

This briefing paper is part of “Accountability for Starvation: Testing the Limits of the Law,” a joint project of Global Rights Compliance (GRC) and the World Peace Foundation (WPF).

The project aims to identify how international law may be used to advance the prevention, prohibition and accountability for mass starvation.

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**Damaan Humanitarian Organization** is Dutch-based non-governmental organization that works to foster sustainable development and humanitarian responses in Syria. Its mission is to make a lasting difference in the lives of Syrians and to help rebuild the country. It does so by seeking local solutions to the country’s challenges and sowing the seeds for lasting change.

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## Accountability for Starvation Crimes: Syria

### OVERVIEW

1. This memorandum addresses the issue of starvation crimes committed during the war in Syria (2012-18) including the goals and methods of the perpetrators, the outcomes for the victims, and the possibilities for legal redress. It includes an overview of the use of starvation during the war and case studies of Eastern Ghouta (in the Damascus suburbs), Aleppo and Deir Alzor. Detailed legal analysis of starvation issues is addressed elsewhere.<sup>1</sup>
2. Before the conflict, Syria was a middle-income, food-secure country. Given the techniques used by the regime in many areas, populations were reduced to starvation during the war. Additionally, wartime economic destruction means that 6.5 million people are now acutely food insecure.
3. The Assad regime used a ‘kneel or starve’ strategy relentlessly during the war, as part of its strategy of attrition to reduce opposition-held urban enclaves to submission. It involved (a) sealing off besieged areas, denying access to food and other essentials including water, health care, electricity and gas, employment and money; along with (b) targeted attacks on bakeries, health facilities, markets, livelihoods and agriculture; and (c) restricting or blocking humanitarian relief and attacking relief workers.
4. While opposition forces, notably Da’esh/ISIL, also besieged areas (including using starvation as a method of war), as the only armed party with recourse to aerial bombardment, the regime had greater means and demonstrated a consistent will to enforce siege. Moreover, numerous actions by commanders of the Syrian regime forces constitute serious and grave International Humanitarian Law (IHL) violations.
5. There are no reliable statistics of the numbers of deaths due to starvation and related diseases, despite strong evidence that starvation tactics are implicated in the overall excess mortality since 2012. The UN reports ‘hundreds of thousands’ of overall deaths due to conflict, without specifying cause, since the war in Syria began.

## Background

6. Prior to the war, Syria was a middle-income country with moderate urbanization and a diversified economy, in which agriculture played an important role. The country was a net food exporter. It had not suffered famine since the devastations of World War I. In the early 2000s, it suffered several economic shocks that caused impoverishment and unrest. In the north-east of the country, a long drought and mismanagement of rural water resources contributed to agricultural crisis, especially in the irrigated sector, and food insecurity affected farmers. Syria also hosted refugees from Iraq. Economic reforms at the same time allowed crony capitalists close to the ruling family to gain control over key sectors, from which they could extract profits. The 'world food crisis' of 2008-09 and 2011, which involved a global spike in prices for basic cereals including wheat, which arose from a number of factors associated with the turbulent global economy, coincided with the regime reducing social subsidies in the country, which caused further hardship and contributed to popular discontent. None of these factors, however, indicated that Syrians could at any time in the near future come face-to-face with starvation.
7. The main humanitarian assistance projects before 2011 were targeted at Iraqi refugees through food rations and using an electronic voucher system. There was also a drought response programme targeting Syrians in the eastern part of the country.
8. The conflict in Syria began in March 2011 as a wave of non-violent popular protests demanding democratic reforms. The protesters hoped that President Bashar al-Assad would either be forced from power (as had happened to the presidents of Egypt and Tunisia) or would spearhead reforms himself. Instead, the regime entrenched itself. It violently repressed protesters. In July 2011, defectors from the military, including military conscripts, announced the formation of the Free Syrian Army (FSA), aiming to overthrow the Assad regime by force. However, for some months, the uprising remained primarily non-violent and overwhelmingly non-sectarian.
9. Numerous external actors became engaged in Syria's domestic political arena, supporting different groups with funding and weaponry. The US, UK, France, Saudi Arabia, Turkey, Qatar, Jordan and UAE supported the opposition, while the regime called on Russia, Iran, Hezbollah of Lebanon, and Iraqi and Afghan Shiite militias. Partly through the sponsorship of diverse external sponsors with their own agendas, and partly through a regime strategy of destroying the democratic middle ground through radicalizing the opposition and playing divide-and-rule on a sectarian basis, the opposition rapidly fragmented. This handed a lifeline to the regime, which although a minority actor with limited resources, still commanded the state apparatus and sufficient cohesion and firepower to be able to crush its divided opponents one at a time. Western countries quickly became more appalled by the rise of Al-Qaeda-linked groups and (from 2013) Da'esh/ISIL, than the atrocities of the Assad regime, and diverted their main military effort towards destroying Da'esh/ISIL. The tide of the war decisively changed in 2015 when the Assad government benefitted from increased support from Iran and Hezbollah and Russian intervention. Russian aircraft and artillery escalated the level of destruction still further.
10. The war has been extraordinarily complex, not just in the shifting landscape of armed groups and their diverse sponsors, identities and ideologies, but also in the military tactics used. The regime suffered many early losses, as much of the country rebelled and many army officers defected to the opposition. It then opted to fight a war of relentless attrition, targeting all areas under the opposition, and laying siege to civilian areas where the opposition was able to concentrate forces. The government adapted standard counter-insurgency methods to protracted urban warfare. It sealed off the opposition-controlled enclaves. Limited by the fact that it did not have sufficient force for a ground assault, its primary weapons were deprivation and fear. Hence it used the method of 'kneel (surrender) or starve', policed by troops and militia, combined with air raids and artillery bombardment. The strategy was deployed against city after city.
11. During the conflict, more than half of Syria's population (11 million people) has been displaced, with slightly over 6 million internally displaced and 5.6

