

Constitutional Equal Rights Across Sexual Orientation and Gender Identity



WORLD Policy Analysis Center

NUMBERS TO NOTE

5%

of constitutions guarantee equal rights regardless of sexual orientation

3%

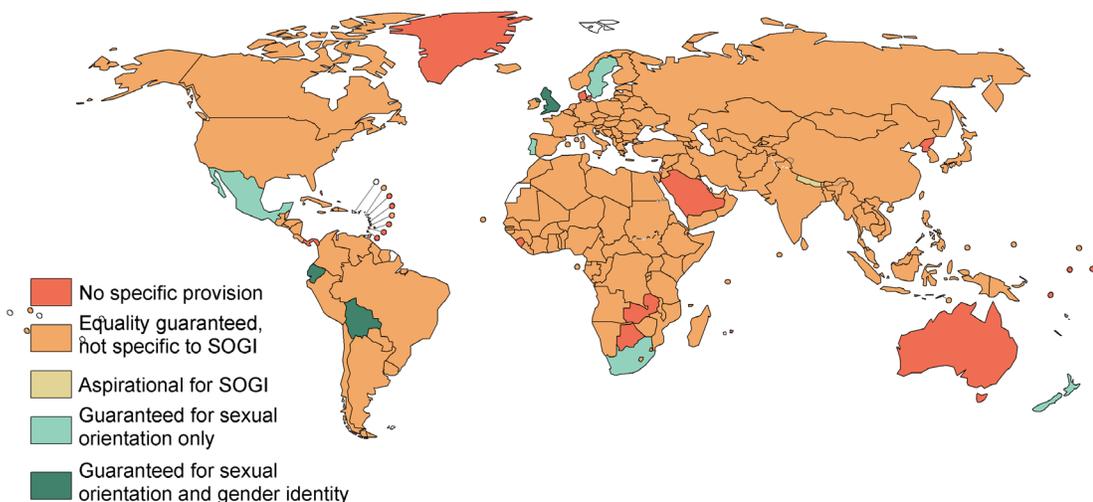
of constitutions guarantee equal rights regardless of gender identity

6%

of constitutions prohibit the right to marry for same-sex couples or allow for legislation to do so

- Around the world, discrimination on the basis of sexual orientation and gender identity (SOGI) remains a source of profound inequality and violence:
 - According to ILGA, as of 2019, 68 countries criminalized consensual sexual activity between adults of the same sex
 - Across Europe, a 2012 survey indicated that over 25% of LGBT citizens had been victims of violence within the preceding 5 years, 59% of whom believed the violence was motivated by their sexual orientation or gender identity
 - In the 2010–2014 World Values Survey, which asks respondents across 58 countries for their views on important social issues, 54% of adults in the average country surveyed said they would not want a gay person as their neighbor
- Recent years have yielded some progress in the law: as of 2017, 22 countries had legalized same-sex marriage. At the same time, backlash to these victories has led to new discriminatory laws
 - Within constitutions, explicit protections on the basis of SOGI have led to important rulings:
 - In **South Africa**, the constitution’s guarantee of equal rights regardless of sexual orientation led to the reform of immigration law to provide equal treatment to same-sex couples
 - In **Mexico**, the Supreme Court cited the constitution’s explicit prohibition of sexual orientation discrimination in its landmark decision legalizing same-sex marriage
 - In the absence of a specific guarantee, individuals and groups have also leveraged general equality provisions and other constitutional rights to secure important victories:
 - In **Canada**, pursuant to the general equality provision, in 1998 the Supreme Court ordered the province of Alberta to prohibit sexual orientation discrimination in its

Does the constitution explicitly guarantee equality or non-discrimination across sexual orientation and gender identity?



ABOUT ADVANCING EQUALITY

To learn more, please see **Chapter 6** of the open-access book [Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide](#) (Jody Heymann, Aleta Sprague, and Amy Raub; University of California Press, 2020).

Analyzing the constitutions of all 193 United Nations countries, *Advancing Equality* traces 50 years of change in constitution drafting and examines how stronger protections against discrimination, alongside core social and economic rights, can transform lives.

employment law

- In the **U.S.**, the constitution’s protections of due process and general equality provided the foundation for the Supreme Court’s 2015 marriage equality ruling
- In **India** and **Pakistan**, overall guarantees of equality before the law provided the constitutional foundation to establish that transgender individuals have equal rights
- Still, the risk of these approaches is their unpredictability, as well as the missed opportunity to send a stronger message about equality
- Globally, just 5% of constitutions guarantee equal rights regardless of sexual orientation, while 3% extend these protections to gender identity as well
- At the same time, another 6% of countries prohibit the right to marry for same-sex couples or allow for legislation to do so
- All of the constitutional bans on same-sex marriage were enacted since 2000, suggesting that they were in direct response to recent gains for LGBT+ rights
- An additional 8% define marriage as exclusively between a man and a woman
- One barrier to more widespread progress is the lack of a binding international agreement:
 - U.N. bodies have determined that existing treaty protections against “sex” discrimination extend to sexual orientation
 - Yet given the ambiguous text, countries including **Uganda** have argued that sexual orientation discrimination is permissible under international law
- Successful efforts to advance equal rights on the basis of SOGI in constitutions have included working in broad coalitions:
 - In **South Africa**, integrating the fight for LGBT+ rights within the broader post-apartheid struggle for equality helped secure support for the world’s first specific constitutional protection against sexual orientation discrimination
 - In **Ecuador**, LGBT+ activists partnered with feminist groups and labor organizations to enact a SOGI-specific equal rights provision and strengthen fundamental social and economic rights



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With these data, **WORLD** informs policy debates; facilitates comparative studies of policy progress, feasibility, and effectiveness; and advances efforts to hold decision-makers accountable.

CONTACT US

WEBSITE
worldpolicycenter.org

EMAIL
world@ph.ucla.edu

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