



## 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](mailto:INCLONewsletter@aclu.org).

Best,

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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), 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

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### *Services & Public Accommodations*

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**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*

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**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*

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**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

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### [Access to Contraception](#)

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**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](#)

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**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](#)

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**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](#)

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### [Aid-in-Dying](#)

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**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](#)

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**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](#)

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**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.

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## Employment

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**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

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**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*

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**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*

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**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.”

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