

Solidarity as a Precondition for the Realisation of Socio-economic Rights



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The word solidarity is no stranger to the legal and political discourse surrounding human rights, and it features in various international human rights instruments. Yet, solidarity is also a polysemic and inherently contentious word. Despite its widespread use, its legal and practical implications, including the distinct rights, duties and responsibilities flowing from solidarity, remain somewhat obscure.

As we elaborate in an [article](#) recently published in *Human Rights Law Review*, we argue that solidarity is a foundational principle and a crucial interpretive tool of Economic, Social and Cultural Rights (ESCR), which is based not only on obligations of the state but also on responsibilities held by individuals and other private actors.

While the state is the ultimate guarantor of ESCR implementation, individuals and private actors have a role to play in contributing to the systems and the infrastructure to guarantee ESCR – a social security, public healthcare, education or pension system, to only name a few. Without such systems in place, societies are less resilient and more prone to severe, lasting harms amid the [polycrisis](#) we are in.

That being said, such systems can only be maintained and developed if individuals and private actors accept to make a (direct or indirect) contribution to it within their

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and private actors accept to make a (direct or indirect) contribution to it, within their means, in the interest of a broader common good. Solidarity connects the individual with the collective, makes individual wellbeing dependent upon the wellbeing of other members of that society. It entails civic responsibilities; its concrete implications will hinge upon one's role and position in society.

This does not necessarily mean that individual contributions to the general interest must always be voluntary. One should not disguise and gloss over significant resistance and pushbacks against concessions or duties imposed by the state in the name of the broader common good, such as to advance the enjoyment of ESCR. That is to say, civic responsibilities do not replace legal duties; civic responsibilities complement legal duties.

Solidarity Within Society as a Prerequisite for ESCR

Individual civic responsibilities can be derived from the idea of collective benefit- and burden-sharing within society. They complement rights and can in fact help make them real. Hence, both notions – rights and responsibilities – can reinforce one another. As shown by [Berdi3n del Valle and Sikkink](#), responsibilities are not alien to the idea of human rights domestically and globally, at least not outside of Europe.

ESCR give rise not only to positive obligations on the state but also to civic responsibilities on individuals to contribute meaningfully, within their means, to the progressive realisation of ESCR. As a matter of international law, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)) requires an adequate mobilisation, allocation and spending of resources on the part of the state to advance ESCR. Yet, while the state is the ultimate guarantor of such adequate resourcing, the social rights to essential public services, such as healthcare, education, housing or [social security](#), build on national, statutory social insurance and assistance schemes that are based – at least to some extent – on direct or indirect individual contributions.

A Fair Tax System Demands Solidarity

As we write this post, global initiatives for fairer taxation systems are gaining momentum: Brazil's [G20 initiative](#) on taxing the super rich, and the [current negotiations](#) on a new UN Framework Convention on International Tax Cooperation. Even if they are not framed in ESCR terms, both are crucially important for the realisation of ESCR, and are essentially steeped in the notion of solidarity.

In her [2014 report](#), the then UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sep3lveda Carmona, highlighted the importance of fiscal policy for the realisation of human rights, with taxation being the primary source to generate public resources.

Such state-administered redistribution of wealth and resources to safeguard an adequate standard of living for everyone presupposes strong solidarity ties within society: It is based on contributions and duties of individuals as members of a given society, as well as of other private actors like corporations.

Statutory social insurance and social assistance schemes are typically the main pillars of social security systems. The bulk of these expenses are financed through taxes – which require individual and corporate contributions.

The African Charter on Human and Peoples' Rights includes an individual duty to pay taxes (Art. 29(6)). This implies a parallel obligation on state parties to put in place an effective, human rights-advancing taxation system. Besides, a minimum of [143 out of 193 national constitutions](#) stipulate a citizen's duty to pay taxes. While it could be claimed that this constitutes a limitation of the individual freedom to dispose of one's private property, such limitation is compatible with IHRL provided that it is proportionate, in accordance with the law and serves a legitimate aim.

In fact, privately owned goods and services should (under certain conditions) be seen as part of the maximum of available resources that public authorities could make use of in order to realise ESCR (as one of us [argued](#)). In other words, contributing to the fulfilment of ESCR is one of the social functions of private property.

Taxation is not simply a legitimate form of control of the use of property – as it is commonly seen from the perspective of Art. 1 [Protocol 1](#) of the European Convention on Human Rights. Taxation is a necessary public tool to materialise ESCR. As observed by the CESCR, [progressive taxation schemes](#) are one of the mechanisms through which the state mobilises resources to discharge its obligation to fulfil human rights and to counteract substantive inequalities within society.

Conversely, a narrow tax base and tax evasion will likely result in a state's inability to guarantee minimum essential levels of social protection and public service provision. Low levels of revenue collection tend to [hit](#) the poorest segments of society the most. This, in turn, entrenches inequalities and undermines any redistributive capacity of taxation.

There is an individual civic responsibility to contribute willingly to the sustainability of public institutions and social welfare, and to support politically, as a citizen, the design and implementation of a fair and progressive tax system. Such a tax system that advances the enjoyment of ESCR, and that every member of society contributes to according to one's means, is thus steeped in the idea of a broad solidarity web in society. A strong solidarity web can render taxation systems more sustainable and resilient by creating a sense of ownership and shared responsibility for the social welfare among all actors involved.

Contributing in Accordance with our Means

The ability to make individual sacrifices for the general interest is not evenly distributed. Some will be fitter, stronger, wealthier and otherwise more powerful than others. Expectations stemming from solidarity ought to be commensurate with individual abilities and power.

This idea of solidarity is consistent with recent case law concerning housing from the UN Committee on Economic, Social and Cultural Rights. In *Ben Djazia and Bellili v Spain* (2017), the Committee established that there must be an independent assessment of the proportionality of evictions in the private rental sector on a case-by-case basis. In *López Albán v Spain* (2019), it went further and established that the principle of proportionality requires not only looking at the circumstances of the individual or family at risk of eviction but also at the circumstances of the landlord seeking the eviction. In the Committee's opinion, the proportionality test 'entails examining not only the consequences of the measures for the evicted persons but also the owner's need to recover possession of the property. This inevitably involves making a distinction between properties belonging to individuals who need them as a home, or to provide vital income and properties belonging to financial institutions' (para. 11.5). Hence, while the income from private renting may be essential or close to essential for many private individuals, it would not be so for many corporate landlords. The principle of solidarity sustains this sort of application of proportionality: The right to adequate housing should impose different civic responsibilities and legal duties, as well as [different interpretations of private property rights](#), for different types of landlords.

The systemic and structural changes required by ESCR cannot take place (at least not in the long run) unless a solidarity web is entrenched in society. This is by no means to suggest that society should protect this web by excluding outsiders/incomers. Rather, our proposition is firmly against nativist scapegoat populism and atomistic, individualistic conceptions of ESCR. We hold that solidarity is essential to ensure the progressive realisation of ESCR and to formulate a more collectivist, republican and egalitarian agenda for human rights.



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