

Analysis & Impact for Humanitarians: The Looming Spectre of New Anti-LGBTQ Laws in Niger February 2025

Statements made by representatives of Niger’s military government indicate that it intends to pass a law criminalising sexual activity between individuals of the same sex, as well as other acts related to diverse sexual orientations, gender identities and expressions, and sex characteristics (SOGIESC). Opposition to the very concept of homosexuality has been voiced by both the previously democratically elected government, and the junta that has ruled since the country’s 2023 coup. The previous government had **begun the process of revising the Penal Code to include acts relating to homosexuality**, and had announced that these revisions would criminalise:

<p>Homosexual acts</p> <p>Including public displays of affection between members of the same sex.</p>	<p>Involvement in same sex marriage</p> <p>Including purporting to contract/ officiate such a marriage, and also helping to organise or "celebrating" it.</p>	<p>LGBTQI+ organisations/ events/ associations</p> <p>Criminal sanctions would apply to both individual employees, and the organisations themselves.</p>
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Announcements made by the former President indicate that the government intended to prescribe the **death penalty** for some of these acts.

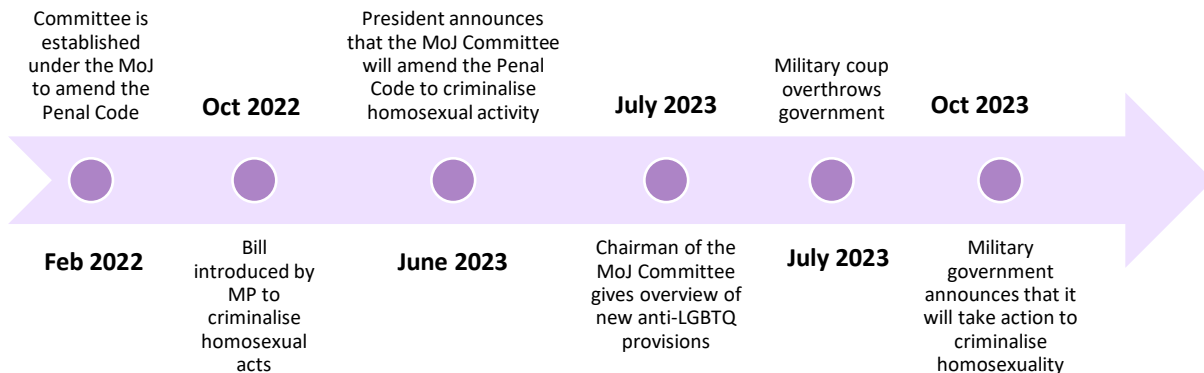
The junta has committed to making its own revisions to the Penal Code – and while it is unclear if these revisions will take the same form as those suggested by the previous government, it is highly likely that they will criminalise homosexual acts and related activity in some way.

When this law is passed, it is likely to impact the way **NGOs, UN agencies, donor agencies, civil society, and their staff, carry out their programming**. Some of these impacts are summarised below – including what is known to have been in the law proposed by the previous government; and provisions which the International PRIDE Centre has assessed as being at risk of inclusion in the new law.

<p>Criminalisation of organisations & donors</p> <p><u>Previous draft law:</u> Would criminalise organisations that are LGBTQI+-focused, and their donors.</p> <p><u>Risks/ possibilities under new law:</u> May criminalise any organisations conducting activities for, or related to, people with diverse SOGIESC.</p>	<p>Criminalisation of programming</p> <p><u>Previous draft law:</u> Would criminalise hosting events targeted towards LGBTQI+ populations and conducting advocacy related to LGBTQI+ rights.</p> <p><u>Risks/ possibilities under new law:</u> May criminalise providing services to LGBTQI+ populations.</p>	<p>Criminalisation of individuals</p> <p><u>Draft law:</u> Would criminalise those engaging in homosexual acts; working at LGBTQI+ organisations; and associated in any way with same sex marriages, including by 'celebrating' them.</p> <p><u>Risks/ possibilities under new law:</u> May criminalise diverse SOGIESC.</p>
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Background

Homosexual acts have never been criminalised in Niger. The existing Penal Code sets the age of consent at 21 for sexual acts between people of the same sex, but 13 for people of different sexes.¹ In recent years, the absence of laws criminalising homosexual acts has increasingly become a subject of public debate. In June 2023, Niger’s then-President, Mohamed Bazoum, announced that a committee under the Ministry of Justice (MoJ) had been reviewing the Penal Code and the law on Criminal Procedure since February 2022, and made clear that the revisions to the laws would include a comprehensive suite of amendments to criminalise homosexual acts.² In July 2023, the Chairman of the Committee made a statement ‘assuring’ the citizens of Niger that *“an entire section of the draft of the new Penal Code has been devoted to its [homosexuality’s] criminalisation”*.



