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Navigating the Battlefield of Hunger During Armed Conflicts: Obligations, Obstacles and Solutions

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NAVIGATING THE BATTLEFIELD OF HUNGER DURING ARMED CONFLICTS: OBLIGATIONS, OBSTACLES, AND SOLUTIONS

DR. YING CHEN* & DR. TARISA YASIN**

Despite sufficient global food supplies, food insecurity remains a persistent problem in many countries. In recent years, conflict has emerged as one of the key drivers of acute food insecurity, affecting hundreds of millions of people worldwide. The situation has worsened since 2022, as the impacts of the Russia-Ukraine war are felt worldwide. This Article investigates food security challenges arising from armed conflicts and proposes potential solutions to tackle these challenges. It first examines the right to food as enshrined in both international and national laws. These legal frameworks set out the rules that govern the responsibilities of States and conflicting parties as well as relief actions during armed conflicts. Through the case studies of Sudan, Somalia, Congo, Ethiopia, and Ukraine, this Article identifies two key impediments to upholding the right to food in conflict-affected areas: a state's failure to perform its obligations and inadequate international humanitarian aid. In response, the Article proposes two solutions to mitigate conflict-induced food insecurity: strengthening accountability and justice for serious violations of international law and improving the efficiency as well as the effectiveness of international food aid programs. A long road remains ahead, but with commitment, the world can collaborate to support the realization of the right to food during armed conflicts.

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I. INTRODUCTION

Despite sufficient global food supplies,¹ food insecurity remains a persistent problem.² Hunger and malnutrition are particularly

1. See Hilal Elver (Special Rapporteur on the right to food), *Interim Rep. of the Special Rapporteur on the Right to Food*, ¶ 83, U.N. Doc. A/70/287 (Aug. 5, 2015) (noting that “[t]he world has long produced enough food, sufficient not only to meet the caloric requirements of the existing global population of over 7 billion, but also to meet the needs of a population expected to reach 9 billion in 2050.”).

2. *World is Moving Backwards on Eliminating Hunger and Malnutrition, UN Report Reveals*, U.N. NEWS (July 6, 2022), <https://news.un.org/en/story/2022/07/1122032>; see also U.N. FOOD & AGRIC. ORG., ET AL., THE STATE OF FOOD SECURITY

prevalent in areas affected by armed conflicts.³ According to the Global Report on Food Crises (“GRFC 2022”), in 2020, ninety-nine million people in conflict-affected areas suffered from acute hunger and malnutrition.⁴ In 2021, this number surged to 139 million, marking a 40.4 percent increase.⁵ The situation has worsened since 2022, as the impacts of the Russia-Ukraine war are felt worldwide.⁶ Michael Fakhri, the United Nations (“UN”) Special Rapporteur on the Right to Food, notes that conflict is one of the key drivers of extreme hunger and malnutrition in recent years.⁷ Professor Maria Sassi also affirms that “[c]onflict is the main reason for the current surge in the number of people facing acute food insecurity and in need of urgent food, nutrition, and livelihood assistance.”⁸

Conflict undermines food availability and accessibility through a variety of means.⁹ First, it disrupts local agricultural production and

AND NUTRITION IN THE WORLD 2022: REPURPOSING FOOD AND AGRICULTURAL POLICIES TO MAKE HEALTHY DIETS MORE AFFORDABLE 1 (2022), <https://www.fao.org/3/cc0639en/cc0639en.pdf> (arguing that food insecurity remains a persistent issue as the world is moving away from the “Zero Hunger” Goal which aims to end global hunger and all forms of malnutrition by 2030).

3. Jelena Pejic, *The Right to Food in Situations of Armed Conflict: The Legal Framework*, 83 INT’L. REV. OF THE RED CROSS 1097, 1097 (2001) (asserting that “[a]rmed conflict is one of the primary obstacles to realization of the right to adequate food in many parts of the world today.”).

4. GLOB. NETWORK AGAINST FOOD CRISES & FOOD SEC. INFO. NETWORK, 2022 GLOBAL REPORT ON FOOD CRISES: JOINT ANALYSIS FOR BETTER DECISIONS 7 (2022), https://docs.wfp.org/api/documents/WFP-0000138913/download/?_ga=2.115740036.364634638.1684199016-1606896140.1679014589.

5. *Id.*

6. See *Food Security and Armed Conflict*, INT’L COMMITTEE OF THE RED CROSS (Oct. 24, 2022), <https://www.icrc.org/en/document/food-security-and-armed-conflict>.

7. *Conflict and Violence are the Primary Causes of Hunger and Famine*, Special Rapporteur on the Right to Food Tells the Human Rights Council, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. (Mar. 9, 2023), <https://www.ohchr.org/en/news/2023/03/conflict-and-violence-are-primary-causes-hunger-and-famine-special-rapporteur-right> [hereinafter “Conflict and Violence are the Primary causes of Hunger and Famine”].

8. Maria Sassi, *Coping Strategies of Food Insecure Households in Conflict Areas: The Case of South Sudan*, 13 SUSTAINABILITY 8615, 8615 (2021).

9. See U.N. FOOD AND AGRIC. ORG. & WORLD FOOD PROGRAMME, MONITORING FOOD SECURITY IN FOOD CRISIS COUNTRIES WITH CONFLICT SITUATIONS: A JOINT FAO/WFP UPDATE FOR THE MEMBERS OF THE UNITED NATIONS SECURITY COUNCIL 27 (2022) [hereinafter “The Joint FAO/WFP Report”]

essential food systems, particularly through the destruction of infrastructure, such as farms, irrigation systems, and food processing and storage facilities.¹⁰ Second, conflict and violence force civilians to flee their homes and communities to seek refuge in safer areas.¹¹ Displaced populations are susceptible to food insecurity due to the loss of their livelihoods and “reduced access to assets and income-generating activities.”¹² They also find themselves in dire situations while searching for food and other essential supplies in unfamiliar and sometimes dangerous environments.¹³ Third, conflict often hinders humanitarian access to affected areas,¹⁴ making it challenging for hungry populations to obtain sufficient food and nutrition.¹⁵

The impacts of armed conflicts on food security have been well observed in, for example, the Federal Democratic Republic of Ethiopia (“Ethiopia”), the Federal Republic of Somalia (“Somalia”), and the Republic of the Sudan (“Sudan”).¹⁶ There is a pressing need to identify viable and effective solutions to address conflict-induced food insecurity because, as Professor Alex de Waal notes, conflict does not

(listing the regular targeting and disruption of “[f]arms, crops, grazing pastures, fisheries, irrigation systems, livestock, mills, and food processing and storage sites” as examples through which conflict affects food availability); *see also* Sassi, *supra* note 8 (“Conflict is the main reason for the current surge in the number of people facing acute food insecurity and in need of urgent food, nutrition, and livelihood assistance. This situation requires sound policies based on accurate evidence.”).

10. The Joint FAO/WFP Report, *supra* note 9; Sassi, *supra* note 8; *see also* *Food Security in Armed Conflict: What You Need to Know*, INT’L COMM. OF THE RED CROSS (Jul. 31, 2023), <https://www.icrc.org/en/document/food-security-in-armed-conflict-what-you-need-know> (highlighting that “it’s been common practice since the origin of warfare to poison wells, burn crops or deprive civilians of sustenance in other ways; beyond these tactics, conflicts also drive food insecurity more indirectly – for example, by making trade and travel routes unsafe, forcing displacement of people and livestock, or causing damage to critical infrastructure, among other impacts”).

11. *See* The Joint FAO/WFP Report, *supra* note 9, at 27 (describing how conflict can leave people food insecure by cutting communities off from infrastructure, transport routes and markets).

12. *Id.* at 40.

13. *See id.* at 27.

14. Sam Loewenberg, *Conflicts Worsen Global Hunger Crisis*, 386 THE LANCET 1719, 1719–21 (2015).

15. *See* The Joint FAO/WFP Report, *supra* note 9, at 27.

16. *Id.* at 26.

necessarily have to lead to extreme hunger and malnutrition.¹⁷

This Article examines the food security challenges that result from armed conflicts. Following the introduction, Part II investigates the right to food as enshrined in international and national laws, as well as generic issues pertaining to the enforcement of international law. Part III considers Sudan, Somalia, the Democratic Republic of the Congo (“Congo”), Ethiopia, and Ukraine as case studies where armed conflicts have severely compromised food availability and accessibility. Through these case studies, Part IV identifies the obstacles to fulfilling the right to food during armed conflicts. Part V proposes two solutions to alleviate conflict-induced food insecurity: strengthening accountability and justice for serious violations of international law and improving the efficiency and effectiveness of international food aid programs. Finally, Part VI concludes the Article by re-emphasizing the urgency of addressing conflict-induced food crises.¹⁸ It calls for the world to work collaboratively to support the realization of the right to food during armed conflicts.

II. THE RIGHT TO FOOD AS A FUNDAMENTAL HUMAN RIGHT

A. THE RIGHT TO FOOD IN INTERNATIONAL LAW

General Comment No. 12 of the UN Committee on Economic, Social, and Cultural Rights defines the right to food as ensuring that “every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”¹⁹ In international law, the right to food is comprised of three key elements: availability, accessibility, and

17. KLAUS VON GREBMER ET AL., GLOBAL HUNGER INDEX: ARMED CONFLICT AND THE CHALLENGE OF HUNGER 3 (2015) [hereinafter 2015 Global Hunger Index]; Alex de Waal, *Armed Conflict and the Challenge of Hunger: Is an End in Sight?*, in GLOBAL HUNGER INDEX: ARMED CONFLICT AND THE CHALLENGE OF HUNGER (Klaus Von Grebmer et al. eds., 2015).

