



**WORLD Policy  
Analysis Center**

# **EQUAL RIGHTS FOR WOMEN AND GIRLS IN THE WORLD'S CONSTITUTIONS**

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## **About the WORLD Policy Analysis Center**

The goal of the WORLD Policy Analysis Center (WORLD) is to improve the quantity and quality of comparative data available to policymakers, citizens, civil society, and researchers around the world on policies affecting equity, development, human health, and well-being. Under the leadership of Dr. Jody Heymann, Dean of the UCLA Fielding School of Public Health, WORLD is committed to making its broad, globally comparative findings publicly accessible to inform and encourage improvements in legal and policy frameworks worldwide, allow nations to learn from the approaches taken in other countries, facilitate studies of the feasibility and effectiveness of laws and policies in critical areas, and support global and local civil society in their efforts to hold decision-makers accountable.

## **About This Report**

Over 65 years ago, the Universal Declaration of Human Rights established that all people, regardless of sex, “are born free and equal in dignity and rights.” A series of treaties in the following decades—most notably the U.N. Convention on the Elimination of All Forms of Discrimination against Women—created more specific guarantees for the world’s women and girls. In 1995, 189 nations reaffirmed their commitments to advancing women’s and girls’ civil, social, political, and economic rights through the Beijing Declaration and Platform for Action, a landmark document that laid out a detailed strategy for addressing remaining gaps and barriers. To mark its 20th anniversary, this policy brief series by the WORLD Policy Analysis Center examines countries’ progress toward enacting laws and policies to achieve gender equality. Using our global datasets capturing the legal and policy contexts shaping gender rights worldwide, we have created a series of policy briefs that highlight areas of progress and areas needing further improvement in education, constitutional rights, work and family, and child marriage. In this brief, we examine constitutional protections for women worldwide, and how these have changed since the Beijing Declaration and Platform for Action was adopted. WORLD is committed to making a lasting difference on the ground through interactions among researchers, policymakers and other stakeholders invested in translating evidence into practice.

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## ABSTRACT

As the fundamental documents that shape country's legal and political systems, constitutions are a place where the protection of women's rights is crucial to gender equality in areas of economic, social, political, cultural, civil, and fundamental human rights. The findings in this brief provide a detailed global assessment of the ways in which constitutions protect women's and girls' rights relevant to areas of concern of the Beijing Declaration and Platform for Action, progress that has been made since 1995, and remaining gaps.

After examining available constitutions as of May 2014, we find that nearly all constitutions take some approach to protecting equality for women and girls. Most constitutions also guarantee measures to ensure girls' right to primary education and protect women's political rights, including women's right to vote, right of association, and right to hold legislative office. Protections lag however in the areas of economic and social rights, such as health, work, and marriage. Specifically, constitutional protections are less common or weaker for women's rights to medical care and public health services, protections from discrimination at work, the right to equal pay for equal work, and the right to equality in marriage. Additionally, constitutions guarantee fewer protections of girls' right to secondary education.

Despite these remaining gaps, constitutional protections of women's and girls' rights have increased over the past 20 years. Constitutions adopted after the Beijing Declaration are more likely than those adopted earlier to guarantee rights and protections to women and girls in all spheres we examined, although progress has been weaker in protecting equality in marriage and equal pay for equal work.

## BACKGROUND

The Beijing Declaration and Platform for Action refers to constitutions as one important mechanism through which states can take action to improve equal rights for women, and specifies the need for governments to “provide constitutional guarantees and/or enact appropriate legislation to prohibit discrimination on the basis of sex for all women and girls of all ages and assure women of all ages equal rights and their full enjoyment” (Objective I.2, 232.b).<sup>1</sup> As we near the 20<sup>th</sup> anniversary of this important convention, it is a pivotal time for policymakers to get a sense of the progress that has been made in promoting equal rights for girls and women and where gaps remain to shape the post-2015 agenda.

Including provisions relevant to gender equality in countries’ national constitutions is of both practical and symbolic importance, though provisions in national legislation and policy are also crucial. As the fundamental building blocks of governments and laws, constitutions shape the values of a society and are more difficult to repeal or amend than other legislative or policy approaches. They also provide a legal foundation for citizens to combat discrimination and can thus be a catalyst for action on promoting equal rights for women.<sup>2</sup> While there are concerns regarding the gap between constitutional provisions and their implementation,<sup>3</sup> evidence shows that the inclusion of relevant rights and protections in constitutions promote women’s opportunities.<sup>4</sup> The potential to leverage constitutions to promote equal rights for women has been demonstrated around the world, as the following examples illustrate:

*By challenging laws or actions that violate girls’ and women’s rights:*

- In Botswana, South Africa, and Zimbabwe, constitutional prohibitions against gender discrimination were effectively used to challenge regulations that banned pregnant students from attending school.<sup>5</sup>
- In Swaziland, the High Court amended the 1968 Deeds Registry Act which previously prevented married women from registering property in their own name based on constitutional protections of women’s equal economic rights and equality before the law.<sup>6</sup>
- In Kuwait, constitutional protections of equality before the law were successfully used to oppose a ministerial order barring women from jobs at the Justice Ministry.<sup>7</sup>
- A Malaysian High Court ruled against a decision by the Ministry of Education to retract an employment contract upon discovering the candidate was pregnant, based on its violation of the constitutional prohibition of discrimination.<sup>8</sup>
- The extensive recognition of women’s rights in Colombia’s constitution of 1991 provided a backdrop for emerging gender jurisprudence in the nation. Constitutional provisions were used to strengthen women’s protections against domestic violence in legislation. The constitution also promoted the rights of pregnant women in gaining access to education and being protected from loss of employment.<sup>9</sup>
- In the United States the Supreme Court ruled against an all-male admission policy of the Virginia Military Institute for specialized training, based on its violation of the Equal Protection Clause of the Fourteenth Amendment.<sup>10</sup>

*By overturning discriminatory customary laws:*

- In 1997, a non-discrimination clause in Nigeria's constitution was used successfully to oppose a custom that denied inheritance rights to female children in the country.<sup>11</sup>
- In South Africa, customary laws that prevented women from owning property, excluded them from holding traditional leadership positions and granted a husband legal guardianship over his wife were successfully opposed on constitutional grounds.<sup>12</sup>

*By supporting new laws that protect equality:*

- During the 1990s, the women's rights movement in Turkey demanded changes to the civil code based on protections of gender equality in Turkey's constitution. As a result, the Civil Code that came into force included protections of women's equal rights to inheritance and matrimonial property, and stipulated an equal age of marriage for men and women.<sup>13</sup>
- In India, the women's rights movement successfully promoted the introduction of legislated prohibition of sexual harassment in the workplace based on protections of gender equality in the constitution.<sup>14</sup>
- Case studies from France, Costa Rica, and Argentina showed that the inclusion of quotas in constitutions led to a significant increase in women's level of political participation. Since Argentina adopted legal quotas in its constitution in 1991, 11 out of 19 countries in the same region have followed suit, indicating that the inclusion of provisions in national constitutions can affect constitution building of nations in the same region.<sup>15</sup>

*By limiting the passage of discriminatory laws:*

- In Egypt, the constitutional court ruled against a vote by the Council of States to ban women from serving as judges based on its violation of the constitutional guarantee of equality.<sup>16</sup>
- In 2009, the government of Afghanistan passed the *Shiite Personal Law*, which included several provisions that violated Afghanistan's constitutional rights for women, including restrictions of women's ability to leave the house or be employed without their husbands' permission and mandating that women have sex with their husbands upon their request. The constitutional guarantees of equal rights gave support to opposition from civil society and a number of unconstitutional provisions were removed from the bill.<sup>17</sup>

These cases show that although legal, political, and cultural contexts are critical to implementation, constitutions provide important legal grounds for the promotion of gender equality in a range of areas critical to women's daily lives. Assessing the extent to which women's and girls' rights are protected in constitutions is a necessary first step for the identification of missing protections as well as implementation gaps.<sup>18</sup> In addition, understanding which rights are guaranteed to women and girls in current constitutions and how these are defined can provide vital information for states that seek to improve gender equality at the highest level by adding relevant provisions to their constitutions. The WORLD Policy Analysis

Center has investigated the current status and fundamental changes in constitutional protections of women's and girls' human rights from 1995 to 2014 in the spheres of equality and non-discrimination, civil and political rights, health, education, marriage, and work, all of which are tied to the Beijing Platform's critical areas of concern. This policy brief provides an overview of findings on current protections in constitutions and changes in rights for girls and women since the Beijing Platform, using unique quantitative data on national constitutions in 197 countries collected by the WORLD Policy Analysis Center.

## METHODS

The database used for this brief contains data on 197 countries with constitutions in force as of May 2014. This database was created exclusively based on analyzing primary constitutional texts in the original language or translated into English, French, or Spanish. Additional legislation was included in the database only when the constitution explicitly referenced it. 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, documents or laws that are considered to be constitutional either by the country itself or by the legal community were identified.

Our current database is a reflection of what is explicitly written in constitutions. Litigation can play an important role in creating a body of jurisprudence that can further extend women's constitutional protections beyond what is contained in the constitutional text itself. Given that the scope of the project includes 197 countries, and that the role and strength of case law varies substantially across countries, we were unable to include an analysis of case law relevant to the rights reported. Including case law in future analyses will be important to understand more fully the extent to which equal rights are protected in different countries.

Based on 37 international conventions, a framework of rights and protections was established to permit constitutional characteristics to be compared. The selection of constitutional provisions for this brief's analysis were based on relevance to the Beijing Platform areas, their importance for improving outcomes for girls and women, and the ability to systematically collect this data from national constitutions globally.

We categorized levels of protection based on the language used in constitutions to define rights. Rights were considered to be "guaranteed" when constitutional provisions explicitly protected the right or phrased its implementation as a duty or obligation of the country. For example, the constitution of the Dominican Republic states: "The payment of equal salary for work of equal value is guaranteed, without discrimination of gender or other kind."<sup>19</sup> Rights that are based on non-authoritative language or described as state objectives rather than duties were considered to be "aspirational" protections. This level of protection was also assigned to rights whose enforcement was limited by the state's resources or constitutions specified that the right could not be claimed in court. Eritrea's constitution, for example, states that: "The State shall

endeavor, within the limit of its resources, to make available to all citizens health, education, cultural and other social services.”<sup>20</sup>

Importantly, there are a range of social groups for which equality in rights matters. In addition to gender, the WORLD Policy Analysis Center also examines protections based on race/ethnicity, religion, language, sexual orientation, national origin, citizenship, disability, parents’ marital status, social position, age, and prisoner status. While the examination of protections for these individual groups was beyond the scope of the analyses for this brief, more information on the Center’s work relevant to these social groups can be found on our website (<http://worldpolicyforum.org/global-maps/equal-rights-and-discrimination/>).

Further, there are a number of provisions relevant for gender equality that are beyond the scope of our current examination, including the areas of nationality, citizenship, property rights, and inheritance. While there are several additional important areas of concern, the focus of the present analyses was on a set of indicators for which systematic data collection was feasible at the time. Expanding the collection of provisions in these areas and additional rights that are relevant to gender equality in future analyses will be important to assess the status of women’s equality in rights comprehensively.

