

12-30-2022

Different Countries, Same Homophobia and Transphobia: A Cross-Cultural Survey of So-Called Conversion Therapy Practices and the Move Toward Legislative Protections for the United States LGBTQ+ Community

Samantha J. Past

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/bjil>



Part of the [Civil Law Commons](#), [Civil Rights and Discrimination Commons](#), [Common Law Commons](#), [Comparative and Foreign Law Commons](#), [First Amendment Commons](#), [Human Rights Law Commons](#), [Law and Gender Commons](#), [Law and Politics Commons](#), [Law and Society Commons](#), [Legal History Commons](#), [Legislation Commons](#), [Litigation Commons](#), [Other Law Commons](#), [Public Law and Legal Theory Commons](#), [Rule of Law Commons](#), [Sexuality and the Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Samantha J. Past, *Different Countries, Same Homophobia and Transphobia: A Cross-Cultural Survey of So-Called Conversion Therapy Practices and the Move Toward Legislative Protections for the United States LGBTQ+ Community*, 47 Brook. J. Int'l L. 560 (2022).

Available at: <https://brooklynworks.brooklaw.edu/bjil/vol47/iss2/5>

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Brooklyn Journal of International Law by an authorized editor of BrooklynWorks.

DIFFERENT COUNTRIES, SAME HOMOPHOBIA AND TRANSPHOBIA: A CROSS-CULTURAL SURVEY OF SO-CALLED CONVERSION THERAPY PRACTICES AND THE MOVE TOWARD LEGISLATIVE PROTECTIONS FOR THE UNITED STATES LGBTQ+ COMMUNITY

INTRODUCTION

So-called “conversion therapy”¹ is an umbrella term used to describe an array of dangerous practices that wrongly allege to change an individual’s sexual orientation or gender identity or gender expression.² Conversion therapy is grounded in the belief that an individual’s sexual orientation and gender identity or gender expression should change if they do not “fall under what other actors in a given setting and time perceive as the desirable norm.”³ Lesbian, gay, bisexual, transgender, non-binary, and gender non-conforming individuals (LGBTQ+)⁴ are frequently deemed “abnormal” on the basis of homophobic⁵ and

1. The term “conversion” inaccurately implies that an individual can change or “convert” their sexual orientation. See LUCAS RAMÓN MENDOS, ILGA WORLD, CURBING DECEPTION: A WORLD SURVEY ON LEGAL REGULATION OF SO-CALLED “CONVERSION THERAPIES” 17–18 (2020), https://ilga.org/downloads/ILGA_World_Curbing_Deception_world_survey_legal_restrictions_conversion_therapy.pdf. To denounce the expression “conversion therapy” it is recommended when using the phrase that “so-called” precedes the terms. *Id.*

2. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy/> (last visited Nov. 28, 2021).

3. Rep. on Practices of So-Called “Conversion Therapy” on Its Forty-Fourth Session, at 4, U.N. Doc. A/HRC/44/53 (2020) [hereinafter Rep. on Conversion Therapy].

4. LGBTQ+ is an acronym for lesbian, gay, bisexual, transgender, queer or questioning, and all other gender identities and sexual orientations. Kendra Cherry, *What Does LGBTQ+ Mean?*, VERYWELLMIND (Nov. 30, 2020), <https://www.verywellmind.com/what-does-lgbtq-mean-5069804>.

5. “Homophobia is an irrational fear of, hatred or aversion towards” homosexuality and lesbian, gay, or bisexual individuals—someone who is homophobic has homophobia. *Definitions*, U.N. FREE & EQUAL, <https://www.unfe.org/definitions/> (last visited Jan. 24, 2022).

transphobic⁶ ideologies, and they are often targeted by conversion therapy providers.⁷

Physicians, licensed professionals, and religious and spiritual leaders utilize a range of techniques to provide conversion therapy under the guise of providing health care or following religious practices.⁸ In the twentieth century, “biological approaches” were common among providers, such as lobotomies,⁹ castration,¹⁰ testicle implants, clitoridectomies,¹¹ and hormone injections.^{12–13} Today—in the twenty-first century—although some providers still promote “aversion treatments” like electroshock therapy, hypnosis, self-harm, and religious prayer,¹⁴ talk therapy¹⁵ is the dominant method used by proponents of conversion practices.¹⁶

Despite formal public rejection and scientific discreditation, discrimination against the LGBTQ+ community continues to fuel conversion therapy across the globe.¹⁷ Sexual orientation

6. “Transphobia is an irrational fear, hatred, or aversion towards transgender people”—someone who is transphobic has transphobia. *Id.*

7. CHRISTY MALLORY, TAYLOR N.T. BROWN & KERITH J. CONRON, UCLA WILLIAMS INST., CONVERSION THERAPY AND LGBT YOUTH: UPDATE 1 (June 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-Update-Jun-2019.pdf>.

8. *Id.*

9. A lobotomy is an incision into nerve tracts of the frontal lobe of the brain. *APA Dictionary of Psychology: Lobotomy*, AM. PSYCH. ASS’N, <https://dictionary.apa.org/lobotomy> (last visited Jan. 24, 2022).

10. Castration is the surgical removal of the testicles or ovaries. *APA Dictionary of Psychology: Castration*, AM. PSYCH. ASS’N, <https://dictionary.apa.org/castration> (last visited Apr. 11, 2022).

11. Clitoridectomy is the surgical removal of all or a part of the clitoris. *APA Dictionary of Psychology: Clitoridectomy*, AM. PSYCH. ASS’N, <https://dictionary.apa.org/clitoridectomy> (last visited Apr. 11, 2022).

12. *See, e.g.*, MALLORY, BROWN & CONRON, *supra* note 7.

13. Tiffany C. Graham, *Conversion Therapy: A Brief Reflection on the History of the Practice and Contemporary Regulatory Efforts*, 52 CREIGHTON L. REV. 419, 421–22 (2019).

14. Christopher Romero, Note, *Praying for Torture: Why the United Kingdom Should Ban Conversion Therapy*, 51 GEO. WASH. INT’L L. REV. 201, 202–03 (2019).

15. Talk therapy, also known as psychotherapy, is a term for treating mental health issues by discussion with a mental healthcare provider. *Psychotherapy*, MAYO CLINIC, <https://www.mayoclinic.org/tests-procedures/psychotherapy/about/pac-20384616> (last visited Jan. 24, 2022).

16. MALLORY, BROWN & CONRON, *supra* note 7, at 2.

17. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 2.

change efforts¹⁸ like conversion therapy have devastating, long-lasting effects on their victims.¹⁹ Customary side effects of conversion therapy treatments include lowered self-esteem, anxiety, depression, social isolation, self-hatred, shame, guilt, intimacy challenges, suicidal thoughts, and post-traumatic stress disorder.²⁰ As stated by the United Nation's Special Rapporteur on Torture,²¹ conversion therapy can "lead to severe and life-long physical and mental pain and suffering and can amount to torture and ill-treatment."²²

LGBTQ+ rights advocates argue that conversion therapy also violates international human rights law or the right to health, freedom from non-consensual medical treatment, the right to non-discrimination, freedom from torture, the right to privacy, and the rights of the child.²³ In response to the damaging effects of conversion therapy, advocates and allies around the world are actively promoting legislation to ban conversion therapy.²⁴ To date, only eight countries have national conversion therapy bans: Brazil, France, Canada, Ecuador, Malta, Taiwan, Albania, and Germany.²⁵ In 2018, the European Parliament encouraged

18. Sexual orientation, gender identity or gender expression change efforts (SOGIE) refers to the process of attempting to change, suppress, or divert an individual's sexual orientation, gender identity or gender expression. See BISHOP, *infra* note 47, at 7.

19. *Conversion Therapy is Torture*, INT'L REHAB. COUNCIL FOR TORTURE VICTIMS (Apr. 23, 2020), <https://irct.org/media-and-resources/latest-news/article/1027> [hereinafter IRCT].

20. Rep. on Conversion Therapy, *supra* note 3, at 13.

21. The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a United Nations special procedure that examines issues related to torture. *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, INT'L JUST. RES. CTR., <https://ijrcenter.org/un-special-procedures/special-rapporteur-on-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment/> (last visited Jan. 24, 2022).

22. Ryan Thoreson, *Why Banning Anti-LGBT 'Conversion Therapy' Isn't Enough*, HUM. RTS. WATCH (May 15, 2020, 11:09 AM), <https://www.hrw.org/news/2020/05/15/why-banning-anti-lgbt-conversion-therapy-isnt-enough>.

23. See MENDOS, *supra* note 1, at 59.

24. Thoreson, *supra* note 22.

25. Rachel Savage, *French Parliament Bans LGBTQ+ Conversion Therapy*, THOMSON REUTERS FOUND. (Dec. 14, 2021, 12:26 PM), <https://news.trust.org/item/20211214172447-mo0ld>; Matt Lavietes, *Canada Bans Conversion Therapy, Joining a Handful of Other Nations*, NBC NEWS

its member states to ban conversion therapy, however, the Parliament did not provide guidance on how conversion therapy “should be defined or curbed.”²⁶ Various other countries have local civil and criminal bans, regulations or policies that restrict conversion therapy.²⁷

This Note compares conversion therapy practices in three countries with recently introduced LGBTQ+ legislation: Ghana, Canada, and the United States (US). The following piece identifies the political, religious, social, and cultural motivations furthering conversion therapy in each country, and analyzes how each factor contributes to or hinders national conversion therapy legislation. This Note argues that conversion therapy is a pervasive global problem that must be banned through federal law, and the proposed federal legislation banning conversion therapy in the US must be amended to include all forms of conversion therapy practices and eliminate religious exemptions.

This Note proceeds in four parts. Part I discusses conversion therapy at-large and provides the history of conversion therapy practices beginning in the twentieth century. This Part provides global statistics demonstrating the prevalence of conversion therapy and its effects on different populations around the world. Part II is divided into three sections: (A) Ghana; (B) Canada; and (C) the US. Each section of Part II illustrates the experiences of LGBTQ+ individuals, identifies relevant elements that influence the country’s LGBTQ+ related legislation, and examines the status of conversion therapy legislation at present. Part III of this Note explains the similarities and differences between the three nations’ approaches to conversion therapy legislation. Part IV provides recommendations on how a national conversion therapy ban may be enacted in the US, specifically arguing that US federal legislation must include all conversion therapy providers and exclude religious carveouts. Finally, some concluding remarks are offered.

(Dec. 12, 2021, 3:39 PM), <https://www.nbcnews.com/nbc-out/out-news/canada-bans-conversion-therapy-joining-handful-nations-rcna8253>.