18. See Robert H. Trudell, *Food Security Emergencies and the Power of Eminent Domain: A Domestic Legal Tool to Treat a Global Problem*, 33 SYRACUSE J. INT'L L. & COM. 277, 292 (2005) (because “hundreds of millions of people’s [lives] hang in the balance and the security of the world is under threat”).

19. Comm. on Econ., Soc. and Cultural Rts., *General Comment 12: The Right to Adequate food (art. 11)*, ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

adequacy.²⁰ Availability emphasizes the importance of having access to adequate food and nutrition from agricultural production that is available for purchase on the market.²¹ Accessibility refers to not only the physical, but also the economic ability to, acquire sufficient food and nutrition.²² Adequacy highlights the need to ensure food safety and to meet individuals' dietary and cultural needs.²³ The first two elements are deemed pivotal, while the third one is considered secondary as adequacy cannot be achieved alone without the fulfilment of the first two. During armed conflicts, priority is given to the first two elements—availability and accessibility—as they ensure the fundamental requirements for human survival and development.²⁴ It is worth noting that, most recently, many scholars, such as Hilal Elver and Ying Chen, have advocated for the inclusion of sustainability into the right to food as the fourth element due to its importance for long-term food security.²⁵ Nevertheless, the urgency of

20. See U.N. Off. of the High Comm'r for Hum. Rts., *Fact Sheet No. 34: The Right to Adequate Food* 2–3 (April 1, 2010) (emphasizing one of the elements of the right to food: “[f]ood must be available, accessible, and adequate”); see also Elver, *supra* note 1, ¶ 6 (defining the necessary elements of right to food as availability, accessibility, and adequacy).

21. Elver, *supra* note 1, ¶ 7 (and is a sufficient enough amount to meet the needs of the ever-growing population); see also D. Moyo, *The Future of Food: Elements of Integrated Food Security Strategy for South Africa and Food Security Status in Africa*, 101 AM. SOC'Y INT'L L. PROC. 103, 103 (2007) (defining food availability as “effective or continuous supply of food t both national and household level” and that “it is affected by input and output of market conditions, as well as production capabilities of the agricultural sector).

22. Ying Chen, *Protecting the Right to Food in the Era of Covid-19 and Beyond*, 49 GA. J. INT'L & COMP. L 1, 6 (2021) [hereinafter Chen, *Protecting the Right to Food*] (citing United Nations Office of the High Commissioner for Human Rights, *supra* note 20, ¶ 12).

23. See *id.* at 6–7; Elver, *supra* note 1, ¶15.

24. See Ore Koren & Benjamin E. Bagozzi, *From Global to Local, Food Insecurity is Associated with Contemporary Armed Conflicts*, 8 FOOD SEC. 999, 999–1010 (2016) (“The relationship between access and availability is therefore codependent; if food is not available, neither is it accessible. However, the reverse is not true; while plenty of food can be available, many different factors might hinder access to it.”).

25. See Elver, *supra* note 1, ¶ 19 (“While not specifically enunciated in general comment No. 12 (1999), sustainability is linked to hunger-reduction strategies and policies as it places emphasis on the principles of participation, non-discrimination, transparency and empowerment.”); Ying Chen, *Improving Sustainability and Promoting the Right to Holistic Food: The Role of Agribusiness*, 31 FLA. J. INT'L L.

ensuring food availability and accessibility still takes precedence over sustainability considerations in the context of armed conflicts. Accordingly, “the right to food” in this Article centers on the first two key elements.

The right to food is a fundamental human right and a prerequisite for individuals to exercise all other human rights.²⁶ Without the realization of this right, “self-fulfillment, political aspirations, and legal rights and responsibilities are empty concepts.”²⁷ The right to food has been well established in international law.²⁸ Specifically, it is safeguarded by international human rights law, international humanitarian law, and international criminal law.

1. *International Human Rights Law*

The right to food has been enshrined in several international human rights treaties. Professor Smita Narula identifies four distinct phases in the evolution of the right to food, which corresponds to the development of other modern human rights standards: (1) acknowledging human rights concerns in the UN Charter; (2) identifying specific human rights universal to all individuals in the Universal Declaration of Human Rights (“UDHR”); (3) elaborating each right in one of two binding UN human rights covenants: the International Covenant on Civil and Political Rights (“ICCPR”), or the International Covenant on Economic, Social and Cultural Rights (“ICESCR”); and (4) adopting additional conventions and declarations addressing diverse human rights concerns.²⁹

Phase one. Although the UN Charter does not enumerate specific

143, 143–78 (2019) (“This research provides an advanced interpretation of the right to food, arguing that it should include not only food security and food safety, but also sustainability.”).

26. See Caitlin Firer, *Free Trade Area of the Americas and the Right to Food in International Law*, 1 U. ST. THOMAS L. J. 1054, 1059 (2004) (noting that inadequate access to sufficient food and nutrition can curtail individuals’ ability to “realize their full potential or their right to life”).

27. Donald E. Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food Under International Law*, 6 PACE INT’L L. REV. 285 (1994).

28. Pejic, *supra* note 3, at 1098 (explaining that the law functions in a preventative manner, and that the “right to food” is not explicit in international law).

29. Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 704–05 (2006).

human rights, it does express a commitment to promoting and protecting human rights broadly. For example, the Preamble “reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”³⁰

Phase two. Despite the absence of the right to food in the UN Charter, this right is explicitly recognized in the 1948 UDHR as an important aspect of the right to an adequate standard of living.³¹ Article 25.1 specifies, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food. . . .”³²

Phase three. The right to food is further elaborated in the ICESCR which has a binding effect on all States Parties.³³ Article 11.1 stipulates the state’s obligation to “ensure the realization of this right”³⁴ and recognizes “the essential importance of international co-operation.”³⁵ Article 11.2 mandates that the state parties “shall take, individually and through international co-operation, the measures” to “improve methods of production, conservation and distribution of food. . . .”³⁶ Furthermore, the state parties shall “tak[e] into account the problems of both food-importing and food-exporting countries,” and “ensure an equitable distribution of world food supplies in relation to need.”³⁷ Article 11 can be interpreted to impose dual obligations on the State Parties of the ICESCR, namely: (1) the obligation to uphold the right to food within their respective jurisdictions and; (2) a shared responsibility to provide international assistance for the realization of this right beyond their borders.

30. U.N. Charter Preamble.

31. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter “UDHR”].

32. *Id.*, at art. 25.

33. Benedict Sheehy & Ying Chen, *Let Them Eat Right: Re-Framing the Food Insecurity Problem Using a Rights-Based Approach*, 43 MICH. J. INT’L L. 631, 659 (2022) (noting that although the ICESCR imposes a legal obligation on states, the U.N. does not have the ability to enforce the obligation).

34. G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 11.1, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

35. *Id.*

36. *Id.* art. 11.2.

37. *Id.*

Phase 4. The Universal Declaration on the Eradication of Hunger and Malnutrition (“the Declaration”) was adopted in 1974 to protect everyone’s inherent right to be free from hunger and malnutrition.³⁸ The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),³⁹ the Convention on the Rights of the Child (“CRC”),⁴⁰ and the Convention on the Rights of Persons with Disabilities (“CRPD”)⁴¹ all contain provisions that ensure vulnerable individuals have access to food that is adequate, available, and accessible.⁴²

2. *International Humanitarian Law and International Criminal Law*

The right to food is also protected under international humanitarian law and international criminal law.⁴³ These two legal frameworks are particularly relevant to food security in the context of armed conflicts.

The Geneva Conventions and their Additional Protocols are at the core of international humanitarian law; together, they establish universal rules for humane treatment of individuals during armed conflicts.⁴⁴ One important aspect of these rules is that they uphold the right to food for prisoners of war and civilians, including those in

38. G.A. Res. 3348 (XXIX), The Universal Declaration on the Eradication of Hunger and Malnutrition, ¶ 1 (Dec. 17, 1974).

39. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, arts. 12, 14. (Dec. 18, 1979).

40. G.A. Res. 44/25, Convention on the Rights of the Child, arts. 24, 27 (Nov. 20, 1989).

41. G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities, U.N. Doc. A/RES/61/106 (Jan. 24, 2007).

42. See Sheehy & Chen, *supra* note 33, at 658 (drawing attention to the three Conventions’ shared provisions requiring access to food for marginalized and disadvantaged people).

43. Firer, *supra* note 26, at 1060–61 (providing that the right to food is recognized broadly in international treaties, resolutions, and the like); Pejic, *supra* note 3, at 1097–98 (concluding that the right to food is de facto widely established by international law due to the protection of the right for those that cannot get food without assistance).

44. See generally Major Thomas J. Murphy, *Sanctions and Enforcement of the Humanitarian Law of the Four Geneva Conventions of 1949 and Geneva Protocol I of 1977*, 103 MIL. L. REV. 3, 3–5 (1984) (explaining that the Geneva Conventions and their Additional Protocols require humane treatment of all individuals in accordance with the conventions universally, beyond the scope of armed conflict).

occupied territory.⁴⁵

Article 20 of the Geneva Convention Relative to the Treatment of Prisoners of War (“Geneva Convention III”) ensures “prisoners of war who are being evacuated” are supplied with adequate food.⁴⁶ Article 26 also provides that “the basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies.”⁴⁷ Furthermore, “collective disciplinary measures affecting food are prohibited.”⁴⁸ However, with its main focus on civilians, this article will not examine food insecurity experienced by prisoners of war.

