



Global Developments in Religious Freedom and Equal Treatment

February 2014

Dear Friends:

Welcome to the first issue of the International Network of Civil Liberties Organizations' (INCLO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. INCLO is a network of civil liberties organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include:

- American Civil Liberties Union
- Association for Civil Rights in Israel
- Canadian Civil Liberties Association
- Centro de Estudios Legales y Sociales (Argentina)
- Egyptian Initiative for Personal Rights
- Hungarian Civil Liberties Union
- Irish Council for Civil Liberties
- Kenya Human Rights Commission
- Legal Resources Centre (South Africa)
- Liberty (United Kingdom)

In this newsletter, we hope to highlight significant international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

This first issue discusses not only current cases, but also cases of particular significance from recent years concerning the following topics:

- Religious freedom and reproductive rights;

- Religious freedom and LGBT rights; and
- Religious expression.

This newsletter does not purport to be comprehensive or definitive. Instead, it is our own best effort to identify and characterize the international legal developments in this arena.

The newsletter will also be available shortly in Spanish and perhaps other languages as well. We will share with you shortly the language(s) in which it will be available and the contact(s) for the different language editions.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Kelsey Townsend at INCLONewsletter@aclu.org.

Finally, please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter. Join us in celebrating this launch.

Best,
Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Isabella Sankey
Director of Policy, Liberty

Religious Freedom & Women's Rights

Access to Abortion

Australia: Since May 2013, the [Medical Board of Victoria has been investigating a doctor](#) who refused to provide a referral for a couple he claims were seeking to terminate a pregnancy based on sex. Victoria's conscientious objection law requires doctors refusing to provide care to make a referral to another doctor, who should be known not to object to that procedure. The doctor in this case claimed that he did not know any physician who would provide the abortion. The [case has invigorated debate](#) about whether Victoria's abortion law strikes the proper balance between religious conscience and women's reproductive rights.

European Union: This past December, the [European Parliament voted not to advance a draft report](#) that recommended both the protection of abortion as a human right, as well as greater regulation of healthcare providers invoking religious refusals to prevent their participation in abortion procedures. Instead, the Parliament passed a resolution stating that sexual and reproductive health rights are a matter for member states. [The report](#) had argued that, even in countries where abortion is legal, the abuse of conscientious objection by healthcare providers has limited women's access.

Ireland: This past July, [Ireland amended its abortion law](#) to give effect to the Irish Supreme Court's previous ruling permitting access to abortion where a woman's [life is at risk, including from the risk of suicide](#). The legislation was enacted, in part, to respond to the European Court of Human Rights (ECtHR) decision in the 2010 case [A B & C v. Ireland](#), where the Court held that Ireland had not provided a clear, accessible procedure by which a woman could obtain a legally authoritative determination regarding whether Irish law permits abortion in her circumstance.

The decision to enact legislation coincided with the public outcry following the 2012 [death of Savita Halappanavar](#). Halappanavar developed a fatal infection following pregnancy related complications. Official reports confirm that healthcare providers rejected Halappanavar's repeated requests for a termination, despite the knowledge that she faced an inevitable miscarriage at seventeen weeks. The report of the Health Services Executive into the death of Halappanavar found "the interpretation of the law related to lawful termination in Ireland" to be a "material contributing factor" in the case. A [civil suit](#) alleging negligence on the part of the hospital has been filed by Halappanavar's husband. INCLO member [Irish Council for Civil Liberties \(ICCL\) has been active](#) on the abortion debate in Ireland.

Poland: In two recent cases, the ECtHR held that the state of Poland had violated the European Convention by failing to ensure that the practice of conscientious objection does not hinder women's access to lawful reproductive health services, and by failing to enforce its own religious refusals law adequately. Polish law is explicit in permitting physicians to refuse to perform medical services such as abortion, but still requiring them to make referrals, among other things. The Court suggested that proper enforcement of this law may fulfill Poland's obligations under the Convention with regard to women's access to abortion. However, Poland violated those obligations when, inconsistent with its own law, it did not regulate physicians' refusal to provide referrals for abortion and other procedures that could lead to abortion, such as prenatal genetic testing. This is the first time that the ECtHR has addressed state failure to regulate conscientious objection in an abortion case. [RR v. Poland](#), App. No. 27617/04, Eur. Ct. H.R. (2011), and [P & S v. Poland](#), App. No. 57375/08, Eur. Ct. H.R. (2012).

United Kingdom: This past June, [the UK Supreme Court agreed to hear a case](#) brought by Catholic midwives seeking the right to refuse to supervise or support staff providing abortions. [UK's Abortion Act 1967](#) protects the right of religious refusal for healthcare providers who "participate" in abortion. At issue in the case is whether "participation" extends only to those who directly perform abortions, or whether it includes those who supervise those directly performing abortions. [Doogan and Wood v. NHS Greater Glasgow & Clyde Health Board](#) [2013] CSIH 36 (lower court decision).

United States: This past November, the [ACLU filed suit](#) against the United States Conference of Catholic Bishops (USCCB) on behalf of a pregnant woman whose health was put at risk when a Catholic hospital denied her information and timely care while she was miscarrying. The hospital at which she sought care is governed by the Ethical and Religious Directives for Catholic Health Care, issued by USCCB, which among other things prohibit Catholic hospitals from providing or recommending pregnancy termination prior to fetal viability, regardless of the risk to the woman's health. The lawsuit charges that the USCCB is ultimately responsible for the unnecessary trauma and harm experienced by the patient. [Complaint, Means v. United States Conference of Catholic Bishops](#). The USCCB's statement on the claims [can be found here](#).

International: In December 2013, Global Doctors for Choice [published a white paper on conscientious objection in the reproductive healthcare setting](#). This paper reviews current evidence of prevalence, examines potential consequences of conscience-based refusal of care, and documents the policy choices that various countries make in this arena, including: whether institutions can claim objector status, which specific occupations can invoke objection; which countries require objectors to disclose their status as objectors to patients; which countries mandate registration of objection status with employers or government bodies; which countries explicitly require provision of services in cases of emergency; and which national medical societies delineate standards of and regulation of care. The authors conclude by recommending

a more standardized definition of the practice of objection, the lack of which hinders tracking and analysis of this practice. They also call on professional healthcare organizations to prioritize establishing certain standards of care, such as eliminating the option of refusal in cases of ectopic pregnancy, inevitable spontaneous abortion, rape, and maternal illness.

Access to Contraception

United States: This spring, the [Supreme Court will hear two challenges](#) to the federal rule requiring insurance plans to cover Food and Drug Administration-approved contraceptives with no cost-sharing. [Sebelius v. Hobby Lobby Stores](#), [Conestoga v. Sebelius](#). The plaintiffs in the cases are for-profit businesses that argue that compliance with the rule would violate their religious freedom. One of the significant questions is whether for-profit, secular corporations can exercise religion at all. Another question is whether businesses can impose their views on their diverse workforce, denying their employees a benefit to which they are entitled by law. The Supreme Court will hear argument on March 25. INCLO member [ACLU filed a friend-of-the-court brief](#) in the case.

Nearly 80 cases in total have been filed challenging the federal rule. INCLO member ACLU has filed friend-of-the-court briefs in many of these cases. For a more thorough update on this litigation, please [visit the ACLU's website](#).

Philippines: This coming March, the [Philippine Supreme Court is expected to rule](#) on the constitutionality of a landmark law requiring the government to subsidize contraception for the poor. The law also requires healthcare providers who object to contraception on religious grounds to refer patients to another provider. Opponents of the law argued that this duty of referral violates both free speech and free religious exercise rights under the Filipino Constitution. The [government argued](#) that this duty upholds a careful compromise between the provider's rights and those of the patient, who should be able to access this information. [Pro-Life Philippines Foundation v. Office of the President](#) (and 13 other petitions).

Sex Segregation

Canada: This January, a public debate arose concerning the [request of a student at an Ontario university for religious accommodation](#). The student had enrolled in an online course, and requested, on religious grounds, to be excused from the one in-person component of the course so he would not have to meet publicly with women. The professor who originally received the request was ordered by the university administration to grant the accommodation of the student's religious freedom. However, the professor refused, arguing that doing so would harm gender equality. [CCLA's Interim General Counsel published an op-ed expressing her personal view against the accommodation](#) because it would harm the recognition of women's dignity and their right to meaningful participation.

United Kingdom: In December 2013, Universities UK (UUK), the body that represents British Universities, published guidance on gender segregation in university lectures and debates. This followed a series of Islamic events at campuses at which male and female students had been separated. The guidance sought to explain the relevant legal framework and contained a [hypothetical case study](#) suggesting that universities should permit voluntary gender segregation by lecture audiences. After triggering heavy criticism, UUK withdrew their guidance and announced that they were seeking further legal advice. The UK Equality Act 2010 specifically permits gender segregation in premises that are permanently or temporarily being used for the

purposes of an organized religion, but not in public areas of learning. However, it is unclear whether “voluntary” segregation would be permitted by law.

Religious Freedom & LGBT Rights

Same-Sex Marriage

Argentina: In 2010, Argentina became the [first country in Latin America](#) to adopt legislation granting same-sex couples all the rights and responsibilities of marriage, including the right to adopt children. The Catholic Church opposed the initiative, with then-Bishop Jorge Bergoglio – now Pope Francis – calling it “a war of god”. INCLC member [CELS was involved](#) in the debate. Its [Executive Director delivered a statement](#) in the public hearing before the Senate calling attention to human rights standards.

Canada: In 2011, the Saskatchewan Court of Appeal held that proposed amendments to Saskatchewan’s Marriage Act – which would allow marriage commissioners to refuse to perform marriages if performing them were contrary to the commissioner’s religious beliefs – would violate the Canadian Constitution. The court stated that allowing marriage commissioners to refuse same-sex couples would harm the recently won same-sex marriage rights of LGBT people, violate their dignity, and undermine the tradition whereby agents of the state serve everyone equally. [Marriage Commissioners Appointed Under the Marriage Act \(Re\)](#), 2011 SKCA 3.

France: This past October, the Constitutional Council rejected a challenge to the national marriage equality law enacted in France earlier in 2013. This challenge was brought by seven mayors who argued that the French Constitution’s “freedom of conscience” provision required that the new law include a religious exemption for civil servants who officiate marriages. The Council rejected this argument, affirming the state’s interest in “the proper functioning and the neutrality of public services” provided by civil servants. Independent summary and commentary in English is [provided here](#). [Franck M. and Others](#), Conseil constitutionnel [CC] [Constitutional Court] decision No. 2013-353, Oct. 18, 2013 (in French).

Hungary: In 2010, the [Constitutional Court ruled](#) that registrars for the state are obliged to register same-sex couples seeking the status of civil partnership, as doing so does not violate their right to freedom of conscience or religion under the Constitution. [Resolution 32/2010. \(III. 25.\)](#) (in Hungarian). Registered partnership has been an option for same-sex couples since 2009, despite numerous objections from different parties in Hungary. (However, while registered partnerships continue to be available to same-sex couples, in 2012 Hungary [passed a law](#) explicitly defining marriage as an act between a man and a woman.) INCLC member [HCLU has been active](#) on this issue.

Ireland: This past November, the Government announced that a [referendum on same-sex marriage will be held in mid-2015](#). The announcement follows the 100-member Convention on the Constitution’s April 2013 endorsement of same-sex marriage, extending to protection of same-sex parents’ guardianship and adoption rights. INCLC member [ICCL has been active](#) on this issue, and is one of three civil society organizations invited to address the Convention in favor of same-sex marriage.

Also in 2013, the Equality Authority announced plans to [review the operation of Section 37 of the Employment Equality Acts 1998-2011](#). Section 37 permits certain medical and educational institutions with a “religious ethos” to discriminate against employees or prospective employees who, for reasons including gender identity and sexual orientation, may be considered as undermining that ethos. The ICCL has been active on this issue, [calling for Section 37 to be amended](#) to specify, among other things, that the “religious ethos” exemption can be used to discriminate only on the grounds of religion, and that an employee’s religious membership must constitute a genuine and legitimate occupational requirement.

Israel: This past October, [legislation was introduced in the Israeli national legislature](#) to create civil unions, which would be available for same-sex and heterosexual couples. This legislation is noteworthy because the only marriages performed *within* Israel that the state recognizes are those performed by religious authorities. This forces anyone who does not meet religious authorities’ requirements for marriage – including same-sex couples – to marry outside the country. Same-sex marriages performed out of state *are* recognized by Israel. Civil unions performed in Israel would provide benefits equal to those of marriage.

United Kingdom: In January 2013, the ECtHR issued its decision in [Eweida and Others v. United Kingdom](#), a much-anticipated case on religious freedom. *Eweida* involved four consolidated cases from the United Kingdom. The case originally titled *Ladele v. Islington* concerned religious discrimination claims brought by a British civil servant who refused to register same-sex civil partnerships due to her religious objections. The ECtHR held that the UK, in refusing to accommodate the civil servant, had not exceeded the “margin of appreciation” granted to member states when implementing the Convention. The Court affirmed that it granted a wide margin of appreciation in cases concerning the balancing of competing Convention rights. The Court recognized the interference with the applicant’s rights, but also recognized the state’s interest in securing the rights of others, such as LGBT individuals, who are also protected under the European Convention. The Court found no breach of Article 14 (prohibition of discrimination) taken with Article 9 (freedom of thought, conscience and religion). INCLC member [Liberty intervened in these cases](#). Independent summary and commentary of all four consolidated cases [can be found here](#). The other consolidated cases, *Eweida*, *Chaplin*, and *McFarlane*, are discussed below. [Eweida and Others v. United Kingdom](#), Nos. 48420/10, 59842/10, 51671/10, 36516/10, Eur. Ct. H.R. (2013).

Relatedly, following the successful passage of the Marriage (Same-Sex Couples) Act 2013 same-sex marriage will be legally recognized throughout the UK, except for Northern Ireland, beginning in 2014. INCLC member [Liberty lobbied for the legislation](#), including a permissive regime allowing those religious denominations that so wish to conduct same-sex religious marriages.

Employment

Australia: This past June, [Australia passed a law to protect LGBT individuals under its federal antidiscrimination laws](#). The law, however, makes an exemption for bodies “established for religious purposes,” which includes religious non-profit entities. [One notable exception](#) is that elder care providers, even if established for religious purposes, will not be able to discriminate on the basis of LGBT status.

Canada: In 2010, the Ontario Superior Court held that a Christian social services organization unlawfully discriminated when it fired a support worker for being lesbian. The court held that the organization did not qualify for an exemption afforded to religious institutions. According to the

court, even though the organization was motivated by a Christian mission, there was nothing in the work of caring for individuals that required workers to be prohibited from engaging in a same-sex relationship. [Ontario Human Rights Commission v. Christian Horizons](#), 2010 ONSC 2105.

South Africa: In 2008, a South African Equality Court held that a Christian church violated antidiscrimination law when, on the basis of its religious beliefs, it fired a music teacher employed as a contractor for being gay. The court rejected the church's claim that the teacher was in a position of church leadership. The court also explained that the church could have continued to employ the teacher without sending a tacit message approving of homosexuality, by publicly declaring that it was continuing to employ the teacher only because it was required by law to do so. [Strydom v. Nederduitse](#) 2009 (4) SA 510 (Equality Court).

United Kingdom: In another one of the four consolidated cases in [Eweida and Others v. United Kingdom](#), *McFarlane v. Relate*, the ECtHR upheld the rejection of a religious freedom and religious discrimination claim by a therapist, who was dismissed by his employer after he refused to provide counsel about sexual issues to same-sex couples. The Court held that the UK approach fell within a wide margin of appreciation and that dismissal was proportionate to the employer's legitimate interest in securing the equal rights of others, namely its LGBT clients. INCLO member Liberty [intervened in these cases](#). Independent summary and commentary of all four consolidated cases [can be found here](#). [Eweida and Others v. United Kingdom](#), Nos. 48420/10, 59842/10, 51671/10, 36516/10, Eur. Ct. H.R. (2013).

United States: This past November, the [U.S. Senate passed the Employment Non-Discrimination Act](#), a bill that would prohibit discrimination in employment based on sexual orientation or gender identity. This legislation, however, includes a religious exemption that [INCLO member ACLU](#) has argued is [too broad](#). The bill now proceeds to the U.S. House of Representatives.

Services & Public Accommodations

Israel: In 2012, the Jerusalem Magistrate Court ruled that owners of a reception hall violated Israeli antidiscrimination law by cancelling a reservation to host a wedding reception after discovering that the reception was for a lesbian couple. The court rejected the owners' argument that their company was a religious institution that qualifies for an exemption. The court stated that businesses should thus be expected to serve the public. [Tal Ya'akovovich and Yael Biran v. Yad Hashmona](#) (2012).

United Kingdom: This past October, the [UK Supreme Court upheld a discrimination claim](#) against the owners of a bed-and-breakfast who refused to provide a double room to a civilly partnered gay couple. The owners argued that providing this service would have violated their religious beliefs. They also argued that they did not discriminate on the basis of sexual orientation, since they would have also refused to allow an unmarried heterosexual couple to share a double room. The Court rejected these arguments. Noting that the civil partnership legislation intended to confer the same rights on a gay or lesbian couple as marriage confers on a straight one and also that the relevant equality provision (now the Equality Act 2010) required the courts to treat marriage and civil partnerships as analogous, the Court held that the hoteliers directly discriminated against the claimants. INCLO member [Liberty filed a brief](#) in this case as interveners. [Bull v. Hall and Preddy](#), [2013] UKSC 73.

United States: This past August, the New Mexico Supreme Court issued its decision in [Elane Photography v. Willock](#), in which it held that a photography studio that refused to photograph a same-sex commitment ceremony violated the state's antidiscrimination law. The studio claimed that providing this ceremony would violate both its free speech and religious beliefs. The [ACLU filed a brief](#) in this case, arguing that the studio should not be exempt from the state antidiscrimination law. The studio has now asked the U.S. Supreme Court to review the case. [Elane Photograph v. Willock](#), 309 P.3d 53 (N.M. 2013). This is [one of a number of cases](#) throughout the US involving business owners invoking religion to refuse to serve LGBT people.

Other

United States/Uganda: Within the United States as well, the case of [Sexual Minorities Uganda v. Scott Lively](#) is currently pending in federal court. This case involves a claim that a U.S. pastor aided and abetted crimes against humanity in Uganda – those crimes being a campaign of systematic persecution of LGBT individuals, including advocacy for the Ugandan Anti-Homosexuality Bill that [Uganda's parliament eventually passed in Dec. 2013](#) (though it must still be signed by the President to enter into law). The [court rejected a motion to dismiss](#), and the trial is expected to proceed throughout 2014. [Sexual Minorities Uganda v. Scott Lively](#), No. 12-CV-30051 (D. Mass.).

Religious Expression & Freedom

Argentina: In 2011, [Argentina passed a law protecting women's right to wear headscarves](#) in public spaces. The law also allows women to wear their headscarves for their national ID card photograph.

Canada: In 2012, the Supreme Court of Canada decided the case of *R v. N.S.*, which presented the question of whether a Muslim woman could be required to remove her full-face veil when serving as a witness in court. The woman in question in the case was the complainant in a criminal sexual assault case. The accused argued that the requirement was justified on two grounds: the right of the accused to face the accuser, and the necessity of seeing a witness's face in order to assess her credibility. The case split the Court, whose majority decided that this question must be decided on a case-by-case basis, depending on the nature and importance of the evidence the witness is expected to give, and the impact that failing to remove the veil would have on trial fairness for the accused. The case was subsequently sent back to the preliminary inquiry judge to determine whether the woman had to remove the veil based on the Supreme Court's decision. The judge concluded that she did. An appeal related to this decision was subsequently denied. INCLO member [CCLA filed a brief](#) in the case. [R. v. N.S.](#), 2012 SCC 72.

This past November, the [Quebec government tabled its proposed secular "Charter of Values."](#) [The charter](#) would have barred all public sector employees from wearing "conspicuous" religious symbols, including face coverings. The charter [drew criticism](#) for appearing to favor Christianity, as it did not simultaneously ban crucifixes displayed by government buildings. In response, Quebec's Minister of Democratic Institutions argued that such crucifixes are part of Quebec's historical identity.

France: This past November, the [ECtHR heard arguments in SAS v. France](#), the much-watched case regarding France's ban on face concealment in public. The case was brought by a Muslim woman who, because of the law, is no longer able to wear the full-face veil (niqab) in public.

INCLO member [Liberty has filed a brief as intervenor. *SAS v. France*](#), No. 31955/11, Eur. Ct. H.R. (pending).

Hungary: The ECtHR is considering a challenge to the Hungarian Church Law, which selectively removed state recognition of church status from some – but not all – religious organizations previously registered as churches. Serving as counsel for various excluded organizations, INCLO member [HCLU has challenged this law](#) both in the ECtHR and in Hungary's Constitutional Court, which deemed the law unconstitutional, but, as the HCLU has argued, provided an insufficient remedy. These excluded organizations claim that the law is discriminatory and violates their freedom of religion. [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#), No. 70945/11, Eur. Ct. H.R. (pending).

Ireland: The Convention on the Constitution recently [recommended amending the clause on blasphemy in the Irish Constitution](#), which has recently given rise to the offence of blasphemy under statutory law following the introduction of the Defamation Act 2009. Members of the Convention expressed a wish to find a more effective way to balance the right of freedom of religion with freedom of expression. Following receipt of the official report from the Convention secretariat, the Government may decide to put the issue to a referendum. INCLO member [ICCL has called for reform](#) of Ireland's outmoded blasphemy laws, including at its appearance before the Convention in November 2013.

Israel: This past April, the Jerusalem District Court issued its decision in [State of Israel v. Ras](#). The court held that women praying at the Western Wall could not be arrested for causing a public disturbance or violating "local custom," despite their wearing prayer shawls (tallits) that only men traditionally wear. [Women's groups are currently negotiating with the Israeli government](#) regarding what sections of the Wall will be dedicated for women's prayers. This compromise is being taken in hopes of allaying the public disagreement. [State of Israel v. Ras](#), File No. 23834-04-13 DC (Jer) (2013).

South Africa: This past March, the Supreme Court of Appeal of South Africa upheld a lower court decision that a state correctional facility unlawfully discriminated in terminating the employment of Rastafarian correctional officers after they refused to cut dreadlocks worn in observance of their religious beliefs. The facility argued that this dress code requirement was justified on the basis that dreadlocks render Rastafarian officers conspicuous and susceptible to manipulation by Rastafarian inmates seeking to smuggle into the facility an illegal drug used in their religious rituals. The Court held that no evidence had been presented that the dreadlocks had ever rendered officers vulnerable to such manipulation. [Dep't of Corr. Servs. v. Police and Prisons Civil Rights Union](#) [2013] ZASCA 40. Relatedly, another court in South Africa, declared this past May that barring a student from school if she did not cut off her dreadlocks discriminated against her on the basis of her Rastafarian religion. [Radebe v. Principal of Leseding Technical School](#), No. 1821/2013.

Provincial legislatures are [currently debating](#) the [Traditional Courts Bill](#). This bill seeks to give more power to customary law, including religious law, within rural South African provinces. The bill has been criticized as proposing a [second-class system of justice, particularly for women](#), given the gendered aspects of much of customary and religious law.

United Kingdom: The final two cases consolidated in the ECtHR case [Eweida and Others v. United Kingdom](#) concerned religious dress. The case originally titled *Eweida v. British Airways* concerned an airline worker who was told to remove a small Christian cross necklace as a result of the airline uniform policy. The Court held that the uniform policy was disproportionate to the

airline's objective of maintaining a particular professional image, and that the UK had failed to protect the applicant's right to manifest her religious beliefs under Article 9 of the Convention. INCLO member [Liberty represented the plaintiff](#) in the domestic proceedings in the case.

In the case originally titled *Chaplin v. Royal Devon*, the ECtHR upheld a hospital's ban on jewelry, even though it prevented a nurse from wearing a Christian cross necklace. The Court held that this regulation was proportionate to the objective of protecting the health and safety of nurses and patients alike (e.g., preventing the necklace from contacting an open wound). Independent summary and commentary of all four consolidated cases [can be found here](#). [*Eweida and Others v. United Kingdom*](#), Nos. 48420/10, 59842/10, 51671/10, 36516/10, Eur. Ct. H.R. (2013).

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

May 2014

Dear Friends:

Welcome to the second issue of the International Network of Civil Liberties Organizations' (INCLO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Since our first issue in February, there has been a flurry of activity in the highest courts of various countries and of transnational bodies. This activity has touched on a number of connective themes, including: the rights of institutions to assert freedom of religion (Australia, Canada, United States); religious freedom and contraceptive access (Philippines, United States); and state recognition and funding of religion (Canada, Hungary, Ireland, United Kingdom, United States). We hope this edition will illuminate how debates on these issues are proceeding, not just in one country, but in different countries. Please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our own best effort to identify and characterize the international legal developments in this arena.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Kelsey Townsend at INCLONewsletter@aclu.org.

Finally, please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

Best,
Louise Melling

Isabella Sankey

Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Director of Policy, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), Liberty (United Kingdom).

Religious Freedom & Women's Rights

Access to Abortion

Argentina: The Santa Fe province has opened a public registry available to consumers that lists healthcare professionals who, citing ethical or religious objections, are lawfully exempt from complying with laws requiring them to provide sexual and reproductive health services, including non-lifesaving abortion, post-abortion care, and contraception. Santa Fe law requires those who object to provide referrals to those willing to provide reproductive services. [Website](#) (in Spanish).

Sweden: In 2013, the Federation of Catholic Family Associations in Europe filed a complaint with the European Committee on Social Rights alleging that the Swedish government has failed to provide legal protections for religious objectors to abortion, allowing such objectors "to be treated in a discriminatory way." The [government has responded](#) that, despite inquiries with labor associations and the Swedish Society of Obstetrics and Gynecology, it has found no evidence of actual claims of religious objection to performing abortion. The government also argues that it is reasonable to assume that people who object to abortion on religious grounds will not actively seek employment in positions where the person would have to participate in the procedure. The Committee has not yet issued a decision. [Fed'n of Catholic Family Ass'ns in Europe \(FAFCE\) v. Sweden](#).

Access to Contraception

Canada: In Ottawa, a patient going to a walk-in health clinic for birth control reportedly [received only a note](#) stating that the on-call doctor does not provide or refer for contraception, or a range of other services including abortion, because of his "medical judgment as well as professional ethical concerns and religious values." The matter has provoked some controversy. The Canadian Medical Association has a policy allowing physicians to refuse to perform abortions but its policy around providing or referring for contraception is less clear, according to a spokesperson for the Association.

Philippines: This April, the Philippine Supreme Court issued a decision addressing a challenge to a law providing government funding for contraception for the poor, among other services, and requiring health care workers to provide referrals for contraception and other services funded by the law. The Court rejected, among other claims, the plaintiffs' argument that the law violated their free exercise rights because their tax dollars would now support contraception. However, the Court struck down the provisions of the law requiring individual healthcare professionals and religiously affiliated healthcare institutions to disseminate information about contraception and other reproductive health services, as well as to refer patients to those who would provide it. Citing the Scottish [Doogan](#) case (discussed in Feb. 2014 newsletter), the Court held that compelling individuals or religiously affiliated institutions to violate their religious conscience, whether directly or indirectly, is a violation of their free exercise of religion. The Court also held,

however, that healthcare professionals must themselves provide reproductive health services – and cannot merely provide a referral – where the woman’s life is threatened. [Pro-Life Phil. Found. v. Office of the President](#) (and 13 other petitions).

United Kingdom: In February, the Royal College of Obstetricians and Gynaecologists [revised its written guidelines](#) on doctors seeking either a specialist diploma awarded by the Faculty of Sexual and Reproductive Healthcare, or membership in the group. To the [objection](#) of Christian groups, the updated guidelines state that, in order to obtain this diploma and membership, doctors cannot conscientiously object to providing any form of hormonal contraception, including emergency contraception. (The existing guidelines address standards for those who object to providing abortions.)

United States: In March, the U.S. Supreme Court [heard arguments](#) in the consolidated cases [Sebelius v. Hobby Lobby Stores, Inc.](#) and [Conestoga Wood Specialties Corp. v. Sebelius](#). In these cases, for-profit companies seek exemptions from complying with a federal regulation requiring health insurance policies to cover all forms of Food and Drug Administration-approved contraceptives. These cases address many important questions, including whether corporations are persons for the purposes of the federal Religious Freedom Restoration Act, whether the owner of a corporation can exercise his or her religious beliefs through the corporate form, what constitutes a substantial burden on religious exercise, and the scope of government interests that are sufficiently compelling such that they justify substantial burdens on religious exercise. The cases will be decided before the Court’s term ends in June. Audio and a transcript of the argument can be found [here](#). INCLC member [ACLU filed a friend-of-the-court brief](#) in the case.

Religious Freedom & LGBT Rights

[Services & Public Accommodations](#)

Australia: This April, the Victorian Court of Appeal held that a youth camp facility owned by a Christian church [engaged in unlawful discrimination](#) by refusing to let an LGBT youth suicide prevention group use its facility. The court held that, because the youth camp operated as a commercial entity, it did not qualify for a religious exemption under Victoria’s antidiscrimination statute. [Christian Youth Camps v. Cobaw Cmty. Health Servs.](#) [2014] VSCA 75.

Canada: This April, the Law Society of British Columbia [voted to accredit](#) the first Christian law school in Canada, despite the school’s policy requiring students to adhere to a covenant prohibiting non-marital heterosexual sex. Vancouver Park Board Commissioner and aspiring law student, Trevor Loke, has filed a legal challenge against the government of British Columbia, for approving the school to grant degrees, a decision based partially on the law society accreditation. [Loke v. Minister](#) (petition). In addition, because of a petition signed by over 1,000 lawyers in the province, the Law Society of British Columbia must now to hold a vote of the membership, which may direct the Law Society to deny accreditation. The law societies of the [Ontario](#) and [Nova Scotia](#) provinces, in contrast to British Columbia’s, have voted to deny accreditation so long as the school maintains the covenant. Of note, the same university had previously been the subject of a Canadian Supreme Court case, which overturned the British Columbia College of Teachers’ denial of accreditation due to the same policy. The Court asserted then that a religious institution does not violate antidiscrimination protection when it prefers adherents of its own religion. [British Columbia Coll. of Teachers v. Trinity W. Univ.](#) [2001] 1 S.C.R. 772.

In March, a high school student [filed an application in the Human Rights Tribunal of Ontario](#), alleging discrimination on the basis of sexual orientation by officials at his publicly-funded Catholic school, including negative portrayals of LGBT people in various parts of its curriculum. Full public funding for Ontario's Catholic schools is constitutionally guaranteed. *Karas v. Conseil Scolaire de District Catholique Centre-Sud*. (See also *Erazo v. Dufferin-Peel Catholic Dist. Sch. Bd.*, below).

Ireland: In April, the Irish Human Rights and Equality Commission (Designate) submitted a report on the review undertaken by the Equality Authority into the [operation of Section 37\(1\) of the Employment Equality Acts 1998-2011](#). The Commission recommended reform of a provision of the Acts that permits certain medical and educational institutions with a "religious ethos" to make hiring and firing decisions based on whether the employees or prospective employees may be considered as undermining that ethos, including on grounds other than religion. The Commission proposed that such discrimination only be permissible where "adherence to a particular religious belief is a genuine, legitimate and justified occupational requirement" of an institution. The Commission further recommended that discrimination should not be permissible where it constitutes discrimination on any other ground protected by the Employment Equality Acts including sexual orientation, gender, civil, and family status. The Parliament will take the report under advisement as it debates a bill to amend Section 37 of the Employment Equality Acts.

United Kingdom: In January, the Scottish Charity Appeals Panel [reversed](#) an order by charity regulators that a Catholic adoption agency must stop excluding same-sex couples from its services if it is to preserve its charity status. The panel held that, while it was clear that the agency engaged in discrimination, the public benefit the agency provided outweighed the harm of discrimination. The panel also asserted that same-sex couples still had access to other adoption agencies, as well as the other charitable services provided by the agency. [St. Margaret's Children and Family Care Soc'y v. Office of the Scottish Charity Regulator](#) [2014] Scottish Charity Appeals Panel App 02/13.

In March, a UK Christian couple [filed a case](#) with the ECtHR arguing that a requirement that they rent rooms at their inn without regard to marital status, violates their religious freedom. The UK's Equality and Human Rights Commission had previously brought proceedings against the couple for violating antidiscrimination measures. The couple declined to try their case in the British courts, given the UK Supreme Court's decision in [Bull](#) (discussed in Feb. 2014 newsletter), which upheld a discrimination claim against the owners of another bed-and-breakfast who refused to provide a room to a civilly partnered gay couple. The Court will decide later this year whether to hear the case.

Relatedly, also in March, the government's [Equality and Human Rights Commission issued guidance](#) explaining how the Marriage (Same Sex Couples) Act of 2013 interacts with existing equality law in England and Wales. Among other points, the guidance states that all civil marriage officiants are [required by law](#) to conduct same-sex marriages. Furthermore, commercial service providers [cannot refuse](#) to provide services on the basis that a customer is married to, or intends to marry, a person of the same sex.

Religious Expression & Freedom

[Clothing and Garb](#)

Germany: In April, an administrative court in Bavaria [rejected the claim](#) of a Muslim student seeking to wear a niqab at her public high school. The court stated that education is founded on the principle of open communication between teacher and student, extending to non-verbal expressions. Thus, it rejected the student's argument that the German constitution's provision on freedom of religion protects this practice. [Statement by the court](#) (in German).

Israel: In February, the Israel Postal Company, which provides banking services, removed from one of its Jerusalem branches a sign stating that people wearing a head covering would not be allowed to withdraw money. INCLO member ACRI had [objected](#) to the sign, saying it amounted to religious discrimination. The company had defended the sign, saying its policy was based upon a government directive forbidding activity at financial institutions without facial identification.

South Africa: A Cape Town independent school that had [previously prohibited](#) any displays of religious garb, regardless of religion, has [changed its policy](#). It did so after a Muslim female wishing to wear traditional headwear unsuccessfully attempted to enroll and a Department of Education spokesperson urged her to approach the South African Human Rights Commission for assistance, asserting that the policy was unconstitutional. By contrast, a public school that had informally allowed Muslim females to wear headwear [formally recognized](#) the hijab as an acceptable part of the school uniform.

[Government Recognition and Funding of Religion](#)

Canada: In April, the Ontario Superior Court [ruled](#) that students attending a publicly funded Catholic high school may opt out of religious field trips and religious services. Ontario's Education Act provides that students, without regard to their religious beliefs, have a right to attend publicly funded secondary schools. The Act also allows students to opt out of "programs and courses of study in religious education," which the court interpreted to encompass activities beyond classroom studies. [Erazo v. Dufferin-Peel Catholic Dist. Sch. Bd.](#), 2014 ONSC 2072.

Hungary: In April, the ECtHR [held that the Hungarian Church Act](#) – which selectively removed state recognition of church status from some, but not all, religious organizations previously registered as churches – violated the European Convention on Human Rights and its provisions on freedom of religion and association. The Court concluded that the government neglected its duty of religious neutrality. The government had asserted an interest in prohibiting the recognition of organizations pretending to pursue religious ends, but in fact only seeking financial benefits of state recognition. However, the Court asserted that there were much less drastic measures that the government could have taken to pursue this objective. The Court also stated that there was no fair procedure by which organizations could seek to regain their church status. INCLO member HCLU, among others, litigated the challenge. [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#), No. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Eur. Ct. H.R. (2014).

Ireland: In January, the [ECtHR found the Irish government liable](#) for failing to protect children from sexual abuse at a state-funded Catholic school in the 1970s. The government had argued that the school was not a public school and thus the government could not be liable. The Court held, however, that in relinquishing control of education to non-state actors, the government should have been aware of potential risks to children's safety and adopted commensurate safeguards. [O'Keefe v. Ireland](#), No. 25810/90, Eur. Ct. H.R. (2014).

United Kingdom: In March, the ECtHR upheld the UK government's exclusion of Mormon temples from its law granting tax exemptions to places of "public religious worship." The Court rejected the argument that Mormons were a target of direct discrimination, as similarly situated places of religious worship were also denied tax exemptions (e.g., the Church of England's private chapels). The Court also held that any indirect discrimination was reasonably justified by the purpose of the exemption, which was to benefit religious buildings providing a service to the general public. By contrast, Mormon temples were open only upon selective recommendation by members of the church. [The Church of Jesus Christ of Latter-Day Saints v. UK](#), No. 7552/09, Eur. Ct. H.R. (2014).

United States: In March, the Salvation Army, a Christian social service organization, settled a case in which it was accused of proselytizing clients, as well as discriminating against its employees and prospective employees based on religious beliefs, while accepting public funds. NYCLU, INCLO Member ACLU's affiliate, [litigated the case](#). [Lown v. The Salvation Army](#), No. 04-CV-01562 (S.D.N.Y. 2014).

Other

The Americas: In April, the Hemispheric Institute of Performance and Politics [convened](#) a conference on "Religious Freedom 'versus' Equal Rights," featuring presentations by advocates and academics from the Americas. A series of 11 blog posts from each of the presenters, all regarding current legal and policy debates at the intersection of gender, sexuality, religion, and public life, [can be found on the Institute website](#).

Canada: In March, the Supreme Court of Canada [heard arguments](#) in a Quebec Catholic school's challenge to a government-mandated high school course on ethics and religious culture, which is to be taught from a secular perspective. The school seeks the ability to teach its own version of the course, consistent with Catholic principles. A key legal question at issue is to what extent Canada's Charter protects the religious freedom of institutions, a question that the Court has not yet addressed. INCLO member [CCLA filed an intervener's brief](#) in the case. [Loyola High Sch. v. Att'y Gen. of Québec](#), No. 35201.

Ireland: Ireland's state-funded national radio and television broadcaster has [settled a legal claim of defamation](#) against it for airing accusations that two prominent journalists, as well as the IONA Institute (a conservative Catholic organization in Ireland), were homophobic. This incident takes place in the backdrop of the Convention on the Constitution's recent recommendation to amend the Irish Constitution to permit equal marriage for same-sex couples, and the government's commitment to put the matter of equal marriage [to a popular referendum in 2015](#).

Netherlands: The Royal Dutch Pharmacists' Association is [arguing](#) that Dutch law permitting physician assisted suicide and euthanasia should be modified to recognize pharmacists' right to be included in the consultation process, as well as to refuse to provide doctors the drugs necessary for the assisted suicide or euthanasia.

United Kingdom: In December, the Court of Appeal [dismissed](#) the claim of a care worker that firing her for not working on Sunday constituted discrimination based on her religion. The court held that the employment tribunal below had erred in considering it relevant whether abstaining from work on Sundays is a core part of the Christian faith. However, the court ultimately decided that the facility had sufficiently established that no viable alternative to its scheduling existed. [MBA v. The Mayor & Burgesses of Merton](#) [2013] EWCA Civ. 1562.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES



Irish Council for
Civil Liberties

LIBERTY
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

LRC
Legal Resources Centre



Global Developments in Religious Freedom and Equal Treatment

August 2014

Dear Friends:

Welcome to the third issue of the International Network of Civil Liberties Organizations' (INCLU) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

In less than 24 hours, two landmark decisions were handed down on opposite sides of the Atlantic Ocean: *Hobby Lobby*, where the U.S. Supreme Court held that the federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of objecting closely held corporations (i.e., corporations with a limited number of shareholders), and *SAS*, where the European Court of Human Rights upheld France's ban on face concealment in public in a case brought by a Muslim woman.

We hope this edition will begin to shed light on these cases, as well as on other transnational developments. As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena.

We also wish to note the recent publication of the [Symposium Issue](#) of Brooklyn Law School's *Journal of Law and Policy*. This issue includes eight articles written by panelists from the October 2013 symposium, "Religious Freedom and Equal Treatment: An International Look," convened at Brooklyn Law School and co-sponsored by INCLU.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Kelsey Townsend at INCLONewsletter@aclu.org.

Finally, please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Isabella Sankey
Director of Policy, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), Liberty (United Kingdom).

Religious Freedom & Women's Rights

Access to Abortion

Italy: The European Committee of Social Rights [concluded](#) that the Italian government violated the European Charter of Social Rights's provision on the right to health by failing to ensure that health care facilities in the country "compensate[d] for the deficiencies in service provision" caused by doctors refusing to perform abortions (a refusal protected by statute in Italy). The Committee stated that women can face "substantial difficulties" in securing their legally protected right to abortion because the government did not ensure health care facilities adopt measures to safeguard women's access to abortion in the face of objecting doctors within those facilities. [International Planned Parenthood Federation – European Network v. Italy](#), No. 87/2012.

Poland: The mayor of Warsaw has [fired](#) a doctor at a public hospital who refused to perform an abortion. Polish law permits doctors to refuse to perform abortions on religious grounds, but requires them to refer patients to doctors who will provide the care. In this case, the doctor instead referred the patient to a hospice that would provide palliative care for the child after birth. A formal inquiry by the mayor also concluded that the doctor did not inform the patient that abortion is prohibited in Poland after the 24th week of pregnancy and in fact ordered tests that made the patient miss this deadline. The doctor had [signed](#) a "Faith Declaration" indicating his refusal to perform abortions.

This incident takes place in the backdrop of [recent decisions](#) by the European Court of Human Rights, holding that the Polish government must do more to enforce the provision of its law requiring doctors who refuse to provide medical care, including abortions, to make referrals to someone who will provide care. The previous newsletters have reported on these cases.

South Africa: A [study](#) of abortion in South Africa has concluded that, despite the legal availability of abortion in the country, women's access to abortion has been impeded by the failure of health care facilities to monitor and cover gaps in service caused by religious objections to performing or participating in abortion.

Sweden: Sweden's Equality Ombudsman has [ruled](#) that a midwife was not subject to discrimination based on religion when a hospital rescinded a job offer after she stated that she would not participate in abortions. The Ombudsman ruled that the hospital's action interfered with the midwife's right of religious exercise, but that the right to health of patients outweighs this right. The midwife has now [taken](#) her case to district court. *Grimmark v. Jonkoping County Council* (decision on file).

This case takes place against the backdrop of the complaint of the Federation of Catholic Family Association in Europe against the Swedish government, pending in the European Committee on Social Rights, for failing to provide legal protections for religious objectors to abortion. The previous newsletter reported on this complaint.

[Access to Contraception](#)

Canada: The Ontario Human Rights Commission has [weighed](#) in on a periodic [review](#) of the College of Physicians and Surgeons of Ontario's guidelines to recommend clarification of the policy regarding physicians' refusals to provide medical services because of religious objections. The current policy of the College requires objecting doctors to advise patients that they can see another doctor, but does not require them to provide referrals to specific doctors. The Commission has recommended that the guidelines clarify that objecting physicians are to make referrals, as well as inform administrators of their objections so administrators can prevent any potentially discriminatory or harmful impact on their patients. The policy attracted public attention after an incident in February 2014, when a patient going to a walk-in health clinic for birth control [received](#) only a note stating that the on-call doctor does not provide or refer for contraception because of his ethical and religious objections. This incident was reported in the previous edition of this newsletter.

United States: In a hotly contested and closely watched case, the U.S. Supreme Court [held](#) that that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of objecting closely held corporations. As a result, closely held for-profit corporations (i.e., corporations with a limited number of shareholders), ranging from a chain of arts and crafts stores to a wood supplier, are exempt from complying with federal law. The decision is unprecedented in that, for the first time, the Court said that business owners can use their religious beliefs to deny their employees a benefit they are guaranteed by law. The decision rests on rights afforded by a federal statute, not the Constitution. [Burwell v. Hobby Lobby](#), 573 U.S. ____ (2014). INCLC member ACLU filed a brief in the case and [released](#) a statement on the decision.

In an unrelated matter, a nurse in Florida has [filed](#) suit against a health care facility, alleging that it eliminated her from consideration for a job after she expressed her refusal to provide certain forms of birth control, because she believes they cause abortions. The nurse alleges that the facility's decision violates federal and state laws that protect the right of healthcare professionals to refuse to participate in abortion.

[Sex Segregation](#)

Israel: A group dedicated to promoting religious pluralism in Israel has [petitioned](#) the High Court of Justice to overturn a new policy of the Education Ministry that authorizes gender segregation in state-funded religious schools. The Education Ministry has defended its policy as necessary "to prevent a drain of pupils," particularly of Orthodox Jewish students, to private religious schools. The group opposed to the policy argues that it is discriminatory and will siphon funds from gender integrated schools.

United Kingdom: The Equality and Human Rights Commission, an independent statutory body overseeing anti-discrimination law in England, Scotland, and Wales, has [published](#) new legal guidance on gender segregation at events organized by universities and student societies. It confirms that gender segregation, such as seating men and women separately at an event, is not permitted at events that are not acts of religious worship. This guidance was issued after controversy arose when Universities UK (UUK), the body that represents British Universities, [published](#) its own guidance suggesting that universities should permit voluntary gender segregation in lecture audiences (as reported in previous newsletters).

Religious Freedom & LGBT Rights

Same-Sex Marriage

Italy: The Civil Court of Grosseto has [ordered](#) the town to recognize the marriage of a gay couple wed in the United States. The order was issued after one of the town's civil registrants refused to transcribe the marriage into the town's records. It is the first time that any gay marriage has been recognized in Italy.

Malta: Malta's parliament unanimously [voted](#) to recognize same-sex unions and to allow gay couples to adopt children. It did so despite the strenuous opposition of the Roman Catholic Church, which is the official state religion of Malta.

Services & Public Accommodations

United Kingdom: A Christian nursery worker has [filed](#) a claim of religious discrimination against her former employer. The worker was fired after she was reported to have harassed a lesbian colleague and to have stated that she would not read books featuring same-sex parents to children in her care based on her religious beliefs.

The Equality Commission, an independent public body that oversees antidiscrimination law in Northern Ireland, has sent a letter to a bakery charging it with discrimination for refusing on religious grounds to serve a customer seeking a cake to mark the International Day Against Homophobia and Transphobia

Employment

Italy: The Italian Education Minister has promised an inquiry into a matter where a Catholic school refused to renew the contract of a gay teacher. The teacher [claimed](#) that her contract was not renewed after the head teacher inquired into her sexual orientation (to which the teacher refused to respond). The head teacher maintains she did not renew the contract after assessing the teacher's "ethical and moral" profile. In compliance with a [European Union directive](#), Italian law prohibits discrimination based on sexual orientation in employment, although it allows for such discrimination if there is a "genuine and determining" occupational requirement.

Gender Identity and Expression

Canada: After facing a human rights complaint from a transgender girl, Catholic schools in Vancouver have [adopted](#) a policy allowing transgender students to request accommodations. According to the superintendent for Catholic Independent Schools of the Vancouver Archdiocese, under this policy, students may use the washroom that matches their gender identity or a private washroom. This policy is believed to be the first of its kind in Catholic schools in North America.

Malaysia: Transgender women in Malaysia have [filed](#) a claim in the Putrajaya Court of Appeal, alleging the unconstitutionality of a state law that prohibits any men from wearing women's attire in public. The claimants are appealing the Negeri Sembilan High Court's ruling, which rejected their application on the ground that, as Muslims, the claimants are subject to state-level Sharia law, not secular law. Sharia law in Malaysia prohibits Muslim men from dressing as women.

Religious Expression & Freedom

Clothing and Garb

France: By a vote of 15-2, the European Court of Human Rights [upheld](#) France's ban on face concealment in public. The case was brought by a Muslim woman who, because of the law, is no longer able to wear the full-face veil (niqab) in public. All 17 judges held that the ban was disproportionate to the French government's claimed goal of ensuring physical security, as well as its goal of furthering gender equality. The Court further doubted whether protecting women from their choices to practice religion could be a legitimate aim. However, 15 judges found that the ban "can be regarded as justified so far as it seeks to guarantee the conditions of 'living together.'" The Court found relevant that the ban was not based expressly on religion, but applied to all face concealment. It also found relevant that the punishment for violating the ban was relatively light. Ultimately, it held that the French government had a wide "margin of appreciation" to "protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness." [SAS v. France](#), No. 31955/11. INCLO member Liberty [intervened](#) in the case and [criticized](#) the ruling in strong terms. Following the ruling, politicians in various countries, including Spain, Austria, Norway, and Denmark, have [indicated](#) a desire to move forward with bans in their countries.

Turkey: Turkey's Constitutional Court [ruled](#) 16-1 that the rights of a lawyer had been violated after she was banned from entering court because she was wearing a headscarf. The Court held that the action violates both equality and freedom of religion guarantees of the Turkish Constitution. Headscarf bans in employment, education, and other contexts are common in Turkey, a secular country with a large Muslim population.

