

SUPPORT FOR THE SWISS AMENDMENT  
TO THE ROME STATUTE OF THE ICC



Global  
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Compliance

On 28<sup>th</sup> of August 2019, the Government of Switzerland submitted a [proposal](#) to the UN Secretary General to amend the Rome Statute of the International Criminal Court (ICC). The proposal seeks to amend Article 8 of the Rome Statute, in order to make the starvation of civilians a war crime punishable before the ICC when committed in a non-international armed conflict. (NIAC) As the Swiss proposal mentions: “starving civilians is already a war crime under the Rome Statute in international armed conflicts. However, the vast majority of contemporary armed conflicts are non-international in nature.”

The gap in the prohibition for NIACs is difficult to discern given under International Humanitarian Law (IHL) a parallel provision is present both under treaty law, in article 14 of the Second Additional Protocol to the Geneva Conventions, and under customary law applicable for both types of conflicts.<sup>1</sup> The drafting history of Article 8(2)(b)(xxv) of the Rome Statute also provides no indication as to why starvation was criminalised only in an IAC or why it departed from the aforementioned position under IHL and customary law.<sup>2</sup> Notably, one of the original drafts of the Rome Statute did include a provision that criminalised starvation in a NIAC. However, the final draft of the Rome Statute did not include it, leaving some to conclude the omission was unintentional.<sup>3</sup> There appears as a matter of legal analysis no rational basis for the failure to criminalise starvation in a NIAC under the Rome Statute and thus no rational basis with which to oppose the amendment.

The Swiss Government proposed the amendment to the Rome Statute in 2018, following the adoption of [UN Security Council Resolution 2417\(2018\)](#), which recognised that the use of starvation can constitute a war crime, without differentiating between international and internal conflicts. However, the amendment was deferred to the 18<sup>th</sup> session of the Assembly of State Parties to the Rome Statute (December 2019).

Global Rights Compliance (GRC) and the World Peace Foundation’s (WPF) project “[Accountability to Mass Starvation: Testing the limits of the law](#)”, has been actively supporting the proposed amendment

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<sup>1</sup> Art. 14 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non International Armed Conflicts, 8 June 1977 (AP II). 2 Rule 53, ICRC Customary IHL Database, 2005, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule53)

<sup>2</sup> K. Dörmann, L. Doswald-Beck, and R. Kolb, Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary (Cambridge University Press, 2003), online publication, 2009, available at [http://www.mpil.de/files/pdf3/mpunyb\\_doermann\\_7.pdf](http://www.mpil.de/files/pdf3/mpunyb_doermann_7.pdf) (last visited 19 May 2019); see also O. Triffterer and K. Ambos (eds), The Rome Statute of the International Criminal Court: A Commentary (3rd edn., C.H. Beck, Hart, Nomos, 2016) at 510; W. A. Schabas, An Introduction to the International Criminal Court (5th edn., Cambridge University Press, 2017) at 285.

<sup>3</sup> Annex IV Non-paper submitted by Switzerland: proposed amendments to article 8 of the Rome Statute on the inclusion of starvation as a war crime in non-international armed conflicts, ICC-ASP/17/35, 20 September 2018, § 11, available at: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP17/ICC-ASP-17-35-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/ICC-ASP-17-35-ENG.pdf) (last visited 2 May 2019), see footnote 10.

through a series of activities aimed at gathering global consensus among States and Civil Society Organisations.

GRC and the WFP published a comprehensive Expert Report on Mass Starvation containing a detailed analysis of current conflict case studies designed to provide a comprehensive assessment of the prospects of accountability based on a review of the most relevant and probative documentation/information. The Expert Report includes a [Legal Policy Paper](#), which is the first authoritative assessment of the crime of starvation and methods of accountability, as well as country case analysis on the use of starvation in [Yemen](#), [Syria](#) and [South Sudan](#). The Legal Policy Paper highlights why there appears to be no logical reason for the distinction between starvation in a IAC and a NIAC. The country case studies underscore the significant access to justice issues that the proposed amendment could overcome. Despite the extensive use of starvation as a weapon of war, all three countries would be unable to investigate or prosecute the use of starvation as a war crime under the current legal framework of the ICC.

GRC released three Papers in May, June and July 2019, timed to mirror the meetings of the UN Working Group on Amendments before the ICC. These Papers provided a detailed overview of how the amendment can play a crucial role in the fight for accountability for conflict-induced hunger. The Papers analysed the need for inserting the crime of starvation in non-international armed conflicts in the [Protection of Civilians agenda of the UN](#), the need to bring [Legal Consistency](#) in the current legal framework, and the importance of ensuring [Accountability](#) for the use of starvation in both types of conflicts.

GRC will continue to support the amendment in the final stages of the adoption through engagement with all actors involved in this process. GRC and the WFP will hold a Symposium in Tailloures (France) in September, where Representatives of the Swiss Governments engaged in the promotion of the amendment will participate together with critical stakeholders such as the Deputy Director of the World Food Programme Brian Lander, representatives of several UN Commission of Inquiries tasked to investigate war crimes in Syria, Yemen and South Sudan. The event is designed to foster further discussions on the issue of accountability for starvation, to stimulate discussion about the progress and potential impacts of sharpening the relevant law, by discussing it not only on legal terms, but also in the context of conceptual, institutional, political, and public challenges.

The importance of this amendment to opposing impunity and as a springboard towards effective accountability for starvation crimes worldwide cannot be overstated. GRC will continue to post news on its passage through the amendment process and highlight any upcoming events during

International Law Week in New York and at the UN Assembly of State Parties in the Hague in December 2019.

The next Story In Focus to be released on [www.starvationaccountability.org](http://www.starvationaccountability.org) will be an exclusive discussion with the Deputy Head of IHL and International Criminal Justice Section of the Directorate of International Law of the Swiss Federal Department of Foreign Affairs **Matthias Lanz-Pedretti**.

**A vote on the Swiss amendment by all State Parties to the Rome Statute will be made in December 2019.**