



Global
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Talking Points for Civil Society Organisations advocating for the

Ratification of the Starvation Amendment to the Rome Statute of the International Criminal Court



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HOW TO USE THESE TALKING POINTS

The Talking Points are designed to assist civil society organisations (CSOs) with advocacy in support of ratification of the Starvation Amendment to the Rome Statute. Whether CSOs' activities are focussed on addressing food insecurity, the prevention of mass-starvation events, the provision of humanitarian relief, accountability for international crimes or a related area, these Talking Points serve as a flexible and adaptable template for advocating for ratification of the Starvation Amendment.

Structure

The Talking Points are organised thematically for ease of navigation.

Customisable content

The Talking Points are designed to be adapted, modified and supplemented by CSOs' unique knowledge of their own advocacy contexts and networks.

The Talking Points serve as a framework. They can be supplemented with further information from GRC's extensive collection of resources relevant to starvation accountability. For more visit starvationaccountability.org



TIP

Look out for this icon throughout the Talking Points. The tips contain helpful context and suggestions for expanding and customising the content to advocacy needs, as well as links to helpful resources.

Supporting resources

The Talking Points are hyperlinked to provide references to resources prepared by GRC and others. These resources aid an understanding of starvation in conflict, global efforts to pursue accountability for starvation crimes, and the Starvation Amendment to the Rome Statute of the International Criminal Court (ICC).

The Talking Points form part of GRC's unique CSO Toolkit, a complement to GRC's Ratification Guidebook: [Ratifying and Implementing the Starvation Amendment to the Rome Statute](#) and its companion resource, the [Ratification Portal](#) for the Starvation Amendment to the Rome Statute of the ICC.

Explore the CSO Toolkit at starvationaccountability.org/cso-toolkit/

Download the Ratification Guidebook at starvationaccountability.org/publications/ratification-guidebook/

Explore the Ratification Portal at starvationaccountability.org/ratification-portal/

BACKGROUND & CONTEXT

1 About starvation accountability

It is well-documented that the world's means of agricultural production outweigh its needs: in the twenty-first century, famine, mass starvation and acute food insecurity are man-made phenomena. Armed conflicts, whether between states or warring factions within them, is the principal cause.¹

There is no shortage of information to indicate that many large-scale starvation events that occur in conflict situations today are the result of intentional strategies by warring parties. At the same time, a scarcity of perpetrators are held to account for these egregious acts. Access to food, water and other objects indispensable to survival continue to be weaponised against civilians, with impunity. As a result, millions are denied humanitarian access and deprived of the essentials necessary for survival, and history needlessly repeats itself, while those responsible walk free. The most vulnerable people in already at-risk societies continue to suffer the worst indignities and fatalities that acute food insecurity entails.

Starvation accountability is where the fight to end world hunger and the fight to end impunity for grave human rights violations intersect. Deliberate starvation of civilians as a method of warfare is not permitted under the laws of war, but the infrastructure to ensure effective prosecutions for this crime has historically been lacking. The advent of the ICC saw the prospect of prosecutions for the crime of deliberate starvation of civilians during hostilities elevated to the international stage by its inclusion, as a war crime, amongst the crimes that the ICC can investigate and prosecute, under Article 8(2)(b)(xxv) of the [Rome Statute](#). But the Rome Statute – the treaty which gives the ICC its powers – contained a notable omission. It only envisaged the prosecution of deliberate starvation when it occurred in a war between two Nation States (so-called 'international armed conflicts', or 'IACs'). For the purpose of the laws of war that regulate the behaviours of warring parties, and which in turn informs international criminal law (a body of law which seeks to deter the commission of atrocity crimes and hold perpetrators to account) the distinction between IACs and so-called 'non-international armed conflicts' (or 'NIACs') is critical. Whether or not a conflict is an IAC or a NIAC will determine the nature and source of the laws regulating conduct of hostilities, including what conduct is considered an international crime.

Since the end of World War II, most armed conflicts, even those that have drawn in the involvement of other States, have been classified as NIACs. These conflicts between warring parties *within* the territory of a State – which may take the shape of civil war, wars of secession, insurgencies, and other bloody internal strife – are representative of most ongoing armed conflicts in the world today. Armed conflict in Ethiopia, Somalia, South Sudan, Syria, and Yemen make up some of the most notable contemporary examples of NIACs. Between these conflicts, millions have suffered the consequences of food insecurity, starvation, and famine.



TIP

Further background reading on the relationship between starvation and contemporary armed conflict can be found in GRC's case studies of [Starvation in Conflict Today](#). GRC has also contributed and provided support to the World Food Programme (WFP) and Food and Agriculture Organisation's (FAO) biannual reports to the UN Security Council (UNSC) on ['Monitoring food security in food crisis countries with conflict situations'](#) that highlight emerging situations of food insecurity and famine. The reports

¹ 'Food Assistance: A Step to Peace and Security', WFP, www.wfp.org/conflict-and-hunger (last accessed 4 November 2022).

innovatively also include a set of recommendation to members of the UNSC on how to operationalise UNSC 2417. WFP's [HungerMap^{LIVE}](#) provides up-to-date metrics on hunger hot-spots around the world, including plotting the relationship between hunger and conflict.

