

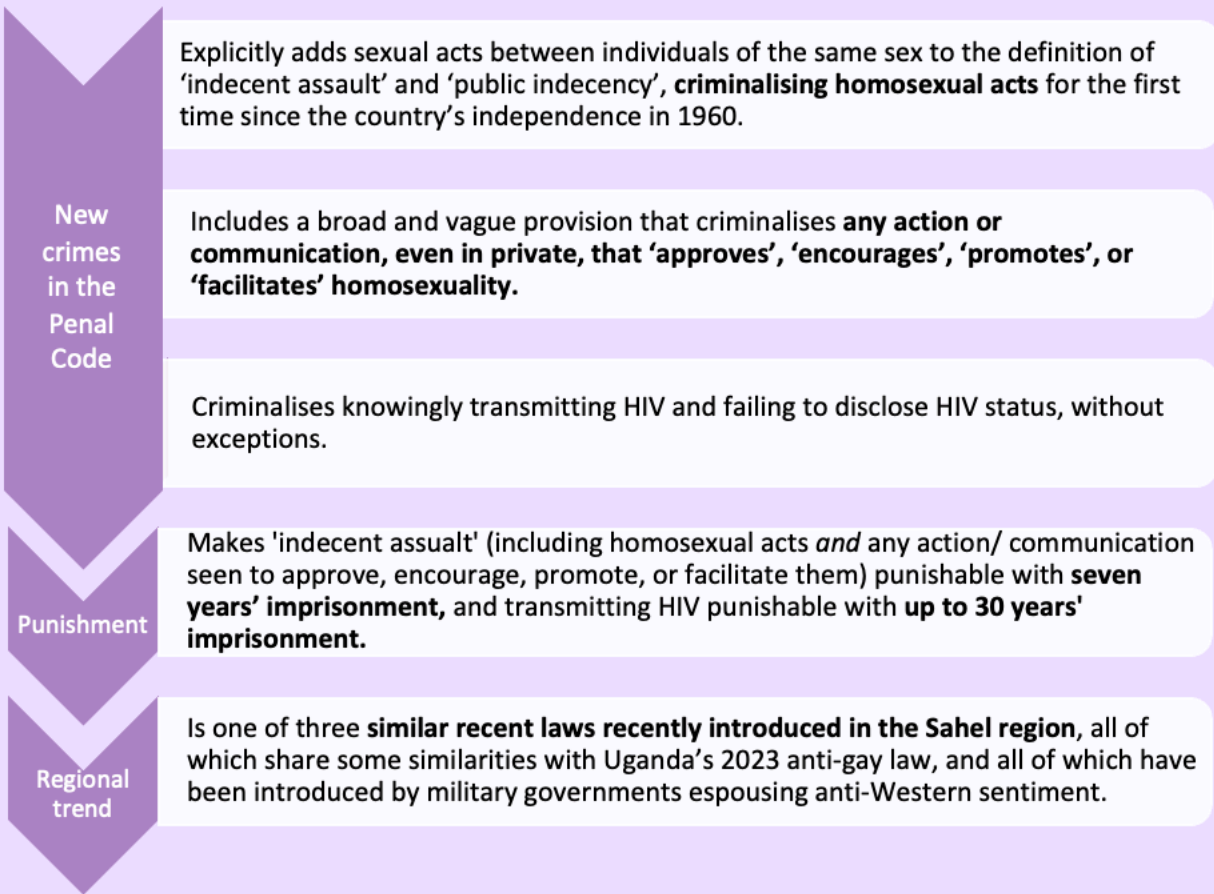


THE INTERNATIONAL PRIDE CENTRE
PROTECTION, RIGHTS, INCLUSION
IN DISPLACEMENT & EMERGENCIES

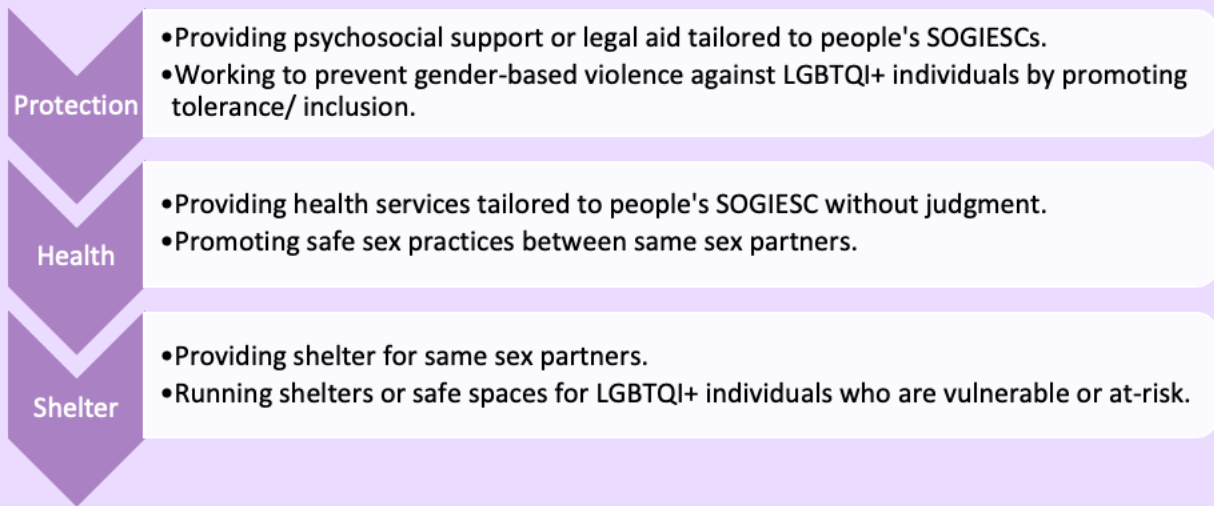
January 2025 Bulletin: New Mali Anti-LGBTQI Law

Legal Analysis & Impact for Humanitarians

A revised version of Mali's Penal Code, which came into effect in Mali in December 2024:



The revised Penal Code does not make any explicit reference to organisations delivering humanitarian assistance which is accessible to people with diverse sexual orientations or gender identities and expressions (SOGIESC). However, the new provisions **may criminalise the way NGOs, UN agencies, civil society, and their staff carry out their programming.** The following activities, for example, are likely to be considered crimes under the new Code:



Overview of the law

The new law consists of amendments to the 2001 Penal Code. These amendments were passed by Mali's military-controlled parliament, the **Transitional National Council (TNC)**, on 31 October 2024, and subsequently approved by the President, General Assimi Goïta. The law came into effect in Mali on 13 December 2024.

The relevant amendments have been inserted in three places:

1. Updating the section on ‘offences against public dignity’ to explicitly include homosexual acts,
2. Creating a new offence of ‘voluntary transmission of HIV’, and
3. A subsection within the new provision which refers to incest, and makes same sex incest an aggravating circumstance.

Offences against public dignity