United States: The U.S. Supreme Court has [granted](#) a petition to hear the case of a Muslim prisoner who was prevented from wearing a beard because of his prison facility's safety and security regulations. The petitioner argues that the prison policy violates his rights of religion guaranteed by federal law. INCLO member ACLU has [submitted](#) a brief, arguing that the policy substantially burdens the prisoner's religious freedom and does more to undermine prison security than to enhance it. *Holt v. Hobbs*, No. 13-6827.

Other

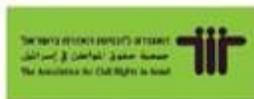
Egypt: INCLO member Egyptian Initiative for Personal Rights (EIPR) has [called](#) for an end to religious defamation trials in Egypt. EIPR has documented 48 defamation cases involving police harassment and prosecution from 2011 to the end of 2013.

Kenya: A Muslim restaurateur in Nairobi has [sued](#) Kenya's Conference of Catholic Bishops, charging religious discrimination after his lease was cut short. The restaurateur claims that the bishops told him they could no longer accept a business operated by Somali Muslims on their property. (The restaurant was in a building owned and operated by the Conference of Catholic

Bishops.) The Bishops [claim](#) that, though they signed a lease, they never agreed to let the building be used as a restaurant.

Spain: By a vote of 9-8, the European Court of Human Rights [upheld](#) the decision of the Roman Catholic Church of Spain not to renew the contract of a public high school religion teacher who had left the priesthood to start a family and expressed liberal views on issues including contraception and abortion. (In Spain, parents have the right to ensure that children receive religious education in school. The Spanish government thus has cooperation agreements with the Catholic Church, as well as with Evangelical, Jewish, and Muslim communities, for these faiths to provide teachers to teach religion in the public schools.) The ECtHR held that the religion teacher had “a duty of loyalty towards the Catholic Church,” a duty that he voluntarily assumed when he entered his contract. The dissenting judges argued that, despite its agreement with the Catholic Church, the Spanish government was responsible for ensuring that the teacher’s rights were not violated. According to the dissent, the teacher’s rights were violated because “there is no evidence that he had taught religion in a manner that contradicted the doctrine of the Church, or that the publicity given to his situation had resulted in disapproval by his pupils’ parents or by his school.” [Fernandez Martinez v. Spain](#), No. 56030/07.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES



Irish Council for
Civil Liberties

LIBERTY
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

LRC
Legal Resources Centre



Global Developments in Religious Freedom and Equal Treatment

December 2014

Dear Friends:

Welcome to the fourth issue of the International Network of Civil Liberties Organizations' (INCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

As the year draws to a close, courts and governments continue to grapple with questions about how to reconcile commitments to equality and religious freedom. To name just some of the recent developments covered in this issue: the UK Supreme Court held that the country's Abortion Act does not allow midwives to refuse to supervise or support other hospital staff who provide abortions; the Supreme Court of Argentina will soon hear a case about whether mandatory religious instruction in public schools violates the constitutional rights of students; a South African magistrate ordered the parties to undergo mediation in a case asking whether a Christian guesthouse violated the country's Equality Act by refusing to serve a same-sex couple; and, in the wake of the U.S. Supreme Court's decisions in *Hobby Lobby* and *Wheaton College*, the Obama Administration released new provisional rules governing insurance coverage for contraception.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. To provide the fullest possible view of relevant developments, we include both current cases and cases of particular significance from recent years. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Kelsey Townsend at INCLONewsletter@aclu.org.

Best,
Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & Women's Rights

Access to Abortion

Argentina: Abortion is legal in Argentina when the pregnancy is the result of rape or poses a risk to the woman's health or life. In March 2012, the Supreme Court of Justice of Argentina issued a [landmark ruling](#) in a case involving a 15-year old from the Province of Chubut who requested the termination of her pregnancy, which resulted from rape. The Court's decision clarified that a judicial order is not required to access abortion when any of the situations described above are met and provided guidance to guarantee access to legal abortion. Additionally, the Court noted that health providers seeking to exercise the right to conscientious objection must declare their objection early, so every health institution can ensure adequate human resources to guarantee access to legal abortion. INCLO member CELS submitted a friend-of-the-court brief in the case.

Also in 2012, claimants asked a judge in the Province of Cordoba to recognize the right to terminate a pregnancy involving a nonviable anencephalic fetus, which may pose a risk to the woman's health. The claimants went to court after the hospital and the doctors serving the woman refused to perform the abortion on the basis of their right to conscientious objection. Although the court recognized that public health centers cannot raise institutional conscientious objections, it allowed the hospital's institutional objection because the hospital was a private, though non-religious, institution. In addition, the court directed the woman to ask her medical insurance company for information regarding other healthcare providers willing and able to perform the abortion.

Colombia: In 2006, Colombia recognized the right to abortion under certain circumstances. Since then, conscientious objection to abortion has been a hotly contested issue. In decision T-388/2009, the Constitutional Court in Colombia handed down its most definitive guidelines to date on the practice of abortion. In this decision, the Court reviewed the case of a woman from Santa Marta who sought a legal therapeutic abortion from her healthcare provider. Although the provider authorized the procedure, it requested a judicial order before carrying out the abortion. The judge refused to grant the order, stating that he conscientiously objected on grounds of his personal beliefs. Reviewing the case, the Constitutional Court held that only persons directly involved in abortions, such as treating physicians, are entitled to claim conscientious objector

status; institutions may not claim conscientious objector status in refusing to allow abortions; physicians may claim objector status only if "there is a guarantee that the pregnant woman will have access to the procedure" in safe conditions and without facing added barriers; and judges may not claim conscientious objector status in declining to adjudicate abortion cases. The case addresses one of the most common challenges and debates regarding access to reproductive rights in Latin America.

Women's Link Worldwide and Georgetown University's O'Neill Institute for National and Global Health Law have published a collection of essays about the Colombian Constitutional Court's decision. The book, *T-388/2009 Conscientious Objection and Abortion: A Global Perspective on the Colombian Experience*, is [available online](#). The collection situates Decision T-388/2009 at the center of a global debate on conscientious objection to abortion, including essays on the decision's lessons and implications for Latin America, the United States, Europe, Spain, Africa, and Colombia itself.

European Union: On September 29, the Global Day of Action for Access to Safe and Legal Abortion, nine European civil society organizations (including INCLIO member HCLU) [launched](#) a petition asking the European Parliament for a resolution guaranteeing women timely and effective access to safe abortion procedures, as well as affordable contraceptives and support services. The organizations urge all EU citizens to [sign the petition](#).

United Kingdom: On December 17, the UK Supreme Court issued a landmark ruling [NHS Greater Glasgow & Clyde Health Board v. Doogan](#), unanimously holding that the UK's [Abortion Act 1967](#) does not give midwives the right to refuse to supervise or support staff providing abortions. Under the Act, healthcare providers may refuse on religious grounds to "participate" in abortion. In this case, the Court concluded that "participate," as used in the Act, means "taking part in a 'hands-on' capacity" in the course of treatment. It does not, the Court held, extend to acts that simply facilitate the carrying out of the abortion. In reaching this conclusion, the Court referenced earlier decisions interpreting the Act to hold that the Act's protections for conscientious objection do not extend to receptionists who object to typing a letter referring a woman to a hospital consultant for a possible abortion, or to doctors charged with signing the certificate authorizing the abortion. The Court's judgment deals only with the definition of "participation" in the Act; it explicitly does not consider whether the Human Rights Act 1998 or the Equality Act 2010 required the midwives' employers to make reasonable adjustments to the requirements of the job in order to cater to the midwives' religious beliefs, leaving this issue for resolution in the related employment tribunal proceedings.

The decision itemizes the tasks included in the plaintiffs' work duties, and notes as to each whether it falls within or outside the scope of the Act's protection for conscientious objectors. Tasks covered by the protection include: providing part of the treatment in response to requests for assistance from the patient or from the midwife caring for her, or being present if medical intervention is required in connection with the treatment. Excluded from protection are supervisory or support tasks, such as allocating staff to patients, communicating with other professionals, and ensuring that the patient's family is provided with appropriate support. Additionally, the Court held that individuals who object to participation in a patient's abortion have the "obligation to refer the case to a professional who does not share that objection." That, the Court emphasized, is a "necessary corollary of the professional's duty of care towards the patient."

Uruguay: The Uruguayan Court of Administrative Disputes (TCA) recently [issued](#) a decision suspending some articles of Presidential Decree 375/012 that regulate conscientious objection

to legal abortion. In October 2012, the National Congress of Uruguay enacted the Voluntary Interruption of Pregnancy Act, which legalized abortion within the first twelve weeks of pregnancy and recognized conscientious objection rights for gynecologists and medical staff. President José Mujica subsequently issued Decree 375/012, which contains various regulations pertaining to abortion.

Last year, a group of gynecologists from the Integrated National Health System [filed](#) a legal challenge to Decree 375/012. As part of that challenge, the gynecologists called on the court to suspend immediately 11 articles in the Decree that deal with conscientious objection, claiming they violate their freedom of conscience and right to practice medicine by limiting objections to performance of the procedure so as not to include pre- and post-abortion procedures. They also maintained that the regulations unduly restrict their freedom to counsel patients regarding alternatives to abortion.

In a preliminary decision, the administrative court unanimously held that the 11 articles at issue may cause severe damage to the plaintiffs' conscience rights and accordingly suspended the challenged provisions related to gynecologists. The court, however, refused to suspend Article 30, which excludes conscientious objection for staff not directly involved in the procedures, because the gynecologist plaintiffs were not entitled to request such relief. The decision suspends the articles pending a final decision that addresses the legality of the full Decree. Meanwhile, the Voluntary Interruption of Pregnancy Act, which regulates the process that doctors and other medical staff must follow to validly claim conscientious objection, remains in effect.

[Access to Contraception](#)

United States: As we reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations (i.e., a corporation whose stock is not freely traded and is held by a relatively small number of shareholders) that objected to providing coverage. In [Wheaton College v. Burwell](#), in a temporary order, the Court enjoined the government from enforcing an accommodation for religiously affiliated non-profit entities that objected to providing contraceptive coverage. (The order was issued pending appeals in the case.) That accommodation provided that non-profit organizations that objected to providing insurance coverage for contraception could certify their objection to their insurers or third-party administrators; the insurer or third-party administrator would then arrange and pay for the contraceptive coverage separately. That accommodation has been challenged by various non-profits (including Wheaton College) on the ground that filling out the form violates their religious beliefs because it facilitates access to contraception.

In response to the Court's orders, the government [has released](#) an interim final rule, according to which qualifying non-profits will have the option of notifying the U.S. Department of Health and Human Services, instead of their insurers or third-party administrators, of their objection to covering contraception in their insurance. The Department will then itself notify the insurers or third-party administrators, whose responsibility to arrange and pay for coverage for contraception remains the same. The administration has also made clear its intent to extend the accommodation to closely held for-profit corporations.

The new rule has not appeased objecting non-profit organizations, which maintain that the new rules still require them to facilitate contraceptive coverage in violation of their religious beliefs. They thus persist in their lawsuits challenging the rule. To date, all three federal appeals courts

to consider the issue [have rejected](#) that argument. Six other courts of appeals have heard or soon will hear arguments in cases challenging the new rule.

[Gender Discrimination](#)

United Kingdom: On November 17, the Church of England held a [final vote](#) allowing women to become bishops, overturning a centuries' old gender barrier in the Church. The Church's lawmaking body, the General Synod, announced the decision after a show of hands in which approximately 450 of the 480 people present voted for the change. The largely formal November vote follows earlier approval of the reform by both the General Synod and Parliament. (The text of the amending Canon can be found [here](#).) The Church voted to ordain women as priests in 1992, and now roughly one-third of its clerics are women, but the highest offices remained available only to men. Although the new reform removes that final barrier, conservatives were assured that they would be able to request male priests and bishops for their parishes, with disputes to be arbitrated by an ombudsman appointed by the Church's leadership.

[Other](#)

Ireland: In August 2014, the UN Human Rights Committee [indicated](#) that the practice of symphysiotomy, a surgical procedure once used to widen the cervix to facilitate birth, amounted to torture or "cruel, inhuman or degrading treatment or punishment," as defined by Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The procedure – which is alleged to have been carried out on approximately 1,500 women and girls in Ireland between the 1920s and the 1980s, often without obtaining consent – involves severing one of the main pelvic joints and unhinging the pelvis to facilitate a vaginal birth. Survivors of the practice have argued that it was promoted in Catholic-run hospitals and by medical personnel who, for religious reasons, wished to avoid procedures that might limit a woman's capacity to bear more children. The Committee called for investigation into the practice, access to an effective remedy for survivors, and prosecution for those who performed symphysiotomies without the patient's consent. A [statutory redress scheme](#) established by the Government in November 2014 provides *ex gratia* payment to survivors in exchange for the release of any legal claims related to the practice. Both [Survivors of Symphysiotomy](#), which represents the majority of survivors, and INCLC member [ICCL](#) criticize the scheme as wholly inadequate and argue that it fails to meet the Human Rights Committee's investigation and prosecution recommendations.

[Religious Freedom & LGBT Rights](#)

[Services & Public Accommodations](#)

Canada: The Ontario Human Rights Tribunal [will hear](#) the case of a teenager who alleges he was subject to discrimination on the basis of sexual orientation by officials at his state-funded Catholic school. The complaint asserts a host of discriminatory behavior, including delays in approving a student club supporting LGBTQ rights, refusal to include same-sex couples in examples of family structure, and expressed disapproval of adoption by same-sex couples. The local school board has denied all allegations, stating that "the staff did everything to offer the student its support and to intervene in cases of discriminatory language or conduct on the part of other students." *Karas v. Conseil Scolaire de District Catholique Centre-Sud*.

South Africa: After a guesthouse in the Western Cape town of Wolseley refused to lodge a same-sex couple on the ground that doing so would violate the owners' Christian religious beliefs, the couple sued, charging violations of the country's antidiscrimination law. In court, the guesthouse owners argued that they were being discriminated against on account of their religion. The presiding judge referred the case for mediation, a process he viewed as more conducive than litigation to improving relations between the LGBT and Christian communities. LGBT leaders have criticized the move, characterizing it as a failure to uphold the law that could be used to bolster companies or services that use religion to justify discrimination. If the mediation fails, the matter will likely return to court.

United Kingdom: The Equality Commission, an independent public body that oversees enforcement of antidiscrimination law in Northern Ireland, [announced](#) that it will take legal action against a bakery that refused on religious grounds to serve a customer seeking a cake to mark the International Day Against Homophobia and Transphobia. The customer had asked for a cake featuring the slogan "support gay marriage" along with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserts that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintains that it has acted lawfully. The Commission said that, although it "would prefer not to have to litigate," the case "raises issues of public importance regarding the extent to which suppliers of goods and services can refuse service on grounds of sexual orientation, religious belief and political opinion."

In 2012, a judge in Northern Ireland [ruled](#) that the country's ban on adoption by same-sex couples was incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms. That decision was subsequently affirmed by the court of appeals and became final in late 2013, when the UK Supreme Court denied further review. Now, the Catholic Bishops of Northern Ireland have announced that they are ending their relationship with The Family Care Society NI, an adoption service founded by the Church, on the ground that acting in accordance with the ruling would require them to go against the Church's teachings. The adoption service has said that it will continue to provide adoption services and that any money it might receive from the Church in the future will be used only for purposes consistent with Church doctrine. The Democratic Unionist Party, one of the two main unionist parties in Northern Ireland, said that these developments demonstrate the need for legislation to include conscience clauses for religious groups.

[Other](#)

Egypt: Several organizations have called on the Egyptian government to respect human rights by not interfering in private and personal decisions. The statement was issued following a December 7 raid by Egyptian police of a bathhouse in central Cairo. The police arrested 33 men on suspicion of "debauchery" – a charge that has been used against gay people in Egypt extensively. Since October 2013, there has been a brutal crackdown on the LGBTIQ population in Egypt, with over 200 arrests and prosecutions. The actions, the statement charges, violate human rights, including rights to privacy and nondiscrimination and the right not to be punished or tortured based on status.

Israel: The Attorney General of Israel has withdrawn claims that Jerusalem Open House, a grassroots LGBT activist organization, was guilty of negligence in insisting that Jerusalem's 2005 gay pride parade take place despite the violent atmosphere it was likely to provoke. During the parade, one of the participants was stabbed by an ultra-Orthodox resident of the West Bank. The victim filed a lawsuit seeking damages from the attacker, the municipality, and the Israel

Police. The municipality and the police responded by filing a third-party lawsuit against Jerusalem Open House as the parade's organizer, claiming that it should be held responsible for the victim's injuries. In April, INCLO member ACRI asked the Attorney General to withdraw the third-party lawsuit, arguing that it "would strike a mortal blow to civil society organizations and to the very public interest that the prosecution and the Jerusalem Municipality are supposed to represent." On September 30, the Attorney General announced that the Israeli Police would withdraw their claim against Jerusalem Open House.

Uganda: Members of the Ugandan parliament have introduced an [anti-LGBT bill](#), after the country's constitutional court struck down an earlier version because it was passed without the requisite parliamentary quorum. The bill criminalizes "promoting homosexuality" and threatens long prison sentences for anyone convicted of engaging in sex with someone of the same sex. President Yoweri Museveni warned that introducing the bill could provoke trade boycotts from Western nations, but influential evangelical ministers strongly support the law's reenactment.

Religious Expression & Freedom

Clothing and Garb

Turkey: A Turkish university professor [began a two-year jail sentence](#) in November, after he was convicted of violating a Muslim student's constitutional right to education by barring her from entering the university while wearing a headscarf. Turkey's Higher Education Board lifted the country's ban on wearing headscarves on university campuses in 2010, but some universities have contested the decree's legality and maintained the ban.

United States: On October 7, the U.S. Supreme Court [heard oral argument](#) in *Holt v. Hobbs*, which asks whether Arkansas prison officials may prohibit a Muslim inmate from growing a half-inch long beard. The prisoner, Gregory H. Holt (also known as Abdul Maalik Muhammad), claims that the prohibition violates the federal Religious Land Use and Institutionalized Persons Act of 2000, which prohibits the government from substantially burdening a prisoner's religion unless it can demonstrate that the burden is narrowly drawn to serve a compelling government interest. The prison officials argued that the beard ban is necessary to prevent prisoners from smuggling contraband and to ensure that inmates can be easily identified on sight. But Mr. Holt's lawyers argue that the government does not deserve deference in this case, because it cannot point to any evidence to support its justifications for the ban. Audio and a transcript of the argument are available [here](#). INCLO member ACLU submitted a [friend-of-the-court brief](#) in the case.

Government Recognition and Funding of Religion

Argentina: The Supreme Court of Argentina will soon decide whether provincial public schools may have compulsory religious instruction. In 2010, the Asociación por los Derechos Civiles (ADC) and a parents' group challenged the imposition of religious education in the Province of Salta, arguing that it restricts the rights of parents to raise their children according to their beliefs and violates the government's duty of neutrality in the exercise of public functions, particularly with respect to education. The provincial Supreme Court [upheld](#) the religious instruction, basing its ruling in substantial part on the observation that a majority of the province's citizens are Catholic and on the availability of an alternative curriculum for students who do not wish to receive religious instruction in Catholicism.

Canada: On October 14, the Supreme Court of Canada heard oral argument in [Mouvement laïque québécois v. City of Saguenay](#), 2013 QCCA 936, a case charging that recital of a prayer at the beginning of public city council meetings violates the Quebec Charter of Human Rights and Freedoms, particularly the rights to equality and freedom of religion. The case was brought by a non-religious citizen of the City of Saguenay and the Mouvement laïque québécois (Quebec Secular Movement), a non-profit organization whose goal is to defend and promote freedom of conscience, separation of church and state, and secularization of Quebec's public institutions. INCLC member CCLA intervened in the case.

Hungary: The European Court of Human Rights's (ECtHR) decision holding that the Hungarian Church Act violates the European Convention on Human Rights [became final](#) on September 9, after the Hungarian government's request for referral of the case to the Court's Grand Chamber was denied. The Act selectively removed church status and state subsidies from several religious organizations previously registered as churches, particularly those not in favor with the government. As reported in our second issue, the ECtHR [held](#) in April that the measure violates the Convention's provisions on freedom of religion and association, concluding that the government neglected its duty of religious neutrality. Now that the Court's judgment has become final, the government must come to an agreement with the aggrieved churches on the restoration of their status and on just compensation for any damages. If the parties fail to reach an agreement within six months, the Court will decide these issues. INCLC member HCLU, among others, litigated the challenge. [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#), No. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Eur. Ct. H.R. (2014).

Other

Canada: A formerly haredi Orthodox Jew is seeking compensation from the Quebec government in the amount of \$1.25 million over its failure to enforce provincial education guidelines at two still-operating haredi yeshivas north of Montreal. Mr. Lowen alleges that the schools, which provide instruction only in Yiddish, did not teach him to read or write English or French and did not follow the required public school curriculum. As a result, Mr. Lowen says that he was left virtually illiterate, unemployable, and unable to support his children.

Please e-mail INCLCNewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

March 2015

Dear Friends:

Welcome to the fifth issue of the International Network of Civil Liberties Organizations' (INCLCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Already, the year is off to a brisk start. Here are a few brief highlights from this quarter's issue: A legal storm is brewing in Canada over whether law societies must recognize degrees awarded from religious law schools that ban same-sex partnerships; Ireland is considering legislative reforms to prevent religious schools from discriminating on the basis of sexual orientation, as well as having a referendum on same-sex marriage; and the US Supreme Court held that prison officials could not prevent a Muslim prisoner from growing a half-inch beard in accordance with his religious beliefs.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. To provide the fullest possible view of relevant developments, we include both current cases and cases of particular significance from recent years. Please feel free to alert us to developments you think should be included in future issues of INCLCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Kelsey Townsend at INCLCLOnewsletter@aclu.org.

Best,
Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

Ireland: On May 22, Ireland will hold a [referendum](#) on whether to legalize marriage for same-sex couples. Currently, same-sex couples in Ireland can enter into civil partnerships, which confer rights and responsibilities similar but not equal to marriage. Recent polls suggest that roughly 70% of the public supports same-sex marriage. INCLO member ICCL is playing a leading role in the campaign to pass the referendum.

On January 21, 2015, the Irish government [announced](#) plans to amend the Children and Family Relationships Bill to extend full adoption rights to cohabiting couples and those in civil partnerships. Under current Irish law, children may be adopted only by married couples or single applicants, making it impossible for a same-sex couple to jointly adopt. The government hopes to pass the reform ahead of Ireland's [referendum on same-sex marriage](#).

United States: On April 28, the U.S. Supreme Court [will hear](#) oral arguments in four consolidated cases addressing marriage for same-sex couples. The Court granted review on two discrete questions: (1) whether the Constitution requires states to license a marriage between two people of the same sex; and (2) whether the Constitution requires states to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. INCLO member ACLU represents plaintiffs in [two](#) of the four cases before the Court. INCLO members CELS, CCLA, LRC and Liberty joined in a friend-of-the-court brief that highlights the lessons and perspectives from other countries affording marriage for same-sex couples.

Services & Public Accommodations

Canada: In [Trinity Western University v. Nova Scotia Barristers' Society](#), the Nova Scotia Supreme Court (the provincial trial court) ruled that the Nova Scotia Barrister's Society (NSBS), the regulatory body for lawyers in that province, may not refuse to recognize law degrees issued by Trinity Western University (TWU), a private Christian university in British Columbia. The NSBS had decided that it would recognize law degrees from TWU only if the school changed its student conduct policy, which prohibits sexual intimacy outside of "traditional marriage." The Nova Scotia Supreme Court ruled that the NSBS has jurisdiction to protect the public interest in the practice of law in the province but not to regulate a law school. NSBS thus lacked the authority to deny recognition to degrees from TWU absent a change to its policy. The court

further held that, in making its decision, the NSBS had not appropriately balanced equality concerns with freedom of religion. The NSBS has [announced](#) that it will appeal the court's ruling.

Litigation involving TWU continues apace in [other provinces](#). In June 2015, an Ontario court will hear TWU's challenge to a similar denial of recognition by the Law Society of Upper Canada. And, in British Columbia, there is also litigation challenging a similar decision of the Law Society of British Columbia to refuse to recognize those degrees.

United Kingdom: On March 26 and 27, a court [will hear](#) a case brought by the Equality Commission for Northern Ireland against a bakery that refused to serve a customer seeking a cake to mark the International Day Against Homophobia and Transphobia. As reported in our December 2014 issue, the customer had asked for a cake featuring the slogan "support gay marriage" together with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserts that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintains that it has acted lawfully.

On February 27, public [consultation](#) closed regarding a proposed amendment to Northern Ireland's Equality Act to allow businesses and service providers to engage in sexual orientation discrimination on religious grounds. The proposed amendment, which was drawn up in the wake of the bakery dispute described above, would state that the Equality Act's ban on discrimination based on sexual orientation does not prohibit businesses or service providers from restricting the provision of goods, facilities, and services "so as to avoid endorsing, promoting or facilitating behavior or beliefs which conflict with [their] strongly held convictions." More than [148,000 people](#) have signed a petition against the proposed amendment. Sinn Fein and the Social Democratic and Labour Party (SDLP) have said that they will block the bill when it comes before the Northern Ireland Assembly.

The European Court of Human Rights has received an application from a case originating in Wales about whether guesthouse owners may deny service to same-sex couples on the basis of religion. Jeff and Sue Green, who run a 13 bed guesthouse in Wales, filed the challenge after the UK's Equality & Human Rights Commission informed them that their policy of providing rooms with double beds only to married couples constituted unlawful discrimination on the grounds of sexual orientation. This case comes after a unanimous UK Supreme Court [decision in a separate case, where the Court](#) ruled that any burden on the religious rights of guesthouse owners is justifiable and proportionate in light of the need to protect others against discrimination.

United States: On February 18, a Washington State judge ruled in [Ingersoll v. Arlene's Flowers](#) that a flower shop impermissibly discriminated against a same-sex couple by refusing to provide flowers for their wedding. Both the couple and the Washington Attorney General sued the florist for violating Washington's anti-discrimination and consumer protection statutes. The court held that the refusal to provide flowers for the same-sex wedding violated the statutes and that the florist did not have a constitutional right to ignore the law simply because it went against her religious beliefs. The florist is appealing the court's ruling. INCLO member ACLU represented the couple in the proceedings. This is the most recent in a series of rulings in the United States rejecting religious motivation as a defense to discrimination claims brought by same-sex couples.

[Employment](#)

Ireland: The Justice and Equality Minister of Ireland has announced [plans](#) to amend the Employment Equality Act to prohibit religious schools from discriminating against LGBT teachers. Currently, § 37 of the Act allows religious, education, and medical institutions to discriminate in employment “where it is reasonable to do so in order to maintain the religious ethos of the institution.”

Other

Egypt: An Egyptian court has [acquitted](#) all 27 defendants charged after police raided a bathhouse in central Cairo. The court cited insufficient clarity in the case papers and the forensic department’s report. The police arrested the men on suspicion of “debauchery” – a charge that has been used against gay people in Egypt extensively—and accused them of organizing same-sex orgies. The prosecution has ordered an appeal. The defendants, meanwhile, have indicated their intention to bring defamation charges against Egyptian journalist Mona Iraqi, who led police to the bathhouse, as well as the owner of the television network that broadcasts her show. In December 2014, INCLO member EIPR [reported](#) that at least 150 individuals have been arrested on debauchery charges in the last 18 months

Kenya: In August 2014, Kenya’s Republican Liberty Party [introduced](#) a bill that would impose life imprisonment on anyone convicted of engaging same-sex sexual activity. The bill, which resembles [legislation](#) in Uganda, has received strong support from many of Kenya’s religious leaders. INCLO member KHRC will soon publish a report on how religious leaders and institutions view same-sex sexuality and gender nonconformity. Among other conclusions, the study found that 63.9% of religious leaders in Kenya felt that their religious views supported criminalization of same-sex sexual activity; 30.2% felt that their religious views did not support criminalization; and about 5% did not know whether their religious views support criminalization.

South Africa: On the December 3, 2014, South Africa’s Western Cape High Court handed down judgment in [Makumba v Minister of Home Affairs and Others](#), ordering the Department of Home Affairs to reconsider the asylum application of a Malawian woman who was assaulted and abused when her employer, family, and community members found out that she was a lesbian. Malawi, a majority Christian country with a significant Muslim minority, has a significant record of religiously-motivated persecution against LGBT individuals. A moratorium on enforcement of laws criminalizing same-sex activity was lifted three days after it was announced in 2010, in light of strong opposition by the county’s Council of Churches. INCLO member LRC represented Ms. Makumba in the case.

Religious Freedom & Women’s Rights

Access to Abortion

United Kingdom: The High Court in Belfast has [granted](#) the Northern Ireland Human Rights Commission leave to pursue judicial review of abortion law in Northern Ireland. The Human Rights Commission is seeking a change that would allow abortion in cases of rape, incest, or “serious malformation” of a fetus. Currently, abortion is legal in Northern Ireland only where there is either a risk to the woman’s life or a risk of serious or permanent damage to her physical or mental health. The case has been listed for a three-day hearing in June.

New Zealand: The Abortion Law Reform Association of New Zealand has created a database known as [My Decision](#) that lists health care professionals and organizations that will not provide or refer for abortion care and/or contraception services. The database includes the name of the individual or organization that refuses to provide care, the region in which they operate, and their professional title. Right to Life New Zealand [condemned](#) the database, claiming that it is meant to “name and shame” and that “[c]onscientious objection is a fundamental right and one that must be preserved if we are to continue to live in a free and civil society.”

International: Last fall, the Center for Reproductive Rights released a report entitled [Conscientious Objection and Reproductive Rights: International Human Rights Standards](#) (Spanish version available [here](#)). The report analyzes the various human rights standards that govern conscientious objection in the reproductive health care context, as compared with the human rights standards that govern conscientious objection to military service. The report concludes that, because conscientious objection in the reproductive health care context can impose significant harm on third-parties (i.e., patients), the conscientious objection right should be more narrowly circumscribed in the reproductive health care context than elsewhere.

[Access to Contraception](#)

Canada: Following complaints last year about an Ottawa walk-in clinic that refused on religious grounds to provide a woman with birth control, and as part of a policy review process, the Ontario College of Physicians and Surgeons voted earlier this month to update its professional and human rights policy. The updated policy requires doctors who are unwilling to provide certain forms of medical care (such as prescriptions for contraception) to: (1) refer patients to a “non-objecting, available, and accessible” physician; and (2) provide care themselves in cases of medical emergency. Doctors who violate the policy could face disciplinary action. The Christian Medical and Dental Society of Canada, the Canadian Federation of Catholic Physicians’ Societies, and five individual doctors have [filed](#) a notice of application for judicial review in Ontario’s Superior Court of Justice, alleging that the College’s updated policy violates their rights to freedom of conscience and freedom of religion. They maintain that the policy’s “effective referral” requirement may prove unconscionable for some doctors, and insist that refusing to provide certain procedures or medications does not violate the rights of patients and does not amount to discrimination.

United States: As reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations that objected to providing coverage. (A closely held corporation is, loosely speaking, one whose stock is not freely traded and is held by a relatively small number of shareholders.)

Religiously affiliated nonprofit organizations continue to object to rules governing them concerning insurance for contraception. Under an accommodation now in place, religiously affiliated non-profit organizations that object to insurance coverage for contraception can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator would then arrange and pay for the contraceptive coverage separately.

The accommodation is being challenged, as requiring organizations to facilitate contraceptive coverage in violation of their religious beliefs. To date, all four federal appeals courts to have considered the issue – the Third, Sixth, Seventh, and D.C. Circuits – have [rejected](#) the challenges. The US Supreme Court recently vacated the Seventh Circuit’s decision in [University](#)

[of Notre Dame v. Burwell](#), which was issued before the Supreme Court's decision in *Hobby Lobby*, and ordered the appeals court to reconsider the case in light of *Hobby Lobby*. The Michigan Catholic Conference has asked the Supreme Court for full review of the Sixth Circuit's decision in [Michigan Catholic Conference v. Burwell](#). Six courts of appeals have or soon will hear arguments in cases challenging the new rule. INCLC member ACLU joined friend-of-the-court briefs in several of these cases.

Other

Ireland: On February 10, the Ireland High Court [heard arguments](#) in a case where a woman is seeking damages from a hospital that performed a symphysiotomy on her twelve days before the birth of her child. As discussed in our last issue, symphysiotomy is a surgical procedure that was once used to facilitate a vaginal birth by severing one of the main pelvic joints and unhinging the pelvis. The practice is alleged to have been carried out on approximately 1,500 women and girls in Ireland between the 1920s and the 1980s, often without consent. Survivors have argued that it was promoted in Catholic-run hospitals and by medical personnel who, for religious reasons, wished to avoid procedures that might limit a woman's capacity to bear more children. In August 2014, the UN Human Rights Committee [indicated](#) that the practice amounted to torture or "cruel, inhuman or degrading treatment or punishment," as defined by Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

A [redress scheme](#) established by the Government in November 2014 provides *ex gratia* payment to survivors in exchange for the release of legal claims related to the practice. Both Survivors of Symphysiotomy, which represents the majority of survivors, and INCLC member ICCL have argued that the release is overbroad because it requires waiver of all claims related to symphysiotomy, not just those against the government, as a condition of payment.

United Kingdom: The UK Parliament has [voted](#) in favor of legislation authorizing the creation of babies using DNA from three people. The technique at issue is designed to prevent the inheritance of certain mitochondrial diseases by combining the DNA of two people with the healthy mitochondria of a donor woman. The bill authorizing the technique passed over the objections of the Catholic and Anglican Churches in England; the churches maintain that the technique is neither safe nor ethical, particularly because it involves the destruction of embryos.

On January 26, the Church of England ordained Libby Lane as its first female bishop. As we reported in our last issue, the Church held a [final vote](#) in November 2014 allowing women to become bishops, overturning a centuries' old gender barrier in the Church. The reform had previously been approved by both the Church's lawmaking body and the British Parliament. (The text of the amending Canon can be found [here](#).)

Religious Freedom & Individual Rights

Clothing and Garb

Canada: On February 6, the Federal Court of Canada held in [Ishaq v. Minister of Citizenship and Immigration](#) that a Muslim woman who applied for Canadian citizenship could not be required to remove her religious veil, or niqab, as part of the oath taking portion of her citizenship ceremony. The federal government has appealed the decision.

United States: On January 20, the U.S. Supreme Court held in [Holt v. Hobbs](#) that a prison rule prohibiting a Muslim inmate from growing a half-inch long beard violated his religious rights. The Court held that the prohibition violates the federal Religious Land Use and Institutionalized Persons Act of 2000, which prohibits the government from substantially burdening a prisoner's religion unless it can demonstrate that the burden is narrowly drawn to serve a compelling government interest. The prison officials argued that the regulation was necessary to prevent prisoners from smuggling contraband and to ensure that inmates can be easily identified on sight. But the Court concluded that the government could not point to any evidence to support its justifications for the ban. INCLC member ACLU submitted a [friend-of-the-court brief](#) in the case.

And on February 25, the Supreme Court heard oral argument in [Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.](#), which involves a Muslim woman's claim that she was denied a job because her religious headscarf, or hijab, did not meet the company's "look policy." Under federal employment discrimination law, employers are required to accommodate the religious beliefs and practices of employees and applicants unless doing so would place an undue burden on the employer. In this case, the company maintains that it had no obligation to accommodate the plaintiff's hijab because she never informed them that it was part of her religious practice. The Court will address whether an employer's obligation to accommodate a religious practice is triggered only when an employee or applicant identifies a potential conflict. Audio and a transcript of the argument are available [here](#). INCLC member ACLU joined a [friend-of-the-court brief](#) in the case.

Other

Canada: The Supreme Court of Canada recently held in [Carter v. Canada](#) that the Criminal Code's absolute prohibition against assisted suicide violates Section 7 of the Canadian Charter of Rights and Freedoms, which protects the right to life, liberty, and security of the person, which may not be deprived except in accordance with the principles of fundamental justice. A number of religious groups had intervened in the case, asking the Court to confirm that physicians and other health-care workers cannot be compelled to provide medical aid in dying. The Court held that nothing its opinion would compel physicians to provide assistance in dying, and that "[w]hat follows is in the hands of the physicians' colleges, Parliament, and the provincial legislatures."

Please e-mail INCLCNewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

July 2015

Dear Friends:

Welcome to the sixth issue of the International Network of Civil Liberties Organizations' (INCLC) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: Ireland legalized same-sex marriage in a nationwide referendum, while the supreme courts of Mexico and the United States upheld same-sex marriage as a constitutional right; a county court in Northern Ireland held that Ashers Bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia; a second wave of cases challenging rules providing for insurance coverage for contraception are slowly making their way to the United States Supreme Court; and the Hungarian government reached a compensation agreement with two religious organizations unlawfully deprived of church status, following a decision by the European Court of Human Rights.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLC's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLCNewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

Ireland: On May 22, Ireland legalized same-sex marriage through a nationwide [referendum](#), with a 61% majority of votes cast supporting legalization. Previously, same-sex couples in Ireland could enter into civil partnerships, which conferred rights and responsibilities similar but not equal to marriage. Ireland is now the first country in the world to legalize same-sex marriage through a popular vote. Father Brendan Hoban, co-founder of the Association of Catholic Priests, [called](#) the referendum a “significant body-blow to the position of the Catholic Church,” which campaigned heavily against legalization of same-sex marriage. INCLO member ICCL played a leading role in passing the referendum.

This is not the only important news from Ireland. On April 6, the Irish government enacted an amendment to the Children and Family Relationships Bill, extending full adoption rights to cohabiting couples and those in civil partnerships. Previously, children in Ireland could be adopted only by married couples or single applicants, making it impossible for a same-sex couple to jointly adopt. The bill was passed ahead of Ireland's referendum on same-sex marriage, thereby removing the adoption issue from the same-sex marriage debate.

And, on June 3, Joan Burton – the Irish Deputy Prime Minister and Minister for Social Protection – announced that the Cabinet had agreed to drop a controversial “forced divorce” clause from the Gender Recognition Bill, which would have required married individuals who transitioned to divorce before their new gender status would be recognized. The Bill is also being amended to allow persons over 18 years of age to obtain a gender recognition certificate based on a statutory self-declaration of gender identity. Previously, the Bill would have required applicants to supply a statement from an endocrinologist or psychiatrist affirming that the applicant is transitioning or has transitioned to his or her preferred gender.

Italy: On July 21, the European Court of Human Rights (ECtHR) [ruled](#) that Italy is violating the European Convention on Human Rights by refusing to offer adequate legal protection and recognition for same-sex couples. At present, same-sex couples in Italy are unable to get married or enter into civil partnerships. The court found that although same-sex couples may live openly in Italy, they do not receive any formal recognition for their status as a family and must frequently turn to the country's overburdened judicial system to obtain protection for even “the most basic issues arising in a relationship.” The court held that these hindrances violate

Article Eight of the European Convention on Human Rights, which guarantees the right to respect for privacy and family life. Given the absence of marriage equality for same-sex couples in Italy, the ECtHR suggested that the passage of legislation authorizing civil unions or registered partnerships would be “the most appropriate way for same-sex couples . . . to have their relationship legally recognized.” The Court did not, however, reverse its previous decisions which have held that Article 12, the right to marry, does not require member States to allow same-sex couples to marry.

In its decision, the Court pointed to a growing trend towards legal recognition of same-sex couples, noting that 24 out of the 47 Council of Europe member States have legislated in favour of such recognition. The Court also noted that, according to recent surveys, a majority of the Italian population supported legal recognition of homosexual couples. In the Court's opinion, the Italian government had failed to identify any community interests which weighed against such recognition.

Mexico: On June 3, Mexico's Supreme Court [held](#) that any state law barring same-sex couples from marriage violates the country's constitution. The ruling was issued in the form of a “jurisprudential thesis,” which means that although it is binding on lower federal courts, it does not directly invalidate any state laws. Accordingly, civil registry authorities abiding by state laws may still refuse to authorize same-sex marriages. Couples subject to such refusals may, however, obtain a federal court order compelling the issuance of a license.

United States: On June 26, the U.S. Supreme Court [ruled](#) that the Constitution guarantees same-sex couples the right to marry. The Court reasoned that marriage is a fundamental right that may not be discriminatorily denied to gay and lesbian individuals, writing: “It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society.” The decision was greeted with joy, as well as with politicians calling for protections for the religious liberty of those who object to marriage for LGBT couples. Legislative proposals – to permit individuals and institutions to refuse to recognize marriages of same-sex couples – will likely emerge in the coming months. INCLC member ACLU represented plaintiffs in [two](#) of the four cases before the Court. INCLC members CELS, CCLA, LRC and Liberty joined in [a friend-of-the-court brief](#) that highlighted the lessons and perspectives from other countries affording marriage for same-sex couples.

[Services & Public Accommodations](#)

Canada: Courts in British Columbia, Nova Scotia, and Ontario have been asked to decide whether those provinces' legal societies must accredit law degrees issued by Trinity Western University (TWU), a private Christian university in British Columbia. The provincial legal societies take issue with TWU's student conduct policy, which prohibits sexual intimacy outside of “traditional marriage.” During the first week of June, an Ontario Divisional Court [heard](#) oral argument in a case by TWU against the Law Society of Upper Canada. The Law Society has declared that it will not accredit TWU – thereby preventing the university's graduates from practicing law in Ontario – because the school's “discriminatory” policy “would jeopardize the public's confidence in the legal profession.” In its arguments before the court, TWU relied heavily on a 2001 Supreme Court of Canada precedent requiring the British Columbia College of Teachers to recognize TWU's education school.

As reported in our previous issue, in a case similar to that just argued in Ontario, a Nova Scotia trial court [held](#) that the Nova Scotia Barrister's Society lacked the authority to condition its recognition of TWU's law school on a change in the school's student conduct policy and

determined that the law society did not appropriately balance equality concerns against freedom of religion. That decision is now on appeal. And, in August, a British Columbia court will hear TWU's case challenging the Law Society of British Columbia's refusal of recognition.

United Kingdom: On May 19, a Belfast county court [held](#) that a Northern Ireland bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia. As reported in our December 2014 issue, the customer had asked for a cake featuring the slogan "support gay marriage," together with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserted that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintained that it has acted lawfully. Although the court acknowledged the bakery owners' religious beliefs, it emphasized that "they are in a business supplying services to all." The court also rejected the argument that the bakery should not have been required to endorse same-sex marriage through its cake decorations, holding: "[Defendants] were contracted on a commercial basis to bake and ice a cake with entirely lawful graphics and to be paid for it. The Plaintiff was not seeking support or endorsement." The bakery has [indicated](#) that it will appeal the court's ruling.

United States: On April 27, a county court judge in Kentucky [ruled](#) that the print shop Hands On Originals did not violate a local anti-discrimination ordinance by refusing on religious grounds to print shirts promoting the Lexington Pride Festival. The court held that Hands On Originals discriminated on the basis of the content of the requested message, rather than the sexual orientation of its customers. The Lexington Human Rights Commission has appealed the court's decision.

Over the course of the year, many bills were introduced in the states that would have authorized the use of religion to discriminate. Most have gone down in defeat; only seven of more than 70 were enacted into law. Both Arkansas and Indiana enacted state Religious Freedom Restoration Acts. The measures were narrowed after widespread opposition because of concerns the laws could be used to justify discrimination. Michigan enacted a trio of laws allowing agencies that place children for adoption or foster care to refuse to provide services that conflict with their religious beliefs, including the placement of children with LGBT foster parents referred by the state. North Carolina passed a law allowing state officials to recuse themselves from issuing all marriage licenses and performing marriage ceremonies, subject to certain safeguards designed to ensure that such recusals do not prevent state residents from getting married. Utah, in turn, passed a law that requires certain government officials to ensure that someone is available to solemnize all civil marriage ceremonies, while not expressly requiring the officials themselves to perform the ceremonies. INCLC-member ACLU lobbied against many of the refusals bills introduced this year, and maintains a [website](#) tracking the progress of such legislation throughout the United States.

[Employment](#)

United Kingdom: A Nottingham Employment Tribunal recently heard oral arguments in an employment discrimination [lawsuit](#) brought by a Church of England clergyman who was barred from working as a hospital chaplain because he married a same-sex partner. Although the plaintiff, Jeremy Pemberton, was employed by the National Health Service, he needed a license from the diocese to work as a chaplain at King's Mill Hospital in Mansfield. He alleges that the acting bishop for Southwell and Nottingham discriminated against him under the Equality Act by refusing the license. The Church maintains that those in holy orders cannot enter into marriage with a same-sex partner.

Other

Kenya: On April 24, a Nairobi High Court [ordered](#) the Kenyan Non-Governmental Organizations Coordination Board to recognize and register the Gay and Lesbian Human Rights Commission. The Board had rejected the Commission's petitions for registration on five separate occasions, explaining that "any association bearing names gay and lesbian could not be registered," because "the associations were furthering criminality and immoral affairs." Although the court acknowledged that same-sex sexual activity remains illegal in Kenya, it held that the Kenyan Constitution's right to free association applies to all people living within Kenya, regardless of their sexual orientation. The court further held that the Kenyan government "cannot rely on religious texts or its views of what the moral and religious convictions of Kenyans are to justify the limitation of a right" protected under the Constitution. Christian groups in Kenya have protested the ruling, and the Kenyan Christian Professionals Forum [said](#) it would appeal the decision "on behalf of the public interest."

Religious Freedom & Women's Rights

Access to Contraception

Hungary: The Hungarian Ministry of Human Capacities recently [announced](#) that the *EllaOne* emergency contraception pill (also known as the morning-after pill) will continue to be available only with a prescription, due to the Ministry's concerns about patient safety. INCLC-member HCLU and other women's rights groups [condemned](#) the decision. Both the European Medicines Agency and the European Commission have [voiced](#) support for making the *EllaOne* pill available without a prescription, and it can now be accessed over the counter in all European Union member states except Hungary and Malta (where it is not available).

United States: As reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations that objected to providing coverage. (A closely held corporation is, loosely speaking, one whose stock is not freely traded and is held by a relatively small number of shareholders.) The government responded to the Court's ruling by issuing a rule extending the accommodation for objecting religiously affiliated non-profits to closely held for-profit corporations. Under the accommodation, qualifying organizations that object to insurance coverage for contraception can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator would then arrange and pay for the contraceptive coverage separately.

At the same time as the Administration is extending the accommodation, legal challenges to it continue. To date, every appeals court to have addressed the issue has rejected challenges to the accommodation. Most recently, the U.S. Courts of Appeals for the Fifth and Tenth Circuits joined the Third, Sixth, Seventh, and D.C. Circuits in rejecting non-profit challenges to the accommodation. In [East Texas Baptist University v. Burwell](#), the Fifth Circuit held that the accommodation's certification requirements do not require religious non-profits to provide or facilitate access to contraception, and that religious non-profits have no right to challenge the government's independent arrangements with insurance companies regarding contraception coverage. The Tenth Circuit reached a similar result in [Little Sisters of the Poor v. Burwell](#).

There are now petitions for Supreme Court review in three of these cases. For more information, contact LibertyNewsletter@aclu.org for a subscription to INCLO-member ACLU's newsletter on U.S. religious refusals.

Marriage & Family

South Africa: Last September, the South African Human Rights Commission (SAHRC) [filed](#) a lawsuit in the Western Cape High Court challenging the Birth and Death Registrations Act 51 of 1992, which requires a man to give his consent before he may be registered as the father of a child born outside of marriage and which, in these cases, prohibits a child from using his father's surname without the father's consent or leave of court. SAHRC challenges these requirements on a number of grounds, including that they unconstitutionally discriminate between mothers and fathers who have children outside of marriage, between married and unmarried mothers, and between children born inside and outside of marriage. INCLO-member LRC represents SAHRC and two individual plaintiffs in the lawsuit.

Other

United Kingdom: Leaders of an ultra-Orthodox Jewish sect in North London recently [issued](#) a letter warning that the sect's schools would not educate students driven to class by their mothers. "There has been an increase in incidences of mothers of our students who have begun driving cars," the letter stated, "something that goes against the laws of modesty within our society." Addressing the letter, Education Secretary and Minister for Women and Equalities Nicky Morgan said: "This is completely unacceptable in modern Britain. If schools do not actively promote the principle of respect for other people they are breaching the independent school standards. Where we are made aware of such breaches we will investigate and take any necessary action to address the situation."

