



Constitutional Guarantees to Equality and Full Inclusion for Children, Youth, and Adults with Disabilities



More than twelve years since the landmark adoption of the Convention on the Rights of Persons with Disabilities (CRPD) and over three years since the Sustainable Development Goals (SDGs) were launched with the ambitious mission to “leave no one behind”—have countries taken necessary action to advance equal rights and inclusion for persons with disabilities? Meeting the transformative goals outlined in both the CRPD and the SDGs requires that the global community regularly examine the steps countries are taking—to highlight countries in every region that are leading the way to dismantle barriers to equal opportunity, who can serve as resources for other nations in the development of legal frameworks that embody the commitments outlined in the CRPD and the SDGs. This fact sheet series examines the steps countries are taking in national legislation and constitutions to prevent discrimination, guarantee equal rights, and provide children, youth, and adults with disabilities with equal opportunities in education and work during this important time.

Introduction

- Constitutions are the highest source of law in nations. As a result, guarantees of equal rights in constitutions are powerful tools for reversing discriminatory laws and policies, and for supporting the effective implementation of policies and laws that promote equality.
- In periods of political and social change, constitutional equal rights protections can also guard against the weakening of legislative commitments to equality and inclusion.
- Beyond their instrumental value, constitutions play a large normative role. Rights and values enshrined within national constitutions can powerfully shape societal norms towards inclusion and support broader advances in understanding of disability when they address socially constructed barriers to full participation.
- Given the powerful ways constitutional rights can advance and protect equal rights for persons with disabilities and other historically marginalized groups, it's essential to monitor these rights. At the same time, constitutional provisions that deny equal rights based on certain forms of disability or leave room for the continued exclusion of persons with disabilities may perpetuate the marginalization and isolation of children, youth, and adults with disabilities—it's critical to assess these provisions.

Constitutional Guarantees of Equality and Non-Discrimination over Time

- Globally, only 27% of constitutions explicitly guarantee equality or non-discrimination on the basis of disability. Despite the relatively low prevalence of constitutions with these protections, there has been a rapid increase in these guarantees amongst constitutions that have been adopted more recently.
- In 2007, a year after the CRPD was adopted, only 32 constitutions explicitly guaranteed equality and non-discrimination for persons with disabilities. Over

the course of the next 10 years, constitutional protections steadily increased to 40 constitutions in 2011, 47 in 2014, and 52 in 2017.

- Nearly half of constitutions adopted in the 2000s and nearly three-quarters of those adopted between 2010 and 2017 explicitly guarantee equality and/or protection from discrimination to persons with disabilities. In contrast, only 11% of constitutions adopted before 1990 contain these guarantees.
- However, explicit guarantees to equality and non-discrimination for persons with disabilities still lag behind guarantees to other groups. This disparity is evident even among more recently adopted constitutions: between 2010 and 2017, 100% of new constitutions explicitly guaranteed equality on the basis of gender, as did 92% on the basis of religion and 79% on the basis of race/ethnicity, compared to 71% on the basis of disability.

Dismantling Barriers and Advancing Full Participation

- In addition to guaranteeing equality and non-discrimination, advancing the full participation of children, youth, and adults with disabilities requires that countries take affirmative steps to dismantle discriminatory barriers to fundamental rights.
- In education, this includes guarantees that education facilities are physically accessible to students with disabilities, and guarantees that all students with disabilities have the right to attend school in integrated mainstream environments alongside their peers without disabilities.
- Although 28% of countries enshrine the right to education for children and youth with disabilities in their constitutions, few countries take further important steps to dismantle persistent barriers to equality in education, by making explicit references to accessibility or integration. Only 4% of constitutions address the integration of students with disabilities into the public school system, and fewer still (2% of constitutions) require that schools and other educational institutions be physically accessible.

