Constitutional Equal Rights Across Gender and Sex

- Around the world, gender inequalities persist in the economy, education, political representation, and other areas of public and private life:
  - Globally, women earn 24% less than men; 104 countries prohibit women’s employment in specific jobs
  - Across low-income countries, just 66 girls finish secondary school for every 100 boys
  - Gender-based violence affects women in every country, while one-third of the world’s countries have no laws against sexual harassment in the workplace
  - Explicit protections of gender equality in the constitution have made a difference:
    - In Kuwait, the Administrative Court invalidated a ban on female applicants to the Justice Ministry, based on gender equality in the constitution
    - General protections of equal rights can also have impact, but their coverage is less predictable:
      - In the U.S., it wasn’t until the 1970s that the Equal Protection Clause of the 14th Amendment—ratified in 1868—was applied to cases of discrimination against women
      - Even within the past decade, a U.S. Supreme Court justice argued that the constitution does not prohibit gender discrimination
- As of 2017, 85% of constitutions globally explicitly guarantee equal rights or prohibit discrimination on the basis of sex and/or gender
- Guaranteeing equal rights on the basis of both sex and gender can provide stronger protection against discrimination rooted in

FACT SHEET: JANUARY 2020

Does the constitution explicitly guarantee equality or non-discrimination across sex and/or gender?

- No specific provision
- Equality guaranteed, not specific to sex or gender
- Aspirational provision
- Guaranteed right

85% of constitutions explicitly guarantee equal rights or non-discrimination on the basis of sex and/or gender
100% of current constitutions adopted since 2000 include a gender equality guarantee
7% of constitutions guarantee gender equality but allow customary or religious law to supersede the constitution

ABOUT ADVANCING EQUALITY

To learn more, please see Chapter 3 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.
gender stereotypes about behavior, speech, or appearance

- Protections of equal rights in the family are far less common, despite the significant consequences for women’s public lives: 6% of constitutions comprehensively protect equality at each stage of marriage—entering, exiting, and within marriage—and less than a quarter guarantee equal rights within marriage or while both entering and exiting marriage.

- In Uganda, the Supreme Court invoked the constitution’s guarantee of equal rights in marriage to strike down a customary law requirement that women pay back their “bride price” (similar to a dowry) upon divorce.

- Just 5% of constitutions address indirect discrimination, which is important for identifying and reforming laws and practices that don’t explicitly target women, but disproportionately restrict their rights or opportunities.

- For example, in 2017, the European Court of Justice struck down a height requirement for the police force in Greece.

- Similarly, few prohibit discrimination on the basis of pregnancy (6%) or marital status (8%), which are common grounds of discrimination that some courts have not been willing to address based on gender equality protections alone.

- Further, 7% of countries guarantee gender equality but allow customary or religious law to supersede the constitution, which may jeopardize equal rights.

- In Zimbabwe, women’s groups actively participated in drafting a new constitution in 2013, and succeeded in securing a new provision establishing that equal rights take precedence over conflicting customs.

- Protections are more common in more recently adopted constitutions: whereas 54% of current constitutions adopted before 1970 include a gender equality guarantee, 100% of those adopted since 2000 do so.

- Yet even some of the oldest constitutions have been amended to guarantee women’s equal rights:

- In 2006, Luxembourg amended its 1868 constitution to affirm that “women and men are equal in rights and duties.”

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### Explicit constitutional guarantee of equality or non-discrimination across sex and/or gender by year of constitutional adoption

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**ABOUT WORLD**

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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**PHOTO CREDIT**

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