26. Thoreson, *supra* note 22.

27. *See* Rep. on Conversion Therapy, *supra* note 3, at 18.

I. WHAT IS CONVERSION THERAPY?

A. A History of Discrimination: Homosexuality as a Mental Disorder

The origins of conversion therapy can be traced back to the twentieth century.²⁸ In the late nineteenth century, scientists classified homosexuality as “morally unacceptable” and began to theorize possible “cures” for homosexuality as a mental disorder.²⁹ Under the pathology of sexual orientation and gender identity, heterosexuality and the alignment of sex assigned at birth with gender identity was accepted as “the biologic norm.”³⁰ Sexual diversity was consequently characterized by global healthcare professionals as a “deviation, a perversion or a mental illness which could be cured, shifted or ‘converted’ with ‘treatment’.”³¹ In 1948, the World Health Organization (WHO)³² branded “same-sex desires” as a mental disorder.³³ In 1952, negative biases and harmful assumptions led the American Psychiatric Association (APA)³⁴ to classify homosexuality as a mental illness.³⁵ Given these formal medical categorizations, physicians encouraged a biological and behavioral approach to “rid their patients of same-sex desires” and framed these practices as “therapies.”³⁶

In the late 1960s, due to an influx of support and the advancement of the US LGBTQ+ rights movement, the “gilded age” of conversion therapy came to an end.³⁷ After the Stonewall Riots³⁸

28. Graham, *supra* note 13, at 421.

29. Rep. on Conversion Therapy, *supra* note 3, at 5.

30. MENDOS, *supra* note 1, at 17.

31. *Id.*

32. The World Health Organization is a United Nations agency that heads global efforts to expand universal health coverage. *About WHO*, WORLD HEALTH ORG., <https://www.who.int/about> (last visited Jan. 24, 2022).

33. Romero, *supra* note 14, at 206.

34. The American Psychiatric Association is the leading psychiatric organization in the world, with members working to advance mental health in over 100 countries. *About APA*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/about-apa> (last visited Jan. 24, 2022).

35. Romero, *supra* note 14, at 208.

36. *Id.* at 206; *see also* MENDOS, *supra* note 1, at 17.

37. Graham, *supra* note 13, at 422.

38. The American Stonewall Riots began the morning of June 28, 1969, when New York City police raided the Stonewall Inn—a popular gay club in Greenwich Village. *Stonewall Riots*, HISTORY.COM (June 25, 2021), <https://www.history.com/topics/gay-rights/the-stonewall-riots>. The police raid

in 1969, medical professionals began to shift their views on homosexuality.³⁹ Activists started pressuring organizations, like the APA, to remove the classification of homosexuality as a mental illness.⁴⁰ In 1987, the APA formally removed references to homosexuality from its Diagnostic and Statistical Manual of Mental Disorders,⁴¹ and in 1992, the WHO removed homosexuality from its International Statistical Classification of Diseases and Related Health Problems.⁴² In the decades that followed, mainstream associations of healthcare professionals began issuing statements publicly rejecting conversion therapy on the grounds of the severe physical and psychological side effects.⁴³ Today, although major international health organizations and mainstream medical and mental health organizations in the US largely reject conversion therapy, practices still occur across the globe.⁴⁴

B. Current Global Prevalence

Conversion therapy exists in many countries and most regions of the world.⁴⁵ In a 2019 survey conducted by OutRight Action International,⁴⁶ a majority of respondents expressed that conversion therapy practices were very common in Africa and somewhat common in Latin America, the Caribbean, and Asia.⁴⁷ According to a 2018 report published by the Williams Institute on Sexual Orientation and Gender Identity Law and Public

incited a riot among bar patrons and residents that lasted six days and included violent clashes with law enforcement. *Id.* The Stonewall Riots are known as the catalyst that started the global gay rights movement. *Id.*

39. Romero, *supra* note 14, at 208.

40. *Id.*

41. *Id.*

42. *Id.*

43. See Graham, *supra* note 13, at 423.

44. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 2; see, e.g., *Policy and Position Statements on Conversion Therapy*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/policy-and-position-statements-on-conversion-therapy> (last visited Nov. 28, 2021).

45. Rep. on Conversion Therapy, *supra* note 3, at 6.

46. OutRight Action International is a leading international LGBT human rights organization. *About Us*, OUTRIGHT, <https://outrightinternational.org/about-us> (last visited Nov. 28, 2021).

47. AMIE BISHOP, OUTRIGHT ACTION INT'L, HARMFUL TREATMENT: THE GLOBAL REACH OF SO-CALLED CONVERSION THERAPY 37 (2019), https://outrightinternational.org/sites/default/files/ConversionFINAL_Web_0.pdf.

Policy,⁴⁸ about seven hundred thousand LGBTQ+ adults between eighteen and fifty-nine years old endured conversion therapy in the US.⁴⁹ Further, about sixteen thousand LGBTQ+ youth ages thirteen to seventeen will receive conversion therapy from a licensed health care professional before they reach eighteen years old, and approximately fifty-seven thousand youths across the US will receive conversion therapy from religious or spiritual advisors before age eighteen.⁵⁰ Globally, minors under the age of eighteen are disproportionately subjected to conversion therapy.⁵¹

Conversion therapy providers predominantly include mental health professionals, faith-based organizations, traditional healers, and state agents—aided by family, community members, and political authorities who promote conversion therapy practices.⁵² A 2020 international report on conversion therapy submitted to the United Nations Human Rights Council,⁵³ found medical and mental health providers “as the main perpetrators in 45.8% of [conversion therapy] cases, religious authorities, traditional healers and groups in 18.9%, conversion camps and rehabilitation centers in 8.5% and parents in 6.9%.” Further, “[s]tate authorities—such as police, military and other entities—accounted for 4.4% of cases, and school authorities in 4.4%.”⁵⁴

48. The Williams Institute is a research center that conducts independent research on sexual orientation and gender identity law and public policy. *About*, WILLIAMS INST., <https://williamsinstitute.law.ucla.edu/about/who-we-are/> (last visited Jan. 24, 2022).

49. MALLORY, BROWN & CONRON, *supra* note 7, at 1.

50. *Id.*

51. BISHOP, *supra* note 47, at 14, 21.

52. *Id.* at 7.

53. The Human Rights Council is an inter-governmental body within the United Nations that promotes and protects global human rights, including addressing human rights violations and providing recommendations. *Welcome to the Human Rights Council*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last visited Jan. 24, 2022).

54. Rep. on Conversion Therapy, *supra* note 3, at 7.

II. GHANA, CANADA, AND THE US: TWO EXTREMES AND A MIDDLE GROUND

A. *The Republic of Ghana: A Largely Anti-LGBTQ+ Nation*

While evidence supports that “Africans are among the world’s least tolerant people when it comes to homosexuality,”⁵⁵ the degree of disapproval of LGBTQ+ people in Ghana is nearly 18 percentage points higher than the average 71 percent documented across African countries.⁵⁶ According to an Afrobarometer⁵⁷ survey conducted in 2019 and 2020, less than one in ten Ghanaians are tolerant toward people in same-sex relationships.⁵⁸ Most Ghanaians not only do not want people in same-sex relationships as neighbors, co-workers, supervisors, or members of their religious communities, but also would report an individual that “they know to be involved in a same-sex relationship” to the authorities.⁵⁹

Widespread anti-LGBTQ+ sentiment in Ghana results in frequent physical and psychological violence and abuse of members of the LGBTQ+ community.⁶⁰ For example, LGBTQ+ individuals are often victims of “mob attacks, physical assault, sexual assault, extortion, discrimination in access to housing, education and employment, and family rejection” due to their sexual orientation or gender identity or gender expression.⁶¹ Violence against lesbian, bisexual, and gender non-conforming women in Ghana usually occurs in their own homes—from physical beatings to subsequent eviction.⁶² Lesbian and bisexual women in Ghana are typically forced to marry men, conceive children, and

55. Daniel Armah-Attoh, *Curbing Intolerance of Persons in Same-Sex Relationships in Ghana: The Important Role of Education* 1 (Afro Barometer, Working Paper No. 184, 2020), https://afrobarometer.org/sites/default/files/publications/Documents%20de%20travail/afropaperno184_curbing_intolerance_for_same_sex_relationships_in_ghana.pdf.

56. *Id.* at 4.

57. Afrobarometer is a pan-African, non-partisan survey research network that conducts surveys and provides data on Africans’ experiences and attitudes on various issues across the continent. *Id.* at 1.

58. *Id.* at 5.

59. *Id.* at 3.

60. WENDY ISAACK, HUM. RTS. WATCH, “NO CHOICE BUT TO DENY WHO I AM”: VIOLENCE AND DISCRIMINATION AGAINST LGBT PEOPLE IN GHANA 1 (Jan. 8, 2018), https://www.hrw.org/sites/default/files/report_pdf/ghana0118_web.pdf.

61. *Id.* at 29.

62. *Id.* at 30.

thus conform to family and societal expectations.⁶³ Afraid of the consequences, LGBTQ+ individuals must hide their sexuality, gender identity or gender expression.⁶⁴

According to data from the Commission on Human Rights and Administrative Justice (CHRAJ),⁶⁵ since 2013, thirty-six of the seventy-five discrimination cases filed with CHRAJ were filed by LGBTQ+ individuals.⁶⁶ Yet, the vast majority of LGBTQ+ victims do not report incidents of violence or abuse because of stigma, fear of exposure and arrest, and negative treatment by the police.⁶⁷ In a 2018 report published by Human Rights Watch,⁶⁸ the LGBTQ+ Ghanaians interviewed concluded that the “combination of the criminalization of adult consensual same-sex conduct and the profoundly religious and socially conservative Ghanaian context has an insidious effect on their individual self-expression.”⁶⁹ All of the interviewees expressed that they either “felt they had little choice but to adopt self-censoring behavior, or worse, deny their sexual orientation or gender identity to avoid suspicion by family members and the communities in which they live.”⁷⁰ LGBTQ+ individuals in Ghana live in fear and isolation, unable to express their true selves and live free from systemic discrimination and persecution.⁷¹

1. Following Its Colonial Origins: Homosexuality as a Criminal Offense

Declared by a gay rights group in a petition sent to the former President of Ghana, John A. Kuffor, “Ghana’s continuing

63. *Id.* at 3.

64. *See id.*

65. The Commission on Human Rights and Administrative Justice is an independent governmental organization that serves to protect fundamental human rights and ensure good governance in Ghana. *What We Do*, CHRAJ, <https://chraj.gov.gh/what-we-do/> (last visited Jan. 24, 2022).

