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LouvainX: Louv2.01x International Human Rights

KarenWest (/dashboard) ▼

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When we think of discrimination, we usually first have in mind the use of prohibited criteria, that are irrelevant to the decision to be made or that are considered inappropriate to rely on as a matter of principle. For instance, characteristics such as race or ethnicity, sex, religion, disability or sexual orientation should play no role in employment recruitment procedures, in access to schools, or in the allocation of social housing. (In contrast, qualifications or merit may be relevant in hiring procedures, grades or income may influence decisions to allocation grants, and family size may be relevant to decisions concerning social housing).

Discrimination thus understood is called *direct* **discrimination**, because it consists in relying directly on such prohibited or irrelevant criteria.

But discrimination may also result from the use of apparently neutral criteria, procedures, or practices, the effect of which will be similar to that of direct discrimination: it is then referred to as *indirect* **discrimination**. Such criteria, procedures or practices, which result in *de facto* discrimination, may be calculated in order to exclude the members of a certain category. Alternatively, even in the absence of any intention to discriminate, they may have a discriminatory impact because they are the result of established and unchecked routines, and fail to take into account the specific situation of certain groups.

In order to make sure you've understood the distinguishing features of direct and indirect discrimination respectively, please try to answer the following questions before turning to the answers and accompanying explanations.

DISCRIMINATION - EXERCISE 1 (1/1 point)

1. How do the notions of direct and indirect discrimination relate to the intention to discriminate?

   ○ Direct discrimination is always intentional, indirect discrimination may be either intentional or unconscious;

   ○ Direct discrimination is always intentional, whereas indirect discrimination consists in the use of neutral procedures, criteria or practices which, although there is no intention to discriminate, may have an effect similar to direct discrimination; or,

   ● Both direct and indirect discrimination can be either intentional or non-intentional; there is no necessary relationship between the two notions. ✔

EXPLANATION

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Direct discrimination does not necessarily mean that it is *intentional* or *conscious*: racism or sexism may be unconscious, and result simply from unchecked thought processes, for instance when a railroad company simply cannot imagine a woman driving a train, or when a bar owner cannot imagine men, rather than women, acting as waiter/waitresses. Similarly, indirect discrimination may be quite deliberate (the apparently neutral measure is chosen because it will lead to the exclusion of members of a certain category), but it also may be unintended: the apparently neutral measure may have been chosen for other reasons than to exclude members of a certain group, but without taking into account the fact that it may have exclusionary impacts. The adoption of apparently neutral measures that discriminate in fact will be considered discriminatory if the same objectives could have been attained by the adoption of other, equally effective measures.

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