- At work, 22% of constitutions guarantee equal work rights to persons with disabilities, but only 1% of constitutions explicitly address reasonable accommodation. Guaranteeing reasonable accommodation—or the right to individual modifications and adjustments—is another critical way to dismantle barriers to full participation at work.
- Constitutions may also take further steps to ensure access to school and work and support the full social participation of persons with disabilities by guaranteeing accessibility—in other words, by requiring that measures be taken to identify and eliminate obstacles to public places, transportation, information, and other facilities and services. Only 3% of constitutions reference accessible public transportation, and 6% of constitutions address accessibility in public places.
- Further, the CRPD importantly shifted the world’s understanding of disability beyond the prevailing medical view to a more societal view that acknowledges the impact of myriad barriers to full participation. This recognition of the role of social and environmental barriers is central to advancing inclusion for persons with disabilities, and as fundamental laws, constitutions can provide a powerful tool to advance equal opportunities by explicitly recognizing the need to remove these barriers.
- In addition to guaranteeing most of the important rights detailed above, 2% of countries (Fiji, Kenya, and Zambia) constitutionally define disabilities in a way that recognizes the role that these constructed barriers have in hindering the full realization of rights.

Denial of Equal Rights in Constitutions

- Political participation is essential to advancing rights for persons with disabilities, allowing them to shape the direction of future inclusive policies through voting and holding elected office.
- However, 1% of constitutions allow for restrictions on the right to vote on the

basis of physical health conditions, and 23% of constitutions specify that persons with mental health conditions can be denied the right to vote. Additionally, 2% of constitutions deny persons with physical health conditions the right to hold a legislative office, while 32% of constitutions deny this right to persons with mental health conditions.

- In many cases, broad mental health-based restrictions open the door to abuse and over-exclusion, especially since these assessments may be informed by stigma rather than science, and begin from the assumption of incapacity. For example, a health history including episodes of depression has nothing to do with voting capacity of the over 300 million people worldwide the WHO estimates to currently suffer from depression.
- Finally, an individual's right to liberty is a fundamental right that undergirds all others, and Article 14 of the CRPD clarifies that "the existence of a disability shall in no case justify a deprivation of liberty." Nevertheless, 19% of countries specify that the right to liberty can be denied to people with mental health conditions. There's no case for basing restrictions of liberty on a specific condition or category of people instead of actual risk. Some countries' courts have adopted standards for evaluating whether individuals pose imminent threats to themselves or others. Although individual assessments in these cases will likely never be fully accurate evaluations of risk, and some potential for abuse persists, this approach is far more narrowly tailored to the issue of personal and public safety than an exception applying to an entire group based on disability status.

Methodology Overview

- This analysis relies exclusively on constitutional texts in place as of May 2017, which were reviewed for all 193 United Nations member states. Although the vast majority of countries have codified written constitutions, a few countries (e.g. the United Kingdom, Canada, New Zealand, and Israel) either have no written codified constitution or have a series of constitutional laws rather than a single text. In these cases, those documents or laws that are generally