66. ISAACK, *supra* note 60, at 29.

67. *Id.* at 33.

68. Human Rights Watch is an international organization that defends the rights of people around the world, through investigation, exposition, and putting pressure on individuals and institutions with power to “respect rights and secure justice.” *Id.* at preface.

69. *Id.* at 2.

70. *Id.*

71. *See id.*

criminalization of homosexuality is a relic of colonialism.”⁷² Ghana is one of the many former British colonies perpetuating nineteenth century laws imposed by the British monarchy that prohibit “unnatural offenses.”⁷³ As it currently reads, Section 104(1)(b) of Ghana’s Criminal Offenses Act (COA), commonly referred to as the “anti-gay law,” states “[w]hoever has unnatural carnal knowledge . . . of any person sixteen years or over with his consent is guilty of a misdemeanour.”⁷⁴ Section 104(2) defines “unnatural carnal knowledge” as “sexual intercourse with a person in an unnatural manner or with an animal.”⁷⁵ Although “unnatural carnal knowledge” is vague and could apply to oral or anal sex between various individuals—in addition to sex between men—the “law only anticipates the situation where a man has unnatural carnal knowledge of a woman or another man,” and common law defines “unnatural carnal knowledge” to “involve penile penetration of anything other than a vagina.”⁷⁶

While the COA does not expressly criminalize homosexuality, the law is used to target LGBTQ+ people and perpetuate a culture of intolerance and violence.⁷⁷ In various circumstances, Ghanaian enforcement authorities have utilized the COA to arrest individuals suspected of being lesbian or gay.⁷⁸ As reported in the ILGA World’s⁷⁹ 2020 publication, in recent years several adults have been arrested for consensual same-sex sexual acts

72. Kwame Essien & Saheed Aderinto, “Cutting the Head of the Roaring Monster”: *Homosexuality and Repression in Africa*, 30 AFR. STUDY MONOGRAPHS 121, 131 (2009), https://repository.kulib.kyoto-u.ac.jp/dspace/bitstream/2433/85284/1/ASM_30_121.pdf.

73. ALOK GUPTA, HUM. RTS. WATCH, THIS ALIEN LEGACY: THE ORIGINS OF “SODOMY” LAWS IN BRITISH COLONIALISM 1, 25 (Dec. 2008), https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf.

74. The Criminal Offenses Act (1960) Cap. 29 § 104(1) (Ghana).

75. *Id.* § 104(2).

76. ISAACK, *supra* note 60, at 22.

77. *Id.* Notably, the COA is written in terms of the gender binary or “the inaccurate concept that gender is categorized into only two distinct forms (i.e. man/woman).” *Beyond the Gender Binary*, DCEG STAFF (Apr. 1, 2022), <https://dceg.cancer.gov/about/diversity-inclusion/inclusivity-minute/2022/beyond-gender-binary#:~:text=The%20gender%20binary%20describes%20the,%2C%20non%2Dbinary%20or%20gender>.

78. ISAACK, *supra* note 60, at 22.

79. ILGA World, or the international lesbian, gay, bisexual, and intersex association, is a worldwide federation that campaigns for lesbian, gay, bisexual, trans, and intersex rights. *About Us*, ILGA WORLD, <https://ilga.org/about-us> (last visited Jan. 24, 2022).

in Ghana.⁸⁰ For example, in September 2020, eleven lesbian women were arrested in the city of Aflao after a video became public of two women reportedly engaging in sexual acts.⁸¹ Further, local Ghanaian police are known to use social media to entrap and lure LGBTQ+ people—particularly gay men.⁸²

2. Legal “Safeguards” in the Constitution and Government Responses

Despite the country’s codified constitutional claim to guarantee fundamental human rights and freedoms to “[e]very person,” LGBTQ+ individuals in Ghana are left largely unprotected.⁸³ Articles 17(1) and 17(2) of the Constitution of the Republic of Ghana promise equality and bar discrimination “on grounds of gender, race, colour, ethnic origin, religion, creed or social economic status.”⁸⁴ Markedly, sex, sexual orientation, and gender identity or gender expression are not enumerated as unlawful grounds of discrimination.⁸⁵ Ghana’s Constitution also purports to ensure respect for human dignity, protection of personal liberty, and the right to privacy—all of which *should* extend to LGBTQ+ individuals.⁸⁶

The government of Ghana unfailingly rejects requests by United Nations bodies to repeal the law against unnatural carnal knowledge and amend its Constitution.⁸⁷ In tandem, since 2010, Ghanaian government officials and parliamentarians have advocated for additional criminalization of LGBTQ+

80. LUCAS RAMÓN MENDOS ET AL., ILGA WORLD, STATE-SPONSORED HOMOPHOBIA 2020: GLOBAL LEGISLATION OVERVIEW UPDATE 117 (Dec. 2020), https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf [hereinafter IGLA World Report].

81. *Eleven Lesbians Arrested at Aflao In the Volta Region*, GHANA VANGUARD (Sept. 26, 2020), <https://ghanavanguard.com/eleven-lesbians-arrested-at-aflao-in-the-volta-region/>.

82. See, e.g., Colin Stewart, *Ghana: Police Make Rare Arrests in Anti-Gay Blackmail Case*, 76 CRIMES (Apr. 6, 2017, 10:22 AM), <https://76crimes.com/2017/04/06/ghana-police-make-rare-arrests-in-anti-gay-blackmail-case/>.

83. See CONSTITUTION OF GHANA ch. V § 12(2) (1992).

84. *Id.* at arts. 17(1)–(2).

85. See ISAACK, *supra* note 60, at 12.

86. *Id.* at 53.

87. *Id.* at 4.

individuals.⁸⁸ In February 2017, the Speaker of Parliament, Aaron Mike Oquaye, referred to homosexuality as an “abomination” while calling for stricter laws against same-sex conduct.⁸⁹ Subsequently, in July 2017, Oquaye equated homosexuality with bestiality during a public conversation with Amnesty International.⁹⁰

3. The Leading Role of Religion and Religious Conversion Therapy

Religion is instrumental to Ghanaian culture and society.⁹¹ According to a survey developed by Gallup International Association,⁹² about 96 percent of the Ghanaian population claim to practice some form of religious belief system.⁹³ Christianity and Islam, the two dominant religions in Ghana, “inform the view that homosexuality is an abomination and contrary to religious beliefs and teachings.”⁹⁴ Akin to comments made by political leaders, influential religious figureheads—using religion to justify their remarks—make statements that contribute to homophobia and often incite violence toward LGBTQ+ individuals.⁹⁵ In February 2017, Osempakani Kaakyire Kofi, president of Movement for the Kingdom Image, a well-known religious group in Ghana, called on the Ghanaian government to “make the defence of homosexuals a treasonable offence.”⁹⁶ One month later, Osofo Kofitse Ahadzi, a senior member of the Afrikania Mission, a neo-traditionalist movement in Ghana, encouraged gay people

88. *Id.*

89. *Id.*

90. *Id.* Amnesty International is focused on research and campaigning to fight human rights abuses through a “global movement of more than 10 million people who take injustice personally.” *Who We Are*, AMNESTY INT’L (2023), <https://www.amnesty.org/en/who-we-are/>.

91. *Id.*

92. Gallup International Association is the oldest global polling organization in the world, covering over sixty countries on all continents. *About Us*, GALLUP INT’L ASS’N, <https://www.gallup-international.com/about-us> (last visited Jan. 24, 2022).

93. ISAACK, *supra* note 60, at 4.

94. *Id.*

95. *Id.* at 4–5.

96. *Make Defence of Homosexuals Treasonable – Government Urged*, GHANAWEB (Feb. 28, 2017), <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Make-defence-of-homosexuals-treasonable-Government-urged-514297>.

to “go hang themselves,” and said “if [LGBTQ+ people] can’t live normal lives, they should go commit suicide and save our generation from getting out of tune with reality.”⁹⁷

Given the central role of religion and the authority of religious leaders, it is unsurprising that religious conversion therapy is the most practiced form of conversion therapy in Ghana.⁹⁸ As discovered by OutRight Action International, 75 percent of conversion therapy occurrences in Africa are performed for religious and cultural reasons.⁹⁹ To date, homosexuality is still perceived by many Ghanaians as unreligious and “unAfrican.”¹⁰⁰ Religious leaders also promote conversion therapy via religious crusades—where they aim to exorcise “demons of homosexuality.”¹⁰¹ As an example, Ghanaian Pastor, Moses Foh-Amoaning, organizes religious campaigns to protect against the alleged danger that churches will be “dominated by homosexuals” if the clergy does not interfere and fight against homosexuality.¹⁰²

In addition to religious crusades and independent practices performed by religious leaders, prayer camps managed by privately-owned Christian religious institutions are commonplace in Ghana, with several hundred located around the country.¹⁰³ The alleged purpose of these camps is to “serve as refuge for people seeking spiritual healing.”¹⁰⁴ A young woman from the southern Ghanaian city of Kumasi, shared her experience at a camp with Human Rights Watch, explaining when her family suspected she was a lesbian they took her to a prayer camp where

97. *Kill Yourself If You Can't Be Straight – Homosexuals Told*, GHANAWEB (Mar. 13, 2017), <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Kill-yourself-if-you-can-t-be-straight-Homosexuals-told-518288>.

98. See CTR. FOR HUM. RTS. FAC. L. UNIV. PRETORIA, REPORT ON CURRENT PRACTICES IN CONVERSION THERAPY, EMERGING TECHNOLOGY, AND THE PROTECTION OF LGBTQ+ RIGHTS IN AFRICA 11 (2021), https://www.chr.up.ac.za/images/centrenews/2021/Current_practices_in_conversion_therapy_and_emerging_technology_14_May_2021.pdf.

99. *Id.*

100. *Id.*

101. *Id.*

102. Josh Jackman, *Hundreds of Gay People to Be ‘Treated for Homosexuality’ at Camp in Ghana*, PINKNEWS (Aug. 21, 2018), <https://www.pinknews.co.uk/2018/08/21/400-gay-people-treated-homosexuality-camp-ghana/>.

