

LGBTIQ HUMAN RIGHTS · POLICY BRIEF

COMPREHENSIVE NONDISCRIMINATION LAWS FOR LGBTIQ PEOPLE

February 2026 · outrightinternational.org

KEY POINTS

- People around the world **face discrimination** based on their sexual orientation, gender identity, gender expression, and sex characteristics.
- Nondiscrimination laws are a crucial tool to **prevent discrimination** and **provide redress**.
- Nondiscrimination laws work best for LGBTIQ people when they **explicitly include** sexual orientation, gender identity, gender expression, and sex characteristics as protected grounds.
- Laws should protect against discrimination in **all aspects of life**, including work, education, health care, housing, public services, and access to justice.
- Gradual progress toward nondiscrimination protections, through **local, sector-specific, or regulatory reforms**, can build precedent for national change.

What is the purpose of this policy brief?

Discrimination against lesbian, gay, bisexual, transgender, nonbinary, intersex, and queer people takes place around the world. Many countries have laws that protect people against certain forms of discrimination, but most of these laws do not do enough to prevent discrimination on the grounds of sexual orientation, gender identity, gender expression, and sex characteristics.

Legal frameworks that do not prohibit discrimination on these grounds may leave people without enforceable protection in many areas of life.

International human rights instruments establish that everyone is entitled to equal protection of rights “without distinction of any kind.” UN treaty bodies have confirmed that these equality guarantees extend to discrimination based on sexual orientation and gender identity, and have emphasized that states must ensure effective protection in law and in practice against such discrimination. Regional systems have reinforced similar obligations, creating a growing normative consensus that discrimination against LGBTIQ people is unlawful.

In some countries, lawmakers are removing protections as a result of far-right influence. In other countries, there are new opportunities to pass nondiscrimination legislation or amend existing legislation to add more protected characteristics, and advocates and policymakers are weighing

which approaches to legislating nondiscrimination are most effective, comprehensive, and politically viable.

Law is not a panacea. Preventing discrimination also requires education, normative change, and institutional practice. Yet legislation, regulation, and accountability mechanisms play a central role in setting binding standards and making protection operational in everyday contexts.

This brief provides a general framework for understanding and advancing inclusive nondiscrimination laws, which governments should implement alongside other preventive strategies.

What types of discrimination do LGBTIQ people experience?

LGBTIQ people experience discrimination in both direct and indirect forms, across public and private spheres, based on sexual orientation, gender identity, gender expression, and sex characteristics. It takes the form of explicit exclusion, unequal treatment, and harassment, as well as seemingly neutral rules or practices that have disproportionate and harmful effects in practice.

Common forms of discrimination include denial of employment, housing, education, health care, or public services; refusal to issue or recognize identity documents; harassment, abuse, or exclusion by

public officials or service providers; and exclusion from democratic participation, social protection schemes, or family-related benefits.

Some people of queer experience, including women, older people, migrants, people with disabilities, indigenous people, people of color, and people living in poverty, may face compounded forms of exclusion, increasing their vulnerability and limiting access to remedies.

What does international human rights law say?

International human rights law establishes that all people are entitled to equality and protection from discrimination, including on grounds that are not always explicitly listed in domestic legislation. Across global and regional systems, states are required not only to recognize equality in principle but to ensure it operates in practice.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) impose nondiscrimination obligations across the application of all other rights.¹ Other UN treaties reinforce these duties in specific contexts. For instance, the Convention on the Rights of the Child prohibits discrimination against all children and adolescents without distinction of any kind—a guarantee that encompasses discrimination based on sexual orientation, gender identity, gender expression, and sex characteristics.² The Convention Against Torture requires states to prevent cruel, inhuman, or degrading treatment, including where institutional discrimination creates conditions of vulnerability or abuse.³

Regional systems complement these standards:

- In the Americas, the Belém do Pará Convention embeds nondiscrimination within violence prevention frameworks.⁴
- In Europe, the European Convention on Human Rights and Protocol No. 12 establish binding equality guarantees.⁵
- In Africa, the Maputo Protocol—an African Union treaty on the rights of women—requires states to eliminate discrimination against women and to

promote gender equality, reinforcing nondiscrimination duties.⁶

Taken together, these instruments require states to prohibit discrimination across sectors, ensure access to effective complaint mechanisms, and remove laws or practices that obstruct access to justice and essential services. When these obligations are met, nondiscrimination frameworks can function as meaningful tools of protection for LGBTIQ people.