million registered refugees. More than half a million have been killed. In 2018, 13.1 million people (54% of the population) were in need of food assistance; of whom about half were acutely food insecure.<sup>2</sup> A formerly food secure country faced a situation in which a quarter of its populace was in urgent need of humanitarian aid.

## Starvation During the War

12. The ‘kneel or starve’ strategy was applied first in Homs, where government soldiers sprayed graffiti announcing these words on walls close to checkpoints. In 2011, the city experienced targeted violence along sectarian lines, which escalated in 2012, when the government deployed the army against an opposition stronghold neighborhood Baba Amr. For a month, the area was surrounded and reduced to rubble. By July 2012, a similar pattern, replete with violence, was repeated in other opposition-dominated neighborhoods. This was widely noticed by the local people. The ‘starve’ element included cutting off food supplies, water, electricity and gas, waste services, and medical care, as well as employment and access to banks. This was accompanied by indiscriminate attacks on the area as well as attacks against any movement inward or outward. Normal economic life came to a halt. The situation was only relieved in 2014, with series of negotiated surrenders that included surrender of territory and mass displacement.
13. Siege warfare was the most characteristic tactic used by the regime and its allied forces throughout the war, at the height of the conflict impacting over a million people in towns and cities across the country. Sieges were implemented using direct violence (bombing, sniping, massacres, rape, chemical weapon attacks), and, the focus of this study, through strategic use of starvation and deprivation of objects indispensable to survival (OIS) of entire civilian populations.
14. The end result of siege tactics varied over time and geography. In some instances, the regime gained control over both territory and population; in others, once territorial control was established, the entire population was displaced and only small segments were allowed to return. As an example, in 2013-15 as the regime was losing ground, it sought to establish areas of control along the border with Lebanon, to secure vital passageways. For many observers, this was a part of a plan to link Shiite territories in Lebanon with Alawite controlled areas in Syria should the regime need to retreat further and consolidate in an ‘Alawistan’ or a small part of Syria. In other areas, it sought to secure important Shi’ite religious shrines by homogenizing the sectarian identity of the surrounding population. However, as the regime’s battlefield successes mounted, it increasingly aimed to consolidate control of both population and territory throughout the country.
15. To a lesser degree, sieges were also deployed by other armed groups, notably Da’esh/ISIL and al-Nusrah Front, with a similar range of outcomes. An example examined below is the city of Deir Alzour. In other cases, for example the Aleppo countryside, the sectarian nature of the conflict played a role and siege appears have had the additional intent of compelling communities to abandon their land. Ultimately, these actors were less successful in their efforts, as the war progressed, and regime forces increasingly gained territorial control.
16. At times, anti-government forces were able to draw tactical advantage from the regime’s siege policy in their recruitment and allegiance building. People who already did not necessarily support Assad in the besieged areas tended to consolidate their support for the rebel authorities. Local NGOs benefiting from the support of charity and international support focused their assistance at civilians, while the rebels usually gave priority access to food and other supplies to their own troops, including recruits and affiliates.
17. Protracted siege warfare creates artificial scarcities and opportunities for windfall profits for those who can break the siege, and thus economic war generated a war economy. The war economy was associated with corruption and cross-line deal-making, which allowed those with money or who controlled key commodities (fuel, water, food) to trade with the enemy, at times for enormous profit. This underground economy meant that many people were able to survive who would otherwise have perished. However, it also represented a massive transfer of resources from ordi-

nary Syrians to a mafia-like network of war profiteers.

