and cultural rights can be formally vindicated at the national level.

The World Conference should call upon all States to identify specific means by which the various rights contained in the Covenant can be vindicated. This information should be communicated to the Commission on Human Rights at the earliest opportunity. At the same time the Commission, or the Sub-Commission, should appoint a Special Rapporteur to study

On March 21st 1990, Namibians emerged as upholders of democratic principles based on respect for human dignity and, as enshrined in the Constitution, committed this country to human rights, the rule of law and democracy. The World Conference on Human Rights in Vienna, marking the 45th Anniversary of the Universal Declaration of Human Rights, was a unique opportunity for our young country to reassert its commitment to this noble Declaration and to spare no effort in its implementation.

H.E. Dr Sam Nujoma
President
Republic of Namibia

The protection and promotion of human rights are fundamental to peace, progress and prosperity. Mankind has made great strides in advancing knowledge, science and technology but progress in wisdom, civility and values has lagged behind. Therefore, we need a constant review and assessment to see where we stand, what our vision should be. Only respect for human rights can make our progress and achievements fulfilling and long-lasting. As we move towards the 21st century, we must make sure that these fundamental principles are translated into reality all over the world.

The Rt. Hon. Girija Prasad Koirala
Prime Minister
Kingdom of Nepal

this specific issue, which goes to the heart of the widespread neglect of economic, social and cultural rights as human rights.

5. An Optional Protocol to the Covenant should be adopted which would provide for the submission of complaints alleging the violation of economic, social and cultural rights.

The Committee on Economic, Social and Cultural Rights has recently called upon the relevant UN organs to consider the drafting and adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which would permit the submission of complaints alleging violations of the rights recognized therein.

The case in favour of such a procedure rests essentially on the following arguments: (a) existing procedures are not adequate to protect the rights in question in the face of major violations; (b) the exclusion of economic, social and cultural rights from such procedures highlights the unequal treatment of one set of rights vis-à-vis the other; and (c) it is essential that such a procedure be created in order to provide the opportunity for the development of some jurisprudence relating to economic, social and cultural rights (in the continuing absence of such jurisprudence the second-class status of those rights will inevitably be maintained).

6. Non-governmental organizations in the human rights field should urgently consider what can be done to remedy the present situation in which the great majority of those NGOs which are most active at UN level pay little more than lip service to economic, social and cultural rights.

7. States Parties to the Covenant on Economic, Social and Cultural Rights should seek to enhance the domestic significance and effectiveness of reporting.

For a variety of reasons, the potential effectiveness of the international monitoring arrangements established under the Covenant on Economic, Social and Cultural Rights depends heavily upon the extent to which each State Party is prepared to attach importance to the reporting process at the domestic level. To date, very few States have taken any of the measures that have been suggested by the Committee in this regard.

An approach which has frequently been suggested by the Committee is for the Governments concerned to seek to ensure the involvement of NGOs and the leading social partners in the reporting process. In the absence of any of these types of initiatives the likelihood is that the process of preparing a report will be treated as a routine and burdensome bureaucratic task, and will accordingly make little, if any, contribution to

domestic efforts to ensure economic, social and cultural rights.

8. Resources should be provided which would enable the Committee on Economic, Social and Cultural Rights to carry out its monitoring functions effectively.

9. States Parties to the Covenant should be provided with an appropriate incentive to take their reporting obligations seriously.

The Covenant was carefully drafted so as to emphasize the relevance of the provision of technical cooperation (advisory services) in situations in which the State Party is unable, of its own accord and from its own resources, to achieve the realization, especially at a minimum core level of adequacy, of a given right. However, although many resolutions have addressed the matter, and many general statements have been made as to the potential availability of advice and/or resources, the fact remains that there is no credible link whatsoever between the reporting procedures under the Covenant and the provision of any advice or assistance directed at the resolution of a particular problem.

10. Training programmes need to be established in the field of economic, social and cultural rights.

It is too often assumed that training programmes are to be directed primarily at national level officials in developing countries. In the field of economic, social and cultural rights the need for such programmes begins with the officials of the UN Centre for Human Rights, the Special Rapporteurs, members of expert groups, members of treaty bodies and others. Such programmes will not be easy to devise, let alone to fund. The starting point must be serious consultations among officials of some of the key UN and other international agencies, followed by the preparation of professionally produced training programmes and resource materials. It is time we stopped thinking of human rights, and particularly economic, social and cultural rights, as a matter on which any lay person can rapidly gain expertise. It has evolved from a field in which it was once sufficient to talk of a few basic standards and to demand that blatant violations cease, to one in which the norms, procedures and institutions are complex and often highly specialized, the skills required are often multidisciplinary, and in which sustained and carefully targeted training is indispensable.

EXTRACT FROM: The Importance of the Inter-Play between Economic, Social and Cultural Rights, and Civil and Political Rights, paper prepared for the interregional meeting organized by the Council of Europe, January 1993