103. ISAACK, *supra* note 60, at 3.

104. *Id.*

she was severely beaten to “cure” her of her “deviant” sexuality.¹⁰⁵

4. The Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill

In July 2021, Ghanaian lawmakers proposed what some LGBTQ+ rights activists referred to as the “most homophobic document the world has ever seen,”¹⁰⁶ and the “worst anti-LGBTQ bill ever.”¹⁰⁷ The draft bill, titled “Promotion of Proper Human Sexual Rights and Ghanaian Family Values 2021” (hereinafter the “Family Values Bill”), was introduced to Ghana’s Parliament in July and underwent its first reading in August.¹⁰⁸ Since its introduction, the Family Values Bill was transferred to Parliament’s Constitutional, Legal and Parliamentary Affairs Committee¹⁰⁹ for additional readings.¹¹⁰

The primary goal of the Family Values Bill is to ban “LGBTQ+ and related activities,” alleging that said activities are inconsistent with the “sociocultural values of any ethnic group in Ghana.”¹¹¹ The proposed legislation targets individuals based on their real, perceived, or questioned sexual orientation, gender identity, and sex characteristics as well as allies, or “a non-queer

105. *Id.*

106. Colin Stewart, ‘The worst anti-LGBTQ bill ever’, 76 CRIMES (July 25, 2021, 7:46 AM), <https://76crimes.com/2021/07/25/the-worst-anti-lgbtq-bill-ever/>.

107. Dan Avery, *Ghana Poised to Vote on ‘worst anti-LGBTQ bill ever,’ Advocates Warn*, NBC NEWS (July 29, 2021, 12:04 PM), <https://www.nbcnews.com/nbc-out/out-news/ghana-poised-vote-worst-anti-lgbtq-bill-ever-advocates-warn-rcna1545>.

108. *Draft Bill on “Proper Sexual Rights and Ghanaian Family Values Bill 2021” – An Analysis by UN Independent Human Rights Experts*, UN GHANA (Aug. 12, 2021), <https://ghana.un.org/en/139914-draft-bill-proper-sexual-rights-and-ghanaian-family-values-bill-2021-analysis-un-independent> [hereinafter *Draft Bill*].

109. The Committee on Constitutional, Legal and Parliamentary Affairs consists of eighteen members who examine questions pertaining to constitutional, legal, and parliamentary issues across Ghana. *Constitutional, Legal and Parliamentary Affairs Committee*, PARLIAMENT OF GHANA, <https://www.parliament.gh/committees?com=15> (last visited Jan. 24, 2022).

110. *See Draft Bill*, *supra* note 108.

111. Human Rights Council, Analysis of the Draft Bill “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021”, § 1, U.N. Doc. OL GHA 3/2021 (Aug. 9, 2021), <https://ghana.un.org/sites/default/files/2021-08/Public%20-%20OL%20GHA%2003.08.21%20%283.2021%29.pdf>.

person who supports or advocates for the queer community.”¹¹² The Family Values Bill intends to impose restrictions and penalties on members of targeted populations, such as criminalization, prohibition of marriage, adoption, fosterage, and all forms of support for LGBTQ+ individuals.¹¹³ Notably, the Family Values Bill also promotes conversion therapy and offers incentives to any person within a targeted population who “recants and makes a voluntary request to access an approved medical help or treatment.”¹¹⁴

Independent United Nations human rights experts urge the Ghanaian government to reject the Family Values Bill, declaring that adopting the legislation, in any form, would be synonymous to a violation of numerous human rights standards.¹¹⁵ For example, efforts to block human rights defenders from organizing to protect LGBTQ+ people, and an absolute prohibition of public debate on sexual orientation and gender identity or gender expression, “raises grave concerns about rights to freedom of opinion and expression, and of association.”¹¹⁶ In addition, human rights experts argue that the proposed legislation would legitimize instances of violence against LGBTQ+ individuals, like conversion therapy practices.¹¹⁷ Experts conclude that the legislation aims to “establish a system of State-sponsored discrimination and violence against the LGBTQ+ community.”¹¹⁸

As Ghana awaits the future of the Family Values Bill, members of the LGBTQ+ community continue to live in fear and experience persistent abuse and discrimination based on their sexual orientation and gender identity or gender expression.¹¹⁹ The very introduction of this legislation exemplifies the religious, political, social, and cultural prevalence of anti-LGBTQ+ sentiment throughout the country, including conversion therapy practices that violate a myriad of essential human rights.¹²⁰

112. *Id.* §§ 2, 4.

113. *Id.* § 4.

114. *Id.* § 9.

115. *Ghana: Anti-LGBTI Draft Bill a “recipe for violence”- UN Experts*, OHCHR (Aug. 12, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27378&LangID=E>.

116. *Id.*

117. *Id.*

118. *Id.*

119. *See id.*

120. *Id.*

B. Canada: A Leader in LGBTQ+ Rights

1. Pan-Canadian Progress

Canada is regularly regarded as an international leader in LGBTQ+ rights.¹²¹ Since the late 1960s, legal protections for the LGBTQ+ community have steadily expanded across Canada, and in subsequent decades mainstream social acceptance has also advanced.¹²² In 1969, the Canadian government passed a bill decriminalizing private sexual acts between consenting adults or individuals over the age of twenty-one.¹²³ In the 1995 case, *Egan v. Canada*, the Supreme Court of Canada held that sexual orientation, although not listed as a ground for discrimination under Section 15(1) of the Canadian Charter of Rights and Freedoms,¹²⁴ “constitutes an equivalent ground on which claims of discrimination may be based.”¹²⁵ In 1996, the Canadian Human Rights Act was amended to include sexual orientation as an unlawful ground of discrimination.¹²⁶ This amendment was a “clear declaration by Parliament”¹²⁷ that members of the LGBTQ+ community in Canada are entitled to equal opportunity “to make for themselves the lives that they are able and wish to have.”¹²⁸ Shortly after the change in law, in the 1998 case *Vriend v. Alberta*, the Supreme Court of Canada held that provincial human rights legislation excluding sexual orientation violated Section 15(1).¹²⁹ In 2000, the Canadian Parliament

121. Krishna Rau, *Lesbian, Gay, Bisexual and Transgender Rights in Canada*, HISTORICA CAN., <https://www.thecanadianencyclopedia.ca/en/article/lesbian-gay-bisexual-and-transgender-rights-in-canada> (last updated Dec. 2, 2021).

122. *Id.*

123. *Rights of LGBTI Persons*, GOV'T OF CAN. (Sept. 10, 2018), <https://www.canada.ca/en/canadian-heritage/services/rights-lgbti-persons.html>.

124. The Canadian Charter of Rights and Freedoms is one part of the Canadian Constitution that outlines the rights and freedoms that Canadians deem necessary for a free and democratic society. *Guide to the Canadian Charter of Rights and Freedoms*, GOV'T OF CAN. (Mar. 24, 2022), <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>. As part of the Constitution, the Charter constitutes the supreme law of Canada. *Id.*

125. *Rights of LGBTI Persons*, *supra* note 123.

126. *Id.*

127. *Id.*

128. Canadian Hum. Rts. Act, R.S.C. 1985, c H-6.

129. *Id.*

passed Bill C-23, a law codifying equal social and tax benefits for same-sex couples as heterosexuals in common-law relationships.¹³⁰ Subsequently, in 2005, Canada became the fourth country in the world to legalize same-sex marriage through the Civil Marriage Act—enacted to permit same-sex marriage across Canada.¹³¹ Presently, the majority of Canadian provinces and territories include sexual orientation in their human rights legislation as an unlawful ground of discrimination.¹³²

2. Unnoticed and Underreported: Pan-Canadian Conversion Therapy

Conversion therapy practices have existed in Canada since the 1950s.¹³³ Beginning in the 1970s, these practices were increasingly used on LGBTQ+ Canadians across the country.¹³⁴ According to a 2019 study conducted by the School of Population and Public Health at the University of British Columbia, more than twenty thousand Canadians experienced a form of conversion therapy.¹³⁵ Sex Now Survey¹³⁶ results collected from 2019 to 2020, discovered that one in five GBT2Q¹³⁷ Canadian men reported receiving sexual orientation, gender identity or gender expression change efforts.¹³⁸ About 40 percent of these men—over forty-six thousand individuals—specifically underwent conversion therapy.¹³⁹ Conversion therapy in Canada is often conducted by licensed healthcare professionals, unlicensed

130. *Rights of LGBTI Persons*, *supra* note 123.

131. Margrit Eichler, *Same-Sex Marriage in Canada*, HISTORICA CAN., <https://www.thecanadianencyclopedia.ca/en/article/same-sex-marriage-in-canada> (last updated July 20, 2021).

132. *See* Rau, *supra* note 121.

133. OHCHR, CONVERSION THERAPY IN CANADA: THE ROLES AND RESPONSIBILITIES OF MUNICIPALITIES 5 (2019), https://www.ohchr.org/Documents/Issues/SexualOrientation/IESOGI/CSOsKZ/REPORT_-_Conversion_Therapy_in_Canada_Nov_2019.pdf [hereinafter CONVERSION THERAPY IN CANADA].

134. *Id.*

135. *Id.*

136. The Sex Now Survey is Canada's largest and longest-running survey on GBT2Q men's health. CMTY.-BASED RSCH. CTR., THE LATEST: CONVERSION THERAPY AND SOGIECE IN CANADA (2020), https://www.cbrc.net/sex_now_survey_results_reveal_prevalence_of_change_efforts?utm_campaign=sogiece_in_canada&utm_medium=email&utm_source=cbrc.

137. Gay, bisexual, trans, two-spirit and queer. *Id.*

138. *Id.*

139. *Id.*

counselors, camps, faith-based organizations and schools, independent religious leaders, and religious institutions.¹⁴⁰

Historically, the Canadian government neglected to regulate or collect data on conversion therapy.¹⁴¹ As a result, conversion therapy has “never been formally tracked or criminalized in Canada,” and the number of Canadians who experienced conversion therapy is likely much higher than that indicated in the information organizations can gather.¹⁴² Although current data provides a “sense of the scope of contemporary [conversion therapy practices],” abundant gaps in knowledge exist, such as accurate information regarding the settings where conversion therapy occurs, the age of an individual at initiation, and duration of the processes.¹⁴³ Despite this deficiency in data, it is clear that conversion therapy practices continue to exist and harm members of the Canadian LGBTQ+ community.¹⁴⁴

3. The Limitations of Provincial and Municipal Jurisdictions

Canada has enacted multiple sub-national restrictions on conversion therapy.¹⁴⁵ The provinces of Ontario, Nova Scotia, and Prince Edward Island all enacted legislation that bans health care professionals from providing conversion therapy to minors without consent.¹⁴⁶ Similarly, Canadian territories like New Brunswick, Quebec, and Yukon Territory introduced analogous legislation that prohibits conversion therapy within their jurisdictions.¹⁴⁷ On a municipal level, many cities and counties

140. Travis Salway et al., *Experiences with Sexual Orientation and Gender Identity Conversion Therapy Practices Among Sexual Minority Men in Canada, 2019-2020*, PLOS ONE (June 3, 2021), <https://doi.org/10.1371/journal.pone.0252539>.