18. A complex and often perilous humanitarian aid effort was mounted. International actors were frequently prevented from reaching the most vulnerable populations. A large network of local relief organizations sprang up during the war, some of which received assistance from international agencies and donors. Data on attacks against humanitarian aid workers are limited: although international organizations made an effort to account for attacks against international staff, there was no systematic effort to detail attacks against national staff or local NGOs.
19. This memo documents patterns and distinguishing features of sieges: in Damascus and its environs that affected hundreds of thousands of people in some 50 towns and villages, with focus on Eastern Ghouta; along the border with Lebanon, with focus on Zabadani; in Aleppo, in the northwest; and Deir Alzor near the Iraqi border. We also discuss the use of starvation in the context of Syria's vast (and largely underground / illicit) prison system, infamous now for its barbaric torture tactics.

### Case Study: Eastern Ghouta

20. The siege of Eastern Ghouta was the longest since the World War II and was among the harshest in the Syrian context.
21. Eastern Ghouta is a collection of towns and villages in the vicinity of Damascus. It was historically an agricultural area, but in the 1980s urban growth saw agricultural land replaced with residential and industrial complexes. Between 2013-2018 it was besieged in the most protracted and intense case of siege warfare in the country. The Assad regime and supporting Shiite militias were exclusively responsible.
22. The residents of the area protested against the regime, Assad forces responded with harsh oppression, prompting armed rebellion began in late 2011. Various rebel and FSA-affiliated groups were created in late 2011, and onward. Eastern Ghouta's siege began in April 2013. This was preceded by cutting of water and electricity supplies. The following year, the Syrian government banned

civilian traffic into the enclave. Only a trickle of commercial food deliveries was allowed to be imported, which were then sold at huge price inflation. There is no confirmation if these food deliveries were allowed by the general command or were due to the corruption of the officers in charge. In addition to blocking food and basic services, medical supplies were stopped, and the besieged population had to make do with stocks and locally produced materials. Waste disposal also ceased in the area. The government prohibited civilian movement out of the enclave by indiscriminately attacking any movement. Access was heavily restricted, and at times completely blocked and banned. For most of the siege, Eastern Ghouta had only two access routes to the outside world: al-Wafideen crossing, which was almost permanently closed and only allowed the movement of civilians and a few selected cars, and a network of tunnels that lead to the Damascus suburbs. Al-Wafideen crossing was controlled by Syrian state forces on one side and Jaish al-Islam on the other. The other access route was a network of tunnels that ran out to the Damascus suburbs, al-Qaboun, Tishreen, and Barzeh, controlled by groups affiliated to the FSA. One officer said, that if they could cut off the air supply, they would do it.<sup>3</sup>

23. The population under siege in Eastern Ghouta was subjected to air attacks including barrel bombs and an infamous chemical weapons attack in August 2013. The air attacks included a pattern of attacks on hospitals, bakeries and communal kitchens that showed evidence of a determination to inflict the maximum deprivation on people. During the last push to conquer the enclave, and in order to undermine the will of the people to resist, bombs or missiles were targeted at locations where there was evidence of cooking (i.e., smoke rising from communal kitchens), which would appear to be an effort at disrupting a bakery or kitchen. This pattern of attack was against all communal kitchens and bakeries and was always preceded by aerial reconnaissance. Once the majority of bakeries and communal kitchens were eliminated, the intensified attacks on hospitals and medical centres took place. This was a consistent pattern of depriving people of activities (as well as objects) essential to their survival.
24. Within the besieged areas, control was divided

between two primary opposition armed groups: Jaysh al-Islam and Al-Rahman Corps, an FSA affiliate group. Jaysh al-Islam, an Islamist group mainly controlling Douma district, seized control over all aspects of life in the area under its control including policing, setting up courts and distribution of aid under their direct control. This was an effort to consolidate control and gain allegiance from the people. NGOs and groups with different affiliation of political aspirations were not allowed to operate in the area under the control of the Jaysh al-Islam. In the remaining part of Eastern-Ghouta, the Free Syrian Army represented by Al-Rahman Corps co-administrated the area under its control with the civilian local councils and representatives of the Syrian interim government, which was recognized internationally. The FSA defended the area, while the municipal authority and Syrian interim government were left to arrange services such as water, health care and waste disposal. Meanwhile, the FSA had a parallel services structure for its own affiliates.