Article	Offence	Language used	Punishment
325(2)	Indecent assault	<ul style="list-style-type: none"> • “Any unnatural sexual act* committed with an individual of the same sex.” • “Any comment, image, public or private writing, any public or private act, likely to approve, encourage, promote or facilitate the indecent assault.” 	Seven years’ imprisonment + fine of 500,000 francs (USD 775).
325(1)	Public indecency	“Any unnatural sexual act* performed publicly with an individual of the same sex.”	Two years’ imprisonment + fine of 200,000 francs (USD 310).

* ‘Sexual act’ is not defined.

The first part of the Article on ‘indecent assault’ in the Code criminalises homosexual ‘acts’, rather than identities or expressions. However, the second part of the Article criminalises acts or communications seen to ‘approve, encourage, promote or facilitate’ sexual acts between same sex individuals.

Approve, encourage, promote, facilitate

The vague nature of these verbs renders it difficult to know exactly what conduct will be criminalised under the Code. The words ‘encourage’, ‘promote’, and ‘facilitate’ are also used in the Ugandan anti-gay law, which is infamous for being the harshest on the African continent, and which has resulted in arrests of people and the closing of organisations providing services to LGBTQI+ people.¹ **The word ‘approve’ is not used in the Ugandan law – but seems to be even broader than the other three;** requiring only a passive act of approval (of homosexual acts) to contravene the Code.