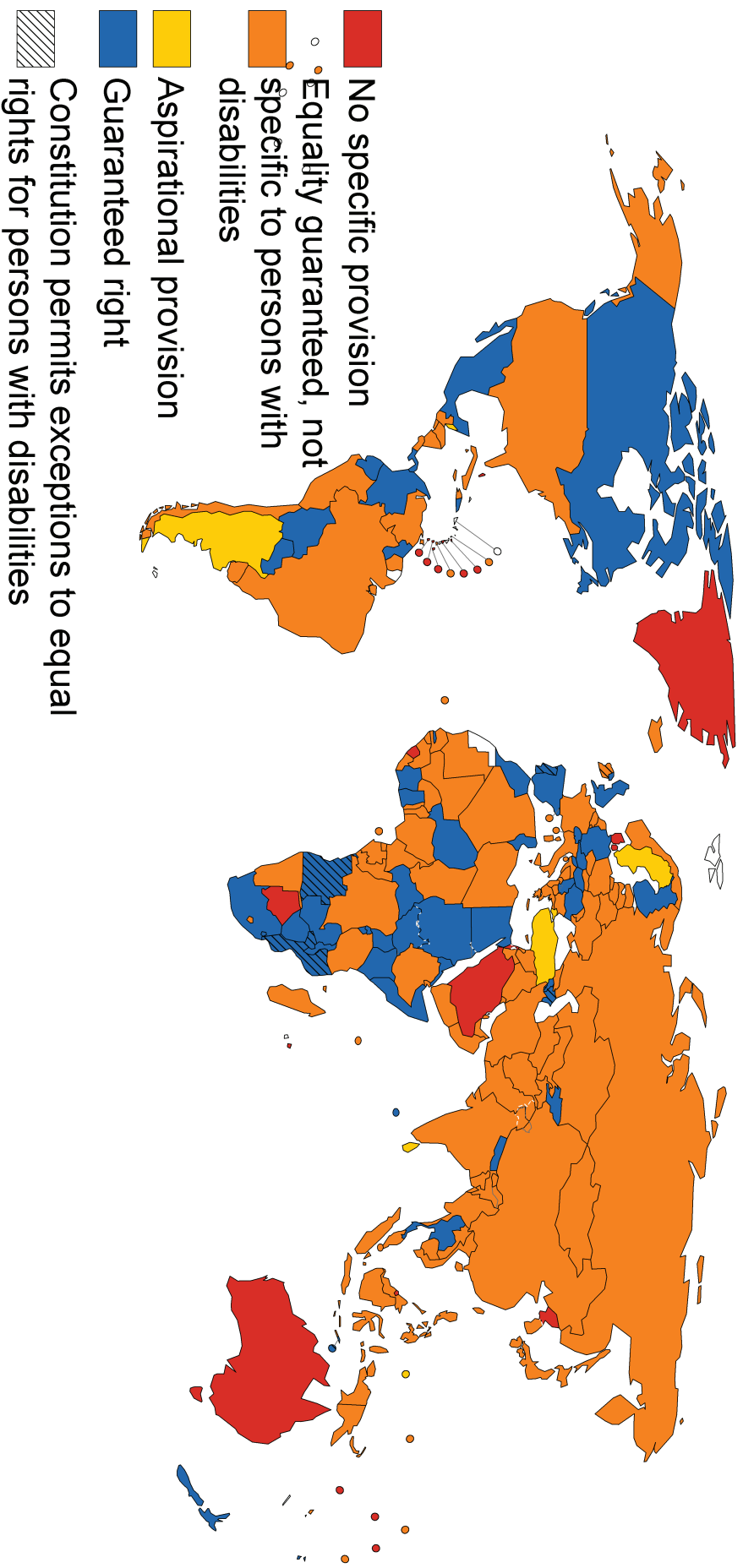
considered to have constitutional status either by the country itself or by the legal community were identified. A systematic review of case law aligned with equal rights for persons with disabilities is outside the scope of this analysis.

- Brazil's and Togo's constitutions do not contain explicit constitutional guarantees on the basis of disability, but both countries are parties to the CRPD and have constitutional provisions making human rights treaties equal to or superior to the constitution. Many other countries specify in their constitutions that international treaties take precedence over conflicting legislation. However, across all of these countries, the direct applicability of international treaties in domestic courts varies, and as such, this analysis has been restricted to rights explicitly guaranteed on the basis of disability within national constitutions.
- Given the age of many constitutions, provisions focused on disability are often less detailed relative to provisions found in legislation. Except when otherwise specified in presentation of findings, guarantees on the basis of 'disability' refer to constitutional guarantees based on general references to disability or guarantees extended on the basis of both mental and physical disability.
- Further details on full methodology can be found at:
<https://www.worldpolicycenter.org/topics/constitutions/methods>

