



Protections of Equal Rights Across Sexual Orientation and Gender Identity: An Analysis of 193 National Constitutions



Background

- In recent years lesbian, gay, bisexual, and transgender (LGBT) persons have made considerable progress at securing equal rights at both the national and international levels.
- Yet while LGBT rights are receiving increased legal protection in some countries, a divergent trend is occurring in others where legislation criminalizing same-sex relationships is being enacted or considered. This contributes to stigmatization, rendering LGBT individuals more vulnerable to human rights abuses, including discrimination and violence.
- This article provides the first detailed global assessment of the ways in which constitutions protect equal rights based on sexual orientation and gender identity (SOGI) across the spheres of general equality and discrimination, employment and marriage rights.
- Although governments may use a variety of legislative and policy channels to address rights in these areas, constitutions are particularly important tools:
 - The symbolic and legal weight of constitutional rights can be leveraged to oppose or encourage the introduction of legislation;
 - Since constitutions are typically more difficult to repeal or amend than other laws and policies, they may also be more resistant to reversal when governments change, and;
 - Constitutions often include specific mechanisms for redress when provisions are violated by states or private actors.

Findings

- Between 1990 and 2014, ten countries introduced protections of equality or non-discrimination based on sexual orientation to their constitutions and five did so for gender identity.

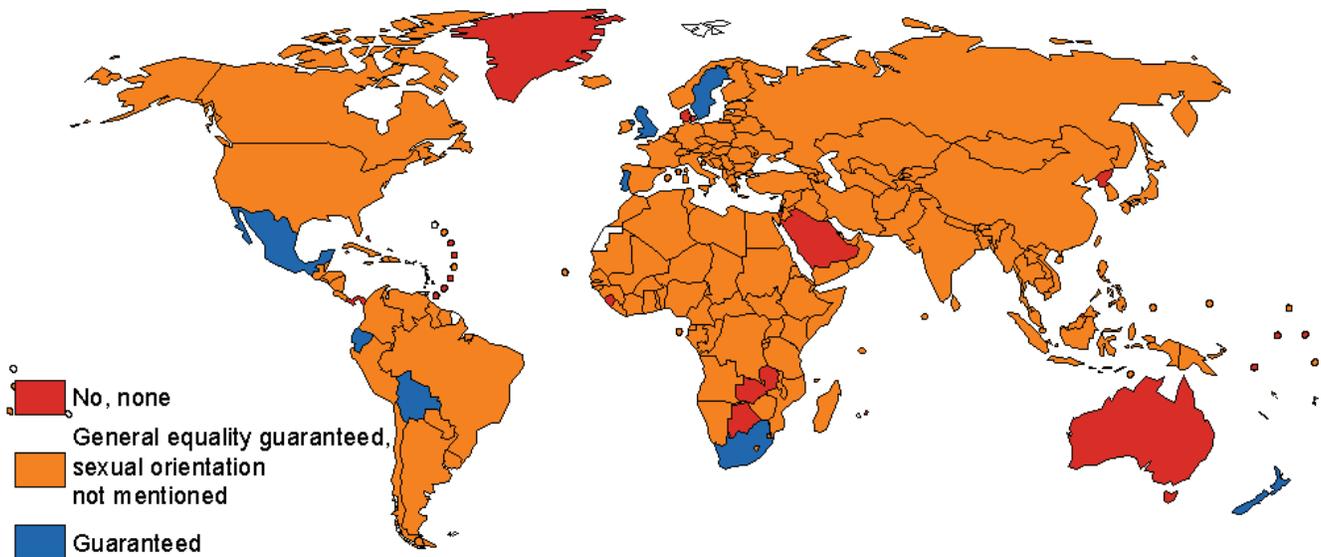
- In this same time period, thirteen countries added prohibitions of same-sex marriage, or permitted legislation to do so. None of the constitutions in our study explicitly protected the right to same-sex marriage, though 22 have introduced case law or legislation in support of marriage equality.
- Five of the constitutions that take an approach to equality or non-discrimination based on sexual orientation also guaranteed equal treatment in some aspect of employment on this basis.