Religious Freedom & Racial Justice

Hungary: On April 22, the Hungarian Supreme Court [held](#) that a parochial elementary school in Nyíregyháza (a city in north-eastern Hungary) which educates exclusively Roma children is not impermissibly segregating but rather serving a Church program. The school, which was shut down in 2007 after an earlier anti-segregation lawsuit by Chance For Children Foundation (CFCF), was reopened in 2011 under the auspices of the Greek Orthodox Church. Although the parochial school serves only Roma children as part of a special Church program, Roma families may also choose to send their children to several other schools located nearby. The CFCF initiated a new lawsuit against the parochial school, claiming that it segregates Roma children and deprives them of the educational opportunities offered in other town schools. Although the trial and appellate courts both agreed that the parochial school violated anti-segregation laws, the Supreme Court reversed those decisions, holding that the Church's right to freedom of religion and the Roma parents' right to send their children to the school of their choice superseded anti-segregation requirements. The CFCF now looks to the European Commission to clarify whether the Supreme Court's ruling is in accord with Council of Europe recommendations on Roma integration.

Religious Freedom & Individual Rights

Clothing and Garb

United States: On June 1, the U.S. Supreme Court issued its decision [Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.](#), which involved a Muslim woman's claim that she was denied a job because her religious headscarf, or hijab, did not meet the company's "look policy." Under U.S. federal employment discrimination law, employers are required to accommodate the religious beliefs and practices of employees and applicants unless doing so would place an undue burden on the employer. The company maintained that it should not be held liable for religious discrimination, because the woman had never informed them that she needed to wear her *hijab* for religious reasons. The Supreme Court rejected this argument, holding that a company may be held liable for religious discrimination where its failure to hire a prospective employee is motivated by a desire to avoid making a reasonable religious accommodation, even if the prospective employee cannot show that the company had "actual knowledge" of her need for such an accommodation. INCLC member ACLU joined a [friend-of-the-court brief](#) in the case.

Employment

United Kingdom: Two employment decisions out of the U.K. illustrate how courts are grappling with religious speech in the workplace. On February 27, an employment tribunal [held](#) that the East London National Health Service Foundation Trust did not unlawfully discriminate based on religion or restrict freedom of conscience when it suspended a Christian occupational therapist, Victoria Wastenev, for proselytizing a Muslim coworker who was experiencing health problems. The Trust suspended Ms. Wastenev after her coworker complained that Ms. Wastenev had offered to pray for her, invited her to attend church events, and gave her a book about a Muslim woman who converts to Christianity. Ms. Wastenev maintained that her suspension violated the religious discrimination provisions of the Equality Act and the religious freedom protections enshrined in the European Convention on Human Rights. The employment tribunal, however, concluded that Ms. Wastenev had been disciplined because her actions "blurred professional boundaries and placed improper pressure on a junior employee rather than [because] they were religious acts." On April 2, Ms. Wastenev [appealed](#) to the Employment Appeals Tribunal.

In June, a separate employment tribunal in Watford [concluded](#) that a childcare service unlawfully discriminated against Sarah Mbuyi, an evangelical Christian who was terminated from her nursery assistant position after she told a lesbian coworker that she believed homosexuality to be a sin. The conversation so upset the coworker that she asked to be transferred to a different room so she would not have to work with Ms. Mbuyi. The employment tribunal concluded that the termination of Ms. Mbuyi was a disproportionate response under the circumstances of her actions.

Government Recognition and Funding of Religion

Hungary: As reported in previous issues, the ECtHR held in [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#) that Hungary's Church Act of 2012 violated the freedom of religion and association provisions of the European Convention on Human Rights by selectively removing church status and state subsidies from several religious organizations previously registered as churches, by establishing a politically tainted re-registration procedure, and by treating the deprived churches differently from the incorporated churches. Pursuant to the ECtHR's ruling, the Hungarian government had six months to reach an agreement with the claimant religious organizations regarding just compensation. Two religious organizations

[accepted](#) the government's offer of compensation, which did not include a provision restoring church status. The ECtHR will determine appropriate compensation for the [other religious organizations](#). INCLO-member HCLU, which represents nine of the seventeen claimant religious organizations in the dispute, maintains that, in addition to providing compensation, the government must amend both the Church Act and the Fundamental Law to restore the organizations' church status.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

October 2015

Dear Friends:

Welcome to the seventh issue of the International Network of Civil Liberties Organizations' (INCLCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: Kim Davis, a county clerk in the United States, was found in contempt of court after she refused to issue marriage licenses in the wake of the Supreme Court's same-sex marriage ruling; a new report on Nigeria's Same Sex Marriage Prohibition Act, which prescribes up to 14 years' imprisonment for those who enter into same-sex marriages or co-habit, states that the law has led to mob attacks, police torture, evictions, and health risks; Spain's Constitutional Court held that a pharmacy could not be legally required to sell emergency contraception over religious objections; Canada's Federal Court of Appeal upheld a lower court decision striking down a requirement for Muslim women to remove the niqab before taking the citizenship oath; the Indian Supreme Court stayed a decision ruling that the Jain tradition of santhara, which involves death by fasting, qualifies as suicide; and INCLCLO released a report examining how courts in different countries address the tensions between religious freedom and principles of equality.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLCLOnewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Brian Hauss
Staff Attorney, ACLU

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

United States: On June 26, the Supreme Court [ruled](#) that the federal Constitution guarantees same-sex couples the right to marry. The Court reasoned that marriage is a fundamental right that may not be denied to gay and lesbian individuals: "It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society." Although most officials throughout the country are complying with the Supreme Court's ruling, there are some efforts to resist the ruling in the name of religion.

Following the Supreme Court decision, Kim Davis – the head clerk for Kentucky's Rowan County – [stopped](#) issuing all marriage licenses, stating that issuing marriage licenses to same-sex couples goes against her religious beliefs. Four couples brought a lawsuit challenging the denial of their marriage licenses, and a federal district court ruled that Ms. Davis's "religious convictions cannot excuse her from performing the duties that she took an oath to perform as Rowan County Clerk." When Ms. Davis refused to comply with the court's order, the court found her in contempt and ordered her held in jail. In Ms. Davis's absence, Rowan County deputy clerks began issuing marriage licenses to all eligible couples. The district court later released Ms. Davis from jail on the condition that she not interfere with the issuance of marriage licenses. When Ms. Davis returned to work, she altered the marriage licenses so they state they are issued pursuant to a federal court order (rather than the clerk), and she directed deputy clerks to sign the licenses in their capacity as notaries public rather than as county officials. Plaintiffs have argued that these alterations undermine the licenses' validity. Litigation remains ongoing. The plaintiff couples are represented by INCLO-member ACLU.

Services & Public Accommodations

Canada: As reported in previous issues, courts in British Columbia, Nova Scotia, and Ontario have been asked to decide whether those provinces' legal societies must accredit a proposed law school at Trinity Western University (TWU), a private Christian university in British Columbia. The provincial legal societies take issue with TWU's mandatory Community Covenant, which prohibits sexual intimacy outside of "traditional marriage between a woman and a man."

In July, the Ontario Divisional Court [upheld](#) the Law Society of Upper Canada's decision not to accredit TWU. Noting that the Society's refusal of accreditation "does not, in fact, preclude TWU from opening a law school," the court determined that the conduct policy discriminates against

LGBTQ individuals by “reduc[ing] their opportunities for acceptance to law school in comparison with all other persons.” TWU says it will appeal the judgment.

By contrast, a Nova Scotia court [held](#) in January that the Nova Scotia Barrister’s Society lacked the authority to condition its recognition of TWU’s law school on a change in the school’s student conduct policy and determined that the law society did not appropriately balance equality concerns against freedom of religion. That decision is now on appeal.

The court in British Columbia has [reserved judgment](#) in TWU’s case challenging the Law Society of British Columbia’s refusal of recognition.

Other provinces and territories have accredited the proposed school.

United States: On August 13, the Colorado Court of Appeals issued an [opinion](#) in *Craig & Mullins v. Masterpiece Cakeshop, Inc.*, affirming that the cakeshop violated the state’s anti-discrimination law when it refused to sell a wedding cake to a same-sex couple. Rejecting the argument that the anti-discrimination law violates the cakeshop’s right to religious exercise, the court wrote that “Masterpiece remains free to continue espousing its religious beliefs, including its opposition to same-sex marriage. However, if it wishes to operate as a public accommodation and conduct business within the State of Colorado, [the law] prohibits it from picking and choosing its customers based on their sexual orientation.” The court also rejected the cakeshop’s First Amendment free expression argument, reasoning that “that the act of designing and selling a wedding cake to all customers free of discrimination does not convey a celebratory message about same-sex weddings,” and that any political sentiment inferred from the wedding cake “is more likely to be attributed to the customer than to Masterpiece.”

This is one of a number of such cases involving businesses that refused for religious reasons to provide services to LGBT people. Other cases of which we are aware involve wedding venues, a photography studio, a bakery, a flower and gift shop, and an inn. We will report on these cases when there are significant developments.

[Employment](#)

South Africa: Ecclesia de Lange – a minister fired by the Methodist Church in 2010 for marrying her same-sex partner – has [appealed](#) her dismissal to the Constitutional Court, after adverse rulings by the Western Cape High Court and the Supreme Court of Appeal. Ms. de Lange has told the Constitutional Court that her relationship and cohabitation were well known to the Church, but that she was subjected to discipline and ultimately terminated only after she announced her wedding plans. Freedom of Religion South Africa, a religious rights organization, has filed papers arguing that the Court must appreciate the Methodist Church’s longstanding doctrinal position on same-sex marriage.

[Education](#)

Canada: On August 26, the Nova Scotia Court of Appeal [held](#) in *Bonitto v. Halifax Regional School Board* that a school may prohibit a parent from distributing religious materials on school premises during school hours. Sean Bonitto, a fundamentalist Christian and parent at Park West School in Halifax, distributed religious materials – asserting, among other things, that homosexuality is a sin – to students and others. The school board’s policy provides that distribution of materials at the school requires principal approval, which was denied to Mr.

Bonitto. Mr. Bonitto argued that the prohibition infringed his freedom of religious expression under the Canadian Charter of Rights and Freedoms, but the court concluded that the prohibition was reasonable and proportionate to the school's interest in promoting a safe learning environment.

Government Discrimination

Hungary: The advertising company used by Budapest's municipal transport agency has [refused](#) to contract with melegrandi.hu, a dating site for LGBT people that wanted to place advertising posters on city buses. In its refusal, the advertising company argued that the posters would be harmful to the moral development of young people, which is prohibited by the law on advertising. The dating site has filed a challenge before the Hungarian Equal Treatment Authority, arguing that it does not offer sexual services and its advertisements therefore do not violate the advertising law's youth-protective rules. Moreover, the dating site has asked the Authority to examine whether advertisements are allowed for heterosexual dating sites. The dating site is represented by INCLO-member HCLU.

India: In early 2014, the Gujarat state government authorized tax exemptions for all movies made in the Gujarati language, except for those depicting social evils, evil customs, or blind faith. The government denied the tax exemption to a movie called Meghadhanushya (Spectrum of the Rainbow), which is about a gay youth's struggle to understand his identity, on the grounds that it depicted a "social evil" and is "opposed to public policy." The Gujarat High Court held that the movie is entitled to the tax exemption, stating that depicting the life of a gay person is not equivalent to depicting a social evil or custom. The Indian Supreme Court [stayed](#) the High Court's order and, in August, agreed to review the merits of the case.

Nigeria: A new [report](#) on Nigeria's Same Sex Marriage Prohibition Act – which prescribes up to 14 years' imprisonment for those who enter into same-sex marriages or co-habit and also criminalizes "gay clubs, societies, and organizations" – states that the law has led to mob attacks, police torture, evictions, public whippings, and health risks. The report, authored by PEN American Center and the Leitner Center for International Law and Justice, calls on Nigerian President Muhammadu Buhari to repeal the legislation, charging that it denies freedom of expression and other rights protected under Nigeria's Constitution. Nigerian groups documented 105 human rights violations against LGBT people in the year after the law's enactment in January 2014.

Religious Freedom & Women's Rights

Access to Contraception

Spain: On July 8, Spain's Constitutional Court [held](#) that the government violated a pharmacy's "ideological freedom," as protected under Article 16 of the Spanish Constitution, when it sanctioned the pharmacy for refusing to sell emergency contraception. Citing different positions on the possible abortive effects of emergency contraception, the Court reasoned that the plaintiff pharmacy's beliefs involving the right to life outweighed the government's interest in ensuring that all pharmacies provide the medication. In so holding, the Court stated The Court noted that the plaintiff pharmacy was located in in the urban center of Seville and there was no showing that women's access to the contraception was obstructed. The Court, however, upheld sanctions imposed on the pharmacy for refusing to sell condoms, on the ground that there was in that case "no conflict of conscience with constitutional relevance." Dissenting, Judge Adela

Asua argued that Article 16 should not be used to excuse citizens from performing their legal duties and expressed concern that the decision could “bring ill-fated consequences for our state and our existence.”

United States: As reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations that objected to providing coverage. Now, pursuant to new federal rules, closely held for-profit organizations (like Hobby Lobby) and religiously affiliated non profits that object to providing contraception may avail themselves of an accommodation. Under the accommodation, closely held corporations and religiously affiliated non-profit organizations that object to insurance coverage for contraception can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator will then arrange and pay for the contraceptive coverage separately.

Thus far, seven federal appeals courts have rejected challenges to the accommodation, primarily on the ground that it does not substantially burden religious exercise. On September 17, however, the Eighth Circuit Court of Appeals parted ways with its sister courts and held that the accommodation impermissibly burdens religious exercise.

The split between the circuit courts significantly increases the chance that the issue will be taken up by the Supreme Court. There are currently petitions for Supreme Court review in seven of these cases; the Supreme Court has scheduled the cases for a conference at October 30. For more information, contact LibertyNewsletter@aclu.org for a subscription to INCLC member ACLU’s newsletter on U.S. religious refusals.

[Access to Abortion](#)

Argentina: In 2012, the Argentina Supreme Court ruled that abortion is lawful in cases of rape or threat to the woman’s life, and instructed the country’s national and regional governments to establish protocols for ensuring access to lawful abortions. The National Ministry of Health recently updated its abortion care [protocol](#), which is mandatory across the whole country. The updated protocol clarifies that healthcare professionals may refuse to provide service on conscientious objection grounds, “provided [the refusal] does not delay, slow down, or impede access” to a lawful abortion. Healthcare professionals who conscientiously object to providing abortion care must still inform women about their right to access lawful abortion under appropriate circumstances and, if the patient wishes to obtain an abortion, must refer the patient to another physician for appropriate assistance. An attending physician may not refuse to perform an abortion if no other physician is available. Healthcare professionals who conscientiously object to providing abortion care are instructed to notify the proper authorities at the healthcare institution in which they work. Healthcare institutions, which do not have conscientious objection rights, must ensure that patients have access to lawful abortions.

Canada: On July 29, Canada’s national public health service [announced](#) that it has approved RU-486, a pill used to terminate a pregnancy. Under Canada’s national ethics rules, doctors may refuse to perform abortions or refer patients for abortions, so long as they connect the patient with other service providers. In Ontario, doctors will reportedly also be able to refuse to prescribe RU-486. Other provinces’ policies on refusals to prescribe the medication remain unclear.

Uruguay: In October 2012, the National Congress of Uruguay enacted the Voluntary Interruption of Pregnancy Act, which legalized abortion within the first twelve weeks of pregnancy. President José Mujica subsequently issued Decree 375/012, which contains various

regulations pertaining to abortion. A group of gynecologists from the Integrated National Health System filed a legal challenge to the Decree. As part of the challenge, the gynecologists called on the court to suspend immediately 11 articles in the Decree that deal with conscientious objection, claiming they violate the doctors' freedom of conscience and right to practice medicine by limiting objections to performance of the procedure and thus do not include pre- and post-abortion procedures. They also maintained that the regulations unduly restrict their freedom to counsel patients regarding alternatives to abortion.

In the December 2014 issue, we reported that the Uruguayan Court of Administrative Disputes (TCA) issued a preliminary decision suspending the challenged articles. In August, the court [reaffirmed](#) that ruling in a final decision, holding that the plaintiff physicians may refuse to participate in any stage of the abortion process. In several regions of the country, more than 80% of gynecologists refuse to perform abortions on religious or moral grounds, according to a [report](#) released by Women and Health in Uruguay.

[Other](#)

India: In 2012, the Haji Ali Dargah Trust, which is charged with maintaining a prominent mosque and tomb located in Mumbai, banned women from entering the tomb's inner sanctum. The Indian Muslim Women's Movement filed a public interest litigation before the High Court of Bombay challenging the ban. In August 2015, the court [asked](#) the trust to reconsider the ban, possibly by reverting to its previous practice of using separate entrances for men and women. If the parties cannot reach an amicable resolution, the court will resolve the issue.

In July, the Kerala High Court [dismissed](#) a public interest litigation challenging the constitutional validity of Sharia-based Muslim Personal Law, which governs family proceedings in India's Muslim communities. The petitioners in the case maintained that the law's inheritance provisions discriminate on the basis of gender because the provisions stipulate that daughters – but not sons – must share inherited property with their relatives. The court ruled that the issues raised in the case could not be adjudicated in public interest litigation and must instead be resolved by the legislature through the enactment of a Uniform Civil Code for family law. The Indian Supreme Court has on numerous occasions since the 1970s requested that the legislature implement such a law.

Religious Freedom & Individual Rights

[Clothing and Garb](#)

Belgium: The European Court of Human Rights (ECtHR) has asked for the Belgian government's response in the case of *Dakir v. Belgium*, which involves a Muslim woman's challenge to a ban on face coverings in public places. The plaintiff complains that the prohibition on her wearing the niqab – a veil covering the face with the exception of the eyes – violates her right to manifest her religion, her right to respect for her private life, and her right to freedom of expression. A group of INCLO members, led by Liberty, has applied for permission to intervene in the case.

Canada: In September, Canada's Federal Court of Appeal [upheld](#) a lower court's [decision](#) striking down a government policy requiring women who wear a niqab to unveil in order to take the oath of citizenship. The court declined to address whether the policy was consistent with the Canadian Charter of Rights and Freedoms, instead holding that the mandatory nature of the

policy contravened the Citizenship Regulations, which require a citizenship judge to “administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof.” The government has filed leave to appeal the decision to the Supreme Court of Canada.

India: In July, the Kerala High Court [ruled](#) that two female students must be allowed to wear hijabs for the All-India Pre-Medical Test. The examination’s administrators had previously stipulated a strict dress code to prevent malfeasance. In response to the students’ challenge, the High Court ruled that it was improper for any authority to deny a woman the right to wear her religious attire, and indicated that the authorities could prevent cheating by authorizing a female invigilator or other official to examine the students at the hall before the exam commenced.

Kenya: In *Methodist Church v. Teachers Service Commission*, the High Court of Kenya [held](#) that Muslim students cannot be allowed to wear hijabs, white trousers, and open shoes instead of the regular school uniforms, as this would amount to preferential treatment over other students who profess different faiths. The court further noted that the school uniforms assist in the identification of students, promote discipline, and instill a sense of inclusivity and unity of purpose among students.

[Employment](#)

United Kingdom: On February 27, an employment tribunal [held](#) that the East London National Health Service Foundation Trust did not unlawfully discriminate based on religion or restrict freedom of conscience when it suspended a Christian occupational therapist, Victoria Wastenev, for proselytizing a Muslim coworker who was experiencing health problems. The Trust suspended Ms. Wastenev after her coworker, Enya Nawaz, complained that Ms. Wastenev had offered to pray for her, invited her to attend church events, and gave her a book about a Muslim woman who converts to Christianity. Ms. Wastenev maintained that her suspension violated the religious discrimination provisions of the Equality Act and the religious freedom protections enshrined in the European Convention on Human Rights. The employment tribunal, however, concluded that Ms. Wastenev had been disciplined because her actions “blurred professional boundaries and placed improper pressure on a junior employee rather than [because] they were religious acts.” On October 5, Ms. Wastenev received [permission](#) to appeal her case to the Employment Appeals Tribunal.

[Government Recognition and Funding of Religion](#)

Argentina: The Ombudsman of Buenos Aires ruled, in Resolution 841/15, that religious figures and images should be banned in public schools. The ruling came in response to a claim brought by a student’s mother, who asserted that the display of religious figures and images in public schools violates Article 24 of the Constitution of Buenos Aires, which requires the city to provide free and secular public education.

[Other](#)

Hungary: Judit Kende, a psychology student at Eötvös Loránd University in Budapest, was [denied](#) her doctoral degree because she conscientiously objected to take an oath supporting the Fundamental Law of Hungary. Ms. Kende is challenging the denial of her degree, arguing that the oath requirement unduly interferes with her freedom of conscience because some passages of the Fundamental Law reflect controversial political and moral views with she disagrees. She

also argues that the oath requirement is contrary to the law on higher education and that the values espoused in the Fundamental Law have no proper bearing on her vocation. Although the university promised to address the issue, it has thus far failed to do so. Ms. Kende is represented by INCLO-member HCLU.

India: In March, the Maharashtra State government [joined](#) a number of other Indian state governments in banning the slaughter of cows, which are considered holy by Hindus. (In 2004, the Indian Supreme Court ruled that a ban on the slaughter of cows is constitutionally valid.) In addition to the slaughter ban, however, the Maharashtra government has also made the purchase, sale, and possession of beef illegal, except for the meat of water buffaloes. [Petitions challenging](#) the Maharashtra law have been filed with the Bombay High Court, arguing among other things that the law violates Article 29 of the Indian Constitution, which protects the interests of cultural minorities. INCLO-member HRLN is appearing on behalf of some of the petitioners.

Other

Aid in Dying

Canada: In March, we reported on the Supreme Court of Canada's [decision](#) holding that the Criminal Code's absolute prohibition against assisted suicide violates the right to life, liberty, and security of the person, as protected under Section 7 of the Canadian Charter of Rights and Freedoms. In the wake of that decision, the Canadian government has [appointed](#) a panel to study how to implement the court's decision. The panel will focus on which forms of assisted dying should be permitted, on eligibility criteria, and on safeguards to protect a doctor's "freedom of conscience" not to participate in such procedures.

India: On August 10, the Rajasthan High Court [held](#) that the Jain tradition of santhara, which involves death by fasting once a person believe has completed his or her earthly purpose, qualifies as suicide and ruled that any person who supported the practice would be culpable for abetting suicide. The court ruled that santhara is not an essential religious practice of the Jain community and is therefore not entitled to protection under Article 25 of India's Constitution. The Indian Supreme Court [stayed](#) the High Court's order and admitted the appeal for hearing.

Disability Rights

Canada: A hearing-impaired student at Memorial University in Newfoundland has [filed](#) a complaint against the university with the Newfoundland and Labrador Human Rights Commission, alleging that he was forced to drop a course because the professor refused on religious grounds to wear a sound-transmitting device. In 1996, the professor entered into an agreement with the university allowing her to refuse to wear the device because of her Hindu religious beliefs. The university stated that its agreement with the professor is currently under review.

INCLO Report

On September 21, INCLO released a [report](#) that addresses the tension between freedom of religion and equality rights in three areas: LGBT rights, reproductive rights, and religious appearance. The report, "Drawing the Line: Tackling Tensions Between Religious Freedom and Equality," examines how courts in a number of countries have tackled these issues, and offers

recommendations for resolving competing religion and equality claims. Editions in Spanish, French, and Hungarian will be released in the coming months.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

November 2015

Dear Friends:

Welcome to the seventh issue of the International Network of Civil Liberties Organizations' (INCLCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: Kim Davis, a county clerk in the United States, was found in contempt of court after she refused to issue marriage licenses in the wake of the Supreme Court's same-sex marriage ruling; a new report on Nigeria's Same Sex Marriage Prohibition Act, which prescribes up to 14 years' imprisonment for those who enter into same-sex marriages or co-habit, states that the law has led to mob attacks, police torture, evictions, and health risks; Spain's Constitutional Court held that a pharmacy could not be legally required to sell emergency contraception over religious objections; Canada's Federal Court of Appeal upheld a lower court decision striking down a requirement that Muslim citizenship applicants remove the niqab before taking the citizenship oath; the Indian Supreme Court stayed a decision ruling that the Jain practice of Santhara, which involves death by fasting, qualifies as suicide; and INCLCLO released a report examining how courts in different countries address tensions between religious freedom and equality.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLCLOnewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Brian Hauss
Staff Attorney, ACLU

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

United States: On June 26, the U.S. Supreme Court [ruled](#) that the federal Constitution guarantees same-sex couples the right to marry. The Court reasoned that marriage is a fundamental right that may not be denied to gay and lesbian individuals: "It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society." Although most officials throughout the country are complying with the Supreme Court's ruling, there are some efforts to resist the ruling in the name of religion.

For example, following the Supreme Court decision, Kim Davis – the head clerk for Kentucky's Rowan County – [stopped](#) issuing all marriage licenses, stating that issuing marriage licenses to same-sex couples goes against her religious beliefs. Four couples brought a lawsuit challenging the denial of their marriage licenses, and a federal district court ruled that Ms. Davis's "religious convictions cannot excuse her from performing the duties that she took an oath to perform as Rowan County Clerk." When Ms. Davis refused to comply with the court's order, the court found her in contempt and ordered her held in jail. In Ms. Davis's absence, Rowan County deputy clerks began issuing marriage licenses to all eligible couples. The district court released Ms. Davis from jail on the condition that she not interfere with the issuance of marriage licenses. When Ms. Davis returned to work, she altered the marriage licenses so they state they are issued pursuant to a federal court order (rather than the clerk), and she directed deputy clerks to sign the licenses in their capacity as notaries public rather than as county officials. Plaintiffs have argued that these alterations cloud the licenses' validity. Litigation remains ongoing. The plaintiff couples are represented by INCLO-member ACLU.

Services & Public Accommodations

Canada: As reported in previous issues, courts in British Columbia, Nova Scotia, and Ontario have been asked to decide whether those provinces' legal societies must accredit a proposed law school at Trinity Western University (TWU), a private Christian university in British Columbia. The provincial legal societies take issue with TWU's mandatory Community Covenant, which prohibits sexual intimacy outside of "traditional marriage between a woman and a man."

In July, the Ontario Divisional Court [upheld](#) the Law Society of Upper Canada's decision not to accredit TWU's law school. Noting that the Society's refusal of accreditation "does not, in fact,

preclude TWU from opening a law school,” the court determined that the conduct policy discriminates against LGBTQ individuals by “reduc[ing] their opportunities for acceptance to law school in comparison with all other persons.” TWU says it will appeal the judgment.

By contrast, a Nova Scotia court [held](#) in January that the Nova Scotia Barrister’s Society lacked the authority to condition its recognition of TWU’s law school on a change in the school’s student conduct policy and determined that the law society did not appropriately balance equality concerns against freedom of religion. That decision is now on appeal.

The court in British Columbia has [reserved judgment](#) in TWU’s case challenging the Law Society of British Columbia’s refusal of recognition.

Other provinces and territories have accredited the proposed school.

United States: On August 13, the Colorado Court of Appeals issued an [opinion](#) in *Craig & Mullins v. Masterpiece Cakeshop, Inc.*, affirming that the cake shop violated the state’s anti-discrimination law when it refused to sell a wedding cake to a same-sex couple. Rejecting the argument that the anti-discrimination law violates the cake shop’s right to religious exercise, the court wrote that “Masterpiece remains free to continue espousing its religious beliefs, including its opposition to same-sex marriage. However, if it wishes to operate as a public accommodation and conduct business within the State of Colorado, [the law] prohibits it from picking and choosing its customers based on their sexual orientation.” The court also rejected the cake shop’s First Amendment free expression argument, reasoning “that the act of designing and selling a wedding cake to all customers free of discrimination does not convey a celebratory message about same-sex weddings,” and that any political sentiment inferred from the wedding cake “is more likely to be attributed to the customer than to Masterpiece.”

This is one of a number of such cases involving businesses that refused for religious reasons to provide services to LGBT people. Other cases of which we are aware involve wedding venues, a photography studio, a bakery, a flower and gift shop, and an inn. We will report on these cases when there are significant developments.

[Employment](#)

South Africa: Ecclesia de Lange – a minister fired by the Methodist Church in 2010 for marrying her same-sex partner – has [appealed](#) her case challenging her dismissal to the Constitutional Court, after adverse rulings by the Western Cape High Court and the Supreme Court of Appeal. Ms. de Lange has told the Constitutional Court that her relationship and cohabitation were well known to the Church, but that she was subjected to discipline and ultimately terminated only after she announced her wedding plans. Freedom of Religion South Africa, a religious rights organization, has filed papers arguing that the Court must appreciate the Methodist Church’s longstanding doctrinal position on same-sex marriage.

[Education](#)

Canada: On August 26, the Nova Scotia Court of Appeal [held](#) in *Bonitto v. Halifax Regional School Board* that a school may prohibit a parent from distributing religious materials on school premises during school hours. Sean Bonitto, a fundamentalist Christian and parent at Park West School in Halifax, distributed to students and others religious materials asserting, among other things, that homosexuality is a sin. The school board’s policy provides that distribution of

materials at the school requires principal approval, which was denied to Mr. Bonitto. Mr. Bonitto argued that the prohibition infringed his freedom of religious expression under the Canadian Charter of Rights and Freedoms, but the court concluded that the prohibition was reasonable and proportionate to the school's interest in promoting a safe learning environment and a religiously neutral public space.

Government Discrimination

Hungary: The advertising company used by Budapest's municipal transport agency has [refused](#) to contract with melegrandi.hu, a dating site for LGBT people that wanted to place advertising posters on city buses. In its refusal, the advertising company argued that the posters would be harmful to the moral development of young people, which is prohibited by the law on advertising. The dating site has filed a challenge before the Hungarian Equal Treatment Authority, arguing that it does not offer sexual services and its advertisements therefore do not violate the advertising law's youth-protective rules. Moreover, the dating site has asked the Authority to examine whether advertisements are allowed for heterosexual dating sites. The dating site is represented by INCLO-member HCLU.

India: In early 2014, the Gujarat state government authorized tax exemptions for all movies made in the Gujarati language, except those depicting social evils, evil customs, or blind faith. The government denied the tax exemption to a movie called Meghadhanushya (Spectrum of the Rainbow), which is about a gay youth's struggle to understand his identity, on the grounds that it depicted a "social evil" and is "opposed to public policy." The Gujarat High Court held that the movie is entitled to the tax exemption, stating that depicting the life of a gay person is not equivalent to depicting a social evil or custom. The Indian Supreme Court [stayed](#) the High Court's order and, in August, agreed to review the merits of the case.

Nigeria: A new [report](#) on Nigeria's Same Sex Marriage Prohibition Act – which prescribes up to 14 years' imprisonment for those who enter into same-sex marriages or co-habit and also criminalizes "gay clubs, societies, and organizations" – states that the law has led to mob attacks, police torture, evictions, public whippings, and health risks. The report, authored by PEN American Center and the Leitner Center for International Law and Justice, calls on Nigerian President Muhammadu Buhari to repeal the legislation, charging that it denies freedom of expression and other rights protected under Nigeria's Constitution. Nigerian groups documented 105 human rights violations against LGBT people in the year after the law's enactment in January 2014.

Religious Freedom & Women's Rights

Access to Contraception

Spain: On July 8, Spain's Constitutional Court [held](#) that the government violated a pharmacy's "ideological freedom" as protected under Article 16 of the Spanish Constitution when it sanctioned the pharmacy for refusing to sell emergency contraception. Citing different positions on the possible abortive effects of emergency contraception, the Court reasoned that the plaintiff pharmacy's beliefs involving the right to life outweighed the government's interest in ensuring that all pharmacies provide the medication. In so holding, the Court noted that the plaintiff pharmacy was located in the urban center of Seville and there was no showing that women's access to the contraception was obstructed. The Court, however, upheld sanctions imposed on the pharmacy for refusing to sell condoms on the ground that there was in that case

“no conflict of conscience with constitutional relevance.” Dissenting, Judge Adela Asua argued that Article 16 should not be used to excuse citizens from performing their legal duties and expressed concern that the decision could “bring ill-fated consequences for our state and our existence.”

United States: As reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations that objected to providing coverage. Now, pursuant to new federal rules, closely held for-profit organizations (like Hobby Lobby) and religiously affiliated non-profits that object to providing insurance for contraception may avail themselves of an accommodation. Under the accommodation, closely held corporations and religiously affiliated non-profit organizations can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator will then arrange and pay for the contraceptive coverage separately. This accommodation too has been challenged in court.

Thus far, seven federal appeals courts have rejected challenges to the accommodation, primarily on the ground that it does not substantially burden religious exercise. On September 17, however, the Eighth Circuit Court of Appeals parted ways with its sister courts and held that the accommodation impermissibly burdens religious exercise. The split between the circuit courts significantly increases the chance that the issue will be taken up by the Supreme Court. There are currently petitions for Supreme Court review in seven of these cases; the Supreme Court has scheduled the cases for a conference on November 6. For more information, contact LibertyNewsletter@aclu.org for a subscription to INCLC-member ACLU’s newsletter on U.S. religious refusals.

[Access to Abortion](#)

Argentina: In 2012, the Argentina Supreme Court ruled that abortion is lawful in cases of rape or threat to the woman’s life and instructed the country’s national and regional governments to establish protocols for ensuring access to lawful abortions. The National Ministry of Health recently updated its abortion care [protocol](#), which is mandatory across the whole country. The updated protocol clarifies that healthcare professionals may refuse to provide service on conscientious objection grounds, “provided [the refusal] does not delay, slow down, or impede access” to a lawful abortion. Healthcare professionals who conscientiously object to providing abortion care must still inform women about their right to access lawful abortion under appropriate circumstances and, if the patient wishes to obtain an abortion, must refer the patient to another physician. An attending physician may not refuse to perform an abortion if no other physician is available. Healthcare professionals who conscientiously object to providing abortion care are instructed to notify the proper authorities at the healthcare institution in which they work. Healthcare institutions do not have conscientious objection rights and must ensure that patients have access to lawful abortions.

Canada: On July 29, Canada’s national public health service [announced](#) that it has approved RU-486, a pill used to terminate a pregnancy. Under Canada’s national ethics rules, doctors may refuse to perform abortions or refer patients for abortions, so long as they connect the patient with other service providers. In Ontario, doctors will reportedly also be able to refuse to prescribe RU-486. Other provinces’ policies on refusals to prescribe the medication remain unclear.

Uruguay: In October 2012, the National Congress of Uruguay enacted the Voluntary Interruption of Pregnancy Act, which legalized abortion within the first twelve weeks of pregnancy. President José Mujica subsequently issued Decree 375/012, which contains various regulations pertaining to abortion. A group of gynecologists from the Integrated National Health System filed a legal challenge to the Decree. As part of the challenge, the gynecologists called on the court to suspend immediately 11 articles in the Decree that deal with conscientious objection, claiming they violate the doctors' freedom of conscience and right to practice medicine by limiting objections to performance of the procedure and thus do not include pre- and post-abortion procedures. They also maintained that the regulations unduly restrict their freedom to counsel patients regarding alternatives to abortion.

In the December 2014 issue, we reported that the Uruguayan Court of Administrative Disputes (TCA) issued a preliminary decision suspending the challenged articles. In August, the court [reaffirmed](#) that ruling in a final decision, holding that the plaintiff physicians may refuse to participate in any stage of the abortion process. In several regions of the country, more than 80% of gynecologists refuse to perform abortions on religious or moral grounds, according to a report released by Women and Health in Uruguay.

[Other](#)

India: In 2012, the Haji Ali Dargah Trust, which is charged with maintaining a prominent mosque and tomb located in Mumbai, banned women from entering the tomb's inner sanctum. The Indian Muslim Women's Movement filed a public interest litigation before the High Court of Bombay challenging the ban. In August 2015, the court [asked](#) the trust to reconsider the ban, possibly by reverting to its previous practice of using separate entrances for men and women. If the parties cannot reach an amicable resolution, the court will resolve the issue.

In July, the Kerala High Court [dismissed](#) a public interest litigation challenging the constitutional validity of Sharia-based Muslim Personal Law, which governs family proceedings in India's Muslim communities. The petitioners in the case maintained that the law's inheritance provisions discriminate on the basis of gender because the provisions stipulate that daughters – but not sons – must share inherited property with their relatives. The court ruled that the issues raised in the case could not be adjudicated in public interest litigation and must instead be resolved by the legislature through the enactment of a Uniform Civil Code for family law. The Indian Supreme Court has on numerous occasions since the 1970s requested that the legislature implement such a law.

Religious Freedom & Individual Rights

[Clothing and Garb](#)

Belgium: The European Court of Human Rights (ECtHR) has asked for the Belgian government's response in the case of *Dakir v. Belgium*, which involves a Muslim woman's challenge to a ban on face coverings in public places. The plaintiff complains that the prohibition on her wearing the niqab – a veil covering the face with the exception of the eyes – violates her right to manifest her religion, her right to respect for her private life, and her right to freedom of expression. INCLO member Liberty has been granted permission to intervene in the case.

Canada: In September, Canada's Federal Court of Appeal [upheld](#) a lower court's [decision](#) striking down a government policy requiring women who wear a niqab to unveil in order to take

the oath of citizenship. The court declined to address whether the policy was consistent with the Canadian Charter of Rights and Freedoms, instead holding that the mandatory nature of the policy contravened the Citizenship Regulations, which require a citizenship judge to “administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof.” The government has filed leave to appeal the decision to the Supreme Court of Canada.

India: In July, the Kerala High Court [ruled](#) that two female students must be allowed to wear hijabs for the All-India Pre-Medical Test. The examination’s administrators had previously stipulated a strict dress code to prevent malfeasance. In response to the students’ challenge, the High Court ruled that it was improper for any authority to deny a woman the right to wear her religious attire, and indicated that the authorities could prevent cheating by authorizing a female invigilator or other official to examine the students at the hall before the exam commenced.

Kenya: In *Methodist Church v. Teachers Service Commission*, the High Court of Kenya [held](#) that Muslim students cannot be allowed to wear hijabs, white trousers, and open shoes instead of the regular school uniforms, as this would amount to preferential treatment over other students who profess different faiths. The court further noted that the school uniforms assist in the identification of students, promote discipline, and instill a sense of inclusivity and unity of purpose among students.

[Employment](#)

United Kingdom: On February 27, an employment tribunal [held](#) that the East London National Health Service Foundation Trust did not unlawfully discriminate based on religion or restrict freedom of conscience when it suspended a Christian occupational therapist, Victoria Wastenev, for proselytizing a Muslim coworker who was experiencing health problems. The Trust suspended Ms. Wastenev after her coworker, Enya Nawaz, complained that Ms. Wastenev had offered to pray for her, invited her to attend church events, and gave her a book about a Muslim woman who converts to Christianity. Ms. Wastenev maintained that her suspension violated the religious discrimination provisions of the Equality Act and the religious freedom protections enshrined in the European Convention on Human Rights. The employment tribunal, however, concluded that Ms. Wastenev had been disciplined because her actions “blurred professional boundaries and placed improper pressure on a junior employee rather than [because] they were religious acts.” On October 5, Ms. Wastenev received [permission](#) to appeal her case to the Employment Appeals Tribunal.

[Government Recognition and Funding of Religion](#)

Argentina: The Ombudsman of Buenos Aires ruled, in Resolution 841/15, that religious figures and images should be banned in public schools. The ruling came in response to a claim brought by a student’s mother, who asserted that the display of religious figures and images in public schools violates Article 24 of the Constitution of Buenos Aires, which requires the city to provide free and secular public education.

[Other](#)

Hungary: Judit Kende, a psychology student at Eötvös Loránd University in Budapest, was [denied](#) her doctoral degree because she conscientiously objected to take an oath supporting the Fundamental Law of Hungary. Ms. Kende is challenging the denial of her degree, arguing that

the oath requirement unduly interferes with her freedom of conscience because some passages of the Fundamental Law reflect controversial political and moral views with which she disagrees. She also argues that the oath requirement is contrary to the law on higher education and that the values espoused in the Fundamental Law have no proper bearing on her vocation. Although the university promised to address the issue, it has thus far failed to do so. Ms. Kende is represented by INCLO-member HCLU.

India: In March, the Maharashtra State government [joined](#) a number of other Indian state governments in banning the slaughter of cows, which are considered holy by Hindus. (In 2004, the Indian Supreme Court ruled that a ban on the slaughter of cows is constitutionally valid.) In addition to the slaughter ban, however, the Maharashtra government has also made the purchase, sale, and possession of beef illegal, except for the meat of water buffaloes. [Petitions challenging](#) the Maharashtra law have been filed with the Bombay High Court, arguing among other things that the law violates Article 29 of the Indian Constitution, which protects the interests of cultural minorities. INCLO-member HRLN is appearing on behalf of some of the petitioners.

Other

Aid in Dying

Canada: In March, we reported on the Supreme Court of Canada's [decision](#) holding that the Criminal Code's absolute prohibition against assisted suicide violates the right to life, liberty, and security of the person, as protected under Section 7 of the Canadian Charter of Rights and Freedoms. In the wake of that decision, the Canadian government has [appointed](#) a panel to study how to implement the court's decision. The panel will focus on which forms of assisted dying should be permitted, on eligibility criteria, and on safeguards to protect a doctor's "freedom of conscience" not to participate in such procedures.

India: On August 10, the Rajasthan High Court [held](#) that the Jain practice of Santhara, which involves death by fasting once a person believes he or she has completed his or her earthly purpose, qualifies as suicide and ruled that any person who supported the practice would be culpable for abetting suicide. The court ruled that Santhara is not an essential religious practice of the Jain community and is therefore not entitled to protection under Article 25 of India's Constitution. The Indian Supreme Court [stayed](#) the High Court's order and admitted the appeal for hearing.

Disability Rights

Canada: A hearing-impaired student at Memorial University in Newfoundland has [filed](#) a complaint against the university with the Newfoundland and Labrador Human Rights Commission, alleging that he was forced to drop a course because the professor refused on religious grounds to wear a sound-transmitting device. In 1996, the professor entered into an agreement with the university allowing her to refuse to wear the device because of her Hindu religious beliefs. The university stated that its agreement with the professor is currently under review.

INCLO Report

On September 21, INCLC released a [report](#) that addresses the tension between freedom of religion and equality rights in three areas: LGBT rights, reproductive rights, and religious appearance. The report, "[Drawing the Line: Tackling Tensions Between Religious Freedom and Equality](#)," examines how courts in a number of countries have tackled these issues, and offers recommendations for resolving competing religion and equality claims. Editions in Spanish, French, and Hungarian will be released in the coming months.

Please e-mail INCLCNewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

January 2016

Dear Friends:

Welcome to the eighth issue of the International Network of Civil Liberties Organizations' (INCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: a Belfast court is considering whether marriages between same-sex partners in England and Wales must be accorded equal status in Northern Ireland; the South African Constitutional Court dismissed an appeal filed by a Methodist minister who was fired for marrying a same-sex partner, citing procedural concerns; in a sequel to its *Hobby Lobby* decision, the US Supreme Court agreed to review whether the religious accommodation for organizations that object to the Affordable Care Act's contraceptive coverage rule itself violates their religious exercise rights; a court in Northern Ireland held that the European Convention on Human Rights requires the province to allow abortion access for women who are pregnant with fatal fetal abnormalities or who are pregnant as a result of sexual crime; the European Court of Human Rights upheld France's ban on the wearing of "conspicuous religious symbols," including the niqab, by public employees; and an Egyptian court imprisoned a television presenter for contempt of religion.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Brian Hauss
Staff Attorney, ACLU

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

United Kingdom: Late last year, a Belfast High Court [heard](#) challenges brought by two same-sex couples, now living in Northern Ireland, who seek recognition of their English marriages. Under the UK's Marriage (Same Sex Couples) Act 2013, marriages between same-sex couples in England and Wales are recognized only as civil partnerships in Northern Ireland. On November 2, the Northern Irish Assembly [considered](#) legislation that would have legalized marriage between same-sex partners; however, members of the Democratic Unionist Party blocked the vote, despite majority support. The petitioners in the court cases contend that Northern Ireland's refusal to recognize their marriages violates Article 8 of the European Convention on Human Rights, which protects the right to privacy and a family life. Both the Attorney General of Northern Ireland and the UK Government Equalities Office have opposed the challenges. The court has reserved judgment in both cases.

Services & Public Accommodations

Canada: As reported in previous issues, courts in British Columbia, Nova Scotia, and Ontario have been asked to decide whether those provinces' legal societies must accredit a proposed law school at Trinity Western University (TWU), a private Christian university in British Columbia. The provincial legal societies have declined to do so given TWU's mandatory Community Covenant, which prohibits sexual intimacy outside of "traditional marriage between a woman and a man."

On December 10, 2015, a British Columbia court [overturned](#) the provincial Law Society's decision not to accredit TWU's law school, citing procedural improprieties. The Society's board of directors had initially accredited the school in April 2014, but reversed their decision six months later out of deference to a non-binding vote by the Society's membership. The court ruled that the board of directors had allowed the membership's vote to "wrongfully fetter" their discretion and "supplant" their judgment, thereby depriving TWU of a "meaningful opportunity to present their case fully and fairly." The Society has said that it needs to review the decision before deciding whether to appeal.

The British Columbia court's decision follows decisions in Nova Scotia and Ontario. In January 2015, a Nova Scotia court [held](#) that the Nova Scotia Barrister's Society lacked the authority to condition its recognition of TWU's law school on a change in the school's student conduct policy and determined that the law society did not appropriately balance equality concerns against

freedom of religion. And, in July 2015, the Ontario Divisional Court [upheld](#) the Law Society of Upper Canada's decision not to accredit TWU's law school. Both those decisions are now on appeal. Other provinces and territories have accredited the proposed school; however, TWU has said that the law school will not open its doors until all barriers to its graduates have been removed.

[Employment](#)

South Africa: On November 24, 2015, the South African Constitutional Court [dismissed](#) an appeal filed by Ecclesia De Lange, a minister fired by the Methodist Church in 2010 for marrying her same-sex partner. The case was dismissed largely for procedural reasons. In particular the Court [emphasized](#) that she had not shown good cause to set aside the arbitration agreement and that she had failed to adequately raise and preserve her claim below. The Court accordingly concluded that Ms. De Lange's unfair discrimination claim had not "been properly ripened," especially given the "considerable complexity and vast public repercussions" arising from the competing equality and religious freedom concerns at stake in the dispute.

United Kingdom: On October 28, 2015, a Nottingham Employment Tribunal [held](#) that the Church of England did not violate the UK's Equality Act when it barred Rev. Jeremy Pemberton from working as a hospital chaplain because he married a same-sex partner. Although Rev. Pemberton was employed by the National Health Service, he needed a license from the diocese to work as a chaplain at King's Mill Hospital in Mansfield. In its [decision](#), the tribunal reasoned that the Church had valid grounds to revoke his permission to officiate as a hospital chaplain with the National Health Service because he had breached his oath of obedience by marrying a same-sex partner.

[Education](#)

United States: Recently, there has been a marked increase in the number of religiously affiliated colleges and universities applying for and [receiving](#) exemptions from compliance with a federal statute that prohibits sex discrimination at any institution or activity that receives federal funding. Title IX, as the statute is commonly known, allows any school "controlled by a religious organization" to apply for an exemption from those parts of the law that "would not be consistent with the religious tenets" of the organization.

Shortly after the law passed in 1972, scores of colleges and universities secured waivers. (Documents from 2013 showed more than 250 colleges and universities having received some kind of waiver as of that date, with the vast majority having been granted in the 1970s.) A second wave of waiver requests has followed closely on the heels of the Obama administration's guidance that the Title IX discrimination prohibitions extend to "claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity." Since 2014, more than thirty schools have applied for Title IX religious exemptions, and twenty-seven have been granted. Many of the granted exemptions are broad and allow schools that receive federal funding to discriminate based on gender identity, sexual orientation, marital status, and whether a person has had an abortion.

[Government Discrimination](#)

South Africa: On December 8, 2015, a trans man filed a lawsuit seeking to compel the South African Department of Home Affairs to alter his gender markers in government identification

documents, as required under the Alteration of Sex Description and Sex Status Act. Government officials had previously told the plaintiff that his application to alter his gender markers could not be finalized without a letter from medical personnel confirming that he had undergone gender reassignment surgery. He maintains, however, that the Alteration of Sex Description and Sex Status Act requires only medical gender reassignment, not gender reassignment surgery, as a condition for altering gender markers in government identification. He alleges that the disjunction between his gender identity and the gender markers on his government identification often requires him to divulge details about his personal life, which violates his rights to dignity, privacy, and equality. The Department of Homeland Affairs has not yet responded to the claims raised in the case. The plaintiff is represented by INCLO-member LRC.