Comprehensive nondiscrimination laws are laws that protect all people from discrimination across multiple sectors of life, including employment, education, health care, housing, public services, and access to justice, and that cover a broad range of protected characteristics. A law is not comprehensive when it offers protection in only one sector or when it covers only one protected characteristic.

Is explicit inclusion of LGBTIQ people in nondiscrimination legislation important?

The explicit naming of sexual orientation, gender identity, gender expression, and sex characteristics as protected grounds can strengthen legal clarity and reduce the risk of exclusion in the application of nondiscrimination laws.

When a statute clearly states “sexual orientation,” “gender identity,” “gender expression,” and “sex characteristics” as protected grounds in anti-discrimination provisions, institutions have a firm basis to act, enforce, and provide remedies. Without this clarity, protections become uneven and fragile, and their application depends on context-specific interpretation, discretionary decision-making, or evolving judicial approaches rather than on clear, enforceable obligations.

This is particularly evident where nondiscrimination frameworks protect only on the basis of sexual orientation. Such limited formulations often fail to address discrimination experienced by transgender, nonbinary, and intersex people, whose exclusion is more directly linked to gender identity, gender

expression, or sex characteristics. Comprehensive protection requires recognizing all of these grounds together.

On the other hand, for policymakers working in contexts where laws protect against discrimination on the basis of “sex,” “gender,” or an open-ended “other grounds,” but do not include sexual orientation, gender identity, gender expression, or sex characteristics, **it is crucial not to assume and act upon the belief that LGBTIQ people are not protected.**

As a matter of purpose and ordinary legal interpretation, the default should be an inclusive reading of “sex” and “gender” protections, because discrimination targeting people of queer experience frequently operates through sex-based distinctions and gender stereotypes. In several instances, human rights bodies and courts have taken this approach, by interpreting protections on the ground of “sex” to encompass sexual orientation and treating discrimination related to gender reassignment as a form of sex discrimination.⁷

What should enforcement mechanisms include?

Legal protections against discrimination are toothless in the absence of clear, accessible, and nondiscriminatory complaint procedures and mechanisms for enforcement.

- **Complaint bodies:** Independent institutions with authority to receive complaints, investigate, and resolve discrimination cases across various sectors (such as ombuds offices, human rights commissions, or equality tribunals).
- **Specific sanctions:** Clearly defined penalties that apply to state agencies and private actors that discriminate based on protected characteristics.
- **Training and accountability systems for public officials:** Mandatory education and oversight to ensure public servants apply equality standards in practice.
- **Public dissemination:** Making nondiscrimination standards publicly known through accessible state channels—such as official gazettes, parliamentary proceedings, administrative circulars, or public guidance—so that individuals

understand that exclusion is prohibited and remedies exist.

- **Repeal of punitive laws that block reporting or access to justice:** Removal of criminal or administrative provisions that stigmatize identities or prevent survivors from seeking help safely.

Which sectors should be covered?

- **Employment and workplace conditions:** Protection from biased hiring processes, unequal treatment, intimidation, harassment, or unfair dismissal based on personal identity or characteristics.
- **Education:** Guarantees against exclusion, bullying, or discriminatory rules that limit students’ participation or access to learning environments and extracurricular activities.
- **Health care:** Equal access to care, including services free from pathologization or degrading treatment.
- **Housing:** Protection from discrimination in access to rental housing, property ownership, or accommodation, including refusal, eviction, or unequal conditions.
- **Access to services and public accommodations:** Equal access to services provided by governments and private entities, without denial, restriction, or arbitrary barriers.
- **Legal aid and access to justice:** Right to counsel and complaint processes, free from discriminatory interference.

What are the key indicators that a nondiscrimination law is working in practice?

A key indicator is that **people know the nondiscrimination law exists**, trust the system enough to report violations, and can access remedies without unnecessary barriers. Awareness converts rights into real protection.

Another indicator is that **institutions abide by the law consistently**, meaning employers do not reject applicants, schools do not block enrollment, and

public services do not deny assistance based on protected grounds. The law must be applied in practice, not merely exist on paper.

A third signal is that **oversight bodies** are taken seriously, and that their findings trigger concrete action by the state. Investigations must lead to remedies and, where appropriate, sanctions when discrimination occurs, regardless of whether the perpetrator is a public official or a private actor.