Later in July 2023, however, Niger’s government was overthrown in a military coup, bringing efforts to carry out its legislative and policy agendas to a halt. The military government has committed to undertaking its own revisions to the Penal Code.³ In October 2023, Niger’s Council of Ministers released a statement saying it had become aware of ‘subversive attempts’ by ‘a foreign power’ to *“introduce LGBT practices and debate into [Nigerien] society”*, and pledged to introduce measures to ‘ensure justice’ for those involved in same sex activity.⁴ The military government has not indicated when the new Penal Code, or any other measures intended to criminalise homosexuality, will be adopted. Nevertheless, it should be assumed that such legislation is under development, and will eventually be passed into law.

What might be expected from a revised Penal Code?

Comments by the members of the previous Nigerien government indicate that their amendments to the Penal Code included provisions criminalising the following acts:

Adults engaging in sexual acts with people of the same sex

- Comments made by the former President and the Chairman of the MoJ Committee indicated that these acts included both **sexual intercourse**, and **public displays of affection between members of the same sex**.
- There had been no indication of what the punishment for these will be, other than references to 'significant' prison sentences.

¹ Article 282, Penal Code.

² Caliban (2023) 'Niger's President announces upcoming criminalization of homosexual relations, up to and including the death penalty', Dosmanzanus, available at <https://www.dosmanzanas.com/2023/02/el-presidente-de-niger-anuncia-la-proxima-penalizacion-de-las-relaciones-homosexuales-hasta-con-la-pena-de-muerte.html>

³ CEDAW Committee (2024) 'Experts of the Committee on the Elimination of Discrimination against Women Praise Niger for Efforts to Remove Barriers to Women’s Rights, Ask About Measures to Eradicate Child Forced Marriages and Increase Girls’ Participation in Education' OHCHR, available at www.ohchr.org/en/news/2024/01/experts-committee-elimination-discrimination-against-women-praise-niger-efforts-remove

⁴ N. Pohl (2023) 'Niger Government Commits to Bringing to Justice Those Who Promote LGBT Practices' Tchadinfos, available at www.tchadinfos.com/le-gouvernement-nigerien-sengage-a-traduire-en-justice-ceux-qui-promeuvent-les-pratiques-lgbt/

Any involvement or association with a same-sex marriage

- The types of involvement mentioned by the former President included:
 - **Purporting to contract a marriage** with a person of the same sex (possibly criminalising Nigeriens who were married abroad and then returned to Niger),
 - **Officiating** a ceremony purported to be a marriage between persons of the same sex,
 - **Being the witnesses** at such a ceremony,
 - **Organising** or helping to organise a same sex marriage,
 - **Allowing one's child** to be married to a person of the same sex,
 - **“Celebrating”** a same sex marriage (vague terminology which could include, for example, sending an email or text message to congratulate a newly married couple).
- The former President stated that these offences would attract penalties ranging from **10 years' imprisonment to the death penalty**.
- The language used by government representatives when describing these provisions suggests that they may have been influenced by the Anti-Homosexuality Act in Uganda, which is the harshest on the continent.

Running or financing organisations advocating for LGBTQI+ rights

- **Managing and operating** LGBTQI+ organisations.
- **Financing or sponsoring LGBTQI+ organisations** – putting donors at explicit risk.
- Both **individuals** involved in doing this and the **organisations** themselves could be prosecuted.

What don't we know?

All publicly available information about the previous revisions made to the Penal Code come from public statements by a handful of representatives of the former government. The draft revisions were not made public. Much is therefore unknown about the contents of the draft law – including the following:

<p>The extent of the revisions made to the Penal Code</p>	<p>The full extent of the activities criminalised in the revisions. The former President claimed that over 100 new provisions were added to the law; very little detail has been made available about what these contained.</p> <p>If these provisions include the criminalisation of diverse SOGIESC, in addition to sexual acts. (The former President made some references to homosexuality itself being criminalised.)</p> <p>Whether the law includes sanctions for the ‘promotion’ of homosexuality, as in the laws in Uganda and neighbouring Mali – which would vastly expand the category of people vulnerable to prosecution.</p> <p>Whether the new provisions included any reporting requirements, whereby individuals were obliged to report on anyone they knew to have violated the Code.</p>
<p>When a new Penal Code will be passed, and if it will include the provisions</p>	<p>What criminal sanctions the law imposes for each different activity.</p> <p>The military government has committed to passing its own revisions to the Penal Code, including in statements made to the UN Human Rights Council (HRC) in January 2024 – but the Nigerien representative at the HRC did not answer a question posed to him by another delegation about when the new Penal Code would be adopted.⁵</p>