2 About the Starvation Amendment

The Assembly of States Parties (ASP) of the ICC – made up of those countries that are members of the Court² – adopted the text of the Starvation Amendment on 6 December 2019 to add the war crime of intentional starvation of civilians in NIACs to the jurisdiction of the ICC, through the new Article 8(2)(e)(xix) of the Rome Statute. For the first time since the adoption of the Rome Statute in 1998, the ICC was afforded the power to investigate and prosecute starvation crimes regardless of whether they occur in IACs or NICAs, bringing the Rome Statute system in-line with the long-standing prohibition of deliberate starvation of civilians as a method of warfare.

The Starvation Amendment represents a milestone on the journey to justice for civilian victims of war. It presents an opportunity to help put efforts to eradicate world hunger back on track by strengthening the tools available to deter attacks on food, water and other essentials, and hold those responsible for weaponising the necessities of life to account.

However, the adoption of the Starvation Amendment by the ASP was only a first step towards realising the amendment's potential. For the Starvation Amendment to have an impact internationally, and for the ICC's powers to be effective, States Parties to the ICC must additionally agree to be bound by the terms of the Starvation Amendment through the process of ratification (the formal process by which States express their consent to be bound) and take implementation steps to ensure they are in a position to cooperate with ICC investigations, prosecutions and judicial processes as they relate to the new Article 8(2)(e)(xix) crime. This not only ensures wide reach of the ICC's legal authority over starvation crimes when they occur in NIACs, but also facilitates cooperation between States Parties and the ICC and amongst States Parties themselves. Widespread ratification is therefore critical for advancing the normative aims of the Starvation Amendment and ending the deliberate use of starvation as a weapon of war and enhancing the protection of civilians.

² A list of States Parties to the ICC is available on the ICC's website, [here](#).

THE TALKING POINTS

A INTRODUCTORY OBSERVATIONS

1 The history of starvation: An overview



TIP

The following narrative can be supplemented with examples relevant to the user's own advocacy network, in order to contextualise the historical significance of starvation as a weapon of war. Examples are included on GRC's (non-exhaustive) [Starvation Timeline](#).

- The deliberate use of starvation as a weapon of war has a long-history that spans centuries and transcends civilizations. Warring parties have sought to exploit the destructive impact of limiting food supplies, to devastating effect.
- Siege warfare became increasingly prevalent during the Middle Ages, and the concept of overwhelming the enemy through the deprivation of food, water and other essentials necessary for survival was commonplace. Siege starvation has been used as a method of warfare throughout history, and with increasing prevalence in the last decade.
- For much of recorded history, starvation was seen as a legitimate tool justifying military ends. While methods of warfare have evolved, the use of starvation as a deliberate tool to inflict suffering on civilian populations has not.
- Whereas famine and food insecurity are often conceived as a by-product of war, there is an abundance of evidence to suggest that starvation—death, illness, and suffering resulting from the lack of food, water, medicines, shelter and other essential commodities—is frequently deployed as an intentional tactic.

2 The prohibition of starvation as a weapon of war



TIP

More information on the prohibition can be found in [Factsheet #1: The Prohibition of Starvation as a Method of Warfare](#).

- The Hague Conventions of 1907³ sought in broad terms to limit destruction of enemy property to instances of imperative military necessity. An aim reinforced by the four Geneva Conventions of 1949.
- Notwithstanding the use of starvation in both World Wars by the Axis powers and allies and a call for starvation to be considered as a form of genocide,⁴ it was not until the two Additional Protocol to the Geneva Conventions were adopted in 1977 that the use of starvation was prohibited in both IACs and NIACs under **international humanitarian law (IHL)**.

³ International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, ihl-databases.icrc.org/ihl/INTRO/195 (last accessed 12 May 2022).

⁴ R. Lempkin, *Axis Rule in Occupied Europe* (Washington, DC; Carnegie Endowment for International Peace, 1944).

- Additional Protocol I (applicable to IACs) prohibits deliberate attacks against objects indispensable to the survival of the civilian population, irrespective of the motive. It prescribes only narrow exceptions to the rule in the case of military necessity.
- Additional Protocol II prohibits the starvation of civilians in NIACs, without exception.
 - In NIACs, it is expressly prohibited for warring parties to attack, destroy, remove or render useless objects indispensable for the survival of the civilian population, such as: food stuffs, areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation work.
- The Additional Protocols have widespread acceptance amongst the international community and all ICC States Parties are amongst the High Contracting Parties to both Additional Protocols.
- As well as being prohibited under **IHL** by the Additional Protocols, the prohibition has obtained the status of customary international law,⁵ and finds support in other fields of international law.
- Deliberately starving civilians as a weapon of war is inconsistent with international human rights law, including the right to food, the right to life and a host of corollary rights. Numerous human rights instruments recognise the rights to food and create obligations on States to protect and promote citizens access to adequate food, water and shelter.
- For example:
 - Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights recognises both the right of everyone to adequate standard of living, including adequate food, and ‘the fundamental right of everyone to be free from hunger’.
 - The right to food is also reflected in various human rights treaties and other non-binding instruments that are declarative of States’ intent.
- These human rights protections apply even in conflict, creating positive obligations on States that are consistent with criminalising the use of starvation of civilians as a deliberate weapon of war.



