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The project aims to identify how international law may be used to advance the prevention, prohibition and accountability for mass starvation. More information and additional resources are available at:

Starvationaccountability.org

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International advisory firm, **Global Rights Compliance**, specialises in services associated with bringing accountability for violations of international humanitarian law and international human rights law.

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Accountability for Mass Starvation: Starvation in Yemen

OVERVIEW

The war in Yemen has been fought using both economic and military strategies, both of which have contributed to the country's descent into famine. The belligerents have conducted the war with good knowledge of how their actions will cause mass starvation. The greatest responsibility for the famine lies with Saudi Arabia and the United Arab Emirates, followed by the Houthi militia and other armed groups. Yemen was already a poor country with a fragile economy, and before the war there was pervasive hunger, especially in rural areas. The war and targeted economic measures created another layer of food crisis: wider, deeper and more lethal.

The famine in Yemen has elements of both food supply decline and collapse in real demand (people's ability to purchase food). It has many causes. First, are underlying economic vulnerabilities, including poverty, dependence on a few key economic sectors, and political tensions that have recurrently contributed to the worsening of the economy. Second, are the ways in which the country's economic crisis was severely worsened by the war, including inflation and the rapid depletion of currency reserves which led to the Central Bank of Yemen adopting severe cuts in spending. A war economy of profiteering in the trade in essential commodities has also emerged. Third, are targeted economic measures by the Saudi-led coalition and its client the Recognized Government of Yemen (RGY), aimed at Houthi areas. These measures include non-payment of salaries, pensions and welfare; restrictions on money transfers; restrictions on travel; restrictions, delays and additional costs for importers of essential commodities; and blockade. Fourth, is destruction of objects indispensable to survival (OIS), including bombing of roads and bridges; attacks on critical infrastructure

(electricity, water, irrigation dams, agricultural extension facilities); attacks on agricultural areas; attacks on markets and on private sector employers leading to bankruptcies and unemployment (and consequent collapse of real demand), and attacks on artisanal fishing. The Houthis are also responsible for actions of this kind, notably in the siege of Ta'izz. Fifth, is hampering activities indispensable for survival, including taxing movements of essential commodities (often multiple times at checkpoints), corruption in issuing trade licenses, and looting. All parties (including local armed groups) have engaged in this. Last is impeding humanitarian supplies and operations, through blockade and through the imposition of onerous restrictions, levies and fees.

The actions of the belligerent parties are culpable in varying degrees. As a general rule, economic policies, however severe their outcomes may be for human wellbeing, are not subject to criminal sanction. In the case of Yemen, the selective and targeted imposition of economic policies, when their impact in causing starvation had already become clear, may constitute the use of starvation as a method of war. The case for considering such actions as prohibited is strengthened by the evidence of other widespread and systematic uses of starvation as a weapon, by means of more clearly-prohibited military actions such as attacks on health facilities and fishing boats (by the Coalition forces) and by evidence for systematic smuggling and corruption (by the Houthis).

INTRODUCTION

Yemen is the largest and most protracted famine of the contemporary era. There has been no official 'famine' declaration by the United Nations, for a large population, made on the basis of a food security assessment in accordance with the Integrated food security Phase Classification (IPC) scale. But this should not be reason for complacency. The data collected by the IPC, FEWSNET and other humanitarian information systems indicate a vast crisis, with some pockets of greater severity (resulting in an IPC level 5 'famine' label being declared) and many others that would have descended into

famine were it not for large-scale humanitarian aid. Those data sets are often incomplete, partly due to the denial of access by the belligerent parties. We simply do not have complete information and there is good reason to fear that the poor quality of information conceals very severe human deprivation including starvation. Moreover, when large populations suffer extended periods under conditions that do not qualify as 'famine' (IPC level 5) but are nonetheless in conditions of extreme food insecurity or humanitarian emergency, they can suffer elevated mortality rates. Such excess deaths can rapidly accumulate to surpass the thresholds used for assessing historical famines, i.e. 100,000 excess deaths for a 'great famine' or even one million for a 'calamitous famine.' For these reasons we do not hesitate to use the word 'famine' to describe the humanitarian conditions that have prevailed in Yemen since 2015.

The Yemen famine has a complex set of causes, including underlying economic vulnerabilities, the impact of the war on economic wellbeing, the targeted economic measures deployed by the RGY, partly at the behest of its Gulf sponsors, and the military tactics used by all parties, principally the Saudi-led coalition.

The most high-profile actions contributing to starvation are blocking or diverting humanitarian aid, or subjecting such assistance to preconditions, delays, and levies. These are all important. They are not, however, the cause of starvation; they are a reason why starvation caused by other factors is not sufficiently relieved.

The most visible aspect of the war in Yemen is military conflict, especially aerial bombardment, that has led to thousands of casualties among civilians. However, even greater suffering has been caused by belligerents targeting essential economic infrastructure and services for attack, undermining the economy and people's livelihoods. In addition, the major belligerents have used exclusively economic weapons in a targeted manner. Economic war in Yemen has unequivocally led to widespread starvation.

