

## 4. Legal Duties

All human rights carry corresponding obligations that must be translated into concrete duties to guarantee these rights. For many years, traditional human rights discourse was dominated by the misperception that civil and political rights require only negative duties while ESCR require positive duties. In this view, the right to free speech is guaranteed when the state leaves people alone, whereas the state must take positive action to guarantee the right to health by building health clinics and providing immunization.

This positive versus negative dichotomy has been discredited recently in favor of the understanding that all human rights have both positive and negative components. It is a matter of common sense that civil and political rights, including free speech, require the positive outlay of state resources in terms of providing a functioning judicial system and educating people about their rights. Conversely, all ESCR have negative aspects; some states prevent people from freely exercising ESCR, for example by blocking food or medical supplies to disfavored groups or regions.

Most scholars and activists now agree that duties for all human rights -- civil and political as well as ESCR -- can be divided into several discrete categories based on the type of duties. Although there is some variation in these typologies, they converge along the following basic categories: the duties to respect, protect, and fulfill.<sup>1</sup>

- The duty to respect is the negative obligation. It requires responsible parties to refrain from acting in a way that deprives people of the guaranteed right. Regarding the right to health, for example, a government may not deprive certain communities of access to health care facilities.
- The duty to protect is the obligation concerning third parties. It requires responsible parties to ensure that third parties do not deprive people of the guaranteed right. For example, a government must pass and enforce laws prohibiting private companies from releasing hazardous chemicals that impair public health.
- The duty to fulfill is the positive obligation. It requires responsible parties to establish political, economic, and social systems that provide access to the guaranteed right for all members of society. For example, a government must provide essential health services such as accessible primary care and clean water.

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<sup>1</sup> Eide, see note 3; Shue, "The Interdependence of Duties." in Alston & Tomaševski, eds., *The Right to Food* (Utrecht: Stichting Studie- en Informatiecentrum Mensenrechten, 1984)