TIP

More information on the interrelation between the war crime of starvation and the right to food (and other related human rights) can be found in [Factsheet #3: The War Crime of Starvation and the Right to Food under International Human Rights Law](#).

GRC’s [Country Profile Database](#) can be used to supplement the above narrative with specific examples of a State’s existing international obligations that are consistent

⁵ ICRC, ‘Customary International Law – Rule 53’, IHL Database Customary IHL, ihl-databases.icrc.org/customary-ihl/eng/docndex/v1_rul_rule53 (last accessed 12 May 2022).

with the prohibition on deliberate starvation of civilians and weigh in favour of ratification and implementation of the Starvation Amendment.

3 The nature of the war crime of starvation

- Starvation can manifest into a range of dangerous consequences for victims, including acute physical and psychological pain, ongoing injury, or death. These results are often separated in time from the acts of a perpetrator. For example:
 - The consequences of undernutrition, malnutrition, and the desperate fight for survival build cumulatively over time, and can permeate long after the cessation of hostilities.
 - In addition to physical consequences, starvation crimes can induce an array of indignities, such as poverty, the inability to feed one's family or pay for transportation to feeding centres, maternal deficiencies, and negative coping mechanisms like child marriages or looting.
- Starvation disproportionately impacts women, children, older persons, persons with disabilities and other minorities. Those most vulnerable to starvation include young children, pregnant or nursing mothers, older persons, persons with disabilities, agricultural workers and farmers, residence of rural areas, residents of disadvantaged urban areas, and minorities.
- Identifying how starvation violations may manifest is key to differentiating between unintended consequences and wilful conduct. Four non-exhaustive causes include:
 1. Food sources are damaged, destroyed or rendered useless in conflict.
 2. Attacks on humanitarian aid.
 3. Access to food is limited or completely cut off.
 4. Agricultural activities are interrupted.
- Common indicators of the intentional starvation include:
 - Depriving people of the resources they need to survive,
 - Destroying or stealing humanitarian relief,
 - Denying access of humanitarian workers to civilian populations,
 - Attacking or destroying healthcare facilities,
 - Attacking humanitarian convoys and personnel, leading to the suspension of humanitarian programming,
 - Attacking water and food resources, sanitation, and electrical systems,
 - Attacking means of agricultural production,
 - Forcing people to relocate to areas with insufficient food or clean water to stay healthy, and
 - Forcing people into areas lacking healthcare services for the sick and injured.

**TIP**

Read more about the phenomenon of starvation in [Factsheet #2: Understanding Starvation: A Manmade Phenomenon](#).

B DELIBERATE STARVATION: AN INTERNATIONAL CRIME**4 NIACs and IACs**

- Armed conflict takes the form of either *international* or *non-international* armed conflict:
 - The term **non-international armed conflict (NIACs)**, sometimes referred to as *internal* armed conflicts, refers to situations of violence involving protracted armed confrontations between government forces and one or more organised armed groups, *i.e.* Armed Non-State Actors (ANSAs), or between ANSAs themselves, occurring on the territory of a State.⁶
 - An **international armed conflicts (IACs)**, by contrast, occur when one or more States use armed force against another State, regardless of the reasons for, or the intensity of, this conflict.⁷
- Because deliberate starvation is prohibited in both NIACs and IACs, it is commonly accepted that any intentional starvation of civilians in conflict is a war crime. For example:
 - In 2016, UN Secretary General Ban Ki Moon warned of starvation of civilians in Syria, a NIAC, stating 'Let me be clear: the use of starvation as a weapon of war is a war crime'.⁸
 - UN Security Council [resolution 2417 \(2018\)](#) recognises that starvation of civilians as a weapon of war can amount to a war crime, without distinction as to whether it occurs in a NIAC or IAC.
 - At least 67 States either include starvation as a war crime in both IACs and NIACs or make no distinction in their domestic criminal law and/or military manuals.
- Aggrieved victims have a legitimate expectation of access to justice, which is why it is important for the international community to ensure the existence of robust international justice mechanisms capable of pursuing accountability for perpetrators of starvation crimes regardless of the type of conflict.

⁶ 'Internal conflicts or other situations of violence – what is the difference for victims?', ICRC, <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm> (last accessed 10 May 2022).

⁷ 'International armed conflict', ICRC Casebook: How Does Law Protect in War, <https://casebook.icrc.org/glossary/international-armed-conflict> (last accessed 10 May 2022).

⁸ 'Starvation 'as a weapon' is a war crime, UN chief warns parties to conflict in Syria', UN News, <https://news.un.org/en/story/2016/01/519982-starvation-weapon-war-crime-un-chief-warns-parties-conflict-syria> (last accessed 11 May 2022).

5 Intentional starvation of civilians and the ICC: A loophole

- The Rome Statute defines the crimes within the ICC's jurisdiction: those international crimes that the ICC can investigate and prosecute. Agreed by States Parties in 1998, the original text of the Rome Statute included the war crime of intentional starvation of civilians:
- Article 8(2)(b)(xxv) criminalises, in IACs, the act of intentional starvation of civilians by depriving them of objects indispensable to their survival, including the wilful impediment of humanitarian relief supplies as provided for under the Geneva Conventions.
- However, the Rome Statute included no analogous war crime of intentional starvation of civilians in NIACs.
- This omission was inexplicable and illogical. Some have speculated it is the result of a drafting error.⁹



TIP

For more information see Wayne Jordash, Joe Holmes and Catriona Murdoch, 'Strategies for Prosecuting Mass Starvation', (2019) 17 *Journal of International Criminal Justice* 849: doi.org/10.1093/jicj/mqz044 and Bridget Conley, Alex de Waal, Catriona Murdoch & Wayne Jordash (eds) *Accountability for Mass Starvation: Testing the Limits of the Law* (OUP, 2022): [ISBN: 9780192864734](https://www.oxfordup.com/9780192864734).