What role should criminal codes play in sanctioning discrimination against LGBTIQ people?

Some states embed nondiscrimination clauses in their criminal codes, either by directly punishing discriminatory acts or allowing bias motivation to intensify liability.

Outright cautions that individual criminal liability should not be the default or sole response to discrimination. Criminal penalties are not appropriate to address all forms of harm and should generally be a last resort, particularly when they rely on carceral measures, which almost always lead to adverse human rights consequences.⁸ In most cases, civil liability is a more appropriate remedy.

Further, discrimination at the point of service must be addressed at the highest levels within the entity responsible for such discrimination. Entities such as companies and public service providers should be motivated by nondiscrimination laws to enact and enforce policies prohibiting personnel from engaging in discriminatory behaviors. When a receptionist discriminates against a patient, or a cashier discriminates against a customer, the entity that employs them, not the individual “face” of discrimination—often, someone with limited power within the entity—should generally bear responsibility. Civil liability transfers accountability to the owners and managers of public and private entities, and can require them to take steps to provide redress and ensure nonrepetition.

Individual criminal liability may, however, be appropriate when discrimination is accompanied by physical harm or other actions that are already covered under criminal law—for instance, physical or sexual assault.⁹

The strongest legal architectures are typically hybrid: they preserve criminal liability for extreme abuse while investing in restorative, stigma-free reporting routes that communities can trust and safely access.

What approach should legislation take to religious and conscience exemptions?

Some legal frameworks prohibit discrimination in general terms, but then undercut those protections through expansive “freedom of religion,” “freedom of conscience,” or “conscientious objection” carve-outs. Provisions that effectively authorize refusals of services, employment, education, or health care on religious or conscience grounds can hollow out a nondiscrimination statute by converting a binding obligation into an optional norm—precisely in the sectors where equal access is most essential.

To preserve the primacy and effectiveness of nondiscrimination guarantees, legislation should reject open-ended religious or conscience exemptions in secular public and private spaces and make clear that such claims cannot justify denial of goods and services, exclusion from education or housing, or refusal to hire. Any limited space for religious autonomy, where recognized, should be confined to the internal life of religious institutions and tightly defined roles with genuine religious functions, and it should never operate to deny, segregate, or stigmatize people seeking services or opportunities.

The **Dominican Republic’s** new Penal Code, approved in 2025, is a clear illustration of how religious exemptions can hollow out equality protections. The Code criminalizes discriminatory conduct, including in hiring, education, and access to goods and services. However, the same provision states that there is no discrimination where a service provider or employer bases the refusal on conscientious objection or religious motives.¹⁰

How have countries and regions advanced comprehensive nondiscrimination protections for LGBTIQ people?

Around the world, governments have followed different legal and policy routes to expand nondiscrimination protections for LGBTIQ people.

In some countries, progress has been driven by **national equality statutes** that explicitly name protected grounds and create administrative bodies to enforce them. These models provide the highest degree of legal clarity and institutional responsibility.

South Africa provides a distinct constitutional model: its 1996 Constitution explicitly prohibits discrimination on grounds including sexual orientation, establishing one of the strongest equality clauses globally and providing a direct constitutional basis for judicial protection against discrimination based on sex, gender, and sexual orientation.¹¹

Canada's Human Rights Act, adopted by Parliament in 1977, originally prohibited discrimination on grounds such as race, national or ethnic origin, religion, age, and sex. Sexual orientation was added in 1996, and gender identity and gender expression were added in 2017.¹²

The Act obliges employers, service providers, and institutions under federal authority to promote inclusive practices and combat harassment or exclusion based on diverse sexual and gender identities.

The Act does not expressly recognize “sex characteristics” as a prohibited ground of discrimination. It remains unclear to what extent intersex persons are protected under existing grounds.

A second model involves **sector-specific statutory protections** that explicitly prohibit discrimination on the basis of sexual orientation, gender identity, gender expression, or sex characteristics within individual legal domains, such as labor or education laws or public service regulations. This approach creates enforceable safeguards even before comprehensive nationwide equality statutes are adopted.