Economic warfare is not regulated under Interna-

tional Humanitarian Law (IHL) traditionally, on the grounds that non-physical forms of warfare such as embargoes do not constitute an attack (the typical concern of IHL) and gaining economic advantage over an adversary is not considered a military advantage.

The conduct of war by means that include economic strategies as well as military ones is an imprecise activity fraught with complications.

First, war brings economic pressures and distortions, which in themselves demand exceptional policy responses. For example, war expenditure demands either borrowing or forced savings; which have redistributive and/or inflationary impacts and which can increase inequality and/or poverty. Choosing where these burdens fall is a political choice, but one not normally regarded as potentially criminal. Second, there are direct economic weapons of war such as blockade (which is not unlawful *per se*) or the collateral destruction of objects important for subsistence (which may include OIS). Third, restrictions on trade (such as trade in arms and other military supplies) can have knock-on effects on civilian wellbeing, for example by slowing down normal commerce. Fourth, tools of economic warfare such as blockade, currency manipulation or the expropriation of assets generate secondary effects, such as the emergence of shadow economies of smugglers and profiteers, freelance mercenaryism and collusion of commanders across front-lines—economic war creates a war economy. The combination of economic warfare and a war economy creates winners as well as losers; it not only impoverishes but redistributes.

In this context, it is necessary to take into account the overall circumstances of the conflict and the economy, in order to determine what economic actions may be regarded as unlawful. Notably, when a belligerent party with control over economic and financial institutions (in the Yemen case, the RGY and Saudi-Emirati Coalition's control over the Central Bank of Yemen), makes economic policy choices that target the suffering on a particular population, which is also at the same time being targeted by other more direct measures such

as military blockade and aerial bombardment targeting OIS, then it is fair to conclude that general economic policy is being designed and implemented to starve a population.

Prior to the war, Yemen was the poorest country in the Arab world, with the lowest human development indicators, high food insecurity and high child malnutrition. The basic predicament of food security in Yemen was: (a) agriculture and artisanal fishing had long been neglected, leaving rural communities in deepening poverty; so that (b) national food production had not kept pace with a rising population; and (c) the great majority of Yemenis relied on purchasing food that had been commercially imported; while (d) the country had few sources of foreign exchange, leaving it highly exposed in the case of external shocks. In particular, Yemen's foreign exchange relied overwhelmingly on remittances from migrant workers in Saudi Arabia and other GCC countries, and (later) exports of oil and liquefied natural gas (LNG).

Yemen's economic history in the last three decades is one of astonishing volatility, repeatedly buffeted by major shocks and alternating boom and bust. A period of modest growth came to an abrupt halt in 1990, when Yemen refused to cast its UN Security Council (UNSC) vote in favour of the U.S.-led coalition against Iraq, a decision that led to the expulsion of hundreds of thousands of Yemeni workers from Saudi Arabia and a sudden economic plunge. A decade later, Yemen's economy rebounded on the basis of oil exports—and when that bonanza ended, the economy crashed again. In the years immediately following the 2011 uprising, the economic crisis intensified, and indicators for malnutrition worsened.

Economic Policies

Shortly after the outbreak of the war, its calamitous economic impacts became clear. The war caused a collapse in business confidence, a sharp decline in government revenue, an increase in government spending (as both the RGY and the Houthis put more civil servants and soldiers on the payroll), a hemorrhage of foreign exchange reserves, and a spike in the prices of essential commodities in-

cluding food and fuel.

These impacts were distributed across all parts of Yemen. The hikes in the prices of food and fuel were felt, more-or-less equally, in Aden, Hudaydah and Sana'a. Approximately six months later, a second pattern set in, which lasted until early 2018. During this period, food prices fluctuated and overall rose modestly, less than the devaluation of the Rial—i.e. not increasing in real terms. Prices differed somewhat by geography: wheat was less expensive in Hudaydah and most expensive in Tai'zz (not shown in the graph). Most food crises are characterized by sharp rises in food prices: on this occasion, the key problem was not price inflation but the collapse in people's salaries. There was simply not enough real demand to buy the food that was available. Then, in mid-2018, food prices once again spiked.

Food prices in RGY-controlled Aden have not been significantly lower than in Houthi-controlled areas. Maps of the areas affected by the crisis also show that RGY-controlled areas have not escaped

hardship and in some cases have been among the worst hit. These facts point to the reality that the famine has not solely, or even principally, been the outcome of measures targeted solely at the Houthi-controlled areas. This does not, of course, exculpate the Saudi-led coalition, insofar as: (a) they pursued policies that inflicted starvation on all Yemenis; (b) they had the resources to ameliorate those impacts; and (c) they also pursued policies targeted at the population in Houthi-controlled areas.

In the early months of the war, the CBY managed to maintain a remarkable level of technocratic impartiality under exceptionally adverse conditions, maintaining a tight monetary policy, sustaining credit to businesses for importing food, servicing the domestic debt by issuing government bonds; and paying salaries for approximately 1.25 million people on the state payroll. The CBY maintained neutrality between Houthi-controlled Sana'a and RGY-controlled Aden. However, these measures could only postpone the crisis, as the CBY was spending its reserves.