We conducted three types of analyses. First, we assessed the current state of women’s and girls’ rights in constitutions worldwide in areas tied to the Beijing Platform objectives. Second, we compared provisions of constitutions adopted in 1995 or before to those that were adopted between 1996 and 2005, as well as those that were adopted in 2006 or later, in order to assess whether the Beijing principles were incorporated into constitutional law subsequent to the Declaration and to track relevant changes over time. Third, we examined differences in constitutional protections for girls and women in constitutions that were last amended between 1996 and 2005, and 2006 or subsequently compared to those that have not been amended since before the Declaration to reveal whether countries have taken the opportunity to add fundamental protections for women and girls to their constitutions during the amendment process.

In general, constitutions are difficult to amend. In the absence of a feasible method to compare the difficulty of amendment processes across nations, we took the date of most recent amendment as a proxy for the last time a country had the opportunity to add gender protections to its constitution. This is an imperfect indicator because the most recent amendment may have been procedural or substantive and is it not possible to determine whether only minor amendments were made due to lack of political will or structural obstacles within a constitution. We found that the majority of provisions for equality are included at the time of constitutional adoption. Thus the findings section of this brief will focus on examining the protections for women and girls by year of constitutional adoption.

## FINDINGS

### EDUCATION

Equal access to education is fundamental to girls' opportunities in life and long-term ability to earn a livelihood. According to the strategic objectives of the Beijing Platform, governments should:

*“Advance the goal of equal access to education by taking measures to eliminate discrimination in education at all levels on the basis of gender [...] (80 a) [and] close the gender gap in primary and secondary school education by the year 2005; provide universal primary education in all countries before the year 2015 (80 b).”<sup>21</sup>*

To assess countries' current approaches to addressing these objectives in their constitutions and the extent to which relevant provisions have changed over time, we asked the following questions: Do constitutions protect girls' right to equality in education? What type of right to primary education do constitutions guarantee for girls? And finally, what type of right to secondary education do constitutions guarantee for girls?

#### ***Right to equality in education***

To date, the majority of the world's constitutions protect girls' right to equality in education, by either guaranteeing the right to girls or guaranteeing the right to citizens and prohibiting gender discrimination (60%).<sup>22</sup> An additional 5% aspire to protect girls' right to education and 13% of constitutions guarantee the right to education to citizens, but do not specifically protect girls' right to education (see Map 1). While 50% of constitutions adopted in 1995 or earlier include protections of equality in education for girls, more states that adopted their constitution between 1996 and 2005 and after 2005—81% and 90%, respectively—chose to protect girls' right to equality in education. Conversely, 28% of constitutions adopted before the Beijing Platform did not mention the right to education at all, which has decreased to 3% of constitutions adopted after 2005. Notably, a number of states, particularly from Sub-Saharan Africa that adopted their constitution since Beijing include a protection for girls' right to equality in education. Out of the 56 constitutions that were adopted since Beijing, only three nations (Bhutan, Holy See, and Nigeria) did not include any relevant provisions for girls' right to equality in education (see Map 2 and Map 3).

#### ***Right to primary education***

The majority of constitutions worldwide guarantee the right to free primary education to all children or specifically to girls. Forty-three percent guarantee the right to free and compulsory primary education and an additional 11% guarantee the right to free primary education (see Map 4). The incorporation and levels of protectiveness of girls' rights to primary education have increased steadily in constitutions that were adopted since Beijing. Seventy-six per cent of the constitutions that were adopted after 2005 now incorporate the right to free primary education,

compared to 56% adopted between 1996 and 2005 and 49% adopted before Beijing, suggesting increased attention is being paid to this right.

### **Right to secondary education**

On a global scale, the right to free secondary education is guaranteed in 22% of constitutions.<sup>23</sup> An additional five percent, while not guaranteeing that secondary is free, guarantee girls the right to secondary education (see Map 5). While these findings show that countries worldwide could do more to protect girls' right to education at the secondary level, guarantees are increasing. While only 20% of constitutions adopted in 1995 or before and 19% of constitutions that were adopted between 1996 and 2005 include a guarantee of free secondary education, 38% of constitutions adopted after 2005 make this a guarantee. The relative increase of relevant provisions in more recent constitutions suggests a heightened global recognition of the importance of this right. Still, the current lack of guarantees to ensure girls' right to access secondary education remains a critical area of concern.

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## HEALTH

Countries have universally recognized girls' and women's right to health in international agreements, including the right to the highest attainable standard of health, medical care treatment and public health. The Beijing Declaration has highlighted governments' responsibilities to improve the health status of girls and women, provide access to primary health care, and ensure for all women the right to control all aspects of their health. Specifically, the Beijing Declaration calls on governments to undertake relevant steps to:

*“Reaffirm the right to the enjoyment of the highest attainable standards of physical and mental health, protect and promote the attainment of this right for women and girls and incorporate it in national legislation [...] (106 b), provide more accessible, available and affordable primary health-care services of high quality, including sexual and reproductive health care (106 e), strengthen and reorient health services, particularly primary health care, in order to ensure universal access to quality health services for women and girls [...] (106 i) [and] reinforce laws, reform institutions and promote norms and practices that eliminate discrimination against women (107 d).”<sup>24</sup>*

Constitutions provide a foundation for states to address unequal access to health care and related services as well as women's empowerment to take care of their health needs. To reveal the status of protections of women's and girls' rights in this area, the WORLD Policy Analysis Center examined relevant constitutional provisions at present, as well as prior to and after 1995 with a focus on the following questions: First, do constitutions guarantee medical care treatment to women and girls? Second, do constitutions guarantee protection of public health to women and girls? Third, do constitutions take any approach to health for women?

### **Right to Medical care**

Globally, approximately half of constitutions do not address the right to medical care treatment for women and girls or for citizens overall. Thirty-one percent of the world's constitutions either

explicitly guarantee women’s right to medical care treatment, or guarantee medical care treatment to citizens and prohibit gender discrimination. While an additional seven percent aspire to provide medical care treatment to women, nine percent guarantee the right to medical services to all citizens, but do not explicitly address health protections for women or guarantee that women enjoy equal rights (see Map 6). Trends since Beijing show a decrease in the number of constitutions that do not mention this right and a steady increase in constitutions that offer specific or general protections of the right to medical care treatment for women (21% of constitutions adopted prior to Beijing versus 55% of constitutions adopted post-Beijing).

### ***Right to public health***

We took several approaches into account that constitutions take to protect women’s right to public health, including reference to “defense of public health,” “access to preventive services,” “preservation of health,” or “illness prevention.” We considered a right to public health to be protected for women when the constitution made mention of a guarantee to public health in broad terms (such as the statement of a right to public health) or when specific aspects of a right (such as access to immunization and health education) appeared within a broader applicable context. For example, if access to immunizations was mentioned within the context of the protection of public health or disease prevention, the right to public health was considered granted, but if it appeared alone, the overall right to public health was not considered guaranteed.<sup>25</sup>

Protections of the right to public health for women in constitutions are largely lacking throughout the world. Eighty-four percent of constitutions do not mention this right, whereas 12% either guarantee the right specifically to women, or do so universally and in addition protect women from discrimination (see Map 7). While overall levels of protection of women’s right to public health are low, 21% of constitutions adopted after 1995 include a protection of women’s right to public health relative to 8% of constitutions that were adopted prior to Beijing.

### ***Any approach to health***

Constitutions were considered to take an approach to women’s health when they addressed any of the following: women’s right to health, public health, or medical services. Globally, 44% of constitutions protect women’s rights in at least one of these areas, by either explicitly guaranteeing the right to women or by guaranteeing the right universally and prohibiting discrimination based on gender (see Map 8).<sup>26</sup>

Constitutions adopted after Beijing include approaches to protecting women’s health rights more frequently than those adopted before. Notably, 76% of constitutions adopted after 2005 guarantee an approach to women’s health compared to 33% of constitutions that were adopted prior to the Declaration.

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## **WORK**

Equal rights in work are fundamental to women’s independence, well-being, and opportunities in life. In this regard, the Beijing Platform has outlined the need for governmental action to promote

women's economic rights and independence, including the provision of access to employment, appropriate working conditions and control over economic resources. Specifically, the Declaration outlines a number of action steps for governments to take, including:

*“(a) enact and enforce legislation to guarantee the rights of women and men to equal pay for equal work [...], (b) adopt and implement laws against discrimination based on sex in the labor market, [...] hiring and promotion [...] and (r) reform laws or enact national policies that support the establishment of labor laws to ensure the protection of all women workers, including safe work practices, the right to organize and access to justice.”<sup>27</sup>*

The following findings provide an overview of the extent to which governments have incorporated provisions that are relevant for gender equality in employment in their national constitutions before and since 1995. The underlying questions for this examination were: Do constitutions guarantee protection from discrimination at work for women? And finally, do constitutions guarantee women the right to equal pay for equal work?

### ***Protection from discrimination at work***

On a global scale, relatively few constitutions guarantee women's protection from discrimination at work. To date, 19% of constitutions protect women from discrimination at work and an additional 5% aspire to protect women from discrimination at work broadly or guarantee protection in a particular aspect of work, such as hiring, promotions or working conditions (see Map 9).<sup>28</sup> Constitutions adopted after Beijing are more likely to include these protections than those adopted before: 17% of constitutions adopted prior to Beijing include at least some protection from discrimination at work based on gender compared to 43% of constitutions adopted after 1995.

### ***Right to equal pay for equal work***

In order to ensure equal economic prosperity for men and women, countries need to create conditions in which women and men receive equal pay for equal work.<sup>29</sup> On a global scale, there has been relatively slow progress on the inclusion of women's right to equal pay for equal work in constitutions. In fact, while 21% protect this right for women and an additional 5% aspire to ensure the right to equal pay for equal work, 69% of constitutions do not mention this right (see Map 10). However, constitutions that were adopted after 1995 guarantee protection of this right for women more frequently relative to those that were passed before the Declaration, even though the trend is weak—20% of constitutions adopted prior to Beijing protect the right to equal pay for equal work compared to 22% of constitutions adopted between 1996 and 2005 and 24% after 2005.

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## POLITICAL RIGHTS

In order to promote equal status between women and men in society, it is essential that women have equal access to political rights. The Beijing Platform specified the relevance for women to be equally involved in decision-making processes as follows:

*“Women’s equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women’s interests to be taken into account.”<sup>30</sup>*

Accordingly, our investigation of relevant constitutional provisions was based on the following questions: Do constitutions guarantee women’s right of political association? Do constitutions protect women’s right to vote? And lastly, do constitutions protect women’s right to hold legislative office?

### ***Right of political association***

Currently, approximately half of constitutions guarantee women’s right of political association or women’s right of association or assembly broadly (37% and 19%, respectively). Overall, 38% of constitutions provide a universal guarantee of the right of association, but do not provide protections for women (see Map 11). Notably, 50% of the constitutions adopted after Beijing guarantee the right of political association to women compared to 32% of constitutions that were adopted before 1995.