25. The government tightly restricted humanitarian aid and often blocked it entirely. Through the first half of 2017, no UN aid convoys entered eastern Ghouta. The 4 May 2017 'De-escalation Zone' agreement and the 22 July 2017 Cairo ceasefire agreement that backed it up both included detailed provisions for aid access, which were only partially honoured. There were UN aid convoys to Douma and Harasta between May and August 2017. Each time the amounts permitted and the people to whom the aid could be distributed were tightly regulated. For example, on 30 October 2017, supplies were allowed for 40,000 residents in the two towns of Kafr Batna and Saqba, but the government stipulated the aid not be shared or distributed with residents of other areas in Eastern Ghouta.<sup>4</sup>

26. In late 2017, the regime further tightened its blockade. After 78 days with no access to the enclave, a UN aid convoy was permitted access in February 2018. According to UN figures, the regime stripped it of 3,810 units of medical equipment, including syringes, intravenous catheters, sterile surgical gloves, anesthetics, adrenaline, and anti-asthma medicines.<sup>5</sup> The same happened to a UN convoy the following month, when government forces removed most of the medical equipment, includ-

ing surgical kits, insulin, dialysis equipment, and other supplies. Even the goods that were allowed to pass did not all make it into the hands of those who needed them so desperately. During the night, 40 trucks pulled out of Douma after shelling on the town, without fully unloading the supplies they had brought in. Ten trucks left the town still fully sealed, while four more had been partially unloaded.

27. An indication of the level of scarcity is that, in November 2017, one kilogram of bread in eastern Ghouta cost 1,150 percent more than in nearby Damascus.<sup>6</sup> From January 2017, bread and wheat flour prices increased by more than 174 percent and 390 percent, respectively, while sugar prices rose by more than 1,000 percent. Boiling water to make it safe to drink often became impossible due to fuel shortages.

28. There is as yet no comprehensive assessment of the civilian impact of the siege and war in Eastern Ghouta. A limited measure of the severity of the siege during the final year (2017), however, can be found in a humanitarian survey of the period 29 October-14 November 2017, which classified the situation as 'serious,' having found a global acute malnutrition (GAM) rate of 11.9%, a sharp increase from levels found in January 2017 (2.1%). Chronic malnutrition levels were also classified as 'serious,' with 36% stunting rate; again, an increase from January 2017 (30.5%). The survey also found that residents were reduced to eating raw vegetables and consuming only one meal a day, with priority given to children.<sup>7</sup>

29. Eastern Ghouta fell to the control of the Syrian regime in March 2018 after a military campaign aided by the Russian air force. At the time the regime regained control, approximately 400,000 people were residing in the enclave.

### Case Study: Zabadani

30. The siege of Zabadani by regime forces, ended in 2017, when the town was part of a four-city deal between armed groups that included civilian population transfer with the effect of 'cleansing' along sectarian lines. The deal included Madaya, Foah, and Kefraya—as well as a ransom paid by Qatar to release hostages taken by a Shiite armed group

in remote Iraqi areas. The deal illustrates the many actors involved in and layers of interlocking interests that both helped to maintain and, finally, conclude this siege.

