



LPHR legal briefing on starvation of civilians in Gaza

13 October 2023

This legal briefing focuses on a key component of Israel's ongoing massive military response in Gaza following widespread atrocities perpetrated by Palestinian armed groups in Israel. The sheer scale of human suffering over the past six days is horrifying and immeasurable.

This memo outlines how Israel's declaration of a total siege on Gaza, approved at the highest levels of Israel's leadership, strongly appears to amount to a policy of starvation of the civilian population of Gaza, in serious violation of international humanitarian law. Furthermore, this starvation policy strongly appears to constitute a war crime, possibly rising to a crime against humanity.

Starvation of Gaza's civilian population violates international humanitarian law and is a war crime

On Monday 9 October, Israel's Minister of Defence, Yoav Gallant, [stated](#): "I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed."

In a compelling specialist [assessment](#) of the legal consequences of the Israeli Defence Minister's order, a leading international law authority on siege starvation, Tom Dannenbaum, concludes:

"This order commands the starvation of civilians as a method of warfare, which is a violation of international humanitarian law and a war crime ([ICC Statute](#), article 8(2)(b)(xxv)). It may also satisfy the legal threshold for the crime against humanity of inhumane acts (7(1)(K)) and, depending on what happens from here, other crimes against humanity, such as those relating to killing (murder and extermination) (7(1)(a-b))."

Dannenbaum's conclusion stems principally from international humanitarian law strictly prohibiting starvation of the civilian population as a method of warfare in both [international](#) and [non-international](#) armed conflicts. Furthermore, starvation as a method of warfare is considered a war crime in both international and non-international armed conflicts.

The UN Commission of Human Rights in South Sudan provides the following outline of 'starvation' in its October 2020 [report](#) on the use of starvation as a method of warfare:

"The term 'starvation' should be understood to encompass deprivation not just of food and water but also of other goods essential for survival in a particular context. The crime of starvation does not require that victims die from starvation, only that they should intentionally be deprived of objects indispensable to their survival. This may include depriving individuals of their ability to obtain food, degrading public health, and disrupting access to clean water, or deliberate denial of food and arbitrarily refusing to allow relief operations where the survival of the civilian population is threatened."

The Israeli Defence Minister's declaration that, "[T]here will be no electricity, no food, no fuel, everything is closed", clearly meets the UN Commission's understanding of starvation.



Israel's imposition of a complete siege on Gaza is a core part of its military response which has the stated objective of eliminating Hamas. The UN Group of Eminent International and Regional Experts on Yemen clarified, in its September 2019 [report](#), that:

“Military necessity cannot be invoked to justify the starving of the civilian population. Hence, other violations of international humanitarian law can constitute violations of the prohibition of starvation, in particular attacks against objects indispensable to the survival of the population, as well as denial of humanitarian access.... [P]arties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, provided the relief is impartial and humanitarian in character and subject to the parties’ right of control. The withholding of consent to humanitarian access that leads to starvation is considered arbitrary, hence unlawful.”

Based on this legal clarity, it is clearly apparent that Israel's current withholding of consent to humanitarian access that leads to starvation for civilians in Gaza, is a serious violation of international humanitarian law. Furthermore, Dannenbaum highlights that such denial of consent constitutes a war crime under the Rome Statute of the International Criminal Court:

“Article 8(2)(b)(xxv) of the [ICC Statute](#) is explicit in affirming that the war crime of starvation of civilians as a method of warfare can be perpetrated through the denial of relief supplies. Criminal liability attaches when a perpetrator deprives civilians of objects indispensable to their survival with the intent to starve civilians as a method of warfare ([ICC Elements](#), p.21). The deprivation of objects to a civilian population [in Gaza] is clearly underway.”

The parties to this conflict are obliged to properly adhere at all times to key international humanitarian law principles that govern the conduct of hostilities: distinguishing between civilians/civilian objects and combatants/military objects, proportionality, and precautions in attack. Dannenbaum compellingly asserts that the fundamental principle of distinction (Protocol I, [article 48](#)) is violated by Israel's declared siege on Gaza, even if assuming that its goal is only to starve Hamas combatants, because the deprivation of sustenance is targeted initially at the civilian population:

“[E]ven assuming the ultimate goal *is* solely to starve out or coerce Hamas combatants, that objective is being pursued through an operation that purposively denies sustenance to the civilian population. In other words, the deprivation is targeted in the first instance at the civilian population. This, on the most reasonable understanding of the law, is a clear case of starvation of civilians as a method of warfare. Notably, [article 54\(3\)\(b\)](#) of Protocol I precludes the use of starvation methods to force the civilian population’s movement.”

The aforementioned UN Group of Eminent International and Regional Experts on Yemen assert that the principle of proportionality in attack should also be examined in the context of siege warfare that has the consequence of starvation of the civilian population. The Experts then go on to highlight other rules of international humanitarian and human rights law that are clearly relevant:



“Starvation may also amount to a form of inhuman treatment. Should it lead to death, it could amount to wilful killing of civilians. Starvation also violates international human rights law, including the right to food and to water, as well as the right to health.”

It is appropriate to return to the compelling assessment provided by Tom Dannenbaum to conclude this overview which legally clarifies that Israel's imposition of a complete siege on Gaza amounts to prohibited starvation of a civilian population. He legally clarifies that the civilian character of Gaza's population is not overturned by the presence of Hamas and Islamic Jihad fighters, given that Gaza remains overwhelmingly civilian as a whole ([Protocol 1, article 50 \(3\)](#)). He further legally clarifies that civilians do not lose their protected status if they decline to leave their homes or their homeland, because such a decision “does not amount to participating directly in hostilities” ([Protocol 1, article 51 \(3\)](#)). Then, after properly highlighting that approximately half of its 2.3 million Palestinian inhabitants are children, he convincingly asserts:

“[A]ny operation targeted at the population of Gaza as a whole is an operation targeted at a civilian population.”

Conclusion

LPHR submits that Israel's order of a “complete siege on Gaza” seriously violates international humanitarian law by constituting the starvation of Gaza's civilian population. It is beyond conscionable and demands accountability. Israel's leadership must immediately end its siege on Gaza and rapidly permit the entry of humanitarian relief into Gaza. All necessary diplomatic efforts must be exercised to ensure this urgently occurs and that international law is fully upheld. The international community must further act decisively to immediately cease the hostilities which is causing overwhelming civilian suffering.