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Factsheet #3:

The War Crime of Starvation and the Right to Food Under International Human Rights Law



The War Crime of Starvation and the Right to Food under International Human Rights Law

This Factsheet provides an overview of the interrelationship between the guarantees to adequate food and freedom from hunger under International Human Rights Law (IHRL) and the war crime of deliberate starvation of civilians.

IHRL has a great deal in common with International Humanitarian Law (IHL) – the rules that prescribe acceptable and unacceptable conduct in times of war – and International Criminal Law (ICL) – the body of law designed to deter the commission of serious atrocities and hold individual perpetrators to account. Similar substantive norms and underlying philosophies resonate throughout IHRL, IHL and ICL. ICL draws from many IHL prohibitions and States' obligations under IHRL. This includes, for example, the criminalisation under ICL of the deliberate starvation of civilians, derived in-turn from the IHL prohibition of starvation tactics during armed conflict (see [Factsheet #1: The Prohibition of Starvation as a Weapon of War](#)). IHRL offers guarantees of individual and collective rights that apply both during peacetime and whenever IHL and/or ICL apply, including during situations of armed conflict. As such, IHRL complements and reinforces IHL and ICL.

Conduct related to the weaponisation of starvation against civilians in armed conflict is prohibited by IHL and a war crime under ICL. Analysing warring parties' conduct through the lens of breaches of IHRL can help establish where violations of IHL and/or ICL have occurred. Conversely, ICL is an important deterrent to prevent breaches of IHRL from occurring, and an important means of ensuring access to justice for victims of such breaches. Ratification of the starvation amendment to the Rome Statute of the International Criminal Court is an important means of advancing and protecting the values enshrined in the right to food and to be free from hunger.

International Human Rights Law in Conflict

IHRL is a body of law that safeguards the dignity and fundamental freedoms of all people at all times, including during armed conflict situations. At its core, IHRL protects individuals by defining the main duties and obligations of States and providing avenues for victims to seek redress. Some human rights impose immediate obligations on States to take – or refrain from taking – action to ensure rights are protected. Others impose progressive obligations, requiring States to take appropriate measures towards their full realisation to the maximum extent their resources allow. For this purpose, various UN treaty bodies, regional human rights bodies, Commissions of Inquiry, and other agencies are mandated to monitor compliance with, and implementation of, IHRL.

The primary sources of IHRL are international human rights treaties. They are also supplemented by customary rules and complimented by regional human rights treaties. The foundation of IHRL is the Universal Declaration of Human Rights (UDHR) together with two international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the ICCPR enumerates civil and political rights (CP rights) subject to immediate realisation, the ICESCR contains economic, social and cultural rights (ESC rights) which are subject to progressive realisation. While this means that the parameters of States' obligations to promote these rights may differ according to different contextual factors, both CP rights and ESC rights continue to apply during times of war.

Since the end of World War II, most armed conflicts have been characterised by fighting between States and organised armed groups, i.e., Armed Non-State Actors (ANSAs). Under IHL, such wars are known as Non-International Armed Conflicts, or NIACs.

In NIACs, States still retains the obligation to take all appropriate diplomatic, economic, judicial and other measures to protect the human rights of the population living under an ANSA's *de facto* (existing in fact, although perhaps not intended, legal or accepted) control. Although the extent to which ANSAs have their own obligations under IHRL is debatable, there is broad consensus that ANSAs “exercising either government-like functions or *de facto* control over territory and population must respect and protect the human rights of individuals and groups” (Clapham, 2006). The precise scope and extent of human rights obligations attributable to an ANSA must take into account the group’s distinct organisation, authority and capacities.