In Uganda, people presenting themselves in a way that the police have interpreted as homosexual have been arrested under the Ugandan law’s provisions on ‘promoting’ homosexuality. Under Mali’s new law, anyone conveying ‘approval’ of homosexual acts is vulnerable to prosecution – including, presumably, those conveying approval by the way they look or act. Thus, the law likely **implicitly criminalises diverse SOGIESC**. Human Rights Watch has reported that in the month since the law was passed, individuals have been arrested for under the Code **based purely on their physical appearance or gender expression.**²

Voluntary transmission of HIV

Article	Offence	Language used	Punishment
321(30)	Voluntary Transmission of HIV	“Any person living with HIV is required to disclose their HIV status to their spouse or sexual partner [within] six weeks.”	<ul style="list-style-type: none">• Failure to disclose: fine of 1m francs (USD 1550)• Failure to disclose + transmission: 10 years’ imprisonment + fine of 5m francs (USD 7750)• Failure to disclose + person dies of HIV: Same fine + 30 years’ imprisonment
321(32)		“Any person who knowingly transmits or attempts to transmit HIV to another person, by any means, shall be punished...”	Three years’ imprisonment and a fine of 20m francs (USD 31,000).

The Code introduces the above articles criminalising the **knowing transmission** of HIV and/or **non-disclosure of HIV status**. **There are no exceptions** for cases where there is no significant risk of transmission; where the sexual partner accepted the risk; where reasonable measures to reduce risk of transmission were taken; or where the person did not disclose their status due to fear of violence or negative consequences – as recommended by UNAIDS and the UNDP in their Policy Brief on the criminalisation of HIV transmission.³ These provisions are likely to **disproportionately impact gay men and men who have sex with men**. The phrasing of the prohibition of ‘knowingly transmitting’ HIV, ‘by any means’, could also criminalise its transmission from mother to child.

Incest provision

The Act also introduces a new article criminalising incest, which makes incest committed between persons of the same sex an aggravating circumstance. This provision implies that incest committed against a person by a member of the opposite sex is more natural or acceptable than incest committed by a person of the same sex, thereby treating victims unequally.

Impact on humanitarian programming: NGOs, UN, civil society

As is unfortunately common in global humanitarian programming, there is little reference to LGBTQI+ populations in the humanitarian plans and reports that have been released in Mali since the crisis response began in 2012. The extent to which humanitarian response programming has even *attempted* to assist LGBTQI+ persons or communities in Mali is therefore difficult to assuage.

Regardless of whether humanitarian programming explicitly targets these populations or simply serves them as part of its general programming, it is the International PRIDE Centre’s analysis is that humanitarian organisations and staff members who knowingly provide services to LGBTQI+ individuals are at risk of meeting the definition for committing ‘indecent assault’ under the Code. Examples of programming and activities possibly criminalised under the law include:

Sector	Examples of programming/ activities	How criminalised under the law
All	<ul style="list-style-type: none"> • Making clear that programming is open to people of all SOGIESCs. • Providing services to LGBTQI+ individuals without judgment. • Having internal rules and regulations prohibiting discrimination on the basis of SOGIESC. 	Under the law, simply 'approving' of homosexual acts is criminalised. Offering services and conducting operations in a way that includes LGBTQI+ individuals and treats them as equals may now be considered a criminal act.
Protection	<ul style="list-style-type: none"> • Providing psychosocial support (PSS) or legal aid tailored to people's SOGIESC. • Working to prevent gender-based violence against LGBTQI+ individuals by promoting tolerance/ inclusion. 	PSS that is appropriate to a person's SOGIESC, legal aid that recognises their rights to equality, or the promotion of tolerance and inclusion, may all be considered approval, encouragement, or even promotion of homosexual acts.
Health	<ul style="list-style-type: none"> • Providing health services tailored to people's SOGIESC. • Promoting safe sex practices between same sex partners. 	The promotion of safe sex practices between same sex partners may be categorised as the promotion of sexual acts between same sex partners.
Shelter	<ul style="list-style-type: none"> • Providing shelter for same sex partners. • Running shelters or safe spaces for LGBTQI+ individuals who are vulnerable or at-risk. 	Providing shelter may be considered to facilitate homosexual acts, and running safe spaces may be seen to approve, encourage or promote them.