31. Initial talk of the deal began during a period when the regime was focused on consolidating areas of control along its border with Lebanon. It was timely as the regime was in retreat and believed to be consolidating its own future country that would link the Shiite areas in Lebanon with its Alawite-controlled Syria. By the time of implementation, the regime was already on the winning side and its ultimate goal may have changed. Nonetheless, the siege ended with the total population displacement. Years after the forced evacuation, only a small group of ex-residents were allowed to return upon a long process of security clearance.
32. In 2011, protests against the Assad regime started in the form of peaceful protests in Az-Zabadani, which is located 45 km north of the capital Damascus. The first death in Az-Zabadani as a result of the Assad's forces crackdown was reported on May 27, 2011. This was accompanied by what had become a pattern of daily arrests against males between 15-60 years old. By August 2011, the opposition took up arms against the regime due to the increased suppression of the regime's forces. In November 2011, the regime forces attacked the town with heavy artillery and tanks. The campaign lasted for approximately one week, resulting in only partial achievement of regime aims, after which the regime resorted to indiscriminate bombardment. This resulted in the displacement of half of the town's population of 26,285 (2004 census) from western neighbourhoods towards eastern neighbourhoods and Bludan town, and was followed by several military campaigns.
33. The city remained under siege until it fell into the hands of the regime and its affiliated militias. During the siege, activists reported tens of deaths due to illnesses directly caused by deprivation of food and medical supplies,<sup>8</sup> lack of heating fuel through winter further exacerbated health impacts of the siege. Meanwhile, the city lacked all basic services including electricity, gas supplies, state-education and clean water. The regime attempted to break into Az-Zabadani town started in July 2015 with the support of Lebanese Hizbullah, Iraqi militias of Abu Alfadl Alabbas and Palestinian militias of Ahmed Jibril. The campaign slowed down when the opposition and the regime, with the involvement of Iran and Qatar, reached the agreement of Az-Zabdani-Kafraya and Foaa.
34. The agreement included an immediate ceasefire, evacuation of the wounded and the opening of relief passages to besieged areas. Nevertheless, only two points were implemented: the cessation of hostilities and evacuation of the wounded.
35. In late 2015, activists in the two cities of Madaya and al-Zabadani documented the death of 48 people in the last two months due to the siege of their cities. Among them, 33 died due to lack of food and medicine whilst seven died due to land mine explosions, and six were killed by snipers of the regime and its militias as they tried to run away from their besieged homes. Two were also killed by snipers as they attempted to smuggle food and medicine into besieged areas.<sup>9</sup>
36. The siege continued unabated until the city was forcibly evacuated in April 2017. Discussions about a possible deal began during a period when the regime was focused on consolidating areas of control along its border with Lebanon. It was timely as the regime was in retreat and believed to be consolidating its own future country that would link the Shiite areas in Lebanon with its Alawite-controlled Syria. By the time of implementation, the regime was already on the winning side and its ultimate goal may have changed; nonetheless, the siege ended with the total population displacement. Years after the forced evacuation, only a small group of ex-residents were allowed to return, and only following a long process of security clearance.

### Case Study: Aleppo

37. The use of starvation as a weapon of war in and around Aleppo is a more complex case due to the combination of different forms of siege tactics deployed alongside government attacks on farms and agricultural areas. In July 2012, a mix of armed groups, including the FSA, moved their troops into Aleppo and took control of almost half of the city in less than a month. Thereafter, the city was divided into two parts: western Aleppo, under

government control and eastern Aleppo, under a plethora of armed groups. Among the rebels were Jabhat Al-Nusra and Da'esh/ISIL, which emerged as significant actors in mid-2013. Patterns of violence and deprivation mirrored those elsewhere, but distinct were the networks of relationships between armed forces that resulted in the imposition of severe restrictions on goods trafficking into regime-controlled areas. The Quadral Committee of the opposition consolidated control over the crossing to the regime's areas at Bustan Al-Qaser neighbourhood.

38. The countryside east of Aleppo is a rich agricultural area with a good irrigation system. The government launched targeted and systematic attacks on the infrastructure, fields and markets. The town of Maskana, 100 km east of Aleppo, was the location of farms and water installations that provided water to the city. Government missiles struck the state-owned cattle farm and sugar factory. Markets, bazaars and trucks loaded with food were attacked and destroyed. The large Wednesday market in Maskana was repeatedly attacked.
39. The town of Albab is a commercial hub that links Aleppo, Idlib and Turkey to the eastern part of Syria. It became a place of refuge for Aleppo inhabitants who were fleeing the city after the outbreak of war there. In the first two years of the conflict (2012 and 2013), Albab was not attacked systematically. It was targeted whenever there was a rebel military operation against the nearby Kweres Military Airbase, to put pressure on the armed group factions to withdraw from the areas around the base. Thereafter, markets, bazaars, hospitals and bakeries were targeted by mortars, missiles and barrel bombs. This damaged the economy, pressured the inhabitants to leave, and made it difficult for businesspeople to reconstruct damaged houses, industries, farms and markets. The food supply for the local people, the displaced people, and for the market in Aleppo suffered. As the war intensified in this area, these attacks continued. In April 2015, the government targeted the main hospital in the city of Deir Hafer killing around 30 people including medical staff in the hospital.<sup>10</sup>
40. Until late 2013 and 2014, as Da'esh/ISIL gained advantage, trade between different sections of Aleppo continued despite the conflict. Following

the rise of Da'esh/ISIL, regime strongholds became surrounded, until a new military campaign mounted in mid-2013 from the south re-opened access late in the same year.

41. Areas of Northern Aleppo, bordered areas controlled by Kurdish armed groups, who maintained relations with regime forces, a relationship that allowed two Shi'a towns in the north to subvert total siege. Nubl and Zahraa, surrounded by opposition groups from three sides, were dependent on the supply line connecting them with Afrin, which was under Yekîneyên Parastina Gel (YPG). Moreover, aerial supply never stopped into the two Shi'a towns until the regime allied Shi'a militias opened the land supply line in February 2016 by ousting the opposition groups encircling the two towns. During the time the opposition groups were putting pressure on the Shi'a towns, civilians were able to move into Afrin or use helicopters to be transferred into Western Aleppo.