6 The Starvation Amendment: Closing the gap

- On 6 December 2019, by consensus, the Assembly of States Parties (ASP) of the ICC adopted the **Starvation Amendment**, which added the crime of intentional starvation of civilians in NIACs to the list of crimes the ICC can investigate and prosecute. This followed from an amendment proposal successfully led by Switzerland.
- The new Article 8(2)(e)(xix) of the Rome Statute, introduced by the Starvation Amendment, criminalises, in NIACs, the act of intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies. This was only the 5th time the Rome Statute has been amended since its adoption in 1998.
- The adoption of the Starvation Amendment is a vital step in strengthening international justice responses to starvation crimes.
- However, additional steps are needed to capitalise on this momentum, implement lasting reform, and improve the prospect of justice outcomes for victims of starvation crimes:

⁹ Rogier Bartels, 'Time to fix the Rome Statute and add the crime of starvation in non-international armed conflicts!', EJIL:Talk! <https://www.ejiltalk.org/time-to-fix-the-rome-statute-and-add-the-crime-of-starvation-in-non-international-armed-conflicts/> (last access 11 May 2022).

- The Rome Statute system requires States Parties to ratify an amendment adopted by the ASP for it to have legal effect: Rome Statute, art. 121(5).
- Without widespread ratification, prosecutors will only be able to investigate and prosecute starvation crimes in a handful of countries. This will result in an inconsistent regime, where starvation in a NIAC is permitted in one country but not in other.



TIP

GRC's [Ratification Tracker](#) maintains an up-to-date list of countries that have ratified the Starvation Amendment.

C REASONS TO RATIFY (AND IMPLEMENT)



TIP

Ratification is the process by which States indicate their consent to be bound by an international agreement, such as the Starvation Amendment. The applicable procedures will vary in each States, and some States will require legislative processes as well as an act of the Executive to give effect to ratification. The final step of any ratification process for the Starvation Amendment, however, will be the deposit of an instrument of acceptance or ratification with the Secretary-General of the United Nations in New York.

More information on ratification is available in GRC's [Ratification Guidebook](#).

As GRC advocated during the amendment process led by Switzerland, there are various compelling reasons underlying why the Starvation Amendment was necessary. These arguments also go to the heart of why States ought to take steps to ratify (and implement) the Starvation Amendment following its adoption by the ASP. Below, we highlight seven (7) important reasons to States to ratify and implement the Rome Statute.

7 The reasons:

1) Protecting the most vulnerable

- By ratifying the Starvation Amendment, States can underscore their commitment to the protection of civilians.
- It has been a long-standing objective of the United Nations Security Council, acknowledged in UNSC resolution 1265 (1999) to protect civilians caught up in the horrors of war.



TIP

In 2019, GRC issued a Policy Paper in support of the adoption of the Starvation Amendment, addressing the [protection of civilians](#).

2) Legal consistency

- Victims of war crimes in NIACs are just as entitled to justice as victims of the same crimes occurring in IACs.

*'What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife.'*¹⁰

- Widespread ratification of the Starvation Amendment will help to correct an unfortunate omission in the Rome Statute and strengthen international efforts to protect civilians from the horrors of armed conflict.



TIP

In 2019, GRC issued a Policy Paper in support of the adoption of the Starvation Amendment, addressing the how the Starvation Amendment promotes [legal consistency](#).

3) Harmony with national values

- All States Parties to the Rome Statute are also amongst the 168 High Contracting Parties to the four Geneva Conventions of 1949 and its Additional Protocols of 1977. Additional Protocol II prohibits the use of starvation as a method of warfare in NIAC.
- This means that that all States Parties already accept, as a matter of international law, that the deliberate starvation of civilians as a method of warfare in non-international armed conflicts, is prohibited.
- In addition, the wide acceptance of international human rights treaties enumerating the right to food shows that many States Parties recognise the existence of their positive obligations to take steps to eradicate hunger.
- The fact that States have committed to be bound to similar obligations outside of the Rome Statute system is further evidence of the Starvation Amendment's compatibility with States' established interests and shared values.



TIP

GRC's [Country Profile Database](#) offers an overview of the relevant legal frameworks and obligations applicable to each State Party to the ICC. The database can be used to supplement the above talking points with contextualized examples of a State's existing values as reflected in existing legal obligations, constitutional protections to the right to food, and domestic laws penalising the starvation of civilians as a method of warfare.

¹⁰ ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-T. Decision on the Defence Motion for Interlocutory Appeal, 2 October 1995, para. 119.