### ***Right to vote***

The majority of constitutions protect women’s voting rights (79%), either by guaranteeing the right to vote to women explicitly (31%) or by guaranteeing universal suffrage and prohibiting discrimination based on gender (48%). The majority of remaining constitutions guarantee universal suffrage, without addressing gender specifically (see Map 12). To date, Holy See is the only country that changed its constitution since Beijing without granting universal suffrage to its citizens. While this may be of little concern for countries in which gender equality in voting is no longer an issue, constitutional protections of this right for women could be an important driver behind ongoing efforts to achieve greater gender equality in countries where women still face discrimination in this regard. In line with the findings for the right to political association, women’s right to vote is guaranteed at a greater frequency in constitutions that were adopted since Beijing relative to constitutions that were adopted prior to the Declaration. Ninety-five percent of constitutions adopted since Beijing protect women’s right to vote versus 73% of constitutions adopted pre-Beijing (see Map 13 and Map 14).

### ***Right to hold legislative office***

The right to hold legislative office is an important aspect of women’s political rights that requires protection. On a global scale, the majority of constitutions protect women’s right to hold legislative office, either by guaranteeing this right specifically to women or by having an elected legislature and prohibiting discrimination against women (27% and 49%, respectively). Overall, 20% of constitutions provide for an elected legislature but do not protect women’s right to be eligible for legislative office (see Map 15). Similar to the patterns for women’s right to vote, constitutions that were adopted after Beijing were more likely to include protections of this right for women.

It is important to note that constitutions vary in their approaches to promote women's representation in political roles, with different implications for gender equality. Some reserve a specific number of seats to women in the legislature, which may restrict rather than promote gender equality in the long term if the relative allocation of seats is different for men and women. Other constitutions require governments to reserve a minimum number of seats, and a third category of countries protect women's presence in elected bodies but do not specifically reserve seats for them.<sup>31</sup> Constitutional protections in this domain therefore require particular evaluation of their implications for women's representation in practice and requirements for additional structural and procedural measures to promote gender equality.

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## FAMILY LIFE

As stated in the Beijing Declaration, it is crucial that rights are protected in family life to advance women's autonomy and empowerment in society, and improve women's social, economic and political status worldwide. Specifically, the Declaration states:

*"Inequality in the public arena can often start with discriminatory attitudes and practices and unequal power relations between women and men within the family (...) The unequal division of (...) responsibilities within households based on unequal power relations also limits women's potential to find the time and develop the skills required for participation in decision-making in wider public forums. A more equal sharing of those responsibilities between women and men not only provides a better quality of life for women and their daughters but also enhances their opportunities to shape and design public policy, practice and expenditure so that their interests may be recognized and addressed."<sup>32</sup>*

Given the importance of women's equal rights in family life, in addition to the separate policy brief on work and family law and policy, we examined the question: Do constitutions protect women's right to equality in marriage?

### ***Right to equality in marriage***

In order to assess constitutions' approaches to protecting women's equality in marriage, we separately examined equal rights to enter marriage (meaning that marriage is not forced, that it is entered into with the free consent of spouses, or that men and women have equal rights to marry), to exit marriage (meaning that spouses have equal rights to divorce or dissolve a marriage), and within marriage (meaning that spouses broadly have equal rights, specifically surrounding children and property or that women do not have to give up their civil and political rights upon marriage).

Overall, constitutions show weak protections of women's rights in marriage and no significant difference in inclusion of these rights between constitutions adopted prior to Beijing and those adopted subsequently. In examining constitutional protections of women's right to equality in marriage, including entering, exiting, and within marriage, we found that the majority of constitutions do not mention any relevant protections (57%) or allow for possible limitations on equality in marriage (9%) by stating that customary or religious law may supersede some or all constitutional provisions or explicitly allowing for limitations in equality after marriage. These

may be provisions specific to family law or applicable to broader areas such as rights surrounding women's property, resources, or freedom of movement. Only 28% of current constitutions guarantee equal rights within marriage and/or when entering and exiting marriage. An additional five percent only guarantee equality in entering marriage and two percent aspire to protect at least one aspect of marriage equality for women (see Map 16). Of constitutions adopted prior to Beijing, 28% include protection of women's equality in all areas of marriage or at least when entering or exiting or within marriage, compared to 30% of constitutions adopted between 1996 and 2005 and 28% after 2005, showing that patterns have not changed significantly. Protection in all three areas has seen modest increases in the past decade: four percent of constitutions adopted prior to 1995, four percent of constitutions adopted between 1996 and 2005, and ten percent of constitutions adopted in the most recent period include such protections.

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## GENERAL EQUALITY

The Beijing Declaration emphasizes the need for states to protect the enjoyment of all human rights and freedoms by women and girls in accordance with the Charter of the United Nations, international law, and major international human rights treaties. Further, the Declaration requires governments to take action to ensure women's entitlement to economic, political and social rights on an equal basis with men and to prohibit discrimination on the grounds of sex. Specifically, action steps to be taken by governments include:

*"Promoting and protecting the full and equal enjoyment by women and men of all human rights and fundamental freedoms without distinction of any kinds as to (...) sex (...), [and] f) Take action to ensure that the human rights of women (...) are fully respected and protected."*<sup>33</sup>

In examining countries' approaches to protect gender equality broadly, we find that the majority of the world's constitutions take at least one approach to guaranteeing equality specifically for women in their constitutions (76%) and constitutions adopted after 1995 are more likely to include these protections than those adopted before Beijing. This means these national constitutions either guarantee women's right to equality, right to equality before the law, or equal enjoyment of rights; prohibit discrimination based on gender; or provide more than one of these guarantees. In a typical formulation, constitutions guarantee equality in rights regardless of gender.<sup>34</sup> An additional eight percent of countries guarantee gender equality in their constitutions, but allow customary or religious law to supersede all or some constitutional provisions. This exception could compromise women's rights since provisions relevant to women's equality may be overruled by customary or religious stipulations.

A number of constitutions do not even guarantee a basic level of protection of women's equality in rights. Ten percent of constitutions globally solely guarantee general equality without mentioning gender. Countries that only protect general equality but do not mention gender specifically may provide limited grounds for legal or other actions to promote gender equality. A number of countries do not mention any approaches to equality in their constitutions (five percent); however all but one of these ten constitutions (Holy See) were adopted prior to Beijing

(see Map 17 and Map 18). Our findings show that protections relevant for gender equality have been more frequently included in constitutions that were adopted after the Beijing Declaration (see Map 19).

Given the broad conceptualization of this right it is important to note that while the majority of countries include protections for gender equality, a number of countries could strengthen provisions by guaranteeing rights explicitly to women and by protecting women from possible restrictions of their rights based on religious or customary law.

## CONCLUDING REMARKS

The 20<sup>th</sup> anniversary of the Beijing Platform provides a crucial opportunity for states around the world to assess their progress in advancing gender equality. This in-depth examination of the state of women's and girls' human rights in constitutions around the world shows the level of protections countries have in place in their foundational documents and how protections have changed since Beijing. This information can be used to identify gaps in the existence and strength of women's rights protections. Further, these findings can be used to assess the implementation of rights in states where constitutional protections exist. Finally, regional variation can shed light on countries' progress or setbacks in ensuring women's and girls' rights relative to other countries in the same region and indicate feasibility of including relevant protections.

On a global scale, countries have made important strides in advancing gender equality in critical areas of concern of the Beijing Platform since 1995. Overall protections of the rights to equality for women in general and in the areas of education, health, employment, political decision-making, and family life are more frequently included in constitutions that were adopted since Beijing. This suggests that the increased international recognition of the importance of gender equality over the last few decades may be encouraging change. However protections are weaker when we examine specific rights within these spheres, as summarized below.

### EDUCATION

On a global scale, constitutions show considerable variation in the scope and specificity of protections of girls' rights to education. The majority of nations protect girls' right to equality in education and guarantee free primary education to citizens, which enhances girls' chances to receive a basic level of education. However, the majority of constitutions do not mention girls' right to secondary education, revealing major gaps in protecting the right to education at a level that is required for most jobs that provide an adequate income. While overall levels of protections are weak, countries that have adopted their constitution since 1995 were more likely to incorporate the right to free secondary education. Similarly, constitutions that were adopted since Beijing were found to have more protections for girls' right to equality in education and girls' right to primary education. While overall progress has been made, it is important to

consider rights to specific levels of education as well as regional variation to identify opportunities for countries to move forward.

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## HEALTH

We found substantial variation in the focus, specificity, and level of protection of fundamental rights to health for women. Judging by the standards outlined in the Beijing Declaration, there are significant gaps in the level of protection of women's health rights at a constitutional level. While rights to medical treatment and public health for women have increasingly been incorporated in constitutions adopted since Beijing, overall levels of protection are still low. Examining fundamental protections of women's health in constitutions more broadly however, reveals greater commitment over time of states to protect at least some aspect of women's right to health.

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## WORK

Our examination of the state of women's rights in employment since Beijing shows that relatively few constitutions protect women from discrimination in employment or guarantee the right to equal pay for equal work to women. Increasing levels of protections in constitutions adopted since Beijing may indicate greater recognition of the relevance of these rights. However, overall low levels of protections show that many nations could do more to advance this important area of women's fundamental rights.

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## POLITICAL RIGHTS

Countries vary considerably in their approaches to ensuring women's rights in power and decision-making in society. Overall, women's political rights have increasingly been incorporated in constitutions since Beijing and protections are more common in recently adopted constitutions. The current status of women's rights in this area suggests however that states could strengthen existing levels of protection by providing guarantees specifically for women in addition to universal protections. While a considerable number of states protect rights in these areas universally and not for women specifically, trends show that constitutions adopted since Beijing more frequently include relevant protections of political rights for women.

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## FAMILY LIFE

While overall progress has been made in enhancing women's rights in political decision-making, our examination highlights the lack of advancement in the status of women's marital rights. The majority of constitutions do not address women's rights in entering, exiting, and within marriage and most of the constitutions that include relevant provisions do not protect women's rights in this sphere comprehensively. This is an area of critical concern and requires further attention to promote women's equal status in society. Interestingly, countries across regions, including Armenia, Japan, Malawi, Namibia, Serbia, Tajikistan, and Vietnam guarantee equality in all aspects of marital rights for women, demonstrating that there are no geographic constraints in

comprehensively protecting women's rights upon changing their civil status. Equal rights in marriage irrespective of the partner's gender are also critical. Twelve constitutions (6%) explicitly deny and one specifies that legislation may deny this right. More than two thirds fail to address it. The remaining have ambiguous wording. Ongoing work is examining this.

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## GENERAL EQUALITY

An examination of constitutional approaches to protecting gender equality broadly, shows that progress since Beijing has been made, but several countries could do more to ensure their constitutions reflect the Beijing Declaration's objectives to protect the full and equal enjoyment of all human rights and fundamental freedoms by women and men. While the majority of the world's constitutions take at least one approach to guaranteeing equality specifically for women in their constitutions, a number of constitutions do not guarantee a basic level of protection of women's equality in rights or place gender equality at risk indirectly by allowing customary or religious law to prevail over provisions in the constitution. Moreover, countries that only protect general equality but do not mention gender specifically may provide limited grounds for legal or other actions to promote gender equality. It remains a crucial responsibility of countries to bring constitutional provisions in line with the objectives of the Beijing Declaration and other international treaties in order to protect the equal enjoyment of human rights for all individuals regardless of gender.