Discussion

- Rising international affirmation of the rights of LGBT persons has been paralleled by an increase in constitutional provisions addressing these rights.
- Still, constitutional provisions for SOGI remain rare, particularly in comparison to the percentage of countries with provisions against discrimination based on sex (84%), race or ethnicity and religion (76%), and disability (24%).
- Moreover, the increase in constitutional protections for SOGI does not necessarily signal growing global consensus on LGBT rights, as evidenced by the increase in countries banning gay marriage.

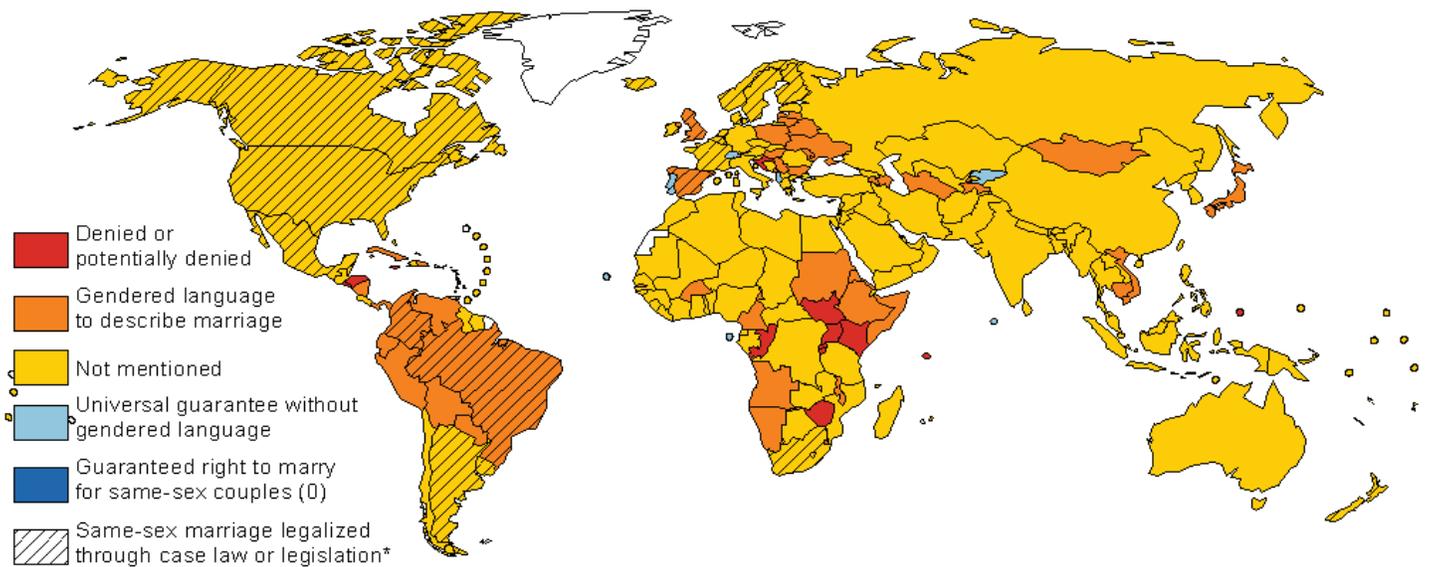
This research brief presents key findings from the following article: Raub A, Cassola A, Latz I, and Heymann J, Protections of Equal Rights Across Sexual Orientation and Gender Identity: An Analysis of 193 National Constitutions. Yale Journal of Law and Feminism. 2016. To access this and other WORLD publications, please visit: <http://worldpolicycenter.org/publications>.

Figure 1: Does the constitution take any approach to equality based on sexual orientation?



Source: WORLD Policy Analysis Center, Constitutions Database, 2014

Figure 2: How is the right to marry for same-sex couples treated in the constitution?



*Note: Legalization of same-sex marriage in Mexico varies at sub-national level.

Source: WORLD Policy Analysis Center, Constitutions Database, 2014

Data on case law and legislation gathered via external sources, including country websites and civil society websites.

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