⁵ OHCHR (2024) 'Experts of the Committee on the Elimination of Discrimination against Women Praise Niger for Efforts to Remove Barriers to Women's Rights, Ask About Measures to Eradicate Child Forced Marriages and Increase Girls' Participation in Education', available at www.ohchr.org/en/news/2024/01/experts-committee-elimination-discrimination-against-women-praise-niger-efforts-remove

drafted by the previous government	<p>Whether the government will accept the revisions made to the Penal Code by the previous government, or write their own.</p> <p>When announcing they would pass a law to criminalise homosexual acts, the government did not actually mention the Penal Code – so it is also possible that this could be passed as a separate piece of legislation.</p>
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Impact on humanitarian programming: NGOs, UN, civil society

A review of the humanitarian response plans in place in Niger since 2015 indicates that LGBTQI+ populations have not explicitly been included in the provision of humanitarian assistance. These documents emphasize the specific needs of women and children, along with other marginalised groups such as internally displaced persons (IDPs), refugees and migrants, and people with disabilities.

Regardless of whether humanitarian programming explicitly identifies and targets these populations or simply serves them as part of its general programming, a new law, when passed, is likely to criminalise humanitarian aid organisations, certain programmes, and many private and professional activities of those working in the sector. The table below sets out what activities would be criminalised according to what is known of the law drafted by the previous government, as well as what *might* be criminalised – based on statements made by the current government, as well as looking at other anti-homosexuality laws that may influence Nigerien lawmakers (including in Uganda and across the Sahel):

Who/what	How they would be criminalised under the previous draft law	Additional risks: how they may be criminalised under a new law
Organisations	<ul style="list-style-type: none"> Organisations identifying as ‘LGBTQI+’ could be prosecuted, regardless of the activities they carry out. Donors, investors or any other type of financier to LGBTQI+ organisations would be at risk of prosecution. Organisations not identifying as LGBTQI+, but advocating for LGBTQI+ rights, could be prosecuted. Former government representatives indicated these organisations would be shut down, but did not speak to what other criminal sanctions may be issued. 	<ul style="list-style-type: none"> There is a risk that organisations simply serving LGBTQI+ communities may also be targeted for prosecution.
Programmes	<ul style="list-style-type: none"> Advocating for LGBTQI+ rights would be a criminal activity. It would be criminal to host what the President described as “homosexual events” - which would likely include any workshops, trainings, healthcare/ psychosocial (PSS) sessions, etc, that brought together or provided information about LGBTQI+ communities. 	<p>Statements made about the law to date have not indicated that it would become illegal to serve LGBTQI+ populations. However, if the law criminalises the ‘promotion’ of homosexuality (currently one of the unknowns, but an increasing trend across Africa), experience in Uganda demonstrates that many humanitarian services for LGBTQI+ people (including medical care, PSS, housing, etc) may be deemed to ‘promote’ homosexuality, and become illegal.</p>

Individuals

- Anyone engaging in same sex relations could be prosecuted.
- Working at LGBTQI+ organisations would be criminalised.
- Anyone involved in any way with same sex weddings, including by 'celebrating' them (which could possibly involve attending them abroad, or congratulating newlyweds) would be considered to have committed a crime punishable by minimum 10 years' imprisonment.
- The law may make it a criminal act to provide services to people with diverse SOGIESC.
- The law may criminalise diverse SOGIESC itself. Some comments from the former President alluded to this being the case.

Other consequences to humanitarians of the law passing are likely to include:

1. **Reduced access to LGBTQI+ communities**, who are likely to go even further underground, making it harder for organisations to identify, reach, or serve them.
2. **Threats to NGOs' ability to abide by humanitarian principles.** Humanitarian response organisations need to ascertain how to continue to serve LGBTQI+ persons in need in their response programming, or risk violating their core humanitarian principles and mandates.
3. **Increased risks to, and damaged relationships with, civil society groups supporting LGBTQI+ populations.** If these laws pass in Niger, local organisations who are working with or serving LGBTQI+ organisations will be at risk of prosecution, and will likely look to international organisations for support on navigating these risks and continuing their work. If larger humanitarian organisations disengage from these groups for fear of prosecution, it will increase the risk and vulnerability of both these organisations and LGBTQI+ individuals; further erode the support structures these communities rely on for their survival; and damage relationships between humanitarian actors and local partners working in this space.
4. **Restrictions or withdrawal of funding** due to perceived association with LGBTQI+ rights.