### Case Study: Deir Alzor

42. Deir Alzor is a case of reciprocal siege tactics mounted by government forces and Da'esh/ISIL from 2014-17. For more than three years, Da'esh/ISIL besieged a government enclave of 200,000 civilians, who were intermittently supplied by the UN. The regime mounted persistent attacks on basic civilian infrastructure, notably bridges, regardless of the fact that the population was aligned with it. In so doing, the regime sought to defeat Da'esh/ISIL even through imposing enormous suffering on loyal civilian populations. It is worth mentioning here that regime-controlled areas suffered the most with no land supply lines. Da'esh/ISIL managed to overcome the bridges' destruction by using boats crossing the Euphrates to supply the city with basic needs.
43. Deir Alzor is the largest city in eastern Syria, in the oil-producing area of the country, close to the Iraqi border. As the war began, it was difficult for the government to keep control over this large remote area. Hence, the regime forces started withdrawing from smaller towns, and consolidated its forces at the military airport of Deir Alzor, the Talaéa 'Vanguard' Camp and Military Brigade 137. By 2013, the entire countryside was under the control of the opposition armed groups, whereas the city

was divided between the opposition groups in the eastern part of the city and the regime in the western part. The regime adopted the same strategy that was being followed in other places: attacking food convoys, markets, bakeries, hospitals and notably the bridges.

44. By end of 2014, ISIS entered Deir Alzor and took control of much of the city. The first ISIS action was to cut the supply lines to the regime-controlled areas, where 200,000 civilians lived. The government still controlled the airport but Da'esh/ISIL attacks made it dangerous for aircraft to land. The UN used airdrops to provide humanitarian supplies. The siege lasted from July 2014 to September 2017.
45. By 2015, there were reports of civilians, mostly children under five, dying of starvation in Deir Alzor.<sup>11</sup> Very little aid reached the Da'esh/ISIL-controlled areas, apart from WFP airdrops, and it was not possible to conduct on-site assessments. Nonetheless, from people who managed to flee, reports of deaths from starvation and related diseases persisted through 2019,<sup>12</sup> as the remaining civilian population attempted to flee the final Government push to defeat ISIS reached displacement camps.
46. The government reacted to Da'esh/ISIL by targeting the bridges which link the city with its eastern rural hinterland. Warplanes carried out two raids on the town of al-Ashara targeting al-Hikmah hospital area and the Traffic Centre, while a raid carried out on Soq al-Hal in the city of al-Mayadin wounded dozens of civilians.

## Starvation in Detention

47. The regime, and its agencies and proxies, detained numerous people before and during the conflict. Many were subjected to conditions in detention that involved the OIS including food, water, sufficient clothing.
48. In January 2014, an official forensic photographer for the Military Policy, codenamed 'Caesar', defected from the regime with a dossier of 53,275 unique files, photographs taken between May 2011 and August 2013, that documented torture in primarily five Syrian regime detention cen-

ters, under the control of Military intelligence, Air force intelligence, 'Patrols' (military intelligence), and 'Palestine' (Military intelligence).<sup>13</sup> The Syrian Network for Human Rights documented 14,129 people killed while being tortured by parties to the conflict (March 2011 – March 2019); 13,983 of these deaths occurred while detainees were held by the Syrian government.<sup>14</sup> Expert analysis of the photographs demonstrated evidence of violent blunt force trauma, suffocation and starvation.

49. A doctor working for the Syrian Association for Missing and Conscience Detainees (not a forensic expert) 'reviewed all 28,707 of the detainee photographs and found more than 40 percent of the bodies were emaciated, with sharply defined rib cages, prominent pelvic bones, and sunken faces.'<sup>15</sup> Reviewing a subset of the photographs representing 19 victims, Physicians for Human Rights found that six showed evidence of starvation, and 'in four of the cases starvation is likely to have contributed to the victim's death.'<sup>16</sup>
50. Former detainees provided testimony of the lethal conditions: inadequate food, no medical treatment, torture, disease brought on and aggravated by conditions of severe deprivation, overcrowding, lack of ventilation, and extreme mental anguish. There is evidence that all detainees suffered from severely inadequate food and that many from starvation.

