

Urgent Call for ECOWAS to Adopt Exceptions Necessary to Allow Humanitarian Access and Address Basic Human Needs under Niger Sanctions

December 4th, 2023

We, INGOs having significant humanitarian operations in Niger, call on the Economic Community of West African States (ECOWAS) to urgently adopt formal exceptions for humanitarian action in the sanctions regime on Niger to ensure that aid can flow in an orderly and timely manner to the civilians of Niger, at a time of dramatically increasing need. More than 4.3 million Nigeriens are in urgent need of humanitarian aid, and the negative impacts for the population are worsening by the day.

Humanitarian actors as well as commercial and financial entities that enable their operations, need formal legal clarity that their efforts to deliver humanitarian aid are permitted under the sanctions. Banks, suppliers, insurers, and other private sector actors also need legal certainty about the application of the sanctions to transactions necessary for humanitarian activities in Niger. Many humanitarian actors have been forced to pause critical humanitarian activities and this shut down will continue if legal clarity is not provided.

The legal clarity required would be an amendment to the sanctions language expressly permitting humanitarian activities and actions that are necessary to aid delivery in Niger, in accordance with Article 4(4) of the Supplementary Act on Sanctions Against Member States that Fail to Honour their Obligations to ECOWAS (A/SA.13/02/12, sometimes referred to as A/SP.13/2/12) of 17 February 2012, which provides that sanctions shall not affect the delivery of humanitarian aid to people in the concerned Member State. This provision of law remains largely unknown to the public. Legal certainty is therefore an absolute necessity.

We are grateful for the letters from ECOWAS Commission dated 25 August 2023, recalling the above Article and advising Benin, Togo and Nigeria that the sanctions should not affect the delivery of humanitarian aid. However, the flow of much-needed humanitarian supplies remains slow and unreliable as the language of the sanctions themselves remains unchanged. Ambiguities remain around what is or is not permitted, and these present inconsistent interpretations at border crossings. The permitted passage of vehicles carrying humanitarian supplies remains on an inconsistent, ad hoc basis, with cargo sitting at the border with much delay, compromising the contents, especially as related to nutrition and medical commodities. Thousands of trucks are currently blocked at the border with Benin. In addition, the uninterrupted availability of key infrastructure resources, such as fuel and electricity, remains vital to allow the continued flow of lifesaving aid, such as for the preservation of vital pharmaceutical products.

As impartial humanitarian organisations, we remain compelled to keep working, despite the complex and challenging operating environment. We are committed to the highest standards of risk management and due diligence to ensure assistance reaches those most in need. However, we need certainty to facilitate humanitarian action and to enable us to resume reaching people in need in Niger in a consistent, predictable manner.

It is in keeping with ECOWAS's own commitment under Article 4(4) of the Supplementary Act to ensure that effective, uninterrupted access to much needed humanitarian assistance reaches vulnerable persons in a member state that we call on ECOWAS to include these much-needed amendments to its sanctions on Niger and to do so with immediate effect.

Clear public amendments to the sanctions would ensure all relevant parties take the necessary steps to allow humanitarian access.

Specifically, we call on ECOWAS to adopt legally binding humanitarian exceptions that excludes from the scope of the sanctions on Niger the provision of essential supplies, services, and economic resources necessary to carry out impartial humanitarian activities, as well as required to meet basic human needs. We respectfully call on ECOWAS to adopt amendments to the existing language of the sanctions on Niger that most directly impact the ability to carry on delivery of humanitarian aid, and respectfully suggest below a wording for such amendments. We note these suggested amendments reflect language included in ECOWAS sanctions on Mali and ECOWAS’s commitment under Article 4(4) of the Supplementary Act, together with some additional clarifying suggestions to further limit ambiguities around interpretation and to ensure the prompt resumption of much needed activities to meet the basic needs of the civilians in Niger.

Suggestion of amendments:

Closure of land and air borders between ECOWAS countries and Niger, which closure shall not affect the delivery of humanitarian aid to people in Niger, in particular, the crossing of persons, supplies (such as basic and essential goods and any material necessary to effectively deliver humanitarian aid), vehicles and aircrafts employed or intended for use in such delivery.

Suspension of all commercial and financial transactions between ECOWAS Member States and Niger, with the exception of basic and essential goods and services such as food products, water, pharmaceutical products, medical supplies and equipment, petroleum products and electricity, and other commercial or financial transactions necessary to deliver humanitarian aid in Niger.

Freeze of all service transactions ~~including utility services~~, with the exception of basic utility and public services such as electricity, water, gas and petroleum products, as well as other services transactions necessary to deliver humanitarian aid in Niger.

This call to action is supported by:

