



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

July 2022

Dear Friends:

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

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

- Canada banned conversion therapy for gay, lesbian, bisexual, and transgender people;
- Chile issued its first marriage license for a same-sex couple;
- Colombia’s Constitutional Court decriminalized abortion up to 24 weeks of pregnancy;
- In France, the Court of Cassation upheld a ban on attorneys wearing religious attire in courtrooms, ruling against a Muslim law student who sought to wear her hijab in court;
- In Hungary, voters defeated a referendum intended to show public support for Hungary’s anti-LGBT censorship law;
- In India, a state-level high court upheld a ban on headscarves, including hijabs, in schools and universities, ruling against several Muslim students who challenged the ban;
- Israel lifted its surrogacy restrictions, granting access to surrogacy for same-sex couples, single men, and transgender people;
- In Japan, a district court ruled that the government’s ban on marriage for same-sex couples is constitutional;
- Kuwait’s Constitutional Court overturned a law criminalizing “imitation of the opposite sex,” which was used to criminalize transgender people;
- In Malta, a group of doctors filed a legal protest against the country’s total abortion ban;

- New Zealand banned conversion therapy for gay, lesbian, bisexual, and transgender people;
- In Poland, an appeals court ruled that four municipalities must rescind their “LGBT-free zone” resolutions;
- South Korea’s Supreme Court ruled that consensual same-sex activity among military service members is not a punishable offense;
- In Taiwan, a local level court allowed a gay man to adopt his husband’s non-biological child, the first decision of its kind in the country;
- The European Court of Human Rights declined a Northern Irish’s man’s request that the court review a U.K. Supreme Court decision siding with a bakery in Northern Ireland that refused to bake a cake decorated with the words “support gay marriage”;
- In the United States, three states have criminalized some or all gender-affirming healthcare for transgender youth, and another state has initiated child abuse investigations into families that support their children getting gender affirming care, with all the measures subject to challenge; and
- The U.S. Supreme Court overturned the federal constitutional right to obtain an abortion.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify the international legal developments and trends in this area. Given the challenges of language and more, the newsletter draws principally from press reports about developments.

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

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

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### *Adoption and Childcare*

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**Cuba:** In February of this year, Cuba began public [consultation](#) on proposed amendments to the Family Code, which would legalize marriage and adoption for same-sex couples. The proposed changes would also legalize prenuptial agreements and assisted pregnancy. The amendments will likely be voted on this fall via referendum.

**Israel:** On January 11, Israel [lifted](#) restrictions on surrogacy to grant access to surrogacy for same-sex couples, single men, and transgender people. The restrictions were lifted after the Israeli High Court of Justice [ruled](#) in 2021 that limiting access to surrogacy exclusively to heterosexual couples and single women was unconstitutional.

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

**Taiwan:** On January 4, 2022, a local level court in Taiwan [allowed](#) a gay man to adopt his husband's non-biological child, who was adopted before the couple was married. The decision is the first of its kind in Taiwan. LGBT activists in the country hope that the decision will encourage legislative reform of laws that restrict adoption for same-sex couples.

### *Discrimination*

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**Canada:** On January 7, 2022, a law [banning](#) conversion therapy took effect in Canada, making it illegal to provide or promote services with the intention of altering or repressing a person's sexual orientation or gender identity. The law also prohibits taking Canadian minors abroad to receive conversion therapy.

**Dominican Republic:** In August 2021, an amended penal [code](#) that defines the crime of discrimination but that excludes discrimination based on sexual orientation or gender identity [failed](#) to become law after the Senate did not vote on the code before the end of the legislative session. The code also stated that it is not discrimination to refuse service if the refusal is based on religious, ethical, or moral grounds.

**Ghana:** In October 2021, Ghana's parliament began formal consideration of a [bill](#) to criminalize LGBT people and pro-LGBT advocacy. Under the proposed law, LGBT people could be sentenced to up to ten years in prison. Additionally, anyone publicly defending an LGBT person or publishing information that casts homosexuality in a positive light could face other criminal penalties. The proposal comes amidst a wave of anti-LGBT hate crimes in Ghana, where the most recent polling found that around 90% of citizens would support the criminalization of same-sex relationships.

**Hungary:** On April 3, 2022, voters [defeated](#) a referendum intended to show public support for Hungary's anti-LGBT censorship law through a campaign to spoil enough ballots to render the result of the referendum invalid. For the referendum to be valid, more than fifty percent of eligible voters had to answer all the questions presented validly; fewer than forty-five percent did. The referendum included questions on sex education in schools, the availability of information for children on gender reassignment, and banning LGBT content that "influences the development of underage children."

On July 7, 2021, a [law](#) went into effect in Hungary that bans discussion of sexual and gender diversity in education, entertainment, media, and other public spaces. Those who violate the ban face civil sanctions and monetary fines. Immediately after the law's passage, the European Commission [issued](#) a formal notice stating that the law violates multiple E.U. laws. The Commission also threatened to freeze E.U. funds to Hungary for breaching E.U. law, but ultimately did not do so. Most recently, in October, the European Parliament [sued](#) the Commission in the European Court of Justice for its failure to hold Hungary accountable.

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

**Kuwait:** On February 16, 2022, the Constitutional Court of Kuwait [overturned](#) a law criminalizing transgender people, finding that it violated the right to personal freedom. The law criminalized "imitation of the opposite sex" and allowed law enforcement to arrest and prosecute any person whose outward appearance did not match their sex assigned at birth according to their official government identification.

**New Zealand:** On February 15, 2022, New Zealand's parliament [banned](#) conversion therapy, outlawing practices aimed at changing a person's sexual orientation, gender identity, or gender expression. The ban applies to people of all ages, but includes stronger protections for minors and individuals with impaired decision-making capacity.

On December 9, 2021, New Zealand's parliament [approved](#) legislation that would allow transgender people to change their gender markers on government identification and other official documents without supporting documentation from medical professionals. The bill will go into effect 18 months from the date of passage.

**Poland:** On June 28, 2022, a top Polish appeals court [ruled](#) that four municipalities must rescind their "LGBT-free zone" resolutions. Additionally, the European Union Commission has confirmed that municipalities with "LGBT-free zone" resolutions in place will not receive E.U. funding.

**South Korea:** On April 21, 2022, the Supreme Court of South Korea [reversed](#) a lower court ruling that convicted two gay soldiers for having sex outside of military facilities. The court ruled that consensual same-sex activity among military service members is not a punishable offense. South Korea's military anti-sodomy law had made same-sex relations punishable by up to two years in prison.

**United Kingdom:** The U.K. government [enacted](#) legislation which expands existing laws decriminalizing same-sex relations, paving the way for gay and bisexual men to have their criminal records expunged for formerly illegal same-sex activities.

On January 6, 2022, the European Court of Human Rights [declined](#) a Northern Irish's man's request to review to a U.K. Supreme Court [decision](#) siding with a bakery in Northern Island that refused to bake a cake decorated with the words "support gay marriage." The U.K. Court reasoned that "[t]he bakers could not refuse to supply their goods to [the customer] because he was a gay man or supported gay marriage, but that is quite different from obliging them to supply a cake iced with a message with which they profoundly disagreed." The European Court of Human Rights concluded the case was inadmissible because the litigant had not pleaded any European Convention of Human Rights claims in domestic court.

**United States:** On April 11, 2022, the U.S. State Department [began](#) offering the gender marker "X" to all passport applicants.

### [Education](#)

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**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](#)

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**Colombia:** On December 10, 2021, the Constitutional Court of Colombia [ruled](#) in favor of a transgender woman, affirming a lower court decision allowing her to obtain her pension under the rules for women (which permit retirement at a younger age than for men).

**South Korea:** On January 7, 2022, a South Korean court [rejected](#) a same-sex couple's request to reinstate spousal health insurance benefits through one of the partner's employers. The court reasoned that because marriage for same-sex couples is not legal in South Korea, it could not compel the South Korean government to reinstate spousal coverage for the couple.

### [Health Care](#)

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**Japan:** On October 4, 2021, a transgender man filed a lawsuit [challenging](#) a provision of Japan's "Gender Identity Disorder Special Cases Act," which requires transgender people to undergo medical sterilization surgery in order to legally change their gender. The plaintiff seeks to have his gender legally recognized as male without undergoing sterilization surgery. The law also requires that transgender people in Japan be single, have no children under the age of 20, and undergo a psychological evaluation before they can legally change their gender. Japan promised to revise the law in 2017, but has failed to do so. In 2019, the Japanese Supreme

Court found that the law did not violate Japan's constitution, but acknowledged the social and political need for reform.

**United Kingdom:** On June 29, the U.K. Employment Appeal Tribunal ruled [against](#) a Christian doctor who was fired from his government position for refusing to identify transgender clients by their chosen name and pronoun, claiming that doing so would violate his religious beliefs. The Appeal Tribunal held that firing the doctor was permissible because accommodating his beliefs in the workplace would violate transgender clients' right to equal treatment. The doctor has said he will appeal.