In **Sweden**, the 1999 Act on a Ban Against Discrimination in Working Life on Grounds of Sexual Orientation introduced one of Europe's earliest prohibitions of employment discrimination based on sexual orientation.¹³

In **Botswana**, the 2010 Employment Act put in place employment protections based on sexual orientation, nearly a decade before the High Court decriminalized consensual same-sex sexual conduct in 2019.¹⁴

In **Fiji**, the Employment Relations (Amendment) Act 2015 expanded the “prohibited grounds of discrimination” in the employment context to include “gender identity and expression.”¹⁵

A third common route has been **constitutional or judicial interpretation**. In countries without nationwide nondiscrimination statutes, courts have relied on constitutional equality, privacy, or dignity clauses to expand protection on these grounds.

Peru's Constitutional Court recognized gender identity as a protected category under the constitutional guarantee of equality and nondiscrimination in 2016, even though at the time it was a category that did not appear in any statute or legislation in the country.¹⁶

The **Inter-American Court of Human Rights** held in Advisory Opinion 24/17 (2017) that gender identity is a protected category under the American Convention's guarantees of equality and nondiscrimination, binding on states in the region even though at the time many of them had not yet expressly incorporated gender identity into their domestic legislation.¹⁷

While judicial recognition can unlock rights and remedies, it remains vulnerable when it is not paired with explicit legislation or formal complaint systems that operate across sectors:

- States have a **positive obligation to adopt legislation** to align their domestic frameworks with international human rights norms.¹⁸
- States' responsibility to address discrimination does not stop once a judgment is issued.¹⁹ Judicial remedies are merely **one part of a "remedy ecosystem,"** which includes other laws, policies, regulatory systems, and structures.²⁰

Can incremental reform substitute comprehensive legislation?

Across legal traditions, many LGBTIQ movements **advocate for incremental reform:** securing enforceable protections first in specific legal domains—such as local nondiscrimination ordinances, clauses in labor codes, education rules, or decisions from regulatory oversight bodies—and then scaling those advances toward nationwide statutory reform.

Incremental reform allows communities to gain some protection even when political consensus at the national level has not yet been achieved.

Gradual progress can be particularly effective when it builds legal precedent, widens the coalition of supporting actors, and increases public familiarity with LGBTIQ identities as part of the population the law must protect.

In socially polarized or politically restrictive environments, a step-by-step strategy can lower resistance by shifting the legal culture before attempting a single, large overhaul.

Importantly, graduality should never be framed as a substitute for comprehensive equality, nor should incremental reform legitimize hierarchies of protection within LGBTIQ communities. In some contexts, so-called political compromises have extended protection to sexual orientation while excluding gender identity, gender expression, or sex characteristics, entrenching selective equality and leaving the most marginalized without protection.

While incremental strategies can help build legal precedent and political feasibility, they must be anchored in a clear commitment to universality and nonregression, ensuring that partial measures expand—rather than freeze or justify—enduring exclusions.

A progression of incremental reforms should ultimately culminate in nationwide legal clarity that is explicit, enforceable, and universal. The clearest signal that gradual sequencing is succeeding is when early wins translate into binding national standards, institutional accountability, and independent complaint mechanisms that operate consistently across both public and private sectors.

Movements and governments that follow this pathway demonstrate that what matters most is not only the speed of reform, but its institutionalization, enforceability, and permanence.

The law is working when communities are aware of their rights, institutions refrain from discrimination, and oversight bodies impose consequences when discrimination occurs—proving that equality protections have moved from symbolic recognition to operational reality within the legal system.