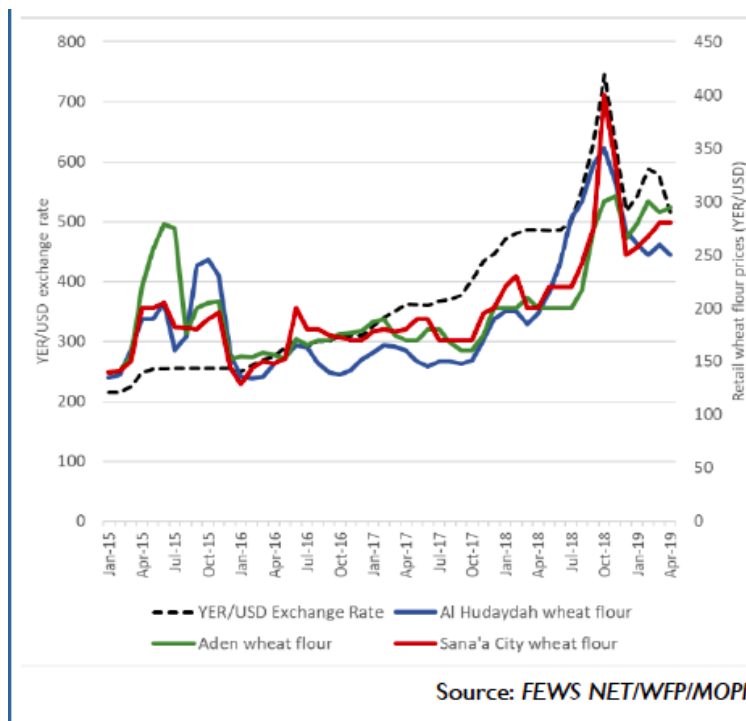


Figure 1: Retail Wheat Prices (YER/kg) in select markets. Source: FEWSNET, 'Yemen Food Security Outlook, June 2019 to January 2020,' USAID, June 2019, p. 4.

The Arab Coalition partners possessed sufficient financial resources to mitigate or even overcome these impacts. They did not do so. What they did, instead, was to direct the worst impacts selectively to the Houthis and Houthi-controlled areas. They appear to have assumed that a financial squeeze on resources in Sana'a would weaken the Houthis to the point of collapse or at least compromise. Given the prominence of cash payments to the political business strategies of the Yemeni leadership and the Gulf monarchs themselves, this was perhaps a natural assumption to make. It was not a correct one.

The single most important instrument used by the Saudi-led coalition and the RGY was control over the CBY. From September 2016, when the CBY was transferred from Sana'a to Aden, it implemented a policy of nonpayment of salaries, pensions and social welfare payments to the Houthi-controlled areas, and restricting access to foreign exchange by importers. On top of inflation and currency depreciation, these weapons affected (primarily) the real demand for essential food, by reducing incomes, and (secondarily) the supply, by reducing food production, importation and distribution. Additional, higher profile economic weapons have included partial (and occasionally complete) blockade imposed on Hudaydah's seaports and the closure of the country's main airports.

In retaliation, the Houthis immediately began running an internal financial system in an effort to increase financial liquidity, resorting to the smuggling of fuel and putting financial strains on the population under their control.

The consequences have been: (a) massively reducing cash incomes and savings through interruption in salaries, welfare payments and pensions, unemployment and disruption of commerce; (b) degrading both official and informal welfare service provision; (c) disrupting local food production (agriculture and fishing); (d) increasing the costs and risks of the importation and internal transportation of food, fuel and other essential commodities; (e) enabling belligerents to steal, tax (sometimes several times over) and extort from the population, so that they materially benefit at the

expense of others; and (f) obstructing humanitarian assistance.

One of the most common features of famine is a sharp increase in food prices. This occurred in Yemen, but later and on a smaller scale than in most famines (150% increase). More crucial in Yemen has been the collapse in peoples' ability to purchase food: it is often available at the same or modestly increased price, but people simply do not have the money to buy it.

The current operations of the CBY-Aden are not transparent, with little bookkeeping or accounting for expenditure (noting that the current governor appears to be more trusted than his predecessors).

The non-payment of salaries and pensions introduced an additional layer of hardship and hunger to Yemen. Prior to 2016, the profile of hunger had been an intensified version of pre-war poverty: concentrated in rural areas and among the most vulnerable. After 2016, urban residents and government employees—formerly among the relatively better-off—found themselves unable to buy food.

The CBY played a crucial role in enabling importers to access foreign exchange through letters of credit. Prior to 2016, the operation of importing wheat was described as "smooth". Importers trusted commercial banks, and the efficiency of the process, which rendered food accessible. After the September 2016 relocation of the CBY, restrictions on access to foreign exchange and the necessary permits, including for wheat, became difficult and sometimes impossible.