Article 23 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (“Geneva Convention IV”) requires high contracting parties to “permit the free passage of all consignments of essential foodstuffs . . . intended for children under fifteen, expectant mothers and maternity cases.”⁴⁹ Article 55 specifies the occupying power’s “duty of ensuring the food . . . supplies of the population,” stating that “it should . . . bring in the necessary foodstuffs . . . if the resources of the occupied territory are inadequate.”⁵⁰ Article 59 outlines the occupying power’s responsibility in agreeing to and facilitating food relief schemes.⁵¹ These schemes may be carried out by states or impartial humanitarian agencies.⁵² All contracting parties must permit the free passage of relief consignments and ensure the distribution of food supplies.⁵³

In 1977, two Protocols were adopted to supplement the Geneva Conventions: the Protocol Relating to the Protection of Victims of

45. Michael Fakhri (Special Rapporteur on the Right to Food), *Conflict and the Right to Food*, ¶ 63, U.N. Doc. A/HRC/52/40 (Dec. 29, 2022).

46. Geneva Convention Relative to the Treatment of Prisoners of War art. 20, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention III].

47. *Id.* art. 26.

48. *Id.*

49. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 23, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV].

50. *Id.* art. 55.

51. *Id.* art. 59.

52. *Id.*

53. *Id.*

International Armed Conflicts (“Protocol I”)⁵⁴ and the Protocol Relating to the Protection of Victims of Non-international Armed Conflicts (“Protocol II”).⁵⁵

Article 54 of Protocol I protects “objects indispensable to the survival of the civilian population” in international armed conflicts (“IACs”).⁵⁶ It prohibits the “[s]tarvation of civilians as a method of warfare,”⁵⁷ and the intentional destruction of essential food supplies and agricultural systems that are vital to civilian survival.⁵⁸ Article 70 of Protocol I states that all parties to the conflict are obligated to “allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel . . . even if such assistance is destined for the civilian population of the adverse Party.”⁵⁹

Protocol II applies to non-international armed conflicts (“NIACs”) only. Article 14 prohibits the starvation of civilians and the destruction of agricultural production for military purposes.⁶⁰ Article 18 regulates relief operations; it provides, “[i]f the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs . . . relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken.”⁶¹ Relief operations in NIACs are subject to the consent of the relevant High Contracting Party, which is different from IACs where relief operations do not require such consent.⁶² As Professor Donald E. Buckingham explains, in the context of NIACs, the High Contracting Party “is not obliged to accept and facilitate international humanitarian assistance within its borders,” unless it is

54. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

55. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol II].

56. Protocol I, *supra* note 54, arts. 54, 70.

57. *Id.*

58. *Id.*

59. *Id.* art. 70.

60. Protocol II, *supra* note 55, art. 14.

61. *Id.* art. 18.

62. *Id.*

so ordered by the UN Security Council (“UNSC”).⁶³

Geneva Conventions III and IV have been universally ratified and are binding on all State Parties.⁶⁴ As for Protocols I and II, although they have yet to receive universal ratification, many of the rules contained in these Protocols have been accepted as part of customary international law.⁶⁵ For example, Professor Tom Dannenbaum and Professor Donald E. Buckingham argue that the prohibition of weaponizing food has been “consistent state practice and *opinio juris*,” and therefore, is a norm of customary international law that has binding effect “on all States (and other parties to the conflict),” regardless of the ratification status.⁶⁶ The International Committee of the Red Cross’ research also confirmed that state practice has established the prohibition of civilian starvation as a method of warfare “as a norm of customary international law applicable in both international and non-international armed conflicts.”⁶⁷

Apart from Geneva Conventions and the two Protocols, there are other treaty instruments that safeguard the right to food for specific groups of people during armed conflicts. For example, the Declaration

63. See Buckingham, *supra* note 27, at 299; Protocol II, *supra* note 55, art. 18.

64. See Jordan Luber, *Better Than Bullets: Ethiopia Is Committing War Crimes by Starving Civilian Populations in the Ethiopian Civil War*, 37 AM. U. INT’L L. REV. 701, 708–09 (2022) (noting that because the Geneva Conventions simply codified customary international law, its provisions are universally binding even without ratification).

65. See Laura Niada, *Hunger and International Law: The Far-Reaching Scope of the Human Right to Food*, 22 CONN. J. INT’L L. 131, 170 (2006) (“The Geneva Conventions, as well as the main provisions of Protocol I and II, are widely reputed customary international law.”).

66. Buckingham, *supra* note 27, at 299; see *War Crimes*, U.N. OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, <https://www.un.org/en/genocideprevention/war-crimes.shtml> (asserting that many principles in international humanitarian law are considered binding under customary international law); U.N. Office of The High Comm’r for Human Rights, *International Standards: OHCHR: Protecting human rights during conflict situations*, <https://www.ohchr.org/en/protecting-human-rights-conflict-situations/international-standards> (describing core international humanitarian law sources and their status as customary international law); Niada, *supra* note 65, at 169–170 (explaining the binding nature of the Geneva Conventions and the main provisions of Protocols I and II under customary international law).

67. See JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES 186* (2005).

on the Protection of Women and Children in Emergency and Armed Conflict includes a provision stating that “women and children belonging to the civilian population and finding themselves in circumstances of . . . armed conflict” are entitled to the right to food.⁶⁸ The Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Suppression and Punishment of the Crime of Apartheid both implicitly prohibit the use of starvation as a method to deliberately cause the physical destruction of a specific group.⁶⁹

As for international criminal law, the Rome Statute of the International Criminal Court (“Rome Statute”) established the International Criminal Court (“ICC”) in 2002 to investigate and prosecute genocide, crimes against humanity, war crimes, and crimes of aggression.⁷⁰ Pursuant to Article 8, war crimes are grave breaches of the Geneva Conventions.⁷¹ As for the right to food, Article 8(2)(b)(xxv) specifies that “[i]ntentionally 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” is a war crime.⁷² Four elements

68. G.A. Res. 3318 (XXIX), Declaration on the Protection of Women and Children in Emergency and Armed Conflict, ¶ 6 (Dec. 14, 1974).

69. G.A. Res. 3/260A, Convention on the Prevention and Punishment of the Crime of Genocide, art 2 (Dec. 9, 1948) (classifying “deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part” as an act of genocide which is a crime under international law); G.A. Res. 3068 (XXVIII), International Convention on the Suppression and Punishment of the Crime of Apartheid, art 2, Nov. 30, 1973, 1015 U.N.T.S. 243 (prohibiting as “the crime of apartheid” the infliction of serious bodily or mental harm; infringement of freedom or dignity; torture; and cruel, inhuman, or degrading treatment or punishment).

70. Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, July 1, 2002 [hereinafter Rome Statute]; *see also* INT'L CRIM. CT., UNDERSTANDING THE INTERNATIONAL CRIMINAL COURT 9, <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf> (2020) (“The International Criminal Court . . . is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.”); *How the Court Works*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> (explaining the ICC's roles and responsibilities).

71. Rome Statute, *supra* note 70, at art. 8.

72. *Id.* at art.8(2)(b)(xxv).

must be proven to establish the war crime of starvation:

- 1) The perpetrator deprived civilians of objects indispensable to their survival.
- 2) The perpetrator intended to starve civilians as a method of warfare.
- 3) The conduct took place in the context of and was associated with an international armed conflict.
- 4) The perpetrator was aware of factual circumstances that established the existence of an armed conflict.⁷³

Article 8(2)(b)(xxv) applied to IACs only when the Rome Statute was first adopted.⁷⁴ Nevertheless, in December 2019, the Assembly of State Parties adopted Resolution ICC-ASP/18/Res.5. The Resolution amended Article 8 of the Rome Statute by inserting a new subsection, Article 8(2)(e)(xix), which criminalizes the deliberate starvation of civilians in NIACs.⁷⁵ However, as of February 2024, only Croatia, Germany, Liechtenstein, Luxemburg, New Zealand, Portugal, Slovenia, Switzerland, and Uruguay have ratified the amendment; Andorra, the Netherlands, Norway, and Romania have accepted the amendment.⁷⁶ Given that State Parties to the Rome Statute are “not bound by the amendment if they have not ratified it,”⁷⁷ Article 8(2)(b)(xxv) remains largely relevant to IACs and, only in limited circumstances, to NIACs.

73. INT’L CRIM. CT., ELEMENTS OF CRIMES, art. 8(2)(b)(xxv) (2013), <https://www.iccpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

74. See, e.g., Randle C. DeFalco, *Conceptualizing Famine as A Subject of International Criminal Justice: Towards A Modality-Based Approach*, 38 U. PA. J. INT’L L. 1113, 1140 (2017) (discussing the repercussions of the historically strict categorizations of IACs in criminal and humanitarian laws, including the disproportionate application of the law).

75. *Amendment to article 8 of the Rome Statute of the International Criminal Court*, INT’L COMM. OF THE RED CROSS (2019), <https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-amendment-art8-starvation-2019?activeTab>.

76. See *10g Amendment to Article 8 of the Rome Statute of the International Criminal Court (Intentionally Using the Starvation of Civilians)*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-g&chapter=18&clang=_en (listing the ratification dates of the States Parties to the amendment).