141. KEVIN HURREN, CMTY.-BASED RSCH. CTR., ENDING EFFORTS TO CHANGE SEXUAL ORIENTATION, GENDER IDENTITY & GENDER EXPRESSION 7 (2020), https://www.cbrc.net/ending_efforts_to_change_sexual_orientation_gender_identity_gender_expression.

142. CONVERSION THERAPY IN CANADA, *supra* note 133, at 5.

143. Salway et al., *supra* note 140, at 3.

144. *See id.*

145. MENDOS, *supra* note 1, at 90.

146. Danielle d’Entremont, *Yukon Becomes 1st Territory to Ban Conversion Therapy*, CBC NEWS (Nov. 10, 2020, 6:00 AM), <https://www.cbc.ca/news/canada/north/conversion-therapy-banned-yukon-1.5796188>.

147. *Joint Statement by Minister Lametti and Minister Ien on Legislation to Criminalize Conversion Therapy Receiving Royal Assent*, DEP’T OF JUST. CAN. (Dec. 8, 2021), <https://www.canada.ca/en/department-justice/news/2021/12/joint-statement-by-minister-lametti-and-minister-ien-on->

across Canada, including Vancouver, Strathcona, Edmonton, St. Albert, the Regional Municipality of Wood Buffalo, the Town of Rock Mountain House, Spruce Grove, Calgary, Lethbridge, Beaumont, Saskatoon, and Strathmore created prohibition by-laws.¹⁴⁸ In addition, Montreal passed a declaration in 2019 condemning conversion therapy, encouraging the Canadian federal government to criminalize the practice, and urging the provincial government of Quebec to end conversion therapy throughout the province.¹⁴⁹ However, while municipal bylaws and provincial legislation are a successful step toward stopping conversion therapy in Canada—targeting different ways to prevent the practice—, they do not “fully outlaw the practice itself.”¹⁵⁰ In order to ensure that conversion therapy is eliminated, an all-inclusive federal legislation that updates and amends the Criminal Code of Canada is critical.¹⁵¹

4. Setting the International Stage

Social and political Canadian leaders alike have successfully fought against discrimination and for recognition of the LGBTQ+ community—not only in Canada but also abroad.¹⁵² As declared by the former Minister of Foreign Affairs, Chrystia Freeland, “It is [Canada’s] role to set a standard for how states should treat women, gays and lesbians, transgender people . . .”¹⁵³ The country has often fulfilled this standard-setting role through a variety of methods to protect and promote the human rights of LGBTQ2I¹⁵⁴ people, including working with civil society

legislation-to-criminalize-conversion-therapy-receiving-royal-assent.html [hereinafter *Joint Statement*].

148. *Id.*

149. HURREN, *supra* note 141, at 9.

150. CONVERSION THERAPY IN CANADA, *supra* note 133, at 6.

151. *Id.*

152. See *The Human Rights of LGBTQ2I*, *infra* note 154.

153. Graeme Reid, *Canada Sets International Example in LGBT Rights*, HUM. RTS. WATCH (Sept. 5, 2017, 1:56 PM), <https://www.hrw.org/news/2017/09/05/canada-sets-international-example-lgbt-rights#>.

154. Lesbian, gay, bisexual, transgender, queer, 2-spirit, and intersex (LGBTQ2I) people, whereas 2-spirit refers to “conceptions of sexual and gender identity in some Indigenous communities in Canada.” *The Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, 2-Spirit and Intersex Persons*, GOV'T OF CAN. (July 7, 2020), https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-

organizations and NGOs,¹⁵⁵ providing international assistance programming, using bilateral and multilateral channels to encourage states to decriminalize same-sex conduct, supporting grassroots organizations abroad, and publicly condemning violence and discrimination against LGBTQ2I individuals.¹⁵⁶ Canada actively promotes LGBTQ2I human rights through multilateral forums like the United Nations, the Organization of American States,¹⁵⁷ the Organization for Security and Co-operation in Europe,¹⁵⁸ and the Equal Rights Coalition.¹⁵⁹ Notably, Canada is also a founding and active member of the Organization of the American States LGBTI Core Group¹⁶⁰ and the country served as the co-chair of the Equal Rights Coalition from 2017 to 2019.¹⁶¹ In 2019, Canada announced an LGBTQ2I international assistance program consisting of “\$30 million in dedicated funding over 5 years and \$10 million every year after” to support human rights and advance socio-economic circumstances for LGBTQ2I people in developing countries.¹⁶²

In addition to providing support to like-minded countries abroad, Canada also condemns anti-LGBTQ+ sentiment and resettles refugees fleeing from areas that persecute LGBTQ+

droits_homme/rights_lgbti-droits_lgbti.aspx?lang=eng [hereinafter *The Human Rights of LGBTQ2I*].

155. NGOs stands for nongovernmental organizations, which are often non-profit mission-driven advocacy or service organizations. *Nongovernmental Organizations (NGOs)*, THE PRESIDENT & FELLOWS OF HARV. COLL., <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-service-practice-settings/public-international-law/nongovernmental-organizations-ngos/> (last visited Jan. 24, 2022).

156. *The Human Rights of LGBTQ2I*, *supra* note 154.

157. The Organization of American States is the oldest regional organization in the world established to achieve peace and justice, promote solidarity, strengthen collaboration, and defend sovereignty, integrity, and independence among its member states. *Who We Are*, OAS, https://www.oas.org/en/about/who_we_are.asp (last visited Jan. 24, 2022).

158. The Organization for Security and Co-operation studies the impacts of security reform on LGBT people. *The Human Rights of LGBTQ2I*, *supra* note 154.

159. *Id.*

160. The Organization of the American States LGBTI Core Group is an informal policy-coordination group of member states that aim to advance LGBTI human rights agenda. *Id.*

161. *Id.* The Equal Rights Coalition is an intergovernmental body dedicated to the protection of the human rights of LBTI, and promotion of inclusive development in member and non-member countries. *Id.*

162. *Id.*

people.¹⁶³ For example, in the 2017 anti-gay purge conducted by Chechnya's law enforcement and security officials, the Canadian government publicly condemned the actions of Ramzan Kadyrov, head of the Republic of Chechnya, pushed the government of Russia to intervene, and safely resettled numerous victims.¹⁶⁴ Amid the purge, Ramzan Kadyrov stated "[t]ake them to Canada," whilst renewing his vow to "rid the North Caucasus territory of gay people."¹⁶⁵ While the persecution of LGBTQ+ individuals in Chechnya serves as one example, Canada continues to work with the United Nations Refugee Agency,¹⁶⁶ referral organizations, and private sponsors to aid people who are persecuted based on their sexual orientation, gender identity or gender expression, and HIV status.¹⁶⁷

5. A Liberal Agenda: Politics and Justin Trudeau's Inclusive Canada

Canada is a constitutional monarchy including a federal parliamentary government.¹⁶⁸ The sovereign of England serves as the head of state, and the Prime Minister of Canada leads the government.¹⁶⁹ In a 2019 survey conducted by the Organisation for Economic Co-operation and Development (OECD)¹⁷⁰, 64 percent of Canadians reported confidence and high trust levels in their national government—the "fourth-highest rate and well

163. *Id.*

164. TANYA LOKSHINA, HUM. RTS. WATCH, "THEY HAVE LONG ARMS AND THEY CAN FIND ME": ANTI-GAY PURGE BY LOCAL AUTHORITIES IN RUSSIA'S CHECHEN REPUBLIC 35 (May 2017), https://www.hrw.org/sites/default/files/report_pdf/chechnya0517_web.pdf; Reid, *supra* note 153.

165. Reid, *supra* note 153.

166. The United Nations Refugee Agency is a non-profit organization that aids and protects individuals displaced by violence, conflict, and persecution across the world. *About Us*, USA FOR UNHCR, <https://www.unrefugees.org/about-us/> (last visited Jan. 24, 2022).

167. *The Human Rights of LGBTQ2I*, *supra* note 154.

168. U.S. DEP'T OF STATE, CANADA 2020 HUMAN RIGHTS REPORT 1 (2020), <https://www.state.gov/wp-content/uploads/2021/10/CANADA-2020-HUMAN-RIGHTS-REPORT.pdf>.

169. *Government*, GOV'T OF CAN. (July 24, 2017), <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/learn-about-canada/government.html>.

170. The Organisation for Economic Co-operation and Development is an international organization that promotes policies that promote prosperity, equality, and opportunity for everyone. *Who We Are*, OECD, <https://www.oecd.org/about/> (last visited Jan. 24, 2022).

above the OECD average level of 43 percent” among other nations.¹⁷¹

Justin Trudeau has been the Prime Minister of Canada since 2015 and the leader of the Liberal Party from 2013.¹⁷² In 2017, Trudeau formally apologized to the LGBTQ2I community for the historical injustices that they have faced from the Canadian government.¹⁷³ The public apology, delivered in the House of Commons, acknowledged “Canada’s role in the systemic oppression, criminalization, and violence against the [LGBTQ2I] community.”¹⁷⁴ In his speech, Trudeau further declared that the Canadian government wanted to “be a partner and ally to LGBTQ2I Canadians in the years going forward.”¹⁷⁵ During the apology, Trudeau announced that legislation was introduced earlier that day to expunge and destroy the criminal records of individuals convicted of consensual same-sex sexual activity, and an agreement was made to settle a “class-action lawsuit for 110 million Canadian dollars to be paid out to former civil servants and members of the military who lost their jobs because of their sexual orientation.”¹⁷⁶ After Trudeau’s apology, and throughout his leadership, LGBTQ2I support has increased, including federal legislation to protect transgender rights and the first-ever investments in LGBTQ2I service organizations.¹⁷⁷

Trudeau and the Liberal Party incorporate LGBTQ2I advocacy as a key feature of their political platform, using “every opportunity to position themselves as champions for LGBT2QI

171. *Society at a Glance 2019: A Spotlight on LGBT People*, OECD (Mar. 27, 2019), <https://www.oecd.org/canada/SAG2019-canada-en.pdf>.

172. *Meet Justin Trudeau*, LIBERAL, <https://liberal.ca/rt-hon-justin-trudeau/> (last visited Apr. 13, 2022).

