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Niger's Repeal of the 2015/36 Anti-Smuggling Law



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In July 2023, Niger experienced a significant political shift following a military coup d'état. One of the effects of the coup d'état was the decision of the military authorities to abrogate the unpopular 2015/36 Anti-Smuggling Law adopted in 2015 and implemented since mid-2016. The abrogation of the law was requested by community representatives from the Agadez

region— as reported by interlocutors¹ but also confirmed by numerous commentators.² The new military junta demonstrated a preference for

- ¹ Interviews with official sources in Niamey, Niger.
- ² Kate Hairsine, '[Central Niger celebrates junta's repeal of migration law](#),' *Deutsche Welle*, November 29, 2023.

meeting domestic demands and it therefore repealed the law.

This alert aims to examine the legal effects produced by the repealing of the law, which are often overlooked by those who believe that the greatest repercussion will be additional migrant arrivals in Europe.

Effects of the 2015 Law

In the first place, the adoption of the law was in part an answer to a deadly incident in the desert in 2013. On October 30, in northern Niger, 92 people died after they were stranded for several days because of a broken-down vehicle (37 women, 48 children and 7 men).³ The majority were originally from the Department of Kantché and were on their way to Algeria. The incident provoked a very strong reaction in Nigerien society and the authorities expressed the need to counter irregular migration and to protect migrants travelling through the desert. This resulted in the adoption of the Anti-Smuggling Law.⁴

The law was widely viewed as having been adopted under pressure from the EU, although the bloc's officials denied this. At the time, Mohamed Bazoum, then Minister of Interior, explained that 'the Europeans requested us to reduce the number of migrants that were entering Libya. Without the law, we didn't have any way to do that.'⁵ In 2015, the EU launched the 5 billion Euro Trust Fund for Africa, 1 billion of which was reserved for eradicating the root causes of migration through Niger.⁶ The adoption of the law was also related to the fact that Niger had no legal framework to prosecute smuggling, even though Niger had previously ratified the Protocol against the Smuggling of

Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

Nonetheless, the implementation of the 2015/36 Law had been strongly criticized from the very beginning, especially in the Agadez region. Migration represented a critical economic activity in Agadez, involving large parts of the population in various roles such as transporting and hosting migrants and selling essential goods like food, water, and clothing. One of the effects reported is considered to be an upsurge in banditry linked to the loss of income-generating activities for many people who were previously legitimately involved in the migration sector.⁷

The law primarily targeted low-level migration facilitators such as drivers and guides, rather than influential businessmen involved in larger smuggling networks.⁸ This selective enforcement led to the professionalization and consolidation of smuggling activities, with the activity becoming more organized and concentrated in the hands of a few.⁹ By 2018, estimates suggested that only 15 to 20 active smugglers remained in Agadez, further entrenching the smuggling networks among a smaller number of well-organized criminal elements with transnational links.¹⁰

Similarly, critics, journalists, activists, and researchers argued that the law exacerbated the dangerous conditions faced by migrants.¹¹ Their analyses indicated that the law, along

3 'Les cadavres de 92 migrants retrouvés dans le désert au Niger,' *Le Monde with AFP*, October 30, 2013.

4 Interview with a Nigerien criminal justice practitioner, May 2024.

5 Sophie Douce, 'In post-coup Niger, migration becomes legal again,' *The New Humanitarian*, May 6, 2024.

6 'Niger's military government repeals anti-migration law after eight years,' *Al Jazeera*, November 28, 2023.

7 Mark Micallef, Rupert Horsley, and Alexandre Bish, 'The Human Conveyor Belt Broken - assessing the collapse of the human-smuggling industry in Libya and the central Sahel,' (Geneva: The Global Initiative against Transnational Organised Crime, April 2019), 65.

8 Fransje Molenaar, 'Why the EU should help former smugglers get a job - CRU Policy Brief,' (The Hague: Clingendael Institute, April 4, 2018).

9 Ekaterina Golovko, 'Players of many parts: The evolving role of smugglers in West Africa's migration economy - Briefing Paper,' (Dakar: Mixed Migration Center, June 2019).