77. Rome Statute, *supra* note 70, at art. 121(5).

In summary, under international humanitarian law and international criminal law, parties to armed conflicts are obligated to uphold the right to food for both prisoners of war and civilians under their control.⁷⁸ They are prohibited from engaging in activities that may jeopardize food security,⁷⁹ and they play a vital role in facilitating humanitarian operations.

3. *Universal Challenges in Enforcing International Law*

In situations where acute hunger and malnutrition arise from armed conflicts, it is justifiable to anticipate that international law can be relied on to address grave human rights violations and hold violators to account for their actions.⁸⁰ However, the international legal system faces a number of critical challenges pertaining to the implementation of a rights-based approach to food security.⁸¹

Regarding the implementation of international human rights, Professors Benedict Sheehy and Ying Chen argue that international treaty instruments “remain little more than aspirational.”⁸² The majority of the human rights instruments mentioned above do not impose legal obligations on their State Parties.⁸³ Violators may face criticism, but they are not legally liable for their actions.⁸⁴ As for the

78. See Buckingham, *supra* note 27, at 296, 299 (summarizing international legal standards establishing liability for food restrictions to civilians and prisoners of war in IACs and some NIACs).

79. See *id.* at 294 (“The obligation to protect requires the state to counteract or prevent activities or processes which negatively affect food security.”).

80. See *id.* at 288 (explaining that grave issues of food security are addressed in various areas of the international community).

81. See, e.g., *id.* at 289 (listing challenges such as a lack of political consensus among states, political opposition, state sovereignty, and the principle of non-intervention).

82. Sheehy & Chen, *supra* note 33, at 659.

83. See U.N. FOOD & AGRIC. ORG., RIGHT TO FOOD HANDBOOKS: THE RIGHT TO FOOD WITHIN THE INTERNATIONAL FRAMEWORK OF HUMAN RIGHTS AND COUNTRY CONSTITUTIONS 3 (2014), <http://www.fao.org/3/i3448e/i3448e.pdf> (explaining the international instruments on the right to food, separated by binding and non-binding instruments).

84. See, e.g., *A Short History of Human Rights*, in HUMAN RIGHTS HERE AND NOW (Nancy Flowers, ed. 1998), available at <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm> (discussing various human rights instruments, their legal status, and the importance of civil society advocacy in the face of legal impunity).

instruments that do have binding effect on the State Parties, such as the ICESCR, the UN does not have the necessary frameworks to safeguard the implementation.⁸⁵ Furthermore, as Buckingham observes, the lack of political consensus among states is another impediment to the realization of the right to food in conflict-affected areas.⁸⁶ He notes, neutral states often use “state sovereignty and non-intervention in national affairs” as an excuse to oppose initiatives perceived to be against their own political or economic interests.⁸⁷

The implementation of international humanitarian law also encounters many challenges. First, like other areas of international law, international humanitarian law suffers from a lack of effective enforcement mechanisms.⁸⁸ This issue is widely observed by scholars and policymakers. For example, Professor Silja Vöneky notes, international humanitarian law “is not implemented and enforced via a central body or hierarchical institutions,” and that leads to “implementation deficits of rules protecting common values and an overlap of norms and competences.”⁸⁹ Dieter Fleck, former Director of the International Agreements and Policy of the German Federal Ministry of Defence, also states, violations of humanitarian law “cannot be successfully sanctioned and that humanitarian protection therefore cannot stand the test of reality.”⁹⁰ In response to this implementation challenge, he advocates for “joint efforts and continued international co-operation.”⁹¹

85. See, e.g., Matuš Štulajter, *Problem of Enforcement of An International Law – Analysis of Law Enforcement Mechanisms of the United Nations and the World Trade Organization*, 33 J. MOD. SCI. 325, 325–35 (2017) (describing enforcement and compliance issues within the U.N. human rights system).

86. See Buckingham, *supra* note 27, at 289 (explaining pertinent obstacles to effective implementation of international human rights safeguards).

87. See *id.* (describing these challenges as “shields” to the implementation of international human rights).

88. See, e.g., Silija Voneky, *Implementation and Enforcement of International Humanitarian Law*, in HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 690, 690–91 (Dieter Fleck ed., 4th ed. 2021) (discussing fundamental challenges to international humanitarian law, namely implementation and enforcement).

89. *Id.* at 691–92 (explaining the challenges posed by the decentralized implementation of international humanitarian law and the *de facto* deficits created therein).

90. Dieter Fleck, *Implementing International Humanitarian Law: Problems and Priorities*, 281 INT’L. REV. RED CROSS 140, 140 (1991).

91. *Id.* at 152 (asserting that such measures are the only methods which may

Second, while the Geneva Conventions, their accompanying Protocols, and other humanitarian conventions do provide some degree of protection against conflict-induced food insecurity, they are often considered inadequate.⁹² For example, as Fakhri asserts, international humanitarian law only protects prisoners of war and civilians from hunger and malnutrition,⁹³ while deliberately excluding combatants.⁹⁴ This raises a serious concern: although starvation of combatants is lawful,⁹⁵ combatants and civilians usually share the same supply chains for food, any disruptions may still result in the starvation of civilians.⁹⁶

Third, the Geneva Conventions consider starvation as a war crime only if it is intentionally inflicted.⁹⁷ However, an emerging concern has arisen from the recent Russia-Ukraine war. Due to the global food system's growing reliance on international agricultural trade, the conflict-induced disruptions in agri-food systems in one food exporting region may result in acute food insecurity outside the conflict zones.⁹⁸ As noted, the war between Russia and Ukraine has had a devastating impact on global food security, as it has created a range of complex and interconnected challenges for agri-food production and distribution.⁹⁹ In response to this concern, Fakhri

result in resolving issues of motivation and acceptance).

92. See Fakhri, *supra* note 45, ¶ 63 (finding that, although IHL provides some protection against violations to the right to food, it does not eliminate violence in food systems).

93. *Id.* (listing three categories of persons protected from under IHL, including the wounded and sick, prisoners of war, and civilians).

94. *Id.* ¶ 66 (condemning this legal loophole and asserting that starvation of any person is a slow and cruel form of killing in violation of non-derogable human rights).

95. *Id.*

96. *Id.* ¶ 67.

97. *Id.* ¶ 70.

98. See *id.* (explaining the global impact of food-related war crimes, as illustrated in Ukraine).

99. See generally Daniel Aminetzah, et al., *A Reflection on Global Food Security Challenges amid the War in Ukraine and the Early Impact of Climate Change* (Aug. 17, 2022), <https://www.mckinsey.com/industries/agriculture/our-insights/a-reflection-on-global-food-security-challenges-amid-the-war-in-ukraine-and-the-early-impact-of-climate-change> (explaining how the war in Ukraine has led to a decline in export volumes of grain due to decreased yields, logistical constraints, and export limitations).

suggests, “[p]ursuing international criminal conviction[s] for food-related war crimes should not preclude addressing pressing structural reasons leading to widespread severe violations of the right to food in conflict regions and beyond.”¹⁰⁰ Nevertheless, the legal basis to prosecute for such war crimes itself remains questionable.

In summary, the right to food is well established in international law. However, the implementation of this right is ineffective, as evidenced by the fact that food availability and accessibility have been severely compromised in many conflict-affected areas.¹⁰¹

B. THE RIGHT TO FOOD IN NATIONAL LAWS

As noted, the ICESCR specifies that states bear the primary responsibility for upholding their citizens’ right to food; they also assume a shared responsibility in supporting the realization of this right beyond their borders.¹⁰²

Most countries in the world have adopted their own approaches to food security, addressing the needs of vulnerable populations domestically.¹⁰³ Sheehy and Chen categorize state approaches into three distinct groups: (1) explicit constitutional protections, (2) implicit constitutional protections, and (3) the integration of the key elements of the right to food in domestic laws (other than the constitutions), policies, and programs.¹⁰⁴

To date, over thirty countries have explicitly enshrined the right to food in their constitutions, including, for example, Congo, Ukraine, Switzerland, Brazil, South Africa, and Mexico.¹⁰⁵ Most countries in

100. See Fakhri, *supra* note 45, ¶ 70 (explaining the deficiencies related to international criminal law recognizing starvation as a war crime only when it is deliberately inflicted).

101. See *infra* Part III.

102. ICESCR, *supra* note 34, at art. 11.

103. See Sheehy & Chen, *supra* note 33, at 661 (“States around the globe have taken different approaches to enacting, administering, and adjudicating legislation establishing rights and duties providing food security.”).

104. See *id.* (recognizing that the success of domestic approaches to food security depend on various factors such as “[e]conomic resources; local food production practices and resources; to strategic choices in agricultural, financial, and social security policy; and finally, to regulatory design, with related legal factors affecting all of the forgoing factors.”).

