

# Realizing the Promise of Gender Equality Laws

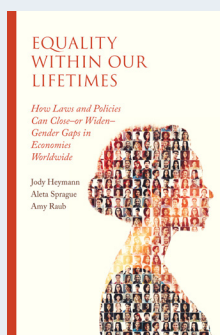
## Key Findings

- Around the world, countries have adopted strategies and legal mechanisms designed to ensure that the benefits of antidiscrimination laws are accessible to all workers.
- Laws that provide for legal aid, collective legal actions, and alternative dispute resolution can help ensure more people have access to justice when their rights are violated.
- For example, 54% of countries have laws establishing independent bodies that handle claims of workplace gender discrimination, sexual harassment, and retaliation or inability to take paid parental leave.
- Legislation can also help enable workers to report discrimination and sexual harassment with less fear of employer retaliation.
- However, just 46% of countries both prohibit gender discrimination at work and ensure that workers who report discrimination are protected from any adverse retaliatory action; 45% do so for sexual harassment.

## About Equality within Our Lifetimes

For more information and a full list of studies summarized in this brief, see [Chapter 5](#) of the open-access book [Equality within Our Lifetimes: How Laws and Policies Can Close—or Widen—Gender Gaps in Economies Worldwide](#) (Jody Heymann, Aleta Sprague, and Amy Raub; University of California Press, 2023).

Building and analyzing a law and policy database that covers 193 countries, *Equality within Our Lifetimes* systematically examines how far we've come and how far we have to go in adopting evidence-based solutions to close gender gaps in employment, income, leadership opportunities, and more.



## Addressing Barriers to Access to Justice

Beyond providing substantive protections against discrimination and harassment, laws shape what tools people have access to when their rights at work are infringed—including whether they have access to a lawyer, the ability to bring claims collectively, the option to pursue alternative justice mechanisms, and adequate protection against employer retaliation.

### Access to Legal Aid

Access to legal assistance can make a critical difference for people seeking to enforce their rights. However, many countries provide no legal aid in civil cases; among those that do, policy details may limit coverage:

- In some countries, such as Australia, provision of legal aid is at the discretion of the court or other bodies and may depend on whether the matter is deemed sufficiently “important.”
- In other countries, including Ireland, legal aid is limited to “complex” matters, which may limit access to justice in cases that are legally straightforward but still difficult to navigate without a lawyer.
- In countries including Djibouti, Malaysia, Zimbabwe, Germany, Iceland, and South Africa, the availability of legal aid is based on whether litigation is “reasonable” or likely to be successful.

Some countries also limit access to legal aid by marginalized women by:

- Excluding undocumented immigrants from eligibility.
- Restricting eligibility to the very poorest workers, excluding many with modest incomes who cannot afford private counsel.
- Failing to guarantee legal aid as a right or entitlement.
- Inadequately funding legal aid, which results in clients being turned away or receiving low-quality representation because attorneys’ caseloads are untenably large.

### Collective Legal Actions

A second way countries can support access to justice is by permitting collective legal actions, which can take a range of different forms including:

- **Class action:** A small group of representative plaintiffs brings a claim on behalf of a large group of people in the same circumstances, seeking a judgment and ruling on damages that will typically bind the whole group.
- **Amparo colectivo:** A group of individuals approaches the courts for a fast-track ruling on an action that has infringed their fundamental rights.
- **Mass tort:** A group of individual lawsuits seeking remedies based on the same conduct by the same defendant are joined together.
- **Public interest litigation (PIL):** Cases brought by or on behalf

of large groups that address issues of substantial public concern.

- **Actio popularis:** A case brought on behalf of a group to advance a public interest, and which may or may not name specific parties.
- **Strategic litigation:** Lawyers bringing a case on behalf of one person or a small group of people aim to change the law in a way that will affect a much larger population.