Religious Freedom & Women's Rights

Access to Contraception

United States: The US Supreme Court has agreed to review whether the religious accommodation for organizations that object to the Affordable Care Act's contraceptive coverage rule itself violates religious exercise rights. As reported previously, the US Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations that objected to providing coverage. In so holding, the Court emphasized that the government had less restrictive means of accomplishing its aims; in particular, it could extend its accommodation for religiously affiliated non-profits to entities such as Hobby Lobby.

It is that very accommodation – which was extended to closely held for-profit organizations (like Hobby Lobby) – that is now contested. Under the accommodation, closely held corporations and religiously affiliated non-profit organizations can certify their objection to contraception coverage to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator will then arrange and pay for the contraceptive coverage separately.

Petitioners challenging the accommodation maintain that, even though they are not required to pay for or administer contraceptive coverage under the accommodation, the form noting their objection itself “triggers” the provision of contraceptive coverage by their insurers and thereby implicates them in actions contrary to their religious beliefs. Seven of eight federal appeals courts have rejected challenges to the accommodation, primarily on the ground that it does not substantially burden religious exercise. Briefing in the cases will be complete in March. Oral arguments are also expected sometime in March.

For more information, contact LibertyNewsletter@aclu.org for a subscription to INCLO-member ACLU's newsletter on US religious refusals.

Access to Abortion

Italy: Although abortion is legal in Italy within 90 days of pregnancy — and later for women in mental or physical danger, or in cases of serious fetal pathologies — women [continue](#) to face serious obstacles in obtaining the procedure. A recent [report](#) by the Italian Ministry of Health notes that only about 60 percent of Italian hospitals perform abortions. The figures among individual practitioners are even starker: Roughly 70 percent of Italian gynecologists, and up to 83 percent in conservative southern regions, refuse to perform abortions on religious or moral

grounds. Experts have noted that the Roman Catholic Church's opposition to abortion has created a strong stigma around the procedure in the overwhelmingly Catholic country, and that doctors who did agree to perform the procedure faced professional backlash. The Italian Association for Demographic Information has attempted to respond to the lack of abortion access in Italy by sending doctors to perform outpatient procedures in underserved regions. Nonetheless, women in Italy continue to face serious obstacles to obtaining timely access to legal abortion.

United Kingdom: On November 30, 2015, a Belfast High Court [held](#) that Northern Ireland's near-total ban on abortion violates the European Convention on Human Rights. The UK's Abortion Act 1967, which legalized abortions by registered practitioners, has never applied in Northern Ireland; instead, the region prohibits abortion except where continuing the pregnancy would either endanger the woman's life or impose long-term negative effects on her health. In its [decision](#), the Belfast court held that Article 8 of the European Convention on Human Rights – which protects the right to privacy and family life – prohibits the government from denying access to abortion for women “who are pregnant with fatal fetal abnormalities or who are pregnant as a result of sexual crime.” In light of the Northern Irish Assembly's record of inaction on abortion issues, the court suggested that a referendum might be required to bring the region's abortion law into compliance with its obligations under the Convention. In a separate decision, Northern Ireland's Department of Justice has [recommended](#) that abortion be permitted in Northern Ireland in cases of fatal fetal abnormality.

Religious Freedom & Individual Rights

Clothing and Garb

France: On November 26, 2015, the European Court of Human Rights [upheld](#) France's ban on the wearing of “conspicuous religious symbols” by public employees. Christiane Ebrahimiyan, who lost her job in the psychiatric department of a French hospital because patients complained about her refusal to remove her niqab (a headscarf), argued that her termination violated Article 9 of the European Convention on Human Rights, which protects the right to freedom of religion. The Court, however, held that France's national courts had not exceeded their discretion under the Convention in deciding to prioritize the state's interest in ensuring separation of church and state over Ms. Ebrahimiyan's religious convictions.

Government Involvement in Religious Affairs

Hungary: On December 1, 2015, the European Court of Human Rights [held](#) by a 4-3 vote that Hungary had not violated Article 6(1) of the European Convention on Human Rights – which guarantees the right to a fair hearing on civil rights claims – by refusing to adjudicate a dispute between a pastor and the Hungarian Calvinist Church. The pastor, who was terminated by the Church for stating in a local newspaper that government subsidies had been unlawfully paid to a Calvinist boarding school, filed contractual claims in the Hungarian civil courts. In its [decision](#), the European Court of Human Rights concluded that the Hungarian Supreme Court's decision effectively determined that the pastor's claims were based on ecclesiastical, rather than civil, law, and therefore dismissal of the case by Hungarian courts did not deprive him of a fair hearing.

India: On December 16, 2015, the Supreme Court of India [upheld](#) an administrative order issued by the State of Tamil Nadu, which opened positions as priests in Hindu temples to

suitable candidates from any caste who had obtained the requisite qualification and training. An association representing Hindu priests, as well as individual priests, challenged the order on the ground that it infringed the constitutional protection for “essential religious practices” by religious denominations. In upholding the State’s order, the Court made clear that although essential religious practices enjoy protection under the Indian Constitution, practices that offend constitutional principles – such as caste discrimination – do not. The Court added, however, that the State’s order could still be challenged in cases where its application goes against religious practices that are not constitutionally offensive.

Government Discrimination

Egypt: On October 22, 2015, the Egyptian Ministry of Religious Endowments [ordered](#) the shrine of Imam Hussein closed for three days, effectively blocking Egyptian Shi’ites from celebrating Ashura, an important holy day commemorating the death of Imam Hussein. The Ministry officially announced that the closure was intended to prevent “Shi’a unorthodox rites from desecrating the shrine on the day of Ashura,” and added that the Shi’a rites “have no roots in Islamic doctrine.” This closure is just one of many episodes of discrimination against Egypt’s Shi’ite religious minority by the country’s Sunni religious establishment and State Security Service. For more information, see INCLO-member EIPR’s report, [“The Turbaned State: An Analysis of the Official Policies of the Administration of Mosques and Islamic Religious Activities in Egypt.”](#)

United States: On January 7, 2016, a settlement was [announced](#) in two federal lawsuits – *Raza v. City of New York* and *Handschu v. Special Services Division* – challenging the constitutionality of a New York Police Department (NYPD) surveillance program directed at Muslim religious and community leaders, groups, and institutions. The *Raza* case, which was filed in 2013, claimed that the NYPD violated the US and New York Constitutions by singling out and stigmatizing New York’s Muslim communities based on their religion. The *Handschu* case was originally filed in 1971 in response to surveillance operations conducted by the NYPD against anti-war protestors, and was settled in 1985 when the NYPD agreed to refrain from investigating political and religious organizations unless there is “specific information that the group is linked to a particular crime.” The lawyers in the *Handschu* case filed papers in 2013 arguing that the NYPD’s Muslim surveillance program violated the 1985 settlement agreement. Pursuant to the new settlement agreement, the NYPD will, among other things: specifically ban investigations based on race, religion, or ethnicity; implement time limits for investigations that fail to turn up threats; and use the least intrusive surveillance techniques possible to prevent undue interference with the political or religious activity of individuals, groups, or organizations. The settlement also provides for a civilian representative, appointed by the mayor, who will review investigations and report suspected violations of the agreement to City Hall or a federal judge. The settlement is currently awaiting court approval. INCLO-member ACLU acted as counsel in the litigation.

Freedom of Conscience and Expression

Egypt: In early 2015, a report released by the Supreme Islamic Research Council at al-Azhar University accused Islam el-Buheiri – a researcher and presenter for an Egyptian television program called “With Islam” – of “destroying the very tenets of Islam” through his work. Following the report’s publication, a number of court cases were filed against el-Buheiri and his program. In one of these cases, the Misdemeanour Court of Misr el-Qadima in South Cairo convicted el-Buheiri of “contempt of religion” under Article 98(f) of the Egyptian Penal Code. On

December 29, 2015, the court commuted the criminal sentence imposed against Islam el-Buheiri from five years imprisonment to one year. Although the Egyptian Constitution ostensibly protects freedom of conscience and expression and freedom of publication, INCLO-member EIPR has documented a number of similar prosecutions. For more details, please see EIPR's report, "[Besieging Freedom of Thought: Defamation of Religion Cases in Two Years of the Revolution.](#)"

Other

INCLO Report

On September 21, 2015, INCLO released a [report](#) that addresses the tension between freedom of religion and equality rights in three areas: LGBT rights, reproductive rights, and religious appearance. The report, "[Drawing the Line: Tackling Tensions Between Religious Freedom and Equality](#)," examines how courts in a number of countries have tackled these issues, and offers recommendations for resolving competing religion and equality claims. Editions in Spanish, French, and Hungarian will be released in the coming months.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

May 2016

Dear Friends:

Welcome to the eighth issue of the International Network of Civil Liberties Organizations' (INCLCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: The Colombian Constitutional Court ruled that same-sex couples have a constitutional right to marriage equality. In the United States, the states of Mississippi and Tennessee enacted laws that authorize discrimination rooted in religious belief. In Northern Ireland, a woman was given a suspended sentence of three months' imprisonment for inducing her own abortion. The U.S. Supreme Court heard argument in another case challenging the requirement that employment insurance plans cover contraception, with the case this time contesting the accommodation already in place for employers who object to the coverage. And Egyptian courts have convicted a number of people for violating the country's law against blasphemy and defamation of religion.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLCLOnewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Brian Hauss
Staff Attorney, ACLU

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

Colombia: On April 28, the Colombian Constitutional Court [held](#) that same-sex couples have the constitutional right to full marriage equality, ruling that state judges, notaries, and clerks “must ensure that citizens’ fundamental rights are observed and that they are all granted equal treatment.” The decision was widely expected after the Court [dismissed](#) a petition against marriage equality for same-sex couples on April 7. Last year, the Court [ruled](#) that same-sex couples have the right to adopt children.

United Kingdom: An English family court magistrate, Richard Page, was [removed](#) from the bench in March after saying in a television interview that he believes children should not be adopted by same-sex couples. Mr. Page – who had previously been reprimanded by the lord chancellor and the lord chief justice for improperly allowing his religious beliefs to influence his rulings – said in the interview that it was his responsibility as a magistrate to do what he considered best for the child, and that he believed “it would be better if it was a man and woman who were the adopted parents.” Mr. Page, who is being represented by the Christian Legal Centre, has said that he [intends](#) to take legal action.

International: On April 8, Pope Francis [released](#) a long-expected proclamation setting forth guiding principles for the Church’s approach to family issues. The 256-page [document](#), titled *Amoris Laetitia* (The Joy of Love), urged priests to welcome gay people, single parents, and unmarried couples who live together into the Church, stating that “[a] pastor cannot feel that it is enough simply to apply moral laws to those living in ‘irregular’ situations, as if they were stones to throw at people’s lives.” The proclamation further stated that “every person regardless of sexual orientation” should be treated with respect and consideration, and that “every sign of unjust discrimination is to be carefully avoided, particularly any form of aggression and violence.” The proclamation made clear, however, that the Catholic Church would not countenance marriages or unions between same-sex partners. The proclamation incorporates recommendations made after two consecutive assemblies of bishops from around the world to discuss the Church’s approach to family issues.

Services & Public Accommodations

Canada: The Law Society of British Columbia has appealed a provincial court judgment [quashing](#) the Law Society’s decision not to accredit Trinity Western University (TWU), a private Christian university in British Columbia. As reported in previous issues, law societies in British Columbia, Nova Scotia, and Ontario have declined to accredit TWU, citing the school’s mandatory Community Covenant, which prohibits sexual intimacy outside of “traditional

marriage between a woman and a man.” In January 2015, a Nova Scotia court [held](#) that the Nova Scotia Barrister’s Society lacked the authority to condition its recognition of TWU’s law school on a change in the school’s student conduct policy and determined that the law society did not appropriately balance equality concerns against freedom of religion. In July 2015, the Ontario Divisional Court [upheld](#) the Law Society of Upper Canada’s decision not to accredit TWU’s law school. These decisions are also now on appeal. Other provinces and territories have accredited the proposed school.

[Government-Sanctioned Discrimination](#)

Russia: Two courts have now ruled that Children-404 – an online civic project founded by LGBT activist Elena Klimova to provide support to LGBT youth – violates Russia’s prohibition against “propaganda of non-traditional sexual relations among minors.” The project hosts private support groups for LGBT teenagers on Vkontakte (the largest Russian online social network) and Facebook, and its website publishes anonymous letters of teenagers subjected to discrimination and harassment because of their sexual orientation and gender identity. On January 23, a Kaluga District Court [banned](#) the project’s support groups on Vkontakte and fined Ms. Klimova. And on April 13, the Central District Court of Barnaul issued an order [blocking](#) access to the Children 404 website itself, requiring Internet service providers to block the website throughout the Russian Federation. Both decisions will be appealed.

United States: In response to advances in LGBT equality, a number of state legislatures have passed bills that would authorize institutions and individuals to discriminate based on religious beliefs. Most prominently, the State of Mississippi [enacted](#) a measure, titled the “Religious Liberty Accommodations Act,” that prohibits the state from taking any adverse action against any protected person or entity that acts on the “belief or conviction that: (a) Marriage is or should be recognized as the union of one man and one woman; (b) Sexual relations are properly reserved to such a marriage; and (c) Male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.” The measure has garnered significant [opposition](#), including from major businesses and celebrities.

Additionally, the State of Tennessee enacted a [law](#) authorizing counselors and therapists to refuse to provide counseling or services “as to goals, outcomes, or behaviors that would conflict with [their] sincerely held principles.” Although the law does not expressly single out LGBT people, it is [widely understood](#) to target those individuals. The American Counseling Association and its state counterpart have sharply criticized the law.

The [Georgia](#) and [Virginia](#) state legislatures also passed bills that would have authorized religiously-motivated discrimination against LGBT individuals, but these measures were vetoed by those states’ respective governors.

Also in the United States, the State of North Carolina [enacted](#) a new law, titled the “Public Facilities Privacy & Security Act,” that bans transgender people from accessing public restrooms and other public facilities consistent with their gender identity. The measure also blocks local governments from taking action to protect LGBT people from discrimination in a wide variety of settings, including employment, housing, and public accommodations. A coalition of civil rights groups – including INCLC-member ACLU – has filed a [lawsuit](#) challenging the constitutionality of the law. After the law’s enactment sparked nationwide [controversy](#), the state’s governor issued an [executive order](#) barring the state from discriminating based on sexual orientation and gender identity in its own employment practices. The order is by no means a fix, however. The

Act continues to prevent transgender people from accessing public restrooms and other facilities consistent with their gender identity, it continues to preclude local governments from adopting more comprehensive anti-discrimination protections, and it does not prevent local governments and private employers from discriminating against LGBT people if they so choose.

Religious Freedom & Women's Rights

Access to Contraception

United States: On March 23, the U.S. Supreme Court [heard](#) oral argument over whether the religious accommodation to the Affordable Care Act's contraceptive coverage rule – designed to accommodate religiously affiliated employers that object to providing the insurance coverage – itself violates the employers' religious exercise rights. Under the accommodation, closely held corporations and religiously affiliated non-profit organizations can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator will then arrange and pay for the contraceptive coverage separately. Petitioners challenging the accommodation maintain that, even though they are not required to pay for contraceptive coverage under the law, the request for accommodation itself "triggers" the provision of contraceptive coverage by their insurers and thereby implicates them in actions contrary to their religious beliefs.

Following the argument, the Court directed the parties to file supplemental briefing addressing "whether contraceptive coverage could be provided to petitioners' employees, through petitioners' insurance, without any such notice from petitioners." The briefing is meant to address whether such a proposal would be a less restrictive means of meeting the government's interest in ensuring women's access to contraception. In light of Justice Scalia's death, the case was heard by only eight Justices. If the Justices reach a 4-4 tie over the issue, the lower court decisions stand. A decision is expected by the end of June.

Eight federal appeals courts have rejected challenges to the accommodation, primarily on the ground that it does not substantially burden religious exercise. The Eighth Circuit Court of Appeals parted ways with its sister courts and held that the accommodation impermissibly burdens religious exercise.

For more information, contact LibertyNewsletter@aclu.org for a subscription to INCLO-member ACLU's newsletter on U.S. religious refusals.

Access to Abortion

United Kingdom and Ireland: A Belfast woman received a three-month prison sentence after pleading guilty to illegally inducing an abortion; the sentence has been suspended for one year. According to [media](#) reports, the woman ordered abortion pills online after she realized that she could not afford to travel to England for the abortion. She was subsequently reported to the police by her housemates and charged with violations of the [1861 Offences Against the Person Act](#). The case is believed to be the first of its kind in Northern Ireland, where abortion remains largely illegal.

Some are concerned that a similar conviction would be possible under the Republic of Ireland's laws, which also [criminalize](#) abortion in most cases. A concerted campaign to repeal the eighth amendment to the Republic of Ireland's constitution, which bans abortion, is currently underway.

Public Accommodations

Australia: On March 4, the Civil and Administrative Tribunal of the State of New South Wales [held](#) that gender-segregated seating at a lecture sponsored by a Muslim political group violated the state's anti-discrimination law. The law, which prohibits sex discrimination in the provision of services, contains an exemption for the acts or practices "of a body established to propagate religion"; however, the tribunal concluded that there was insufficient evidence to demonstrate that the Muslim political party was established specifically to propagate a religion. The court ordered the political party to post signs at future events stating that gender-segregated seating is not compulsory.

Israel: An Israeli woman, Renee Rabinowitz, has [filed](#) a sex discrimination lawsuit against the country's El Al airline, claiming that she was asked by a flight attendant to give up her seat after an Orthodox man objected to having a female seatmate. Some Orthodox Jews believe that Jewish law forbids contact between unmarried or unrelated members of the opposite sex. Ms. Rabinowitz is represented by the Israel Religious Action Center, which previously fought Israeli bus companies and the Ministry of Transportation over gender segregation on bus lines serving Ultra-Orthodox neighborhoods. The case is being heard in Tel Aviv.

Religious Freedom & Individual Rights

Clothing and Garb

India: On March 16, the High Court of Punjab and Haryana [held](#) that Article 25 of the Indian Constitution, which protects freedom of conscience and religion, guaranteed a Sikh man's right to carry a kirpan (a ceremonial sword) while testifying in a criminal case. In so holding, the court observed that there was no indication that the kirpan posed any safety risk and that, even if there were, adequate alternative measures (such as the use of security personnel) could have been adopted to prevent any risk of harm.

United Kingdom: In January, the UK Chief Inspector of Schools [announced](#) that school inspectors will have discretion to rate schools "inadequate" for allowing students or staff to wear full-face veils, such as the niqab. In a statement supporting the new policy, Mr. Wilshaw suggested that the veils may hinder communication and effective teaching. Critics argue that there is no credible evidence to suggest that the veils have any negative effect on education. Prime Minister David Cameron has [said](#) that he would back institutions with "sensible rules" regarding the veils.

International: On April 5, the Pew Research Center released a [report](#) surveying government restrictions on women's attire. Of the 198 countries and territories included in the study, 50 had at least one law or policy governing women's religious attire in 2012 and 2013 (the two most recent years for which data is available). Thirty-nine of those countries had laws or policies restricting women's ability to wear religious attire, and twelve had laws or policies requiring women to wear particular attire. Restrictions on women's religious attire were particularly common in Europe, while laws or policies requiring women to wear particular attire were more common in Africa, the Middle East, and Asia.

Government Involvement in Religious Affairs

Hungary: On March 15, INCLC-member HCLU launched a [petition](#) seeking to pressure the government to bring Hungary's Church Act of 2012 into compliance with a decision by the European Court of Human Rights (ECtHR). As reported in previous issues, the ECtHR in [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#) ruled that the Church Act violated the freedom of religion and association provisions of the European Convention on Human Rights by selectively removing church status and state subsidies from several religious organizations previously registered as churches, by establishing a politically tainted re-registration procedure, and by treating the deprived churches differently from the incorporated churches. In November 2015, the Hungarian government [proposed](#) amendments to the Church Act, which would have maintained the church recognition procedure the ECtHR criticized as arbitrary. The proposed amendments failed to pass parliament due to procedural issues; opponents are concerned the government will soon attempt to reintroduce similar legislation.

[Government Endorsement of Religion](#)

Belgium: In March, Belgium's Constitutional Court [ruled](#) that children cannot be required to attend religion or ethics courses in the country's primary and secondary schools. Prior to the ruling, students had to complete a course of study in either ethics or one of six religions: Catholicism, Eastern Orthodox Christianity, Protestant Christianity, Anglican Christianity, Judaism, or Islam. The Constitutional Court held that the course requirement violates the constitutional right to freedom of religion, and authorized parents to opt their children out of the requirement without having to provide an explanation.

[Freedom of Conscience and Expression](#)

Egypt: In the past three months, Egyptian courts have sentenced at least five people on charges of defamation of religion in two separate cases. On January 26, 2016, the el-Khalifa Misdemeanour Court in greater Cairo sentenced poet Fatma Naoot to three years in prison and a fine of EGP 20,000 for posting material on her Facebook page mocking the sheep sacrifice rituals associated with Eid al-Adha, a Muslim holy day. In an October 2014 Facebook post, Ms. Naoot wrote "Happy massacre, everybody," referring to the sacrifice rituals. Prosecutors formally charged Ms. Naoot with defamation of religion after receiving a complaint from a private citizen. On March 31, the Cairo Appellate Court confirmed the three-year sentence against Ms. Naoot.

On February 25, 2016, the Beni Mazar Juvenile Misdemeanour Court in the Minya Governate sentenced three Coptic students to five years in prison, and ordered another student detained in a juvenile penal institution, for contempt of religion. The charges were based on a 30-second video the students filmed, in which they recited Quranic verses while mocking the militant group known as the Islamic State (ISIL). Although the students themselves had not made the video public, some of their fellow villagers shared it on Facebook, resulting in angry demonstrations in front of the students' homes.

INCLC-member EIPR has documented a number of similar prosecutions. For more details, please see EIPR's report, "[Besieging Freedom of Thought: Defamation of Religion Cases in Two Years of the Revolution](#)." On March 9, a group of human rights activists, journalists, and public intellectuals – including EIPR – [asked](#) the Egyptian Parliament to repeal the section of the Penal Code related to blasphemy and the denigration of religion.

Malaysia: In a landmark decision, a High Court judge in the State of Sarawak [ordered](#) the country's National Religion Department to recognize a man's conversion from Islam to Christianity. The court emphasized that the man had converted to Islam together with his parents when he was 8 years old, and that his constitutionally protected freedom of religion entitled him to convert to Christianity as an adult. Although the national government has said that it will not punish people who convert from Islam to other religions, most of the country's states refuse to recognize conversions from Islam.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

August 2016

Dear Friends:

Welcome to the ninth issue of the International Network of Civil Liberties Organizations' (INCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: the U.S. Supreme Court remanded cases challenging the religious accommodation to the Affordable Care Act's contraceptive coverage rule, with instructions that lower courts should give the parties an opportunity to work out a mutually agreeable solution; the Ontario Court of Appeal upheld the Law Society of Upper Canada's decision not to accredit a law school that discriminates against LGBT students; a federal court preliminarily enjoined a Mississippi law authorizing discrimination against LGBT people and unmarried individuals, among others; an Israeli court ordered the City of Beit Shemesh to remove signs telling women to dress in long sleeves and skirts and to avoid areas where men congregate; the Supreme Court of India has agreed to examine whether certain provisions in the country's Islamic family law code unconstitutionally discriminate against women; and the government of Bahrain has passed a law mandating a strict separation between religious and political activities.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Brian Hauss
Staff Attorney, ACLU

Rosie Brighthouse
Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Services & Public Accommodations

Canada: On June 29, the Ontario Court of Appeal [upheld](#) the decision of the Law Society of Upper Canada not to accredit a law school to be established by Trinity Western University (TWU), a private Christian university in British Columbia. As reported in previous issues, law societies in British Columbia, Nova Scotia, and Ontario have declined to accredit TWU, citing the school's mandatory Community Covenant, which prohibits sexual intimacy outside of "traditional marriage between a woman and a man." In its decision, the Ontario Court of Appeal wrote that TWU's Community Covenant is "deeply discriminatory to the LGBTQ community, and it hurts." Provincial courts in [Nova Scotia](#) and [British Columbia](#) have held that those provinces' law societies inappropriately refused to accredit TWU's law school; these decisions are now on appeal. Other provinces and territories have accredited the proposed school. The Supreme Court of Canada is expected to take up the issue.

Government-Sanctioned Discrimination

United States: On June 30, a federal district court [issued](#) a preliminary [order](#) enjoining the State of Mississippi's "Religious Liberty Accommodations Act," which prohibits the state from taking any adverse action against any protected person or entity that acts on the "belief or conviction that: (a) Marriage is or should be recognized as the union of one man and one woman; (b) Sexual relations are properly reserved to such a marriage; and (c) Male (man) or female (woman) refer to an individual's immutable biological sex as objectively determined by anatomy and genetics at time of birth." The court held that the plaintiffs were likely to succeed in showing that the law unconstitutionally favors discriminatory religious viewpoints and authorizes arbitrary discrimination against LGBT and unmarried individuals. The state has appealed. INCLO-member ACLU is among the organizations challenging the Mississippi law.

On June 7, a [lawsuit](#) was filed in Tennessee state court challenging SB 1556, a recently enacted state law authorizing counselors and therapists to refuse to provide counseling or services "as to goals, outcomes, or behaviors that would conflict with [their] sincerely held principles." The plaintiffs, two gay men, allege that the statute discriminates against LGBT people, in violation of the state and federal constitutions. The American Counseling Association [canceled](#) a conference scheduled to take place in Nashville next year because of the law.

Marriage and Partnership Rights

France: On June 9, the European Court of Human Rights (ECtHR) [held](#) that France's previous ban on marriage for same-sex partners did not violate the European Convention of Human Rights (Convention). In 2004, the mayor of Bègles performed a same-sex couple's marriage and entered it into the official register. French prosecutors successfully annulled the marriage shortly thereafter. The couple ultimately appealed the case to the ECtHR, arguing that France's ban on marriage for same-sex couples violated Convention Articles 8 (right to respect for private and family life), 12 (right to marry), and 14 (prohibition of discrimination). Reaffirming its decision in *Schalk and Kopf v. Austria* (June 24, 2010), the ECtHR held that the Convention does not require member states to grant full marriage equality to same-sex couples. The Court further noted that France had legalized marriage for same-sex couples in May 2013, while the case remained pending.

Hungary: In May, the Hungarian government [proposed](#) an amendment to the Registered Partnership Act that threatened to dramatically restrict the rights of same-sex couples. Although the Constitution prohibits marriage for same-sex couples, Hungary allows same-sex couples to enter into registered partnerships in lieu of marriage. Under the Registered Partnership Act, such partnerships are entitled to the same legal treatment as marriages, unless the Act itself explicitly provides otherwise. As a result, only amendments to the Registered Partnership Act itself can alter the partnership rights enjoyed by same-sex couples. The proposed amendment, which the government submitted as a rider to the 2017 central budget bill, would have amended the Registered Partnership Act so that any legislative provision in any statute could alter same-sex couples' registered partnership rights. Such a provision could make it significantly easier to pass future legislation removing partnership rights. After a social opposition campaign, led in part by INCLC-member HCLU, the Parliament [rejected](#) the proposed amendment.

Religious Freedom & Women's Rights

[Access to Contraception](#)

United States: On May 16, the Supreme Court remanded the cases before it [challenging](#) the religious accommodation to the Affordable Care Act's contraceptive coverage rule, so that the parties may be "afforded an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans 'receive full and equal health coverage, including contraceptive coverage.'"

Under the [accommodation](#), closely held corporations and religiously affiliated non-profit organizations can certify their objection to providing insurance coverage for contraception to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator will then arrange and pay for the contraceptive coverage separately. Entities challenging the accommodation maintained that, even though they are not required to pay for contraceptive coverage under the law, the request for accommodation itself "triggers" the provision of contraceptive coverage by their insurers and thereby implicates them in actions contrary to their religious beliefs.

In sending the cases back to the lower courts, the Supreme Court stated that its decision "expresses no view on the merits of the cases," and particularly that it "does not decide whether petitioners' religious exercise has been substantially burdened, whether the Government has a

compelling interest, or whether the current regulations are the least restrictive means of serving that interest.” There has been no significant activity in the courts yet on remand.

In another matter, the Supreme Court [refused](#) to hear a challenge to Washington State rules requiring licensed pharmacies to provide timely delivery of all prescription medications, including emergency contraceptives. The petitioners in the case argued that the state rules unconstitutionally discriminated against pharmacies that objected on religious grounds to filling certain prescriptions. Justice Alito, joined by Chief Justice Roberts and Justice Thomas, dissented from the Court’s refusal to hear the case.

[Access to Abortion](#)

Argentina: On June 30, the National Campaign for the Right to Legal, Safe and Free Abortion – a national network of organizations that has spearheaded the struggle to legalize abortions in Argentina – once again presented a bill to legalize abortion to Argentina’s Congress. This is the Campaign’s sixth attempt to pass such legislation. Article 6 of the [proposed bill](#) provides that health service authorities must be able to guarantee access to abortion, regardless of whether individual medical professionals conscientiously object. It also establishes a framework for medical professionals to be exempt from performing abortions if they communicate their conscientious objection to the corresponding authorities within 30 days after the law’s enactment. Professionals who enter medicine after the bill is passed must state their conscientious objection when they begin practicing. The bill was presented with the support of 38 legislators from across the political spectrum and will be taken under consideration in the Health Commission of the Congress’s lower house in September 2016. INCLO-member CELS, one of the Campaign’s constituent organizations, has released a [multimedia campaign](#) to support the proposed legislation.

The relaunching of the legislation coincides with ongoing judicial proceedings in “Belen’s Case,” which illustrates the consequences of criminalizing abortion. In that case, a woman (given the pseudonym “Belen” to protect her identity) was diagnosed with a miscarriage at a state hospital in Argentina’s Tucuman province and kept in hospital for care. After staff discovered a fetus in a hospital restroom, Belen was charged with murder. Although medical professionals hadn’t proven Belen’s relation to the fetus, she was convicted of murder and sentenced to eight years in prison. Belen, who has already served two years of pretrial detention, has appealed her case to the Tucuman Supreme Court. On July 1, CELS and nine other human rights organizations submitted various [friend-of-the-court briefs](#) in support of Belen. On July 15, the United Nations Human Rights Committee [recommended](#) both the decriminalization of abortion in Argentina and Belen’s immediate release.

United States: On June 24, INCLO-member ACLU [filed](#) a lawsuit challenging the federal government’s grant of federal funds for care of undocumented immigrant minors, including teenage rape survivors, to religiously affiliated agencies that refuse to provide information about or access to abortion or contraception, even though the federal government is required to provide these services. The [complaint](#) alleges that the government is unconstitutionally violating the separation between church and state by authorizing these private agencies to place religious restrictions on access to reproductive healthcare.

In a different matter, on June 21, the U.S. Department of Health and Human Services (HHS) [rejected](#) a challenge to the State of California’s requirement that managed care health insurance plans cover abortion services. A number of anti-abortion groups complained that the California regulation limited their ability to purchase insurance that does not include abortion coverage,

and argued the regulation violated a decade-old congressional provision prohibiting states and municipalities that receive federal funds from “discriminat[ing]” against individual and institutional health care providers that refuse to “provide, pay for, provide coverage of, or refer for abortions.” HHS, however, concluded that no violation had occurred, because none of the insurance providers objected to the regulation.

California’s abortion coverage rule has also been challenged in [two lawsuits](#), which allege that the rule violates constitutional rights to religious exercise, free speech, and equal protection by effectively preventing religious organizations from purchasing insurance plans that exclude abortion coverage. One of those cases has [survived](#) a motion to dismiss and will proceed to factual discovery. The other case was [dismissed](#), with leave to amend the complaint to add more specific allegations.

[Public Accommodations](#)

Israel: On June 19, a Jerusalem District Court [ordered](#) the mayor of Beit Shemesh to remove signs posted around the city by ultra-Orthodox Jews telling women to wear long sleeves and skirts, and to keep off sidewalks near synagogues and yeshivas where men congregate. Several Orthodox women filed the lawsuit, alleging that the signs encourage violence and harassment against women. A magistrate’s court ruled in the women’s favor last year, but the city failed to remove the signs, prompting the plaintiffs to appeal to the district court for relief. The district court ordered the mayor to remove the signs within three weeks, and instructed that the city should act more forcefully to prevent new signs from going up.

[Religious Freedom & Individual Rights](#)

[Aid-in-Dying](#)

Canada: The Christian Medical and Dental Society of Canada, the Canadian Federation of Catholic Physicians’ Societies, Canadian Physicians for Life and several individual physicians have [filed](#) a legal challenge to the Province of Ontario’s regulations requiring physicians who object to aid-in-dying to refer patients to willing practitioners. Ontario’s regulations require doctors who object to medical procedures, including aid-in-dying, to make an “effective referral,” which means making sure that “the patient is connected in a timely manner to another physician, health-care provider, or agency who is non-objecting, accessible and available to the patient.” The challengers maintain that Ontario’s referral requirement violates Section 2 of Canada’s Charter of Rights and Freedoms, which protects the freedom of conscience and religion. The challenge is likely to join a [similar](#) one filed earlier this year, which argues that Ontario’s referral policy violates the conscience rights of physicians who object on religious or moral grounds to a variety of medical procedures, including abortion, physician-assisted dying, in vitro fertilization, and contraception.

United States: On July 19, the Vermont Alliance of Ethical Healthcare and the Christian Medical and Dental Associations [filed](#) a federal lawsuit challenging Vermont’s aid-in-dying law’s requirement that physicians either inform patients about all their options, including aid-in-dying, or refer patients to a provider willing to furnish such information. The organizations assert several claims, including that this requirement violates their free speech and religious exercise rights

[Ritual Practices](#)

Belgium: A Belgian cabinet minister has [called](#) for a ban on the ritual slaughter of animals. Ben Weyts, animal welfare minister for the Flemish region, maintains that it is necessary to outlaw the slaughter of animals who have not first been stunned. Religious laws in Islam and Judaism require animals to be conscious when their necks are cut, although some religious leaders from both faiths permit the animal to be stunned immediately afterwards. The ritual slaughter of animals, also known as shechita, is currently banned in Sweden, Denmark, Norway, Iceland, and Switzerland, and is subject to special limitations in Estonia, Finland, Austria, and Poland.

Italy: In May, an appeals court in Genoa [overturned](#) convictions of two men charged with animal cruelty for publicly slaughtering a conscious goat. The men, Romanian travelers living in a camp in Val Bisagno, killed the goat in connection with the Islamic celebration of Eid al-Adha, a yearly celebration during which an animal is sacrificed to commemorate God's intervention to prevent Abraham from sacrificing Isaac. In overturning the conviction, Judge Mauro Amisano wrote that the slaughter could not be considered illegal "because it is a practice which is permitted by the freedom of religious expression."

[Clothing and Garb](#)

Europe: On July 13, the European Court of Justice (ECJ) [issued](#) an advisory opinion stating that a French information technology consultancy unlawfully discriminated when it dismissed a Muslim woman for wearing a head scarf when meeting with clients. Eleanor Sharpston, an advocate general for the ECJ, stated in the advisory opinion that there was nothing to suggest the woman "was unable to perform her duties as a design engineer because she wore an Islamic headscarf." She further suggested that she might recommend a different disposition for complete facial coverings, given Western society's emphasis on the importance of "visual or eye contact" during face-to-face interactions between a company and its customers. In a separate case, another of the ECJ's advocate generals recently issued an advisory opinion stating that a Belgian security company could prohibit a receptionist from wearing a head scarf at work, so long as the policy applied to all religious clothing and did not specifically target Islam. Advisory opinions are not final rulings, and the ECJ is expected to resolve the cases over the coming months.

Germany: A Bavarian administrative court has [ruled](#) that the state government may not bar a Muslim trainee lawyer from wearing a head scarf at work. The plaintiff, 25-year-old Aqilah Sandhu, filed the case after the government told her she could not wear her hijab while interrogating witnesses or appearing in court because religious clothing "can impair the trust in religious neutrality of the administration of justice." The Bavarian State Justice Minister has said that the regional government will appeal the decision.

Nigeria: The State of Osun's High Court has [ruled](#) that Muslim students have the right to wear the hijab in the state's public secondary schools. The court declared in its decision that the students' fundamental human right to freedom of religion, conscience and thought protects their decision to wear the hijab, and that no student should be molested or sent out of school for wearing it. Because the state's missionary schools were taken over by the government in 1975, the ruling applies to students throughout the region. The Christian Association of Nigeria (CAN) [appealed](#) the court's ruling, arguing that it violates "the religious right of the original owners of the missionary schools as agreed upon when the schools were taken over" by the government. CAN also instructed Christian students to come to class in church robes to protest the state government's implementation of the court's ruling.

Employment

United Kingdom: On April 7, an employment appeal tribunal [dismissed](#) an appeal by Victoria Wastenev, a Christian occupational therapist who alleged that her employer discriminated against her because of her religious beliefs. The East London National Health Service Foundation suspended Ms. Wastenev for proselytizing a Muslim coworker, including offering to pray for her, inviting her to attend church events, and giving her a book about a Muslim woman who converts to Christianity. In February 2015, an employment tribunal concluded that Ms. Wastenev had been disciplined because her actions “blurred professional boundaries and placed improper pressure on a junior employee rather than [because] they were religious acts.” The appeal tribunal [concluded](#) that the employment tribunal “approached its task correctly and provided a proper and adequate explanation of its reasons.”

Government Involvement in Religious Affairs

Bahrain: The government of Bahrain has [amended](#) the country’s 2005 Political Society Law to prohibit intermixing between political and religious activities. The new amendments, which both houses of Parliament endorsed and King Hamad Bin Eisa Al Khalifa issued, prohibit members of political parties from giving religious speeches, sermons, or guidance. The earlier version of the law was seen as not going far enough in separating political and religious activities. In particular, the country’s Justice Minister was concerned that political figures and candidates had exploited places of worship to further their agendas. The amendments are meant to prevent such activities.

Hungary: On June 28, the European Court of Human Rights (ECtHR) issued a [partial judgment](#) regarding damages, costs, and expenses in ongoing litigation over Hungary’s Church Act. As reported in previous issues, the ECtHR held in [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#) that the Church Act violated the freedom of religion and association provisions of the European Convention on Human Rights by selectively removing church status and state subsidies from several religious organizations previously registered as churches. The Court further held that the Church Act violated the Convention by establishing a politically tainted re-registration procedure, and by treating the deprived churches differently from the incorporated churches. After reaching a partial agreement over the extent of the damages, the government agreed to pay several of the complainants roughly €4.5 million. In its recent partial judgment, the ECtHR held that the Government must pay the remaining complainants roughly €0.5 million. Because the government has not yet amended the law to comply with the ECtHR’s decision, future rights violations and associated damages are expected. In March, INCLO-member HCLU launched a [petition](#) seeking to pressure the government to appropriately amend the law.

India: The Supreme Court of India has [agreed](#) to examine whether a number of Islamic family law provisions are consistent with the Constitution’s prohibition against sex discrimination. India has separate family law codes for Hindus, Muslims, and Christians. These codes govern issues such as marriage, succession, adoption, and inheritance. Critics have argued that the Islamic family law code discriminates against women by allowing polygamy and arbitrary divorce under “triple talaq” system – according to which a man may divorce his wife by repeating the word “talaq” (Arabic for “I divorce you”) three times in a row. Critics also maintain that the Islamic family law discriminates against women with respect to succession and inheritance of property. In agreeing to examine the issue, the Justices said that “[l]aws dealing with marriage and succession are not part of religion. Law has to change with time.”

Religious Discrimination

Egypt: The Governate of Minya, in the south of Egypt, [witnessed](#) a number of violent sectarian attacks in relation to the alleged building of Coptic Christian churches, which – under current law – must be approved by the Egyptian President. On June 29, 2016, several hundred Muslim residents of Kom al-Loufi attacked a house that was under construction, claiming it was being transformed into a church. The building was attacked even though the owner had signed an affidavit in the Samalout police station stating that it would be used exclusively for residential purposes. Four other Coptic Christian homes were also set ablaze. Security forces arrested several of the assailants.

On July 15, several hundred residents of Nazlat Abu Yaqoub – also in the Minya Governate – attacked a number of Coptic Christian homes, also claiming that a house was being converted into a church. As in the Kom al-Loufi attack, there was little evidence to support the attacker's assertions. Although the Police directorate was notified as soon as the attack began, the security forces arrived only an hour later. Security forces ultimately arrested a total of 32 suspects.

The current Constitution requires Egypt's newly elected parliament to promulgate a unified legislation on the construction of churches. That law is scheduled to be introduced in the House of Representatives within the next few weeks. INCLO-member EIPR has stated that religious institutions and civil society organizations must be given an opportunity to actively consult on the draft legislation and its implementing regulations, so as to ensure that the final law includes objective, fair rules and conditions. EIPR has also demanded that immediate steps be taken to legalize the status of churches and existing church buildings where worship services are held without a permit.

Freedom of Conscience and Expression

Israel: A Jerusalem Magistrate's Court judge has [ruled](#) that shouting "Allahu akbar" – Arabic for "God is great" – at Jews on Jerusalem's Temple Mount qualifies as an unlawful disturbance of the peace. The ruling came in a five-year-old case involving Sahar Ghazzawi, who was detained by police after he yelled "Allahu akbar" at a group of Jews at the holy site. Mr. Ghazzawi argued that he was making religious utterances at the Temple Mount as part of his ritual behavior, but other witnesses testified that Mr. Ghazzawi had been using the phrase to intimidate Jews visiting the site. The judge ruled that chanting "Allahu akbar during prayer, at a site of prayer and in the spot in the prayer [book] where it is called for does not constitute a breach of the peace, but a fundamental right. However, when those calls are used as a form of demonstration or protest, or as a way of creating a riot or unrest, they do not constitute prayers and are therefore a clear disturbance of the peace," particularly at politically charged sites such as the Temple Mount.

International: On May 2, the U.S. Commission on International Religious Freedom [released](#) its [2016 Annual Report](#). The Report recommends that the Secretary of State designate eight additional countries as "countries of particular concern" – countries whose governments engage in or tolerate systematic, ongoing and egregious violations of religious freedom. These countries are: Central African Republic, Egypt, Iraq, Nigeria, Pakistan, Syria, Tajikistan, and Vietnam. The Report also recommends that the Secretary re-designate Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, Turkmenistan, and Uzbekistan as countries of particular concern.

In making these recommendations, the Commission noted that in several countries – such as the Central African Republic and areas of Iraq and Syria – “governments are either non-existent or incapable of addressing violations committed by non-state actors,” and that the “country of particular concern” classification “should be expanded to allow for the designation of countries such as these, where particularly severe violations of religious freedom are occurring but a government does not exist or does not control its territory.”

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

January 2017

Dear Friends:

Welcome to the tenth issue of the International Network of Civil Liberties Organizations' (INCLCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: the U.K. Supreme Court has denied review of a Northern Ireland Court of Appeal decision holding that a bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia; eight U.S. states and a number of religiously affiliated health care entities secured a nationwide injunction preventing the federal government from enforcing a regulation prohibiting health care entities from discriminating against transgender people and women seeking reproductive care; after widespread protests, the Polish parliament rejected proposed legislation that would have imposed a near-total ban on abortion; France's top administrative court struck down a local ban on burkini swimsuits, which are designed to accord with traditional Islamic clothing for women; and Egypt passed long-awaited legislation regulating the construction of churches.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLCLOnewsletter@aclu.org.

Best,
Louise Melling

Brian Hauss

Rosie Brighthouse

Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Staff Attorney, ACLU Legal Officer, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Services & Public Accommodations

United Kingdom: The U.K. Supreme Court [denied](#) review of a Northern Ireland Court of Appeal decision [holding](#) that a bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia. As reported in our December 2014 issue, the customer had asked for a cake featuring the slogan "support gay marriage," together with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserted that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintained that it had acted lawfully. The appeals court rejected the bakery's argument that it would have been endorsing marriage equality for same-sex couples by baking the cake, writing: "The fact that a baker provides a cake for a particular team or portrays witches on a Halloween cake does not indicate any support for either." The court further held that legislation prohibiting discrimination based on sexual orientation in the region could not be changed to suit a particular religious or political group.

United States: On October 28, the U.S. Supreme Court [agreed](#) to hear a case challenging a Virginia school board's policy that requires transgender students to use "alternative private" restroom facilities, rather than the bathroom that comports with their gender identity. The lawsuit, which was filed by INCLO-member ACLU on behalf of a transgender student, argues that the school's policy violates Title IX of the U.S. Education Amendments of 1972, a federal law prohibiting sex discrimination by schools receiving federal funds. The U.S. Court of Appeals for the Fourth Circuit held that the school board had violated Title IX by implementing the exclusionary restroom policy.

Marriage

Romania: On July 20, Romania's Constitutional Court [ruled](#) that an anti-LGBT group could petition for a constitutional amendment prohibiting marriage for same-sex couples. The Romanian Constitution currently states that "[t]he family is founded on the freely consented marriage of the spouses" The petition proposes an amendment to replace "the spouses" with "a man and a woman." The proposed amendment will be voted on by the Romanian Parliament and, if approved, submitted for a national referendum. Meanwhile, the Constitutional Court is [considering](#) whether the current Constitution requires Romania to recognize a marriage performed for a same-sex couple in Belgium. At a November 29 hearing, the Constitutional

Court [indicated](#) that it would confer with the European Court of Justice to see how other countries that have not recognized marriage equality for same-sex couples have handled similar cases. Another hearing in the case is scheduled for March 30.

[Health Care](#)

United States: On January 31, a federal court in Texas [issued](#) an injunction prohibiting the federal government from enforcing a regulation that bars discrimination in federally funded health care against transgender people and women seeking reproductive health care. The case was brought by eight states (Arizona, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Texas, and Wisconsin), together with a Catholic health care system and a Christian medical association. The private plaintiffs allege that the regulation violates their religious freedom, among other claims. INCLO-member ACLU filed papers asking the court to let its Texas affiliate and a transgender support group intervene in the case. Two similar cases were recently [filed](#) in a federal district court in North Dakota.

[Government-Sanctioned Discrimination](#)

Argentina: In October, a coalition of human rights and transgender rights organizations – including INCLO-member CELS – issued a [report](#) to the United Nations Committee on the Elimination of Discrimination Against Women, entitled “Human Rights Situation of *Transvestis* and Trans Women in Argentina.” The report found that transgender women and transvestites continue to be subjected to discrimination and violence based on their gender identities, in violation of Argentina’s international obligations under the Convention on the Elimination of all Forms of Discrimination Against Women. The report offers a number of recommendations for eradicating systemic patterns of discrimination, including: ensuring that government identification documents accurately register people’s gender identities; increased investigation and prosecution of crimes involving violence against trans people; and full implementation of Article 11 of Argentina’s Gender Identity Law, which guarantees the trans population’s access to comprehensive health care.

In September, a number of LGBT organizations launched “Reconocer Es Reparar” (“To Recognize Is to Repair”), a public campaign seeking official recognition of the systematic violence imposed on transgender persons and transvestites by public security forces, especially those detained pursuant to “police edicts.” (The edicts allowed officers to arrest people on suspicion of prostitution, homosexuality, idleness, alcoholism, and other offenses, and detain them for several weeks without judicial intervention.) The campaign has [publicized](#) a legislative bill proposing systemic reparations for victims of institutional violence based on gender identity.

Nigeria: On October 20, Human Rights Watch issued a [report](#) entitled, “Tell Me Where I Can Be Safe: The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act.” The law, which took effect in January 2014, threatens 14-year prison terms for anyone who enters into a marriage or civil union with a same-sex partner; it also threatens 10-year prison terms for engaging in a public display of affection with a same-sex partner, as well as for participating in or supporting a gay organization. Although there is no evidence that anyone has been prosecuted under the law, the report found that it has been used to legitimize widespread abuses against LGBT people, including extortion, mob violence, arbitrary arrest, torture in detention, and physical and sexual violence.

Russia: On September 23, Equal Rights Trust issued a [report](#) examining how the Russian courts handle cases related to the LGBT community. The report, “Justice or Complicity? LGBT

Rights and the Russian Courts,” found that in some cases courts have nominally recognized that LGBT people should be protected from discrimination based on their sexual orientation, in accordance with international and regional human rights standards. The report further found, however, that courts nonetheless continue to countenance pervasive discrimination against LGBT people in Russia, including by failing to recognize, address, and remedy clear cases of discrimination.