The War Crime of Deliberate Starvation of Civilians

Starvation of civilians, in IACs and NIACs, is a prohibited method of warfare under Article 54(1) of the First Additional Protocol to the Geneva Conventions and Article 14 of the Second Additional Protocol to the Geneva Conventions, respectively. The prohibition has gained the status of customary IHL, as reflected in the ICRC’s Customary Humanitarian Law Database under [Rule 53 \(Starvation as a Method of Warfare\)](#) and [Rule 54 \(Attacks against Objects Indispensable to the Survival of the Civilian Population\)](#).

Many domestic jurisdictions criminalise the use of starvation as a weapon of war in IACs and/or NIACs or without distinction as to the type of conflict concerned.¹ Intentional starvation of civilian is also recognised as a crime under ICL. For instance, the UN Security Council in [Resolution 2417 \(2018\)](#), has recognised that the deliberate starvation of civilians as a method of warfare is an international crime, irrespective of the legal classification of the armed conflict (IAC or NIAC). The use of starvation as a method of warfare has been expressly condemned, for example, in relation to NIACs in South Sudan ([S/2020/366](#)) and Yemen ([A/HRC/42/L.16](#)).

The Rome Statute of the International Criminal Court (ICC), under its Article 8(2)(b)(xxv), criminalises the deliberate starvation of civilians in IACs. On 6 December 2019, the Assembly of States Parties to the Rome Statute adopted the Starvation Amendment to introduce the new Article 8(2)(e)(xix), criminalising the intentional starvation of civilians as a method of warfare in NIACs. Now, widespread ratification of the Starvation Amendment is needed to give effect to Article 8(2)(e)(xix) and align States Parties’ obligations under ICL with existing IHL protections. This will help provide access to justice for victims of serious human rights violations occasioned by starvation crimes in NIACs and help to deter the commission of such abuses.

The Right to Adequate Food and the Right to be Free from Hunger

“The right to food” is an umbrella term which includes the right to adequate food and water and the right to be free from hunger in all their permeations under different sources of IHRL.

¹ See Annex D to GRC’s **Guidebook: Ratifying and Implementing the Starvation Amendment to the Rome Statute**, available at <https://starvationaccountability.org/publications/ratification-guidebook/>.

- (i) **The right to adequate food and water** is realised when every man, woman and child has constant physical and economic access to sufficient quality and quantity to satisfy their dietary needs.
- (ii) The **right to be free from hunger** is the only right qualified as “fundamental” by the ICESCR. It is considered absolute. It entails the minimum level that should be secured for all, whatever the level of development of a given state. This **minimum core obligation** cannot be limited even in times of public emergency. The right to be free from hunger is also closely related to the right to life.

The right to food is a fundamental human right first recognised under the UDHR in 1949. States’ broad obligations with respect to the right to food are set out in the ICESCR and form a part of the right to an adequate standard of living under the Convention on the Rights of the Child (CRC), which enjoys near universal adoption amongst UN Member States.

The right to food is further recognised under other IHRL instruments, including treaties that bind States that have agreed to their terms, and non-binding declarations of principle, as well as several regional IHRL treaties. Of these, many recognise the right to food in the context of the rights of specific groups of individuals. Additionally, many States enshrine protections to the right to food directly or indirectly in constitutional provisions.

The Realisation of the Right to Food

ESC rights, including the right to adequate food and water and the right to be free from hunger impose a three-fold obligation on states that are expected to:

- (i) **‘respect’** rights by ensuring that they do not consciously or arbitrarily violate them or interfere with their enjoyment;
- (ii) **‘protect’** rights by taking positive action to prevent foreseeable harm at the hands of third parties; and
- (iii) **‘fulfil’** rights by taking positive measures such as adopting appropriate legislative, administrative, budgetary, judicial, promotional, and other measures. This in turn includes an obligation to facilitate, promote and provide.

Violations of these tripartite obligations can occur through either direct action or omission, including the failure of States to take necessary measures stemming from legal obligations.