There are no obligations to report violations under the Code. Thus, while the new provisions are vague and sweeping in the conduct they criminalise, unlike the Ugandan Act, they do not establish a system in which all Malians are expected to report acts believed to violate the Code to the state.

The risks posed by this law to humanitarian organisations operating in Mali include:

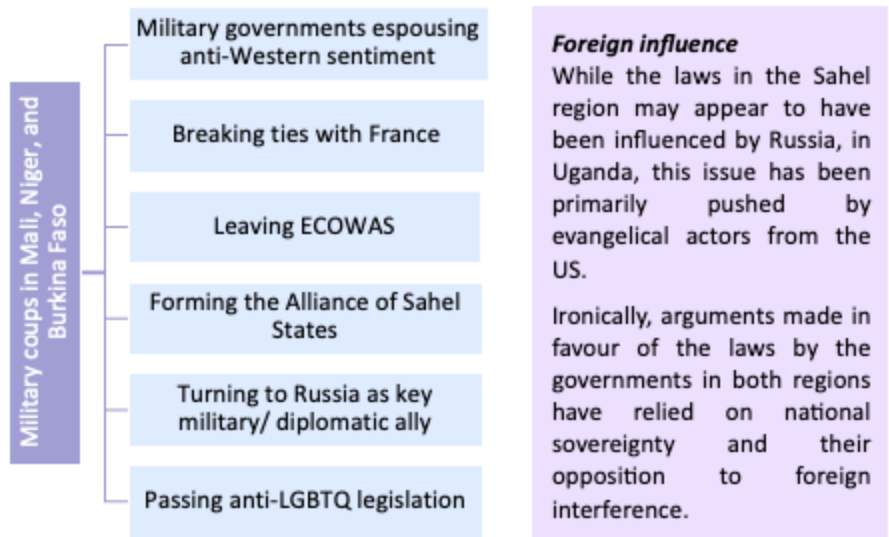
1. **Security risks for staff:** Staff who indicate through their communications or actions (public or private) that they approve of same sex relations, and/or who implement any of the programming listed above, are at risk of arrest and prosecution under the Act. LGBTQI+ staff are at increased risk. Harassment and violence by private individuals may also increase.
2. **Operational risks:** An organisation seen to serve LGBTQI+ populations, to promote policies of inclusion of people of diverse SOGIESC, or who undertakes programming such as that listed in the table above, is likely to be seen to be violating the Code. Since coming to power, the military government has dissolved numerous civil society groups, or prohibited them from operating in the country. It is likely to shut down or deport any organisation seen to be violating these new provisions.
3. **Programming:** All the programme types listed above – including shelters/ safe spaces for LGBTQI+ individuals; tailored medical, legal, and psychosocial services; and efforts to prevent violence against people with diverse SOGIESC – will likely terminate.
4. **Access to LGBTQI+ communities:** LGBTQ individuals are likely to go further underground, making it harder for organisations to identify, reach, or serve them.
5. **Increased risks for LGBTQI+ groups and community support structures:** Most of the support for LGBTQI+ individuals in Mali comes from local LGBTQI+ groups and community structures, who are already under-resourced and at-risk. If larger humanitarian organisations disengage from these groups for fear of prosecution, it will increase the risk and vulnerability of LGBTQI+ individuals and further erode the support structures these communities rely on for their survival.
6. **Funding:** Organisations may face restrictions or withdrawal of funding due to perceived association with LGBTQI+ rights.
7. **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.

Background and context

The law was introduced by the military government that took control of Mali in May 2021. The coup was Mali's second in a nine month period, and took place amidst a wave of military takeovers across the Sahel region.⁴ As in neighbouring Niger and Burkina Faso, Mali's military government has exploited resentment against France – the former colonial power, seen by many to maintain an outsized and paternalistic influence in the region – and against the West more broadly, to justify its rule. The coups in each of these countries were followed by the new governments breaking ties with France; cooling relations with the US; exiting the Economic Community of West African States (ECOWAS); and forming their own Alliance of Sahel States.⁵ The Mali military's commitment to a transition to democracy, first scheduled for 2022, and then for 2024, has now been postponed indefinitely.⁶