173. *Trudeau Apologises for Canada’s Discrimination Against LGBT People*, BBC NEWS (Nov. 28, 2017), <https://www.bbc.com/news/world-us-canada-42157806>.

174. *‘We betrayed you. And we are so sorry’: Read Trudeau’s Apology to Members of the LGBTQ Community*, CANADIAN PRESS (Nov. 28, 2017), <https://nationalpost.com/news/canada/full-english-text-of-prime-ministers-apology-to-members-of-lgbtq-community> [hereinafter *‘We betrayed you. And we are so sorry’*].

175. *Id.*

176. Julie Moreau, *Justin Trudeau Offers ‘long overdue apology’ to Canada’s LGBTQ Community*, NBC NEWS (Nov. 29, 2017, 10:43 AM), <https://www.nbcnews.com/feature/nbc-out/justin-trudeau-offers-long-overdue-apology-canada-s-lgbtq-community-n824871>.

177. *Our Progress*, LIBERAL PARTY OF CAN., <https://liberal.ca/our-progress/> (last visited Jan. 24, 2022).

equality.”¹⁷⁸ In 2019, after a multiparty federal election, the Liberal Party led by Trudeau, won a plurality of seats in the federal parliament and created a minority government.¹⁷⁹ During his campaign and upon re-election, Trudeau promised a variety of support for LGBTQ2I people, including legislation to “eliminate the practice of conversion therapy for everyone and expanded coverage of the ban to include people over 18 years of age.”¹⁸⁰

6. Bill C-6: Approved by the House of Commons, Dead in the Senate

Previously introduced as Bill C-8 during the first session of the 43rd Parliament, on October 1, 2020, Bill C-6, *An Act to Amend the Criminal Code (conversion therapy)* (Bill C-6), was introduced in the House of Commons.¹⁸¹ Bill C-6 was examined by the House of Commons Standing Committee on Justice and Human Rights¹⁸² and relayed back to the House of Commons with amendments.¹⁸³ On June 22, 2021, the amended bill was passed by the House of Commons and received its first reading in the Senate.¹⁸⁴ The purpose of the bill was to amend the Canadian Criminal Code in order to “discourage and denounce conversion therapy by criminalizing certain activities related to it.”¹⁸⁵ Specifically, Bill C-6 amended the Criminal Code to “prohibit anyone from promoting or advertising services related to conversion therapy; forcing persons or causing a child to undergo conversion therapy; removing a child from Canada to undergo conversion

178. Kristopher Wells, *Opinion: New Trudeau Gov't Must Deliver on LGBTQ Promises*, EDMONTON J. (Dec. 10, 2019), <https://edmontonjournal.com/opinion/columnists/opinion-new-trudeau-govt-must-deliver-on-lgbtq-promises>.

179. U.S. DEP'T OF STATE, *supra* note 168.

180. LIBERAL PARTY OF CAN., OUR PLATFORM AT A GLANCE 36 (2021), <https://liberal.ca/wp-content/uploads/sites/292/2021/09/Platform-Forward-For-Everyone.pdf>.

181. Julian Walker & Karin Phillips, *Legislative Summary of Bill C-6: An Act to Amend the Criminal Code (Conversion Therapy)*, LIBR. OF PARLIAMENT (Sept. 07, 2021), https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C6E.

182. The Standing Committee on Justice and Human Rights examines the bills, policies, programs, and spending of the Canadian Department of Justice and six federal agencies. *Committees*, PARLIAMENT OF CAN., <https://www.our-commons.ca/committees/en/just> (last visited Jan. 24, 2022).

183. Walker & Phillips, *supra* note 181.

184. *Id.*

185. *Id.*

therapy abroad; and receiving a material benefit from the provision of conversion therapy.”¹⁸⁶ In addition, Bill C-6 included provisions that authorized courts to “order that advertisements for conversion therapy be disposed of or deleted.”¹⁸⁷ Ultimately, Bill C-6 died on the Order Paper when Parliament dismissed on August 15, 2021, and the government leader in the Senate chose not to recall the chamber to pass the remaining bills.¹⁸⁸

In the wake of Bill C-6, Prime Minister Trudeau and his ministers called out conservatives in Canada for “using procedural delay tactics to stop votes from happening on outstanding pieces of legislation.”¹⁸⁹ Although the LGBTQ2I community was initially disappointed at the failure of Bill C-6, the government became “committed to a ‘complete ban’ on conversion therapy.”¹⁹⁰ Bill C-6 was a milestone for federal recognition of conversion therapy, but the bill did not criminalize conversion therapy to a “consenting adult if no money or material benefit is received for providing such therapy,” and the proposed legislation did not “make it a criminal offence for a consenting adult to seek or receive conversion therapy.”¹⁹¹

The liberal government under Trudeau promised to introduce a tougher version of Bill C-6 within the first few weeks of its new mandate.¹⁹² LGBTQ2I advocates and critics of the original bill argued that the proposed legislation was “flawed because ‘consent’ to conversion therapy is invalid, on the grounds that the practice does harm and is discredited,” and the bill contained various loopholes for factors like age or faith.¹⁹³ The prior bill outlawed conversion therapy for children, but allowed

186. *Id.*

187. Bill C-6, An Act to Amend the Criminal Code (Conversion Therapy) (as passed by the House of Commons, June 22, 2021).

188. Dale Smith, *Here’s What Died on the Order Paper*, NAT’L MAG. (Aug. 17, 2021), <https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2021/here-s-what-died-on-the-order-paper>.

189. Stephanie Taylor, *Trudeau Accuses Parliament of ‘toxicity’ as Conversion Therapy Ban Passes*, CANADIAN PRESS (June 22, 2021, 6:00 PM), <https://globalnews.ca/news/7972239/justin-trudeau-parliament-toxic/>.

190. Marie Woolf, *Liberals to Introduce Tougher Bill to Ban Conversion Therapy*, Advocacy Group Says, CANADIAN PRESS (Nov. 18, 2021, 6:23 PM), <https://globalnews.ca/news/8384188/conversion-therapy-ban-bill/>.

191. Walker & Phillips, *supra* note 181.

192. Woolf, *supra* note 190.

193. *Id.*

conversion therapy to occur with an adult's consent.¹⁹⁴ In response to critics' opinions, Chantalle Aubertin, a spokeswoman for Minister David Lametti,¹⁹⁵ stated that the government is dedicated to a "complete ban" on conversion therapy that would entirely outlaw conversion therapy practices.¹⁹⁶

7. A New National Law: The Third Time's the Charm

After two failed attempts, Trudeau's liberal government followed through on its promise to introduce a tougher version of Bill C-6 and outlaw conversion therapy for all.¹⁹⁷ As of January 7, 2022, conversion therapy was officially banned in Canada.¹⁹⁸ Bill C-4 was passed unanimously by the House of Commons on December 1, 2021, the Senate on December 7, 2021, and the bill was given royal assent on December 8, 2021.¹⁹⁹ The newly enacted legislation amends the Canadian Criminal Code, making it illegal to provide, promote, and profit off of conversion therapy—regardless of age and consent.²⁰⁰ Specifically, under Bill C-4 various new offenses are created:

- (a) causing another person to undergo conversion therapy; (b) doing anything for the purpose of removing a child from Canada with the intention that the child undergo conversion therapy outside Canada; (c) promoting or advertising conversion therapy; and (d) receiving a financial or other material benefit from the provision of conversion therapy.²⁰¹

Further, anyone found guilty of knowingly causing another person to undergo conversion therapy, including providing

194. *Id.*

195. The Honourable David Lametti is the Minister of Justice and Attorney General of Canada. *Joint Statement*, *supra* note 147.

196. Woolf, *supra* note 190.

197. *Id.*

198. Morgan Keith, *Following Unanimous Parliamentary Approval in 2021, Conversion Therapy is Now Illegal in Canada*, INSIDER (Jan. 8, 2022, 2:18 AM), <https://www.businessinsider.com/canada-banned-conversion-therapy-2022-1>.

199. Christine Hauser, *Canada Bans 'Conversion Therapy'*, N.Y. TIMES (Jan. 6, 2022), <https://www.nytimes.com/2022/01/06/world/canada/canada-conversion-therapy-law.html> (last visited Jan. 24, 2022).

200. Rachel Treisman, *After Two Failed Attempts, Canada Bans Conversion Therapy*, NPR (Dec. 9, 2021, 1:10 PM), <https://www.npr.org/2021/12/09/1062720266/canada-bans-conversion-therapy>.

201. Bill C-4, An Act to Amend the Criminal Code (Conversion Therapy), S.C. 2021, c 24 (Can.) (as assented to, Dec. 8, 2021).

conversion therapy, is liable to imprisonment of up to five years.²⁰² In addition, anyone who is found guilty of promoting or advertising conversion therapy, or anyone who receives a material benefit from providing conversion therapy—indirectly or directly—faces imprisonment of up to two years.²⁰³

Many Canadian politicians and LGBTQ2I rights advocates are celebrating the expeditious approval of Bill C-4—crediting in part conversion therapy survivors who shared their personal experiences²⁰⁴—, and recognizing that Canada’s new criminal laws on conversion therapy are “among the most comprehensive in the world.”²⁰⁵ In a joint statement made by Minister Lametti and Minister Ien²⁰⁶ on December 8, 2021, they declared that “[t]he consensus demonstrated by Parliamentarians in Canada is a part of an emerging global consensus surrounding the real and life-long harms for conversion therapy victims and survivors.”²⁰⁷

C. The United States

1. Targeting the Most Vulnerable: Conversion Therapy and LGBTQ+ Youth

In the US, conversion therapy has been practiced for over a century.²⁰⁸ Despite contemporary rejection from mainstream medical and mental health organizations, health care practitioners and religious leaders continue to provide conversion therapy across the country.²⁰⁹ Minors are particularly vulnerable and thus frequently subjected to conversion therapy.²¹⁰ According to a 2018 report conducted by the Williams Institute, about 350,000 adults in the US who were subjected to conversion therapy were exposed as adolescents.²¹¹ The Williams Institute estimates that fifty-seven thousand youths, aged thirteen to seventeen, will receive change efforts from religious or spiritual

202. *Id.* § 320.102.

203. *Id.* §§ 320.103–04.

204. Treisman, *supra* note 200.

205. *Joint Statement*, *supra* note 147.

206. The Honourable Marci Ien is Minister for Women and Gender Equality and Youth of Canada. *Id.*

207. *Id.*

208. MALLORY, BROWN & CONRON, *supra* note 7, at 2.

209. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 2.