105. *Id.* at 662–64 (including Belarus, Bolivia, Brazil, Colombia, Costa Rica,

the world, however, have provided implicit constitutional protection for the right to food by allowing this right to be enforced through broader human rights explicitly enshrined in their constitutions, such as the right to life, the right to development, and respect for human dignity.¹⁰⁶ For example, Ethiopia protects the right to food through the constitutional right to development.¹⁰⁷ Sudan and Somalia protect this right through the constitutional right to life.¹⁰⁸ Lastly, in some countries such as Australia and the United States, there is an absence of a constitutional safeguard for the right to food; instead, the elements of this right are incorporated into domestic laws, policies, and programs.¹⁰⁹

State approaches generally do not make a specific distinction between times of conflict and times of peace, implying a broad and unconditional application to both occasions. However, States place emphasis on improving food security within their territorial boundaries,¹¹⁰ and there is a lack of domestic legislation that regulates State compliance with its international obligation pertaining to the extraterritorial realization of the right to food.¹¹¹ This absence of regulation is justifiable to some extent, as States bear the primary responsibility for their own citizens' food security and providing

Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Fiji, Guatemala, Guyana, Haiti, Honduras, Kenya, Iran, Malawi, Maldives, Mexico, Nepal, Nicaragua, Niger, North Korea, Panama, Paraguay, Philippines, Republic of Moldova, Seychelles, South Africa, Suriname, Switzerland, Ukraine, Uganda, and Zimbabwe as countries that included the right to food in their constitutions).

106. *See id.* at 665–67 (cataloguing the countries that provide implicit constitutional protections for the right to food).

107. *See id.* at 682 (noting Article 43 of Ethiopia's Constitution grants its citizens "the right to improved living standards and to sustainable development").

108. *Id.* at 667 (categorizing Sudan and Somalia as countries which provide implicit constitutional protections for the right to food).

109. *Id.* (categorizing the United States and Australia as countries which protect the right to food through extra-constitutional laws).

110. *See, e.g., Protecting the Right to Food, supra* note 22, at 23 (exemplifying how during the COVID pandemic, many food exporting countries adopted a policy of protectionism and suspended their agricultural export to protect their domestic food security).

111. *See* YING CHEN, TRADE, FOOD SECURITY, AND HUMAN RIGHTS 32–33 (2014) (explaining how few dualist states transform the right to food into national law and how monist states do not make adequate efforts to implement their international obligations).

international assistance is based on consent.¹¹² Consequently, State decisions in providing food aid are often ad hoc,¹¹³ and largely dependent on their particular political, diplomatic, and economic interests, rather than the needs of the food-insecure populations outside their jurisdictions.¹¹⁴

III. CASE STUDIES

The strong correlation between armed conflicts and acute hunger and malnutrition has been widely observed. According to a joint report published by the Food and Agriculture Organization (“FAO”) and the World Food Program (“WFP”), “conflict is the main driver of acute food insecurity at severe levels.”¹¹⁵ Similarly, the International Food Policy Research Institute (“IFPRI”) reveals that “countries with the lowest level of food security . . . are engaged in or recently emerged from war.”¹¹⁶ Consistent with the findings above, scholars, such as Professor Maria Sassi, note that there is a clear nexus between conflict and food insecurity.¹¹⁷ Sassi’s point further supports the notion that conflicts have had detrimental effects on food security.¹¹⁸ The following section investigates the food security situations in Sudan, Somalia, Congo, and Ethiopia, as conflicts and violence have severely undermined food availability and accessibility in these countries. The

112. See ICESCR, *supra* note 34, at art. 11.1 (asserting that international cooperation is based on free consent).

113. Christopher B. Barrett & Daniel G. Maxwell, *Towards a Global Food Aid Compact*, 31 FOOD POL’Y 105, 106 (2006) (“The one formal international accord with legal status, the Food Aid Convention (FAC), has no mechanism for effectively monitoring or enforcing signatories’ compliance with the terms to which they have agreed. Moreover, its membership consists only of donor countries – seven countries plus the European Union and its member states – leaving it unable to address myriad issues that involve recipient governments or operational agencies.”).

114. See *Protecting the Right to Food*, *supra* note 22, at 39 (explaining how voluntary food aid programs are frequently driven by donor-oriented objectives instead of the needs of the recipients).

115. The Joint FAO/WFP Report, *supra* note 9, at 2 (monitoring food insecurity in countries currently undergoing conflict).

116. See 2015 Global Hunger Index, *supra* note 17, at 26 (“conflict is the main cause of persistent severe hunger”).

117. See Sassi, *supra* note 8, at 1 (noting that there is a clear nexus between conflict and food insecurity).

118. See *id.* (observing the connection between conflict and the disruption of food production systems across varying geographic zones).

section then moves on to examine Ukraine, as the war with Russia has disrupted global food supplies and sparked a large-scale food crisis extending beyond the conflict zones.

The five case studies examine three key aspects pertaining to the right to food: (1) state obligations under international law; (2) domestic regulatory and institutional frameworks; and (3) food security situations. The purpose of these case studies is to provide a more nuanced understanding of conflict-induced food insecurity, which assists with the identification of viable solutions to address this pressing challenge.

A. SUDAN

1. *State Obligations Under International Law*

Sudan, as a state party to many international human rights and humanitarian treaties, has assumed the obligation to uphold the right to food.¹¹⁹ In 1986, Sudan became a party to the legally binding ICESCR,¹²⁰ which requires all State Parties to ensure food security for all individuals within their respective jurisdictions, and to cooperate with other states and international organizations to support the realization of the right to food beyond their borders.¹²¹ Furthermore, Sudan has ratified the UDHR,¹²² the CRC,¹²³ the CRPD,¹²⁴ Geneva

119. See generally *The Right to Food around the Globe: Sudan*, U.N. FOOD & AGRIC. ORG., <https://www.fao.org/right-to-food-around-the-globe/countries/sdn/en> [hereinafter *Sudan Right to Food*] (listing Sudan's various international instruments, legislation, policies, and constitutional provisions recognizing the right to food).

120. *Status of Ratification Interactive Dashboard*, OHCHR, <https://indicators.ohchr.org> (for Sudan's ratifications, select Sudan on the left side panel) (recording Sudan's ratification of the International Covenant on Economic, Social, and Cultural Rights in 1986).

121. ICESCR, *supra* note 34, at art. 11.1.

122. *Signatories for Universal Declaration of Human Rights*, THE DANISH INST. FOR HUMAN RTS, <https://sdg.humanrights.dk/en/instrument/signees/24> (recording Sudan's ratification of the Universal Declaration of Human Rights).

123. *Status of Ratification Interactive Dashboard*, *supra* note 120 (for Sudan's ratifications, select Sudan on the left side panel) (recording Sudan's ratification of the Convention on the Rights of the Child (CRC) in 1990).

124. *Id.* (recording Sudan's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2009).

Conventions III¹²⁵ and IV,¹²⁶ and Protocols I¹²⁷ and II.¹²⁸ By ratifying these treaties, Sudan is obligated to protect and promote the right to food under international law. It is worth noting that Sudan is not a State Party to the Rome Statute.¹²⁹ Therefore, crimes in violation of the Rome Statute that occur in Sudan do not usually fall within the ICC's jurisdiction.¹³⁰

2. Domestic Regulatory and Institutional Frameworks

At the national level, as noted, Sudan only provides implicit constitutional protection for the right to food by allowing this right to be enforced through the constitutional right to life.¹³¹ Article 44 of the Constitution provides, “[e]very person has a fundamental right to life . . . which shall be protected by law. No person may be deprived

125. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, INT'L. COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/state-parties?activeTab=1949GCs-APs-and-commentaries> [hereinafter Geneva Convention III Ratification Status] (recording Sudan's ratification).

126. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, U.N. TREATY COLLECTION, <https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a> [hereinafter Geneva Convention IV Ratification Status] (recording Sudan's ascension in 1958).

127. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, INT'L. COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties> [hereinafter Protocol I Ratification Status] (recording Sudan's ratification).

128. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol II)*, 8 June 1977, INT'L. COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties> [hereinafter Protocol II Ratification Status] (recording Sudan's ratification).

129. See generally *The States Parties to the Rome Statute*, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties#S> (listing the 123 countries that are States Parties to the Rome Statute of the International Criminal Court).

130. See UNDERSTANDING THE INTERNATIONAL CRIMINAL COURT, *supra* note 70, at 31 (Sudan may be subject to the ICC's jurisdiction if it voluntarily accepts the jurisdiction “with respect to crimes committed in its territory or by one of its nationals,” or any State Party to the Rome Statute requested the Office of the Prosecutor to conduct an investigate, or if the UNSC refers a situation in Sudan).

131. See Sheehy & Chen, *supra* note 33, at 667 (identifying Sudan as a country which indirectly protects the right to food).

of life arbitrarily.”¹³² Despite the implicit constitutional protection, Sudan lacks a legal framework to implement food rights and protect its citizens from hunger and malnutrition, both during times of peace and conflicts.¹³³

3. *Food Security Situations in Sudan*

Sudan has been embroiled in armed conflicts and violence for decades. As Ishaan Tharoor notes, the country “is riddled with countless armed groups and communal militias,”¹³⁴ making it difficult to bring about sustainable peace. The persistent conflicts have resulted in a high prevalence of hunger and malnutrition in the country, with particularly severe food crises occurring in 2003–2004, 2020–2022, and 2023–present.¹³⁵

i. 2003–2004

The FAO/WFP Joint Report notes, during 2003–2004, the conflict between the Sudanese Army and rebel groups in Darfur resulted in an estimated 200,000 civilian deaths, and a substantial number of deaths were attributed to hunger and related diseases.¹³⁶

ii. 2020–2022

The food security situation in Sudan deteriorated rapidly between 2020–2022 when the civil conflict escalated.¹³⁷ In the first quarter of

132. SUDAN CONSTITUTION, 2019, art. 44 (Sudan), https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en.

133. Sudan Right to Food, *supra* note 119 (listing Articles 27, 1(2), 10(1), 12(1), 14(1), and 32 of Sudan’s Constitution as implicit recognitions of the right to food).

134. See Ishaan Tharoor, *Sudan Slides toward Civil War and State Collapse*, WASH. POST (Apr. 23, 2023), <https://www.washingtonpost.com/world/2023/04/23/sudan-civil-war-violence-future/> (explaining how easily an armed group or militia could turn a two-sided war into a complex free-for-all).

135. See *Sudan*, WFP, <https://www.wfp.org/countries/sudan> (noting that the April 2023 conflict in Sudan has pushed the more than 6 million people to the verge of famine and 42 percent of the population is facing food insecurity); 2015 Global Hunger Index, *supra* note 17, at 25–26 (stating that armed conflict between the Sudanese army and rebel groups in 2003–2004 resulted in 200,000 civilian deaths).

136. See *id.* (explaining how delivering food aid to civilians in conflict demands exceptional skills).

137. The Joint FAO/WFP Report, *supra* note 9, at 39–40 (observing that conflict and violence are key drivers of acute hunger).

2022, over fifteen million people, which accounted for thirty-four percent of the total population in Sudan, suffered from severe hunger and malnutrition.¹³⁸ This presented a seven percent increase compared to 2021 and was higher than in previous years.¹³⁹ The FAO/WFP Joint Report also reveals, “[a]cute food insecurity [was] deepened, particularly in violence hotspots,” such as “the Darfur region, South Kordofan and Blue Nile states.”¹⁴⁰

It is important to highlight that during 2020–2022, restricted humanitarian access posed a critical challenge to food security in Sudan. According to the FAO and the WFP, constraints to humanitarian access were classified as “high” in 2020.¹⁴¹ These constraints became more pronounced and were deemed “very high” as the conflict continued to intensify during 2021–2022.¹⁴² Humanitarian agencies were compelled to temporarily suspend their operations, largely due to armed opposition groups’ deliberate interventions.¹⁴³ For example, in 2021, the WFP had to enforce a one-month suspension in North Darfur after its warehouse was looted.¹⁴⁴ Between February and August of 2022, Sudan recorded a total of 174 security incidents that affected the work of humanitarian agencies; eight aid workers lost their lives.¹⁴⁵ Furthermore, the Sudanese Government’s efforts to facilitate the delivery of humanitarian assistance fell short; excessive bureaucratic constraints, communication disruptions, and delays in government approval undermined the effectiveness of humanitarian assistance during the 2020–2022 food crisis.¹⁴⁶

iii. 2023–present

On April 15, 2023, an armed conflict between the Sudanese Armed Force (“SAF”) General Abdel Fattah Al-Burhan and the Rapid

138. *See id.* at 39 (summarizing the results from the World Food Program’s Comprehensive Food Security and Vulnerability Assessment (CFSVA)).

139. *Id.* at 39–40 (reporting the figures collected from the World Food Program’s CFSVA conducted in the first quarter of 2022).

140. *Id.* at 40.

141. *Id.* at 42.

142. The Joint FAO/WFP Report, *supra* note 9.

143. *See id.*

144. *Id.*

145. *Id.* at 43.

146. *Id.*

Support Forces (“RSF”) General Mohamed Hamdan Dagalo broke out in the capital Khartoum,¹⁴⁷ and spread rapidly across the country.¹⁴⁸ In less than two weeks, the conflict resulted in 450 fatalities and over 4000 injuries.¹⁴⁹ It also caused mass displacement as civilians fled their homes and communities in search of safety and vital supplies, such as food and water.¹⁵⁰ For those who were unable to escape, they were left vulnerable to various dangers, such as the risk of being injured or killed in the fight, and the risk of dying from starvation.¹⁵¹ According to the UN, one third of the Sudanese population needed humanitarian assistance in 2022. The number has spiked since the destructive conflict in April 2023.¹⁵²

Furthermore, members of the humanitarian community have not been spared from violence.¹⁵³ In April 2023, Joyce Msuya, Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, announced, “[a]id workers [had] been attacked in their homes, beaten, and held at gunpoint. Warehouses, offices and vehicles [had] been attacked, looted or seized.”¹⁵⁴ Within a week since

147. *Sudan is Sliding Towards Civil War: Fighting Between Rival Sudanese Generals Could Trigger Ethnic Conflict*, THE ECONOMIST (Apr. 20, 2023), <https://www.economist.com/middle-east-and-africa/2023/04/20/sudan-is-sliding-towards-civil-war>.

148. Press Release, Security Council, As Desperate Sudanese Flee Their Embattled Nation, Security Council Urges Warring Parties to Respect Ceasefire, Reboot Negotiations, Immediately End Fighting, U.N. Press Release SC/15265 (Apr. 25, 2023), <https://press.un.org/en/2023/sc15265.doc.htm> (noting that “[a]cross the country, there have been reports of armed clashes.”) [hereinafter “U.N. P.R. SC/15265”].

149. INT’L MED. CORPS, <https://reliefweb.int/report/sudan/sudan-conflict-situation-report-2-april-27-2023> (“However, the actual death toll is likely much higher, as current figures include only deaths reported to health facilities and access to many locations within the country is restricted”).

150. See U.N. P.R. SC/15265, *supra* note 148; Tharoor, *supra* note 134 (describing how the fighting turned the “teeming capital . . . into a ghost town”).

151. See, e.g., Tharoor, *supra* note 134 (“a Khartoum-based science teacher told my colleagues . . . We can’t stay here. If you do not die from the bombs, you will die of hunger. There is no food in the markets”).

152. U.N. P.R. SC/15265, *supra* note 148 (explaining how over 400 people had died within two weeks); Tharoor, *supra* note 134 (describing the fighting between the forces of two rival Sudanese generals).

153. U.N. P.R. SC/15265, *supra* note 148 (“Aid workers have been attacked in their homes, beaten and held at gunpoint”).

154. *Id.*

the outbreak of the conflict, five aid workers had been killed, with three of them being WFP staff members.¹⁵⁵ As a result, the WFP was forced to suspend its operations until May 2023, exacerbating an already dire food insecurity situation in Sudan.¹⁵⁶

B. SOMALIA

1. *State Obligations Under International Law*

Somalia is a State Party to several international human rights and humanitarian treaties, including, for example, the UDHR,¹⁵⁷ the ICESCR,¹⁵⁸ the CRC,¹⁵⁹ the CRPD,¹⁶⁰ and Geneva Conventions III¹⁶¹ and IV.¹⁶² All these treaties contain provisions that safeguard the right to food, with the ICESCR imposing binding obligations on Somalia to uphold this right domestically and internationally.¹⁶³ However,

155. See *UN Coordinator Calls for Urgent ‘Humanitarian Pauses’ in Sudan, as Death Toll Mounts*, U.N. NEWS (Apr. 21, 2023), <https://news.un.org/en/story/2023/04/1135917> (“I am horrified by the toll the clashes are having on civilians”, said Abdou Dieng. “At least 331 people have been killed nationwide, including five aid workers, and nearly 3,200 have been injured”).

156. See Elizabeth Bryant, *WFP Resumes Food Assistance in Crisis-Torn Sudan*, WORLD FOOD PROGRAMME (Oct. 25, 2023), <https://www.wfp.org/stories/wfp-resumes-food-assistance-crisis-torn-sudan> (“The crisis has also taken a heavy toll on WFP’s operations. Three of our employees and four staff from a partner organization were killed in the unrest, forcing WFP to briefly suspend operations”); Nafisa Eltahir et al., *World Food Programme Halts Sudan Operations, 3 Workers Killed*, REUTERS (Apr. 17, 2023), <https://www.reuters.com/world/africa/world-food-programme-halts-operations-sudan-after-3-employees-killed-2023-04-16> (“The United Nations’ World Food Programme (WFP) . . . temporarily halted all operations in Sudan after three of its employees were killed in clashes between the Sudanese army and the paramilitary Rapid Support Forces (RSF) a day earlier.”).

157. *Signatories for Universal Declaration of Human Rights*, *supra* note 122 (recording Somalia’s ratification of the UDHR).

158. *Status of Ratification Interactive Dashboard*, *supra* note 120 (for Somalia’s ratifications, select Sudan on the left side panel) (recording Somalia’s ratification of the ICESCR in 1990).

159. *Id.* (recording Somalia’s ratification of the CRC in 2015).

160. *Id.* (recording Somalia’s ratification of the CRPD in 2019).

161. Geneva Convention III Ratification Status, *supra* note 125 (recording Somalia’s ratification of the Geneva Convention III in 1962).

162. Geneva Convention IV Ratification Status, *supra* note 126 (recording Somalia’s ratification of the Geneva Convention IV in ratified 1963).

163. See ICESCR, *supra* note 34, at art. 11 (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for

Somalia has not ratified Protocols I and II and the Rome Statute. Crimes in violation of the Rome Statute that occur within Somalia are generally not subject to the jurisdiction of the ICC.¹⁶⁴

2. Domestic Regulatory and Institutional Frameworks

At the national level, Somalia does not provide an explicit constitutional right to food.¹⁶⁵ Instead, it allows food rights to be enforced through broader human rights, such as the constitutional right to life (Article 13),¹⁶⁶ and the constitutional right to full social security (Article 27.3).¹⁶⁷ In practice, Somalia has not established an effective legal and institutional framework to ensure the implementation of the right to food.¹⁶⁸

3. Food Security Situations in Somalia

Somalia has been plagued by conflicts and violence since January 1991 when the then-central government collapsed.¹⁶⁹ Although a new federal government was established in 2012,¹⁷⁰ it has made notable progress in terms of social and political stability and economic recovery.¹⁷¹ However, the prolonged civil war has resulted in a high prevalence of acute hunger and malnutrition across the country.¹⁷²

himself and his family, including adequate food”).

