

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Conflict and Hunger in Sudan

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The ongoing conflict between the Sudanese Armed Forces and Rapid Support Forces has devastated Sudan. In my remarks, I will focus on the law related to one major component of this horror—the issue of weaponized starvation—but that should not detract from the gravity of the killing, destruction, ethnic cleansing, sexual violence, and other abuses perpetrated in this war.

Actions by both the SAF and the RSF have inflicted acute food insecurity on at least 18 million people. 5 million are suffering acute food insecurity at emergency levels—Integrated Food Security Phase Classification (IPC) level 4. Four million children are suffering acute malnutrition; 730,000 of them, severe acute malnutrition. Many face a slow death. With conditions deteriorating since those estimates and the lean season beginning, the World Food Programme has warned that Sudan is facing the world’s worst hunger crisis.

Until relatively recently, legal attention on the infliction of this form of human suffering in war was either absent or marginal in comparison to that applied to more strikingly violent forms of killing and mistreatment.

That marginalization was a mistake. Starvation methods in war inflict profound and enduring suffering, a tearing at human society that is properly characterized as torturous, immediate and long-term impacts on health, and ultimately death. These effects are disproportionately harmful and lethal to children.

Slowly, the law has changed to respond to this reality. Today, starvation of civilians as a method of warfare is prohibited. There is a framework of accountability. And the starvation ban has been brought to the center of the UN Security Council’s work on the protection of civilians.

But this framework of prohibition, accountability, and prevention, has been underutilized. Now is the moment to build the momentum towards changing that.

In what follows, I will: first, explain the starvation prohibition in international humanitarian law; second, discuss the accountability framework; and third, suggest steps to center the protection against starvation in response to the situation in Sudan and more broadly.

International humanitarian law is built on the idea that even in war, when the stakes are at their greatest, there are red lines past which no belligerent may traverse. With the codification of the Geneva Conventions' Additional Protocols in 1977, and the development of related customary law, starvation of civilians as a method of warfare was recognized as one of those red lines.

Specifically, it is prohibited to engage in the deprivation of objects indispensable to civilians, such as food, medicine, water, or the systems by which they are maintained and produced, either for the purpose of denying those objects' sustenance value or for any other purpose if civilians will starve as a result. That prohibition covers the range of methods that the RSF and SAF have deployed in the conflict in Sudan, such as attacking food markets, destroying crops and livestock, attacking aid workers, looting food, and impeding humanitarian delivery. US Special Envoy Tom Perriello has emphasized correctly that both parties have violated international humanitarian law to create what he has called a "famine of choice."

Since the codification of the Rome Statute in 1998, and the associated development of customary law, it has become clear that precisely such acts constitute war crimes for which individuals can be prosecuted. And yet, until very recently, that war crime has remained overlooked. Since an agreement to expand its applicability in 2019 (by amendment to the Rome Statute), there has been growing attention to the issue. The key now is to build on that foundation, spotlight the moral toxicity of starvation methods in war, and invigorate the system of accountability.

That also means expanding the focus beyond war crimes to consider the applicability of crimes against humanity (specifically, murder, extermination, persecution, and inhumane acts) and, where applicable, the crime of genocide. Unlike war crimes, these categories need not be connected to an armed conflict. The defining feature of crimes against humanity is that they are widespread (large in scale) or systematic (patterned, organized, or planned). The defining feature of genocide is that it involves the intent to destroy an identified racial, religious, ethnic, or national group, in whole or in part, as such.

Together, these additional categories are important to capturing distinct aspects of the wrongfulness of starvation crimes, as they ordinarily manifest—discriminatory animus, scale, lethality, the infliction of suffering, and the wrongfulness of mass deprivation regardless of conflict classification. They provide a rich framework for accountability.

However, such legal frameworks do not apply themselves. They need attention, implementation, and institutional support.

With Security Council Resolution 2417, there is a framework for keeping this at the top of the Security Council's agenda, including through emergency briefings, as was done for Sudan on

March 20th following a white note from the UN Office for the Coordination of Humanitarian Affairs.

Resolution 2417 also allows for the adoption of targeted sanctions and it could be used to frame and motivate other preventive and accountability measures. It should be a top priority to carefully evaluate the viability and likely impact of each of these mechanisms and to use them where appropriate. At the national level, one week ago, the Treasury Department imposed sanctions on RSF commanders Ali Gibril and Osman Hamid in part for their role in besieging El Fasher in North Darfur.

It is also important that all states, including the United States, ratify the treaties codifying the prohibition on starvation of civilians as a method of warfare and incorporate the starvation war crime into their national codes, expressing a commitment to ending this practice and enabling domestic courts to play their full and appropriate role as contributors to accountability for war crimes.

International courts, too, can play a key role, where they have jurisdiction. The International Criminal Court currently has jurisdiction in Darfur on the basis of a 2005 UN Security Council referral, but it is unclear whether this extends to the rest of Sudan and whether it covers the starvation war crime. The United States could lead a new Security Council referral to clarify those points. Alternatively, it would be appropriate to consider a facilitating the path to a hybrid court.

Finally, war crimes investigators need evidence, resources, and access. They and all of those involved in accountability work need protection from intimidation and coercion. That requires principled leadership and respect for the integrity of the judicial process.

It is time to make accountability for starvation crimes a priority, in Sudan and globally.

I thank the Commission for bringing attention to this issue.