ENDNOTES

- 1 International Covenant on Civil and Political Rights, adopted December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171, entered into force March 23, 1976, arts. 2(1) and 26; International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, United Nations, Treaty Series, vol. 993, p. 3, entered into force January 3, 1976, art. 2(2).
- 2 Convention on the Rights of the Child, adopted November 20, 1989, United Nations, Treaty Series, vol. 1577, p. 3, entered into force September 2, 1990, arts. 2(1) and 16(1).
- 3 "[t]he protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment." Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2 (24 Jan. 2008), par. 21.
- 4 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted June 9, 1994, OAS/ser.L/II.2.27, CIM/doc.33/94, entered into force March 5, 1995.
- 5 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), adopted November 4, 1950, ETS No. 005, entered into force September 3, 1953; Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted November 4, 2000, ETS No. 177, entered into force April 1, 2005.
- 6 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted July 11, 2003, African Union, entered into force November 25, 2005.
- 7 Toonen v. Australia, Human Rights Committee, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, Views adopted on March 31, 1994, <https://hrlibrary.umn.edu/undocs/html/vvs488.htm>, par. 8.7; Case of P v S and Cornwall County Council, Court of Justice of the European Union, Case C-13/94, Judgment of 30 April 1996, https://infocuria.curia.europa.eu/tabs/affair?sort=AFF_NUM-DESC&searchTerm=%22C-13%2F94%22&publishedId=C-13%2F94; Bostock v. Clayton County, Supreme Court of the United States, 590 U.S., 140 S. Ct. 1731 (2020), <https://www.law.cornell.edu/supremecourt/text/17-1618>; UN CEDAW Committee, General Recommendation No. 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28, December 16, 2010, <https://docs.un.org/en/CEDAW/C/GC/28>; par. 18.
- 8 Ryan Thoreson, "Discrimination: Sexuality, Human Rights, and the Carceral Turn in Antidiscrimination Law," *California Law Review* 110 (2022): <https://www.californialawreview.org/print/discrimination-sexuality-human-rights-and-the-carceral-turn-in-antidiscrimination-law>.
- 9 Ibid.
- 10 Dominican Republic, Ley Orgánica que establece el Código Penal de la República Dominicana (Organic Law establishing the Criminal Code of the Dominican Republic), Ley 74-25, August 3, 2025, <https://tinyurl.com/ek6wuan5>, art. 173.
- 11 South Africa, The Constitution of the Republic of South Africa, December 4, 1996, <https://www.gov.za/documents/constitution/constitution-republic-south-africa-04-feb-1997>, sec. 9(3).
- 12 Canada, Canadian Human Rights Act, R.S.C., 1985, c. H-6, <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#docCont>, art. 2.
- 13 Kingdom of Sweden, Lag om förbud mot diskriminering i arbetslivet på grund av sexuell läggning (Act prohibiting discrimination in employment on the basis of sexual orientation), SFS 1999:133, March 11, 1999, <https://rkrattsdb.gov.se/SFSdoc/99/990133.PDF>.
- 14 Galesiti G.R. Baruti, "The ambit of prohibited grounds of discrimination in Botswana's employment act," *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice*, August 2017, <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/GOAL-16-Book-Baruti.pdf>.
- 15 Fiji, Employment Relations Amendment Act 2015, Act No. 4 of 2015, <https://www.parliament.gov.fj/wp-content/uploads/2017/03/Act-No-4-Employment-Relations-Amendment.pdf>.
- 16 Defensoría del Pueblo, "Defensoría del Pueblo destaca sentencia del Tribunal Constitucional que permite el cambio de sexo de las personas trans," November 9, 2016, <https://www.defensoria.gob.pe/defensoria-del-pueblo-destaca-sentencia-del-tribunal-constitucional-que-permite-el-cambio-de-sexo-de-las-personas-trans>.
- 17 Jorge Contesse, "Sexual Orientation and Gender Identity in Inter-American Human Rights Law," *North Carolina Journal of International Law* 44, no. 2 (2019): <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=2054&context=ncilj>.
- 18 Article 2 of the International Covenant on Civil and Political Rights requires states "to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**" Similarly, Article 2 of the International Covenant on Economic, Social and Cultural Rights requires states to undertake "to take steps, individually and through international assistance and co-operation...by all appropriate means, including **particularly the adoption of legislative measures.**"
- 19 The Inter-American Court of Human Rights has found that "State responsibility does not end when the system of justice issues a final judgment and it becomes binding. In the Court's view, from that point forward the State must also guarantee the necessary means to enable effective execution of said final judgment. Indeed, the right to judicial protection would prove illusory if the State's domestic legal system were to allow a final binding decision to remain inoperative to the detriment of one of the parties." Inter-American Commission of Human Rights, "Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System Of Human Rights," September 2007, <https://www.iachr.org/countryrep/AccessoDESC07eng/Accessodesci-ii.eng.htm>, par. 38.
- 20 OHCHR, *Access To Remedy in Cases of Business-Related Human Rights Abuse an Interpretive Guide*, 2024, <https://www.ohchr.org/sites/default/files/2024-11/access-to-remedy-bhr-interpretive-guide-en.pdf>, 65.

ABOUT OUTRIGHT INTERNATIONAL

Outright International works together for better LGBTIQ lives. Outright is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality.

Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, governments, humanitarian and development institutions, and civil society partners. Outright holds consultative status at the United Nations, where it serves as the secretariat of the UN LGBTI Core Group.

**Together, for better LGBTIQ lives.
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