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- 22 Cuba's Constitution for example, states that: "*The state consecrates the right achieved by the Revolution that all citizens, regardless of race, skin color, sex, (...) have a right to education at all national educational institutions, ranging from elementary schools to the universities, which are the same for all*" (Constitution of the Republic of Cuba. 1976 (amended to 2002). Art. 43.)
- 23 Uzbekistan's constitution for example, stipulates that: "*Everyone shall have the right to education. The state shall guarantee free secondary education*". (Constitution of Uzbekistan. 1992 (as amended to 2003). Art. 41.)
- 24 Beijing Declaration. 1995. p. 34-42.
- 25 Guatemala's constitution for instance, includes the following provision to protect citizens' right to public health: "*The State will see to the health and social assistance of all its inhabitants. It will develop through its institutions preventive measures, promotion, recuperation, rehabilitation, coordination, and appropriate auxiliary measures in order to procure for them the most complete physical, mental, and social well-being.*" (Constitution of Guatemala. 1985 (amended to 1993). Art. 94.)
- 26 Nepal's constitution provides an example of such an approach. The constitution guarantees citizens' right to health as follows: "*The State shall have the following obligations: (h) To pursue a policy of establishing the right of all citizens to education, health, (...)*". (Constitution of Nepal. 2006 (amended to 2008). Art. 33.) In a separate article, the constitution provides a potential privilege for women's right to health: "*Policies of the State: (8) The State shall pursue a policy of making the women participate, to the maximum extent, in the task of national development, by making special provisions for their education, health and employment*". (Constitution of Nepal. 2006 (amended to 2008). Art. 35.) It also includes a provision to protect women from discrimination: "*No discrimination shall be made against any citizen in the application of general laws on grounds of (...) sex (...)*". (Constitution of Nepal. 2006 (amended to 2008). Art. 13.)
- 27 Beijing Declaration. 1995. p. 68-70.
- 28 Haiti's constitution provides an example of a stipulation that protects women from discrimination in work: "*The State guarantees workers equal working conditions and wages regardless of their sex [...]*". (Constitution of Haiti. 1987 (as amended to 2011). Art. 35.)
- 29 Belarus' constitution, for examples, stipulates that "*Women and men [...] shall be entitled to equal remuneration for work of equal value*". (Constitution of Belarus. 1994 (amended to 2004). Art. 42.)
- 30 Beijing Declaration. 1995. p. 79.

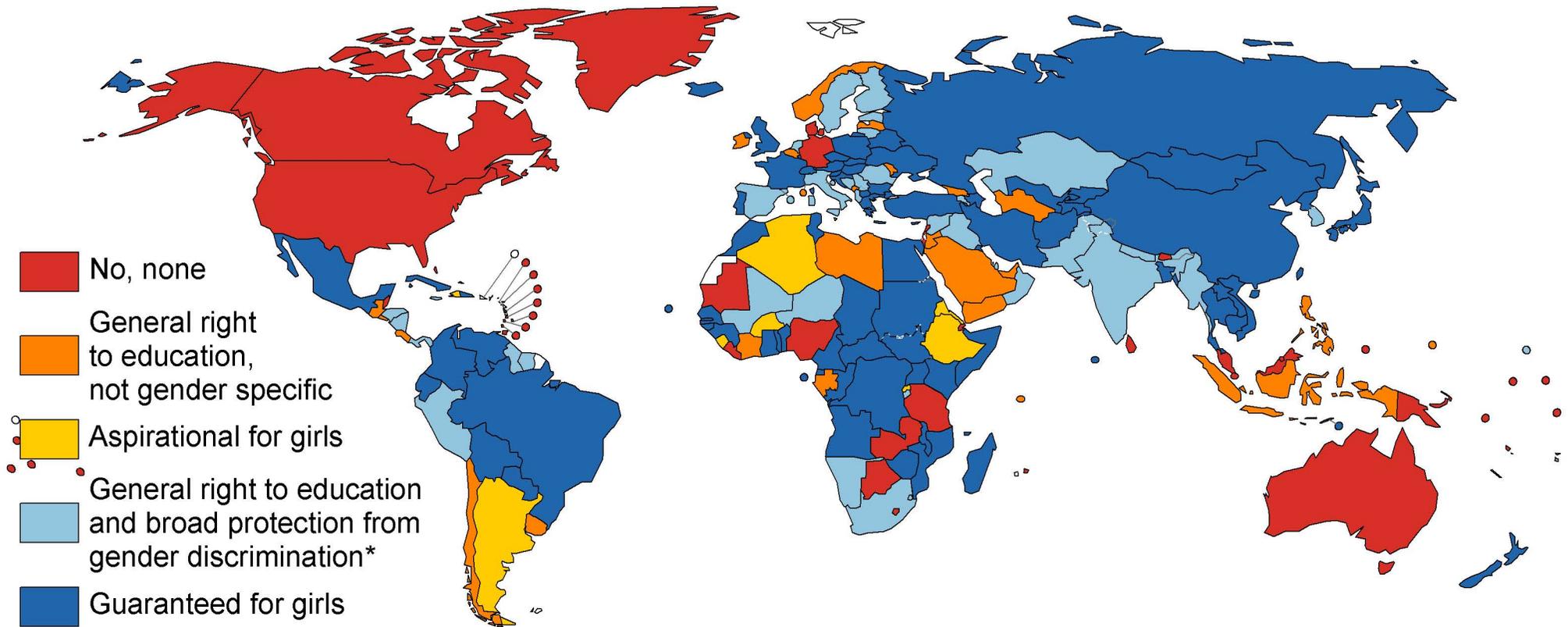
31 Argentina's constitution, for example, stipulates that "*actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system*". (Constitution of the Argentine Republic. 1853 (amended to 1994). Art. 37.)

32 Beijing Declaration. 1995. p. 80.

33 Beijing Declaration. 1995. p. 96.

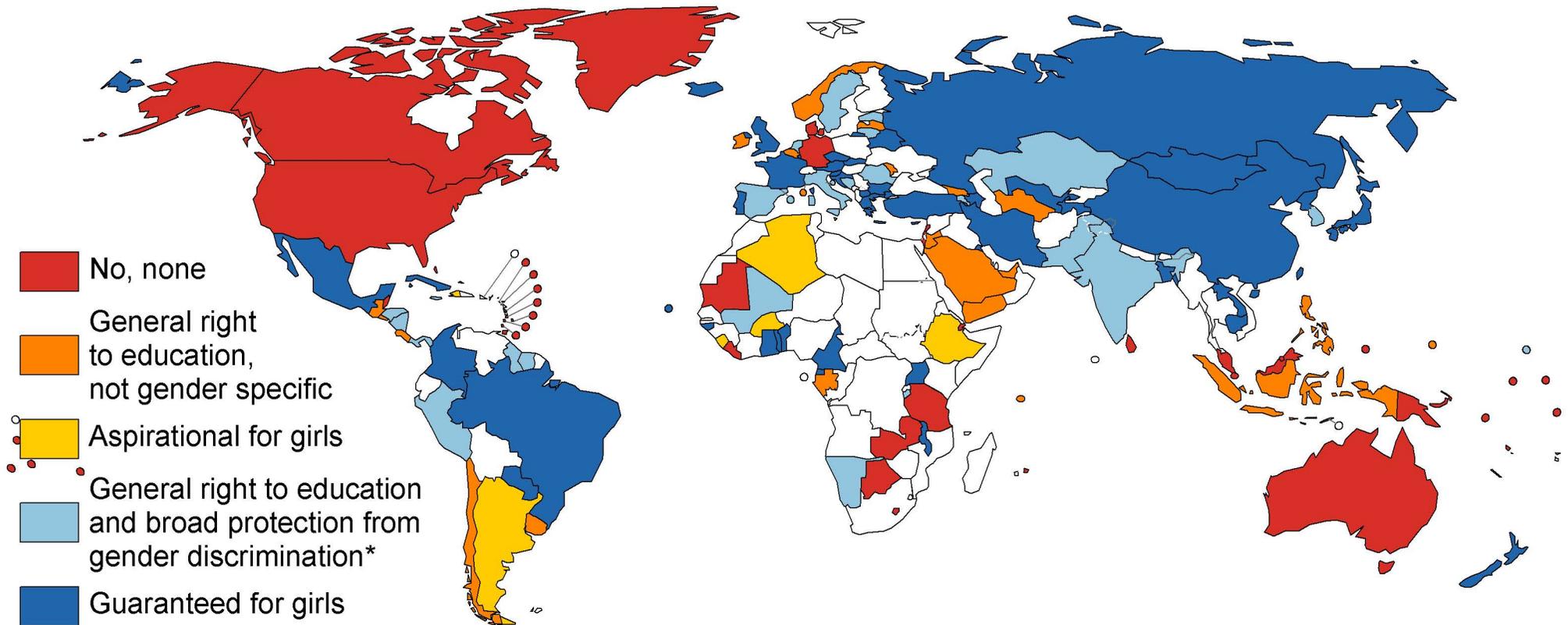
34 Macedonia's constitution for example, specifies the following: "*Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, (...)*". (Constitution of the Republic of Macedonia. 1991 (amended to 2009). Art. 9.)

# Map 1: Does the constitution protect girls' right to equality in education?



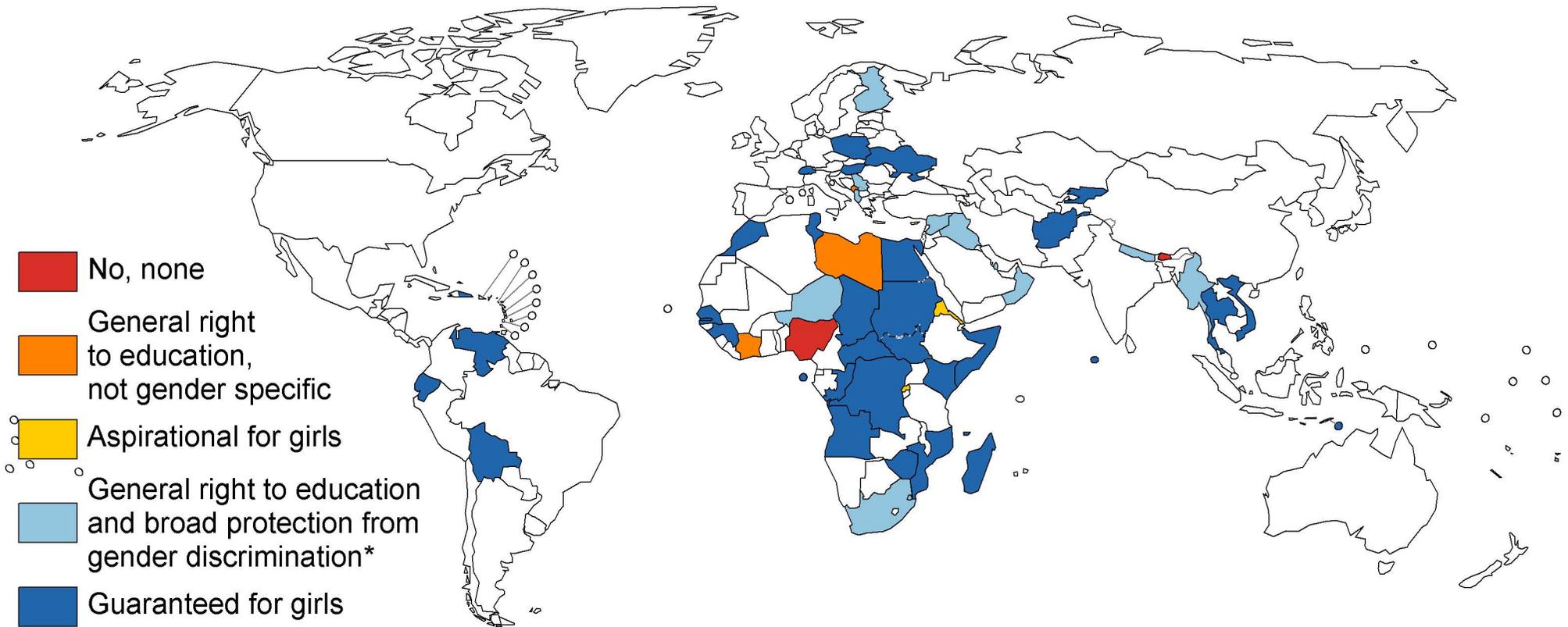
\**Broad protection from gender discrimination* means that the constitution provides general protection against discrimination based on gender, but does not specifically protect against discrimination in education based on gender.