4) Effectiveness of the Rome Statute system

- States Parties to the Rome Statute were represented at the 18th session of the Assembly of States Parties in December 2019 and participated in the approval of the Starvation Amendment by consensus.
- Promoting the integrity of the Rome Statute system demands follow through from State Parties – to take action to ratify and implement amendments in pursuant to Article 121(5) of the Rome Statute.
- By ensuring that the Starvation Amendment is ratified (and implemented), States contribute to the effectiveness of the Rome Statute system – and the preferred – forum for the gradual, consensual, considered development of international criminal law.
- The success of the Rome Statute amendment processes depends upon the corresponding ratification by States. This enables the ASP to remain a credible forum for multilateral cooperation and capable of maintaining the ICC remains as a robust, responsive and effective permanent institution.

5) Protection for humanitarian relief workers

- Starvation tactics in warfare often manifest in attacks against humanitarian supplies, humanitarian actors and their facilities and equipment. As well as interfering with the logistics of providing essential aid to those most in need, these attacks endanger the lives of humanitarian workers.
- Attacks against humanitarian workers have potentially exponential consequences, risking the temporary or even permanent suspension of humanitarian programs and severely impacting civilians' access to humanitarian aid necessary for survival.
- To ensure that humanitarian agencies are able to continue undertaking their important, albeit dangerous work, it is essential that States take all possible steps to ensure robust international responses to interference with the provision of humanitarian relief.
- In this respect, the Starvation Amendment represents a means of strengthening the legal protections that exist for humanitarian relief workers, by:
 - Ensuring that conduct that interferes with the provision of humanitarian aid and risks the lives of humanitarian workers is criminalised;
 - Serving to deter the commission of starvation-related conduct that poses a direct risk to humanitarian workers, including direct attacks on these individuals and the services they provide.
 - To this end, ratifying the Starvation Amendment is consistent with the international community's commitment to safeguarding access to life-saving humanitarian assistance and encouraging efforts to protect objects indispensable to the survival of the civilian population and essential humanitarian services in situations of

armed conflict, as expressed in UNSC [resolution 2573 \(2021\)](#) and calls for a dedicated focal point or Special Envoy on resolution 2417 (2018).

6) International awareness and cooperation

- Widespread ratification (and implementation) of the Starvation Amendment helps to construct the architecture needed to ensure impunity for the war crime of deliberate starvation of civilians, when and where it occurs.
- Ratification (and implementation) helps to spread awareness of the intentional use of starvation tactics as a weapon of war, in violation of international law, and to draw attention to an historically under-prosecuted crime.
- Ratification of the Starvation Amendment provides impetus to relevant domestic authorities to develop their own competencies in respect of the war crime of intentional starvation of civilians (in NIACs). Joining the growing number of States Parties ratifying the Starvation Amendment enables States to help strengthen international efforts to fight impunity for starvation crimes.
- In addition to facilitating cooperation with and support for ICC investigations into deliberate starvation, ratification increases the capacity of States to cooperate amongst each other to support investigations and prosecutions to bring perpetrators of starvation crimes to justice.

7) Economic arguments

- Collectively, States spend billions of euros each year on the provision of food aid to the world's most vulnerable. Many of those recipients are the victims of conflict, including in situations where deliberate starvation tactics are prevalent. For States that contribute to the provision of humanitarian assistance, there is an inherent economic interest in deterring the commission of starvation crimes in order to:
 - Deter costly interference with existing international responses to humanitarian crises; and
 - Deter the creation of future, man-made humanitarian crises through the use of deprivation of food, water and other essentials as a method of warfare.
- Moreover, the dire human and societal impacts of starvation events, like many consequences of armed conflict, can contribute to the cyclical nature of conflicts occurring.
 - The more essential items and humanitarian aid is attacked or destroyed, the stronger the likelihood of conflicts arising due to the scarcity of these items. Redressing the crime of starvation and strengthening mechanisms for future deterrence may not guarantee the elimination of criminal conduct in future. But

they are an important, positive, progressive and necessary step towards ending cycles of violence and reducing the future reliance on humanitarian assistance.

- Accountability for starvation crimes has been marginalised in responses to conflict-induced hunger situations. While expenditure on humanitarian programming remains essential, it is time to think about long-term solutions (such as strengthening accountability for starvation-related conduct, including through ratification and implementation), to contribute to the eradication of food crises.



TIP

The above talking points can be supplemented, for example, with country-specific information concerning expenditure on food aid. For example, the World Food Programme (WFP) publishes lists of States' [contributions by year](#). More detailed information on the cyclical relationship between conflict and hunger is contained in the 2020 Kompass Report from [Welt Hunger Hilfe](#) (available in German, [here](#)), prepared with contributions from GRC and [Terres Des Hommes](#).

D IMPLEMENTATING THE STARVATION AMENDMENT

8 Implementation



TIP

Implementation is the process of ensuring a State's internal laws are consistent with its international obligations. Ratifying the Starvation Amendment binds a State under international law. However, this does not mean that for all States Parties to the ICC that ratify the Starvation Amendment that it will automatically become part of their national law. It is often necessary for States to implement their international obligations domestically in processes distinct from ratification.

Applicable implementation procedures vary from State to State. The Ministry of Foreign Affairs of each State will sometimes publish information explaining how international agreements are binding upon each State. The parameters of implementation can be identified through reference to implementing legislation a state has adopted with respect to the Rome Statute, if any.

The details of implementation legislation for each State are available on the ICC's website, [here](#).

