



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.