

# 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%**

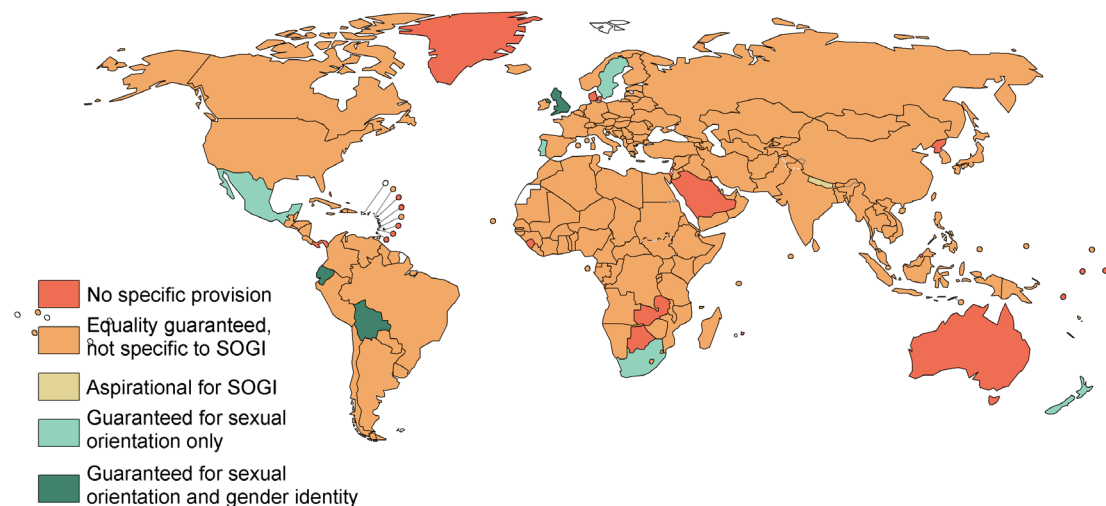
*of constitutions guarantee equal rights regardless of gender identity*

**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



## WORLD Policy Analysis Center

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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.

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