Immediately after coming into power, Mali's military government demanded the withdrawal of both French troops and the UN peacekeeping mission in the country,⁷ and turned instead to Russia for military assistance – both through the Kremlin and the Russian private military company, Wagner.⁸ Russia has a vested interest in maintaining these relationships, which are central to its presence in the region. The EU has concluded that spreading disinformation about LGBTQI+ populations is a tactic used by Russia to *'drive a wedge between traditional values and Western democracies'* within the countries in which it wishes to exert influence.⁹ The narrative that homosexuality is a foreign import that threatens local ways of life has reportedly become increasingly dominant in Mali since the military came to power.¹⁰ In an announcement about the revised Penal Code, Mali's Justice Minister framed the provisions criminalising homosexuality as necessary for the *"protection of Mali's traditional and moral values"*,¹¹ adding, *"we will not accept our customs and values being violated by people from elsewhere."*¹²

Similar laws have been passed in Burkina Faso and Niger, reflecting a regional trend of increased persecution of LGBTQI+ individuals under the guise of protecting local culture and resisting Western influence. These laws follow the Ugandan anti-homosexuality legislation – both in terms of when they were passed, and in some of their characteristics (in the Mali law, for example, the provisions criminalising the 'promotion' of homosexual acts appear to borrow heavily from the Ugandan Act).



Legality under the Constitution and international law

The revisions to the Penal Code likely violate Mali's own constitution, which protects a broad range of human rights. A constitutional referendum held in 2023 left the constitution's section on human rights intact, but introduced a provision stipulating that marriage is defined as "*a union between a man and a woman*". (Other than pointing to the emergence of a particular agenda, this amendment has little relevance to the revised Penal Code provisions). The constitutionally protected rights that are violated or threatened by the revised Code are enumerated in the table below.

The new provisions of the Penal Code also contravene Mali'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 and violated by the Code 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 2) • African Charter (Art 2) • ICCPR (Art 2) 	The UN Human Rights Committee (interpreting the ICCPR) ¹³ and the African Commission (interpreting the African Charter) ¹⁴ have found that human rights violations against people on the basis of their 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	<ul style="list-style-type: none"> • Constitution (Art 6) • ICCPR (Art 17) • African Charter (implied) 	The law explicitly criminalises private acts, including sexual acts and even private communication between citizens.
Right to equal protection of the law	<ul style="list-style-type: none"> • African Charter (Art 3) • ICCPR (Art 26) 	The law removes protections for LGBTQI+ people.
Freedom of thought, opinion, and expression	<ul style="list-style-type: none"> • Constitution (Art 4) • African Charter (Arts 8, 9) • ICCPR (Art 19) 	The law criminalises the expression of opinions that 'approve' of or 'promote' homosexuality.
Freedom of association	<ul style="list-style-type: none"> • Constitution (Art 5) • African Charter (Arts 10, 11) • ICCPR (Art 22) 	Prohibiting communication that approves, encourages, or promotes homosexuality effectively prevents any organising or association around LGBTQI+ rights or identities.
Rights against arbitrary arrest and punishment	<ul style="list-style-type: none"> • Constitution (Art 9) • African Charter (Art 6) • ICCPR (Art 9) 	The vague nature of the law leaves vast swaths of the population vulnerable to possible arrest based on perceptions of their identities and opinions. An increase in arbitrary arrests has been reported since the law's adoption. ¹⁵
Right to health	<ul style="list-style-type: none"> • Constitution (Art 17) • African Charter (Art 16) • ICESCR (Art 12) 	Criminalising HIV transmission reduces the likelihood that individuals will disclose their HIV status, undergo testing, or seek support. The possible criminalisation of transmission from mother to child undermines health outcomes for both. The law will prevent efforts to promote safe sex between same sex partners.