As mentioned above, ESC rights are subject to progressive realisation, meaning that States are required to take steps to the maximum of their available resources with a view to progressively achieving the full realisation of such rights. Nonetheless, the right to food together with other ESC rights contain minimum core obligations subject to immediate realisation, requiring States to take immediate action. The right to be free from hunger constitutes the indispensable and minimum core obligation of the right to food and as such is subject to immediate realisation – requiring States to act with urgency to avoid violations of this right, even in the context of armed conflicts.

Starvation in Conflict: Violations of Interlinked Rights

Intentional starvation of civilians as a method of warfare encompasses the deprivation of indispensable objects, including food, water, shelter, medicine and more. The extent and nature of human rights violations occasioned by the war crime of starvation will depend on the circumstances of the offending conduct in any given case. But violations of the right to food and related rights in conflict situations do not merely help map the consequences of the war crime of starvation: establishing the extent of human rights violations can be a useful tool in determining whether war crimes have been committed in the first place. Reporting on and raising awareness of violations to the right to food (and connected human rights violations) as they occur can help to deter (further) criminal conduct from occurring, establish the intent of perpetrators of deliberate starvation when that conduct does not cease.

The Right to Food and Related Rights in Conflict

Food security is essential to ensure adequate nutrition and freedom from hunger. As such, food security acts as a prerequisite to nutrition security, health, and adequate standards of living and wellbeing. As a result, when conflict causes insufficient access to food and water, violations of rights to food, freedom from hunger, adequate nutrition, and adequate water can be impacted alongside other core rights.

For example, the right to an adequate standard of living obligates States, at a minimum, to ensure adequate food and nutrition, water and housing. Where States fail to do so other closely related ESC rights, including the right to health and CP rights, such as the right to life and to be protected from torture and other inhuman treatment, are at risk of violation, too.

The same is true when starvation tactics are used as a weapon of war. The violation of the right to food or interrelated ESC rights frequently has implications for other connected rights. Moreover, in times of conflict, the impact of food insecurity and the human rights violations it causes are often exacerbated for the most vulnerable amongst the civilian population.

Express Protections of the Right to Food and Related Rights

The following (non-exhaustive) table shows how different international and regional human rights frameworks expressly recognise the right to food, and related ESC rights, through treaties or other instruments:

	Right to Food ²	Right to Adequate Water	Right to Adequate Health	Right to Adequate Housing
International Human Rights Instruments	International Treaties CRSR , Art. 20. ICESCR , Art. 11 CEDAW , Art. 12(2) CRC , Art. 24(2)(c) CRPD , Art. 28 Other Instruments UDHR , Art. 1	International Treaties ICESCR , Art. 11(1) CEDAW , Art. 14(2)(h) CRC , Art. 24(2)(c) CRPD , Art. 28 Other Instruments UDHR , Art. 1	International Treaties ICESCR , Art. 12 CEDAW , Art. 14(2)(h) CRC , Art. 24 CRPD , Art. 25 Other Instruments UDHR , Art. 1	International Treaties CRSR , Art. 21. ICESCR , Art. 11(1) CEDAW , Art. 14(2)(h) CRC , Art. 27 CRPD , Art. 28 Other Instruments UDHR , Art. 1

² Including the right to adequate food, the right to be free from hunger, the right to adequate nutrition, and rights related to rationing.