**United States:** Three U.S. states – Alabama, Arkansas and Arizona - have criminalized some or all gender-affirming healthcare for transgender minors. In addition, Texas has initiated child abuse investigations into parents that allow their trans children to access gender-affirming healthcare. In Arkansas and Texas, INCLO-member ACLU represents transgender youth and their parents in challenging these attacks. Federal courts have temporarily blocked the [Alabama](#) and [Arkansas](#) laws from going into effect, and the cases have been appealed to higher federal courts. [Texas](#) state courts have temporarily blocked investigations into families and that litigation is ongoing.

## [Marriage](#)

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**Bolivia:** In 2020, the Bolivian Constitutional Court [ruled](#) that the country's prohibition on civil unions for same-sex couples violated international human rights law and Bolivian antidiscrimination law. That decision came after a two-year legal battle initiated by a couple denied their right to register their union with the Bolivian civil registry in 2018. Despite the ruling, the La Paz civil registry again [denied](#) a second same-sex couple's request for a civil union. Most recently, on May 13, 2022, a year after the couple sued, the civil registry recognized the union. Further review of the 2020 Bolivian Constitutional Court decision remains pending.

**Chile:** On March 10, 2022, Chile [issued](#) its first marriage license for a same-sex couple as its marriage equality law took effect. The law was signed on December 9, 2021 by the President of Chile two days following the legislation's [passage](#) by the Chilean Congress. Chile is now the eighth country in Latin America to approve marriage equality.

**Guatemala:** On March 16, 2022, Guatemala's congress [shelved](#) a law that would have banned marriage for same-sex couples and increased penalties for abortion. The President threatened to veto the law, which had been passed by a supermajority of lawmakers, following protests from both domestic and international women's and LGBT groups.

**Japan:** On June 20, 2022, a Japanese district court in Osaka [ruled](#) that the government's ban on marriage for same-sex couples is constitutional. The ruling is at odds with a March 2021, a district court decision from Sapporo which ruled that the government's ban on marriage for same-sex couples was [unconstitutional](#). Regardless of the decisions from the respective courts, the Japanese legislature must amend the civil code in order for marriage for same-sex couples to be legally recognized. Activists fear the most recent ruling will decrease pressure on the legislature to codify marriage for same-sex couples into law.

**Slovenia:** On July 8, 2021, the Slovenian Constitutional Court ruled that bans on marriage and adoption for same-sex couples were [unconstitutional](#). The Court ordered Slovenia's legislature to amend its laws within six months in accordance with the ruling. Government officials have



indicated that laws allowing marriage and adoption for same-sex couples could be ready in as little as two weeks.

**Switzerland:** On September 26, 2021, a referendum to legalize marriage for same-sex couples in Switzerland [passed](#) with the support of over two-thirds of voters. In addition to expanding marriage rights to same-sex couples, the referendum also grants lesbian couples access to sperm banks and allows same-sex couples to adopt children. The Swiss parliament approved these measures in December of 2020, but opponents of the law gathered enough signatures to force a nationwide referendum. The law will take [effect](#) on July 1, 2022.

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

**Thailand:** On March 29, 2022, the Thai cabinet [rejected](#) a bill that would have legalized marriage for same-sex couples. The bill had been passed by the lower chamber of Thailand's parliament in February. The defeat of the latest bill comes after Thailand's Constitutional Court [ruled](#) that a provision in the latest draft of the Thai Constitution that restricts marriage to heterosexual couples is constitutional. The court stated that allowing marriage for same-sex couples would "overturn the natural order," and went on to discourage the Thai legislature from approving marriage equality. The bill could still become law because it can still enter Thailand's parliament for a first reading despite the cabinet's vote.

## **Religious Freedom, Reproductive Rights, and Women's Rights**

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### ***Access to Abortion and Contraception***

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**Colombia:** On February 21, 2022, the Constitutional Court of Colombia [decriminalized](#) abortion up to 24 weeks of pregnancy. Abortion was previously legal only in cases of rape, incest, or nonconsensual insemination, in cases where the fetus is no longer viable, and in cases when the pregnant woman's health or life is at risk.

**Ecuador:** On April 29, 2022, [legislation](#) legalizing abortion in cases of rape went into effect. The law allows for abortion in cases of rape up to 12 weeks of pregnancy and requires patients seeking an abortion to either file a complaint, sign an affidavit, or undergo a sexual assault examination to access the procedure. The law also allows doctors with conscientious objections to abortion procedures to opt out of providing the procedure and codifies infanticide as a crime, which had not previously been a part of Ecuador's Penal Code.

**India:** Two state-level High Courts in India, the second highest courts in the country, recently approved exceptions to the nation's 20-week limit for legal abortion. In one case, on January 4, 2022, the Delhi High Court [allowed](#) a woman to terminate a 28-week pregnancy upon learning that the fetus had a rare congenital heart disease, reasoning that she would suffer acute mental distress by continuing with the pregnancy. In another case, on December 27, 2021, the Bombay High Court [allowed](#) a 12-year old girl to terminate a 23-week pregnancy that was the result of

rape, reasoning that the physical and mental health risks posed to the minor warranted an exception to the 20-week law.

