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Economic and Social Rights in the Spotlight

While Human Rights and ways of defending them are well known, it is not the same for the protection of economic, social, and cultural Rights. Melik Özden, author of a recent book on these rights and director of CETIM', one of the driving forces behind the Declaration of the Rights of Peasants in 2018 (UNDROP), reminds us of their crucial role.

Interview by Joël Depommier

What are the founding texts of economic, social, and cultural rights? What about the UN International Covenant on the topic?

MELIK ÖZDEN The starting point in my book is the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted in 1966 and ratified by more than 170 states, with the notable absence of the USA. With this binding treaty protecting the rights to work, health, housing, adequate standard of living, etc. The UN sought to codify the Universal Declaration of Human Rights (1948). In later agreements on the elimination of all forms of discrimination against women, on children's rights, people with disabilities, migrants, peasants, or indigenous people, we find references to civic and political rights as well as to economic and social rights.

In your book, you mention the right to work and social security, but there are still 200 million unemployed people, and 70% of the world's population is excluded from a social security system. Does it mean that the UN texts are merely declamatory?

Far from it. When an agreement or a pact is ratified by countries and their respective governments have endorsed it – either automatically, like in Switzerland, or by passing a law – these agreements become binding. The major issue is still the lack of political will by states to implement them. Contrary to the World Trade Organization, there are no economic sanctions if these agreements are not implemented. At the Human Rights level, there is a follow-up mechanism (Treaty bodies and Special Procedures within the Human Rights Council), but these bodies cannot send UN peacekeepers nor apply sanctions. Nevertheless, according to the legal hierarchy, Human Rights norms are superior to commercial agreements, which are limited in time.

In your book, you give numerous examples of appeals from individuals or groups of people at the international level. How does it work?

The right to appeal has three levels: national, regional (or continental) and international. In Switzerland, the plaintiffs can approach a cantonal court. This attempt fails, and after exhausting all avenues of recourse at the national level, they can seek recourse at the European level by referring to the European Convention on Human Rights, even though this convention is limited to working relations concerning economic and social rights. In addition to the European Court of Human Rights in Strasbourg, it is possible to go to the Committee on Economic and Social Rights of the UN or to other relevant treaty bodies, such as for women's rights, racism, people with disabilities, etc., if the state has ratified the agreement and recognizes the body's competence. However, this procedure is arduous and depends on the decisions of the judges who are named by the state, and who study the cases, sometimes issuing case laws that advance international law.

Are states subject to these decisions?

In theory, yes, but facts prove that certain states ignore them, as is the case for the Federal Council, which disregarded the recent condemnation of Switzerland by the European Court of Human Rights for failing to take the necessary measures to combat global warming.

Another example, Canada, which was condemned in 2018 by the UN Human Rights Committee for denying undocumented migrants access to medical coverage (violation of the right to life). The same Committee condemned Paraguay in 2019, on the one hand, for failing to control sources of pollution (massive fumigation of farmland and water resources with toxic phytosanitary products), causing the death and hospitalization of 22 people in the Yerutí settlement (Curuguaty District in the Canindeyú Department) and, on the other hand, for failing to investigate the case further.

In Chile, a municipal decree prohibited migrants and Mapuche women without resources from selling their goods in the streets. We submitted an appeal to UN Special Rapporteurs, who found that without income, they were condemned to precariousness, which constitutes a violation of their rights to life and food. In the end, Chilean authorities had to repeal this decree with one regrettable point: it only applied to indigenous women, excluding migrant women without legal status.

Last year, we secured the release of nine Filipino' peasants who were illegally imprisoned for simply defending their rights.

For the UN Committee against Torture, the policies of destroying Palestinian homes in their occupied territories represent, in many cases, cruel, inhuman and degrading treatment. These examples demonstrate that ESC rights must first be recognized by states and that appeal mechanisms must exist. Then, people and citizens must become aware of these rights in order to

claim them and demand their implementation. As this information duty is not carried out by the states themselves, it falls back to social movements or communities to make these rights known and, in case of clear violations, to intervene with the relevant authorities to obtain justice. States, even the most authoritarian ones, do not like to be pointed out at the international level, and thus, victims obtain victories that constitute case law.