- Implementation of the Starvation Amendment need not be complex:
 - Under the Rome Statute system implementation may be as straightforward as ensuring that legislation adopted to implement the Rome Statute is sufficient to reflect the jurisdiction of the ICC over the new Article 8(2)(e)(ix) crime of international starvation of civilians in non-international armed conflict.
- To avoid any conflict between domestic law that could undermine state cooperation with the ICC, when a State ratifies the Starvation Amendment, it should ensure that its ability to comply with its obligations under the Rome Statute extends to both situations where an

investigation or prosecution relates to Article 8(2)(e)(ix) crimes in isolation or when they occur in connection with other international crimes under the Rome Statute.

9 Domestic criminalisation



TIP

Whether a State will be required to implement the crime of intentional starvation of civilians in NIAC into domestic criminal law before ratifying depends on the individual circumstances within each State. Irrespective of any domestic requirement to do so, there are policy reasons in favour of ensuring domestic laws penalise deliberate starvation of civilians in IACs and NIACs alike.

- The Rome Statute system does not require States to incorporate the crime of intentional starvation of civilians in NIACs into domestic criminal law. However, ratification is a good time to think about doing so.
- Domestic criminalisation serves to further strengthen the network of accountability mechanisms available internationally and helps close the impunity gap for starvation crimes.
 - For States that exercise universal or extra-territorial jurisdiction over international crimes (that is, jurisdiction over crimes that occur outside of their territory), domestic criminalisation of intentional starvation of civilians in NIACs may offer additional prospects for holding perpetrators to account. For those States that do not exercise jurisdiction, domestic criminalisation nevertheless will help to increase the capacity for State-to-State and international cooperation.
 - By incorporating international starvation of civilians in NIACs in domestic criminal law, States can promote deeper understandings of the crime amongst domestic authorities and criminal justice communities.
- Where domestic procedures do not oblige a State to defer ratification of the crime of intentional starvation of civilians in NIACs until it is incorporated into domestic criminal law, proceeding to ratify and implement can send a strong signal on the international stage of a State's commitment to eradicating the use of starvation as a weapon of war.



TIP

Examples of domestic provisions criminalising the starvation of civilians in conflict can be found in Annex D of GRC's [More information on ratification is available in GRC's Ratification Guidebook.](#)

E OVERCOMING OBJECTIONS

During the process leading to the adoption of the Starvation Amendment, GRC supported Switzerland in addressing the disinclination of some members of the ASP towards adopting the then-proposed amendment. A summary of the debate, including the objections raised, can be found in the [Report of the Working Group of Amendments](#). A Non-Paper submitted by Switzerland (Annex IV to the Report) elegantly addressed the concerns raised in the Working Group debate. GRC's Starvation Policy Paper Series, issued prior to the adoption of the Starvation Amendment, reinforced the position advanced in Switzerland's Non-Paper.

The objections raised during the amendment process may inform why some states, including those that have already criminalised the deliberate starvation of civilians in NIACs (or without distinction as to the type of conflict), have not yet ratified the Starvation Amendment. We address talking points for overcoming these objections as well as for two other possible hurdles to ratification and implementation of the starvation amendment. Finally, this part sets out some common Q&A.



TIP

Some of the content in this section will overlap with matters addressed elsewhere in these Talking Points.

10 Objections raised during the amendment process

1) Doesn't the Rome Statute already criminalise deliberate starvation of civilians in NIACs?

- The Statute of the ICC, as adopted in Rome in 1998, *did not* criminalise deliberate starvation of civilians in NIACs.
 - The Rome Statute distinguishes IACs from NIACs. Prior to the adoption of the Starvation Amendment, it criminalised deliberate starvation of civilians in IACs only, leaving a real gap in the legal architecture.
 - The Starvation Amendment was a significant step towards closing this gap by criminalising deliberate starvation of civilians in NIACs in the text of the amended Rome Statute.
 - Ratification and implementation are necessary, however, for the Starvation Amendment to take effect.
 - Whilst a number of alternative crimes could cover starvation conduct such as attacks of civilians, other inhumane treatment, or for example extermination, these crimes, do not always label effectively the conduct and criminality involved in the deliberate use of starvation as a method of warfare.



TIP

Read more about how the Starvation Amendment promotes [accountability](#) in GRC's Starvation Policy Paper Series.

2) **Isn't there a risk the Starvation Amendment could lead to fragmentation in the Rome Statute?**

