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ILO International Training Centre, Module on Gender, Poverty and Employment

The ILO Discrimination Convention No. 111 (1958) defines discrimination as “*any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation*”. Although such definition focuses on the field of occupation and employment, discrimination can occur in many other contexts, like education and training, access to benefits, resources, assets or public services etc.

Gender discrimination is therefore a difference in treatment based on sex that puts the individual at a disadvantage or limits his or her access to opportunities that are available to other members of society. Such definition emphasizes not only the procedural aspects that might reveal discriminatory (difference in treatment), but also the outcomes of certain practices that might result in deprivation and limitation, which suggests that the presence of intent is not necessary to identify a situation as discriminatory.

This concept of discrimination, which influenced – through nearly a century of jurisprudence – most legal systems in the world, allows us to make a very important distinction between direct and indirect discrimination. Discrimination is direct when rules and practices explicitly exclude or give preference to certain individuals solely on the basis of their membership of a particular group.

Indirect discrimination is much harder to detect, as it refers to norms, procedures and practices that appear to be neutral, but whose application disproportionately affects members of certain groups.

The notion of indirect discrimination has at least two significant implications. The first is to show that treating different people in the same way, without taking into account specific circumstances or context of the disadvantaged, may in some cases perpetuate or even deepen existing inequalities instead of reducing them. Practices in the public or private sphere, which avoid to take into account gender inequalities as a determinant factor are called ‘gender-blind’ or ‘gender-neutral’: they are not overtly discriminatory, but might generate inequalities.

The second important implication of the concept of indirect discrimination is that it contemplates the possibility that discrimination might not be a systemic characteristic of certain workplace cultures or institutional structures.

Gender Discrimination – Direct or Indirect?

Job vacancy announcements that overtly discourage applications from married workers are examples of direct discrimination.

In many countries domestic workers are excluded from the protection that the law grants to other employees. As domestic workers tend to comprise mainly women or members of ethnic minorities or migrant workers, their exclusion from entitlements to certain labour rights constitutes a form of indirect discrimination based on sex, race, ethnic origin or nationality

Certain types of vertical job segregation might be a result of structural discriminatory practices. The expression “glass ceiling”, for example, describes the invisible barrier arising from a complex set of structures in male-dominated organizations which prevents women from obtaining top positions in management and administration. This phenomenon prevails almost everywhere, despite women’s

increased level of qualifications and work performance. It has been demonstrated by research and statistics, and is, at least partly, a result of persistent discrimination against women at work.

The importance of recognizing the cross-cutting nature of gender when considering social factors contributing to the individual's identity becomes crucial when discussing discrimination: due to their gender, women are more likely to face multiple discrimination. Besides constituting discrimination on its own, gender also exacerbates other types of discrimination: for example, a woman from an indigenous group is more vulnerable to discrimination than her male counterpart.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) defines discrimination as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Such definition adds a crucial aspect to the discussion on discrimination, as it makes it a matter of human rights. Gender discrimination is not only about denied opportunities and unequal outcomes, it is first and foremost a violation of the human rights of women.