Several companies import wheat grain into Yemen. These companies face high risks and costs. These include securing foreign currency (increasingly from foreign exchange shops rather than the CBY itself), paying formal and informal taxes and fees for transport, and obtaining the necessary permits. The disruption to the operations of the CBY created one level of difficulty. CBY-Aden policies have created another. It ceased issuing letters of credit (LCs) to importers; it refused to work with any importer that had done business with

Sana'a, and it sometimes created so many delays in issuing permits that shipments spoiled before delivery. The process of attempting to obtain LCs today is described as "extremely complex," and the paucity of trust between the CBY-Sana'a and the CBY-Aden has further complicated the process for everyone.

Wheat importers face additional obstacles which increase costs. All warring factions (the Houthi-Saleh forces, Hadi's government, and the Arab Coalition) have obstructed the delivery of aid and commercial goods to the public. Militias in government-controlled and Houthi-controlled territories heavily tax commodities on travel routes, in many cases goods are double taxed if the products travel through the separately controlled regions.

Uses of Starvation as a Method of Warfare

The second major component in the starvation of Yemen is the use of prohibited means of warfare, namely the deliberate and disproportionate destruction of OIS and the obstruction and manipulation of humanitarian relief. The legal framework of these methods and avenues for accountability are considered in a separate memorandum entitled 'The Crime of Starvation and Methods of Prosecution and Accountability'.

This section uses two case studies in the city of Ta'izz and the port of al-Hudaydah, to investigate the following:

Destruction of OIS

- Bombing of roads, bridges
- Attacks on critical infrastructure (electricity, water, irrigation dams, agricultural extension facilities, health facilities)
- Attacks (bombing) on private sector employers leading to bankruptcies, unemployment, and shortages of essential commodities
- Attacks on artisanal fishing
- Looting

Hampering the Movement of Essential Commodities

- Taxing movements of essential commodities (often multiple times at checkpoints)
- Corruption and delay in issuing trade licenses and providing access to credit

Impeding Humanitarian Supplies and Operations

- Blockade halting the delivery of humanitarian assistance; unreasonable delays in allowing transport of humanitarian aid; taxation and diversion of humanitarian aid.

Note that this paper does not provide a detailed, let alone exhaustive, documentation of these attacks. Rather, it places them in the context of a pattern of the conduct of the war, in order to investigate the intersection between the conduct of the war itself, and the economic policies and other measures. Research and open-source investigations (OSINT) by (among others), the UNSC Panel of Experts of Yemen, the UN OHCHR Group of Eminent Experts on Yemen, Mwatana for Human Rights, Global Legal Action Network, Bellingcat, the Yemen Data Project, The Protection Cluster, Yemen's Ministry of Agriculture and Irrigation, Ammar Mohamed Al-Fareh and Martha Mundy document the range of tactics, possible perpetrators and map patterns of criminality.

Case Study: Ta'izz, Yemen's most Brutal Conflict Zone

Ta'izz governorate was at the center of the 2011 Uprising, and witnessed a flurry of actors attempting to gain control through political and military means. Houthi forces entered into the city in 2014, and tried to consolidate power by integrating their forces into Yemen's military. In the early days of the war, the majority of the city's population resented the new Houthi presence, which they viewed as an occupying force.

From late 2014 to 2017, Ta'izz experienced several bloody battles between the Houthi-Saleh militia and the fragmented forces resisting them while

being targeted in devastating air campaigns by the Saudi-led coalition. Civilian objects were continuously targeted including residential homes, displacing many civilians and resulting in many deaths. Ta'izz was the location of some of Yemen's major food industries. Armed forces and operations included:

- Houthi militants who allied themselves with GPC forces loyal to Saleh and took over several military posts in the city of Ta'izz. At the start of the conflict, the Houthi-GPC forces had full control of the entrances/exits of the city of Ta'izz and began restricting movement in and around the city;
- Saudi-led coalition air strikes;
- Emirati forces, which financially supported certain Houthi-resistance armed groups (both militant Salafi groups and resistance fighters). In January 2017, the UAE entered the conflict through Operation Golden Spear, by assigning a trained Yemeni general to lead a coalition of forces from the south and al-Hodaidah and supplemented by Sudanese mercenaries, in order to secure access and control the strait of Bab al-Mandab.
- Popular Resistance Forces composed of Yemeni military forces loyal to Hadi, and religious and political militias, all fighting against the Houthis.

This motley assemblage of resistance forces has shown an unsurprising lack of unity over the years, and has on several occasions throughout the war exchanged fire amongst themselves. Many of the resistance forces in Ta'izz argue that the Saudi-coalition has been slow to come to their aid.

Several factors contributed to food insecurity in Ta'izz, including ongoing fighting and continuous internal power struggles. Only about 10 percent of the population obtain their food through farming, with 90 percent reliant on the market. It is estimated that 95 percent of businesses in the governorate were damaged in the war. The costs of business have gone up, with numerous informal taxes and shakedowns, with fighters turning to

roadblocks and extortion as a form of sustenance or enrichment. Many workers have lost their jobs. Like the rest of the country, purchasing power has dropped, but inflation is higher there compared to other governorates. For example, a basic basket of food is 25 percent more expensive in Ta'izz than elsewhere.

The Houthi militia imposed a tight but incomplete blockade of the city of Ta'izz, allowing in far too little food to sustain the population causing a rise in severe and acute malnutrition. On the other side, Coalition airstrikes targeted agricultural offices, animal farms, markets, and transportation centers. For example, on 26 December 2017, several airstrikes targeted a market in al-Ta'iziyah district, destroying it, and killing 54 civilians and injuring 32 more.