You remind us that if a state does not have the financial resources to achieve these social rights, it can call on international cooperation and/or expertise. How does it work? Is there a link with the states' international cooperation system?

In the ICESCR, international solidarity and cooperation are mentioned, but they must be disinterested and can materialize through technical aid or training to start a project. In the case of development aid, as it is understood in the West, it often takes the form of loans that are subject to conditions such as buying goods from donor states, even though the targeted countries do not need them. This flaw is not new and has existed for decades, coupled with structural adjustment programs required by the IMF/World Bank duo. These loans only worsen the situation, fueling corruption and increasing public debt.

At the time of decolonization, the Congo (DRC), a former Belgian colony, had to repay the debt of its colonial government instead of building public infrastructure. A recent example in Europe was Greece. Placing the country under guardianship meant that all national resources had to be used for this repayment, even if it meant laying off civil servants, cutting back on public services such as health and education, or reducing benefits for pensioners.

Are there any states that have followed the Pact's precepts of cooperation?

One of the few exceptions is Cuba. This country has sent its doctors abroad, in particular in Africa, during the Ebola and monkey pox outbreaks. It also engages in medical research, despite difficulties posed by the US embargo. Cuba maintains aid programs with tens of countries in the fields of health or education, notwithstanding its economic difficulties.

In addition to the structural adjustment programs, you also mention another threat to the ESCR, namely transnational corporations and the neoliberal imperative of profitability. Could you explain more?

As with the structural adjustment programs, dating back to the seventies, corporate power is not a new phenomenon. Before his fall, Chile's President, Salvador Allende, gave a speech to the UN General Assembly, denouncing the disproportionate power of the TNCs over states and collective policies. After the fall of the USSR, the United States championed a whole series of measures favorable to TNCs within the WTO or in other multilateral and bilateral treaties. A special legal system was established within the World Bank to allow these companies to bring legal action against states for breach of contract.

When Angela Merkel's government in Germany decided to phase out nuclear power, the Swedish company Vattenfall claimed 4.7 billion Euros in damages before the World Bank's arbitration institution, the International Center for Settlement of Investment Disputes (ICSID), and was ultimately awarded 1.43 billion Euros. In Bolivia, as soon as Evo Morales came to power, he nationalized the water management sector, which was held by a multinational consortium called Aguas del Tunari, leading to a 'war on water'.

Bolivia then withdrew from the World Bank's jurisdiction. In the end, the consortium asked for a 25-million-dollar settlement before withdrawing its complaint. It is almost impossible for a state to

win during these proceedings, as the court is composed of three judges, two of them representing one of both parties, each and the last judge being appointed by the World Bank, which leans heavily towards the corporations' side. The seizure of power by transnational corporations was intended by the neoliberal system and imposed on the whole world to privatize the last remaining public sectors. Their discourse seeks to denounce the inefficiency of state bureaucracy while seeking maximum profit in the short term.

Are we not in a critical phase regarding all these rights, with the opposition of Donald Trump's United States or Israel's actions in Gaza?

Indeed, liberal democracy is no longer even respected by its promoters. Liberals and the right-wing pick up the speech of the far right. Human Rights are obstacles to their political discourse and objectives, as they advocate for the law of the strongest, the hierarchy of classes and races, as well as for the privileged against the poor, who are to be eliminated or enslaved, and for the exploitation of the workforce or natural resources, most of which are non-renewable. In a world witnessing a surge of far-right movements, there is no other choice but to fight back. This requires, first and foremost, an organization, whether it is a political party or a union, or whether it means relying on social movements to counter these policies that are leading us straight into the jaws of disaster. To reach this goal, a change in the economic system is required, and some positive signs have been seen. Faced with mechanized, chemical-intensive agro-industrial agriculture that is incapable of feeding humanity and protecting the environment, our battle, in association with La Via Campesina, led to the adoption of a UN Declaration on the Rights of Peasants. Then, the creation of a follow-up mechanism in 2023 in the Human Rights Council, with advances in implementation registered in some countries and progress made in case laws, notably in the Inter-American Court of Human Rights, all constituted positive signs pointing towards the right direction.