10 Micallef et al., 'The Human Conveyor Belt Broken,' 53-55

11 Among others, see: Johannes Claes & Anna Schmauder, 'When the dust settles: Economic and governance repercussions of migration policies in Niger's north - CRU Report,' (The Hague: Clingendael Institute, October 2020).

with the various forms of increased border control, forced drivers to take more remote and perilous routes through the desert. In 2017, the International Organization for Migration (IOM) recorded a “marked increase” in the number of migrants abandoned in the desert, leading to numerous deaths.¹² This highlighted the severe human costs associated with the law’s enforcement. This increased the risks for migrants, as vehicle breakdowns or drivers abandoning their passengers to avoid arrest became more common.¹³

While the law’s abrogation was welcomed by large parts of the Nigerien population, as it allowed economic activities to re-emerge from the underground economy, the EU viewed the repeal of the law negatively. Various officials expressed concerns about a possible increase in irregular migrant arrivals in Europe.¹⁴

Data underscores the immediate impact of the law’s repeal on migration patterns. IOM statistics from Niger show a significant increase in migratory movements, with a more than 30% increase from 97,000 in December 2023¹⁵ to nearly 130,000 in March 2024.¹⁶ However, at the moment of writing, there is no evidence that this has translated into an increase of arrivals in Europe.¹⁷

Legal Implications of Repealing the Anti-Smuggling Law

Niger’s abrogation of the law sends a clear political signal to the EU regarding migration and the future of their collaboration. However, it is important also to look at the legal implications of the repeal.

By repealing the law, Niger is effectively disengaging from its international commitments under the United Nations Convention against Transnational Organized Crime (UNTOC) and its trafficking and smuggling protocols, which Niger had ratified in 2004 and 2009 respectively. Niger thus appears to be pivoting away from international cooperation in combating the smuggling of migrants.¹⁸

At the national level, the repeal means that migrant smuggling is no longer considered to be an offence in Niger, as stated in Ordonnance 2023-36. Condemnations pronounced under the law and their effects have been erased, and those convicted under the law will be released. The order has retroactive effect, nullifying the legal basis for prosecuting the smuggling of migrants.

In discussing the repeal of the law, it must also be remembered that it had several aspects that were criticized by lawyers and human rights advocates. At the time of the repeal, the law was in fact being revised and the new version was about to be submitted.¹⁹ At the time of writing, it is unknown whether the revised law will still be considered by the authorities.

Another major legal consequence of the repeal is the impact on international judicial cooperation related to migration. Requests for mutual legal assistance cannot be met because judges cannot instigate proceedings in the absence of a legal foundation. With regard to the principles of double incrimination and reciprocity, Niger

12 International Organization for Migration (IOM), ‘[Rapport de mission sur l’évaluation des routes migratoires du 19-25 Juillet](#),’ (Geneva : IOM, July 2017). See also : Jonas Bergmann, Julian Lehmann, Thomas Munsch & William Powell, ‘[Protection Fallout: How Increasing Capacity for Border Management Affects Migrants’ Vulnerabilities in Niger and Mali](#),’ (Berlin: Global Public Policy Institute, RMMS West Africa and Danish Refugee Council, November 2017), 44.

13 Border Forensics, ‘[Mission accomplished? The deadly effects of border control in Niger - Investigation Report](#),’ (Geneve: Border Forensics, May 2023).

14 Hairsine, ‘[Central Niger celebrates junta’s repeal of migration law](#),’

15 IOM, ‘[Displacement Tracking Matrix \(DTM\): République du Niger, Rapport N° 71](#),’ (Geneve : IOM, December 2023).

16 IOM, ‘[Displacement Tracking Matrix \(DTM\): République du Niger, Rapport N° 74](#),’ (Geneve : IOM, March 2024).

17 Issifou Djibo, Alessandra Prentice, and David Lewis, ‘[Despite fears in Europe, no migrant surge after Niger junta scrapped ban](#),’ (Reuters, June 7, 2024).

18 Interview with a Nigerien criminal justice practitioner, May 2024.

19 Interview with a Nigerien criminal justice practitioner, May 2024.

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cannot receive a rogatory commission or execute an extradition request for the smuggling of migrants from other countries, as this offence no longer exists in Niger's legal arsenal.

Despite legal challenges, Ordonnance 81-40 of 29 October 1981 on the entry and residence of foreigners in Niger remains in force and can still be used for regulatory purposes.

Conclusion

The repeal of the law has provoked varied and sometimes opposing reactions from different stakeholders. On the one hand, the immediate positive reception of the repeal of the law in Agadez points to the potential economic and social benefits of the decriminalization of migration-related activities for the population of northern Niger. In addition, the repeal of the law will likely reduce migrant deaths in the desert, as it will no longer be necessary to make clandestine trips to avoid military controls. On the other hand, the international community, and particularly Niger's Western partners who not so long ago were the country's closest collaborators, have adopted a very negative view of the junta's decision to repeal the law. Most of the communication focused on the increase in irregular migrant arrivals in Europe. Not only the repeal itself but also the reactions thereto highlight the complex interplay between national policies and international engagement with migration issues. This alert has aimed to bring to light some of the less-often discussed effects of the repeal of the law. Far from being a simple populist victory, it will have ripple effects on both Niger's domestic political economy and the country's international commitments with regard to migrant smuggling and judicial cooperation with other countries.

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