210. See MALLORY, BROWN & CONRON, *supra* note 7, at 1.

211. *Id.* at 2.

advisors across the country, and sixteen thousand LGBTQ+ youth, aged thirteen to seventeen, will receive conversion therapy from a licensed health care professional before eighteen years old.²¹² A 2021 survey completed by The Trevor Project²¹³ found that 75 percent of LGBTQ+ youth in the US have experienced discrimination because of their sexual orientation and gender identity.²¹⁴ Transgender and nonbinary youth reported being subjected to conversion therapy at two times the rate of cisgender LGBTQ+ youth, at an average age of fifteen.²¹⁵ Of LGBTQ+ youth who reported that they were subjected to conversion therapy, 42 percent reported having “seriously considered attempting suicide in the past year.”²¹⁶ Moreover, the survey revealed that youth who have undergone conversion therapy are more than twice as likely to have attempted suicide in the past year as compared to those who were not subjected to these practices.²¹⁷

The detrimental effects of conversion therapy on individuals, specifically minors, are gaining increasing public attention.²¹⁸ In the US, both at the state and national levels, public opinion polls have found majority support for ending the use of conversion therapy on youth.²¹⁹ In a 2019 national poll conducted by Ipsos²²⁰ and Reuters,²²¹ 56 percent of US adults supported the criminalization of conversion therapy on youth by mental health practitioners.²²²

212. *Id.* at 1.

213. The Trevor Project is the largest suicide prevention and crisis intervention organization for LGBTQ youth in the world. THE TREVOR PROJECT, <https://www.thetrevorproject.org/strategic-plan/> (last visited Jan. 24, 2022).

214. THE TREVOR PROJECT, NATIONAL SURVEY ON LGBTQ YOUTH MENTAL HEALTH 2021 2 (2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf>.

215. *Id.* at 12.

216. *Id.* at 2.

217. *Id.* at 12.

218. See MALLORY, BROWN & CONRON, *supra* note 7, at 2–3.

219. *Id.* at 2.

220. Ipsos is a global market research and consulting firm. *About Us*, IPSOS, <https://www.ipsos.com/en/about-us> (last visited Jan. 24, 2022).

221. Reuters is an international news organization. *Our Work*, THOMSON REUTERS, <https://www.reutersagency.com/en/about/our-work/> (last visited Jan. 24, 2022).

222. MALLORY, BROWN & CONRON, *supra* note 7, at 2.

2. State and Municipal Bans: Licensed Health Care Professionals

There are currently twenty states and at least one hundred municipalities that ban the practice of conversion therapy on youth by licensed health care providers in the US.²²³ In 2012, California became the first state to enact a statute banning licensed mental health providers from offering conversion therapy to minors.²²⁴ The California statute became a model for other state and municipal conversion therapy legislation.²²⁵ There are a few common elements among nationwide municipal laws, including similar definitions of conversion therapy and sexual orientation change efforts—defined as an expansive term including efforts aimed at changing a person’s gender identity or gender expression.²²⁶ In addition, the majority of state statutory bans permit licensing entities to discipline health care providers who use conversion therapy on LGBTQ+ youth under eighteen years old.²²⁷ In the Connecticut, Illinois, and New Hampshire laws, conversion therapy for youth is deemed an unfair business practice subject to enforcement and penalties.²²⁸ A New Jersey court in 2015, held that “providing conversion therapy in exchange for payment constitutes a fraudulent business practice, regardless of whether it is used on youth or adults.”²²⁹ Under Delaware’s statutory conversion therapy ban, covered practitioners are prohibited from referring minors to conversion therapy providers outside of the state.²³⁰ While the enacted bans on conversion therapy are valuable to the LGBTQ+ community, in reality, these restrictions have a limited scope of applicability.²³¹ Most of the current conversion therapy bans only target licensed professionals as providers, only protect minors as recipients, and still permit the practice to be used by religious providers.²³²

223. *Conversion Therapy Bans by U.S. State*, BORN PERFECT, <https://bornperfect.org/facts/conversion-therapy-bans-by-state/> (last visited Apr. 13, 2022).

224. Graham, *supra* note 13, at 423.

225. *Id.* at 424.

226. *Id.*

227. MALLORY, BROWN & CONRON, *supra* note 7, at 4.

228. *Id.*

229. *Id.*

230. Graham, *supra* note 13, at 425.

231. *Id.*

232. *Conversion “Therapy” Laws*, MOVEMENT ADVANCEMENT PROJECT (Nov. 23, 2021), https://www.lgbtmap.org/equality-maps/conversion_therapy.

3. Religious Exemptions and First Amendment Challenges

Although there are some similarities among US sub-regional conversion therapy bans, important differences exist for religious exemptions.²³³ Generally, US conversion therapy laws “do not apply to religious or spiritual advisors who engage in sexual orientation or gender identity change efforts.”²³⁴ Nevada, New Hampshire, and Washington have explicit carveouts for religious and spiritual advisors who offer conversion therapy—exempting them from conversion therapy restrictions.²³⁵ The laws in effect in Nevada also note that licensed professionals “who would otherwise be covered may still provide conversion therapy services to minors if they are doing so in a religious counseling or pastoral capacity and make clear that they are not operating under their professional licenses.”²³⁶ Supporters of conversion therapy often argue that bans violate their religious freedom and restrict their freedom of speech under the First Amendment.²³⁷ Wary of the possibility of litigation on the basis of a First Amendment challenge, legislators often exclude faith-based conversion therapy restrictions or include exemptions for religious and spiritual leaders.²³⁸ These religious exceptions for conversion therapy keep LGBTQ+ youth vulnerable to the practice, even in states with enacted conversion therapy bans.²³⁹

4. The Biden Administration’s Promises

The distinctions among conversion therapy bans across regional lines mimic the differing opinions towards the LGBTQ+ community by US political parties and the federal government.²⁴⁰ Days after Joe Biden’s Election Day victory, the President-elect presented a comprehensive plan to advance LGBTQ+ equality and counteract the harmful rollbacks in LGBTQ+ rights

233. *See generally id.*

234. MALLORY, BROWN & CONRON, *supra* note 7, at 4.

235. Graham, *supra* note 13, at 424.

236. *Id.* at 425.

237. *See* John J. Lapin, *The Legal Status of Conversion Therapy*, 22 GEO. J. GENDER & L. 251, 256 (2021).

238. Graham, *supra* note 13, at 425.

239. MALLORY, BROWN & CONRON, *supra* note 7, at 4.

240. Jeff Taylor, *Biden Talked a Big Game on LGBTQ Rights. Here’s What His Agenda May Look Like.*, NBC NEWS (Nov. 11, 2020, 3:29 PM), <https://www.nbcnews.com/feature/nbc-out/biden-talked-big-game-lgbtq-rights-here-s-what-his-n1247451>.

created by the Trump administration.²⁴¹ Included in his plan was a pledge to ban conversion therapy through the enactment of the Therapeutic Fraud Prevention Act.²⁴²

The Therapeutic Fraud Prevention Act was originally introduced in the Senate and the House in 2015 and 2017.²⁴³ On June 24, 2021, the latest version of the legislation was introduced to the Senate, where it is currently still pending.²⁴⁴ This law would outlaw any person from providing or advertising conversion therapy to any individual nationwide.²⁴⁵ According to GLAAD's²⁴⁶ tracker, which monitors the Biden administration's "executive orders, legislative support, speeches and nominations that affect the [LGBTQ+ community],"²⁴⁷ there have been no updates from President Biden regarding a federal conversion therapy ban since taking office.²⁴⁸ On November 20, 2021, however, the White House released a report stating that the administration was updating research on the harms of conversion therapy.²⁴⁹

Separately, in March 2019, the Prohibition of Medicaid Funding for Conversion Therapy Act was introduced in the House of Representatives by Representative Sean Patrick Maloney.²⁵⁰ This federal bill would prevent Medicaid funds from being used to pay for conversion therapy and "crack down on misleading billing tactics," that result in taxpayer dollars funding conversion therapy practices across the country.²⁵¹ This legislation is

241. *Id.*

242. *Id.*

243. MALLORY, BROWN & CONRON, *supra* note 7, at 4.

244. S. 2242, 117th Cong. (2021).

245. *Id.*

246. GLAAD is an American non-governmental media monitoring organization, focused on coverage of LGBTQ people. *About GLAAD*, GLAAD, <https://www.glaad.org/> (last visited Jan. 24, 2022).

247. *Biden Accountability Tracker*, GLAAD, <https://www.glaad.org/biden-harris> (last visited Nov. 28, 2021).

248. *Id.*

249. *Id.*

250. *Prohibition of Medicaid Funding for Conversion Therapy Act*, HUM. RTS. CAMPAIGN (May 27, 2020), <https://www.hrc.org/resources/prohibition-of-medi-caid-funding-for-conversion-therapy-act>.

251. Press Release, Representative Sean Patrick Maloney, Maloney Reintroduces Legislation to Ban Taxpayer Funded Conversion "Therapy" (Apr. 1, 2021), <https://seanmaloney.house.gov/media-center/press-releases/maloney-reintroduces-legislation-to-ban-taxpayer-funded-conversion> (on file with author).

also presently pending and the Biden administration has not provided any additional information since the bill was introduced.²⁵²

III. ROOT CAUSES

While countries in North America are often viewed by the international community as more LGBTQ+ inclusive, the root causes of homophobia and transphobia extend beyond borders.²⁵³ Homophobic and transphobic views, couched in religion, politics, societal conventions, and culture, perpetuate anti-LGBTQ+ sentiment and promote conversion therapy practices around the world.²⁵⁴

In Ghana, Canada, and the US, religion plays a major role in conversion therapy, and religious leaders continue to target LGBTQ+ youth and subject them to conversion therapy practices.²⁵⁵ The connection between religion and the rejection of homosexuality is based on evidence proving that an individual's moral attitudes are formed by exposure to "socializing agents" like religious institutions.²⁵⁶ Christianity is a dominant religion in all three countries, and Christian leaders often use traditional interpretations of the bible to condemn same-sex relations and declare homosexuality as an "abomination."²⁵⁷ Popularized by international media, there is also a developing narrative of US conservative evangelicals and other right-wing Christian groups reportedly exporting the US culture wars on homosexuality to Africa.²⁵⁸ Regardless of the geographic origin, common Christian interpretation is promoted around the world by religious leaders

252. H.R. 1981, 116th Cong. (2019).

253. See, e.g., IGLA World Report, *supra* note 80, at 263.

254. *Id.*

255. *Id.* at 266.