## Map 2: Do constitutions adopted before the Beijing Platform for Action protect girls' right to equality in education?



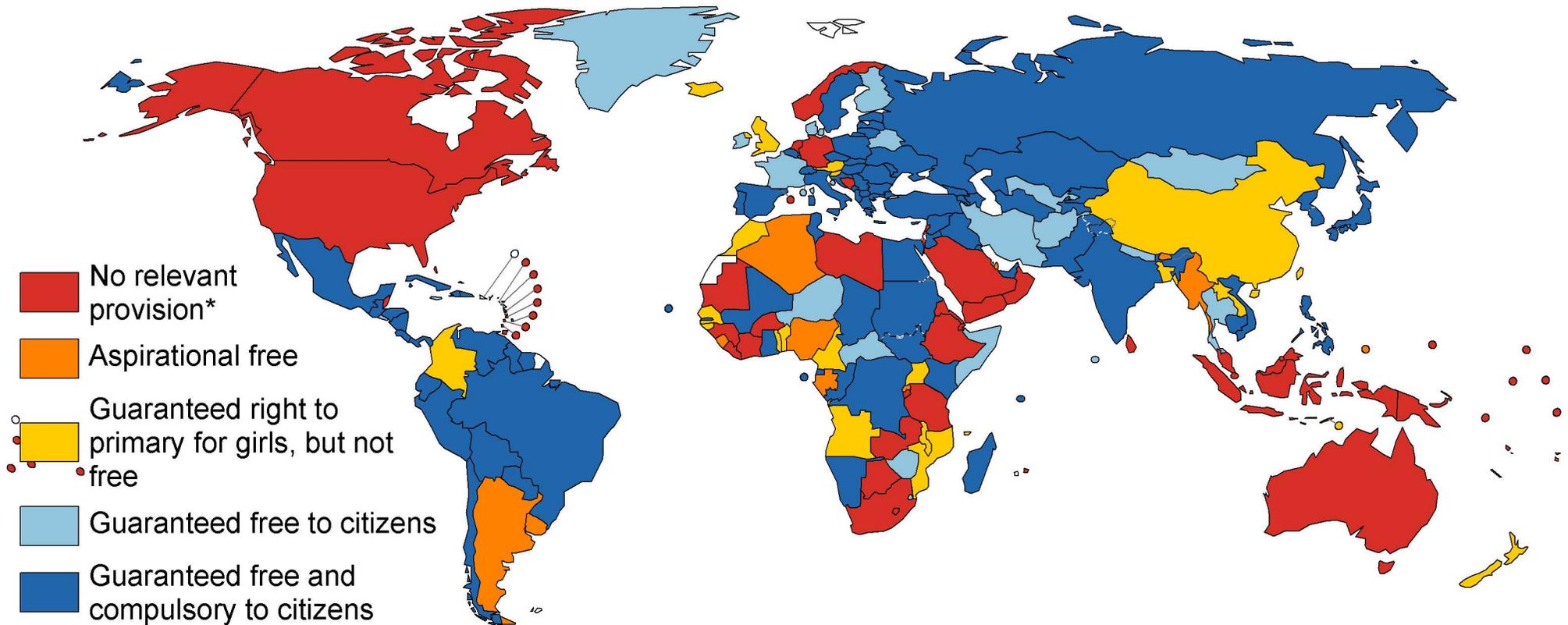
\**Broad protection from gender discrimination* means that the constitution provides general protection against discrimination based on gender, but does not specifically protect against discrimination in education based on gender.

# Map 3: Do constitutions adopted after the Beijing Platform for Action protect girls' right to equality in education?



\*Broad protection from gender discrimination means that the constitution provides general protection against discrimination based on gender, but does not specifically protect against discrimination in education based on gender.

## Map 4: What type of right to primary education does the constitution guarantee for girls?

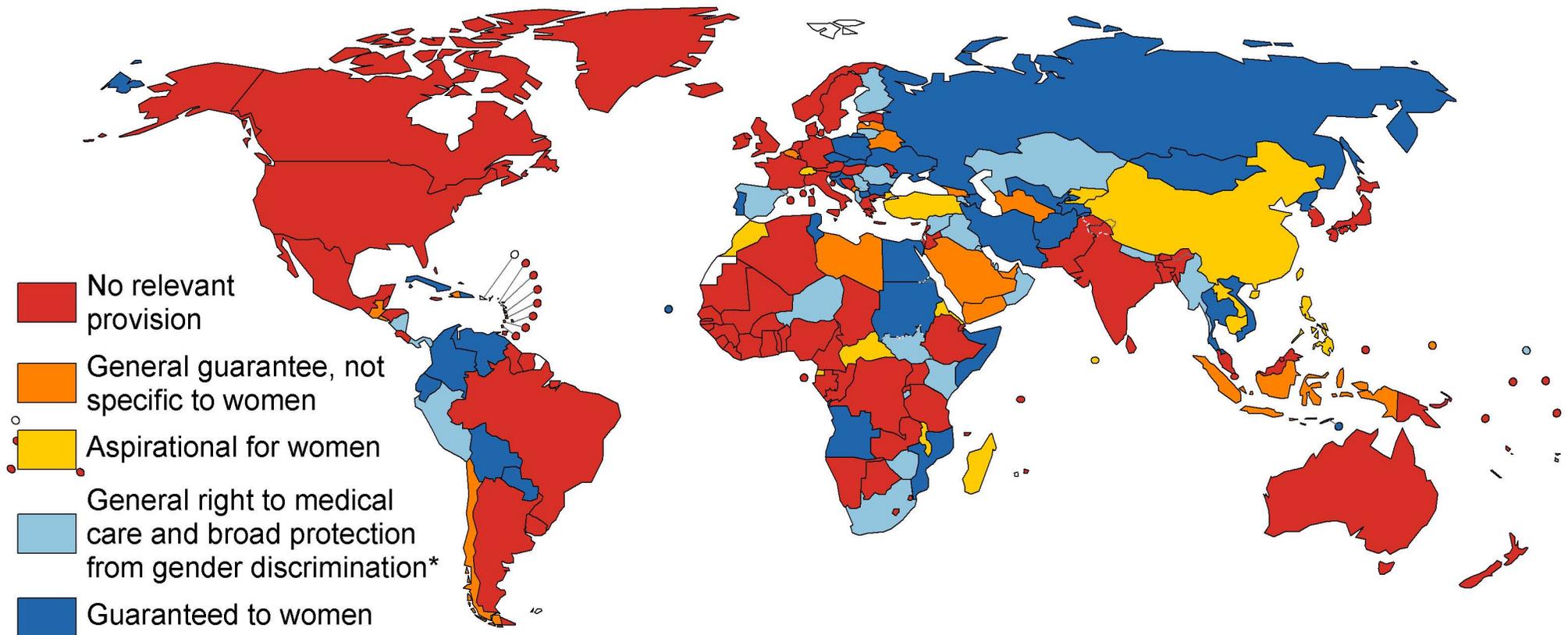


*Right to primary education* means the constitution explicitly mentions a right to primary education or education generally.

\**No relevant provision* means that the constitution does not contain provisions that lower the barriers to girls receiving a primary education, such as explicit guarantees of free primary education to all citizens or guarantees of primary education for girls.



# Map 6: Does the constitution guarantee medical care treatment to women and girls?

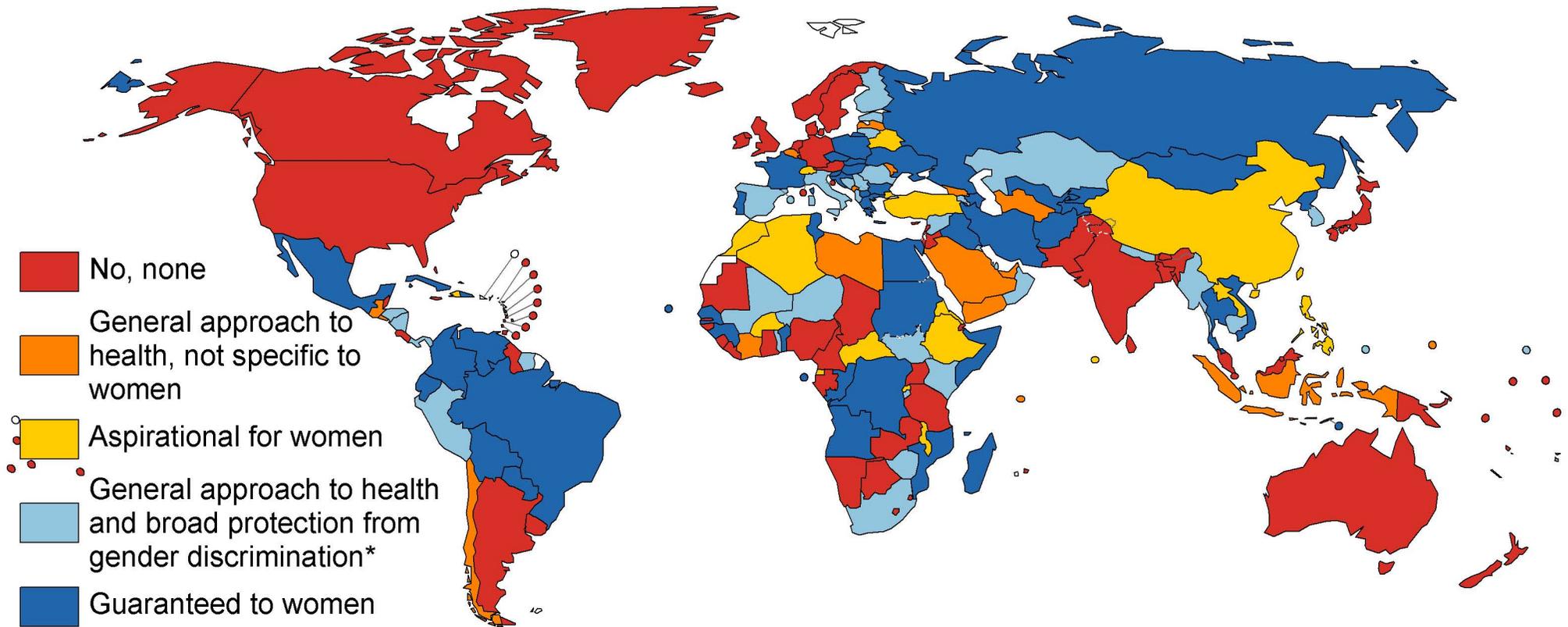


The right to medical care treatment includes "curative services," "health-care services," "disease treatment," or discussion of the state's responsibility to restore/rehabilitate health.