By increasing judicial efficiency and allowing more people to access the court system, collective lawsuits have had demonstrated impact in discrimination and harassment cases:

- In Argentina, a female bus driver brought an amparo colectivo successfully challenging gender discrimination at transport companies.
- In India, a PIL case led to a landmark Supreme Court ruling on sexual violence and harassment.
- In Switzerland, strategic litigation effected substantial gains in pay for nurses nationwide.
- In the U.S., studies have found that class actions are far more likely than other discrimination cases to result in substantive remedies requiring specific actions by employers.

However, these mechanisms' availability varies within and across countries. Moreover, their effectiveness is shaped by requirements and limitations that countries assign them, including:

- Who can legally bring a claim on behalf of a group (or who has "standing").
- What types of claims are eligible.
- What types of damages are available to participants.

- For class actions, how potential class members learn about and join the lawsuit (or "notice" requirements) and whether the class must be "certified" before litigation can move forward.

### Alternative Dispute Resolution

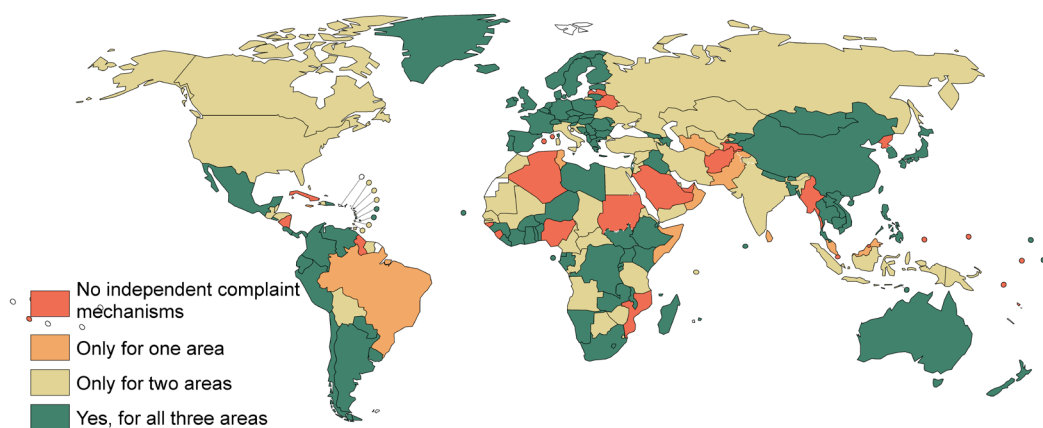
Alternative dispute resolution (ADR) can provide remedies to some individual workplace discrimination claims at lower cost and in a shorter period than going to court. Forms of ADR include:

- **Independent investigations** of disputes
- **Conciliation**, through which a third party helps the two parties to the dispute communicate and evaluate the problem, but does not personally propose a solution
- **Mediation or counseling**, which typically involves working collaboratively with a trained third party to reach a solution
- **Administrative hearings**, where both parties can present their evidence in arguing their case
- **Arbitration**, in which the two parties present their claims before a trained third party empowered to make a legally enforceable decision, similar to a judge or jury in a trial

Some countries provide options to pursue ADR at low or no cost through public institutions including labor commissions, equality bodies, and human rights commissions:

- 54% of countries have independent bodies that handle claims of workplace gender discrimination, sexual harassment, and inability to take or retaliation for taking paid parental leave.
- 32% of countries have ADR mechanisms only for some areas, and 14% of countries have no independent

## Can employees seek justice through an independent body for gender discrimination?



The three areas of gender discrimination examined were: (1) gender discrimination, (2) sexual harassment, and (3) inability to take paid parental leave because of caregiving-related gender discrimination.

Source: WORLD Policy Analysis Center, *Discrimination at Work Database*, 2021



complaint mechanism for any of these areas.

Countries vary in whether legislation enables monetary compensation and penalties in discrimination and sexual harassment cases conducted through ADR.

- 48% of countries have legislation guaranteeing that workers who pursue justice through ADR can receive at least some form of monetary compensation for people who were discriminated against. 32% of countries do so for those who experienced sexual harassment.
- In 29% of countries for gender discrimination cases and 21% of countries for sexual harassment cases, legislation establishes ADR processes but does not explicitly enable workers to claim monetary compensation or re-employment.
- 49% of countries legally provide for fines, sanctions, or disciplinary action on perpetrators in gender discrimination cases through ADR. 34% do so in sexual harassment cases.