Acknowledgments

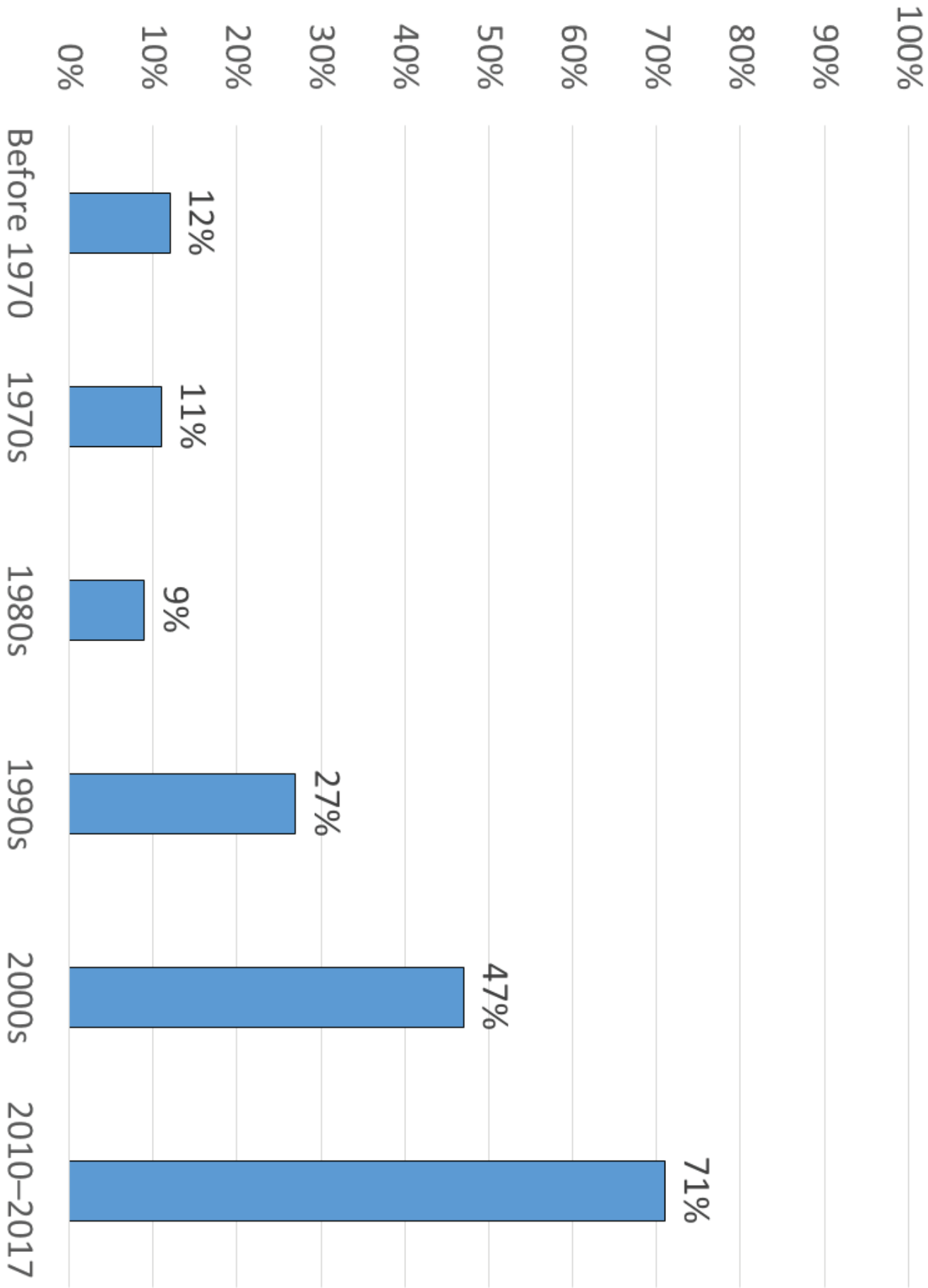
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Map 1. Does the constitution explicitly guarantee equality or non-discrimination for persons with disabilities?