\**Broad protection from gender discrimination* means that the constitution provides general protection against discrimination based on gender, but does not specifically guarantee women a right to medical care treatment.



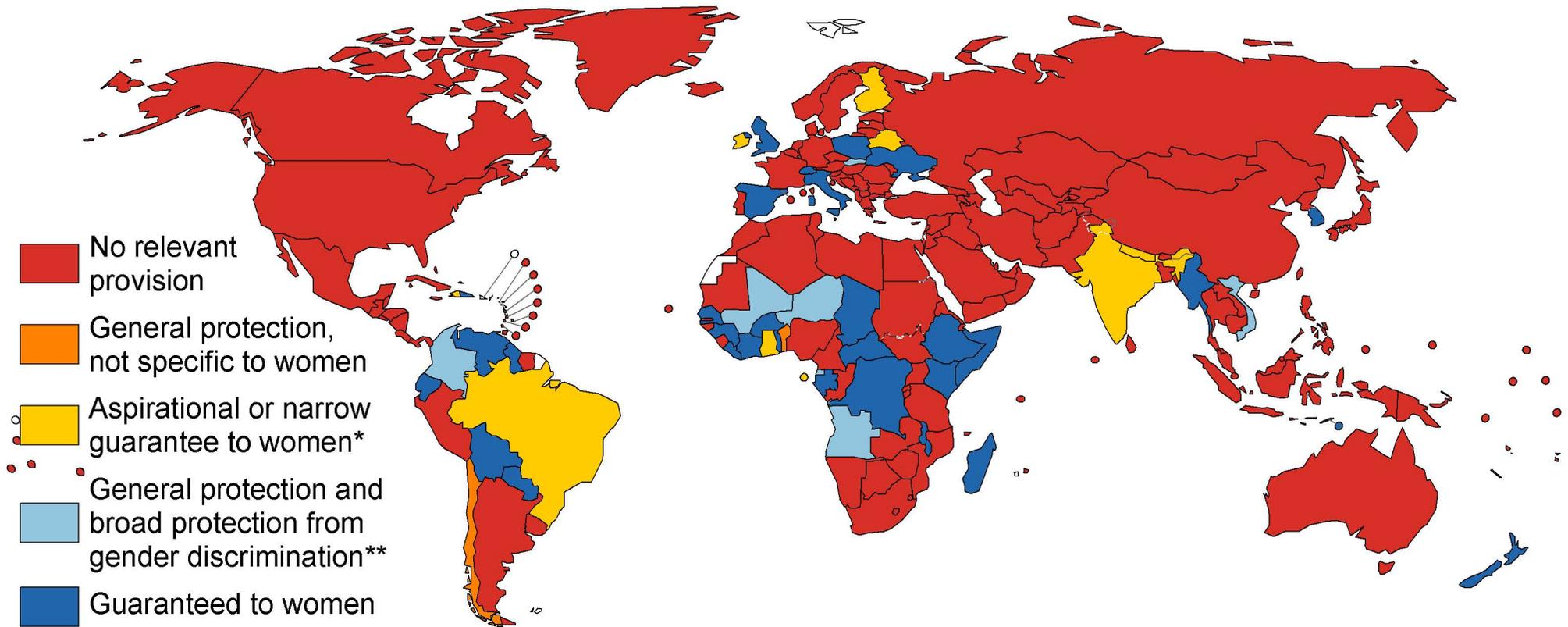
## Map 8: Does the constitution take any approach to health for women?



Approaches to health include the right to health, public health, or medical services.

\**Broad protection from gender discrimination* means that the constitution provides general protection against discrimination based on gender, but does not specifically guarantee protection of health on the basis of gender.

## Map 9: Does the constitution guarantee protection from discrimination at work for women?

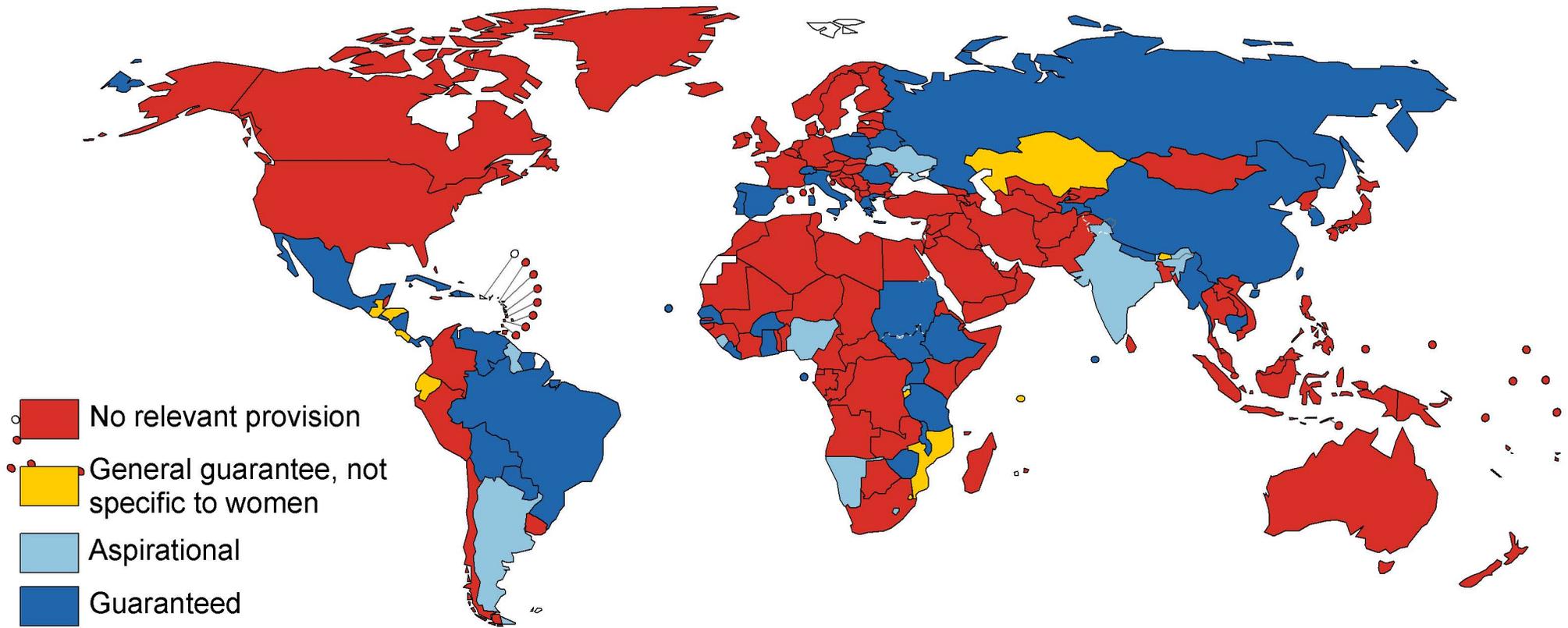


*Protection from discrimination at work* includes equality in hiring, promotions, and working conditions.

\**Narrow guarantee to women* means that the constitution only protects women from discrimination at work in specific areas, such as hiring, promotions, or working conditions.

\*\**Broad protection from gender discrimination* means that the constitution provides general protection against discrimination based on gender, but does not specifically guarantee women protection from discrimination at work.

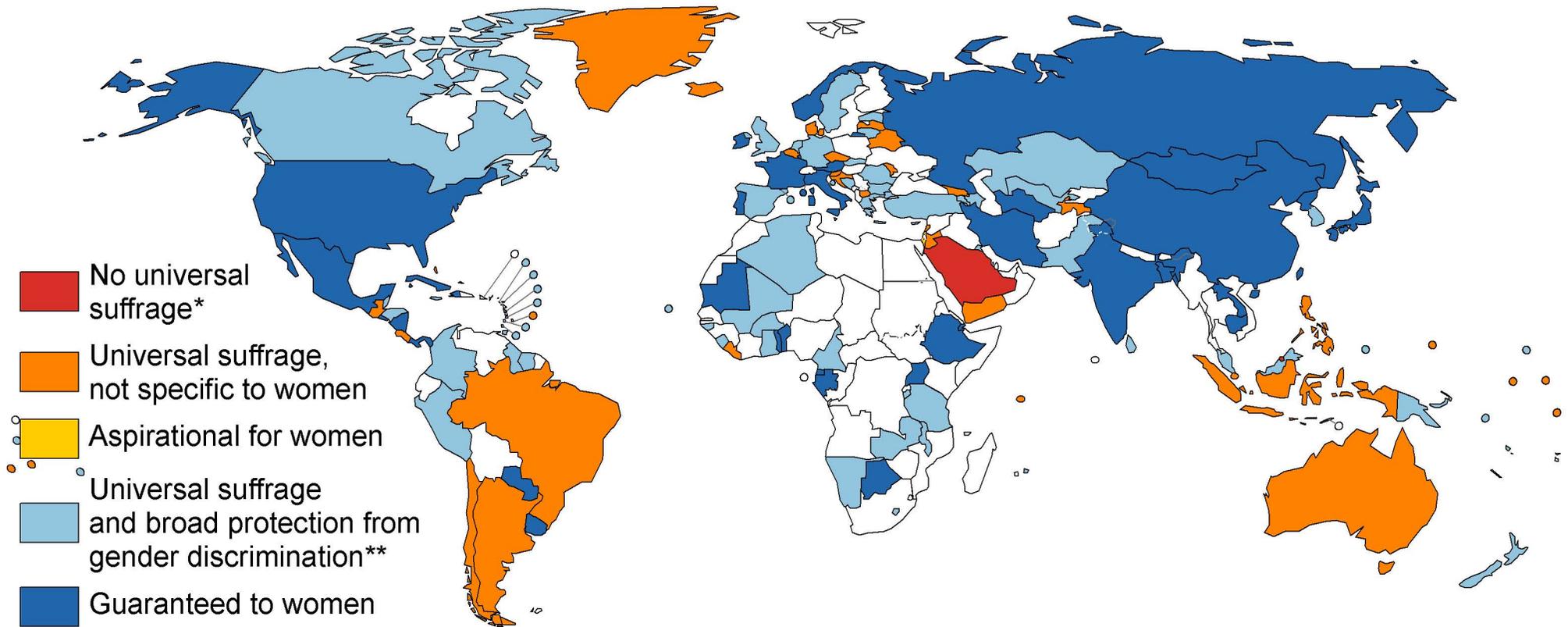
# Map 10: Does the constitution guarantee women the right to equal pay for equal work?