Social context

Stigmatisation and invisibility of LGBTQI+ populations, homophobia, and opposition to the idea of homosexuality itself, appear to be widespread in Niger. The nation is an estimated 98% Muslim, and religion, along with conservative social values, are deeply embedded in daily life within the country.⁶ Niger ranks fifth lowest on the Africa Gender Index, which measures gender equality using various metrics in all countries in Africa.⁷ In 2016, a survey conducted by a pan-African independent research network found that only 5% of the population would have a positive or neutral reaction to having a homosexual neighbour, while 95% said they would 'hate' or 'really hate' it.⁸

As is the case with countries across Africa, these attitudes have not been constant throughout Niger's history. Pre-colonial societies exhibited a range of attitudes toward same-sex relationships and non-conforming gender roles, including acceptance of certain culturally defined groups. The *yan daudu*, for example – biological men who present as and adopt the roles of women - have been part of the Hausa community of northern Nigeria and southern Niger for centuries.⁹ Discrimination against such

⁶ US State Department (2022) '2022 Report on International Religious Freedom: Niger', available at www.state.gov/reports/2022-report-on-international-religious-freedom/niger/

⁷ African Development Bank (2024) 'Africa Gender Index 2023 Analytical Report', available at www.afdb.org/en/documents/africa-gender-index-2023-analytical-report

⁸ UNHCR, quoting a survey undertaken by Afrobarometre (2017) 'Niger: The situation of sexual minorities, including legislation; treatment of sexual minorities by society and the authorities; protection provided to sexual minorities who are victims of violence (2015-September 2017)', available at www.webarchive.archive.unhcr.org/20230518162058/https://www.refworld.org/docid/59d383854.html

⁹ R. P. Gaudio (2009) 'Introducing 'Yan Daudu'', in Allah Made Us: Sexual Outlaws in an Islamic African City, Wiley-Blackwell, pp.1-28

populations has increased at various times throughout history, including with introduction of colonial-era laws, and more recently with the growth of religious conservatism.¹⁰

The increased presence and influence of Russia in Niger is likely to further stoke mistrust of and resentment against the LGBTQI+ population. The EU has concluded that spreading disinformation about LGBTQI+ communities, and portraying LGBTQI+ rights as a symptom of Western excesses, is a strategy used by Russia to increase anti-Western sentiment in the countries it wishes to influence.¹¹ A study conducted in March 2024 by the Africa Center for Strategic Studies, which looked into large disinformation campaigns across the African continent and traced them to their source, found Russian actors to be responsible for 40 percent of them.¹² The same report found that in the month after the Nigerien coup, content related to Niger spiked by 6645% on 45 Russian state and Wagner Telegram channels, *“as these accounts ramped up disinformation to cement the military junta and associate it with Russia.”*¹³ In the neighbouring Sahel countries of Mali and Burkina Faso – which have also galvanised their relationship with Russia following military coups – the juntas that have come into power have already adopted revised versions of their respective penal codes that criminalise same-sex activity.¹⁴

Uganda’s Anti-Homosexuality Act – which has clearly influenced many of the laws being passed across Africa, including in the Sahel – was passed partially as a result of funding and advocacy by Evangelical Christian groups from the US. Conservative US-based groups continue to push this agenda across East Africa, in a way that appears to be separate to, but aligned with, the Russian messaging.

Legality under the Constitution and international law

When the military took over Niger in July 2023, it announced on national television that it had dissolved the constitution and suspended all institutions. This itself was a violation of the constitution. A state cannot legally disregard its own constitutionally protected laws of due process. It also continues to be bound by regional and international law.

The previously suggested revisions to the Penal Code, or any new version of them suggested by the current government, would likely violate both the Nigerien constitution, and Niger’s obligations under international and regional human rights law – including the African Charter on Human and Peoples’ Rights (‘African Charter’), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The rights protected by these instruments, which would be violated by a law criminalising homosexual acts, are set out below:

Right	Legal basis of right	Ways in which the law violates this right
Prohibition of discrimination on the basis of sex.	<ul style="list-style-type: none"> • Constitution (Art 8) • African Charter (Art 2) • ICCPR (Art 2) 	The UN Human Rights Committee (interpreting the ICCPR) ¹⁵ and the African Commission (interpreting the African Charter) ¹⁶ have found that human rights violations against people on the basis of their

¹⁰ L. Buckle (2020) 'African sexuality and the legacy of imported homophobia' Stonewall, available at www.stonewall.org.uk/news/african-sexuality-and-legacy-imported-homophobia?utm_source=chatgpt.com

¹¹ EU External Action (2023) 'FIMI targeting LGBTIQ+ people: Well-informed analysis to protect human rights and diversity', available at www.eeas.europa.eu/sites/default/files/documents/2023/EEAS-LGBTQ-Report.pdf

¹² Africa Center for Strategic Studies (2024) 'Mapping a Surge of Disinformation in Africa' available at <https://africacenter.org/spotlight/mapping-a-surge-of-disinformation-in-africa/>

¹³ Ibid.

