



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.

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