256. Dirk-Jan Janssen & Peer Scheepers, *How Religiosity Shapes Rejection of Homosexuality Across the Globe*, 66 RADBOUND U. NIJMEGEN NETH. J. OF HOMOSEXUALITY 1974, 1974 (2019), <https://www.tandfonline.com/doi/pdf/10.1080/00918369.2018.1522809>.

257. ISAACK, *supra* note 60, at 4.

258. Adriaan Van Klinken, *Christianity and Same-Sex Relationships in Africa*, in ROUTLEDGE COMPANION TO CHRISTIANITY IN AFR. 487, 497–98 (Elias K. Bongmba, ed., 2016), https://www.researchgate.net/publication/303428565_Christianity_and_same-sex_relationships_in_Africa.

claiming that same-sex relationships do not reflect God's "creative intent."²⁵⁹

While religious leaders in Ghana tend to hold more political power than religious authorities in the US or Canada, the political parties of the US and Canadian leaders help to form each nation's legal LGBTQ+ rights agenda.²⁶⁰ Currently, in Canada and the US, liberal and democratic leaders are often elected in part due to the legislative promises made to the LGBTQ+ community.²⁶¹ In Canada, Justin Trudeau and the Liberal Party have not only promised support for the LGBTQ2I, but also proposed three national bans on conversion therapy—implementing feedback from LGBTQ+ rights advocates to ensure comprehensive legislation.²⁶² Unlike Canadian leaders, the promises of the US leaders have yet to result in enacted federal legislation, and previously proposed conversion therapy bans have focused on health care professionals and excluded religious and spiritual leaders.²⁶³

Ultimately, despite differing internal structures, conversion therapy is a pervasive problem in Ghana, Canada, and the US, and national legislation banning conversion therapy is needed to protect LGBTQ+ people. While Canada and Ghana are arguably on opposite ends of the spectrum, referring to their legislative progress or lack thereof, of enacting conversion therapy bans, the US is in the middle—focused on municipal bans—and may be viewed as a model for other nations with more neutral stances on LGBTQ+ rights.

IV. RECOMMENDATIONS

A. *The US: A Federal Law in Progress*

The assortment of local and state conversion therapy legislation in the US reflects the conflicting opinions towards the LGBTQ+ community.²⁶⁴ However, with a democratic president focused on reversing the previous republican administration's

259. Myles Markham, *What Does the Bible Say About Homosexuality*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/what-does-the-bible-say-about-homosexuality> (last visited Dec. 28, 2021).

260. See *'We betrayed you. And we are so sorry'*, *supra* note 174.

261. See *id.*

262. Treisman, *supra* note 200.

263. See, e.g., H.R. 1981, *supra* note 252.

264. See Taylor, *supra* note 240.

rollbacks of LGBTQ+ rights, there is hope that a federal conversion therapy ban may be enacted soon.²⁶⁵

To advance the expansion of national LGBTQ+ protections, advocates, educators, and survivors of conversion therapy must speak up to inform the public that harmful conversion therapy practices exist across the country.²⁶⁶ As Lucas Ramón Mendos, Research Coordinator at ILGA, states “[t]he main driving force (for reform) is survivors with their testimonies coming forwards.”²⁶⁷ Social media, political platforms, and litigation are helpful stages for survivors who feel comfortable to share their stories.²⁶⁸ While awareness is an important advocacy tool—especially in a democratic society where the law tends to reflect general moral and political attitude—law and policy makers must also focus on developing comprehensive federal legislation that bans conversion therapy across the US.

The Therapeutic Fraud Prevention Act of 2021 is a promising federal ban on conversion therapy, however, like Canada’s Bill C-6, there are prominent loopholes that would allow for conversion therapy practices to continue.²⁶⁹ Specifically, the definition of conversion therapy provided in Section 3 reads:

The term “conversion therapy”— (A) means any practice or treatment by any person that seeks to change another individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender, if such person— (i) receives monetary compensation in exchange for such practice or treatment; or (ii) instead of, or in addition to, receiving monetary compensation in exchange for such practice or treatment directly, receives monetary compensation in exchange for a product or service that is integral to the provision of such practice or treatment

265. See, e.g., Rebecca Shabad, *Biden Administration Announces Reversal of Trump-Era Limits on Protections for Transgender People in Health Care*, NBC NEWS (May 10, 2021, 11:45 AM), <https://www.nbcnews.com/feature/nbc-out/biden-administration-announces-reversal-trump-era-limits-protections-transgender-people-n1266823>.

266. See, e.g., Rachel Savage, *As Survivors Speak Out, 9 Countries Seek to Ban Gay ‘Conversion Therapy,’* REUTERS (Feb. 25, 2020, 7:16 PM), <https://www.reuters.com/article/us-global-lgbt-health-trfn/as-survivors-speak-out-9-countries-seek-to-ban-gay-conversion-therapy-idUSKBN20K00T>.

267. *Id.*

268. See, e.g., Rau, *supra* note 121.

269. See S. 2242, *supra* note 244.

by such person, unless such product or service is protected by the First Amendment to the Constitution.²⁷⁰

As currently drafted, conversion therapy providers are connected to monetary compensation or compensation via a product or service.²⁷¹ This definition does not reflect reality, however, because most youths in the US who are victims of conversion therapy are subjected to change efforts by religious or spiritual advisors.²⁷² Thus, a capitalistic approach codified in the Therapeutic Fraud Prevention Act excludes thousands of LGBTQ+ individuals subjected to conversion therapy practices by religious and spiritual leaders who require no compensation for their practices.²⁷³ Federal legislation must be broadened to encompass all forms of conversion therapy—not only commercial conversion therapy practices provided by health care professionals for compensation.

B. Loosen Religion's Grip: Separation of Church and State

Although the US has a “high degree of secularization, religion still exerts an important influence on politics.”²⁷⁴ The Free Exercise Clause of the First Amendment prohibits the US government from penalizing an individual because of their religious beliefs.²⁷⁵ Gender and sexuality legal scholars note that a conversion therapy ban that prohibits unlicensed therapists “could be seen to target religious groups.”²⁷⁶ While individuals are legally entitled to practice any religion of their choice, the right to freedom of religion is not absolute, especially in instances of discrimination.²⁷⁷

According to OutRight Action International, in almost all regions across the globe, current conversion therapy practices

270. *Id.* § 3(1).

271. *See id.*

272. MALLORY, BROWN & CONRON, *supra* note 7, at 4.

273. *See id.*

274. Ding Gang, *Is the US Still a Secular Country, or Religious?*, GLOBAL TIMES (Mar. 3, 2021, 7:15 PM), <https://www.global-times.cn/page/202103/1217201.shtml>.

275. *Your Right to Religious Freedom*, ACLU, <https://www.aclu.org/other/your-right-religious-freedom> (last visited Jan. 24, 2022).

276. Lapin, *supra* note 237, at 265.

277. *See Limits of Religious Freedom*, HARV. POL. REV. (May 27, 2013), <https://harvardpolitics.com/limits-of-religious-freedom/>.

“have been, at best, influenced and, at worst, instigated . . . by conservative Christians from the U.S. and other regions.”²⁷⁸ Thus, anti-LGBTQ+ sentiment promoted by conservative religious groups continues to pose serious threats to individuals across the world, “especially as the methods and intent of these organizations may be disguised as altruistic efforts to support [LGBTQ+] people.”²⁷⁹

Licensed and unlicensed providers of conversion therapy must be included in bans and religious exemptions must be excluded. Further, faith leaders and religious institutions should publicly condemn conversion therapy and “dispel the harmful, religiously based myths which drive negative attitudes and exclusion of LGBTQI people and give the green light for conversion therapy practices.”²⁸⁰ For too long, religious exemptions in US legislation have been used to perpetuate discrimination against the LGBTQ+ community. If religious and faith leaders continue to be excluded from conversion therapy bans, the most vulnerable population of the US—LGBTQ+ youth—will continue to suffer in silence without any form of legal recourse.²⁸¹

C. Continuing Efforts: Local and State Bans Mirroring Federal Goals

Concurrent with efforts toward comprehensive federal legislation, law and policy makers should continue to introduce municipal and state bans that reflect federal law objectives—including all conversion therapy providers and excluding religious exemptions. While a federal ban on conversion therapy should be lawmakers’ focus, given the immediate need to stop harmful conversion therapy practices, LGBTQ+ rights advocates must demand change at all levels of US legislation.

CONCLUSION

Conversion therapy is a form of torture that has devastating, long-lasting effects on its victims.²⁸² Conversion therapy

278. BISHOP, *supra* note 47, at 67.

279. *Id.*

280. *Id.* at 68.

281. *Why the Ban on Conversion Therapy Has to Include Religious Groups*, THE CONVERSATION US (May 25, 2021, 10:50 AM), <https://theconversation.com/why-the-ban-on-conversion-therapy-has-to-include-religious-groups-160896>.

282. IRCT, *supra* note 19.

practices are a demonstration of global societal homophobia and transphobia that is powered by messages from political and religious leaders alleging that “being [LGBTQ+] is pathological, disordered, and unacceptable.”²⁸³ Although Ghana, Canada, and the US are arguably more different than similar, all three countries have perpetuated anti-LGBTQ+ sentiment by permitting conversion therapy practices.

While Canada’s recent federal ban on conversion therapy sets the country apart, Ghana has active anti-LGBTQ+ legislation in place, and the US has an inadequate, narrowly proposed federal legislation that bans some forms of conversion therapy. Supported by a sizeable liberal population, the US is closer to achieving a federal ban than some other countries. However, law and policy makers must focus on developing a comprehensive federal law that includes all forms of conversion therapy, all providers of conversion therapy, and excludes exceptions for religion.

Social media, political platforms, and litigation are effective strategies to increase public education and awareness, however without federal LGBTQ+ protections banning conversion practices, members of the LGBTQ+ community are denied their fundamental human rights. The enactment of a US federal conversion therapy ban is not only necessary for the LGBTQ+ community within the country, but the ban can also have far-reaching effects on countries around the world that may look to US policy and law as an example.

*Samantha J. Past**

283. BISHOP, *supra* note 47, at 67.

* B.A., Barnard College, Columbia University (2018); J.D., Brooklyn Law School (2023); Managing Editor, Brooklyn Journal of International Law (2022-2023). Thank you to the Brooklyn Journal of International Law staff for their efforts developing this Note, and a special thank you to Lucie Couillard Sosa for her support throughout the editing process and beyond. Further, an enormous thank you to my family, partner, friends, and mentors—without your love and encouragement, I would not be where I am today. All errors or omissions are my own.