By August 2018, 75 percent of the population of Ta'izz was ranked as food insecure, and 85 percent were dependent on humanitarian aid. By January 2019, the IPC assessment found that 73 percent of the population ranked at IPC phase 3 and would rank higher without humanitarian assistance. About 30 percent of all IDPs in Yemen are from the governorate of Ta'izz.

Case Study: al-Hudaydah, Yemen's Primary Food Pipeline

Al-Hudaydah was the poorest governorate in Yemen prior to the current conflict. The war's most significant toll was exacted on the already suffering population, and 60 percent of Yemen's acutely malnourished population resides in al-Hudaydah. The governorate has three major ports, but two: Al-Saleef and Al-Hudaydah, receive the great majority of the country's food imports. Since 2014, these ports witnessed significant declines in commercial imports. The country's other ports (Aden and Al-Mukalla) lack the infrastructure to receive bulk food shipments so that greater reliance on them is causing long delays.

The Saudi-Emirati forces mounted a partial, and occasional complete, blockade of the Red Sea ports, beginning in April 2015. Based on UNSC resolution 2216, which prohibits the dissemination

of weapons to the Houthi militia and forces loyal to former president Saleh, Saudi and Emirati naval vessels imposed a regime of inspections on commercial ships. The UNSC resolution was in effect used to limit the flow of food, fuel, and medicine to civilians, reducing imports to about 15 percent of prior levels. This lasted for 16 months. As a result of the shortages that followed, the UN Verification and Inspection Mechanism for Yemen (UNVIM) was created. While an ostensibly independent mechanism, which has eased the importation of essential commodities, it remains subject to Saudi monitoring and approval, and commodity imports are subject to significant and regular delays.

On 6 November 2017, two days after the Houthis targeted the city of Riyadh with missiles, the Saudi coalition retaliated with the imposition of a total air, sea and land blockade of Yemen. All food and fuel was blocked, including nearly 1,500 metric tonnes of aid, some of which spoiled and perished. This lasted sixteen days during which time Saudi Arabia faced criticism from the humanitarian world. These restrictions affected all imports coming through Al-Hudaydah, including food and fuel. During the time of the total blockade, heavy airstrikes occurred throughout Houthi controlled territories, damaging several markets.

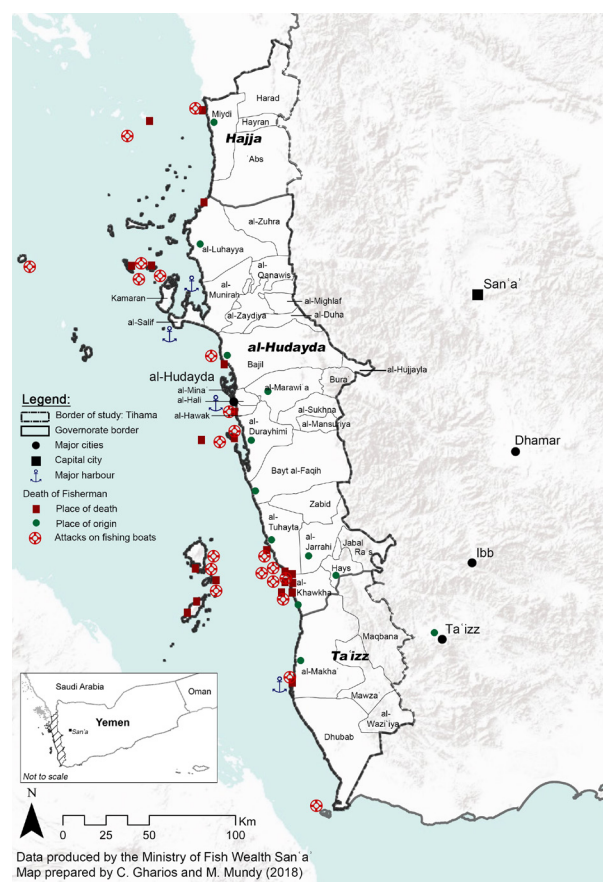
In 2018, the Saudi-led coalition launched the battle to control al-Hudaydah in order to break the Houthi-RGY stalemate on the assumption that it would decisively curb the flow of weapons to the Houthi militia. The fighting displaced tens of thousands of people, contributing to a total displaced population in the governorate of 600,000. The fighting also interrupted the flow of commercial and humanitarian food imports. The UN repeatedly raised warnings that cutting the flow of imports would put a very large population at extreme risk. Fighting within and across armed groups on the ground, and airstrikes destroyed al-Hudaydah's food infrastructure. Airstrikes did the most significant damage by destroying food centres and agricultural sites. Humanitarian access is increasingly restricted by the intense hostilities in the governorate, especially near the shifting frontlines as they move inland from the coastal road and northeast to the outskirts of Al-Hudaydah. On several occa-

sions the coalition ordered civilians to evacuate at short notice, most notably on 9 June 2017, when the Coalition gave the population on the western coast of Hudaydah three days to evacuate.