African Union / Organisation of African Unity Framework	Regional Treaties African Charter on the Rights and Welfare of the Child , Art. 12 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa , Art. 15	Other Instruments ACommHPR, Guidelines on Right to Water in Africa	Regional Treaties ACHPR , Art. 16	Regional Treaties African Charter on the Rights and Welfare of the Child , Art. 20
ASEAN Framework	Other Instruments ASEAN Human Rights Declaration , Art. 28(a)	Other Instruments ASEAN Human Rights Declaration , Art. 28(e)	Other Instruments ASEAN Human Rights Declaration , Arts 28(d), 29.	Other Instruments ASEAN Human Rights Declaration , Art. 28(c)
Council of Europe (CoE) Framework	<i>Not explicitly recognised</i>	Regional Treaties European Social Charter , Art. 31	Regional Treaties European Social Charter , Art. 11	Regional Treaties European Social Charter , Art. 31 European Convention on the Legal Status of Migrant Workers , Art. 13.
ECOWAS Framework	Other Instruments Charter for Food Crisis Prevention and Management	<i>Not explicitly recognised</i>	<i>Not explicitly recognised</i>	<i>Not explicitly recognised</i>
Inter-American Framework	Regional Treaties Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights , Art. 12	Regional Treaties Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights , Art. 11	Regional Treaties Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights , Art. 10	<i>Not explicitly recognised</i>
League of Arab States Framework	Regional Treaties Arab Charter on Human Rights , Art. 38	<i>Not explicitly recognised</i>	Regional Treaties Arab Charter on Human Rights , Art. 39	Regional Treaties Arab Charter on Human Rights , Art. 38
Organization of Islamic States Framework	Other Instruments Cairo Declaration on Human Rights in Islam , Art. 17(c)	<i>Not explicitly recognised</i>	Other Instruments Cairo Declaration on Human Rights in Islam , Art. 17	Other Instruments Cairo Declaration on Human Rights in Islam , Art. 17(c)

Implied Protections of the Right to Food

In addition to these express protections to the right to food and related rights, various human rights instruments offer implicit recognition of the right to food. For example, the Human Rights Committee, which oversees compliance with the ICCPR, has found that denying food to a prisoner constitutes a violation of the right to freedom from cruel, inhuman, and degrading treatment ([CCPR/C/51/D/458/1991](#)) under Article 7 of the ICCPR. The Committee Against Torture, the treaty-body tasked with oversight of the Convention Against Torture and Other Cruel, Degrading and Inhuman Treatment has found that deprivation of certain objects indispensable to the survival of the civilian population (namely food, water and access to sanitary facilities) constitutes a breach of the right to freedom from torture ([CAT/C/63/D/637/2014](#)).

At the regional level, the African Commission on Human and Peoples' Rights recognises the implicit protection of the right to food in the ACHPR and that exploitation of oil which poisons the soil and water, as well as the armed forces sowing terror and destroying harvests violate the state obligation to respect and protect the right to food (*Ogoni case*). Similarly, the Inter-American Court of Human Rights considered circumstances that involved impediments to an indigenous community's access to food, water and essential medical care and supplies in finding violations express rights to life (Article 4) and property (Article 21) of the American Convention on Human Rights (*Sawhoyamaya v. Paraguay*).

The Right to Food, Food Security in Conflict and International Development

Throughout the twenty-first century, the international community expended significant resources and effort to combat hunger, in part, as a response to the disproportionate suffering occasioned to vulnerable civilians during the two World Wars. Significant milestones were achieved, supported by international cooperation, developments in agriculture and deeper understandings of the causes of food insecurity and famine. Today, food security is recognised to consist of six dimensions: availability, access, utilisation, stability, agency and sustainability.

After decades of decline, food insecurity is on the rise, as are incidents of famine and starvation. Increasingly, the weaponisation of food, deliberate use of starvation tactics, and interference with humanitarian assistance are recognised as a major cause of food insecurity. As reflected in UN Security Council Resolution 2417 (2018), the pursuit of accountability for perpetrators – and justice for victims – of the war crime of starvation shares a normative underpinning with initiatives aimed at ensuring the equitable distribution of food resources and combatting food insecurity.

The imperative of achieving the realisation of the right to food is clear. Ending hunger and achieving food security is [Goal #2 \(Zero Hunger\)](#) of the UN Sustainable Development Goals 2030. As the international community continues to invest resources and effort in the fight against hunger, combatting the deliberate use of starvation of civilians as a weapon of war through ratification and implementation of the starvation amendment is a critical aspect of building an international legal framework to combat gross violations and abuses of the right to food.

Further Reading

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