164. See States Parties to the Rome Statute, *supra* note 129 (showing that Somalia has not signed the Rome Statute).

165. FOOD & AGRIC. ORG. OF THE U.N., *The Right to Food Around the Globe: Somalia*, <https://www.fao.org/right-to-food-around-the-globe/countries/som/en> [hereinafter “Somalia Right to Food”].

166. SOMALIA’S CONSTITUTION OF 2012, art. 13, https://www.constituteproject.org/constitution/Somalia_2012.pdf?lang=en (“Everyone has the right to life.”).

167. *Id.*, art. 27.3 (“Every person has the right to full social security.”).

168. Somalia Right to Food, *supra* note 165 (“The Constitution of the Federal Republic of Somalia does not explicitly guarantee the right to adequate food”).

169. Mohamud Hussein et al., *An Analysis of Food Demand in a Fragile and Insecure Country: Somalia as a Case Study*, FOOD POL’Y 101 (2021), at 1 (“Somalia is at last beginning to emerge from a long civil war after the complete collapse of central government in January 1991”).

170. *Id.* (describing the restoration of the central government in 2012).

171. *Id.* (“With the restoration of the central government in 2012, and the emergence of a federal governance systems with substantive powers devolved to the constituent Federal Member States (FMS) the country has made significant progress toward political stability and economic recovery”).

172. See 2015 Global Hunger Index, *supra* note 17, at 26 (“The famine in Somalia

Somalia is one of the world's most food insecure countries.¹⁷³ It heavily relies on humanitarian assistance to meet its citizens' fundamental needs for food.¹⁷⁴ Most recently, Somalia has witnessed two catastrophic food crises.

i. The 2011–2012 Famine

The 2011–2012 famine caused the death of a quarter of a million people in Somalia.¹⁷⁵ Conflicts were a major cause of the famine, in conjunction with drought and economic crisis.¹⁷⁶ Furthermore, politics “complicated the dynamics of the hunger situation.”¹⁷⁷ As the FAO and the WFP observe, humanitarian assistance efforts were compromised due to access restrictions, the risks of kidnapping and violence, as well as the United States' counterterrorism legislation and operations making it “impossible for UN agencies and nongovernmental organizations to operate” in certain areas in Somalia.¹⁷⁸

ii. The 2020–2023 Famine

Since 2020, Somalia's food security situation has rapidly deteriorated, with a greater number of people experiencing acute hunger and malnutrition.¹⁷⁹ The FAO/WFP Joint Report shows that food insecurity in Somalia escalated to a “critical” level in 2022.¹⁸⁰ In 2023, the situation continued to worsen: 6.6 million people face severe

in 2011–2012 . . . was a complex emergency: drought, economic crisis, and war all contributed. Politics complicated the dynamics of the hunger situation.”).

173. *See id.* (describing the famine in Somalia in 2011–2012 as “the worst of the century thus far”).

174. *See Somali Conflict*, INT'L. COMM. OF THE RED CROSS, (Oct. 25, 2023), <https://www.icrc.org/en/where-we-work/africa/somalia/somalia-conflict> (“ICRC delivers emergency food and household materials to 60,000 displaced by fighting.”).

175. 2015 Global Hunger Index, *supra* note 17, at 26 (“The famine in Somalia in 2011–2012 was the worst of the century thus far, costing an estimated 250,000 lives.”).

176. *See id.* (“It was a complex emergency: drought, economic crisis, and war all contributed.”).

177. *Id.*

178. *Id.* at 29.

179. *See* The Joint FAO/WFP Report, *supra* note 9, at 35 (outlining the figure predictions of those who will suffer from acute food insecurity in Somalia in 2022).

180. *Id.*

food insecurity; 400,000 of them face “catastrophic” levels of hunger and malnutrition.¹⁸¹ Death tolls are unclear due to the lack of data,¹⁸² although a report estimates 43,000 deaths in 2022 and an additional 18,000–34,000 deaths in the first six months of 2023.¹⁸³ The underlying causes of the 2023 food crisis are similar to the 2011–2012 famine which are conflicts, climate crisis, and economic instability.¹⁸⁴

First, despite the formation of the new government in 2012, armed conflicts persist in Somalia.¹⁸⁵ The inter-clan conflicts, as well as the conflict between the Government of Somalia and the military group Al-Shabaab¹⁸⁶ continue to cause mass displacement and disruptions in agricultural production and the delivery of humanitarian assistance.¹⁸⁷ Particularly, Al-Shabaab militants are criticized for “blocking aid into the country, which led to several humanitarian groups withdrawing from Somalia.”¹⁸⁸ The ongoing civil war has severely impeded food availability and accessibility, and is the primary driver of famine in Somalia. Second, Somalia has been facing the worst drought in forty years.¹⁸⁹ The multi-season drought that started in late 2020 has led to failed local harvests,¹⁹⁰ exacerbating food insecurity across the

181. *Somalia Emergency*, WFP, <https://www.wfp.org/countries/somalia>.

182. See 2015 Global Hunger Index, *supra* note 17, at 26 (describing the difficulty humanitarian agencies faced in access those suffering from famine to the point that the U.N. “did not raise the alarm until famine conditions were already widespread”).

183. Cara Anna, *Report: 43,000 Estimated Dead in Somalia Drought Last Year*, ASSOCIATED PRESS (Mar. 20, 2023), <https://apnews.com/article/somalia-drought-deaths-hunger-9e78f99c101a290304a28a37dadfef0b>.

184. See, e.g., The Joint FAO/WFP Report, *supra* note 9, at 35–36 (explaining that conflict had a major impact on food security in Somalia from 2021 through the present).

185. *Id.*

186. See Joshua Busby, *Droughts Don't Need to Result in Famine: Ethiopia and Somalia Show What Makes the Difference*, THE CONVERSATION (Oct. 27, 2022), <https://theconversation.com/droughts-dont-need-to-result-in-famine-ethiopia-and-somalia-show-what-makes-the-difference-193241> (noting that Al-Shabaab is a violent Islamist militia based in Somalia).

187. See The Joint FAO/WFP Report, *supra* note 9, at 35–37 (“The long-running armed conflict between the Government of Somalia and Al-Shabaab . . . as well as the conflict driven by inter-clan rivalry, is a key driver of food insecurity, especially in central and southern Somalia.”).

188. Busby, *supra* note 186.

189. *Somalia Emergency*, *supra* note 181.

190. See The Joint FAO/WFP Report, *supra* note 9, at 10 (“Drought and failed local harvests have also driven high food prices”).

country.¹⁹¹ Third, the recent Russia-Ukraine war has also caused record-high global food prices, hindering Somalia's economic access to adequate food and nutrition.¹⁹² Inflation and sharp devaluation of local currencies vis-à-vis the US dollar has further reduced purchasing power.¹⁹³ Consequently, Somalia is currently facing a severe food crisis.¹⁹⁴

C. CONGO

1. State Obligations Under International Law

Congo has ratified many international human rights and humanitarian treaties, such as the UDHR,¹⁹⁵ the ICESCR,¹⁹⁶ the CRC,¹⁹⁷ the CRPD,¹⁹⁸ the CEDAW,¹⁹⁹ Geneva Conventions III²⁰⁰ and

191. See INTEGRATED FOOD SEC. PHASE CLASSIFICATION, SOMALIA FACES INCREASED RISK OF FAMINE AS ACUTE FOOD INSECURITY, MALNUTRITION AND MORTALITY WORSEN (2022), <https://reliefweb.int/report/somalia/somalia-faces-increased-risk-famine-acute-food-insecurity-malnutrition-and-mortality-worsen> [hereinafter Somalia Acute Food Insecurity].

192. See The Joint FAO/WFP Report, *supra* note 9, at 10 (noting the pressure the war in Ukraine added to food security in Somalia as it made food prices increase substantially).

193. See U.N. CONF. ON TRADE & DEV., A DOUBLE BURDEN, THE EFFECTS OF FOOD PRICE INCREASES AND CURRENCY DEPRECIATIONS ON FOOD IMPORT BILLS 5 (2022), <https://unctad.org/system/files/official-document/ditcinf2022d3.pdf> (“In an attempt to combat high inflation in the United States of America, the Federal Reserve increased its interest rates causing the US dollar to appreciate some 24 per cent between May 2021 and October 2022 (Figure 1). This made the US dollar and the food that developing countries buy with it more expensive.”).

194. See *Somalia: Famine Narrowly Averted— So Far, Warn UN Humanitarians*, U.N. NEWS (Dec. 13, 2022), <https://news.un.org/en/story/2022/12/1131662> (reporting food insecurity in Somalia as “catastrophic”).

195. *Signatories for Universal Declaration of Human Rights*, *supra* note 122.

196. *Status of Ratification Interactive Dashboard*, *supra* note 120 (for Congo's ratifications, select Sudan on the left side panel) (recording Congo's ratification of the ICESCR in 1983).

197. *Id.* (recording Congo's ratification of the CRC in 1993).

198. *Id.* (recording Congo's ratification of the CRPD in 2014).