Education

Canada: On November 1, the British Columbia Court of Appeal [held](#) as unreasonable the Law Society of British Columbia's decision not to approve a law school to be established by Trinity Western University (TWU), a private Christian university in British Columbia that prohibits sexual intimacy outside of “traditional marriage between a woman and a man.” This holding of unreasonableness was due to a violation of fundamental religious and associative rights under the Canadian Charter of Rights and Freedoms.

This is one of three such cases. In June, the Ontario Court of Appeal [upheld](#) the Law Society of Upper Canada's decision not to accredit TWU's law school, on the grounds that TWU's Community Covenant is “deeply discriminatory to the LGBTQ community.” In July, the Nova Scotia Court of Appeal [held](#) that the Nova Scotia Barrister's Society lacked the authority to condition its recognition of TWU's law school on a change in the university's code of conduct. Other provinces and territories have accredited the proposed school. The Supreme Court of Canada is expected to take up the issue.

In a wholly different matter, on November 23, an Ontario court held that a school did not have to accommodate a parent seeking to remove his children from lessons concerning marriage and human sexuality that conflicted with the parent's religious beliefs. Although the court recognized that the decision to refuse his accommodation request engaged the parent's freedom of religion protections under the Canadian Charter of Rights and Freedoms, it held that the school's refusal to grant the exemption appropriately balanced the parent's Charter right with the school's statutory objectives (including its statutory duty of religious neutrality) and with the Charter values favoring inclusivity, equality, and multiculturalism.

United States: On September 16, a group of parents and students – calling themselves Privacy Matters – asked a Minnesota federal district court to enjoin the U.S. Education and Justice Departments from taking action on a recently issued guidance concerning the rights of transgender students. The Guidance, which was released in May, makes clear the agencies' view that Title IX prohibits schools receiving federal funds from discriminating against transgender students, and requires these schools to allow students to use restrooms and locker rooms consistent with their gender identity. (Title IX is a federal law that, as noted above, bars sex discrimination in education.) The plaintiffs allege that the Guidance violates their religious exercise rights, as well as the right to privacy, the right to control the upbringing of their children, and principles of due process. A similar [lawsuit](#) is currently pending before a federal district court in Illinois. The guidance is also being challenged in several other cases, including a [case](#) brought by several state governments and school districts in Texas federal court. The Texas court enjoined the guidance; the plaintiffs in that case did not raise a religious exercise claim. It is unclear how the pending change in the Administration of the U.S. government will affect the Guidance.

Religious Freedom & Women's Rights

Access to Contraception

United States: On January 9, the Obama Administration [announced](#) that it will not be modifying the contraceptive coverage requirement at this time. The announcement came after the Administration received more than 54,000 comments in response to its [request](#) for information to determine whether there is a way to modify the Affordable Care Act's accommodation for religiously affiliated employers that objected to providing contraceptive coverage. After reviewing the comments, the Administration concluded that "no feasible approach has been identified at this time that would resolve the concerns of religious objectors, while still ensuring that the affected women receive full and equal health coverage, including contraceptive coverage." Last year, in [Zubik v Burwell](#), the Supreme Court remanded a number of cases [challenging](#) the accommodation so that the parties may be "afforded an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans 'receive full and equal health coverage, including contraceptive coverage.'" The government has begun filing status reports reflecting its decision in the remanded cases.

Access to Abortion

Brazil: In November, Brazil's Federal Supreme Court [held](#) that the criminalization of abortion during the first trimester of pregnancy violates a number of fundamental rights under Brazil's Constitution, including women's rights to sexual and reproductive autonomy, their rights to physical and mental integrity, and the principle of equality. As a result, the Court ordered the release of physicians and clerks who had been detained for operating a clandestine abortion clinic. Under the current criminal code, abortion is outlawed except in cases of rape or threat to the woman's life; women who receive abortions illegally may face up to three years imprisonment. Brazil's Congress is expected to attempt to block legislation decriminalizing abortion in the wake of the Court's ruling.

A Brazilian appellate court recently [ruled](#) that a Catholic priest abused the legal process by interfering with a couple's attempt to obtain a court order permitting them to obtain an abortion. The couple sought authorization for the abortion after it became clear that the fetus had a serious anomaly; however, the priest intervened in the proceeding on the fetus's behalf and convinced the court to deny the permit. The child died eight days after birth. The appellate court awarded the couple more than 60,000 reais in damages.

Philippines: On January 9, President Rodrigo Duterte [issued](#) an executive order instructing government agencies to provide contraceptives to the six million Filipino women without access to birth control and other reproductive health care. The order implements the Responsible Parenthood and Reproductive Health Act of 2012, which the Catholic Bishops Conference of the Philippines has opposed. In 2014, the Supreme Court found the law constitutional, except for a few provisions—primarily those requiring health care practitioners to provide information about contraceptives.

Poland: On October 6, following major public outcry, Poland's parliament [rejected](#) proposed legislation that would have imposed a near-total ban on abortion. Under current law, abortion is allowed in cases of rape, incest, danger to the woman's health, or when prenatal tests show "severe and irreversible" damage to the fetus. The proposal would have limited access to

abortion in cases involving threats to the pregnant woman's life. On October 3, roughly 100,000 women protested against the proposal. The measure, which was initially backed by Poland's ruling Law and Justice Party, was ultimately defeated by a vote of 352 to 58.

Public Accommodations

Israel: On January 11, the Israeli High Court of Justice [issued](#) a landmark decision holding that women visiting the Western Wall in Jerusalem shall no longer be subjected to body searches for "contraband" ritual objects, such as Torah scrolls. The High Court also gave the government 30 days to show good cause why it prohibits women from reading Torah scrolls aloud at the women's prayer area of the Western Wall. The court indicated that it would address that issue together with another petition, [filed](#) last October, requesting that the Court establish a non-gender-specific prayer area at the Wall. The government had initially approved a compromise solution earlier this year – agreeing to the new, integrated prayer area – but ultra-Orthodox groups within the government withdrew their support and demanded that Prime Minister Netanyahu block the proposal.

Religious Freedom & Individual Rights

Clothing and Garb

Canada: The Royal Canadian Mounted Police (RCMP) has [authorized](#) its women officers to wear hijabs as part of their official uniforms. A spokesperson for the Public Safety Minister explained that the change "is intended to better reflect the diversity in our communities and encourage more Muslim women to consider the Royal Canadian Mounted Police as a career option." The RCMP is the third police force in Canada to add the hijab option. Police in the United Kingdom, Sweden, Norway, and some U.S. states have adopted similar policies.

France: On August 26, France's top administrative court – the Council of State – [struck down](#) a French town's ban on burkini swimsuits. The swimsuits, which are designed to accord with traditional Islamic clothing for women, cover the whole body except the face, hands, and feet. Dozens of French towns prohibited beachgoers from wearing the swimsuit, citing concerns about public order after recent terrorist attacks in France. The Council held that the ban violated fundamental individual freedoms, including the freedom of belief, and that it could be justified only by a "proven risk" to public order.

Religious Discrimination

Egypt: On August 30, Egypt's parliament [approved](#) long-awaited legislation on the construction of churches, as required under the country's Constitution. The new statute authorizes provincial governors to approve church building and renovation permits, which were previously issued by the country's security services. The law also stipulates that the size of a church must be proportional to the number of Christians in the area. By contrast, the law on mosque building – which was enacted in 2001 – deals only with issues of land ownership and building regulation. INCLO-member EIPR criticized the differential treatment, stating that the new church law "is a sectarian law that shows the state prefers the adherents of one religion over another." As reported in our August 2016 issue, Christians in Egypt have suffered a number of violent sectarian attacks following the construction of new churches. Most recently, on December 11, a church in the Cairo cathedral complex – the seat of the Coptic Christian pope – was [bombed](#), resulting in the deaths of 27 people.

Freedom of Conscience and Expression

Canada: In August, a trial court in Alberta [upheld](#) the Alberta Human Rights Commission's finding that a private school unlawfully discriminated against two Muslim students by not allowing them to pray on campus. The students' parents were told that the school was non-denominational, that no space in the school would be allocated for praying, and that overt prayers could not take place on campus. The court concluded that the school's anti-prayer policy discriminated against Muslim students and that the discriminatory policy was not reasonable and justifiable in the circumstances because the school had welcomed other overt indications of belief, such as students who manifest their religious beliefs through forms of dress and grooming. The school was ordered to pay \$26,000 in damages.

Ethiopia: On September 10, Ethiopia's chief prosecutor [reported](#) that the government had pardoned roughly 1,000 people, including 135 Muslim individuals who were jailed after convictions for religious extremism. Ethiopia had jailed numerous Muslims who participated in months-long protests in 2012, claiming that the government unconstitutionally encouraged the teaching of the Al-Ahbash form of Islam and dictated the election of community leaders to support it at a religious school in Addis Ababa.

Hungary: On November 24, the local government of Ásotthalom – a small village next to the Southern border of Hungary – [passed](#) an ordinance prohibiting the open expression of Islamic religious beliefs, including through the traditional Islamic call to prayer, the wearing of traditional Islamic clothing (such as burqas, hijabs, and niqabs), and the construction of mosques and minarets. The ordinance also prohibits the public promotion of marriage equality for same-sex couples. Violations of the ordinance are punishable by a 150,000 florint fine. The ordinance was promoted by Ásotthalom's mayor, who is vice-chair of the Jobbik party. On December 19, Hungary's ombudsman [petitioned](#) the Constitutional Court to annul the ordinance, on the ground that it conflicts with the constitutionally protected freedom of religious expression. INCLC-member HCLU has also asked the Court to strike down the ordinance.

Russia: On July 6, President Putin [signed](#) into law new anti-terrorism measures that include a ban on "missionary activities" – including preaching, proselytizing, or otherwise sharing religious beliefs – outside of officially designated areas. Individuals who violate the ban are subject to fines of 5,000 to 50,000 roubles; religious organizations that violate the ban are subject to fines of 100,000 to 1 million roubles. Several individuals, including a Baptist pastor, have already been convicted and fined under the new measures. Numerous others have been brought up on charges.

United States: On December 16, President Obama [signed](#) legislation amending the U.S.'s International Religious Freedom Act to better address escalating religious persecution throughout the world. Among other things, the amendments establish a comprehensive list of people jailed on religious grounds and require international religious freedom training for all Foreign Service officers.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

May 2018

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLC) newsletter, *Global Developments in Religious Freedom and Equal Treatment* – back after a temporary hiatus. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this issue: In a historic election, with a turnout of 64.1% of the electorate, including voters who travelled home from around the world, Ireland voted to amend its constitution to repeal its ban on abortion; Argentinian lawmakers will vote on legislation that would make abortion legal in the first 14 weeks of pregnancy in June; the Argentine Supreme Court banned religious education during school hours; the Mexican Supreme Court determined that the denial of a legal abortion after rape constitutes a reproductive rights and human rights violation; Colombia's Constitutional Court recognized sexual orientation as a suspect category in two cases; the Constitutional Court of Chile upheld a law decriminalizing abortions in specific situations; the High Court of South Africa required applications to change a person's sex description to be considered, irrespective of the person's marital status; the Court of Justice in Northern Ireland declined to permit gay marriage in Northern Ireland; and the Supreme Court of India outlawed the practice permitting a Muslim man to legally divorce his wife by saying "talaq" three times.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLC's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Deepa Patil at INCLCNewsletter@aclu.org.

Best,
Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Lindsey Kaley
Staff Attorney, ACLU Center for Liberty

About INCLLO: The International Network of Civil Liberties Organizations (INCLLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Services & Public Accommodations

United Kingdom: The U.K. Supreme Court will [review](#) a Northern Ireland Court of Appeal decision holding that a bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia. The customer had asked for a cake featuring the slogan "support gay marriage," together with a picture of Bert and Ernie from the children's show Sesame Street. The bakery asserted that it refused the cake order because it was "at odds" with the company's Christian beliefs. The appeals court rejected the bakery's argument that it would have been endorsing marriage equality for same-sex couples by baking the cake, writing: "The fact that a baker provides a cake for a particular team or portrays witches on a Halloween cake does not indicate any support for either." The court further held that legislation prohibiting discrimination based on sexual orientation in the region could not be changed to suit a particular religious or political group. The Supreme Court held a two-day hearing on the matter, starting on May 1, 2018.

United States: On December 5, 2017, the U.S. Supreme Court [heard](#) oral argument in a case where a bakery, in violation of state law, turned away a couple seeking a cake for their wedding reception because the couple is gay. The cake shop argues that requiring it to comply with the state law barring discrimination would violate its constitutional rights to free speech and freedom of religion; the lower court rejected these claims. The US Department of Justice filed a brief in support of the cake shop, arguing also that the constitution protects the right to discriminate in certain circumstances. INCLLO-member ACLU represents the couple who were denied service, and other INCLLO members filed a friend-of-the-court brief in support of the couple.

Ireland: In July 2017, Ireland's Workplace Relations Commission [ruled](#) that a Dublin bakery did not discriminate when it refused to fill an order for a cake with the message: "By the grace of the good Lord, I [name redacted], that in my honest opinion – 'Gay Marriage' is a perversion of equality and the 34th Amendment to the Irish Constitution should be repealed." The bakery argued that it declined to make the cake due to its complexity and because it was no longer accepting orders for custom cakes given how busy it was. The Commission determined that the complainant had not proven that he had been treated less favorably than another person because of his religious beliefs. The man who ordered the cake acknowledged that he initiated the action against the bakery under the Equal Status Act to "balance out" the Northern Ireland Court of Appeal's decision in the case described above.

Colombia: In two recent cases, the Constitutional Court held a mall and its security officers impermissibly discriminated based on sexual orientation. In the first case, on June 2, 2016, the Constitutional Court [determined](#) that the mall violated the rights of a man when it removed him for allegedly engaging in obscene acts with another man in a public bathroom. The court determined that those acts did not occur, and that the fundamental right not to be discriminated against included sexual orientation as a suspect category of discrimination. The court ordered the mall to offer the man a public apology and to ensure its officers receive LGBTI rights training. In the second case, on January 24, 2017, the court [ruled](#) in favor of a same-sex couple who had been ordered to leave the mall. The court rejected the mall's claims that the couple was asked to leave because it was closing, and determined instead that the guard had asked them to leave because they had displayed affection. The decision is notable because the court applied the rights regime and the prohibition on discrimination to the private security company.

Colombia: On March 7, 2017, the Constitutional Court [determined](#) that a man's neighbors had violated his fundamental rights by physically and verbally attacking him because of his sexual orientation, calling him slurs, and threatening to kill him. The man had charged that his neighbors violated his fundamental rights to equality, dignity, sexual diversity, life, and work.

Canada: In September 2016, the Saskatchewan Court of Queen's Bench [dismissed](#) an action brought by a man after a newspaper rejected his request to purchase advertising space to cite bible passages that oppose homosexuality. The newspaper had run the advertisement for several years, but in 2013 declined to do so because it considered the advertisement offensive. The court determined that the newspaper regularly screened out advertisements it considered offensive, which was not discriminatory, and that the advertisement was not rejected because of the man's faith. Instead, it found, "the advertisement targeted and offended a traditionally disadvantaged group. Declining for those reasons brings Post Media's action within the ambit of adopting or implementing a reasonable and justifiable measure designed to prevent disadvantages suffered by a group of individuals based on a prohibited ground." The Court also reasoned that, even had the man established that the rejection of his advertisement was discriminatory, the newspaper's freedom of expression was more significantly impacted than his freedom of religion, as he does not have the right to require the newspaper to communicate his religious beliefs.

[Marriage](#)

South Africa: On September 6, 2017, the High Court of South Africa [ruled](#) that the Department of Home Affairs was obligated to consider applications to alter records containing a person's sex description, irrespective of the person's marital status. The Alteration of Sex Description and Sex Status Act 49 of 2003 allows for applicants to alter their sex description as recorded in the national population register. However, a separate law only recognizes the right of heterosexual couples to marry, so the Department believed that it would be unlawful to alter the sex description of a person if it would lead to a same sex-marriage. The case was brought by three couples: For two of the couples, the Department refused to amend their sex description unless they first divorced. For the third couple, the Department deleted their marriage before altering the transgender spouse's sex description. The court determined that the Department's conduct infringed on the transgender individuals' constitutional rights, and that the Department must consider all applications submitted to alter sex description. INCLO-member Legal Resource Centre represented the couples.

United Kingdom: On August 17, 2017, the High Court of Justice in Northern Ireland [rejected](#) a challenge to Northern Ireland's continued refusal to permit gay marriage. The court recognized the compelling nature of the evidence "about the effect on the gay and lesbian community of being treated less favourably than others so repeatedly and for so long." It nonetheless concluded that the European Convention on Human Rights does not recognize a right to same-sex marriage, and that the right would need to be achieved through legislation. The Northern Irish Assembly last [considered](#) legislation that would have legalized marriage for same-sex couples in November 2015; however, members of the Democratic Unionist Party blocked the vote, despite majority support.

[Employment](#)

United Kingdom: The Court of Appeal has [dismissed](#) the appeal from an order holding that the Church of England did not violate the U.K.'s Equality Act when it barred Rev. Jeremy Pemberton from working as a hospital chaplain because he married his same-sex partner. Although Rev. Pemberton was employed by the National Health Service, he needed a license from the diocese to work as a chaplain. In its [decision](#), previously reported in this newsletter in January 2016, the Nottingham Employment Tribunal reasoned that the Church had valid grounds to revoke Rev. Pemberton's permission to officiate as a hospital chaplain with the National Health Service because he had breached his oath of obedience by marrying a same-sex partner. The Court of Appeal held that discrimination on sexual orientation grounds was permissible where necessary to comply with the doctrines of a religion.

United States: On March 7, 2018, the U.S. Court of Appeals for the Sixth Circuit [ruled](#) that a funeral home engaged in unlawful discrimination on the basis of sex when it refused to permit a transgender employee to adhere to the dress code consistent with her gender identity. The court held that the Religious Freedom Restoration Act – a federal statute – did not provide a defense in this case, reasoning that it did not substantially burden the employer's religious exercise to comply with a federal statute that prohibits workplace discrimination. The owner of the funeral home had argued that he "would be violating God's commands" if he supported the "idea that sex is a changeable social construct" and permitted employees to dress consistent with their gender identity. INCLO-member ACLU [intervened](#) on appeal on behalf of the employee.

Hungary: In September 2016, the Equal Treatment Authority [issued](#) a decision finding that a local mayor had harassed an individual based on the individual's gender identity and sexual orientation. On at least two occasions, the mayor had publicly yelled at the individual about what they were wearing, as well as saying that they could not enter the village and that the mayor would never hire them for a government job, even though they applied for one each month. The Authority found that the mayor had violated the Equal Treatment Act by making statements that created an intimidating, humiliating, and degrading environment around the individual, and prohibited the mayor from continuing the conduct, as well as imposed a fine against the mayor.

[Fundamental Rights](#)

India: On January 8, 2018, the Supreme Court of India [issued notice](#) that it will hear a plea to have the "right to choice of sexual orientation" be declared as part of the fundamental right to life and personal liberty under Article 21 of the Indian Constitution. The law at issue criminalizes certain sexual acts – including between same-sex partners – and carries a penalty of up to life imprisonment. In 2009, the Delhi High Court determined that the law violated fundamental constitutional rights, but on appeal in 2013, the Supreme Court reinstated the law. Now, the

Court has said that a larger group of judges should reconsider the law's constitutionality, as "people who exercise their choice should never remain in a state of fear."

IACHR: On November 24, 2017, the Inter-American Court on Human Rights [issued](#) an advisory opinion, providing that States are obligated to recognize individuals' right to change their names and rectify public records to conform with their gender identity, based solely on the free and informed consent of the applicant. Further, States must recognize and protect the rights of same-sex couples, including access to marriage and the full protection of domestic laws related to the rights of families. As a result, Costa Rica, which requested the advisory opinion, has announced it will take steps to comply, and efforts are underway in Honduras to challenge the constitutionality of laws that prohibit same-sex marriage and restrict name changes.

[*Government-Sanctioned Discrimination*](#)

United States: On January 18, 2018, the U.S. Department of Health and Human Services (HHS) announced the creation of a new division within HHS's Office for Civil Rights called the "Conscience and Religious Freedom Division." The following day, HHS issued a [proposed rule](#) that aims to dramatically expand existing law to enable health care institutions and individuals to refuse to provide services, and that could allow widespread discrimination, particularly against women, LGBT people, and people living with HIV. Many groups and individuals have [commented](#) on the proposed rule, including INCLC-member ACLU.

[*Religious Freedom & Women's Rights*](#)

[*Access to Contraception*](#)

United States: On October 6, 2017, the Trump Administration issued two interim final rules (IFRs) that permit virtually any employer to refuse to comply with federal law requiring contraceptive coverage in health insurance. One IFR allows *any* entity, including any for-profit company or non-profit organization, to invoke religious beliefs to block their employees' or students' health insurance coverage for contraception. The second IFR provides, for the first time, that employers with moral objections (except publicly traded for-profit entities) can also secure an accommodation or an exemption. Previously, the rules provided limited accommodations, with the insurer still providing coverage. The IFRs allow entities to claim an exemption, meaning their employees would get no coverage.

There are currently six cases in the courts challenging the IFRs, including one brought by INCLC-member ACLU: In [two cases](#), the courts have blocked the enforcement of the IFRs, and the government is appealing both decisions.

[*Access to Abortion*](#)

Ireland: On May 25, 2018, Ireland voted to repeal the Eighth Amendment to its constitution, overturning the ban on abortion by a [margin](#) of 66.4% to 33.6%, with all but one constituency voting in favor of repeal. The now-repealed amendment gave fetuses and pregnant women an equal right to life, banning abortion in the country unless the life of the woman was at "real and substantial risk." INCLC-member Irish Council for Civil Liberties [supported](#) efforts to overturn the ban, as it resulted in serious human rights violations. Legislation has been [drafted](#) and will be introduced in the coming weeks that would permit abortion up to 12 weeks for any reason, and until viability if there is a serious risk to the health of the woman.

The repeal followed two decisions issued by the United Nations Human Rights Committee finding that Ireland subjected women to ill-treatment by failing to provide access to abortion when the pregnancy was not viable. In both cases – one decided in [2016](#), the other in [2017](#) – a woman whose fetus had fatal birth defects had to travel outside the country to obtain an abortion and was not provided with information or counseling due to the stigma around abortion. In both cases, the Committee found the state violated the International Covenant on Civil and Political Rights – regardless of the illegality of abortion in Ireland.

In addition, on November 2, 2016, the Irish High Court [refused](#) an application to force a pregnant woman to give birth by caesarean section, when her preference was for a natural birth. The woman had undergone three prior caesarean sections, which heightened the risk of uterine rupture should she deliver naturally. The court found that the woman was taking an unnecessary risk by deciding to have a natural delivery, but that she nonetheless had the capacity to make such a decision. The court appointed counsel for, in its own words, her “unborn child,” but the court did not consider the case to be exceptional enough to justify court intervention and declined to order a forced caesarean section.

Argentina: On June 13, 2018, lawmakers in Argentina will vote on [legislation](#) that would make abortion legal in the first 14 weeks of pregnancy. If approved by the Chamber of Deputies, the bill will next go to the Senate. A special commission has been meeting twice a week for two months to consider the bill and hear testimony from hundreds of experts and witnesses. Many see the bill as a result of a broader women’s rights movement in the country, which started with a 2015 campaign against femicides. If the legislation passes, Argentina would be the fourth (and most populous) country in Latin America to allow abortion without limiting it to circumstances where the pregnancy resulted from rape or the woman’s life was threatened.

Mexico: On April 4, 2018, the Mexican Supreme Court [voted](#) unanimously that the denial of a legal abortion after rape constitutes a reproductive rights and human rights violation. The case was brought on behalf of a young woman who was raped when she was 17 years old and was unable to obtain an abortion due to delays, discrimination, and barriers put in place by Mexican authorities. Although the Court has previously discussed abortion, this is the first time the Mexican Supreme Court has issued a ruling directly addressing the denial of a woman’s access to abortion.

Canada: On January 31, 2018, a superior court of Ontario [upheld](#) a policy requiring physicians with religious objections to performing certain procedures to refer patients to a non-objecting physician and to perform the procedures in an emergency. The court found that the policy did engage the physicians’ religious freedom rights in a manner that is non-trivial, but that the policies were justified to ensure equitable access to healthcare. The court noted that the limited alternatives proposed by the physicians “would compromise the goal of ensuring access to healthcare in many situations, often involving vulnerable members of our society at the time of requesting medical services.” Each of the applicant physicians challenging the policy objected on religious grounds to one or several legally available procedures, including euthanasia, abortion, contraception, fertility treatments, prenatal screening, and/or treatments for transgender patients.

United Kingdom: On February 23, 2018, a United Nations committee [reported](#) that the U.K. and Northern Ireland has committed “grave and systemic violations” of the Convention on the Elimination of All Forms of Discrimination against Women due to restrictions on access to abortion in Northern Ireland. The U.K. government [responded](#) to the report.

Meanwhile, the U.K. Home Office is [considering](#) new national legislation to impose buffer zones around abortion clinics, in response to reports that women have been experiencing intimidation from anti-abortion protestors at clinics. A number of local councils have proposed issuing what are known as “public space protection orders” around clinics in their localities.

Chile: On August 28, 2017, the Constitutional Court of Chile [upheld](#) the law decriminalizing abortions in three situations: when there is imminent risk to the life of the woman; in cases of fatal fetal disease; and in cases of rape during the first 14 weeks of pregnancy when a woman is under 18 years old, and in the first 12 weeks for women over 18. The law also allows “professionals” with conscientious objections to decline to participate in abortions, which the Court extended to non-professionals and institutional participants.

India: On May 9, 2017, the Supreme Court of India [denied](#) an abortion request from an HIV-positive woman who had become pregnant as a result of rape, based on a medical board’s opinion that an abortion at 26 weeks posed a risk to the “life of the petitioner and the fetus in the womb.” The woman initially requested an abortion at 17 weeks, but despite Indian law allowing pregnancies resulting from rape to be terminated up to 20 weeks, she experienced significant delays at the hospital. A lower court [rejected](#) her request for an abortion at 24 weeks, finding that the permissible period for abortion had passed and there was no evidence of health risk to the woman or fetus. The Supreme Court did award her monetary compensation due to the delay, and directed the state to provide medical treatment.

IACHR: On October 23, 2017, the Inter-American Commission on Human Rights [issued](#) a comment urging all States to “adopt comprehensive, immediate measures to respect and protect women’s sexual and reproductive rights.” The comment asserts that criminalizing abortion in all cases limits the rights of women and facilitates high rates of maternal mortality. It also recognizes the necessity of guaranteeing reproductive rights to particularly vulnerable populations – girls, adolescents, and victims of sexual violence or incest – and equates sexual and reproductive rights with the right to live free from violence and discrimination.

[Marriage](#)

India: On August 22, 2017, the Supreme Court of India [held](#) that “triple talaq” – a practice permitting a Muslim man to legally divorce his wife by saying “talaq” three times – was unconstitutional and violated Muslim women’s fundamental rights. Supporters of the practice argued that it is a religious right. The Court banned the practice for six months, asking Parliament to bring legislation governing marriage and divorce in the Muslim community. The Lok Sabha subsequently [passed](#) a bill making any pronouncement of talaq void and punishable by up to three years imprisonment, among other protections for married Muslim women.

[Religious Freedom & Individual Rights](#)

[Religious Freedom](#)

European Court of Human Rights: On March 14, 2017, the European Court of Human Rights issued two decisions regarding employers’ bans on Islamic headscarves in the workplace. In the first opinion, coming out of a [Belgian](#) case, the court determined that the freedom of religion protected by the Charter of Fundamental Rights of the European Union includes the freedom of persons to manifest their religion, but that a prohibition on headscarves in the workplace is not

direct discrimination. The court did not rule as to whether the prohibition constituted indirect discrimination, but provided guidance for the national court, observing that, although the workplace had a generally applicable rule that required all employees to dress neutrally with regard to their religious or political beliefs, such neutral obligation can result in “persons adhering to a particular religion or belief being put at a particular disadvantage.” In the second case, coming out of [France](#), the question was whether employers could consider the effect on customers in barring an employee from wearing an Islamic headscarf. The court determined that customers’ preferences were not a genuine occupational requirement that the employer could consider.

Canada: On November 2, 2017, the Supreme Court of Canada [established](#) that the right to religious freedom does not protect the objects of the religion. The case was brought by citizens of the Ktunaxa Nation, who objected that the development of a ski resort in a particular location would drive the Grizzly Bear Spirit from its home there, and therefore irrevocably impair their religious beliefs and practices. The Court held that the right to freedom of religion does not extend beyond the right to have and to manifest those beliefs, and thus does not include the right to protect the object or spiritual focal point of those beliefs – here, the Grizzly Bear Spirit. Further, the Court determined that the legal duty to consult and accommodate Aboriginal interests is a right to a process, not to a particular outcome, which the Court found was fulfilled after years of negotiations between the local government, the Ktunaxa Nation, and developers.

[Religious Discrimination](#)

Argentina: The Argentine Supreme Court [ruled](#) against religious education in Salta province’s public schools, determining that the schools may not provide religious education during school hours. Notably, the Court’s decision recognized that, while the rule integrating religious education into the curriculum appeared neutral as to which beliefs would be taught, it created a “systemic effect of inequality.” To reach its decision, the Court referred to jurisprudence from the United Nations Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Inter-American Court of Human Rights. The Court’s approach moves antidiscrimination law in Argentina forward, and reaffirms that the government must be neutral as to the plurality of groups within the country. INCLO members joined a friend-of-the-court brief and participated in the public hearing articulating the importance of the separation of religion and state.

Hungary: On April 12, 2017, Hungary’s Constitutional Court [repealed](#) several anti-Islamic measures put in place by the mayor of a Hungarian border town in November 2016. The mayor had instituted a ban on building mosques, women wearing burkas and chadors and other head coverings, and Muslim calls to prayer in public areas. The Court ruled that the prohibitions “aim to limit directly freedom of conscience and religion, as well freedom of speech,” which [violates](#) the Hungarian constitution. Reportedly, the measures were instituted when there was not even a Muslim community in the town.

United Kingdom: On April 27, 2018, a divisional court [ruled](#) that a coroner’s policy not to prioritize any death over another on the basis of religion violated the European Convention on Human Rights and amounted to indirect discrimination contrary to the U.K.’s Equality Act. Under the policy, the coroner had refused all requests for expedition due to religious beliefs while holding the deceased’s body and deciding whether to open an investigation into the death, leading Jewish and Muslim families to face delays in burials that were incompatible with their religious beliefs. The court determined that the blanket policy not to consider the circumstances of individual families when they have a religious basis unlawfully limited the coroner’s discretion,

and was irrational because the coroner considered other factors for expedition, such as eligibility for organ donations. The policy also indirectly discriminated against members of religious groups that prioritized prompt burial, because they were placed at a distinct disadvantage compared with those who did not share those beliefs.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



Global Developments in Religious Freedom and Equal Treatment

November 2018

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLEO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this issue:

- Uruguay passed a law expanding the rights of transgender people, including the right to government-funded gender-affirming surgery;
- The Indian Supreme Court decriminalized sexual conduct between adults of the same sex;
- Scotland became the first country to embed LGBTI issues in school curricula;
- Bermuda's Supreme Court struck down legislation banning marriage for same-sex couples;
- Costa Rica set a deadline to legalize marriage for same-sex couples;
- A Romanian referendum to establish a constitutional ban on marriage for same-sex couples failed to pass;
- A South African court ruled that marriages solemnized under Sharia law must be legally recognized;
- Argentina's Senate voted against a bill to legalize abortion during the first 14 weeks of pregnancy after the bill had passed the Chamber of Deputies;
- Ireland voted to remove blasphemy as a constitutional offense;
- The U.K. Supreme Court held that a bakery did not unlawfully discriminate when it refused to make a cake with a message supporting marriage for same-sex couples; and
- The U.S. Supreme Court held that there was hostility to religion in the adjudication of a case involving a bakery that refused to make a wedding cake for a same-sex couple.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Deepa Patil at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Lindsey Kaley
Staff Attorney, ACLU Center for Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Adoption

Colombia: In May 2017, Colombia's Congress [upheld](#) the full adoption rights of same-sex couples and LGB individuals, rejecting a referendum that would have reversed a 2015 Constitutional Court ruling. The Court had instructed adoption agencies not to discriminate against same-sex couples when providing adoption services, reasoning that denying same-sex couples the right to adopt "limits children's right to a family."

Honduras: In August 2018, the Honduran Parliament [approved](#) a law that prohibits same-sex couples from adopting children. In defending the law, politicians cited the Honduran constitution, which does not permit marriage between same-sex couples, and said that the adoption law could not override the constitutional prohibition. As noted below, both the marriage and adoption provisions are being challenged as unconstitutional.

Italy: After taking office in June 2018, the Italian interior minister, Matteo Salvini, [ordered](#) that identity card application forms for children replace the gender-neutral terms "Parent 1" and "Parent 2" with "mother" and "father," so that same-sex parents cannot both declare themselves as a child's parents. Salvini stated that he would "exert all the power possible" to "defend the natural family founded on the union between a man and a woman." Currently, surrogacy pregnancies are illegal in Italy, and same-sex couples cannot adopt children.

United States: On November 6, 2018, the U.S. Court of Appeals for the Third Circuit heard a Catholic social services agency's request to enjoin the City of Philadelphia from ending referrals to the agency because of its refusal to place foster children with same-sex couples. A lower court [rejected](#) arguments that requiring the agency to comply with the city's antidiscrimination ordinance violates the constitution and federal law. In a similar case, on September 14, 2018, a Michigan federal court [denied](#) motions to dismiss a [lawsuit](#) challenging the constitutionality of

Michigan's practice of permitting state-funded agencies to turn away same-sex couples seeking to foster or adopt children.

Education

Scotland: On November 8, 2018, the Scottish government [announced](#) that state schools will embed LGBTI issues in school curricula, becoming the first country in the world to do so. The curricula will incorporate themes related to LGBTI history, terminology, and ways to tackle prejudice across different student age groups and subjects. The move comes after the LGBTI Inclusive Education Working Group published a [report](#) identifying ways to combat LGBTI bullying in schools.

Canada: On June 15, 2018, the Canadian Supreme Court [held that](#) legal societies could deny accreditation to a Christian university's proposed law school because the university does not allow students to engage in sexual intimacy outside of opposite-sex marriage. The court found that the legal societies were entitled to balance the freedom of religion with other statutory considerations, and that "equal access to the legal profession, diversity within the bar, and preventing harm to LGBTQ law students were all within the scope of its duty to uphold the public interest." The Court's ruling diverges from its [2001 decision](#) in support of the same university when it sought to assume full responsibility for a teacher's college.

On August 23, 2018, INCLC-member Canadian Civil Liberties Association [challenged](#) an Ontario government-issued directive instructing school boards to use old sex-education curriculums, thus removing material on consent and LGBTQ+ identities, among other topics. The legal challenge will be [heard](#), along with a similar case, on January 9, 2019.

Employment

United States: On July 20, 2018, a funeral home [petitioned](#) the U.S. Supreme Court to review whether a federal law barring discrimination based on sex covers discrimination based on gender identity. In the lower courts, the owner of the funeral home had argued that he "would be violating God's commands" if he supported the "idea that sex is a changeable social construct" and permitted employees to dress consistent with their gender identity. The home is not asking the Supreme Court to review the appellate court's [ruling](#) that the Religious Freedom Restoration Act – a federal statute – did not provide a defense in this case. INCLC-member ACLU [intervened](#) on appeal on behalf of the employee. The Court must still determine whether it will hear the appeal.

Fundamental Rights

India: On September 6, 2018, the Supreme Court of India [struck down](#) a section of the Indian Penal Code that criminalized consensual sexual conduct between adults of the same sex. In a unanimous judgment, the Court held that discrimination on the basis of sexual orientation is a violation of freedom of speech and expression, and that the constitution protects an individual's bodily autonomy and right to privacy. The stricken law carried a penalty of up to life imprisonment. The judgment overturns the Supreme Court's 2013 decision to reinstate the law after the Delhi High Court determined that the law violated fundamental constitutional rights in 2009.

Following the Supreme Court's verdict, on September 24, 2018, the High Court in the State of Kerala [permitted](#) a 24-year-old woman to live with her female partner. The matter was before the court on a habeas corpus petition alleging that the woman was illegally detained in a mental health facility by her family immediately after the couple decided to move in together.

On November 12, 2018, the Supreme Court of India [refused](#) to hear a petition challenging a provision of the Indian Penal Code that defines rape as an act committed by a man against a woman – leaving out men or transgender people who are victims of rape. The Court refused to hear the plea asking it to intervene and make India's rape law gender-neutral, as the Court stated that it could not interfere at this stage and that the legislature should change the law.

[Gender Recognition](#)

Argentina: On November 1, 2018, the Director of the Civil Registry in [Mendoza](#), a province of Argentina, issued a resolution requiring a new birth certificate be designed that would permit people to identify themselves on official identity documents as neither male or female. The Director's resolution cites the Inter-American Court on Human Rights' [advisory opinion](#) from November 2017, which provides that States are obligated to recognize individuals' right to change their names and rectify public records to conform with their gender identity. The issue was raised when an individual seeking access to medical treatment was required to change the sex on their birth certificate, but did not wish identify as either male or female, and was ultimately permitted not to identify a sex.

Colombia: The Colombian Constitutional Court will [review](#) lawsuits against a national [law](#) that regulates the recruitment, reserves, and mobilization services of the Colombian military. One lawsuit argues that, although transgender men are required to perform military service – as are all men in Colombia – service should be voluntary for them because their integrity is at risk. Further, the lack of procedure for transgender men to obtain their satisfaction of service papers violates their rights to human dignity, gender identity, equality, work, and free development of personality, among others. The second lawsuit argues that the law should not include transgender women on the list of men exonerated from military service, because they are not men.

India: On May 9, 2018, the Indian Income Tax Department [issued](#) an advisory allowing transgender people to change the gender associated with their Permanent Account Number (PAN), a tax-related identity code, or to obtain a new PAN. The PAN application form will now list three gender options, with transgender as the third option, and applicants will not need to provide any documentation in support of their selection. This change came in response to the Indian Supreme Court's March 28 directive to the government to resolve the mismatch between the PAN card and another identity card that already had a third gender option. The matter was before the Court based on a petition filed by a transgender activist seeking an option to indicate a third gender identity on the PAN card.

[Health Care](#)

Uruguay: On October 18, 2018, the Uruguayan Congress [passed](#) a law that expands the social and economic rights of transgender people. The law defines gender-affirming surgery and hormone therapy as a right that will be government-funded, reserves 1% of public jobs for transgender people, and establishes a fund to pay reparations to transgender people who were detained and tortured during the country's military dictatorship from 1973 to 1985. The law

comes in response to a 2016 census finding that 75% of transgender Uruguayans did not graduate from high school and 25% have no familial support.

Marriage

Bermuda: On November 23, 2018, Bermuda's Supreme Court [ruled](#) that legislation banning marriage for same-sex couples was unconstitutional. The Court first [ruled](#) in May 2017 that banning same-sex couples from marrying was unconstitutional, but in February 2018 Bermuda enacted a law rescinding marriage for same-sex couples, limiting them to domestic partnerships. The most recent ruling allows marriages between same-sex couples to resume after they had been prohibited for several months.

China & Hong Kong: On September 20, 2018, Hong Kong's [policy](#) to grant dependency visas to foreigners in same-sex marriages took effect. The change follows the Final Court of Appeal's July 4 [judgment](#) that the same-sex partner of a British citizen working in Hong Kong is entitled to the same dependency visa to which spouses and children of other foreign workers are entitled. When the immigration department appealed to the Final Court, it argued that Hong Kong law only recognized marriages between men and women, but the Court ultimately reasoned that only granting dependency visas to opposite-sex partners "constituted indirect discrimination."

Costa Rica: On November 14, 2018, the Supreme Court of Costa Rica released an [opinion](#) setting a May 2020 deadline for lawmakers to legalize marriage for same-sex couples in the country, otherwise the current ban on marriage for same-sex couples would be struck down. The Court [held](#) that the ban is unconstitutionally discriminatory, and explicitly referred to the Inter-American Court of Human Rights' January 2018 [opinion](#) that States should recognize same-sex marriages.

European Union's Court of Justice: On June 5, 2018, the European Court of Justice [held](#) that member countries of the European Union (EU) that do not recognize marriages between same-sex couples must still grant residency to same-sex partners of EU citizens. The case was brought by a Romanian and American citizen who married his American partner in Belgium. In 2013, the couple appealed Romanian authorities' refusal to permit the American spouse to stay in Romania for more than three months, because the country does not recognize same-sex marriage.

Honduras: Two [appeals](#) filed by LGBTI rights organizations – challenging the bans on marriage for same-sex couples and adoption by same-sex couples as unconstitutional – are now before the Honduran Constitutional Chamber. The appeals are based on the Inter-American Court of Human Rights' [ruling](#) on January 9, 2018 that States must recognize marriages between same-sex couples, and that it was discriminatory for there to be separate legal provisions for such marriages.

Romania: On October 8, 2018, a referendum in Romania to establish a constitutional ban on marriage for same-sex couples [failed](#) with only 20.4% of Romanians voting, far below the 30% requirement for a referendum to be binding. In September, Senators had voted to put the referendum on the ballot to change the current gender-neutral language of the constitution, which refers to marriage as a union between spouses, to specify that marriage is between a man and woman. The referendum followed the Constitutional Court's September 28, 2018, [ruling](#) that same-sex couples have the same family and privacy rights as heterosexual couples, although marriage between same-sex couples is still not permitted.

South Africa: A [bill](#) is being considered in Parliament to repeal a section of a 2006 law – the same law that recognized marriage rights for same-sex couples – that allows state-employed marriage officers to refuse to marry same-sex couples because of the officer’s conscience or religious beliefs. The law only allows such marriage officers to raise their religion or beliefs in relation to same-sex civil unions – they cannot refuse to solemnize any other marriages based on religious beliefs. The bill seeks to repeal the section as it is contrary to the equality clause of the South African Constitution. INCLO-member LRC will offer written and oral submissions in favor of the bill in response to Parliament’s request for public participation.

Taiwan: On November 24, 2018, three [referendums](#) that call for marriage to be recognized only as between a man and a woman in Taiwan’s civil code and for same-sex unions to be regulated under a separate law, among other issues, were passed by a majority of Taiwanese voters. A referendum in support of marriage for same-sex couples failed. These referendums follow the May 2017 ruling by Taiwan’s highest court that the ban on marriage for same-sex couples was unconstitutional and the government had two years to enshrine marriage for same-sex couples into law. It is unclear what effect the referendums will have on the government’s obligations to legalize marriage for same-sex couples; the government has stated that the referendum results will not impact the court’s original decision.

United Kingdom: Two couples [appealed](#) the High Court of Justice’s decision to uphold the prohibition on marriage for same-sex couples to the Court of Appeal in Northern Ireland. The High Court’s ruling, issued in August 2017, [rejected](#) a challenge to Northern Ireland’s continued refusal to permit gay marriage. The court recognized the compelling nature of the evidence “about the effect on the gay and lesbian community of being treated less favourably than others so repeatedly and for so long.” It nonetheless concluded that the European Convention on Human Rights does not recognize a right to same-sex marriage, and that the right would need to be achieved through legislation.

[Services & Public Accommodations](#)

United Kingdom: On October 10, 2018, the U.K. Supreme Court unanimously [found](#) that a bakery did not unlawfully discriminate on the basis of sexual orientation when it refused to serve a customer who sought a cake featuring the slogan “support gay marriage,” together with a picture of Bert and Ernie from the children’s show, Sesame Street, to mark the International Day Against Homophobia and Transphobia. The Court [held](#) that “[t]he bakers could not refuse to supply their goods to [the customer] because he was a gay man or supported gay marriage, but that is quite different from obliging them to supply a cake iced with a message with which they profoundly disagreed.”

United States: On July 6, 2018, the U.S. Supreme Court narrowly [ruled](#) in favor of a bakery that turned away a couple seeking a cake for their wedding reception because the couple is gay. The Supreme Court found that the Civil Rights Commission that considered the matter evidenced anti-religious bias. At the same time, the Court reaffirmed that states can prevent the harms of discrimination in the marketplace against LGBT people. The Court did not address the bakery’s argument that requiring it to comply with the state law barring discrimination would violate its constitutional rights to free speech and freedom of religion. The U.S. Department of Justice [filed](#) a brief in support of the bakery, arguing also that the constitution protects the right to discriminate in certain circumstances. INCLO-member ACLU represented the couple who were denied service, and other INCLO members [filed](#) a friend-of-the-court brief in support of the couple.

Religious Freedom, Reproductive Rights and Women's Rights

Access to Abortion

Argentina: On August 9, 2018, Argentina's Senate narrowly [rejected](#) a bill that would have legalized abortion during the first 14 weeks of pregnancy; the bill had passed the Chamber of Deputies on June 14. Abortion is only permissible in Argentina if the pregnancy poses a health risk or if the pregnancy is a result of rape. A special commission had met twice a week for two months to consider the bill, hearing testimony from more than six hundred activists, experts, and other witnesses. The U.N. Working Group on the issue of discrimination against women in law and in practice had sent a [letter](#) to the government expressing support for the bill, as it would put Argentina closer to complying with international human rights standards regarding women's right to sexual and reproductive health, physical integrity, and non-discrimination. INCLO-member Centro de Estudios Legales y Sociales [opposed](#) the Senate's decision, as it "den[ies] women and trans men the right to decide about their bodies, reinforcing instead clandestine conditions, criminalization and the risk of death for those who opt to voluntarily interrupt a pregnancy."

Chile: On October 23, 2018, the Chilean government [published](#) a new protocol for entities that object to providing abortions for reasons of conscience. The protocol states that conscientious objections are not valid where there is a risk to the life of the patient, and that public institutions and private institutions that receive certain public funds may not be conscientious objectors, among other limitations. On November 20, 2018, the Constitutional Court of Chile agreed to review the newly released protocol at the [request](#) of a group of legislators. Previously, in August 2017, the Constitutional Court [upheld](#) the law decriminalizing abortions – when there is imminent risk to the life of the pregnant person, in cases of fatal fetal anomalies, and in cases of rape – but invalidated the part of the law prohibiting conscientious objections on the part of institutions.

Colombia: On October 17, 2018, the Colombia Constitutional Court affirmed the right of a woman to proceed with an abortion at 26 weeks where the pregnancy endangered her life. The court [declined](#) to set time limits on the availability of abortion or, more specifically, to say that abortion is [prohibited](#) under any circumstance after 24 weeks. Currently, abortion is legal if a doctor determines that one of three conditions exist – danger to health, a serious issue with the fetus, or the pregnancy resulted from rape or incest – and the doctor authorizes the abortion.

Germany: On October 12, 2018, a German court heard a gynecologist's appeal of her conviction for advertising abortion services. At least three gynecologists are being [prosecuted](#) for violating part of the German Penal Code that prohibits advertisements for pregnancy termination, and all three are challenging the law's constitutionality.

India: On July 16, 2018, the Supreme Court of India [denied](#) an abortion request from a 20-year-old woman who was the victim of child marriage and domestic violence. The petitioner, who was over 25 weeks pregnant at the time of the denial, had been advised against oral contraceptives due to her epilepsy. In denying her request, the Court reasoned that the petitioner would "regret killing the baby" if she "reconciles with the husband," and told the woman's advocate that the fetus should have been represented in court, not the woman. Under current law, pregnancies beyond 20 weeks can only be terminated if they pose a risk to the life of the woman or serious health risks to the fetus.

Ireland: On October 2, 2018, Ireland's Minister for Health [received](#) government approval to include two new provisions in [draft](#) legislation designed to regulate abortion: to make abortion universally accessible so that cost is not a barrier, and to establish safe access zones near abortion service providers. In addition, the bill would permit abortion up to 12 weeks for any reason, and until viability if the pregnancy poses a serious health risk. The legislation comes after the country voted to repeal the Eighth Amendment to its constitution in May of this year, overturning the ban on abortion by a [margin](#) of 66.4% to 33.6%. INCLC-member Irish Council for Civil Liberties [supported](#) efforts to overturn the ban. The legislation is expected to be introduced in the Houses of Parliament in early 2019.

Following this repeal, on June 11, 2018, Ireland's Prime Minister [asserted](#) that no publicly-funded hospitals, including Catholic hospitals, may be exempt from providing abortion services guaranteed when the new laws are in effect. The draft legislation provides that only individuals, not institutions, could opt out of the services based on religious objections.