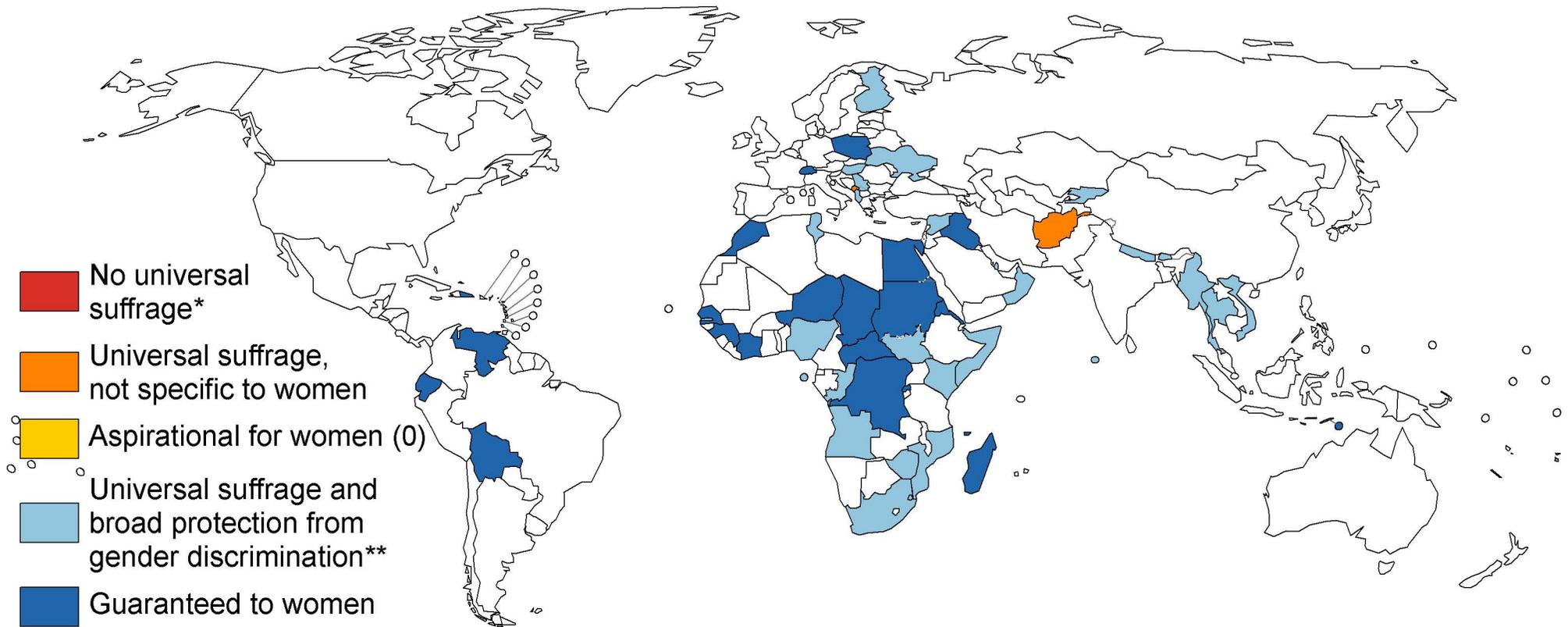
# Map 13: Do constitutions adopted before the Beijing Platform for Action protect women's right to vote?



\*No universal suffrage means that the constitution does not provide for elected legislative bodies or an elected executive.

\*\*Broad protection from gender discrimination means that the constitution provides general protection against discrimination based on gender, but does not specifically protect women's right to vote or political rights.

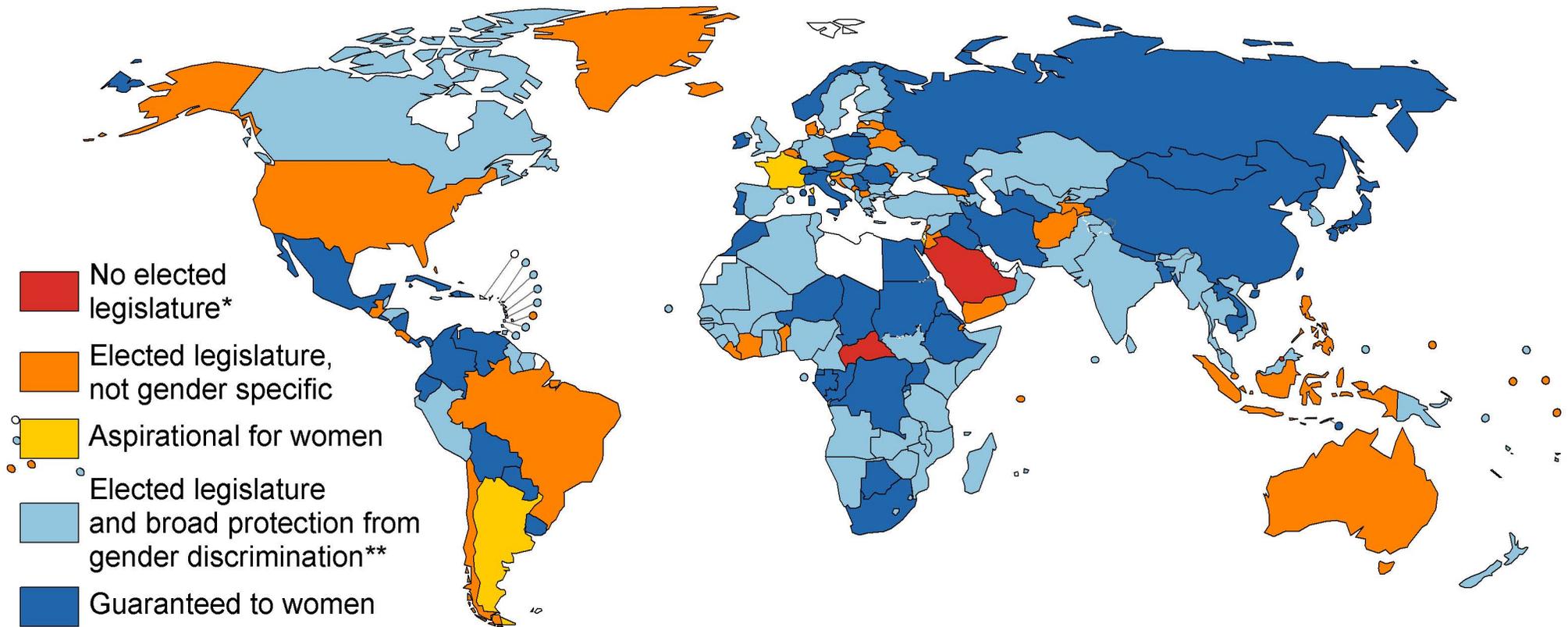
# Map 14: Do constitutions adopted after the Beijing Platform for Action protect women's right to vote?



\*No universal suffrage means that the constitution does not provide for elected legislative bodies or an elected executive.

\*\*Broad protection from gender discrimination means that the constitution provides general protection against discrimination based on gender, but does not specifically protect women's right to vote or political rights.

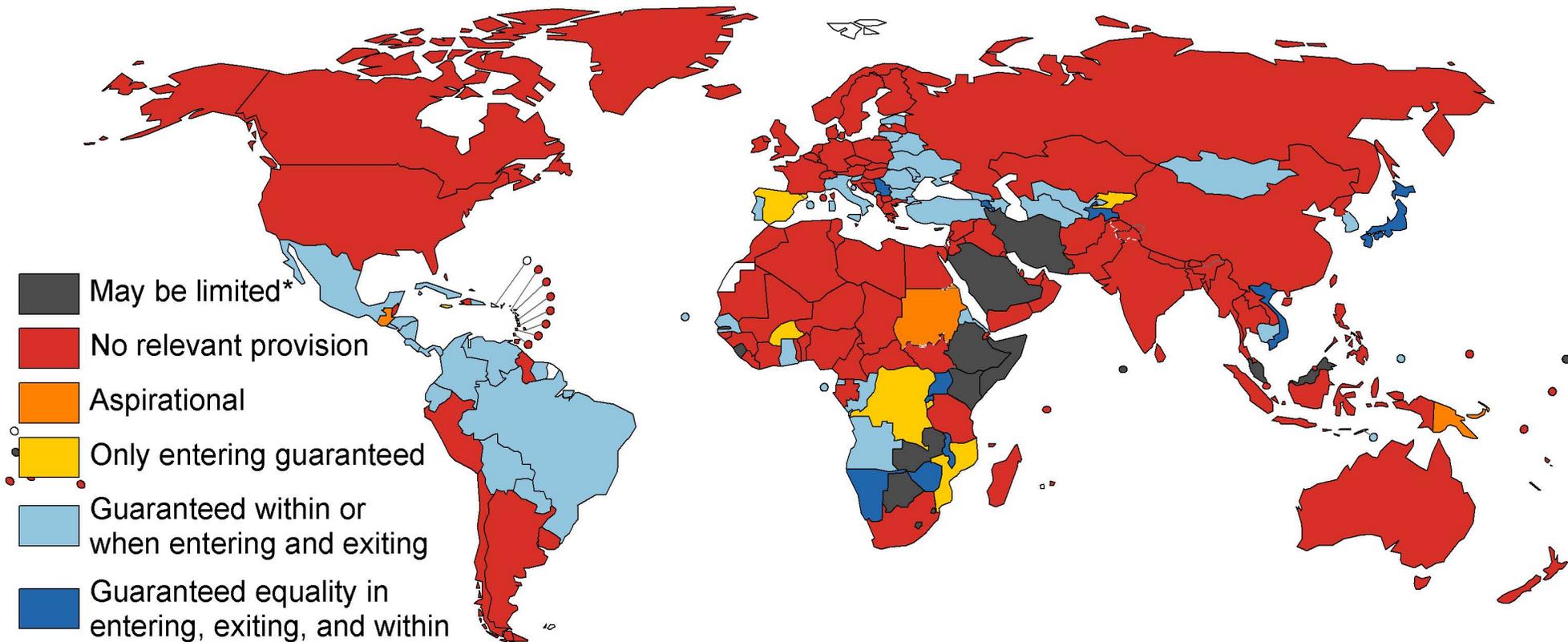
# Map 15: Does the constitution protect women's right to hold legislative office?



\*No elected legislature means that the constitution does not provide for elected legislative bodies.

\*\*Broad protection from gender discrimination means that the constitution provides general protection against discrimination based on gender, but does not specifically protect women's right to hold legislative office or political rights.

# Map 16: Does the constitution protect women's right to equality in marriage in all aspects including entering, exiting, and within marriage?



