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As you may recall from the discussion above, Article 26 ICCPR (<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>) reads:

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

Help

Article 26 ICCPR thus contains four separate norms, imposing on the States parties both negative and positive obligations. These obligations are that States shall (1) guarantee equality before the law; (2) guarantee the equal protection of the law; (3) prohibit any discrimination; and (4) guarantee to all persons equal and effective protection against discrimination. This latter obligation may impose on States to adopt positive action measures in situations of structural discrimination, where certain social groups are permanently excluded from integration factors such as employment, housing, or education, so that the prohibition of individual discriminatory acts appears insufficient to protect them effectively from marginalization.

Before turning to the next unit, where a few examples will be given of these different obligations, read carefully the definition attached to each:

1. The **requirement of 'equality before the law'** is addressed to law enforcement authorities, whether they belong to the Executive or to the Judiciary. This requirement is that the law is applied without discrimination. It prohibits arbitrary conduct by State agents.
2. The **requirement of 'equal protection of the law'** is addressed not at law enforcement authorities, but at the lawmaker. It requires that the law does not create any discrimination, either by making distinctions which cannot be reasonably and objectively justified, or by treating equally situations which require a differentiated treatment.
3. The **requirement to 'prohibit any discrimination'** imposes a *positive obligation* on the legislator: whether they are committed by state agents or by private actors, discriminatory acts should be prohibited and subject to effective legal sanctions. As regards racial discrimination, this obligation already follows from Article 2(1), *d*), of the *International Convention on the Elimination of All Forms of Racial Discrimination*, which provides that the States parties 'shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization'. The *Convention on the Elimination of All Forms of Discrimination against Women* also imposes an obligation on States to 'adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women'; to 'establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination'; and to 'take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise' (Art. 2, *b*), *c*) and *e*)).

4. The **duty to guarantee to all persons equal and effective protection against discrimination** goes beyond the mere

The four obligations of non-discrimination | [...]

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legal prohibition of individual acts of discrimination. It requires that States effectively combat instances of structural or systemic discrimination, if necessary by the adoption of positive measures ensuring that no group is permanently disadvantaged or excluded from the community. As noted in 1989 by the Human Rights Committee in its General Comment No. 18 on Non-discrimination,

'the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant'.



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