While ADR can provide a promising alternative for workers facing discrimination, it is important to note that their potential depends on their effectiveness, fairness, and the remedies they have available.

- Mandatory arbitration has been found to largely favor employers and can prevent employees from making grievances public.
- The amount of damages available through ADR can be much lower than is available through litigation, and some studies have shown that women and minority workers receive particularly low compensation.

## Preventing Retaliation

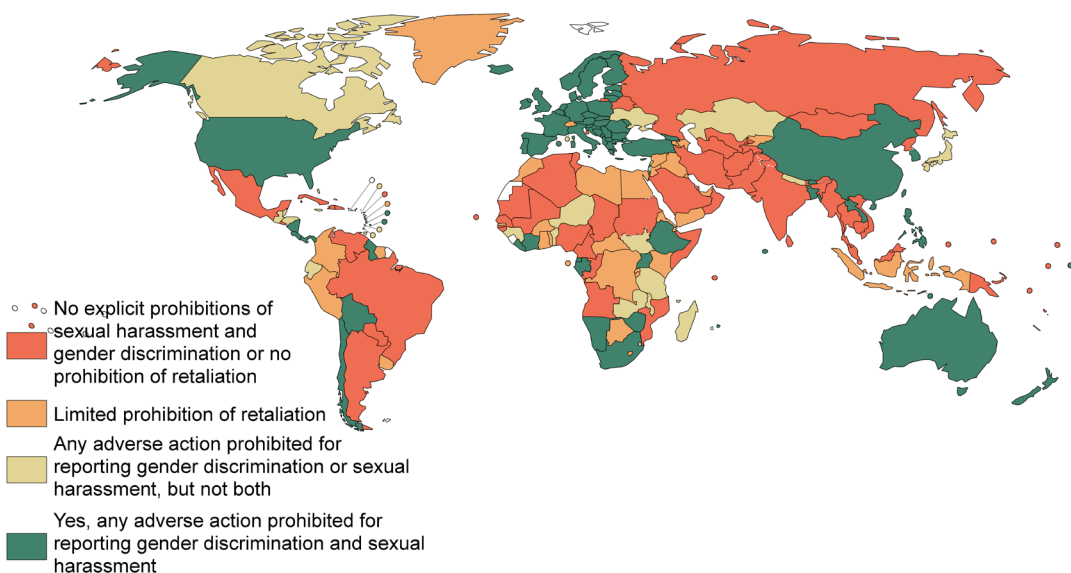
Beyond whether women can access justice, protections against retaliation for initiating or supporting a claim are essential for discrimination laws to achieve their intended impacts.

- 28% of countries prohibit gender discrimination at work but fail to ensure any protection from retaliation for reporting discrimination.
- 20% of countries prohibit sexual harassment at work but fail to prohibit any form of retaliation.

Even among countries that address retaliation in gender discrimination or sexual harassment cases, provisions often fall short of comprehensive protections.

- 46% of countries prohibit gender discrimination at work and ensure that *workers who report discrimination* are protected from any adverse retaliatory action; 45% do so for sexual harassment.
- In 21% of countries, legislative provisions cover only individuals who report gender discrimination. 14% of countries take the same approach for sexual harassment.
- 15% of countries prohibit only retaliatory dismissal after an individual reports gender discrimination—leaving the door open to other forms of retaliation.
- 44% of countries prohibit at least some form of retaliation for *workers who participate in investigations* related to gender discrimination; 39% do so for sexual harassment. Witnesses have a powerful role in supporting or undermining claims of work-place discrimination or harassment, making these additional protections critical.

## Do countries prohibit retaliation for reporting sexual harassment and gender discrimination at work?



Source: WORLD Policy Analysis Center, *Discrimination at Work Database*, 2021



### WORLD Policy Analysis Center

The **WORLD Policy Analysis Center (WORLD)** aims to improve the quantity and quality of globally comparative data on policies affecting health, development, well-being, and equity. 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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