**Ireland:** On April 7, 2022, the upper house of the Irish legislature passed a bill to protect physical access to abortion facilities. The bill came as a result of a grassroots network's efforts with assistance from INCLO-member ICCL. The bill will now go before the lower house. The government is also drafting its own bill which has yet to be published.

On April 1, 2022 the public [consultation](#) period on the operation of the Termination of Pregnancy Act of 2018, which legalized abortion in Ireland, closed. (The legislation provides for review of the Act after it has been in operation for three years). The review process provided an important opportunity for people to outline to the government the barriers to accessing abortion that still exist (mandatory waiting period, lack of geographic spread of services, barriers for the undocumented, and more). INCLO member ICCL is part of a group of civil society and healthcare providers entitled the "Abortion Working Group" (AWG) that put forward a submission. Following review of the submissions, an independent government commission will present recommendations on amendments to the law.

**Kenya:** On March 25, 2022, the High Court of Kenya [affirmed](#) the constitutional right to abortion care, holding that arrests and prosecutions of patients seeking abortions or healthcare providers offering abortion care are illegal. The Court also directed the Kenyan legislature to pass new legislation regarding abortion access consistent with the Constitution of Kenya.

**Malta:** In June, 2022, a group of doctors in Malta filed a legal [protest](#), requesting judicial review of the nation's total ban on abortion. In their protest, the group of physicians argue that Malta's abortion ban prevents them from adhering to international medical standards for necessary abortion care. The doctors ask the court to remove criminal penalties for healthcare providers who help patients terminate their pregnancy and for the creation of new rules that allow abortion in cases of pregnancy complication.

**United States:** On June 24, 2022, the United States Supreme Court ended the federal constitutional right to abortion, [overruling](#) the 1973 decision, Roe v. Wade. The decision comes after an abortion provider challenged a law in the state of Mississippi that bans abortion after 15 weeks of pregnancy. The law was unconstitutional under the Roe v. Wade precedent. Bans on abortion have now gone into effect in several states. INCLO member ACLU has filed a number of suit challenging state bans.

## [Women's Rights](#)

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**Ireland:** On June 2, 2021, the Irish Citizen's Assembly released a series of [recommendations](#) on gender equality, including the deletion of Article 41(2) of the Constitution which states that a woman's place is in the home, a proposal to introduce gender quotas in certain contexts, further support for employed women and people who work as caregivers, and greater recognition of family structures outside of marriage. The Joint Committee on Gender Equality is currently holding hearings with civil society organisations and other key stakeholders, while language for constitutional amendments and new policy and legislation is being considered to implement the recommendations.



## Religious Freedom & Individual Rights

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### Religious Freedom

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**Canada:** INCLO member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, continues their [challenge](#) against Bill 21, a Quebec provincial law that prohibits certain public sector workers—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The case is on appeal following an April 20, 2021, [decision](#) in which the court struck down certain parts of the law, but upheld most of it despite its violation of religious freedom, equality, and other fundamental rights. The law notably includes a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter.

In August 2021, a high school student [sued](#) a publicly funded Catholic school board in Ontario for banning her from running to serve as a student trustee on the school board because she is not Catholic. In the lawsuit, the Ontario high-schooler claims that the school board's decision violates the Canadian Charter of Rights and Freedoms. Previously in April, another publicly funded Catholic school board barred a Muslim student from running for a student trustee position.

**France:** On March 2, 2022, the French Court of Cassation, one of the highest courts in the country, [upheld](#) a ban on attorneys wearing religious attire in courtrooms. The ban, which prohibits any clothing or accessories that outwardly demonstrate religious, philosophical, community, or political affiliations, was challenged by a Muslim law student who wears a hijab.

**India:** On March 15, 2022, a state-level High Court in India [upheld](#) a state-level law banning hijabs in schools and universities. The ban had been challenged by several Muslim students, who stated that the hijab was an essential part of their religious practice. The court rejected the Muslim students' claims, ruling that the hijab is not an essential religious practice.

**United Kingdom:** On January 6, 2022, a U.K. employment tribunal [ruled](#) in favor of a Catholic National Health Service (NHS) nurse who was demoted for refusing to remove a necklace with a small cross, a symbol of her Christian faith, at work at the hospital's request. The hospital asked that the nurse remove the necklace consistent with its policy prohibiting the wearing of necklaces on health and safety grounds, but the tribunal found that other employees at the hospital frequently wore jewelry without reprimand and that the hospital had discriminated against her.

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