



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

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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.

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