- Fragmentation can occur when different States are bound by different legal frameworks, or when different institutions apply different standards in pursuit of the same aims. The Starvation Amendment, however, serves to minimize fragmentation between international criminal law (ICL) and IHL on the specific issue of deliberate starvation of civilians.
 - The Rome Statute, as originally drafted, led to an unhelpful distinction between the ICC's jurisdiction over the war crime of deliberate starvation of civilians based only on the consideration of whether the conflict is NIAC or IAC. This distinction does not exist under IHL rules or customs of war. The Starvation Amendment rectifies this discrepancy.
 - It is the omission of the war crime of deliberate starvation of civilians in NIACs from the original text of the Rome Statute that has led to fragmentation between the Rome Statute system and other sources of international law. The Starvation Amendment will ensure the consistency of the Rome Statute with States' existing obligations under international law.
 - By closing a real gap in the Rome Statute, and ensuring the provisions pertaining to war crimes in the Rome Statute reflect the customary IHL prohibition of the use of deliberate starvation as a weapon of war, regardless of the classification of the conflict, the Starvation Amendment serves to counter fragmentation in international law more broadly.
- For the strength and sustainability of the Rome Statute system and the permanency of the ICC, progressive development must be accommodated within Rome Statute system, lest the institution become incapable of responding to developments in international law.
 - Rather, it reaffirms States Parties' commitments to working collaboratively through the Rome Statute amendment process to ensure the progressive development of international criminal law is consistent with their interests.
 - It serves to affirm the utility of the Rome Statute amendment process and the value of the ICC as a sustainable, equitable and permanent model for the pursuit of international criminal justice in a multilateral legal order.
- The Rome Statute itself envisions such developments through revisions and amendments.
 - Article 10 of the Statute specifically envisages the continued development of international law. International law (including the rules of contemporary international criminal law) has been in a constant state of progressive development and evolution for generations.

- Article 121(5) was the result is a direct result of negotiations on this issue during the drafting of the Rome Statute.
- This provision contemplates that substantive amendments ‘shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance’.
 - For State Parties that have not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by those State Parties’ nationals or their territory.
- Once an amendment has been approved by the ASP, like the Starvation Amendment which was approved by consensus, it becomes the imperative of States Parties to ratify (and implement) the amendment to minimise the risk of fragmentation in the Rome Statute.
 - Now that the Starvation Amendment has been approved by the ASP by consensus, ratification provides States with an opportunity to minimise the possibility and impact of any fragmentation within the Rome Statute system.
- Ratification, therefore, is not a cause of fragmentation, but rather a means of avoiding it. Each State that ratifies is contributing to the momentum to promote widespread ratification by all States Parties.



TIP

Read more about how the Starvation Amendment promotes [legal consistency](#) in GRC’s Starvation Policy Paper Series.

3) Could the Starvation Amendment could be viewed as a political tool

- Politics need not factor in considerations of implementing the Starvation Amendment. The values behind the Starvation Amendment is ensuring (a) legal consistency of the Rome Statute, (b) accountability for those that would breach the well-established prohibition on using starvation of civilians as a weapon of war, regardless of the nature of the armed conflict, and (c) better protection for civilians.
- The Starvation Amendment only criminalises deliberate starvation of civilians through the deprivation of objects indispensable for their survival. Its objectives are unmistakably apolitical.
- The norms underpinning the Starvation Amendment are similar to the norms that underpin the right to adequate food, nutrition and standards of living, and the IHL prohibition on the deliberate use of starvation of civilians as a weapon of war, regardless of the nature of the conflict.



TIP

Read more about how the Starvation Amendment promotes the [protection of civilians](#) in GRC’s Starvation Policy Paper Series.

11 Other possible objections

1) Isn't there a risk of interference with States legitimate interests?



TIP

Some States, particularly those which regularly deploy their armed forces abroad, may be reluctant to ratify any amendments to the Rome Statute that could be interpreted as imposing additional restrictions on the range of conduct their armed forces can engage in during armed conflict. Particularly when States consider that the conduct of their armed forces is appropriate, or appropriately regulated by existing laws of war, there may be a perception that adopting the Starvation Amendment could have the impact of interfering with States' legitimate military deployments or military justice systems. The concern could be particularly apparent for States concerned that starvation could occur as incidental and as an unintended consequence of legitimate military activities.

Given the consistency of the Starvation Amendment with existing IHL, including international custom, it does not have the effect of limiting permissible conduct.

- The Starvation Amendment is consistent with States' legitimate interests – it does not compromise them:
 - Because deliberate starvation of civilians is already prohibited by IHL (by Additional Protocol II to the Geneva Conventions and international custom), the Starvation Amendment does not create a "new" prohibition or impose limitations on the conduct of hostilities not already present in IHL that binds *all* States Parties to the ICC.
 - Rather, the utility of the Starvation Amendment is in deterring the commission of the war crime of starvation and providing access to justice to victims when it does occur.
 - From a legal perspective, the war crime of deliberate starvation, in IACs and NIACs, is not designed to capture *any* conduct that could (or does) result in civilians experiencing a shortage of food, water and other essentials. It is focused exclusively on the sinister, prohibited, yet all-too-frequent practice of *deliberately weaponising* civilians' access to food, water and other objects indispensable for the survival of the population *when it occurs with the intent to cause the starvation of the civilian population*.
 - Legitimate military activities are not captured in the remit of Article 8(2)(b)(xxv) or by virtue of the Starvation Amendment in the new Article 8(2)(e)(xix).
- Ratification is a meaningful way of giving effect to UNSC resolution 2417 (2018) and an effective means for States to demonstrate their commitment, on the international stage, to furthering the UN's work to address conflict-induced hunger, by adding to the categorical recognition of starvation of civilians as an international crime.

2) Aren't there are lot of practical hurdles to ensuring consistency between national laws and the Starvation Amendment?



TIP

As addressed above, the Starvation Amendment can be seen as highly consistent with States Parties existing obligations and duties, including those arising from the Additional Protocol to the Geneva Conventions, customary international law, and international human rights law, as well as being in-line with States existing interests. The existence of these obligations is non-contentious. The content of the Starvation Amendment itself, therefore, should not pose a hurdle to ratification and implementation.