Isle of Man: On November 20, 2018, the Isle of Man's Legislative Council will review a bill [passed](#) by the House of Keys that permits abortion up to 14 weeks of pregnancy for any reason, or up to 24 weeks if there are medical or "serious social grounds." The bill also creates buffer zones around abortion clinics and offers counseling to all patients. The legislation comes in response to a 2017 public survey that found 87% of Manx believe women should have the choice to get an abortion up to 14 weeks and 73% believe some circumstances warrant providing an abortion after 24 weeks. Currently in the Isle of Man, abortion is only allowed in cases where the pregnancy is life-threatening or the fetus has a low survival rate.

Kenya: During a three-day [hearing](#) in May 2018, the High Court of Kenya heard arguments in a lawsuit demanding that the government reinstate guidelines on safe abortions. Abortion is permitted under Kenya's constitution when a pregnant person's life is at risk or in cases of emergency, but the Ministry of Health has withdrawn guidelines on conducting safe abortions – including who can perform abortions – and banned health workers from conducting abortion trainings, causing a chilling effect on abortion providers and, in some cases, arrests. The petitioners argue that withdrawing the guidelines violates the rights of women and health workers under the constitution and international law. One of the petitioners [challenging](#) the ministry's actions is the mother of a teenage girl who died following complications of an abortion she sought after she was raped. The Court's decision is expected by the end of the year.

Mexico: On October 2, 2018, a bill to [amend](#) the Mexican federal constitution to legalize abortion was introduced to the Senate. The amendment would include the right to self-determination and free development of personality in the first article of the constitution. Right now, state laws include penalties up to 6 years in prison, with only Mexico City permitting abortion up to 12 weeks of pregnancy.

United Kingdom: In a [landmark ruling](#) on June 7, 2018, the U.K. Supreme Court found that existing abortion laws in Northern Ireland, which ban abortion except where there is a risk to life or of serious long-term harm, are incompatible with human rights law in cases of fatal fetal anomaly, rape, and incest. The majority opinion held that the laws infringed upon the right of respect for private and family life under the European Convention on Human Rights. The judgment is not binding because the Northern Ireland Human Rights Commission did not have standing to bring the case, but the Court concluded that "the present law clearly needs radical reconsideration."

On August 25, 2018, the British government [announced](#) that those obtaining an abortion in England will be allowed to take the second of two pills required for a medication abortion at home. Currently, both pills, which are administered 24 to 48 hours apart, must be taken at a clinic. The plan is expected to take effect by the end of the year and follows similar plans in Scotland and Wales.

On October 23, 2018, a bill to decriminalize abortion in the U.K., including Northern Ireland, [passed](#) its first reading (the first parliamentary hurdle), and is scheduled for a second reading on January 25, 2019. The “ten-minute rule” bill – which does not hold the same weight as legislation that has been formally entered into Parliament – proposes to strike the law criminalizing abortion except where there is a risk to the life or health of the pregnant person, which is still the law in Northern Ireland. In other parts of the U.K., abortion is still *prima facie* a crime, but other laws allow for exceptions, such as legalizing abortions up to 24 weeks gestation if it is carried out by a doctor with the written agreement of a second doctor, or after 24 weeks in cases of risk to life, fetal abnormality, or severe physical or mental injury to the pregnant person.

Meanwhile, the U.K. Home Office [rejected](#) a proposal for new national legislation to impose buffer zones around abortion clinics, in response to reports that anti-abortion protestors at clinics have been intimidating patients. The proposal also raised concerns about free speech, freedom of assembly, and the criminalization of homelessness and/or begging by legitimizing the use of Public Space Protection Orders. Ultimately, the Home Secretary found that establishing protest-free areas would be a disproportionate response because harassment from protestors was “not the norm” and there was already legislation in place that restricted harmful protest activities.

[Marriage](#)

India: On September 27, 2018, the Supreme Court of India [decriminalized](#) adultery, striking down a section of the Indian Penal Code. The law had defined adultery as a person having sex with a man’s wife without prior consent from the husband, which the Court found treats a wife as the property of her husband. The Court held that the law violated the Indian Constitution, as it perpetuated the subordinate status of women, denying them dignity and sexual autonomy, and was based on gender stereotypes.

On September 20, 2018, the President of India [promulgated](#) an Ordinance to criminalize “triple talaq” – a practice permitting a Muslim man to legally divorce his wife by saying “talaq” three times. Under the Ordinance, “triple talaq” is punishable with a fine and imprisonment for up to three years. The Ordinance responds to the Supreme Court of India’s decision in August 2017, which [held](#) that the practice was unconstitutional and violated Muslim women’s fundamental rights. After the decision, the Lok Sabha had [passed](#) a bill making any pronouncement of talaq void and punishable by imprisonment, but it was blocked by the Rajya Sabha, necessitating the President’s Ordinance. Supporters of the practice argue that it is a religious right.

South Africa: On August 31, 2018, the Western Cape High Court [ruled](#) that marriages solemnized under Sharia law must be legally recognized. The court found that failing to recognize such marriages violated the constitutional rights to equality, human dignity, and freedom of religion, among other rights, in part because it prevented Muslim women from being able to demand legal protection in cases of divorce. INCLO-member LRC represented an amicus applicant in support of the petitioners.

Religious Freedom & Individual Rights

Religious Discrimination

Canada: On June 28, 2018, a Quebec Superior Court [suspended](#) the province's ban on face coverings for anyone giving or receiving a public service. The Court held that the ban violates the Canadian Charter of Rights and Freedoms, and could cause irreparable harm to Muslim women. The ban was previously suspended in December 2017, until the government could create regulations. Although the completed regulations include provisions for religious exemptions, the Superior Court prevented the ban from going into effect because the regulations are ambiguous and confusing.

Sweden: On August 15, 2018, a Swedish labor court [ruled](#) in favor of a Muslim prospective employee whose job interview ended when she refused to shake hands with a male employee because of her religious beliefs. The employer had argued that it was not discriminating against the prospective employee based on her religion, but was defending gender equality, as it could not hire someone who would refuse to shake a person's hand based on gender – though the prospective employee contended that she does not shake anyone's hand. The court held that while the company was right to promote gender equality, the European Convention on Human Rights protects the prospective employee's right to refuse to shake hands on religious grounds.

Religious Freedom

India: On September 28, 2018, the Supreme Court of India [struck](#) a provision prohibiting women between the ages of 10 and 50 from entering a Hindu temple in Sabarimala, Kerala. The Court held the restriction violated the right of women to practice their religion, noting that any rule segregating women based on their biological characteristics can never be constitutional. The Court reasoned that “[p]atriarchy in religion cannot be permitted to trump over the element of pure devotion borne out of faith and the freedom to practice and profess one's religion.”

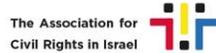
Ireland: On October 26, 2018, Ireland voted via referendum to remove “blasphemy” as an offense from an article in the Constitution. The final results showed that about 65% voted in favor of removing the word, while about 35% were opposed – though the last time someone had been prosecuted for blasphemy was in 1855. INCLO-member Irish Council for Civil Liberties [campaigned](#) to remove “blasphemous” from the Constitution.

United Nations: On February 28, 2018, the United Nations Human Rights Council [distributed](#) the Report of the Special Rapporteur on Freedom of Religion and Belief. As noted by the report, “[i]nternational human rights law imposes a duty on States to be impartial guarantors of the enjoyment to freedom of religion or belief of all individuals and groups within their territory and those subject to their jurisdiction.” The report analyzed how relationships between States and religions impact freedom of religion or belief and stressed the obligation of States to impartially guarantee freedom of religion to all. The report observed that States with a favoured religion, or that pursue policies to heavily restrict the role of religion, are both less likely to uphold their obligations to freedom of religion or belief, whereas States with no identification toward religion tend to fare better.

IACHR: On May 11, 2018, the Inter-American Commission on Human Rights (IACHR) [held](#) a public hearing on Freedom of Religion and the Secular State in Latin America. The [participating organizations](#) “stressed the fundamental importance of strengthening the clear separation

between the State's duty to protect the human rights of people under its jurisdiction and the existence and influence of religious groups." In particular, they emphasized the impact of a secular State on sexual and reproductive rights, and the rights of Afro-descendant and LGBTI persons. The IACHR committed to monitoring and following up on this issue and offered to provide technical assistance to States.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

July 2019

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLLO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this issue:

- Taiwan legalized same-sex marriage, a historic first for Asia;
- Ecuador's highest court voted to legalize same-sex marriage;
- The High Court of Kenya upheld laws criminalizing same-sex sexual activity;
- Angola eliminated a provision in its law that criminalized same-sex sexual conduct;
- Brazil's Supreme Court decided to criminalize discrimination based on gender identity and sexual orientation;
- State high courts in India issued decisions holding that doctors could proceed with abortions without court orders where the life of the pregnant person is at risk, that cohabitation between two consenting adults of the same sex cannot be considered illegal, and that laws against sexual harassment protect transgender individuals;
- Ireland legalized abortion up to 12 weeks for any reason, and until viability if the pregnancy poses a serious health risk;
- The Isle of Man legalized abortion up to 14 weeks of pregnancy for any reason, and from 15 to 23 weeks' gestation in certain cases;
- A South African appellate court overturned a church's decision not to recognize same-sex marriages;

- South Korea's Constitutional Court ruled that the law criminalizing abortion was unconstitutional and called for the parliament to revise it by the end of 2020;
- The Supreme Court of the United States will hear three cases that present the question whether a federal law barring employment discrimination based on sex covers discrimination based on gender identity and sexual orientation.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Basseem Maleki at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Lindsey Kaley
Staff Attorney, ACLU Center for Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Adoption

United States: On April 22, a U.S. court of appeals [ruled](#) that the City of Philadelphia did not violate the constitution or federal law by requiring a taxpayer-funded Catholic child welfare agency to comply with the City's antidiscrimination ordinance. Philadelphia had ended referrals to the agency because of its refusal to place foster children with same-sex couples. The agency argued that requiring it to comply with the antidiscrimination ordinance violated its religious rights. In two similar cases, religiously affiliated, taxpayer-funded child-placing agencies and others have [challenged](#) Michigan's policies that prevent state-contracted foster care agencies from turning away same-sex couples or LGBT individuals seeking to foster or adopt children. The plaintiffs claim that requiring them to comply with the policies violates their religious, free speech, and equal protection rights under the U.S. Constitution, as well as federal law.

Consensual Sex

Angola: On January 23, 2019, Angola's parliament approved a new penal code that [eliminated](#) a provision in its law that was widely interpreted to criminalize same-sex sexual conduct. The new penal code also explicitly [prohibits](#) discrimination against individuals on the basis of gender, religion, and sexual orientation, among other bases, in employment and the provision of services.

Botswana: On June 11, 2019, Botswana's High Court [decriminalized](#) same-sex sexual activity between consenting adults. An anonymous gay applicant challenged the laws, which threatened individuals who engaged, or even attempted to engage, in same-sex activity with up to seven years in prison. The Court unanimously ruled that the laws were discriminatory and conflicted with Botswana's Constitution.

India: On January 29, 2019, a state high court [held](#) that cohabitation between two consenting adults of the same sex cannot be illegal. The ruling came in response to a petition filed by a woman who claimed that her partner was held in illegal confinement by her parents who did not approve of their relationship. The court noted that the constitutional right to life "inheres within its wide amplitude an inherent right of self-determination with regard to one's identity and freedom of choice with regard to sexual orientation or choice of partner."

Kenya: On May 24, 2019, the High Court of Kenya [held](#) that laws criminalizing same-sex sexual activity between consenting adults are constitutional. The case was brought by three Kenyan LGBTQ rights organizations that [challenged](#) two sections of Kenya's penal code that punish "carnal knowledge . . . against the order of nature" with up to 14 years imprisonment, and "indecent practices between males" with up to 5 years imprisonment. The organizations maintained that the laws violated the Kenyan Bill of Rights, including the rights to equality, non-discrimination, human dignity, security, privacy, and health. The court [held](#) that the laws do not violate constitutional protections because the provisions do not single out LGBT individuals.

Lebanon: On March 30, 2019, a Lebanese military court [acquitted](#) four military personnel charged with sodomy, ruling that sodomy is not punishable under Lebanon's penal code, which [punishes](#) any sexual intercourse that is considered "contrary to nature" with up to one year in prison. The court noted that the law does not specify which types of sexual acts are contrary to nature, and so would not enforce it against the military personnel. The military court's decision follows the July 2018 [ruling](#) by a civil appellate court that consensual sex between people of the same sex is not unlawful. The law has previously been used by Lebanese security forces to justify detaining and arresting members of the LGBTQ community, notably resulting in the cancelation of Beirut Pride and a raid on an LGBT rights conference.

[Discrimination](#)

Brazil: On June 13, 2019, Brazil's Supreme Court [decided](#) to criminalize discrimination based on gender identity and sexual orientation. The Court [ruled](#) that such discrimination should be framed within Brazil's law criminalizing racism until Congress approves legislation addressing LGBT discrimination. Brazil's Senate is currently working on a bill that would criminalize discrimination based on gender identity and sexual orientation with prison sentences of up to five years. This decision is viewed by many as an open rebuke to President Bolsonaro's homophobic [rhetoric](#).

Colombia: On April 5, 2019, the [Political Network for Values](#) held a [meeting](#) at the Colombian parliament that included politicians from 30 countries to discuss legislation that could further anti-LGBT and anti-abortion agendas in their respective countries. The Political Network for Values tracks legislation on abortion, in vitro fertilization, surrogate maternity, euthanasia, marriage, adoption by same-sex couples, gender identity, and freedom of conscience and religion.

India: On December 17, 2018, a state high court [affirmed](#) that the provision of the Indian Penal Code that criminalizes sexual harassment protects transgender individuals who are harassed based on their gender identity. A transgender woman brought the suit after police officials failed to pursue her complaint that she had been harassed by male students, on the basis that no penal section was violated. After she initiated her case, the police officials eventually opened an investigation into the harassment.

[Education](#)

Canada: On April 29, 2019, a Canadian court of appeal [affirmed](#) a lower court's refusal to suspend the implementation of a law that requires school administrators to accept students' requests to establish gay-straight alliances and restricts school staff from notifying parents of students' participation in such student groups. The case was [brought](#) by a group of faith-based private schools, parents, and advocacy groups that collectively argued that the bill infringes on their rights to religious freedom, expression, and association under the Canadian charter; the parents argued in addition that the law interferes with the protection of their children and certain parental rights. The court held that the balance of interests favored maintaining the legislation while the litigation continues, in part because "[t]he public good presumed in protecting the safety and privacy interests of these individual children, as well as promoting an inclusive school environment generally, is extremely high."

On March 18, 2019, INCLO-member Canadian Civil Liberties Association (CCLA) sought permission to [appeal](#) an Ontario court's dismissal of its legal challenge to the government-issued directive instructing school boards to use old sex-education curricula, thus removing material on consent and on LGBTQ+ identities, among other topics. The petition stems from one of two [challenges](#) to the directive, one brought by CCLA and a queer parent and another by a teacher and her union, both of which argued that student equality rights and teachers' freedom of expression were violated when the content was removed from the mandatory curriculum.

India: On March 26, 2019, a state high court [directed](#) the government of Karnataka to make provisions for transgender individuals to change their names and genders on educational certificates. The court's [order](#) comes after the Education Department refused to change a transgender man's name and gender on his educational certificates absent a court order. The court ordered the government to provide guidelines for individuals to make such changes to their educational certificates without court orders.

United Kingdom: On May 31, 2019, protests against a primary school's teaching of LGBTQIA+ equality were halted after a civil court [issued](#) an interim injunction that bans protestors from congregating in the streets surrounding the school. A full trial to consider the injunction will take place at the end of July 2019. Recent months have seen protests outside various schools, objecting to primary schools in the U.K. teaching children about LGBTQIA+ people and families as part of relationship education. Some campaigners claim that any mention of LGBTQIA+ people, families and communities conflicts with their religious beliefs. INCLO-member Liberty has [written](#) to the heads of all primary schools in England and Wales to outline that parents' right to their religious beliefs does not allow the imposition of those beliefs on others in a way that is discriminatory – such as by seeking to erase the existence of LGBTQIA+ people and families from primary schools' curriculum.

[Employment](#)

United States: On April 22, 2019, the Supreme Court [agreed](#) to review the question whether a federal law barring employment discrimination based on sex covers discrimination based on gender identity and sexual orientation. The Supreme Court accepted three cases for review, two cases in which the employees contend that they were unlawfully discriminated against based on their sexual orientation, and one in which a transgender employee of a funeral home was found to have been unlawfully discriminated against based on her gender identity. In that case, the owner of the funeral home had argued that he “would be violating God’s commands” if he supported the “idea that sex is a changeable social construct” and permitted employees to dress consistent with their gender identity. INCLC-member ACLU [represents](#) the employees in two of the cases.

[Marriage](#)

Cayman Islands: On April 10, 2019, the Cayman Islands Court of Appeal [granted](#) the government’s request to stay a lower court’s judgment legalizing same-sex marriage in the country. The case was [brought](#) by a same-sex couple after the government refused their application for marriage. The lower court ruled that the government’s decision was discriminatory, violating the couple’s constitutional right to a private and family life, and ordered that the provision in the marriage law excluding same-sex couples be altered to state that marriage is between two “spouses.” The Court of Appeal will hear the appeal on the merits in August.

Ecuador: On June 12, 2019, Ecuador’s highest constitutional court ruled to [legalize](#) marriage for same-sex couples. Two same-sex couples brought the case to challenge the law that recognized same-sex unions but not marriage. The court held the law was discriminatory and unconstitutional and that same-sex couples should be allowed equal rights. The National Assembly will still be required to amend the laws defining marriage for the country, but same-sex couples will be able to marry as soon as the court notifies government offices of its ruling.

Ireland: On November 9, 2018, the Workplace Relations Commission (WRC) [ruled](#) that a print and design company unlawfully discriminated based on sexual orientation when it refused to print invitations for a civil partnership ceremony for a same-sex couple. The company [argued](#) that it was justified in refusing service because the request contradicted its religious beliefs. The WRC ordered the company to pay a fine, concluding that the company would have made wedding invitations if it was not for a same-sex couple, so regardless of the reasons for not providing the wedding invitation – including the company owner’s religious beliefs – the company discriminated based on the customer’s sexual orientation.

South Africa: On December 6, 2018, the National Assembly of the South African parliament adopted a bill that [repealed](#) a section of a law that allowed state-employed marriage officers to refuse to marry same-sex couples because of the officer’s conscience or religious beliefs. The provision only allowed marriage officers to raise religious objections to same-sex civil unions – they could not refuse to solemnize any other marriages based on religious beliefs. The bill still has to be adopted by the second house of parliament, the National Council of Provinces. INCLC-member LRC offered written and oral submissions in favor of the bill in response to the parliament’s request for public participation.

On March 8, 2019, an appellate court [ruled](#) that the Dutch Reformed Church’s decision not to recognize marriages between same-sex couples and to require pastors in same-sex couples to be celibate was unlawful and invalid, as it discriminates based on sexual orientation. In 2015,

the church had [decided](#) to permit pastors to solemnize weddings between same-sex couples and eliminated the requirement that pastors in same-sex relationships be celibate, but overturned that order less than a year later. The court rejected the church's argument that its decision was not subject to judicial review because the judgment was that of a religious body.

Taiwan: On May 17, 2019, Taiwan's legislature [legalized](#) marriage for same-sex couples, a historic first for Asia. Same-sex couples were also granted the right to [adopt](#) children who are blood relatives. However, same-sex couples still [cannot](#) marry if one partner is from a country where same-sex marriages are illegal. The legislation followed a decision by Taiwan's High Court, which had [ruled](#) that it was unconstitutional to bar same-sex couples from marrying and gave the legislature two years to legalize marriages for same-sex couples.

Religious Freedom, Reproductive Rights and Women's Rights

Access to Abortion

Australia: On April 10, 2019, the High Court of Australia [upheld](#) Victorian and Tasmanian laws establishing safe-access zones around abortion clinics. Anti-abortion activists who were convicted for protesting and handing out anti-abortion pamphlets in safe-access zones had [challenged](#) the laws, claiming they violate the protestors' constitutional freedom of communication on governmental and political matters. The High Court unanimously affirmed that the laws comply with the constitution because their purpose – to protect the privacy, safety, and dignity of individuals seeking lawful medical services – was a compelling objective compatible with the constitution.

Canada: On May 15, 2019, the Court of Appeal for Ontario [upheld](#) a requirement that doctors who refuse to perform certain medical services for religious reasons [must](#) refer patients to other healthcare providers where they can get the care they need. The decision arose in a case brought by physicians challenging the College of Physicians and Surgeons of Ontario's policy that requires physicians who object to providing certain medical care on the basis of religion or conscience – in particular, medically assisted death as well as abortion and reproductive health care – to provide the patient with a referral to a non-objecting, available, and accessible healthcare provider. The physicians argued that referral requirements infringe their freedom of conscience and religion under the Canadian Charter of Rights and Freedoms because they obligate the physicians to be complicit in procedures that offend their religious beliefs, as well as discriminate against physicians based on religion. The court concluded that as the physicians are "members of a regulated and publicly-funded profession, they are subject to requirements that focus on the public interest, rather than their interests," and that the referral requirement is a reasonable compromise that avoids requiring them to personally provide their patients these services.

On April 16, 2019, the Canadian government's national health department [removed](#) the requirement that individuals need to undergo an ultrasound before they can be prescribed the drug for a medical abortion. Advocates had [argued](#) that requiring individuals to undergo an ultrasound before getting the prescription places a disproportionate burden on individuals for whom accessing an ultrasound and medical appointments in a short period is very difficult.

Chile: On December 6, 2018, the Constitutional Court of Chile [held](#) that a protocol prohibiting public and private institutions that receive certain public funds from conscientiously objecting to providing abortions was unconstitutional as applied to private institutions. The Chilean

government announced that it will comply with the ruling and will permit private clinics to refuse to provide abortions even while maintaining state contracts.

El Salvador: In March 2019, the Supreme Court of El Salvador [commuted](#) the 30-year sentences of three women who were convicted of abortion-related crimes – after they had already been imprisoned for years – on the basis that the sentences were disproportionate and immoral considering the economic support the women provide their families. El Salvador bans abortion under all circumstances. The women were convicted of aggravated homicide even though they maintained that they had experienced miscarriages or medical emergencies and had not had abortions. Advocates have successfully [freed](#) a total of 13 women convicted of crimes related to abortion in 2018 and 2019, but must argue for each person on a case-by-case basis.

Germany: On February 21, 2019, Germany's parliament [revised](#) the prohibition on doctors advertising that they perform abortions. The new regulation allows doctors to advertise that they provide abortions, but prohibits them from mentioning the methods they use or their costs. Instead, the German Medical Association will maintain a centralized list with that information. Prior to the revision, at least three gynecologists challenged the law's constitutionality after they were [prosecuted](#) for advertising that they provide abortion services.

India: On April 3, 2019, after [hearing](#) three petitions filed by women seeking abortions after the permitted 20 week window, a state high court held that a registered medical practitioner may medically terminate a pregnancy that exceeds 20 weeks without permission from a court, but only when such pregnancy is immediately necessary to save the life of the pregnant person. The court also ordered that in cases where a child is born alive after attempts to terminate the pregnancy, the state must assume full responsibility for the child if the parents are unwilling or unable to care for the child. Finally, the court directed the government to establish medical boards in each district to review cases of people seeking abortions after 20 weeks, and to provide safe and hygienic health care facilities for prenatal care and abortions in rural areas.

Meanwhile, the courts have addressed several cases of women seeking abortions after 20 weeks, where the abortion was not lifesaving.

- On April 1, 2019, a state high court [rejected](#) the petition of a woman to terminate her 24-week pregnancy on the basis that it was a result of sexual assault and that carrying the pregnancy to term would be detrimental to her mental health.
- On February 18, 2019, a state high court [allowed](#) a pregnant woman to terminate her 29-week pregnancy after [observing](#) that the continuation of the pregnancy would severely compromise the quality of life for both the woman and fetus.
- On December 28, 2018, a state high court [ruled](#) that a surrogate was permitted to terminate her 24 week pregnancy after a medical board found that the fetus had multiple cardiac abnormalities and would have a low chance of survival. The intended parents consented to the abortion.

Ireland: On December 20, 2018, Ireland's President [signed](#) a bill into law that permits abortion up to 12 weeks for any reason, and until viability if the pregnancy is life-threatening, poses a risk of serious harm, or the fetus has been diagnosed with a fatal abnormality. Under the laws, abortion is free of charge as part of the maternity health care service – though there is a mandatory [three-day](#) waiting period and doctors who are willing to perform abortions must [opt in](#)

to the service. The legislation comes after the country voted to repeal the constitutional ban on abortion in May 2018 by a [margin](#) of 66.4% to 33.6%. INCLLO-member Irish Council for Civil Liberties [supported](#) efforts to overturn the ban and is part of a working group monitoring the implementation of the legislation, including a mandatory review of the legislation after three years.

Isle of Man: On May 24, 2019, the Abortion Reform Act went into [effect](#), permitting abortion up to 14 weeks of pregnancy for any reason, and from 15 to 23 weeks' gestation in cases of sexual assault, severe fetal impairment, or risk to the pregnant person's health. Additionally, abortion will be allowed at any point during the pregnancy if a medical practitioner finds a substantial risk of long-term injury to the pregnant person, risk to their life, risk that the child would die during labor, or risk that the child would sustain severe impairment that would limit the length and quality of their life. The law also creates buffer zones around abortion clinics and [requires](#) that the patient is offered counseling before abortion services are provided. Prior to passage of the Abortion Reform Act, abortion was only allowed in cases where the pregnancy was life-threatening or the fetus had a low survival rate.

Kenya: On June 12, 2019, Kenya's High Court [ruled](#) that abortions are permitted for people pregnant as a result of rape and where the pregnancy poses a risk to the person's physical or mental health. The Court further [held](#) that the Kenyan government's withdrawal of guidelines for abortions violated the constitution, which guarantees the right to health, life, and dignity, by creating uncertainty regarding the legality of abortions and thus discouraging medical providers from administering abortions. The Court directed authorities to reinstate the guidelines and to provide training for health professionals. The challenge was filed on behalf of a teen who was raped at age 15 and died as a result of an unsafe abortion; the Court ordered that the government pay the teen's mother \$29,600 for reparations.

Mexico: On May 15, 2019, the Supreme Court of Mexico [ruled](#) that individuals who have health risks during pregnancy can apply for an abortion, even if their life is not at risk, because denying access to abortions under these circumstances would violate the patient's right to health. The case was brought by a woman who was denied an abortion even though her pregnancy was high risk due to recent surgery, diabetes, and hypertension. Previously, Mexico's Federal Penal Code only permitted abortions in cases of rape or when the individual's life was at risk.

North Macedonia: On March 14, 2019, the North Macedonian parliament [extended](#) abortion access from 10 to 12 weeks of pregnancy for any reason, and eliminated the three-day waiting period and the counseling requirement. Under the new law, abortions can now be performed from 12-22 weeks for socio-economic reasons, rape and incest, medical risks, and fetal anomaly, and approval from a hospital commission is no longer required, meaning people can have abortions from 12-22 weeks based on their statement alone. Furthermore, medication abortion is now an option and can be provided in clinics outside of hospitals.

Rwanda: As of April 8, 2019, Rwanda's penal code no longer [requires](#) approval of a court and two doctors for abortion; now a single doctor can approve an abortion. Even with a doctor's approval, abortion is only [permitted](#) in cases of rape, incest, forced marriage, or risk to the health of the pregnant person or fetus. On April 4, days prior to the revisions going into effect, the President of Rwanda [pardoned](#) 367 people imprisoned for abortion-related crimes such as abortion, complicity in abortion, and infanticide.

South Korea: On April 11, 2019, South Korea's Constitutional Court [ruled](#) that the law criminalizing abortion except in cases of rape or incest, or severe health risk to the woman or

fetus, was unconstitutional. Abortion was otherwise [punishable](#) by up to one year in prison for pregnant people who intentionally aborted a pregnancy, and up to two years for doctors who administered an abortion. The law will remain in full effect until the parliament amends the law; if parliament does not revise the law by the end of 2020, the law will be declared null and void.

United Kingdom: On January 30, 2019, the Belfast High Court [heard](#) argument in a case challenging Northern Ireland's abortion law as violating the United Kingdom's human rights commitments. Northern Ireland is the only country in the U.K. where abortion remains [illegal](#). In June 2018, the U.K. Supreme Court [ruled](#) in a prior case that Northern Ireland's abortion law violates the right of respect for private and family life under the European Convention on Human Rights, but because the case was brought by an organization, not a woman affected by the law, the Court could not issue a formal declaration of incompatibility. This most recent case was brought by a woman who was denied an abortion in 2013 even though doctors said her child would die once born.

United States: On May 15, 2019, the state of Alabama enacted a law [banning](#) abortion, with exceptions only for cases of serious health risk to the pregnant person or lethal anomaly to the fetus. Under the new law, doctors who perform abortions could be charged with a felony and face up to 99 years in prison. To date, [six](#) other states have passed bans on abortions as soon as a heartbeat is detectable, which is as early as 6 or 8 weeks. Abortion still remains legal in all the states as none of the laws have gone into effect yet. Lawsuits have been or will be filed to stop the bans from going into effect; INCLC-member ACLU has filed four such lawsuits.

On May 2, 2019, the U.S. Department of Health and Human Services [issued](#) a regulation intended to dramatically expand existing exemptions to enable refusals to provide health care services because of religious objections. For example, among other issues, the regulation requires an employer to accommodate an employee's religious beliefs with no consideration of the hardship to the employer or patients permitted as part of the analysis. Additionally, the regulation does not include exceptions for emergencies, creating a question whether a health care provider can refuse to provide lifesaving care. INCLC-member ACLU is among the several groups that have brought multiple cases to [challenge](#) the regulation.

[Marriage](#)

India: On February 21, 2019, the President promulgated an ordinance (a temporary law) that criminalizes "triple talaq" – a practice where a Muslim man legally divorces his wife by saying "talaq" three times. On March 25, 2019, the Supreme Court of India [dismissed](#) a petition challenging the measure. Legislative action is required for the ordinance to become permanent. An earlier version of the ordinance was initially promulgated following a 2017 Supreme Court decision ruling that the practice was unconstitutional and violated Muslim women's fundamental rights, but the bill that was pending in the parliament to turn the ordinance into a permanent law [lapsed](#).

[Other Reproductive Health Care](#)

United Nations: On April 23, 2019, the United Nations (U.N.) [adopted](#) a [resolution](#) aimed at preventing the use of sexual violence as a weapon of war, and calling on countries to adopt a survivor-centered approach to ensure people receive medical and psychosocial care without discrimination. The resolution omitted references to protecting survivors' access to sexual and

reproductive health services that were included in earlier drafts after the U.S. [threatened](#) to veto the resolution, believing the phrase implied support for abortion.

On April 1, 2019, members of the U.N. unanimously agreed to reaffirm [support](#) for the Programme of Action of the International Conference on Population and Development (ICPD), which established the importance of reproductive health, women's rights, and female empowerment with regards to achieving sustainable development. This declaration reaffirming support for ICPD calls for an accelerated global effort to achieve its goals to address poverty, gender equality, and the overall health and well-being of all people.

Religious Freedom & Individual Rights

Religious Freedom

Canada: On June 16, 2019, the Quebec government [passed](#) a bill that would [prohibit](#) public officials – including teachers, police officers, and prosecutors, among others – from wearing religious symbols. To shield the bill from legal challenges, the government invoked a clause that enables it to override both the Canadian Charter of Rights and Freedoms and the Quebec Charter. An earlier law that prohibited covering one's face while giving or receiving any public service including schooling, daycare, transit, and universities was enjoined in a case brought by INCLLO-member CCLA together with the National Council of Canadian Muslims.

Pakistan: On January 29, 2019, Pakistan's Supreme Court [upheld](#) its October 2018 acquittal of Asia Bibi, a Christian woman who was convicted of blasphemy and sentenced to death, on the grounds that the prosecution [failed](#) to prove its case beyond reasonable doubt. Pakistan's Penal Code [provides](#) that the use of derogatory remarks towards the Holy Prophet Mohammad is punishable by death or life in prison, though Bibi would have been the first person executed for blasphemy.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

January 2020

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLC) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

There have been many developments since our last issue in July. Here are a few brief highlights:

- Northern Ireland [legalized](#) same-sex marriage and decriminalized abortion;
- Lawmakers in Australia [decriminalized](#) abortion in New South Wales;
- Over a half dozen U.S. states passed laws that would [ban](#) abortion in almost all cases, although litigation, including four suits by INCLC-member ACLU, has blocked any such law from going into effect;
- Lawmakers [decriminalized](#) abortion in the Mexican state of Oaxaca;
- A Hong Kong court [upheld](#) a ban on same-sex unions;
- A court in Bulgaria [recognized](#) same-sex marriage for the first time when it ruled in favor of a same-sex couple who got married in France;
- San Marino [banned](#) discrimination based on sexual orientation;
- Brunei's Sultan has [announced](#) the government will not impose the death penalty on individuals who engage in same-sex sexual activity after the government faced international backlash in response to extreme anti-LGBT [laws](#) rolled out in April.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in

this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Basseem Maleki at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Lindsey Kaley
Staff Attorney, ACLU Center for Liberty

Hilary Ledwell
Fellow, ACLU Center for Liberty

Basseem Maleki
Legal Administrative Assistant
Center for Liberty, ACLU

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Adoption

United States: Catholic Social Services is [seeking](#) the U.S. Supreme Court's review of a lower federal court's decision [ruling](#) that the City of Philadelphia did not violate the Constitution or state law when it stopped foster care referrals to Catholic Social Services because of that agency's refusal to place foster children with same-sex couples. The agency argues that any requirement that it comply with the City's bar on discrimination violates its rights to free exercise of religion.

Consensual Sex

Brunei: On May 5, 2019, the Sultan of Brunei [announced](#) that the government will not impose the death penalty on individuals who engage in same-sex sexual activity. The announcement followed international backlash in response to extreme anti-LGBT [laws](#) rolled out in April.

Discrimination

India: On November 26, 2019, the Indian Parliament [passed](#) the heavily criticized Transgender Persons (Protection of Rights) Bill, which prohibits discrimination generally but [does not](#) provide explicit protections against discrimination in employment, education, and housing. It also [criminalizes](#) abusing a transgender person, but with a penalty much less than that for abusing a cisgender woman or child.

Ireland: Following a review of the Gender Recognition Act 2017, the Irish government has [committed](#) to new legislation to allow children aged 16 and 17 to declare their gender with the consent of their parents. Under the [current](#) legislation, teenagers aged 16 and 17 must get a court order and have any gender change certified by two medical practitioners.

San Marino: On June 4, 2019, San Marino [banned](#) discrimination based on sexual orientation following a referendum in which a majority of voters opted to update the discrimination protections in the country's constitution. This action comes less than a year after the country [legalized](#) same-sex unions.

South Africa: On September 23, 2019, a lower court [held](#) that a prison's refusal to allow an incarcerated transgender woman to express her identity—by wearing certain clothes, applying makeup, and styling her hair—violated the Equality Act and the constitution by discriminating on the basis of gender identity. It ordered that she be able to express her gender identity in those respects and that prison officials use female pronouns when referring to her. It also ruled that the Department of Correctional Services must introduce transgender sensitivity training for current and new employees.

United Kingdom: On October 2, 2019, an employment tribunal panel in Birmingham [found](#) that the Department for Work and Pensions did not violate a doctor's right to freedom of thought, conscience, and religion when it instructed him to use his patients' pronouns or risk losing his job. The doctor had [refused](#) to refer to transgender patients by their pronouns because he said doing so contradicts his Christian beliefs. The tribunal found that while Christianity is protected under the country's Equality Act, discrimination based on those beliefs is not. The doctor plans to appeal the decision.

[Education](#)

Canada: On April 29, 2019, a Canadian provincial court of appeal [let stand](#) during litigation a law requiring school administrators to let students establish gay-straight alliances and restricting school staff from notifying parents of students' participation in such student groups. The law was challenged as infringing on rights to religious freedom, expression, and association, as well as parental rights. The court of appeal held that the balance of interests favored maintaining the legislation while the litigation continues, in part because “[t]he public good presumed in protecting the safety and privacy interests of these individual children, as well as promoting an inclusive school environment generally, is extremely high.” Subsequent to this decision, the province's School Act was [replaced](#) by a statute that grants fewer protections to queer students.

On August 30, 2019, an Ontario court denied INCLO-member Canadian Civil Liberties Association's (CCLA) motion for leave to [appeal](#) a lower court's decision upholding a government directive that school boards return to old sex-education curricula, removing material on consent and on LGBTQ+ identities, among other topics. The CCLA's challenge was one of [two](#), both of which argued the government violated student equality rights and teachers' freedom of expression when it removed the content from the mandatory curriculum. Neither case is going forward.

United Kingdom: On November 26, 2019, a civil court in Birmingham [issued](#) a permanent injunction to halt protests against a primary school's teaching of LGBT equality. In May, the [same court](#) had [issued](#) an interim injunction stopping the protests. Some campaigners claim that any mention of LGBT people, families and communities conflicts with their religious beliefs. INCLO-member Liberty has [written](#) to the heads of all primary schools in England and Wales to

outline that parents' right to their religious beliefs does not allow the imposition of those beliefs on others in a way that is discriminatory – such as by seeking to erase the existence of LGBT people and families from primary schools' curriculum.

Employment

United States: On October 8, 2019, the Supreme Court [heard](#) oral argument on whether a federal law barring employment discrimination based on sex covers discrimination based on gender identity and sexual orientation. The argument [spanned](#) three cases, two in which the employees contend that they were unlawfully discriminated against based on their sexual orientation, and one in which a transgender employee of a funeral home maintains she was unlawfully discriminated against based on her gender identity. INCLO-member ACLU [represents](#) the employee in two of the cases. A decision is expected by the end of June 2020.

Marriage

Bulgaria: On July 25, 2019, a court in Bulgaria [recognized](#) same-sex marriage for the first time. It ruled in favor of a same-sex couple — an Australian citizen and a French citizen — married in France in 2016. The Australian-born woman had been denied rights to work and travel in Bulgaria; those rights were restored following the court's recognition of her marriage to an EU citizen. Bulgaria is one of over [20](#) countries in Europe that have yet to legalize same-sex unions.

China: On October 18, 2019, a Hong Kong court rejected a constitutional challenge to the city's ban on same-sex marriage and civil union partnerships, brought by a woman after she was not allowed to marry her partner. She argued that the ban was unconstitutional. This was the [first](#) ever judicial challenge to Hong Kong's ban on same-sex unions.

Cayman Islands: On August 28, 2019, proceedings [began](#) in the government's appeal of a lower court judgment legalizing same-sex marriage in the country. A same-sex couple [brought](#) the case after the government refused their application for marriage. The lower court ruled that the government's decision was discriminatory and violated the couple's constitutional right to a private and family life, and ordered that the provision in the marriage law excluding same-sex couples be altered to state that marriage is between two "spouses." The lower court's judgment legalizing same-sex marriage is stayed pending the appellate proceedings.

South Africa: When parliament opens in 2020, it will deliberate on a bill that would [repeal](#) a section of a law allowing state-employed marriage officers to refuse to solemnize a civil union between persons of the same sex because of the officer's conscience or religious beliefs. The law at issue allowed marriage officers to raise religious objections only to same-sex unions – they could not refuse to solemnize any others based on religious beliefs. INCLO-member LRC offered written and oral submissions in favor of the bill. LRC also assisted over 200 community members in making written submissions.

United Kingdom: On October 21, 2019, Northern Ireland [legalized](#) same-sex marriage after the majority of parliament [voted](#) for it in July. Northern Ireland was the last country in the United Kingdom to legalize same-sex marriage.

United States: A flower shop [is seeking review](#) by the U.S. Supreme Court of a state supreme court's [ruling](#) that the shop's refusal to provide flowers for a same-sex couple's wedding violated

the state's public accommodations law, and that enforcement of the law did not violate its state and federal free speech and free exercise rights.

Religious Freedom, Reproductive Rights and Women's Rights

Access to Abortion and Contraception

Australia: On September 26, 2019, lawmakers in Sydney [passed](#) a bill decriminalizing abortion in New South Wales (NSW), overturning a 119-year-old law. The new law [removes](#) abortion from NSW's criminal code and permits abortions up to 22 weeks of pregnancy. After that, approval by two doctors is [required](#).

Canada: On November 21, a committee in Alberta's legislature [recommended](#) that a health care refusal bill not move forward for debate. The bill would strip the current requirement that Alberta doctors who refuse to perform a specific service refer their patients to an alternative provider who can provide that service. The bill died with the adjournment of the legislative session but a similar bill is [expected](#) to be reintroduced when the new legislative session begins this year.

Ecuador: On September 18, 2019, lawmakers [rejected](#) a bill that would have decriminalized abortion for all rape victims, leading to protests by pro-choice activists. Under current laws, which have been in place since 1938, abortion is only [permitted](#) in cases where someone with a mental disability is raped and becomes pregnant or if a pregnant individual's life is in danger. Otherwise, obtaining an abortion in Ecuador can result in up to two years in prison.

El Salvador: On September 6, 2019, the office of the attorney general of El Salvador [announced](#) plans to appeal the acquittal of a 21-year-old woman who was [charged](#) with aggravated homicide based on the government's allegation that her delivery of a stillborn son resulted from her attempt to induce an abortion. Her pregnancy was a result of a rape, but abortions in El Salvador are banned in all circumstances.

Mexico: On September 25, 2019, lawmakers in the Mexican state of Oaxaca [voted](#) to decriminalize abortion during the first 12 weeks of pregnancy, making it the second region in Mexico to lift its restrictions. Mexico City decriminalized abortion in 2007. Shortly after Oaxaca decriminalized abortions, the country's ruling party [announced](#) that it was planning to introduce a bill in Congress that would decriminalize abortion at the federal level. Additionally, on September 15, a bill was introduced in Congress that would [offer](#) amnesty to individuals who have been imprisoned for abortions.

On October 22, 2019, the Mexican state of Nuevo Leon [passed](#) a law that would allow health professionals to refuse to perform procedures that violate their religious or ethical beliefs. This is the second such law to pass in a Mexican state. A governmental human rights commission filed an appeal with the Supreme Court to review the first law, which was passed in Morelos in August.

On May 15, 2019, the Supreme Court of Mexico [ruled](#) that individuals who face health risks during pregnancy can apply for an abortion, even if their life is not in danger, because denying access to abortions under those circumstances would violate the patient's right to health. Previously, Mexico's Federal Penal Code only permitted abortions in cases of rape or when the individual's life was at risk.

Monaco: On August 2, 2019, Monaco's government [introduced](#) a bill in parliament that would lift criminal sanctions for people who get abortions in the first twelve weeks of pregnancy. The law would still permit prosecution and up to 10 years in prison for those who provide abortions, thus obliging patients to travel abroad to receive an abortion. Under current law, undergoing an abortion can result in steep fines and imprisonment ranging from six months to three years. Abortions are only permitted in cases involving high-risk pregnancies, rape, and fetal anomalies. A vote on the bill is expected in the coming months.

New Zealand: On August 8, 2019, lawmakers in New Zealand [voted](#) to advance a bill that would decriminalize abortion. Under current law, a pregnant individual seeking an abortion is [required](#) to obtain clearance from two doctors to show that the pregnancy poses a risk to either their mental or physical health. The bill would eliminate these requirements for the first 20 weeks of a pregnancy and would also remove abortion from New Zealand's 1961 Crimes Act. The bill also allows for areas that prohibit demonstrations within 500 feet of clinics.

United Kingdom: On October 21, 2019, Northern Ireland [lifted](#) its 158-year-old abortion ban. Decriminalization comes after the Belfast High Court [held](#) that Northern Ireland's abortion law violated the United Kingdom's human rights commitments.

United States: The U.S. Supreme Court has agreed to review a lower court's decision [upholding](#) an [injunction](#) against the enforcement of the Trump Administration's Final Rules that radically expand exceptions to requirements that insurance plans cover contraception. The Final Rules allow any for-profit company or non-profit organization to invoke [religious beliefs](#) to block their employees' or students' health insurance coverage for contraception. They also provide that non-profit or for-profit employers with [moral objections](#) (except publicly traded for-profit entities) can block their employees' or students' health insurance for contraception. A decision is expected by the end of June.

On March 4, 2020, the U.S. Supreme Court [will hear](#) argument in a case that will decide whether a state may constitutionally require doctors performing abortions to have privileges to admit patients to a nearby hospital. This case comes less than four years after the Court [struck down](#) a similar law in another state, finding that the requirement presented an undue obstacle to those seeking abortions and provided few if any health benefits.

On October 29, 2019, a U.S. district court in Alabama [blocked](#) a state law that would [ban](#) abortion in almost all cases except where there is serious health risk to the pregnant person or lethal fetal anomaly. If the law had gone into effect, doctors who perform abortions could be charged with a felony and face up to 99 years in prison. To date, six other states have passed bans on abortions as soon as a heartbeat is detectable, which is as early as 6 or 8 weeks. Litigation has blocked any such law from going into effect; INCLC-member ACLU has filed four such suits.

In November 2019, three different [district courts vacated](#) a U.S. Department of Health and Human Services' (HHS) [regulation](#) that dramatically expands existing exemptions to enable refusals to provide health care services because of religious objections. For example, among other issues, the regulation requires an employer to accommodate an employee's religious beliefs with no consideration of the hardship to the employer or patients permitted as part of the analysis. Additionally, the regulation does not include exceptions for emergencies, creating a question whether a health care provider can refuse to provide lifesaving care. The courts ruled that HHS did not have authority to issue the Rule, that the Rule conflicts with other provisions of

federal law, that it lacked sufficient justification, and that it violates the Constitution. So far, one of the decisions [has been appealed](#). INCLO-member ACLU is among the several groups that have litigated to [challenge](#) the regulation.

[Marriage](#)

India: On August 1, 2019, the President of India [signed](#) into law a measure criminalizing “triple talaq” — a practice where a Muslim man legally divorces his wife by saying “talaq” three times. On October 21, a Muslim board [challenged](#) the new law, requesting that the Supreme Court examine the validity of the bill. It argues that the law violates four articles of the Indian constitution and also interferes with the Muslim Personal Law.

[Religious Freedom](#)

India: On November 14, 2019, India’s Supreme Court [referred](#) a petition for review to a larger bench in a case concerning the right of women to enter the Sabarimala Temple. At issue is a decision of the Court from September 2018 that women of all ages can enter the Temple, overturning a decades-long, religiously-motivated ban on entry by women ages 10-50.

[Religious Freedom & Individual Rights](#)

[Religious Freedom](#)

Canada: INCLO-member CCLA, the National Council of Canadian Muslims, and an individual plaintiff have filed an application for leave to appeal to the Supreme Court of Canada a [decision](#) from the Quebec Court of Appeal that declined to suspend a provincial government [law](#) that prohibits certain public officials — including teachers, police officers, and prosecutors, among others — from wearing religious symbols. To shield the bill from legal challenges, the provincial government invoked a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter. [Protesters](#) have taken to the streets numerous times against the law.

India: On November 9, 2019, the Supreme Court of India [held](#) that Hindus have title to the disputed land of the demolished Babri Mosque—destroyed by Hindu mobs in 1992—[due](#) to documentary and oral evidence such as an archeological survey of the site supporting the claim that the land belongs to them. The Court also [directed](#) that Muslim groups be given five acres of land in Ayodhya for the construction of a new mosque and observed that the 1992 destruction of the mosque was “in [violation](#) of the rule of law.”

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

October 2020

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations’ (INCLLO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

There have been many developments since our last issue in November. Here are a few brief highlights:

- A United Kingdom court ruled that a Christian adoption and foster care agency may not refuse to place children with same-sex couples;
- The U.S. Supreme Court granted review of a decision ruling that the City of Philadelphia acted lawfully when it denied a grant to a foster care agency that would not serve same sex couples on an equal basis;
- The Canadian province of Manitoba will include “non-binary” in addition to “male” and “female” on birth certificates;
- Gabon decriminalized homosexuality;
- Hungary’s parliament banned any form of legal recognition of trans and intersex people;
- Romania banned educational institutions from teaching “theories and opinion on gender identity according to which gender is a separate concept from biological sex”;
- The British governor of the Cayman Islands ordered that the country legalize same-sex unions;
- Costa Rica made history as the first country in Central America to legalize same-sex marriage; and

- Haiti published a new penal code that allows abortions in cases where the pregnancy resulted from rape or is life-threatening.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Basseem Maleki at INCLONewsletter@aclu.org.