At the very start of the conflict, essential transport infrastructure was damaged or destroyed by airstrikes. Coalition aircraft destroyed four port cranes and several food warehouses. The destruction paralyzed the port until the World Food Programme (WFP), with U.S. funding, procured replacements, which finally arrived in 2018. The Al-Darjah bridge, one of the most critical bridges on the Hudaydah-Sana'a route, was targeted in August 2016, and in January 2017, the Al-Qasbah bridge was also destroyed. These damaged bridges, along with two others, were not reconstructed, and bypasses were put in place as a temporary fix. In the last quarter of 2018, five aid facilities were damaged by armed violence, four of which were in Al-Hudaydah, including a warehouse, two distribution points, and an aid truck. In June 2018, a newly-constructed cholera treatment centre run by Médecins Sans Frontières in Abs was attacked in an air raid and destroyed. It was clearly marked as a medical centre so as to be identifiable from the air and numerous notifications had been sent to Coalition forces to ensure it was on the no-strike list. This was only one of many such attacks on medical facilities. Four water facilities were also damaged, including the main water tank supplying Ad-Durayhimi. In early 2019, three grocery stores, a vegetable washing and packing facility, and the Red Sea Flour Mills were all hit by shelling, with repercussions for an estimated half a million households. The result has been extreme food insecurity in al-Hudaydah. 60 percent of the population is suffering from malnutrition. In January 2019, the IPC assessment found that 57 percent of the population ranked at IPC phase 3 or higher and would be worse without humanitarian assistance.

Agricultural land was the frequently targeted in airstrikes. Airstrikes affected the farming population along the Tihama coast; most specifically the valleys of Wadi Zabid and Wadi Shibam, which in turn impacted the food security of the governorate.

The war has ruined the livelihood of fishing communities. The naval blockade controls the waters for artisanal fishing, often detaining fishermen and their boats. Airstrikes have killed fishermen and destroyed their boats. Between 2015 and 2017, airstrikes destroyed 222 boats and fishing equipment and killed 146 fishermen and wounded 57. Between March 2015 and July 2018, at least 71 airstrikes targeted fisheries, according to the Yemen Data Project. Fishing has fallen to about 25 percent of pre-war levels. Almost all fishermen lack a secondary means of earning wages and live off their daily fishing wages. Without livelihoods, they are vulnerable to famine.



Fishermen and boats targeted. MFW data. March 2015 - December 2017. (Martha Mundy).

The datasets for Yemen are poor, but give a sense of the scale of the crisis. For instance, the WFP announced in March 2019 that 20 million people in Yemen were food insecure. Contaminated water supplies contributed to the worst cholera epidemic in recent history, killing over 3000 people (Ox-

fam), mostly children under five. Save the Children estimated in November 2018 that 85,000 children may have died of hunger in Yemen since the start of the war. In January 2019, the IPC estimated that 57 percent of the population ranked at IPC phase 3 or higher and would be at IPC phase 5 without direct humanitarian assistance.

Options for Redress

Legal Framework for Economic Policies Contributing to Starvation

Before exploring options for pursuing accountability, it is necessary to digress briefly into the legal frameworks governing economic decisions in wartime which contribute to starvation. It is clear from the above analysis that starvation in Yemen has been caused by economic decisions as well as military strategies affecting OIS and humanitarian aid. Any comprehensive accounting for mass starvation in Yemen will need to include both. Some of the actions causing starvation fall within the classical understanding of IHL and International Criminal Law (ICL) while others will demand alternative pursuits of accountability and non-criminal penalties to be imposed.

The most straightforward prosecutorial strategies are those that map least well on to the overall nature, causes and dimensions of the Yemeni famine. For example, cases of penal starvation, of bombing hospitals, and of the brief total maritime blockade prohibiting humanitarian aid are arguably the clearest cases of unlawful actions. They are likely to demonstrate the criminal intent of the perpetrators and some are clear cases of violations of IHL. Grave though they are as crimes, they do not encompass one of the principal means whereby famine was perpetrated in Yemen, namely economic policies. Prosecutions on the basis of IHL violations would be a very significant step, but they still fall short of addressing the totality of the man-made drivers of famine in Yemen.

The counterpart of this is that the single most important drivers of famine, namely the economic measures, some of them targeted (embargoes) and others generalized (expenditure cuts, sala-

ry suspensions), fall outside the bounds of what could be prosecuted under ICL. The economic policies pursued by the Coalition and the RGY may violate the right to food (and other social and economic rights) but these violations do not count as international crimes, and the prospects for pursuing accountability along this route are slim. However, these economic drivers will be relevant to a criminal case, insofar as (a) they may demonstrate that the perpetrators were deliberately pursuing a strategy of starvation, and (b) that the risks of military attacks on OIS posed a heightened danger of causing starvation.

Measures regarding the suspension of salaries, restrictions of trade or currency manipulations, are outside of the scope of IHL, which regulates the use of military force against the adversary. An 'attack' is defined as an act of violence against the adversary by employing physical force, whether in offence or in defence. Non-physical forms of psychological, political or economic warfare such as disseminating propaganda or embargoes do not fall within the definition of an 'attack'. However, a *military* campaign aimed at the destruction of the economy of a country, will be deemed as unlawful under IHL.