## Options for Redress

51. The use of starvation in the war in Syria was consistent and prominent, and was accompanied by the use of direct violence.
52. Starvation-related violations include: destroying or denying access to OIS; direct attacks on civilians or civilian targets that had the foreseeable effect of contributing to starvation; obstructing relief; attacking humanitarian workers; penal starvation.
53. Options for redress include: prosecution; transitional justice mechanisms; and utilizing avenues for investigation leading to policy options such as sanctions. Sustained engagement with the relevant Syrian actors, notably civil society groups, is required to determine the appropriate mecha-

nisms and processes.

54. Detailed analysis of the applicable law and potential avenues for prosecution are contained in a separate memorandum entitled 'The Crime of Starvation and Methods of Prosecution and Accountability'. For the purposes of this memorandum, we draw attention to the principal formulation of the prohibition on crimes of starvation, as contained in Article 8(2)(b)(xxv) of the Rome Statute ('Article 8 starvation'):

**Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions.**

55. The relevant considerations are the following:

- The crime of starvation does not require that the victims should die from starvation, only that they should intentionally be deprived of OIS. There are numerous instances (some of them outlined above) of the destruction, removal, rendering useless or otherwise depriving civilians of OIS in Syria.
- The term 'method of warfare' should be construed as akin to a contextual element that not only links the criminal acts to the conduct of hostilities, but becomes part of the conduct of hostilities. There are strong indications that the Assad regime and its allies are using the destruction of OIS as a specific way of conducting hostilities, suggestive of the intentional use of starvation of civilians.
- The Article 8 crime of starvation may occur when a perpetrator acts with the knowledge that his conduct will as a virtual certainty cause starvation, regardless of the military purpose of the action. Circumstantial evidence will likely be critical in establishing the material elements of the crime. An example may be, if it is clear that a military commander or senior official is aware that there is a dire humanitarian situation and escalating food insecurity, and is aware that continuing to destroy OIS, prevent humanitarian relief or forcibly displace thou-

sands of civilians, would as a virtual certainty result in civilians starving. This may lead to an irresistible inference that starvation was intended or would result in the ordinary course of events.

- Perpetrators often harbor other intents and concurrently or concomitantly pursue other criminal and non-criminal purposes. The existence of any personal motives will not preclude a finding that the perpetrator also holds the requisite intent to starve. Any attack directed at the civilian population is prohibited, regardless of the military motive. In sum, in the circumstances where an alleged perpetrator pursues a lawful purpose but, in that pursuit, adopts criminal or non-criminal means, this will not preclude Article 8 starvation from being engaged.

56. There is a range of factors or indices that will prove important indicators of intent in circumstances where a complex range of factors and intents require identification and assessment. Four factors appear most relevant and probative:

1. Awareness of the risk that an interference with OIS would lead to starvation (including whether the deprivation occurs in pursuit of an ostensibly lawful purpose);
2. Respect for the full range of relevant IHL prohibitions (e.g., the prohibition against terrorising the civilian population; the prohibition against collective punishment; the prohibition on the use of human shields and the prohibition against displacement);
3. The respect for IHL principles that create positive obligations applicable in the context of the conduct of hostilities; and
4. The concrete steps taken (or not taken) by the alleged perpetrator to ameliorate civilian suffering, particularly through the facilitation of OIS to affected civilian populations.

57. In assessing these four factors, relevant considerations will include: the nature, manner, timing and duration of any deprivations or attacks on civilians, including whether such attacks were long-term, persistent and/or indiscriminate; whether the at-

tacks were widespread or perpetrated by single or many military components; and whether they took place as part of a campaign that systematically targeted the victims, including on account of their membership in a particular group. The analysis will encompass all relevant issues, including the general context, the repetition of destruction and discriminatory acts, attacks against civilians more generally, involving a range of modes of perpetration, the scale of those attacks, and relevant policies or speeches encouraging the targeting those civilians.

58. IHL will provide a useful prism through which the intent of the alleged perpetrator may be viewed. The degree of adherence (or non-adherence) to these principles will tell their own eloquent tale about the existence of intent. In sum, however lawful the overall or initial purpose, any prosecutor seeking to establish intent would be logically and cogently able to rely upon the risk and awareness of starvation and the approach taken to those risks as evidenced, in part, by good faith attempts to abide by IHL precepts to ameliorate the effects of any (allegedly, incidental) deprivation.