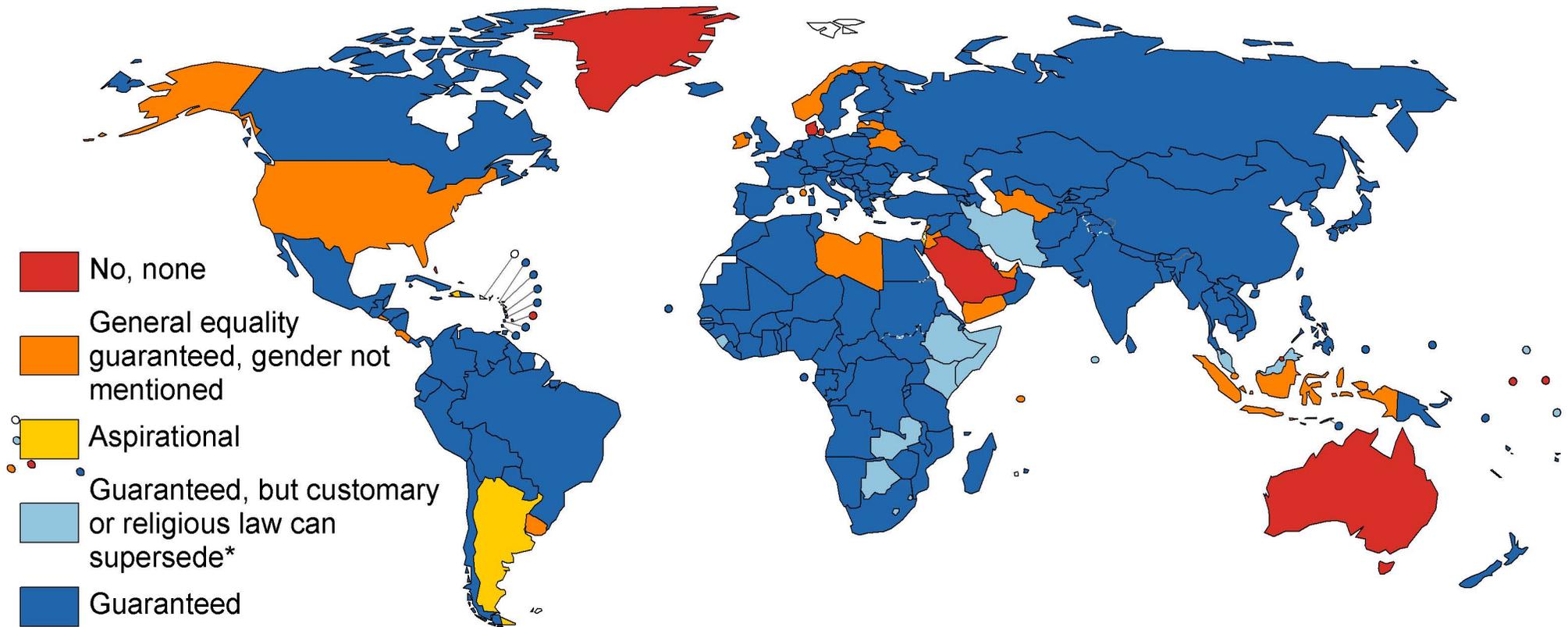
*Equality in entering marriage* means that the constitution guarantees that marriage is not forced, that it is entered into with the free consent of spouses, or that men and women have equal rights to marry.

*Equality in exiting marriage* means that spouses have equal rights to divorce or dissolve a marriage.

*Equality within marriage* means that spouses broadly have equal rights, specifically have equal rights surrounding children, and/or to property, or that women do not have to give up their civil and political rights upon marriage.

\**May be limited* means that customary or religious law may override some or all constitutional provisions.

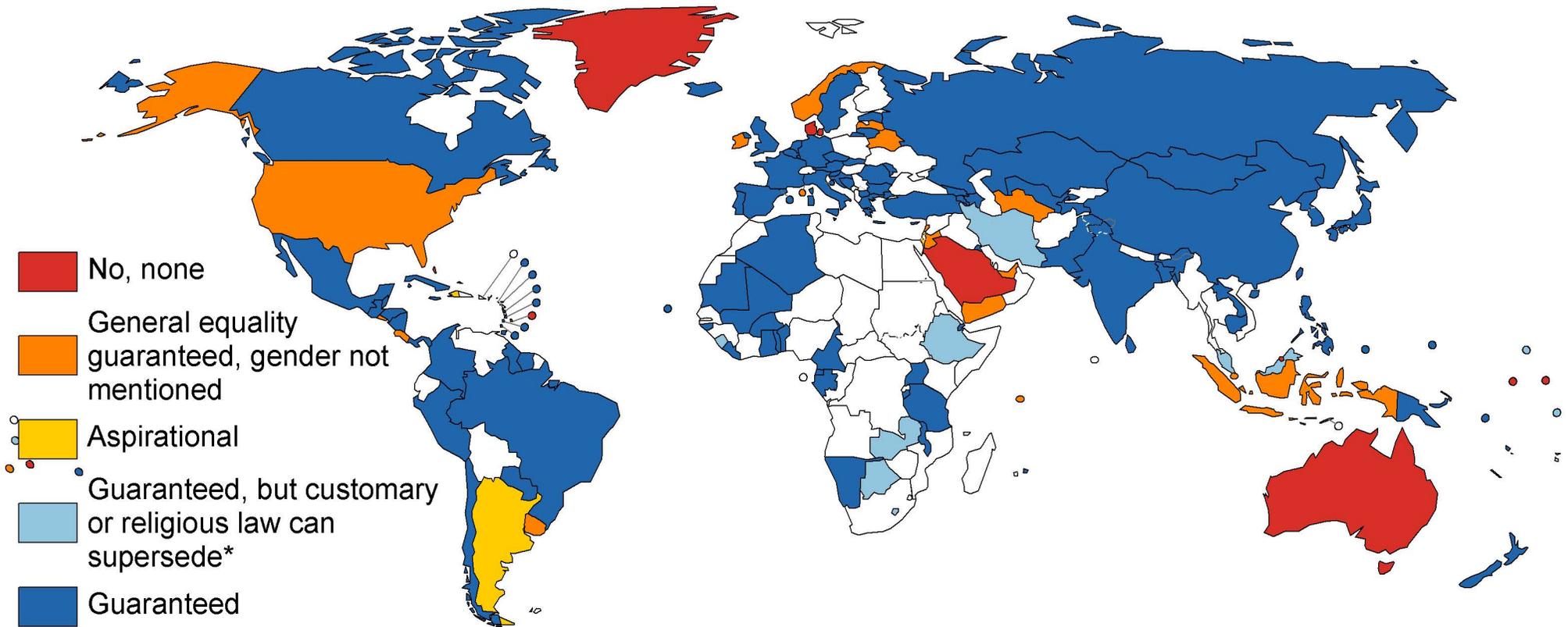
# Map 17: Does the constitution take any approach to gender equality?



Approaches to gender equality include prohibitions of discrimination against women, guarantees of equal rights, guarantees of equality before the law, and guarantees of overall equality for men and women.

\**Guaranteed, but customary or religious law can supersede* means that the constitution guarantees at least one approach to gender equality, but also allows for religious or customary law to prevail over all or parts of the constitution.

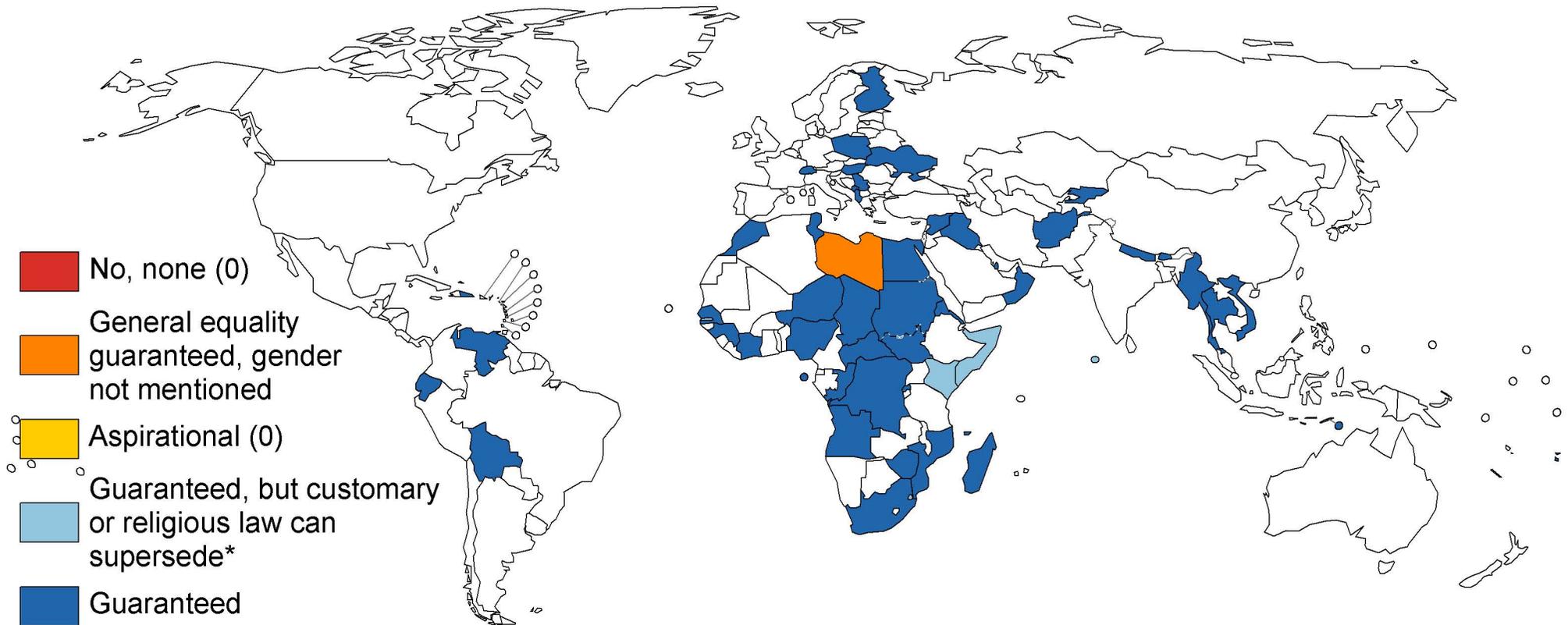
# Map 18: Do constitutions adopted before the Beijing Platform for Action take at least one approach to gender equality?



Approaches to gender equality include prohibitions of discrimination against women, guarantees of equal rights, guarantees of equality before the law, and guarantees of overall equality for men and women.

\**Guaranteed, but customary or religious law can supersede* means that the constitution guarantees at least one approach to gender equality, but also allows for religious or customary law to prevail over all or parts of the constitution.

## Map 19: Do constitutions adopted after the Beijing Platform for Action take at least one approach to gender equality?



Approaches to gender equality include prohibitions of discrimination against women, guarantees of equal rights, guarantees of equality before the law, and guarantees of overall equality for men and women.

\**Guaranteed, but customary or religious law can supersede* means that the constitution guarantees at least one approach to gender equality, but also allows for religious or customary law to prevail over all or parts of the constitution.