Outside IHL, States are obliged under International Human Rights Law (IHRL) to implement policies aimed at ensuring the right to food of every individual, as recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by Yemen in 1987. This has been the focus of a number of international inquiries, inter alia into North Korea, Burundi, and Gaza. Access to food is intended as including both physical and economic access to food or means for its procurement. Economic accessibility implies that financial costs related to the acquisition of food required for an adequate diet should not threaten or compromise the exercise of other human rights (health, housing, education, among others). As a consequence, measures adopted by the State of Yemen affecting the economic accessibility of individuals to access to food, entail a violation of the right to food as recognized under article 11 of the ICESCR.

This paper has also outlined the engagement of other actors such as the Saudi-led Coalition, as well as armed groups such as the Houthis. With regard to the former, the members of the Coalition are obliged to respect the obligations of the ICESCR when engaging in activities outside their territories. Accordingly, actions aimed at the disruption of the accessibility to food in Yemen by Saudi Arabia and other States, fall within the scope of application of this convention and entail a violation of the right to food.

With regard to the responsibility of the Houthis, it is still debated under international law whether non-state armed groups can be held responsible for violations of IHRL. Notwithstanding this uncertainty, the responsibility for human rights violations of armed groups is increasingly recognized by the UNSC and the Human Rights Council. Such groups will be caught under the net of IHL, as discussed below.

Avenues for Redress

Yemenis have few feasible options for redress. On the domestic level prosecutions and investigations are unlikely to yield fair results. The 2015 National Commission of Inquiry has been deemed unable to implement its mandate impartially or effectively. The Coalition's Joint Incident Assessment Team (JIAT) established to assess the lawfulness of the airstrikes against civilians is also regarded as unfit for purpose. The UNSC concluded that a lack of transparency undermined its credibility and frequently resorting to 'technical mistakes' in relation to specific strikes, was unconvincing. Notwithstanding this, there are some options for prosecution which could potentially be adjudicated nationally or internationally.

- The political power play at the UNSC make it very unlikely that consensus will be achieved to form a new (hybrid or otherwise) Yemeni Tribunal or mechanism. As discussed below, scoping the feasibility of an international archive mechanism for Yemen, such as those created for Myanmar and Syria is overdue.
- Some communications via Article 15 of the Rome Statute have been lodged with the In-

ternational Criminal Court (ICC), Yemen is not a party to the ICC but Jordan and the UK are. The vexed issue of whether the UK could be considered a party to the conflict in Yemen is outside the scope of this paper.

- A prosecution could also be affected through a universal jurisdiction (UJ) claim, which are increasingly common across Europe. UJ claims tend to be more narrowly focused and often have a nexus to the arms trade as can be seen in the on-going Italian case involving Mwatana which focuses on the prohibition of arms exports to countries engaged in armed conflict and further EU law and International Arms Trade Treaty obligations ratified by Italy. Despite these obligations and laws Italy continues to export arms to the Coalition. The on-going litigation before the Supreme Court in the UK on export licenses is significant, with a ruling in June that UK arms sales have been unlawful. UJ cases have stepped into the void created by the lack of international multilateral support and they look set to continue.

Prosecutorial Options

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.

War crimes prosecutions could fall into two broad categories. The first includes individual cases of destruction of OIS such as the attack on the MSF cholera centre as discussed above. Whilst import-

ant to pursue they have less relevance to attributing responsibility for large-scale starvation and could readily be prosecuted under a host of other war crimes. Thus, the essence of the criminality behind the starvation in Yemen remains largely unexamined with prosecutions of this nature.

Second, grouping the repeated aerial attacks on OIS to show a pattern of criminality. The bombing campaign starting in March 2015 and sustained over four years would be ripe for such a prosecution. The continued attacks on agricultural areas, fisheries, food producing factories and markets would go some way to demonstrating the starvation tactics in play.

For Article 8(2)(b)(xxv), 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 Coalition forces 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 (2)(b)(xxv) 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 thousands 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. By way of example, the blockade in Yemen was established in response to the launch of a ballistic missile towards Riyadh in November 2017, with the aim of halting the smuggling of weapons, which constitutes a legitimate military purpose. Notwithstanding this purpose, the operation of the blockade appears to have violated a number of fundamental IHL rules on the obstruction of humanitarian aid to populations deemed in need. The UNSC Panel of Experts in their 2018 report found that the blockade was essentially using the threat of starvation as a bargaining tool and an instrument of war.

There are 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; steps that include both humanitarian supplies and economic opportunities.

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 attacks 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. It will also be relevant to consider whether remedial actions were taken (such as facilitating food aid) or whether humanitarian and economic policies in fact aggravated the deprivation.

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 likely 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.

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 to have contributed to the crimes of others and to a degree that attracts individual responsibility will not escape accountability. At the 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.