Hurdles are more likely to come from: (a) the practical/ logistical steps required to formally ratify and implement the Starvation Amendment, which vary in each domestic system and, even in highly-supportive States can mean initiating and completing ratification and implementation procedures can take a long time; or (b) the perception that ratification will contribute to "fragmentation" in the Rome Statute system by causing ratifying States to be bound by a different set of rules than other States Parties.

- It is true that a number of steps are required to ratify and implement the Starvation Amendment in compliance with the Rome Statute. These processes, however, are not likely to be politically contentious, given the existing international legal framework prohibiting the deliberate starvation of civilians as a method of warfare and the strong normative underpinning consistent with the values espoused by States Parties to the Rome Statute.
- Ratification and implementation take time: but this is no reason not to pursue them.
 - It is important to begin these steps early to provide domestic authorities with sufficient time to identify the best ways to ratify and implement. The steps in the process should not be a deterrent to beginning the process.
 - The deliberate starvation of civilians in NIAC is a real and pressing problem. The need for State leadership to broaden the ratification and implementation of the Starvation Amendment is urgent.

12 Common Q&As

Q. What is the Starvation Amendment and why is it important?

- A. The Starvation Amendment to the Rome Statute of the International Criminal Court (ICC) was adopted by the Assembly of States Parties to the ICC on 6 December 2019. It closes a gap in the legal framework of the Rome Statute to make plain that it is a war crime to deliberately starve civilians in non-international armed conflicts and international armed conflicts alike.

**TIP**

Further information on the Starvation Amendment is available in Section 4.2 of GRC's [Ratification Guidebook](#).

Q. What can Executive Government do to support the ratification process?

A. Members of Executive Government may have different formal or informal roles in ratification and implementation processes depending upon the laws and practices of each State. Irrespective of their formal roles, they generally exercise significant influence and can play an important role in formulating policy, contributing to setting the legislative agenda, and acting as agents for change in their own right. Executive Government is encouraged to champion initiatives to ensure ratification and implementation of the Starvation Amendment are given priority and followed through to completion.

**TIP**

Further information on the role of Executive Government is available in Section 6.2 of GRC's [Ratification Guidebook](#).

Q. What can the Legislative do to support the ratification process?

A. In many States, Parliamentarians may have a formal role in supporting parliamentary or legislative procedures necessary to facilitate ratification and/or implementation. Additionally, they can play a role in determining the parliamentary and/or legislative agenda. These roles provide a platform for Parliamentarians to champion efforts to ratify and implement the Starvation Amendment and voice support for the Rome Statute system. For the success of the latter, it is important that Parliamentarians support initiatives to ensure that domestic laws are consistent with States international obligations.

**TIP**

Further information on the role of the Legislative is available in Section 6.1 of GRC's [Ratification Guidebook](#) and in Parliamentarians for Global Action's [Parliamentary Kit on the International Criminal Court](#).

Q. What can the diplomatic community do to support the ratification process?

A. The diplomatic community is well placed to support domestic efforts to ensure that the Starvation Amendment is ratified and implemented. Diplomats have unparalleled access to expertise and insights concerning the benefits of ratification, including how it will advance States' interests at home and abroad.

It is important that States, through their diplomatic representatives, speak up about potential violations of IHL, including those that satisfy the elements of the war crime of deliberate starvation in NIACs under the Starvation

Amendment. Awareness raising, including calling upon the international community to ratify the Starvation Amendment is an important tool for combatting impunity for starvation crimes and in long-term strategies for ending hunger.



TIP

Further information on the Starvation Amendment is available in Section 6.3 of GRC's [Ratification Guidebook](#).

Q. Is supporting ratification of the Starvation Amendment consistent with humanitarian actors' responsibility to maintain neutrality in order to fulfil their mandates?

A. Yes. It is important that humanitarian actors engage with decision-makers to address initiatives to minimize harmful conduct that imperils their work. Some CSOs engaged in facilitating humanitarian aid may be cautious about adopting the lexicon of starvation accountability. However, lending their voice to the call to States to ratify the Starvation Amendment need not compromise neutrality or impede humanitarian efforts and does not require CSOs to take a position on the potential responsibility of warring parties for starvation in specific situations.

Q. When is the best time to ratify / implement the Starvation Amendment?

A. The best time to ratify and implement is now. These procedures don't have to be complex, but they are formal processes that can take time. Starting the processes today is integral to ending the tacit tolerance of weaponised starvation.



TIP

Further information on the Starvation Amendment is available in Section 5.3 of GRC's [Ratification Guidebook](#).

Q. Why ratify if intentional starvation is already prohibited under IHL / the laws of war?

A. ICL, including the Rome Statute, provides accountability mechanisms for many violations of IHL. This is also true for national systems, including those that have strived to ensure domestic laws allow prosecution of crimes also contained in the Rome Statute and cooperation with the ICC. Excluding the crime of deliberate starvation of civilians in NIAC from international and domestic legal systems means that this crime cannot be investigated in the same way as other international crimes, even where Ratification (and implementation) are important means of building a global architecture to ensure that both the ICC, and States Parties, have the legal frameworks in place to pursue investigations and prosecution of starvation crimes when and where they occur.