59. In all cases, the individuals directly responsible for ordering these attacks and actions should be investigated and an assessment of the prospects of a prosecution considered. Additionally, senior leaders or commanders could be prosecuted internationally on the basis of joint enterprises or common purpose modes of liability or a range of other modes of liability such as aiding and abetting. Individual leaders or commanders who are remote from the scene of the crimes, but who can be shown to have in one way or another contributed to the crimes of others and to a degree that attracts individual responsibility will not escape accountability. At the International Criminal Court, (ICC) co-perpetration entails establishing that two or more individuals worked together in the commission of the crime, including an agreement between these perpetrators, which led to the commission of one or more crimes under the jurisdiction of the Court. Co-perpetration requires the existence of two objective elements: (i) an agreement or common plan between two or more persons that, if implemented, will result in the commission of a crime; and (ii) that the accused provided an essential contribution to the common

plan that resulted in the commission of the relevant crime.

60. There is a range of options for prosecution which could potentially be adjudicated domestically, nationally or internationally.

- On the domestic level, there appear to be some investigations and prosecutions of narrow cases, often focused on terrorism and Da'esh/ISIL and naturally do not involve government officials. Concerns have been raised regarding flawed proceedings with a lack of fair trial rights, including little if any access to defence lawyers and no right of appeal.
- On the international level, the political power play at the UN Security Council (SC) make it very unlikely that consensus will be achieved to form a new (hybrid or otherwise) Syrian Tribunal or to move past investing into bodies like the Independent International Commission of Inquiry on the Syrian Arab Republic (IIIM), (which do not have the support of the regime and cannot investigate or operate on the territory of Syria) and the Syrian Commission of Inquiry which serve investigative rather than prosecutorial or international court-based redress. Notwithstanding that, in March 2019 two Communications were filed before the ICC inviting the Prosecutor to open an investigation into crimes committed in Syria by the Assad regime. Syria is not a party to the ICC but the Communications are based on the Bangladesh precedent set following Global Rights Compliance's submissions to the ICC on behalf of 400 Rohingya women and children.<sup>17</sup> This landmark ICC decision opened up avenues to allow for crimes committed in countries not party to the ICC where victims have fled to countries such as Bangladesh, or in this instance Jordan, who have ratified the ICC. In these two communications Syrian victims fled to Jordan where ICC Communications were filed on their behalf. No formal ICC investigation has been opened and given the recent decisions before the ICC the prospects remain slim.
- A prosecution could also be effected through a universal jurisdiction (UJ) claim, which are increasingly common across Europe and fur-

ther has been expressly called on by the Syrian Commission of Inquiry as a viable option for redress. Statistics show an 18 percent increase in named suspects from 2018, with 17 accused on trial, 8 convictions, and 149 named suspects across 15 countries.<sup>18</sup> Germany are leading the way and developments utilizing the Foreign Immunities Act in the U.S. have also been successful, where the Federal Law allows victims to sue states who sponsor terrorism such as Syria. As above, UJ claims tend to be more narrowly focused and often have a nexus to the arms trade or more recently to chemical export regulations linked to their use in the chemical weapons attack in Syria. UJ cases (supported at times by IIM dossiers) have stepped into the void created by the lack of international multilateral support and they look set to continue.

61. On *transitional justice mechanisms*, there are several avenues for consideration, the majority of which would likely need to be, at least for the foreseeable future, conducted internationally given the control by the regime:

- Truth-telling: acknowledging that starvation is a crime and documenting its nature and extent, and those responsible, while also providing for the recognition and memorialization of its victims;
- Reparations and restitution, by the individuals or institutions responsible;
- Guarantees of non-repetition, in the form of public naming and shaming of those responsible, along with public education about responsibilities for starvation crimes. This can be either domestic, or international (UN).

62. On *utilizing avenues for investigation*, it is important to ensure that starvation crimes continue to be investigated and prominently featured across the relevant investigatory and inquiry apparatus of the UN. Well investigated and documented commissions of inquiry and panel of expert reports robustly highlighting starvation crimes and calling for accountability play a critical role in preventing and prohibiting starvation related conduct. Moreover, it is important that information relating to starvation is safely collected and preserved for use

in future investigations and / or prosecutions. To this end, the IIM's function (in addition to other archiving projects and efforts) in analysing and compiling dossiers for future use is essential.

63. A fourth option is the complaint mechanisms available through various UN or international treaty bodies. Whilst conceding that this mode of redress may not necessarily effect visible or tangible results, in the way a prosecution may, it does offer an immediate option for redress.

64. International organizations and aid donors will need to evaluate their assessment of crisis in Syria and response to that crisis in line with their legal obligations. These include UNSC Resolution S/RES/2417 of May 2018 on armed conflict and hunger, and obligations under IHL, International Human Rights Law, and compliance with the Rome Statute.

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