In relation to the Coalition, the high volume and frequent repetition of airstrikes on food and water storage facilities and infrastructure, food trucks and agricultural land offers a basis with which to investigate further the improbability of the strikes being random or a mistaken occurrence. Relatedly, the UNSC concluded that the Coalition's blockade policy was coordinated to restrict items that were essentially civilian in nature, primarily humanitarian aid. These types of conclusions could establish in part the causal link between the Coalition's blockade policy and relevant harm to civilians.

Crimes Against Humanity: As discussed above, mass starvation (both in cause and effect) is usually the outcome of a range of violations and policies which when individually assessed may not give rise to criminal responsibility (for example the economic policies), but when taken together may provide the basis for inferring a persecutory intent, including the deliberate starvation of civilians. The Crime Against Humanity (CAH) of persecution under Article 7(1)(h) of the ICC's Rome Statute, is an 'umbrella' offence, a type of compound crime, offering a prosecutor the option to identify not just the malice of the conduct but the widespread or

systematic persecutory campaign and an identifiable result.

The ability to describe the cumulative effect of these violent and wide-ranging violations, through the lens persecution, may better encapsulate and adequately define the real criminality of a broad starvation campaign of the likes seen in Yemen. In a starvation context, such a campaign could consist of: the total sea and land blockade in 2017, which was reduced to a partial blockade and with the main airport Sana'a, closed to domestic and international flights preventing Yemenis from getting treatment for life threatening medical conditions abroad still closed; a range of economic policies such as the closing of the central bank and non-payment of salaries, pursued in a punitive manner; the degradation of key sectors of the economy through both military onslaught and an economic embargo; the use of landmines across agricultural areas preventing cultivation; an aerial campaign of bombing targeted at civilian objects including OIS such as food storage, agricultural land and medical facilities, as discussed above; and, the wilful impediment of humanitarian aid.

CAH have already been used in the context of starvation in international prosecutions and investigations, such as Cambodia and the Democratic People's Republic of Korea—cases which also featured devastating economic policies. In the latter example, the Commission of Inquiry found that CAH were committed against starving populations. It went on to find that such crimes arose from decisions and policies violating the right to food, which were applied for the purposes of sustaining the political system, in full awareness that such decisions would exacerbate starvation and related deaths to much of the population. It is easy to envision a similar conclusion being levied against the Coalition, where the consequences of their economic policies and military attacks taken in conjunction on a weakened and already malnourished population would have been obvious.

A prosecutor would need to demonstrate that such attacks on the Yemeni population were committed with 'knowledge'. CAH do not require that the State policy underlying them be driven by the

purpose of harming a civilian population, it is sufficient that senior officials setting the State policy are *fully aware* of the direct causal relationship between the State policy and the harm done. The repeated warnings by international relief agencies including the UN, conveyed to the Coalition members through the UNSC and other channels, undoubtedly indicate that, at minimum, that the Coalition leaders were in possession of sufficient information. Ironically, the vast pledges of humanitarian aid by the Coalition, which in January 2018 deposited \$2 billion in Yemen's central bank to prop up the currency and 'help stave off hunger' appear to indicate such 'knowledge'. Commendable in some respects, this humanitarian action highlights the Coalition's appreciation of the humanitarian crisis including life-threatening malnutrition rates.

Non-Prosecutorial Options

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).

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 GEE 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, a body similar to the Independent Impartial and International Mechanism for the Syrian Arab Republic (IIIM), which serves to investigate, analyse and archive rather than prosecutorial or international court-based redress, should be considered in the case of Yemen. OSINT with reports being lodged before international governments and UN bodies and secure archiving may be the best current redress options available.

Another 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, it does offer an immediate option for limited action.

There are a range of possible actions, such as targeted sanctions, asset freezes and seizures, and anti-money laundering measures, which could impose financial consequences upon Yemeni perpetrators with personal and corporate assets overseas. Pursuing this route requires multilateral engagement with UN sanctions mechanisms, financial institutions, regulatory bodies and international law enforcement bodies. As in other cases such as Syria, the relatively limited options of international accountability currently available make these alternative routes attractive and readily available without delay. Listing starvation as a sanctions ground would further elevate the prohibition of deliberate starvation and help energize international advocacy campaigns on the issue.

CONCLUSION

This memorandum has demonstrated the major elements in the starvation of Yemeni civilians, namely (a) economic crisis worsened by war; (b) economic policies in wartime, including economic measures targeted at depriving certain sections of the population; (c) military attacks that destroy, deny or render useless OIS; and (d) obstruction of humanitarian relief.

The combination of economic crisis and economic warfare, has generated a major food crisis in Yemen that undoubtedly qualifies as famine. It comprises both a collapse in real demand for food and a decline in food availability. The principal culprit is the Coalition. Secondary actors include the RGY and the Houthi forces. The Coalition and its client RGY have implemented economic measures that caused massive deprivation, some of them affecting the Yemeni population in total and some of them targeted at the Houthi-controlled population, alongside large-scale, systematic and persistent military attacks on OIS and obstruction of humanitarian assistance. At a more local level, the RGY and numerous affiliated militias and the Houthi forces have used starvation as a weapon, and have also engaged in war economy activities at the expense of depriving the civilian population of access to essential items.

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