Best,*

Louise Melling
Deputy Legal Director, ACLU
Director, Ruth Bader Ginsburg Liberty Center

Basseem Maleki
Legal Assistant, ACLU
Ruth Bader Ginsburg Liberty Center

Lindsey Kaley
Staff Attorney, ACLU
Ruth Bader Ginsburg Liberty Center

*A special thank you to Hilary Ledwell, who contributed greatly to this newsletter but whose fellowship came to an end before its release.

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Adoption

United Kingdom: On July 7, 2020, a high court of England and Wales ruled that a Christian adoption and foster care agency may serve only Evangelical Christians, but cannot exclude Evangelical same-sex couples from adopting or fostering. The court [reasoned](#) that the agency violated the European Convention on Human Rights when it refused to place children with Evangelical same-sex couples because it discriminates against them on the basis of sexual orientation, among other grounds.

United States: On February 24, 2020, the U.S. Supreme Court [granted review](#) of a lower court's decision [ruling](#) that the City of Philadelphia did not violate the Constitution or state law when it stopped foster care referrals to a Catholic social services agency because of that agency's refusal to place foster children with same-sex couples. The agency argues that any requirement that it comply with the City's bar on discrimination violates its rights to free exercise

of religion. The Supreme Court will hear argument in the case on November 4, 2020. INCLC-member ACLU represents intervenors in the action.

Discrimination

Canada: On November 4, 2019, the Manitoba Human Rights Commission [ruled](#) that the province of Manitoba engaged in unlawful discrimination by refusing to allow any designation on birth certificates besides “male” or “female.” This victory was a result of a [complaint](#) filed with the Human Rights Commission by a transgender individual for whom the Manitoba government refused to replace the sex designation on their birth certificate with an “X” to reflect their gender identity. The Manitoba Human Rights Commission sided with the individual and ordered the province to pay them \$50,000 and to begin including a “non-binary” option on birth certificates.

Gabon: In July 2020, the President of Gabon [signed](#) into a law a measure decriminalizing homosexuality, reversing part of a year-old law that criminalized same-sex acts.

Hungary: On May 19, 2020, Hungary’s parliament [banned](#) the legal recognition of transgender and intersex people. The new law defines gender as an individual’s “sex at birth,” [solidifying](#) one’s sex at birth as unchangeable information on all official identification documents. This denies transgender and intersex people the right to update their legal documents to reflect their names and gender.

On October 8, 2020, the Prime Minister of Hungary publicly [opposed](#) a recently published children’s book featuring LGBT characters, claiming that Hungary’s laws are exceptionally tolerant but exposing children to LGBT content is crossing a red line. The Prime Minister’s Office [added](#) that those who acquired and used the book in kindergartens could be committing a crime by “endangering minors.” The government wants to [ban](#) the book and condemned it as “homosexual propaganda.”

South Africa: On September 23, 2020, the Equality Court in the Western Cape [held](#) that refusal to allow a transgender person to express their gender identity violates both the right to equality and the Promotion of Equality and Prevention of Unfair Discrimination Act. This ruling is a result of a [lawsuit](#) brought by a transgender woman serving a prison sentence in a male correctional facility where prison officials denied her the right to express her gender through her hairstyle, dress, and make-up. The court ordered prison officials to allow her and others similarly placed to wear female underwear, keep their hair long, and wear make-up, and it ordered officials to use female pronouns when referring to her. It also directed the Department of Correctional Services to introduce transgender sensitivity training for current and new employees. The court also found that the prison violated the plaintiffs’ right to freedom of expression. INCLC-member LRC represented Gender DynamiX as amicus curiae in this case.

On September 22, 2020, South Africa’s Constitutional Court [heard](#) argument in a case where the South Africa Human Rights Commission sued a former journalist who wrote an article in which he suggested that homosexuality was similar to bestiality, he supported President Mugabe’s homophobia, and he urged politicians to remove the sexual orientation equality clause from the Constitution of South Africa. The Commission charged the column amounted to hate speech, in violation of the country’s Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA). The journalist’s lawyers argue that unless speech explicitly calls for violence or harm against any one or a group of people, it should not be classed as hate speech. They also argue the PEPUDA is impermissibly vague. The column at issue was published in 2012.

Zambia: On May 26, 2020, Zambia's president [pardoned](#) two men who were sentenced in November to 15 years in prison for having sex "against the order of nature." While this is a positive development, Zambia still [enforces](#) colonial-era sodomy laws.

[Education](#)

Romania: In July 2020, Romania's president [appealed](#) to the country's constitutional court a measure passed by the legislature that would [ban](#) educational institutions from teaching "theories and opinion on gender identity according to which gender is a separate concept from biological sex." This ban [prevents](#) teachers, academics, doctors, social workers, and more from discussing the topic of gender, gender identity, and transgender issues. The court heard argument in the case on September 30, 2020.

[Employment](#)

Argentina: On September 4, 2020, Argentina's president [signed](#) a decree requiring that 1% of public sector jobs be set aside for transgender people. The decree includes all transgender people regardless of whether they have updated their ID to reflect their sex and name. One of the most innovative aspects of the [decree](#), is that it contemplates not only access to jobs, but also the possibility of continuing, in parallel with work, compulsory educational training or other training aimed at fulfilling the requirements of the position. The decree further provides that employers "will not be able to establish the employability requirements that obstruct the exercise of these rights."

Russia: On June 16, 2020, a transgender woman [won](#) her lawsuit against her former employer who fired her after she legally changed her gender. The employer cited a Putin government regulation that barred women from working in "dangerous" professions as grounds for firing her. (The woman in this lawsuit worked as a [printer](#), which is one of the many professions included in the list of restricted professions for women.) The court reasoned that her employer discriminated against her because the list of professions prohibited for women is related only to the protection of motherhood in the narrow sense – only for the period of the birth and care of a newborn child. In 2019, following domestic lawsuits and pressure from the U.N., Russia agreed to reduce the list from 456 to 100 different professions – this shortened list will go into effect in January 2021.

United States: On June 15, 2020, the Supreme Court [ruled](#) that a federal law barring employment discrimination based on sex covers discrimination based on gender identity and sexual orientation. The argument spanned three cases, two in which the employees argued they were unlawfully discriminated against based on their sexual orientation, and one in which a transgender employee of a funeral home maintained she was unlawfully discriminated against based on her gender identity. INCLC-member ACLU represented the employee in two of the cases.

[Health Care](#)

United States: Several lawsuits have been filed challenging the U.S. Department of Health and Human Services' (HHS) [Final Rule](#) that rolls back regulatory nondiscrimination protections in health care. The Rule undermines access to health care for vulnerable individuals and communities in many ways, including by emboldening discriminatory denials of care, in

particular for transgender, non-binary, and gender-nonconforming people. The Rule also allows religiously affiliated health care providers to discriminate based on sex. So far, [two courts](#) have enjoined parts of the Rule.

[Marriage](#)

Cayman Islands: In September 2020, the British Governor of the Cayman Islands [approved](#) a law making same-sex unions legal. The Governor’s action followed litigation brought by a same-sex couple refused an application for marriage. A lower court ruled that the government’s decision was discriminatory; on appeal, the court recriminalized same-sex marriage but ordered that same-sex relationships should immediately be recognized with a status equivalent to marriage. The British Governor stepped in when the legislature then refused to act.

China: On May 28, 2020, China’s parliament approved a new [civil code](#) that gives a property owner the power to grant another person the right to reside on the property for life. There is [hope](#) this will provide property protections for same-sex couples.

Costa Rica: On May 26, 2020, Costa Rica made history as the first country in Central America to legalize same-sex marriage. This victory follows an August 2018 [ruling](#) by the nation’s constitutional court that laws banning same-sex marriage were unconstitutional and a 2016 advisory [opinion](#) of the Inter-American Court of Human Rights stating that governments must “guarantee access to all existing forms of domestic legal systems, including the right to marriage,” to same-sex couples. In its decision, the constitutional court of Costa Rica [ordered](#) that the legislature enact marriage equality within 18 months and that, if the legislature was unable to do so within that timeframe, same-sex marriage would automatically be legalized once the deadline expired, which occurred on May 26, 2020.

South Africa: On July 1, 2020, parliament [repealed](#) a section of a [law allowing](#) state-employed marriage officers to refuse to solemnize a civil union between persons of the same-sex because of the officer’s conscience or religious beliefs; the repeal is awaiting signature by the president. The law at issue allowed marriage officers to raise religious objections only to same-sex unions – they could not refuse to solemnize any others based on religious beliefs. INCLO-member LRC offered written submissions in favor of the bill. LRC also assisted over 200 community members in making written submissions.

On March 2, 2020, the South African Human Rights Commission filed an application in the Equality Court [arguing](#) that a wedding venue was discriminating against same-sex couples by refusing to offer services to them because of their gender and sexual orientation. The wedding venue filed a counter application arguing that their right to freedom of religion and belief allows them to deny their services to same-sex couples. The couple refused service has moved to [intervene](#), arguing that the refusal by the wedding venue discriminated against them because of their gender and sexual orientation.

Taiwan: Over a year after Taiwan [legalized](#) same-sex marriage, many same-sex couples are still [unable](#) to marry because of restrictions that prevent people from marrying if their partners are from countries where same-sex marriage is illegal. LGBT groups estimate that these restrictions have prevented approximately 1,000 couples from marrying, which is why they are calling for full recognition of same-sex marriage.

Thailand: On July 8, 2020, Thailand’s cabinet [approved](#) a bill that would recognize same-sex civil partnerships. The bill would give same-sex couples the right to adopt children, pass on

inheritances, and jointly own property, among other rights. The bill still needs to be passed by parliament before it can become law.

United States: A flower shop [is seeking review](#) by the U.S. Supreme Court of a state supreme court's [ruling](#) that the shop's refusal to provide flowers for a same-sex couple's wedding violated the state's public accommodations law, and that enforcement of the law did not violate the shop's federal and state free speech and free exercise rights. The petition remains pending.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Colombia: On March 2, 2020, Colombia's Constitutional Court [refused](#) to legalize abortion in the first four months of pregnancy; it also refused to ban abortions in all circumstances. Abortion is currently permitted in cases involving high-risk pregnancies, rape, or fetal anomalies. When deciding the case, the court had the [opportunity](#) to legalize abortion but instead decided to maintain the status quo.

Haiti: On June 24, 2020, Haiti [published](#) a new penal code that allows abortions when the pregnancy results from rape or incest, or when the individual's physical or mental health is at risk. The new penal code won't go into effect until 2022. Currently, abortion is criminalized and punishable by life imprisonment.

Ireland: On April 7, 2020, the Irish Department of Health [issued](#) new guidelines permitting people who are under 10 weeks pregnant to access their two required consultations remotely during the pandemic. These new guidelines will only apply for the [duration](#) of the COVID-19 pandemic.

Monaco: On October 31, 2019, Monaco's government [lifted](#) criminal sanctions for people who get abortions in the first twelve weeks of pregnancy. The law would still permit prosecution and up to 10 years in prison for those who provide abortions, thus obliging patients to travel abroad to receive an abortion.

New Zealand: On March 18, 2020, lawmakers in New Zealand voted to [decriminalize](#) abortion. The new law [allows](#) unrestricted access to abortions during the first 20 weeks of pregnancy and eliminates the [requirement](#) that a pregnant individual seeking an abortion [obtain](#) clearance from two doctors to show that the pregnancy poses a risk to either their mental or physical health.

Rwanda: On May 19, 2020, Rwanda's president [pardoned](#) and ordered the release of 50 women who were imprisoned for having abortions. Their release comes two years after Rwanda [revised](#) its penal code, allowing abortions in cases of rape or when the individual's life is at risk. The revised penal code still requires that people seeking abortions must first get approval from a doctor, which is very difficult to acquire due to the stigma surrounding abortions and the lack of doctors in rural areas.

Sweden: On March 12, 2020, the European Court of Human Rights (ECHR) [declined](#) to hear a case brought by two nurses in Sweden denied employment as midwives due to their refusal to perform abortions; a Swedish [law](#) requires midwives to carry out abortions. The nurses argued that denying them employment violated their rights to freedom of religion and conscience.

Thailand: On February 19, 2020, Thailand's Constitutional Court [ruled](#) that one section of the country's laws criminalizing abortion was unconstitutional. Abortion is only [allowed](#) in cases where the pregnant person's mental or physical health are at risk, where the fetus is at high risk of having a genetic disease, or in cases of rape. The Court ruled that the provision of the law providing for punishment of women violated prohibitions against sex discrimination, as well as the right to liberty in one's life and person. The Constitutional Court gave the government 360 days to amend the penal code.

Uganda: On August 20, 2020, a Ugandan court [ruled](#) that the government had failed to provide basic maternal health care services, which the court reasoned violates the constitution and subjects women to inhumane treatment. The court awarded the families of two women who died during childbirth in public health care facilities \$84,000 in damages. The court [ordered](#) the government to increase its health budget in order to ensure that women receive proper maternal health care services.

United Kingdom: On April 9, 2020, Northern Ireland's Department of Health [authorized](#) medical professionals in hospitals and clinics to provide abortion services; six months earlier, Northern Ireland [passed](#) legislation overturning its 158-year-old abortion ban. Abortion rights advocates are now calling for the authorization of telemedicine abortions, which is [temporarily](#) being allowed in the rest of the United Kingdom due to the COVID-19 pandemic.

United Nations: On May 21, 2020, the United Nations [rejected](#) a U.S. accusation that the world body used the COVID-19 pandemic to promote access to abortion when it released its humanitarian response plan to the pandemic. The U.S. requested that the U.N. remove all references to "sexual and reproductive health" to avoid controversy. The U.N. [rejected](#) the request and reasoned that it gave sexual and reproductive health the same level of attention as other pressing issues such as food insecurity, health care, shelter, sanitation etc.

United States: On July 8, 2020, the U.S. Supreme Court held that the Trump Administration had authority to issue rules that allow any for-profit company or non-profit organization to invoke [religious beliefs](#) to block their employees' or students' health insurance coverage for contraception. The rules also provide that non-profit or for-profit employers with [moral objections](#) (except publicly traded for-profit entities) can block their employees' or students' health insurance for contraception. The case – the third to come before the court addressing exemptions to the federal mandate that insurance plans cover contraception – now returns to the lower courts to address arguments that the rules are arbitrary and capricious, that is, that the agency acted unreasonably in issuing them.

On June 29, 2020, the U.S. Supreme Court [struck down](#) a state law that requires doctors performing abortions to have privileges to admit patients to a nearby hospital. This case comes four years after the Court [struck down](#) a nearly identical law in another state, finding that the requirement presented an undue obstacle to those seeking abortions and provided few if any health benefits. Chief Justice Roberts was among the five voting to strike the law, but only because of respect for the recent precedent (a decision from which he dissented).

Since the advent of the COVID-19 pandemic, nine states have used the pandemic as an excuse to place limitations on the provision of abortion care. INCLC-member ACLU and its partners filed actions challenging all of these restrictions. Some were successful; others were not. But currently, either as a result of the litigation or the expiration of the orders on their own terms, none of the COVID-related restrictions are in effect.

In November 2019, three different [district courts vacated](#) an HHS [regulation](#) that dramatically expands existing exemptions to enable refusals to provide health care services because of religious objections. For example, among other issues, the regulation requires an employer to accommodate an employee's religious beliefs with no consideration of the hardship to the employer or patients permitted as part of the analysis. Additionally, the regulation does not include exceptions for emergencies, creating a question whether a health care provider can refuse to provide lifesaving care. The courts ruled that HHS did not have authority to issue the Rule, that the Rule conflicts with other provisions of federal law, that it lacked sufficient justification, and that it violates the Constitution. All three of the decisions [have been appealed](#). INCLC-member ACLU is among the several groups that have litigated to [challenge](#) the regulation.

States have been moving to ban abortion either outright or starting very early in pregnancy (at 6-8 weeks of pregnancy). Litigation has blocked any such law from going into effect. At least four of these cases are now on appeal in the federal courts of appeals. INCLC-member ACLU has filed several of these suits.

[Education](#)

Ecuador: On August 14, 2020, the Inter-American Court of Human Rights [set](#) a new international [standard](#) to prevent sexual violence in schools throughout Latin America and the Caribbean when it ruled against Ecuador in a case where an Ecuadorian girl was sexually abused by her school's vice-principal, which led to her suicide. The new standard [requires](#) all states in the region to adopt measures that will ensure that the right to education includes sexual and reproductive education.

[Religious Freedom & Individual Rights](#)

[Religious Freedom](#)

Canada: On April 9, 2020, the Supreme Court of Canada [rejected](#) a request by INCLC-member CCLA, the National Council of Canadian Muslims, and an individual plaintiff to review a [decision](#) from the Quebec Court of Appeal that declined to provide an interim order to suspend a provincial government [law](#) that prohibits certain public officials — including teachers, police officers, and prosecutors, among others — from wearing religious symbols. To shield the bill from legal challenges, the provincial government invoked a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter. The trial on the merits of the matter is due to begin in November 2020. [Protesters](#) have taken to the streets numerous times against the law.

South Africa: On January 22, 2020, a South African military court [withdrew](#) criminal charges against a Muslim woman employed by the South African National Defense Force (SANDF) for disobeying orders to remove her headscarf, which she wears to cover her hair and head in accordance with her religious beliefs. She has worn a headscarf under her beret since she officially joined the SANDF in February 2010 and was only ordered to remove it following a change in command in June 2018. She was [instructed](#) that the wearing of the headscarf was contrary to the SANDF Religious Dress Policy Instruction. If convicted, she faces up to 5 years in prison. INCLC-member LRC managed to have the criminal charges withdrawn by the Military Prosecution pending the determination of the constitutionality of the Religious Dress Policy by the Equality Court.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

May 2021

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLIO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

There have been many developments since our last issue in November. Here are a few brief highlights:

- Angola decriminalized same-sex relationships and banned discrimination based on sexual orientation;
- Argentina became the largest country in Latin America to legalize abortion;
- Bhutan decriminalized same-sex relationships;
- Bolivia legalized marriage for same-sex couples;
- The Constitutional Court of Ecuador declared provisions of the penal code criminalizing abortions in cases of rape unconstitutional;
- Poland banned abortions based on fetal anomalies;
- The Constitutional Court of Romania overturned a law that would have prevented educational institutions from teaching theories and opinions about LGBTQ identities;
- The European Court of Human Rights will consider a foster parent's challenge to Russia's removal of children from his care because of his gender identity;
- South Africa made it illegal for state-employed marriage officers to refuse to solemnize civil unions for same-sex couples because of the officer's conscience or religious beliefs;
- South Korea decriminalized abortion by repealing provisions of its penal code;

- Switzerland voted to legalize marriage for same-sex couples and remove barriers for transgender nationals seeking to change their gender markers on their legal documents; there will be a nationwide referendum to determine if the marriage law will take effect;
- Taiwan expanded marriage protections for same-sex couples by removing the requirement that both spouses be from countries where marriage for same-sex couples is legal;
- Thailand legalized first-trimester abortions;
- The United Kingdom will restore medals to LGBTQ military personnel who were discharged because of their sexuality;
- In the UK, the right of transgender youth to access gender-affirming care is the subject of two recent rulings by the British High Court; and
- In the United States, the state of Arkansas enacted a law that bans access to gender-affirming care for transgender minors.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact us at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, Ruth Bader Ginsburg Liberty Center

Basseem Maleki
Legal Assistant, ACLU
Ruth Bader Ginsburg Liberty Center

Lindsey Kaley
Staff Attorney, ACLU
Ruth Bader Ginsburg Liberty Center

Ricca Prasad
Legal Fellow, ACLU
Ruth Bader Ginsburg Liberty Center

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union (United States), Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBTQ Rights

Adoption

Russia: On January 28, 2021, the European Court of Human Rights decided it will hear a [case](#) brought against the Russian government in which a foster parent challenges the removal of two children from his care because he is transgender. The children—who were under the foster parent’s care for several years—were removed after social services authorities became aware of the foster parent’s gender identity, gender-affirming surgery, and related social media posts regarding the same. The parent argues that the Russian authorities violated his family’s right to respect for family life and discriminated against him based on his gender. Several INCLO members are seeking to intervene in the case.

United States: On November 4, 2020, the US Supreme Court [heard argument](#) on whether a Catholic social services agency has a constitutional right to a contract with the City of Philadelphia to screen foster care families where the agency refuses to place foster children with same-sex couples. The City requires nondiscrimination as a condition of the contract. The agency argues that any requirement that it comply with the City’s bar on discrimination violates its rights to free exercise of religion. The lower courts both found that Philadelphia did not violate any rights of the agency. INCLO-member ACLU represents [intervenors](#) in the action.

[Discrimination](#)

Angola: On February 10, 2021, a new penal code [decriminalizing](#) same-sex conduct took effect. Angola’s Parliament [voted](#) for the new penal code—the first update to the code since Angola gained independence from Portugal in 1975—over two years ago, but Angola’s president only signed the code into law in November 2020. The new law also prohibits discrimination on the basis of sexual orientation.

Bhutan: On February 17, 2021, a [law](#) that [decriminalized](#) same-sex relations went into effect.

Canada: The Province of Manitoba now includes an “X” on birth certificates and other documents for individuals who request a change in their sex designation. The change follows a 2019 decision by the Manitoba Human Rights Commission [ruling](#) that the Province of Manitoba engaged in unlawful discrimination by refusing to allow any designation on birth certificates besides “male” or “female.” This victory resulted from a [complaint](#) filed with the Human Rights Commission by a transgender individual for whom the Manitoba government refused to replace the sex designation on their birth certificate with an “X” to reflect their gender identity.

Honduras: On November 11, 2020, the Inter-American Court of Human Rights heard [argument](#) in a case where petitioners accuse the Honduran Government of killing a transgender woman during a coup in 2009 in an act of gender-based violence and failing to investigate the murder because of her gender identity. A substantial number of international and national NGOs contributed amicus [briefs](#) in this case. The ruling is expected to be an important benchmark on violence based on prejudice against transgender people in Latin America. The killing and coup have been followed by a decade of heightened [violence](#) against LGBTQ individuals in Honduras, including more than 370 homicides.

Hungary: On March 12, 2021, the Constitutional Court of Hungary [ruled](#) that retroactively applying Parliament’s [ban](#) on the legal [recognition](#) of transgender and intersex people is unconstitutional. The ban [denies](#) transgender and intersex people the right to update their legal documents to reflect their names and gender. As a result of the decision, the ban can no longer apply to transgender and intersex people who legally changed their gender prior to May 2020, when the ban was implemented. A local Hungarian LGB organization continues to challenge the ban as unconstitutional in the Constitutional Court of Hungary.

On January 19, 2021, Hungary's government [ordered](#) a publisher to print disclaimers on all books containing "behavior inconsistent with traditional gender roles" in response to the publisher releasing a fairytale anthology book that includes stories with pro-gay themes. The government reasoned that doing so was necessary to protect consumers from being misled. The publisher plans to sue the government.

United Kingdom: On February 16, 2021, the defense ministry [announced](#) that it would restore military medals to LGBTQ personnel who were systematically discharged and stripped of their medals because of their sexuality. The new policy also [allows](#) military personnel who were convicted of "sexual offenses" that are no longer considered crimes to apply to have the charges fully revoked.

[Education](#)

Romania: On December 16, 2020, the Constitutional Court of Romania [overturned](#) a measure passed by the legislature that would have [banned](#) educational institutions from teaching "theories and opinion on gender identity according to which gender is a separate concept from biological sex." The Court [reasoned](#) that the ban would disproportionately discriminate against transgender, nonbinary, and intersex people. The ban would have [prevented](#) teachers, academics, doctors, social workers, and more from discussing gender, gender identity, and transgender issues.

United States: Courts across the country are considering cases that contest the right of transgender students to live according to their identities. Parents have [challenged](#) requirements that teachers and staff use pronouns consistent with individual students' identities as interfering with their right to direct the upbringing of their children, and [teachers](#) have [challenged](#) such requirements as [violating](#) their rights to free speech and free exercise of religion. One federal appellate [court](#) has rendered a [decision](#) allowing a teacher's claims to proceed.

On May 3, 2021, the US Court of Appeals for the Ninth Circuit will hear an appeal from a [decision](#) striking an Idaho state law barring transgender girls and women from participating in sports consistent with their gender identities. Already this year, six states have passed similar laws.

[Employment](#)

Colombia: A state retirement fund company has sued a transgender woman after she won a legal suit to obtain her pension under the rules for women (which permit retirement at a younger age than for men). The state company [says](#) that she must return the money received and must meet the requirements established by law for men.

Indonesia: On January 7, 2021, a Central Java court [rejected](#) a former police officer's lawsuit against a police force for firing him because of his sexual orientation. While being gay is legal in most of Indonesia, discrimination and violence against LGBTQ individuals is on the [rise](#).

Russia: On June 16, 2020, a transgender woman [won](#) her lawsuit against her former employer who fired her after she legally changed her gender. The employer cited a Putin government regulation that barred women from working in "dangerous" professions as grounds for firing her. (The woman in this lawsuit worked as a [printer](#), which is one of the many professions included

in the list of restricted professions for women.) The court reasoned that her employer discriminated against her because the regulation only applies for the period of the birth and care of a newborn child. In 2019, following domestic lawsuits and pressure from the UN, Russia agreed to reduce the list from 456 to 100 different professions; this shortened list went into effect on January 1, 2021.

Health Care

United Kingdom: On March 26, 2021, the British High Court issued a [decision](#) undoing some of the damage to transgender youth seeking medical care caused by a December [decision](#) issued in a separate case challenging both minors' ability to [consent](#) to puberty [blockers](#) and cross sex hormones and the National Health Service's process for securing consent. In December, the Court ruled that there would be "enormous difficulties" for a minor under sixteen to give consent and that even for those 16 and 17, who are presumed competent, clinicians may want to seek court authorization. The more recent decision recognizes the right of parents to consent on behalf of their children. The December decision is being appealed; INCLO-member Liberty has been granted permission to intervene.

United States: On April 14, 2021, the state of Arkansas [enacted](#) a law that bans access to gender-affirming care for transgender minors, including reversible puberty blockers and hormones. This is the first law of its kind in the US. Several other states are considering adopting similar laws.

Marriage

Bolivia: On December 11, 2020, Bolivia's civil registry [authorized](#) a same-sex couple's request for civil union following a two-year legal battle for recognition. Bolivian authorities [denied](#) the couple's request in 2018, citing the country's laws prohibiting marriages for same-sex couples. The couple challenged the rejection in court, successfully arguing that prohibiting their civil union is discriminatory and violates international human rights standards. The Bolivian Constitutional Court agreed and ruled that the Bolivian constitution must be interpreted to align with equality standards.

Japan: On March 17, 2021, a Japanese court ruled that the government's ban on marriage for same-sex couples was [unconstitutional](#), paving the way for marriage equality. The court found that barring marriage for same-sex couples violates an article of the Japanese constitution that [prohibits](#) discrimination on the basis of race, creed, sex, social status, or family origin. Despite this positive ruling, marriages of same-sex couples will not be recognized by law until Japan's legislature amends the civil code.

South Africa: On October 22, 2020, South Africa's President [signed](#) the Civil Union Amendment Act into [law](#), making it illegal for state-employed marriage officers to refuse to solemnize civil unions of same-sex couples because of the officer's conscience or religious beliefs. Prior to this amendment, marriage officers could refuse to solemnize civil unions only for same-sex couples. INCLO-member LRC offered written submissions in favor of the bill. LRC also assisted over 200 community members in making written submissions and joined a trans coalition who wrote to the President requesting that he assent to the bill.

Switzerland: On December 18, 2020, Swiss lawmakers voted to [legalize](#) marriages for same-sex couples; opponents of the law have, however, successfully [petitioned](#) for a nationwide

referendum to determine whether the law will take effect. There is no date yet for the referendum.

Also on December 18, 2020, Swiss lawmakers voted to allow transgender people to change their gender marker on government documents by making a personal declaration and without medical or legal documentation, and to allow lesbian couples to conceive using sperm donation.

Taiwan: On March 4, 2021, the Taipei High Administrative Court in Taiwan [invalidated](#) a decision of a household registration office that prohibited same-sex couples from marrying if one person is from a country where marriages for same-sex couples are prohibited. Additionally, on January 22, Taiwan's judiciary [proposed](#) an amendment to the country's civil code that would pave the way for marriages between Taiwanese nationals and their same-sex partners from foreign countries, so long as they are not citizens of mainland China. The amendment needs to pass the executive and legislative branches of government before it can become law. LGBTQ groups estimate that these restrictions have prevented approximately 1,000 couples from marrying.

Thailand: On July 8, 2020, Thailand's cabinet [approved](#) a bill that would recognize civil partnerships for same-sex couples. The bill would give same-sex couples the right to adopt children, pass on inheritances, and jointly own property, among other rights. It needs to [pass](#) Parliament before it can become law. Also pending is a proposed [amendment](#) to the civil code that would allow same-sex couples to marry and a court [case](#) that could determine whether denying same-sex couples the right to marry is unconstitutional.

United States: A flower [shop](#) is [seeking](#) review by the US Supreme Court of a state supreme court's [ruling](#) that the shop's refusal to provide flowers for a same-sex couple's wedding violated a state law barring discrimination, and that enforcement of the law did not violate the shop's federal and state free speech and free exercise rights. The petition remains pending. INCLC member ACLU [represents](#) the same-sex couple refused services.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Argentina: On January 24, 2021, a law [legalizing](#) abortion for any reason up to the fourteenth week of pregnancy went into effect in Argentina, making it the [largest](#) country in Latin America to legalize abortion. Abortions performed at public hospital will be provided at no cost to the patient. After fourteen weeks of pregnancy, abortions are permitted in cases of rape or to protect the patient's health. In cases where the patient's health is in danger, health professionals cannot refuse to perform the abortion based on religious or conscience objections.

Ecuador: On April 28, 2021, the Constitutional Court of Ecuador [declared](#) articles of the country's penal code criminalizing abortion in cases of rape [unconstitutional](#). Prior to this ruling, abortion was only [allowed](#) when the pregnant person's life or health was at risk or the pregnant person was raped and had a mental health disability.

Honduras: On January 21, 2021, members of Congress [approved](#) a constitutional amendment that would increase the number of congressional votes needed to amend articles of the constitution banning marriage for same-sex couples and abortion from a two-thirds majority to a three-quarters majority. The amendment is intended to create a "constitutional lock" on the

articles. The proposal still requires a second [vote](#) in the unicameral legislature before it can be enacted.

India: On March 25, 2021, India's Parliament [passed](#) a bill that extends the period of time when a person can receive an abortion from 20 to 24 weeks of pregnancy. The extended period will only be available, however, to "such categories of women" as prescribed by rules that have not yet been issued. Abortions will also be allowed after 24 weeks because of a fetal anomaly but will require a medical board to preside over the matter. The [bill](#) calls for medical boards to be set up in each State and Union Territory, which is practically impossible. Even if the boards are set up, they will be difficult to access given that there would be only one in each State or Union Territory.

Ireland: On April 7, 2020, the Irish Department of Health [issued](#) new guidelines permitting people who are under 10 weeks pregnant to access their two required consultations remotely during the pandemic. Currently these new guidelines would only apply for the [duration](#) of the COVID-19 pandemic, but advocates for expanded reproductive rights are hopeful the guidelines will become the new permanent standard.

Poland: On January 28, 2021, a near-total [ban](#) on abortion went into [effect](#) in Poland—a country with some of the strictest abortion laws in Europe—despite demonstrations by hundreds of thousands of protestors. The new ban implements an October decision by the Constitutional Tribunal of the Republic of Poland invalidating a law that permitted abortions based on fetal anomalies. Last year, of the 1,100 abortions performed in Poland, 1,074 were cases with such diagnoses. Abortions are still permitted in cases of rape or incest or when the individual's life is at risk.

South Korea: On January 1, 2021, provisions of South Korea's penal code criminalizing abortion were [repealed](#). This followed a 2019 [ruling](#) by the Constitutional Court declaring that South Korea's broad criminalization of abortion unconstitutionally violated women's rights and ordering legislative reform by the end of 2020. When the legislature failed to act in time, the unconstitutional provisions became [ineffective](#).

Thailand: On February 12, 2021, a new law took effect that [legalizes](#) abortion during the first twelve weeks of pregnancy and reduces criminal penalties for unlawful abortions. Abortion is [allowed](#) between twelve and twenty weeks in cases where the pregnant person's mental or physical health are at risk, the fetus is at high risk of having a genetic disease, or the pregnancy resulted from rape. The amendment comes after the Constitutional Court of the Kingdom of Thailand [ruled](#) in February 2020 that a section of the country's penal code criminalizing abortion was unconstitutional. The Court ruled that the provision of the law providing for punishment of women but not men violated prohibitions against sex discrimination, as well as the rights to life and liberty.

United States: On January 12, 2021, the United States Supreme Court [lifted](#) an injunction that had blocked enforcement during the COVID-19 pandemic of a regulation that requires people seeking a medication abortion to go to a health care provider to pick up the pill. There are now more than a dozen [cases](#) either with petitions for certiorari pending before the Court or in the courts of appeals, any one of which could be heard by the newly constituted Court. And this year threatens to be unprecedented in terms of the number of abortion [restrictions](#) passed by the states.

Religious Freedom & Individual Rights

Religious Freedom

Canada: On April 20, 2021, a Quebec court handed down its [decision](#) on a provincial law that prohibits certain public officials—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The court struck down certain parts of the law, but upheld most of it despite its violation of religious freedom, equality, and other fundamental rights. The law notably includes a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter. INCLO-member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, [filed](#) the first of four challenges against the law. The six-and-a-half week trial was held in November and December 2020. [Protests](#) against the law continue.

South Africa: On January 22, 2021, INCLO-member LRC withdrew its challenge against the South African National Defense Force's (SANDF) Religious Dress Policy after it amended the policy. LRC made submissions on the proposed dress policy and welcomed the amendment. It challenged the original policy after a South African military court issued criminal charges against a Muslim woman employed by SANDF for disobeying orders to remove her headscarf, which she wears in accordance with her religious beliefs. The South African military [withdrew](#) the charges in January 2020.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

December 2021

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLIO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two. **This email contains a few top developments. The full newsletter is attached to this email as a PDF.**

There have been many developments since our last issue in May. Here are a few brief highlights:

- Chile legalized marriage for same-sex couples;
- The Court of Justice of the European Union ruled against two Muslim women in Germany, finding that employers can ban religious outerwear such as headscarves in the workplace;
- Hungary enacted a law banning discussion of sexual orientation and gender identity in schools, media, and certain other public settings;
- The Inter-American Court of Human Rights ruled that El Salvador violated the human rights of a woman criminalized for seeking emergency medical care after a natural loss of pregnancy;
- Israel's highest court announced that, beginning in January of 2022, same-sex couples and single men would have access to parenthood via surrogate pregnancy;
- Mexico's highest court decriminalized abortion;
- New Zealand's highest court upheld provisions of a law that require healthcare providers who object to providing abortions to provide referrals to the nearest abortion provider;

- Several provinces in Poland rescinded their “LGBT-free” declarations after the European Union threatened to eliminate their funding;
- Thailand’s highest court upheld a constitutional provision restricting marriage to heterosexual couples;
- The European Court of Human Rights ruled that Russia violated a transgender woman’s human rights by restricting her parental rights on the basis of her gender identity;
- San Marino voted overwhelmingly to legalize abortion during the first 12-weeks of pregnancy;
- Switzerland voted overwhelmingly to legalize same-sex marriage and expand in-vitro fertilization and adoption services to same-sex couples;
- In the United Kingdom, the Court of Appeal ruled that a Christian foster care agency violated U.K. civil rights law by refusing to place children with same-sex couples;
- In the U.K., the Court of Appeal ruled that transgender minors can consent to gender-affirming care in the form of puberty blockers and hormone therapy without a court order;
- In the United States, the Supreme Court ruled in favor of a Christian foster care agency that refuses to place children with same-sex couples based on a narrow-contract term; and
- In the U.S. State of Texas, a ban on abortion after six weeks has been in effect in Texas since September

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLO’s newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact us at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, Ruth Bader Ginsburg Liberty Center

Grant Gebetsberger
Legal Assistant, ACLU
Ruth Bader Ginsburg Liberty Center

Lindsey Kaley
Staff Attorney, ACLU
Ruth Bader Ginsburg Liberty Center

Duncan Hosie
Legal Fellow, ACLU
Ruth Bader Ginsburg Liberty Center

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO’s members include: American Civil Liberties Union (United States), Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBTQ Rights

Adoption and Childcare

Israel: On July 11, 2021, the Israeli High Court of Justice [ruled](#) that the surrogacy law will allow same-sex couples and single men to become parents via surrogacy, effective January 12, 2022. Over a year ago, the Israeli High Court of Justice found such laws to be unconstitutional and gave the Israeli parliament twelve-months to craft a legislative solution. The court's 2021 decision comes after the Israeli parliament failed to advance a legislative solution.

Russia: On July 21, 2021, several INCLC members filed a [brief](#) in the European Court of Human Rights in support of a transgender foster parent [challenging](#) the Russian government's decision to remove two children from his care because he is transgender. (The parent now lives in Spain.) The children—who were under the foster parent's care for several years—were removed after social services authorities became aware of the foster parent's gender identity, gender-affirming surgery, and related social media posts regarding the same. The parent argues that the Russian authorities violated his family's right to respect for family life and discriminated against him based on his gender.

In another case, on July 7, 2021, the European Court of Human Rights found that Russia had [violated](#) a transgender mother's rights after depriving her of contact with her children on the basis of her gender identity. The woman who brought the legal challenge had two children before she transitioned. Following her transition and divorce from the co-parent of her two children, Russian courts restricted her parental rights and deprived her of contact with her children. At the time of the legal challenge, the woman had not been able to obtain any information about her children or their whereabouts.

United Kingdom: On September 24, 2021, the U.K. Court of Appeal [ruled](#) that a Christian foster care agency violated U.K. equality laws and the European Convention on Human Rights by refusing to place children with same-sex couples. An earlier decision from the High Court had also found the policy to be unlawful.

United States: On June 17, 2021, the U.S. Supreme Court [held](#) that the City of Philadelphia violated the Free Exercise Clause of the First Amendment when it did not renew its contract with Catholic Social Services to certify foster parents because of CSS' refusal to comply with the City's antidiscrimination requirement. In particular, CSS refused to screen or certify same-sex couples. The Court held that where the contracts had a mechanism for granting individualized exceptions, the City had not shown a compelling reason why it could not make an exception for CSS. The case is *Fulton v. City of Philadelphia*. INCLC member ACLU represented intervenors in the action.

Discrimination

Argentina: Effective July 21, 2021, Argentina's National Identity Document and passports [include](#) an "X" gender marker for those who do not wish to identify as male or female. The Presidential decree codifying the change states that the "X" gender marker will indicate "non-binary, undetermined, unspecified, undefined, not informed, self-perceived, not recorded; or another meaning with which the person who does not feel included in the masculine/feminine binary could identify."

Dominican Republic: On June 30, 2021, the Chamber of Deputies released an amended penal [code](#) that excludes sexual orientation as a ground for discrimination. In addition, the code states that it is not discrimination to refuse service if the refusal is based on religious, ethical, or moral grounds. The Senate has not yet voted on the proposal.

Ghana: In October 2021, Ghana's parliament began formal consideration of a [bill](#) to criminalize homosexuality and pro-LGBT advocacy. Under the proposed law, LGBT people could be sentenced to up to ten years in prison. Additionally, anyone publicly defending an LGBT person or publishing information that casts homosexuality in a positive light could face other criminal penalties. The proposal comes amidst a wave of anti-LGBT hate crimes in Ghana, where the most recent polling found that around 90% of citizens would support the criminalization of same-sex relationships.

Honduras: On June 26, 2021, the Inter-American Court of Human Rights [held](#) that the Honduran government violated the right to life and personal integrity of a transgender woman who was killed at the time of a coup in 2009. The court found the government violated Vicky Hernandez' right to life because police harassed her the night before her death, the government controlled the streets the night she died, and the government did not effectively investigate her murder. A substantial number of international and national NGOs contributed amicus [briefs](#) in this case. The ruling is expected to be an important benchmark on violence based on prejudice against transgender people in Latin America.

Hungary: On July 7, 2021, a [law](#) went into effect in Hungary that bans discussion of sexual and gender diversity in education, entertainment, media, and other public spaces. Those who violate the ban face civil sanctions and monetary fines. Immediately after the law's passage, the European Commission [issued](#) a formal notice stating that the law violates multiple E.U. laws. The Commission also threatened to freeze E.U. funds to Hungary for breaching E.U. law, but ultimately did not do so. Most recently, in October, the European Parliament [sued](#) the Commission in the European Court of Justice for its failure to hold Hungary accountable.

Later in July, 2021, Hungary's election panel [approved](#) language for a 2022 referendum intended to show public support for the new LGBT censorship law. The referendum will include four questions on sex education in schools, the availability of information for children on gender reassignment, and banning LGBT content that "influences the development of underage children." A fifth question has been rejected by the Curia of Hungary and is currently pending appeal before the Hungarian Constitutional Court. LGBT advocates say that the referendum will only increase discrimination and stigma against the LGBT community in Hungary.

On March 12, 2021, the Constitutional Court of Hungary [ruled](#) that retroactively applying Parliament's [ban](#) on the legal [recognition](#) of transgender and intersex people is unconstitutional. The ban [denies](#) transgender and intersex people the right to update their legal documents to reflect their names and gender. As a result of the decision, the ban can no longer apply to transgender and intersex people who legally changed their gender prior to May 2020, when the ban was implemented. A Hungarian LGB organization continues to challenge the ban as unconstitutional in the Constitutional Court of Hungary.

On January 19, 2021, in response to a publisher releasing a fairytale anthology book that includes stories with pro-LGBT themes, the Consumer Protection Authority of the Budapest Metropolitan Government [ordered](#) the publisher to print disclaimers on all books containing "patterns of behavior that deviate from traditional gender roles." The Authority reasoned that

doing so was necessary to protect consumers from being misled as a matter of fair commercial practice. The publisher plans to challenge the ruling in court.

Indonesia: On July 10, 2021, the High Military Court in Indonesia [upheld](#) the dismissal and imprisonment of a Navy soldier who was discharged and criminally charged for being gay. While Indonesia does not explicitly criminalize homosexuality, military officials commonly use elements of the Criminal Code pertaining to “decency” and the Military Criminal Code regarding “military disobedience” to punish gay service members. In 2020, at least 15 other service members were fired for their sexual orientation.

Italy: On October 27, 2021, the Italian Senate [blocked](#) a bill that would have expanded hate-crime legislation to women, people with disabilities, and LGBT people. Earlier this year, the Italian Chamber of Deputies approved the bill and sent it to the Senate for debate. The Senate’s rejection of the legislation came amidst fierce [opposition](#) to the bill from the Vatican and conservative political parties in Italy. Following the news, protests were held and attended by affected communities throughout Italy.

Poland: On September 27, 2021, several provinces in Poland [rescinded](#) their “LGBT-free” declarations after the European Commission demanded that they rescind the provisions or risk losing funding from the European Union. In 2019, many regional governments in Poland began to adopt motions declaring their jurisdictions “LGBT-free zones.” The European Commission maintained that the declarations were in direct violation of E.U. law that prohibits discrimination on the basis of sexual orientation.

Spain: On June 29, 2021, the Spanish Cabinet [approved](#) a bill that would allow transgender people over the age of 16 to legally change their gender and name without the need for medical attestation or non-medical witnesses. The proposal is now in parliament for debate, amendments, and final passage.

United States: On October 27, 2021, the U.S. State Department [issued](#) the first passport including the gender marker “X”. The State Department plans to offer the new gender marker to all passport applicants beginning in early 2022.

[Education](#)

United States: Courts across the country are considering cases that contest the right of transgender students to live according to their identities. Parents have [challenged](#) requirements that teachers and staff use pronouns consistent with individual students’ identities as interfering with their right to direct the upbringing of their children, and [teachers](#) have [challenged](#) such requirements as [violating](#) their rights to free speech and free exercise of religion. One federal appellate [court](#) has rendered a [decision](#) allowing a teacher’s claims to proceed.

Over the last two years, ten states enacted measures that [ban](#) transgender students from participating in sports teams that are consistent with their gender identity. The most recent [ban](#) was passed by Texas in October. INCLC-member ACLU represents transgender youth athletes challenging two of the state bans (one in [Idaho](#) and one in [Tennessee](#)).

Employment

Colombia: A state retirement fund company has sued a transgender woman after she won a legal suit to obtain her pension under the rules for women (which permit retirement at a younger age than for men). The state company [says](#) that she must return the money received and must meet the requirements established by law for men.

Health Care

Japan: On October 4, 2021, a transgender man filed a lawsuit [challenging](#) a provision of Japan's "Gender Identity Disorder Special Cases Act," which requires transgender people in Japan to undergo medical sterilization surgery in order to legally change their gender. The plaintiff seeks to have his gender legally recognized as male without undergoing sterilization surgery. The law also requires that transgender people in Japan be single, have no children under the age of 20, and undergo a psychological evaluation before they can legally change their gender. Japan promised to revise the law in 2017, but has failed to do so. In 2019, the Japanese Supreme Court found that the law did not violate Japan's constitution, but acknowledged the social and political need for reform.

United Kingdom: On September 17, 2021, the U.K. Court of Appeal [overturned](#) a December [decision](#) from the U.K. High Court that created significant barriers for transgender youth in the U.K. to access gender-affirming care, specifically puberty blockers. The Court of Appeal determined that the High Court should have dismissed the case, finding that "it was for clinicians rather than the court to decide on competence" of transgender youth to consent to receiving puberty blockers. The Court of Appeal decision restores the rights of trans children and young people to consent to receiving puberty blockers without seeking court approval. INCLO-member Liberty was an intervenor in the case.

On October, 29, 2021, the U.K. Minister for Women and Equalities formally [launched](#) a six-week consultation period for an upcoming proposal to ban LGBT conversion therapy and to provide funding to support victims of conversion therapy. The official proposal is likely to be introduced in parliament in early 2022.

United States: On July 21, 2021, a federal court temporarily blocked a [law](#) which would ban gender-affirming care for transgender minors in the state of Arkansas. INCLO-member ACLU represented four transgender youth in challenging the law. This is the first law of its kind in the U.S. The July decision has been appealed to the U.S. Court of Appeals for the Eighth Circuit.

Marriage

Bolivia: In 2020, the Bolivian Constitutional Court [ruled](#) that the country's prohibition on civil unions for same-sex couples violated international human rights law and Bolivian antidiscrimination law. That decision came after a two-year legal battle initiated by a couple denied their right to register their union with the Bolivian civil registry in 2018. Most recently, despite the ruling, the La Paz civil registry again [denied](#) a second same-sex couple's request for a civil union. Attorneys for the La Paz civil registry argue that is not yet required to issue requests to same-sex couples pending further review of the 2020 Bolivian Constitutional Court decision. The couple most recently denied a union has appealed the civil registry's decision.

Chile: On December 9, 2021, the President of Chile [signed](#) into law a bill allowing marriage for same-sex couples two days following the legislation's [passage](#) by the Chilean Congress. Chile is now the eighth country in Latin America to approve marriage equality.

Japan: On March 17, 2021, a Japanese court ruled that the government's ban on marriage for same-sex couples was [unconstitutional](#), paving the way for marriage equality. The court found that barring marriage for same-sex couples violates an article of the Japanese constitution that [prohibits](#) discrimination on the basis of race, creed, sex, social status, or family origin. Despite this positive ruling, marriages of same-sex couples will not be recognized by law until Japan's legislature amends the civil code. Since the ruling, there has been no action by the Japanese legislature.

Switzerland: On September 26, 2021, a referendum to legalize marriage for same-sex couples in Switzerland [passed](#) with the support of over two-thirds of voters. In addition to expanding marriage rights to same-sex couples, the referendum also grants lesbian couples access to sperm banks and allows same-sex couples to adopt children. The Swiss parliament approved these measures in December of 2020, but opponents of the law gathered enough signatures to force a nationwide referendum.