¹⁴ S. Carter (2024) 'Burkina Faso bans "homosexuality and associated practices" as Africa's coup belt lurches away from the West' CBS News, available at www.cbsnews.com/news/burkina-faso-ban-homosexuality-africa-coup-belt-niger-mali-lurch-to-russia-china/

¹⁵ Human Rights Committee (2014) Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992

¹⁶ African Commission (2014), 'Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity', ACHPR/Res.275(LV)

		SOGIESC is a form of discrimination on the basis of sex. The Code violates each of the rights included in this table, and does so discriminatorily.
Right to privacy/ "secrecy of communications" ¹⁷	<ul style="list-style-type: none"> • Constitution (Art 29) • ICCPR (Art 17) • African Charter (implied) 	The law makes it a criminal act to even celebrate the marriage of people of the same sex, or to 'allow' one's child to enter into such a marriage, criminalising private communications between friends/ within families.
Right to equal protection of the law	<ul style="list-style-type: none"> • Constitution (Art 8) • African Charter (Art 8) • ICCPR (Art 26) 	The law removes protections for LGBTQI+ people.
Freedom of thought, opinion, and expression	<ul style="list-style-type: none"> • Constitution (Art 30) • African Charter (Arts 8, 9) • ICCPR (Art 19) 	The components of the law that criminalise celebrating same sex marriages, described above, also violate this right.
Freedom of association	<ul style="list-style-type: none"> • Constitution (Art 32) • African Charter (Arts 10, 11) • ICCPR (Art 22) 	Prohibiting LGBTQI+ events and associations violates this right.
Rights against arbitrary arrest and punishment	<ul style="list-style-type: none"> • African Charter (Art 6) • ICCPR (Art 9) 	It is likely that any new law will suddenly render vast swaths of the population vulnerable to possible arrest based on perceptions of their identities and opinions.

¹⁷ This is the language from the Nigerien constitution.

Recommendations

It is recommended that humanitarian and aid organisations operating in Niger come together to (1) coordinate advocacy activities and messages opposing the introduction of a new anti-LGBTQI+ law, recognising that there is likely to be limited time to prevent its adoption; (2) develop contingency and risk mitigation plans and ensure they are prepared, in the event that the law does pass; and (3) devise strategies for continuing to stand with and provide critical assistance to LGBTQI+ populations, even in the face of restricted new laws. Specific recommendations are also included below for donor organisations, who are explicitly targeted by the draft law.

Coordinate to prevent law from passing

- Conduct advocacy at HQ/ international level.
- Brief donors on the potential impacts of a new anti-LGBTQI+ law.
- Document and report incidents to build strong evidence base.
- Coordinate to align messaging.

Prepare and reduce risk

- Review programmes and develop contingency plans.
- Set clear redlines, communicate them to donors and HQs.
- Put detailed and budgeted risk mitigation and security plans in place.
- Increase security costs.

Provide services and support

- Use alternative/ inclusive demographic categories to reach LGBTQI+ populations.
- Identify local groups supporting LGBTQI+ populations and coordinate internationally to support them.
- Advise partners on navigating the law.

Donors

- Review grantee portfolios and analyse risk (to donors and grantees)
- Coordinate/ organise to identify local groups to support. Develop strategies for continuing support if/ when the law is passed.
- Collaborate with grantees to develop mitigation plans.

The International PRIDE Centre

The International PRIDE Centre (Protection, Rights, Inclusion in Displacement & Emergencies) provides legal and policy analysis, preparedness, and programming tools for emergency response agencies to ensure inclusive programming for LGBTQI+ persons in emergency, humanitarian, and development settings. For questions about this briefing or to discuss how the PRIDE Centre may be able to support your operations, please contact InternationalPrideCentre@pridecentre.org.

The PRIDE Centre is rooted in a foundation of anti-racism and aid decolonisation across all outputs and operations. We embrace SOGIESC communities in all their diversity, inclusive of indigenous understandings of non-CIS sexual identity and gender expression and identity.