Impact in practice

The law has only been in force since 13 December 2024, so the full extent of its impact is yet to be understood. However, in November 2024 – soon after the law had been passed, but before it officially came into force – Human Rights Watch was already reporting that its ‘immediate consequence’ was an increase in arbitrary arrests, detention, and physical abuse by security forces against individuals based solely on appearance or gender expression.¹⁶

For humanitarian organisations, the law is likely to be used as an additional tool in the junta’s efforts to shrink the civic space. It will follow a series of measures that have been made in the last several years, including the requirement that NGOs must have their finances approved by the Minister of Territorial Administration (on a monthly basis, for foreign organisations); new reporting requirements; a ban on NGOs receiving French funding; and the establishment of a new commission for the ‘coordination, evaluation, monitoring and control of associations and NGOs’.¹⁷

Recommendations

It is recommended that humanitarian organisations operating in Mali act swiftly to review their programming and operations to determine their compliance with the law, and collaborate to devise strategies for mitigating risks to themselves, while continuing to stand with and provide critical assistance to LGBTQI+ populations. Specifically, organisations should:

Advocacy

- Conduct advocacy at HQ/ international level.
- Brief donors on the potential impact of the new provisions of the Code.
- Build evidence base on impact of the Code in practice.

Co-ordination

- Coordinate to align messaging.
- Identify groups supporting LGBTQI+ populations and coordinate internationally to support them.

Risk mitigation

- Put detailed and budgeted risk mitigation and security plans in place.
- Seek input from LGBTQI+ populations on these plans.
- Increase security costs.

Services & support

- Use inclusive demographic categories to reach LGBTQI+ populations, e.g. targeting youth groups, GBV survivors, people with specific health needs, etc.
- Support community structures relied on by LGBTQI+ individuals.
- Advise partners on navigating the law.

¹ Strategic Response Team (2023) "'Eteeka Lyayita... Even the Government does not like you homosexuals", available at https://www.kuchutimes.com/wp-content/uploads/2023/09/20230927_LIVES-AT-RISK.Final-min.pdf

² L. Kojoue (2024) 'New Mali Law Disastrous for LGBT People', HRW, available at www.hrw.org/news/2024/11/06/new-mali-law-disastrous-lgbt-people

³ UNAIDS and UNDP (2008) 'POLICY BRIEF : Criminalization of HIV Transmission', available at www.undp.org/sites/g/files/zskgke326/files/publications/Policy_Brief.pdf

⁴ C. Nzuki (2024) 'The Cost of Paternalism: Sahelian Countries Push Back on the West', CSIS, available at www.csis.org/analysis/cost-paternalism-sahelian-countries-push-back-west

⁵ C. Nzuki (2024) 'The Cost of Paternalism: Sahelian Countries Push Back on the West', CSIS, available at www.csis.org/analysis/cost-paternalism-sahelian-countries-push-back-west

⁶ M. Le Cam (2024) 'In Mali, democracy has been indefinitely postponed', Le Monde, available at www.lemonde.fr/en/opinion/article/2024/05/19/in-mali-democracy-has-been-indefinitely-postponed_6671934_23.html

⁷ International Crisis Group (2023) 'Mali: Avoiding the Trap of Isolation', available at www.crisisgroup.org/africa/sahel/mali/b185-mali-eviter-le-piege-de-lisolement

⁸ C. Triebert et al (2024) 'How Wagner's Ruthless Image Crumbled in Mali' New York Times, available at www.nytimes.com/2024/11/01/world/africa/russia-wagner-mercenaries-mali.html

⁹ 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

¹⁰ Mamba Online (2024) 'Mali Outlaws Homosexuality for the First Time', available at www.mambaonline.com/2024/11/07/mali-outlaws-homosexuality-for-the-first-time/

¹¹ Post on X with video of the Minister of Justice announcing the revisions to the Penal Code: @AESinfos, 1 November 2024, available at <https://x.com/aesinfos/status/1852140056166748556?s=46&t=v4Gg219767Nj5tmJ6hXEg>

¹² AFP (2024) 'Mali Transition Council Passes Anti-gay Law', Barron's, available at www.barrons.com/news/mali-transition-council-passes-anti-gay-law-1cb35801

¹³ Human Rights Committee (2014) Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992

¹⁴ 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)

¹⁵ Above n 2.

¹⁶ Ibid.

¹⁷ CIVICUS (2024) 'Mali Heads in the wrong direction: Military junta ramps up repression instead of calling elections', available at <https://lens.civicus.org/mali-heads-in-the-wrong-direction/>



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 LGBTIQ+ 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 SOGIE communities in all their diversity, inclusive of indigenous understandings of non-CIS sexual identity and gender expression and identity.



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