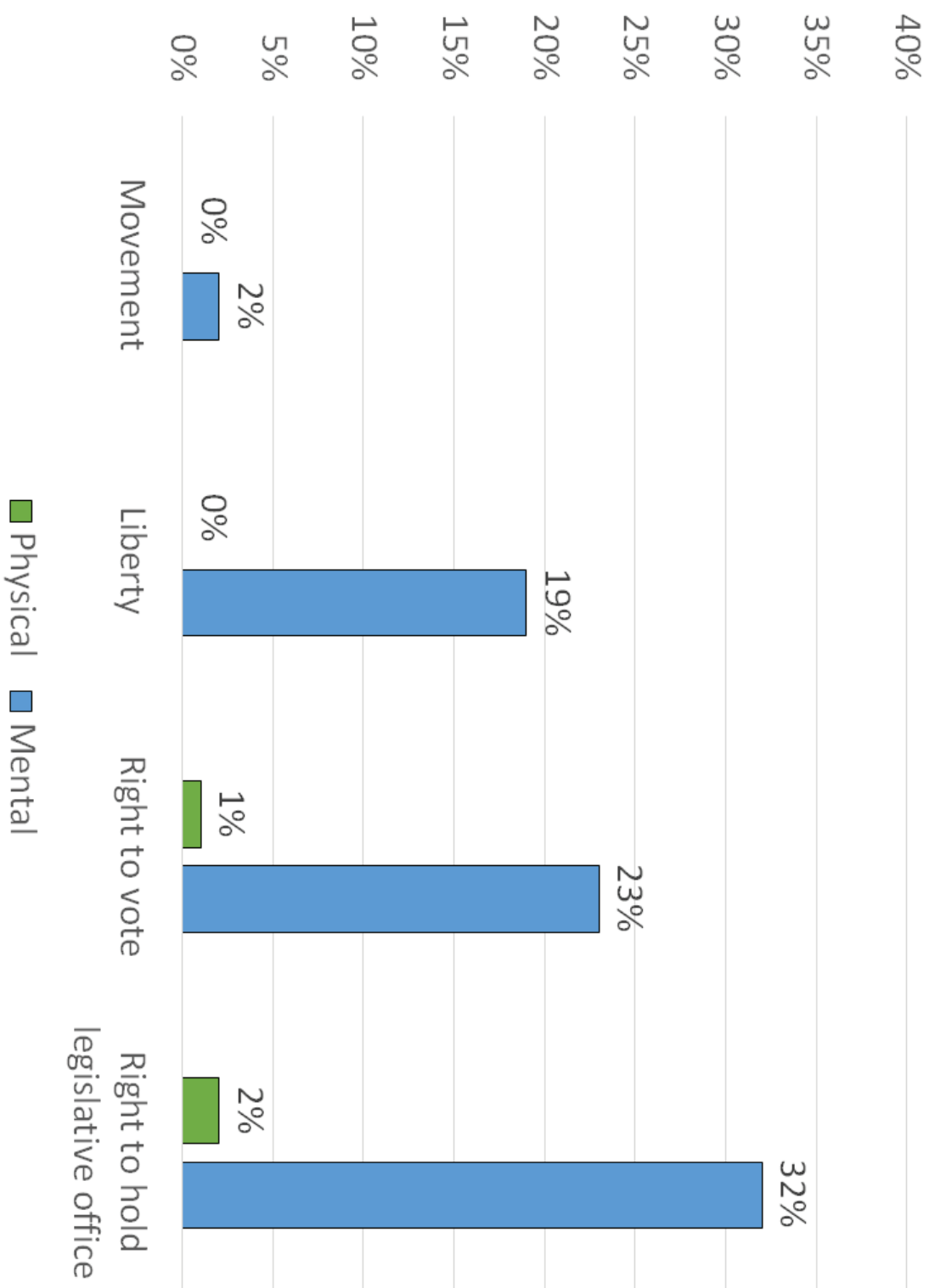
Source: *WORLD Policy Analysis Center, Constitutions Database, 2017*

Graph 1. Explicit Constitutional Guarantee of Equality or Non-Discrimination for



Source: WORLD Policy Analysis Center, Constitutions Database, 2017

Graph 2. Explicit Constitutional Provisions that Allow for Civil and Political Rights to Be Denied Based on Health Conditions



Source: WORLD Policy Analysis Center, Constitutions Database, 2017

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