Taiwan: On March 4, 2021, the Taipei High Administrative Court in Taiwan [invalidated](#) a decision of a household registration office that prohibited same-sex couples from marrying if one person is from a country where marriages for same-sex couples are prohibited. Additionally, on January 22, 2021, Taiwan's judiciary [proposed](#) an amendment to the country's civil code that would pave the way for marriages between Taiwanese nationals and their same-sex partners from foreign countries, so long as they are not citizens of mainland China. The amendment needs the approval of the executive and legislative branches of government before it can become law. LGBTQ groups estimate that these restrictions have prevented approximately 1,000 couples from marrying. The legislative changes remain [pending](#).

Thailand: In November, 2021, Thailand's Constitutional Court [ruled](#) that a provision in the latest draft of the Thai Constitution that restricts marriage to heterosexual couples is constitutional. The court stated that allowing marriage for same-sex couples would "overturn the natural order," and went on to discourage the Thai legislature from approving marriage equality.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Bolivia: On November 9, 2021, an 11-year old girl [successfully](#) obtained an abortion with approval from the Bolivian government. The girl, pregnant as a result of rape, first sought an abortion at a Bolivian hospital in October, but her mother and a Catholic church official intervened, claiming that she had changed her mind. The intervention of the Catholic church prompted a human rights official in Bolivia to [seek](#) criminal charges against hospital staff, the Catholic archdiocese of Santa Cruz, and the mother of the 11-year old. Bolivian human rights officials asserted that the girl's human rights had been violated and that the actions of hospital staff, the archdiocese of Santa Cruz, and the girl's mother amount to human trafficking for the purpose of forced pregnancy. Since 2014, abortion has been legal in Bolivia in the case of rape. It is unclear whether Bolivian officials will still pursue criminal charges.

Colombia: In November 2021, the Constitutional Court of Colombia [delayed](#) a highly anticipated ruling on a lawsuit brought by several women's rights groups seeking to decriminalize abortion. Abortion is currently legal in Colombia only in cases of rape, incest, or nonconsensual insemination, in cases where the fetus is no longer viable, and in cases when the pregnant woman's health or life is at risk. Every year, about 400 women are prosecuted for undergoing abortion procedures in Colombia. If convicted, women face 16-54 months in prison.

El Salvador: On November 30, 2021, the Inter-American Court of Human Rights [ruled](#) that El Salvador violated the rights of a woman when it sentenced her to prison after suffering a natural loss of pregnancy following a health emergency in 2008. The woman was reported to El Salvadorian authorities by her doctor, who assumed that the woman was seeking an illegal abortion when she sought emergency medical care. The court ordered that health care providers can no longer report those seeking reproductive healthcare, including abortions, to law enforcement. The ruling applies to countries throughout Latin America and the Caribbean subject to the court's jurisdiction. The court further ordered that El Salvador establish protocols to ensure health care in situations like that faced by the woman, and ordered El Salvador to pay damages to the family. The woman died in prison while serving a thirty-year term.

Honduras: On January 28, 2021, members of Congress [approved](#) a constitutional amendment that increases the number of congressional votes needed to amend articles of the constitution banning marriage for same-sex couples and abortion from a two-thirds majority to a three-quarters majority. The amendment is intended to create a "constitutional lock" on the articles.

Malawi: On June 15, 2021, a court in Malawi [declined](#) to review a case in which a 15-year old girl was denied a legal abortion. The girl, pregnant as a result of a sexual assault, expressed her desire to terminate the pregnancy, but the hospital treating her informed her that abortion is illegal under Malawi law. However, Malawi allows abortion when necessary to preserve the life of the woman. In her case, the girl argued that, partially as a result of her suicidal ideation during this period, she was entitled to a legal abortion. While the court declined to review her case due to a lack of documentation that the hospital had refused the abortion, it is the first time that the High Court of Malawi acknowledged that there are circumstances in which abortion is legal in Malawi.

Mexico: On September 7, 2021, the Mexican Supreme Court [declared](#) that laws criminalizing abortion are unconstitutional. The decision came as the court struck down a law from the state of Coahuila that imposed criminal penalties for having an abortion. Before the ruling, only four of Mexico's thirty-two states provided legal access to abortion.

New Zealand: On September 23, 2021, the New Zealand High Court [upheld](#) provisions of the Contraception, Sterilisation, and Abortion Act of 1977, amended by the Abortion Legislation Act of 2020, that require healthcare providers to inform patients if they object to providing abortion care and to provide contact details for the nearest healthcare professional that provides the abortion care requested by the patient. The decision also upholds provisions of the law that require employers to accommodate healthcare providers that object to providing abortion care, so long as accommodating those providers does not "cause unreasonable disruption" to the provision of care. The provisions were challenged by health care providers with religious and/or moral objections to abortion on the basis that the new provisions unjustifiably limit a number of their rights confirmed in the New Zealand Bill of Rights Act of 1990. Advocates celebrated the decision as a victory for abortion rights.

San Marino: On September 27, 2021, the Republic of San Marino [voted](#) to legalize abortion, with 77% of voters casting their ballots in favor of the new law. Under the new law, abortion will be legal during the first 12 weeks of pregnancy under all circumstances. After 12 weeks of pregnancy, abortions are permitted if the pregnancy poses a danger to the physical or psychological health of the pregnant person.

United States: On September 1, 2021, a law took effect in Texas that bans abortions after six weeks of pregnancy. The law is unique, in that it is not enforced by the state, but instead allows citizens to sue abortion providers and any other individuals assisting in the process of obtaining abortion for a minimum fine of \$10,000 USD. The United States Supreme Court twice turned away requests for emergency relief, leaving the law in effect.

On December 10, 2021, in a 5-4 majority, the Supreme Court ruled that the most significant part of [a case](#) filed by a coalition of abortion providers and others impacted by the Texas ban must be dismissed. The court also ruled that a narrow portion of the case may proceed against the Texas Medical Board and other licensing authorities, but this will not prevent bounty-hunter lawsuits from being filed. INCLC-member ACLU represents an abortion provider in the case.

On December 1, the United States Supreme Court heard argument in a [case](#) in which an abortion provider is challenging a law in the state of Mississippi that bans abortion after 15 weeks of pregnancy. The law is unconstitutional under existing precedent. Attorneys for the state of Mississippi argued that the Court should reverse the 1973 decision, *Roe v. Wade*, which established a constitutional right to abortion before fetal viability.

On October 12, 2021, the United States Supreme Court [heard](#) oral argument in yet another abortion case in which the state of Kentucky seeks to effectively ban abortion after fifteen weeks of pregnancy. INCLC-member ACLU represents the Kentucky abortion provider challenging the law and argued the case before the Court.

[Women's Rights](#)

Ireland: On June 2, 2021, the Irish Citizen's Assembly released a series of [recommendations](#) on gender equality, including the deletion of Article 41(2) of the Constitution which states that a woman's place is in the home, a proposal to introduce gender quotas in certain contexts, further support for employed women and people who work as caregivers, and greater recognition of family structures outside of marriage. Legislators continue to [develop](#) draft language for new laws and constitutional amendments.

Tanzania: On November 24, 2021, the Tanzanian government [announced](#) it would rescind a policy, in place since 1961, that prevented girls from returning to public secondary schools after giving birth. According to the World Bank, an [estimated](#) 6,500 girls drop out of school in Tanzania annually due to pregnancy and childbirth.

[Religious Freedom & Individual Rights](#)

[Religious Freedom](#)

Canada: INCLC-member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, continues their [challenge](#) against Bill 21, a Quebec provincial law that prohibits certain public sector workers—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The case is on appeal following an April 20,

2021, [decision](#) in which the court struck down certain parts of the law, but upheld most of it despite its violation of religious freedom, equality, and other fundamental rights. The law notably includes a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter.

In August 2021, a high school student [sued](#) a publicly funded Catholic school board in Ontario for banning her from running to serve as a student trustee on the school board because she is not Catholic. In the lawsuit, the Ontario high-schooler claims that the school board's decision violates the Canadian Charter of Rights and Freedoms. Previously in April, another publicly funded Catholic school board barred a Muslim student from running for a student trustee position.

Germany: On July 15, 2021, the Court of Justice of the European Union [ruled](#) against two Muslim women in Germany who were denied the right to wear headscarves in their workplace. The court ruled that employers have the right to limit the expression of religious, political, or philosophical beliefs where there is "a genuine need" to "present a neutral image." The court found that the policies were not discriminatory because they would also apply to other religious outward. However, advocates say that Muslim women are targeted and disproportionately impacted by such bans. The European Court of Human Rights has upheld French bans on face coverings in public spaces and bans on wearing headscarves in public schools. Other European states, including Denmark and Switzerland, have also banned facial veils.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

February 2023

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLIO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning equal treatment, religious freedom, and the intersection of the two.

There have been many developments since our last issue in July, 2022. Here are a few brief highlights:

- Cuba legalized marriage for same-sex couples;
- France could soon amend its constitution to expressly protect abortion;
- India's National Medical Commission declared conversion therapy professional misconduct, preventing licensed mental healthcare professionals from engaging in the practice;
- A labor agency in Japan ruled in favor of a transgender woman in a workplace harassment case, becoming one of the first bodies in the country to recognize discrimination against transgender people as a workplace injury;
- Mexico legalized marriage for same-sex couples nationwide after the last remaining state with a ban on marriage for same-sex couples amended its Civil Code;
- Poland's highest court ruled that states within the country are permitted to recognize same-sex marriages between Polish citizens legally performed abroad;
- Slovenia legalized marriage and adoption for same-sex couples;
- Russia expanded its anti-LGBT censorship law, effectively outlawing all public expressions of LGBT identity within the country;
- Singapore decriminalized consensual sex between people of the same sex;

- In the U.S. and U.K., teachers and others are asserted a religious liberty right not to respect the gender identity of students and clients; and
- The United States enacted a law requiring the federal government and all U.S. states to recognize any marriage validly entered into under a state's laws, protecting recognition of same-sex and interracial marriages.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify the international legal developments and trends in this area. Given the challenges of language and more, the newsletter draws principally from press reports about developments.

Please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact us at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, Ruth Bader Ginsburg Liberty Center

Grant Gebetsberger
Special Assistant, ACLU
Ruth Bader Ginsburg Liberty Center

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union (United States), Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBTQ Rights

Adoption and Childcare

Cuba: In September 2022, voters in Cuba [approved](#) amendments to the Family Code, legalizing marriage and adoption for same-sex couples via referendum. The first same-sex couples were [issued](#) marriage licenses in October when the changes went into effect. The amendments to the Family Code also [legalized](#) prenuptial agreements and assisted pregnancy.

Russia: On July 21, 2021, several INCLO members filed a [brief](#) in the European Court of Human Rights in support of a transgender foster parent [challenging](#) the Russian government's decision to remove two children from his care because he is transgender. (The parent now lives in Spain.) The children—who were under the foster parent's care for several years—were removed after social services authorities became aware of the foster parent's gender identity, gender-affirming surgery, and related social media posts regarding the same. The parent argues that the Russian authorities violated his family's right to respect for family life and discriminated against him based on his gender.

Discrimination

Antigua and Barbuda: On July 5, 2022, the High Court of Justice for Antigua and Barbuda [struck](#) down a 1995 law criminalizing consensual same-sex activity. In its decision, the Court reasoned that the country's constitutional protections against sex discrimination also prohibit discrimination on the basis of gender identity and sexual orientation.

Ghana: In October 2021, Ghana's parliament began formal consideration of a [bill](#) to criminalize LGBT people and pro-LGBT advocacy. Under the proposed law, LGBT people could be sentenced to up to ten years in prison. Additionally, anyone publicly defending an LGBT person or publishing information that casts LGBT people in a positive light could face other criminal penalties.

Hungary: On July 7, 2021, a [law](#) went into effect in Hungary that bans discussion of sexual and gender diversity in education, entertainment, media, and other public spaces. Those who violate the ban face civil sanctions and monetary fines. Immediately after the law's passage, the European Commission [issued](#) a formal notice stating that the law violates multiple E.U. laws. The Commission also threatened to freeze E.U. funds to Hungary for breaching E.U. law, but ultimately did not do so. In August, the European Parliament [dropped](#) its lawsuit against the Commission in the European Court of Justice for its failure to hold Hungary accountable.

On February 2, 2023, the Constitutional Court of Hungary [found](#) that the country's law denying transgender and intersex people the right to update their legal documents to reflect their names and gender does not violate the right to human dignity and privacy. The Constitutional Court explicitly invoked the recently adopted ninth amendment of the Basic Law of Hungary, according to which "Hungary shall protect the right of children to a self-identity corresponding to their sex at birth". The Háttér Society, a Hungarian LGBTQI organization, continues to challenge the ban before the European Court of Human Rights. The constitutional court previously [ruled](#) that retroactively applying Parliament's [ban](#) on the legal [recognition](#) of transgender and intersex people is unconstitutional.

India: On August 25, 2022, the National Medical Commission of India [issued](#) an order declaring conversion therapy professional misconduct. The official order from the regulatory body in charge of medical education and licensing allows the government to take action against medical professionals who engage in conversion therapy, including revoking their license.

Indonesia: On December 6, 2022, Indonesia [criminalized](#) consensual sex outside of marriage. The new provisions effectively outlaw consensual sex between members of the same-sex, since marriage for same-sex couples is illegal in Indonesia.

Ireland: On November 16, 2022, the lower chamber of the Irish Parliament started discussing a [proposed bill](#) to review the existing provisions on incitement to hatred and introducing hate crime legislation for the first time in the country. The bill is expected to go through the legislative process and come into force in 2023. The protected grounds included in the law are race, color, nationality, religion, national or ethnic origin, descent, gender (including gender expression and gender identity), sex characteristics, sexual orientation and disability.

Singapore: In November 2022, Singapore [repealed](#) a colonial-era law that criminalized consensual sex between members of the same-sex. However, in repealing the law, legislators also amended the constitution to prohibit marriage for same-sex couples.

Switzerland: On November 30, 2022, the Swiss parliament began debating [legislation](#) to ban conversion therapy. LGBTQ organizations have pressured the government to ban the practice out of fear that Switzerland could become a safe-haven for conversion therapy after neighboring countries Germany and France banned the practice.

Russia: On December 5, 2022, Russia [expanded](#) its anti-LGBT censorship law, effectively outlawing all public expressions of LGBT identity within the country. The law bans any expression of LGBT identity in public, online, in films, books, and advertising. The existing law, in place since 2013, has already been used to halt LGBT pride demonstrations and arrest LGBT activists.

United States: On December 5, 2022, the U.S. Supreme Court heard argument in *303 Creative v. Elenis*, a [case](#) in which a website design company argues that a U.S. state nondiscrimination law requiring it to serve same-sex couples violates its free speech rights. The case could have major implications for similar nondiscrimination laws across the United States.

United Kingdom: On December 22, 2022, the Scottish Parliament [passed](#) the Gender Recognition Reform Bill, simplifying the process by which people can change their legal sex. The law introduces a system of self-declaration for legal gender recognition, reduces the age requirement from 18 to 16, and removes the need for a psychiatric diagnosis of gender dysphoria. However, the UK Government has blocked the measure, on the basis that it will impact Great Britain-wide operation of equalities law. The Scottish Government is [expected to legally challenge](#) the block.

On January 9, 2023, the UK Government announced that it would review its list of countries whose process for changing gender on legal documents is recognised by the UK. The Government is suggesting it will withdraw recognition from places where self-identification is sufficient to legally change gender, so nationals from those countries would have to apply for a separate UK certificate to have their gender recognised in the UK.

On October 4, 2022, the UK Government announced [changes](#) to its policy for the placement of incarcerated transgender people. According to the Government, “[u]nder the reforms, transgender prisoners with male genitalia should no longer be held in the general women’s estate...This will also apply to transgender women who have been convicted of a sex offence”.

[Education](#)

Argentina: In July 2022, the city of Buenos Aires in Argentina [banned](#) the use of certain gender-neutral terms such as “amigues” and “bienvenid@s” in schools. City officials claim that the terms, meant to foster greater inclusion of transgender and non-binary people within the Spanish language, negatively impact reading comprehension and grammatical skills. Several civil rights groups have filed a [lawsuit](#) seeking to overturn the policy. The ban is believed to be the first of its kind in the world.

United States: Courts across the country are considering cases that contest the right of transgender students to live according to their identities. Parents have [challenged](#) requirements that teachers and staff use pronouns consistent with individual students’ identities as interfering with their right to direct the upbringing of their children, and [teachers](#) have [challenged](#) such requirements as [violating](#) their rights to free speech and free exercise of religion. One federal appellate [court](#) has rendered a [decision](#) allowing a teacher’s claims to proceed.

Over the last two years, 17 states enacted measures that [ban](#) transgender students from participating in sports teams that are consistent with their gender identity. INCLC-member ACLU represents transgender youth athletes challenging three of the state bans in [Idaho](#), [Tennessee](#), and [West Virginia](#).

[Employment](#)

Japan: On November 10, 2022, a labor standards inspection office in Japan’s Kanagawa Prefecture [ruled](#) in favor of a transgender woman in a workplace harassment case against her employer. After being repeatedly misgendered and verbally harassed by her supervisor, the woman was forced to take a leave from work to seek mental healthcare. The decision is significant because while Japan’s labor laws prohibit discrimination on the basis of sexual orientation and gender identity, such harassment is rarely recognized as a workplace injury.

[Health Care](#)

Japan: On October 4, 2021, a transgender man filed a lawsuit [challenging](#) a provision of Japan’s “Gender Identity Disorder Special Cases Act,” which requires transgender people to undergo medical sterilization surgery in order to legally change their gender. The plaintiff seeks to have his gender legally recognized as male without undergoing sterilization surgery. The law also requires that people in Japan be single, have no children under the age of 20, and undergo a psychological evaluation before they can legally change their gender. Japan promised to revise the law in 2017, but has failed to do so. In 2019, the Japanese Supreme Court found that the law did not violate Japan’s constitution, but acknowledged the social and political need for reform.

United Kingdom: On June 29, the U.K. Employment Appeal Tribunal ruled [against](#) a Christian doctor who left his government position after refusing to identify transgender clients by their chosen name and pronoun, claiming that doing so would violate his religious beliefs. The Appeal Tribunal held that, although his beliefs were protected under the Equality Act, the doctor had not suffered discrimination or harassment for those beliefs. The Tribunal found that it was permissible for the government department to require doctors to confirm that they would use clients' preferred pronouns, to protect transgender clients' right to equal treatment. The doctor has said he will appeal.

On December 13, a Scottish court [ruled](#) that transgender women should be included in legislation aimed at improving gender balance on public boards. The court found the Scottish Government's guidance which defines "woman" as including transgender women with a Gender Recognition Certificate to be lawful.

United States: State legislatures in the United States are considering and passing measures to ban, and in some cases criminalize, medical care for trans adolescents. This year, 26 states have proposed such measures. Prior to 2023, three U.S. states – Alabama, Arkansas and Arizona - criminalized some or all gender-affirming healthcare for transgender minors. In addition, Texas initiated child abuse investigations into parents that allow their trans children to access gender-affirming healthcare. In Arkansas and Texas, INCLC-member ACLU represents transgender youth and their parents in challenging these attacks. Federal courts have temporarily blocked the [Alabama](#) and [Arkansas](#) laws from going into effect, and the cases have been appealed to higher federal courts. [Texas](#) state courts have temporarily blocked investigations into families and that litigation is ongoing.

[Marriage](#)

Bolivia: In 2020, the Bolivian Constitutional Court [ruled](#) that the country's prohibition on civil unions for same-sex couples violated international human rights law and Bolivian antidiscrimination law. That decision came after a two-year legal battle initiated by a couple denied their right to register their union with the Bolivian civil registry in 2018. Despite the ruling, the La Paz civil registry again [denied](#) a second same-sex couple's request for a civil union. Most recently, on May 13, 2022, a year after the couple sued, the civil registry recognized the union.

Japan: On November 30, 2022, a Japanese district court in Tokyo [ruled](#) that the government's ban on same-sex marriage is constitutional but that the absence of legal protections for same-sex families violated their human rights. In June 2022, a Japanese district court in Osaka also [ruled](#) that the government's ban on marriage for same-sex couples is constitutional. The two most recent rulings are at odds with a March 2021 district court decision from Sapporo which ruled that the government's ban on marriage for same-sex couples was [unconstitutional](#). Regardless of the decisions from the respective courts, the Japanese legislature must amend the civil code in order for marriage for same-sex couples to be legally recognized.

On November 1, 2022, Japan's capital city of Tokyo began issuing [partnership](#) certificates to same-sex couples. The partnership certificates allow couples to be treated as married couples in public services contexts such as housing, healthcare, and welfare.

Mexico: On October 26, 2022, marriage for same-sex couples became legal [nationwide](#) in Mexico after the state of Tamaulipas voted to amend its Civil Code. The vote comes after the 2015 Mexico Supreme Court decision declaring state bans on marriage for same-sex couples unconstitutional.

Poland: On November 3, 2022, Poland's highest court [ruled](#) that the constitution does not forbid the recognition of marriages of same-sex Polish citizens legally performed in other countries. The ruling allows Polish states to voluntarily recognize such marriages, but does not compel them to do so.

Slovenia: On October 28, 2022, the President of Slovenia [signed](#) into law a [bill](#) legalizing marriage and adoption for same-sex couples. The legislation follows a July 2022 ruling from the Slovenian Constitutional Court that bans on marriage and adoption for same-sex couples were [unconstitutional](#). Slovenia is the first country in Eastern Europe to codify marriage equality. On November 11, 2022, a nonprofit filed an appeal with the Slovenian Constitutional Court [challenging](#) the new law and calling for a nationwide referendum on marriage for marriage and adoption for same-sex couples.

Switzerland: On July 1, 2022, Switzerland began [issuing](#) marriage licenses to same-sex couples after a referendum to legalize marriage for same-sex couples [passed](#) with the support of over two-thirds of voters in September 2021. In addition to expanding marriage rights to same-sex couples, the referendum also grants lesbian couples access to sperm banks and allows same-sex couples to adopt children. The Swiss parliament approved these measures in December of 2020, but opponents of the law gathered enough signatures to force a nationwide referendum.

Taiwan: On January 22, 2023, Taiwan announced that it would [allow](#) marriage between Taiwanese nationals and their same-sex, non-Taiwanese partners from jurisdictions that prohibit marriage for same-sex couples, such as Hong Kong and Macau.

Thailand: On March 29, 2022, the Thai cabinet [rejected](#) a bill that would have legalized marriage for same-sex couples. The bill had been passed by the lower chamber of Thailand's parliament in February. The defeat of the latest bill comes after Thailand's Constitutional Court [ruled](#) that a provision in the latest draft of the Thai Constitution that restricts marriage to heterosexual couples is constitutional. The court stated that allowing marriage for same-sex couples would "overturn the natural order," and went on to discourage the Thai legislature from approving marriage equality. The bill could still become law because it can still enter Thailand's parliament for a first reading despite the cabinet's vote.

United States: On December 13, 2022, the President of the United States signed into [law](#) the Respect for Marriage Act which requires the federal government and all U.S. states to recognize all marriages that were validly entered into under any state's laws. While same-sex and interracial marriage remain legal nationwide, the law ensures that same-sex and interracial marriages would be recognized by the federal government and all U.S. states if the U.S. Supreme Court were to overturn its prior decisions legalizing same-sex and interracial marriage, and requiring the federal government to recognize lawful same-sex marriages.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Australia: In July 2022, more than 15 months after being passed by the state parliament, the Termination of Pregnancy Act 2021 became [law](#) in the state of South Australia, Australia. The new law is a win for reproductive rights and will support more equitable access to abortion care,

including vital telehealth services, across the state. The new law removes abortion from South Australia's criminal laws and brings Australia one-step closer to having abortion decriminalized across the country. The Western Australian Government is currently consulting on the reform of the state's abortion laws.

France: On February 2, 2023, the French Senate voted to [amend](#) the constitution to include a right to abortion. The National Assembly must now approve the Senate's version of the constitutional amendment before it would then go to a nationwide referendum. If successful, France would become the first country in the world to expressly enshrine abortion rights in its constitution.

Ireland: In August 2022, the Irish government proposed a [bill](#) on Safe Access Zones around abortion providers. The bill would provide a 100-meter radius around all places that provide abortions where a range of activities including seeking to influence a person attempting to access abortion services would become illegal. This Bill was supported by a range of civil society groups including ICCL which made a submission on the need for the bill to conform with human rights law.

On April 1, 2022, the public [consultation](#) period on the operation of the Termination of Pregnancy Act of 2018, which legalized abortion in Ireland, closed. (The legislation provides for review of the Act after it has been in operation for three years). The review process provided an important opportunity for people to outline to the government the barriers to accessing abortion that still exist (mandatory waiting period, lack of geographic spread of services, barriers for the undocumented, and more). INCLO member ICCL is part of a group of civil society and healthcare providers entitled the "Abortion Working Group" (AWG) that put forward a submission. Following review of the submissions, an independent government commission will present recommendations on amendments to the law.

Malta: In June 2022, a group of doctors in Malta filed a legal [protest](#), requesting judicial review of the nation's total ban on abortion. In their protest, the physicians argue that Malta's abortion ban prevents them from adhering to international medical standards for necessary abortion care. The doctors ask the court to remove criminal penalties for healthcare providers who help patients terminate their pregnancy and for the creation of new rules that allow abortion in cases of pregnancy complication.

On November 21, 2022, the government of Malta proposed new [legislation](#) that would allow abortion when the pregnancy poses serious risk to the life or health of the pregnant person. The measure needs to be debated in parliament before going to a vote.

Sierra Leone: In July 2022, the government of Sierra Leone [backed](#) a bill which would overturn the country's colonial-era abortion law, decriminalize abortion and expand access to reproductive health services. The bill is now before [parliament](#).

United States: On June 24, 2022, the United States Supreme Court [overruled](#) the 1973 decision, *Roe v. Wade*, that held the federal constitution protected the right to abortion. The decision comes after an abortion provider challenged a law in the state of Mississippi that bans abortion after 15 weeks of pregnancy. The law was unconstitutional under the *Roe v. Wade* precedent. Bans on abortion have now gone into effect in more than a dozen states. INCLO member ACLU filed more than ten cases since the decision to challenge state bans; they argue the bans violate the state constitution. Many of those cases are ongoing, and injunctions are in effect in some states.

Women's Rights

Ireland: On June 2, 2021, the Irish Citizen's Assembly released a series of [recommendations](#) on gender equality, including the deletion of Article 41(2) of the Constitution which states that "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved," a proposal to introduce gender quotas in certain contexts, further support for employed women and people who work as caregivers, and greater recognition of family structures outside of marriage. After extensive consultations with stakeholders including academics and civil society organizations, in December 2022 the Joint Committee on Gender Equality issued a report on how to implement these recommendations. The report also provides for constitutional change to remove any reference to the role of the woman in the home, recognise all families and the role of carers and include explicit reference to gender equality and non-discrimination principles. This would require a referendum, to be held in 2023. Together with other civil society organisations, INCLO member ICCL has been advocating for these changes.

United Kingdom: On December 9, 2022, the UK Government announced its [support](#) for The Protection from Sex-Based Harassment in Public Bill which would ban street harassment such as catcalling, following someone, and intrusive or persistent staring. Under the UK parliamentary system, the Government's support means the bill is almost certain to become law. The Bill is currently going through the parliamentary process.

Religious Freedom & Individual Rights

Religious Freedom

Canada: INCLO member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, continues their [challenge](#) against Bill 21, a Quebec provincial law that prohibits certain public sector workers—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The case is on appeal following an April 20, 2021, [decision](#) in which the court struck down certain parts of the law, but upheld most of it despite its violation of religious freedom, equality, and other fundamental rights. The law notably includes a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter.

In August 2021, a high school student [sued](#) a publicly funded Catholic school board in Ontario for banning her from running to serve as a student trustee on the school board because she is not Catholic. In the lawsuit, the Ontario high-schooler claims that the school board's decision violates the Canadian Charter of Rights and Freedoms. Previously in April, another publicly funded Catholic school board barred a Muslim student from running for a student trustee position.

India: On October 16, 2022, a two-judge bench of the Supreme Court of India [failed](#) to reach consensus in a case challenging a state-level law banning hijabs in schools and universities. The law, which was [upheld](#) on March 15, 2022 by a state-level High Court in India in a separate case, remains in effect. The case before the Supreme Court of India will be referred to a larger bench for further consideration.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

July 2022

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations’ (INCLLO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning equal treatment, religious freedom, and the intersection of the two.

There have been many developments since our last issue in December. Here are a few brief highlights:

- Canada banned conversion therapy for gay, lesbian, bisexual, and transgender people;
- Chile issued its first marriage license for a same-sex couple;
- Colombia’s Constitutional Court decriminalized abortion up to 24 weeks of pregnancy;
- In France, the Court of Cassation upheld a ban on attorneys wearing religious attire in courtrooms, ruling against a Muslim law student who sought to wear her hijab in court;
- In Hungary, voters defeated a referendum intended to show public support for Hungary’s anti-LGBT censorship law;
- In India, a state-level high court upheld a ban on headscarves, including hijabs, in schools and universities, ruling against several Muslim students who challenged the ban;
- Israel lifted its surrogacy restrictions, granting access to surrogacy for same-sex couples, single men, and transgender people;
- In Japan, a district court ruled that the government’s ban on marriage for same-sex couples is constitutional;
- Kuwait’s Constitutional Court overturned a law criminalizing “imitation of the opposite sex,” which was used to criminalize transgender people;
- In Malta, a group of doctors filed a legal protest against the country’s total abortion ban;

- New Zealand banned conversion therapy for gay, lesbian, bisexual, and transgender people;
- In Poland, an appeals court ruled that four municipalities must rescind their “LGBT-free zone” resolutions;
- South Korea’s Supreme Court ruled that consensual same-sex activity among military service members is not a punishable offense;
- In Taiwan, a local level court allowed a gay man to adopt his husband’s non-biological child, the first decision of its kind in the country;
- The European Court of Human Rights declined a Northern Irish’s man’s request that the court review a U.K. Supreme Court decision siding with a bakery in Northern Ireland that refused to bake a cake decorated with the words “support gay marriage”;
- In the United States, three states have criminalized some or all gender-affirming healthcare for transgender youth, and another state has initiated child abuse investigations into families that support their children getting gender affirming care, with all the measures subject to challenge; and
- The U.S. Supreme Court overturned the federal constitutional right to obtain an abortion.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify the international legal developments and trends in this area. Given the challenges of language and more, the newsletter draws principally from press reports about developments.

Please feel free to alert us to developments you think should be included in future issues of INCLO’s newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact us at INCLONewsletter@aclu.org.

Best,

Louise Melling
Deputy Legal Director, ACLU
Director, Ruth Bader Ginsburg Liberty Center

Grant Gebetsberger
Special Assistant, ACLU
Ruth Bader Ginsburg Liberty Center

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO’s members include: American Civil Liberties Union (United States), Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBTQ Rights

Adoption and Childcare

Cuba: In February of this year, Cuba began public [consultation](#) on proposed amendments to the Family Code, which would legalize marriage and adoption for same-sex couples. The proposed changes would also legalize prenuptial agreements and assisted pregnancy. The amendments will likely be voted on this fall via referendum.

Israel: On January 11, Israel [lifted](#) restrictions on surrogacy to grant access to surrogacy for same-sex couples, single men, and transgender people. The restrictions were lifted after the Israeli High Court of Justice [ruled](#) in 2021 that limiting access to surrogacy exclusively to heterosexual couples and single women was unconstitutional.

Russia: On July 21, 2021, several INCLC members filed a [brief](#) in the European Court of Human Rights in support of a transgender foster parent [challenging](#) the Russian government's decision to remove two children from his care because he is transgender. (The parent now lives in Spain.) The children—who were under the foster parent's care for several years—were removed after social services authorities became aware of the foster parent's gender identity, gender-affirming surgery, and related social media posts regarding the same. The parent argues that the Russian authorities violated his family's right to respect for family life and discriminated against him based on his gender.

Taiwan: On January 4, 2022, a local level court in Taiwan [allowed](#) a gay man to adopt his husband's non-biological child, who was adopted before the couple was married. The decision is the first of its kind in Taiwan. LGBT activists in the country hope that the decision will encourage legislative reform of laws that restrict adoption for same-sex couples.

Discrimination

Canada: On January 7, 2022, a law [banning](#) conversion therapy took effect in Canada, making it illegal to provide or promote services with the intention of altering or repressing a person's sexual orientation or gender identity. The law also prohibits taking Canadian minors abroad to receive conversion therapy.

Dominican Republic: In August 2021, an amended penal [code](#) that defines the crime of discrimination but that excludes discrimination based on sexual orientation or gender identity [failed](#) to become law after the Senate did not vote on the code before the end of the legislative session. The code also stated that it is not discrimination to refuse service if the refusal is based on religious, ethical, or moral grounds.

Ghana: In October 2021, Ghana's parliament began formal consideration of a [bill](#) to criminalize LGBT people and pro-LGBT advocacy. Under the proposed law, LGBT people could be sentenced to up to ten years in prison. Additionally, anyone publicly defending an LGBT person or publishing information that casts homosexuality in a positive light could face other criminal penalties. The proposal comes amidst a wave of anti-LGBT hate crimes in Ghana, where the most recent polling found that around 90% of citizens would support the criminalization of same-sex relationships.

Hungary: On April 3, 2022, voters [defeated](#) a referendum intended to show public support for Hungary's anti-LGBT censorship law through a campaign to spoil enough ballots to render the result of the referendum invalid. For the referendum to be valid, more than fifty percent of eligible voters had to answer all the questions presented validly; fewer than forty-five percent did. The referendum included questions on sex education in schools, the availability of information for children on gender reassignment, and banning LGBT content that "influences the development of underage children."

On July 7, 2021, a [law](#) went into effect in Hungary that bans discussion of sexual and gender diversity in education, entertainment, media, and other public spaces. Those who violate the ban face civil sanctions and monetary fines. Immediately after the law's passage, the European Commission [issued](#) a formal notice stating that the law violates multiple E.U. laws. The Commission also threatened to freeze E.U. funds to Hungary for breaching E.U. law, but ultimately did not do so. Most recently, in October, the European Parliament [sued](#) the Commission in the European Court of Justice for its failure to hold Hungary accountable.

On March 12, 2021, the Constitutional Court of Hungary [ruled](#) that retroactively applying Parliament's [ban](#) on the legal [recognition](#) of transgender and intersex people is unconstitutional. The ban [denies](#) transgender and intersex people the right to update their legal documents to reflect their names and gender. As a result of the decision, the ban can no longer apply to transgender and intersex people who legally changed their gender prior to May 2020, when the ban was implemented. A Hungarian LGB organization continues to challenge the ban as unconstitutional in the Constitutional Court of Hungary.

Kuwait: On February 16, 2022, the Constitutional Court of Kuwait [overturned](#) a law criminalizing transgender people, finding that it violated the right to personal freedom. The law criminalized "imitation of the opposite sex" and allowed law enforcement to arrest and prosecute any person whose outward appearance did not match their sex assigned at birth according to their official government identification.

New Zealand: On February 15, 2022, New Zealand's parliament [banned](#) conversion therapy, outlawing practices aimed at changing a person's sexual orientation, gender identity, or gender expression. The ban applies to people of all ages, but includes stronger protections for minors and individuals with impaired decision-making capacity.

On December 9, 2021, New Zealand's parliament [approved](#) legislation that would allow transgender people to change their gender markers on government identification and other official documents without supporting documentation from medical professionals. The bill will go into effect 18 months from the date of passage.

Poland: On June 28, 2022, a top Polish appeals court [ruled](#) that four municipalities must rescind their "LGBT-free zone" resolutions. Additionally, the European Union Commission has confirmed that municipalities with "LGBT-free zone" resolutions in place will not receive E.U. funding.

South Korea: On April 21, 2022, the Supreme Court of South Korea [reversed](#) a lower court ruling that convicted two gay soldiers for having sex outside of military facilities. The court ruled that consensual same-sex activity among military service members is not a punishable offense. South Korea's military anti-sodomy law had made same-sex relations punishable by up to two years in prison.

United Kingdom: The U.K. government [enacted](#) legislation which expands existing laws decriminalizing same-sex relations, paving the way for gay and bisexual men to have their criminal records expunged for formerly illegal same-sex activities.

On January 6, 2022, the European Court of Human Rights [declined](#) a Northern Irish's man's request to review to a U.K. Supreme Court [decision](#) siding with a bakery in Northern Island that refused to bake a cake decorated with the words "support gay marriage." The U.K. Court reasoned that "[t]he bakers could not refuse to supply their goods to [the customer] because he was a gay man or supported gay marriage, but that is quite different from obliging them to supply a cake iced with a message with which they profoundly disagreed." The European Court of Human Rights concluded the case was inadmissible because the litigant had not pleaded any European Convention of Human Rights claims in domestic court.

United States: On April 11, 2022, the U.S. State Department [began](#) offering the gender marker "X" to all passport applicants.

[Education](#)

United States: Courts across the country are considering cases that contest the right of transgender students to live according to their identities. Parents have [challenged](#) requirements that teachers and staff use pronouns consistent with individual students' identities as interfering with their right to direct the upbringing of their children, and [teachers](#) have [challenged](#) such requirements as [violating](#) their rights to free speech and free exercise of religion. One federal appellate [court](#) has rendered a [decision](#) allowing a teacher's claims to proceed.

Over the last two years, 17 states enacted measures that [ban](#) transgender students from participating in sports teams that are consistent with their gender identity. INCLC-member ACLU represents transgender youth athletes challenging three of the state bans in [Idaho](#), [Tennessee](#), and [West Virginia](#).

[Employment](#)

Colombia: On December 10, 2021, the Constitutional Court of Colombia [ruled](#) in favor of a transgender woman, affirming a lower court decision allowing her to obtain her pension under the rules for women (which permit retirement at a younger age than for men).

South Korea: On January 7, 2022, a South Korean court [rejected](#) a same-sex couple's request to reinstate spousal health insurance benefits through one of the partner's employers. The court reasoned that because marriage for same-sex couples is not legal in South Korea, it could not compel the South Korean government to reinstate spousal coverage for the couple.

[Health Care](#)

Japan: On October 4, 2021, a transgender man filed a lawsuit [challenging](#) a provision of Japan's "Gender Identity Disorder Special Cases Act," which requires transgender people to undergo medical sterilization surgery in order to legally change their gender. The plaintiff seeks to have his gender legally recognized as male without undergoing sterilization surgery. The law also requires that transgender people in Japan be single, have no children under the age of 20, and undergo a psychological evaluation before they can legally change their gender. Japan promised to revise the law in 2017, but has failed to do so. In 2019, the Japanese Supreme

Court found that the law did not violate Japan's constitution, but acknowledged the social and political need for reform.

United Kingdom: On June 29, the U.K. Employment Appeal Tribunal ruled [against](#) a Christian doctor who was fired from his government position for refusing to identify transgender clients by their chosen name and pronoun, claiming that doing so would violate his religious beliefs. The Appeal Tribunal held that firing the doctor was permissible because accommodating his beliefs in the workplace would violate transgender clients' right to equal treatment. The doctor has said he will appeal.

United States: Three U.S. states – Alabama, Arkansas and Arizona - have criminalized some or all gender-affirming healthcare for transgender minors. In addition, Texas has initiated child abuse investigations into parents that allow their trans children to access gender-affirming healthcare. In Arkansas and Texas, INCLO-member ACLU represents transgender youth and their parents in challenging these attacks. Federal courts have temporarily blocked the [Alabama](#) and [Arkansas](#) laws from going into effect, and the cases have been appealed to higher federal courts. [Texas](#) state courts have temporarily blocked investigations into families and that litigation is ongoing.

[Marriage](#)

Bolivia: In 2020, the Bolivian Constitutional Court [ruled](#) that the country's prohibition on civil unions for same-sex couples violated international human rights law and Bolivian antidiscrimination law. That decision came after a two-year legal battle initiated by a couple denied their right to register their union with the Bolivian civil registry in 2018. Despite the ruling, the La Paz civil registry again [denied](#) a second same-sex couple's request for a civil union. Most recently, on May 13, 2022, a year after the couple sued, the civil registry recognized the union. Further review of the 2020 Bolivian Constitutional Court decision remains pending.

Chile: On March 10, 2022, Chile [issued](#) its first marriage license for a same-sex couple as its marriage equality law took effect. The law was signed on December 9, 2021 by the President of Chile two days following the legislation's [passage](#) by the Chilean Congress. Chile is now the eighth country in Latin America to approve marriage equality.

Guatemala: On March 16, 2022, Guatemala's congress [shelved](#) a law that would have banned marriage for same-sex couples and increased penalties for abortion. The President threatened to veto the law, which had been passed by a supermajority of lawmakers, following protests from both domestic and international women's and LGBT groups.

Japan: On June 20, 2022, a Japanese district court in Osaka [ruled](#) that the government's ban on marriage for same-sex couples is constitutional. The ruling is at odds with a March 2021, a district court decision from Sapporo which ruled that the government's ban on marriage for same-sex couples was [unconstitutional](#). Regardless of the decisions from the respective courts, the Japanese legislature must amend the civil code in order for marriage for same-sex couples to be legally recognized. Activists fear the most recent ruling will decrease pressure on the legislature to codify marriage for same-sex couples into law.

Slovenia: On July 8, 2021, the Slovenian Constitutional Court ruled that bans on marriage and adoption for same-sex couples were [unconstitutional](#). The Court ordered Slovenia's legislature to amend its laws within six months in accordance with the ruling. Government officials have

indicated that laws allowing marriage and adoption for same-sex couples could be ready in as little as two weeks.

Switzerland: On September 26, 2021, a referendum to legalize marriage for same-sex couples in Switzerland [passed](#) with the support of over two-thirds of voters. In addition to expanding marriage rights to same-sex couples, the referendum also grants lesbian couples access to sperm banks and allows same-sex couples to adopt children. The Swiss parliament approved these measures in December of 2020, but opponents of the law gathered enough signatures to force a nationwide referendum. The law will take [effect](#) on July 1, 2022.

Taiwan: On January 22, 2021, Taiwan's judiciary [proposed](#) an amendment to the country's civil code that would pave the way for marriages between Taiwanese nationals and their same-sex partners from foreign countries, so long as they are not citizens of mainland China. The amendment needs the approval of the executive and legislative branches of government before it can become law. LGBTQ groups estimate that these restrictions have prevented approximately 1,000 couples from marrying. Later, on March 4, 2021, the Taipei High Administrative Court in Taiwan [invalidated](#) a decision of a household registration office that prohibited same-sex couples from marrying if one person is from a country where marriages for same-sex couples are prohibited. The court case and legislative changes remain [pending](#).

Thailand: On March 29, 2022, the Thai cabinet [rejected](#) a bill that would have legalized marriage for same-sex couples. The bill had been passed by the lower chamber of Thailand's parliament in February. The defeat of the latest bill comes after Thailand's Constitutional Court [ruled](#) that a provision in the latest draft of the Thai Constitution that restricts marriage to heterosexual couples is constitutional. The court stated that allowing marriage for same-sex couples would "overturn the natural order," and went on to discourage the Thai legislature from approving marriage equality. The bill could still become law because it can still enter Thailand's parliament for a first reading despite the cabinet's vote.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Colombia: On February 21, 2022, the Constitutional Court of Colombia [decriminalized](#) abortion up to 24 weeks of pregnancy. Abortion was previously legal only in cases of rape, incest, or nonconsensual insemination, in cases where the fetus is no longer viable, and in cases when the pregnant woman's health or life is at risk.

Ecuador: On April 29, 2022, [legislation](#) legalizing abortion in cases of rape went into effect. The law allows for abortion in cases of rape up to 12 weeks of pregnancy and requires patients seeking an abortion to either file a complaint, sign an affidavit, or undergo a sexual assault examination to access the procedure. The law also allows doctors with conscientious objections to abortion procedures to opt out of providing the procedure and codifies infanticide as a crime, which had not previously been a part of Ecuador's Penal Code.

India: Two state-level High Courts in India, the second highest courts in the country, recently approved exceptions to the nation's 20-week limit for legal abortion. In one case, on January 4, 2022, the Delhi High Court [allowed](#) a woman to terminate a 28-week pregnancy upon learning that the fetus had a rare congenital heart disease, reasoning that she would suffer acute mental distress by continuing with the pregnancy. In another case, on December 27, 2021, the Bombay High Court [allowed](#) a 12-year old girl to terminate a 23-week pregnancy that was the result of

rape, reasoning that the physical and mental health risks posed to the minor warranted an exception to the 20-week law.

Ireland: On April 7, 2022, the upper house of the Irish legislature passed a bill to protect physical access to abortion facilities. The bill came as a result of a grassroots network's efforts with assistance from INCLO-member ICCL. The bill will now go before the lower house. The government is also drafting its own bill which has yet to be published.

On April 1, 2022 the public [consultation](#) period on the operation of the Termination of Pregnancy Act of 2018, which legalized abortion in Ireland, closed. (The legislation provides for review of the Act after it has been in operation for three years). The review process provided an important opportunity for people to outline to the government the barriers to accessing abortion that still exist (mandatory waiting period, lack of geographic spread of services, barriers for the undocumented, and more). INCLO member ICCL is part of a group of civil society and healthcare providers entitled the "Abortion Working Group" (AWG) that put forward a submission. Following review of the submissions, an independent government commission will present recommendations on amendments to the law.

Kenya: On March 25, 2022, the High Court of Kenya [affirmed](#) the constitutional right to abortion care, holding that arrests and prosecutions of patients seeking abortions or healthcare providers offering abortion care are illegal. The Court also directed the Kenyan legislature to pass new legislation regarding abortion access consistent with the Constitution of Kenya.

Malta: In June, 2022, a group of doctors in Malta filed a legal [protest](#), requesting judicial review of the nation's total ban on abortion. In their protest, the group of physicians argue that Malta's abortion ban prevents them from adhering to international medical standards for necessary abortion care. The doctors ask the court to remove criminal penalties for healthcare providers who help patients terminate their pregnancy and for the creation of new rules that allow abortion in cases of pregnancy complication.

United States: On June 24, 2022, the United States Supreme Court ended the federal constitutional right to abortion, [overruling](#) the 1973 decision, Roe v. Wade. The decision comes after an abortion provider challenged a law in the state of Mississippi that bans abortion after 15 weeks of pregnancy. The law was unconstitutional under the Roe v. Wade precedent. Bans on abortion have now gone into effect in several states. INCLO member ACLU has filed a number of suit challenging state bans.

[Women's Rights](#)

Ireland: On June 2, 2021, the Irish Citizen's Assembly released a series of [recommendations](#) on gender equality, including the deletion of Article 41(2) of the Constitution which states that a woman's place is in the home, a proposal to introduce gender quotas in certain contexts, further support for employed women and people who work as caregivers, and greater recognition of family structures outside of marriage. The Joint Committee on Gender Equality is currently holding hearings with civil society organisations and other key stakeholders, while language for constitutional amendments and new policy and legislation is being considered to implement the recommendations.

Religious Freedom & Individual Rights

Religious Freedom

Canada: INCLO member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, continues their [challenge](#) against Bill 21, a Quebec provincial law that prohibits certain public sector workers—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The case is on appeal following an April 20, 2021, [decision](#) in which the court struck down certain parts of the law, but upheld most of it despite its violation of religious freedom, equality, and other fundamental rights. The law notably includes a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter.

In August 2021, a high school student [sued](#) a publicly funded Catholic school board in Ontario for banning her from running to serve as a student trustee on the school board because she is not Catholic. In the lawsuit, the Ontario high-schooler claims that the school board's decision violates the Canadian Charter of Rights and Freedoms. Previously in April, another publicly funded Catholic school board barred a Muslim student from running for a student trustee position.

France: On March 2, 2022, the French Court of Cassation, one of the highest courts in the country, [upheld](#) a ban on attorneys wearing religious attire in courtrooms. The ban, which prohibits any clothing or accessories that outwardly demonstrate religious, philosophical, community, or political affiliations, was challenged by a Muslim law student who wears a hijab.

India: On March 15, 2022, a state-level High Court in India [upheld](#) a state-level law banning hijabs in schools and universities. The ban had been challenged by several Muslim students, who stated that the hijab was an essential part of their religious practice. The court rejected the Muslim students' claims, ruling that the hijab is not an essential religious practice.

United Kingdom: On January 6, 2022, a U.K. employment tribunal [ruled](#) in favor of a Catholic National Health Service (NHS) nurse who was demoted for refusing to remove a necklace with a small cross, a symbol of her Christian faith, at work at the hospital's request. The hospital asked that the nurse remove the necklace consistent with its policy prohibiting the wearing of necklaces on health and safety grounds, but the tribunal found that other employees at the hospital frequently wore jewelry without reprimand and that the hospital had discriminated against her.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.