199. *Id.* (recording Congo's ratification of the CEDAW in 1982).

200. Geneva Convention III Ratification Status, *supra* note 125 (recording Congo's ratification of the Geneva Convention III in 1961).

IV,²⁰¹ and Protocols I and II.²⁰² It has agreed to take the responsibility to protect and promote food availability, accessibility, and adequacy for its own citizens, and to facilitate the realization of the right to food beyond its border.²⁰³ Unlike Somalia and Sudan, Congo is a State Party to the Rome Statute and submits itself to the ICC jurisdiction.²⁰⁴

2. Domestic Regulatory and Institutional Frameworks

At the national level, in contrast to Sudan and Somalia, Congo adopts a distinct approach by offering express constitutional protection for the right to food. Article 47 protects its citizens' right to a "secure food supply," and "[t]he law specifies the fundamental principles and the rules of organizations for . . . [a] secure food supply."²⁰⁵

Despite the explicit recognition of the constitutional right to food, Congo has failed to establish effective enforcement frameworks to guarantee the realization of this right.²⁰⁶ This lack of action cannot be surprising as on occasion, the government has been implicated in human rights abuses, specifically "unlawful killings, disappearances, torture, destruction of government and private property, and sexual and gender-based violence."²⁰⁷ Although the government has not directly engaged in the starvation of civilians, it displays tolerance towards the abuse of public power when the Congolese National

201. Geneva Convention IV Ratification Status, *supra* note 126 (recording Congo's ratification of the Geneva Convention IV in 1960).

202. Protocol I Ratification Status, *supra* note 127 (Congo ratified Protocol I in 1982); Protocol II Ratification Status, *supra* note 128 (Congo ratified Protocol II in 2002).

203. ICESCR, *supra* note 34, art. 11.

204. States Parties to the Rome Statute, *supra* note 129.

205. THE CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO, art. 47 (2005) (Dem. Rep. Congo), <https://constitutionnet.org/sites/default/files/DRC%20-%20Congo%20Constitution.pdf>.

206. See *Democratic Republic of Congo*, OHCHR, <https://www.ohchr.org/en/countries/democratic-republic-congo> [hereinafter Human Rights Situations in Congo].

207. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., 2020 Country Reports on Human Rights Practices: Democratic Republic of the Congo (2021) <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/democratic-republic-of-the-congo> [hereinafter 2020 Country Reports on Human Rights Practices] (noting the Congo government's abuse of power).

Police (“PNC”) and the Armed Forces of the Democratic Republic of the Congo (“FARDC”) “[stole] food and money and arrest[ed] individuals who could not pay bribes.”²⁰⁸ As such, the constitutional provision of the right to food holds little practical value in Congo.

3. *Food Security Situations in Congo*

Like Somalia, Congo ranks among the most food-insecure countries in the world.²⁰⁹ In the past three decades, conflicts, driven by factors such as ethnic tensions, resource competition, and foreign interference, have led to a catastrophic humanitarian crisis that affects millions of Congolese people.²¹⁰ According to the IFPRI, the death toll is estimated to have reached up to 5.4 million, with a substantial number of fatalities attributed to hunger, malnutrition, and related diseases.²¹¹

The UN data shows that one in four people in Congo are currently suffering from “crisis or worse” levels of food insecurity.²¹² Particularly, there is a severe food crisis in areas most affected by conflicts, such as Kwango, Tshuapa, Sud Kivu, and Ituri.²¹³

208. *Id.*

209. See KLAUS VON GREBMER ET AL., 2020 GLOBAL HUNGER INDEX: ONE DECADE TO ZERO HUNGER LINKING HEALTH AND SUSTAINABLE FOOD SYSTEMS 5 (Oct. 2020) <https://www.globalhungerindex.org/pdf/en/2020.pdf> (“Alarming levels of hunger have been identified in 3 countries—Chad, Timor-Leste, and Madagascar—based on GHI scores. Based on other known data, alarming hunger has also been provisionally identified in another 8 countries—Burundi, Central African Republic, Comoros, Democratic Republic of the Congo, Somalia, South Sudan, Syria, and Yemen.”).

210. See Julius Maina & Kagure Gacheche, Conflict in the DRC: 5 Articles that Explain What’s Gone Wrong, THE CONVERSATION (Nov. 25, 2022), <https://theconversation.com/conflict-in-the-drc-5-articles-that-explain-whats-gone-wrong-195332> (listing the causes of conflict in Congo as ethnic intolerance, illegal exploitation of natural resources, and elitism);

211. 2015 Global Hunger Index, *supra* note 17, at 26.

212. See INTEGRATED FOOD SEC. PHASE CLASSIFICATION, OVER 27 MILLION PEOPLE IN DRC FACE HIGH ACUTE FOOD INSECURITY DUE TO CONFLICT, COVID-19 AND ECONOMIC DECLINE, <https://www.ipcinfo.org/ipcinfo-website/alerts-archive/issue-37/en/> (depicting and tracking the high number of people facing high levels of food insecurity); see also The Joint FAO/WFP Report, *supra* note 9, at 7 (detailing that twenty-six percent of the population faced crisis or worse between July and December 2022).

213. The Joint FAO/WFP Report, *supra* note 9, at 7.

Furthermore, similar to Somalia and Sudan, humanitarian operations also face significant challenges due to ongoing “military operations and persistent insecurity.”²¹⁴ A surge in global food prices, inflation, and other economic factors have exacerbated food insecurity in Congo.²¹⁵ It is unlikely Congo will emerge from conflicts and violence any time soon, and thus, it continues to struggle with ensuring food availability and accessibility for its citizens.²¹⁶

D. ETHIOPIA

1. *State Obligations Under International Law*

Ethiopia has agreed to undertake the international obligations to safeguard the right to food during times of conflicts and peace, and at both the national and international levels.²¹⁷ It is a State Party to the UDHR,²¹⁸ the ICESCR,²¹⁹ the CRC,²²⁰ the CRPD,²²¹ the CEDAW,²²² Geneva Conventions III²²³ and IV,²²⁴ and Protocols I and II.²²⁵

214. *Id.*

215. *For more details regarding human rights situations in Congo see Human Rights Situations in Congo, supra note 206; 2020 Country Reports on Human Rights Practices, supra note 207.*

216. *See 2020 Country Reports on Human Rights Practices, supra note 207 (listing the wide array of human rights abuses Congo citizens continuously face and how the government has done little to better the situation).*

217. *See ICESCR, supra note 34, art. 11 (explaining the member states' obligation to recognize the right of everyone to an adequate standard of living, including adequate food).*

218. *Signatories for Universal Declaration of Human Rights, supra note 122 (recording Ethiopia's ratification of the Universal Declaration of Human Rights).*

219. *Status of Ratification Interactive Dashboard, supra note 120 (for Ethiopia's ratifications, select Ethiopia on the left side panel) (recording Ethiopia's ratification of the International Covenant on Economic, Social, and Cultural Rights in 1993).*

220. *Id.* (recording Ethiopia's ratification of the Convention on the Rights of the Child (CRC) in 1991).

221. *Id.* (recording Ethiopia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2010).

222. *Id.* (recording Ethiopia's ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1981).

223. *Geneva Convention III Ratification Status, supra note 125 (Ethiopia ratified the Geneva Convention III in 1969).*

224. *Geneva Convention IV Ratification Status, supra note 126 (Ethiopia ratified the Geneva Convention IV in 1949).*

225. *Protocol I Ratification Status, supra note 127 (Ethiopia ratified Protocol I in 1994); Protocol II Ratification Status, supra note 128 (Ethiopia ratified Protocol II*

However, it has not ratified the Rome Statute, and so it generally falls outside the ICC's jurisdiction.²²⁶

2. Domestic Regulatory and Institutional Frameworks

At the national level, the Constitution of Ethiopia protects the right to food through broader human rights.²²⁷ Article 15 safeguards Ethiopian citizens' inalienable right to life.²²⁸ Article 43.1 upholds "the right to improved living standards and to sustainable development."²²⁹ Article 43.4 states, the fundamental objective of "development activities" is to strengthen "the capacity of citizens for development and to meet their basic needs."²³⁰ Article 90.1 also provides, "[t]o the extent the country's resources permit, policies shall aim to provide all Ethiopians access to . . . food. . . ."²³¹ Furthermore, Article 13.2 of the Constitution mandates the interpretation of constitutional rights to be in compliance with the UDHR and other international human rights treaties ratified by Ethiopia.²³²

Compared to the three case studies above, Ethiopia appears to provide more comprehensive constitutional protection for the right to food. In practice, food security in Ethiopia has indeed improved to some extent, particularly since Ethiopia became more politically stable in the 1990s.²³³ However, there still lacks effective enforcement mechanisms that hold the Ethiopian government or perpetrators to account for their violations of the right to food, as evidenced by the 2020–2023 famine in Tigray and the surrounding areas.

in 1994).

226. The States Parties to the Rome Statute, *supra* note 129.

227. CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, 1995, arts. 43, 90 (Ethiopia), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=3ae6b5a84> [hereinafter Ethiopia Constitution].

228. *Id.*, art. 15.

229. *Id.*, art. 43.1

230. *Id.*, art. 43.4.

231. *Id.*, art. 90.1.

232. *Id.*, art. 13.2.

233. See 2015 Global Hunger Index, *supra* note 17, at 14 (describing that Ethiopia has become more politically stable after the large-scale civil wars of the 1990s and 2000s).

3. Food Security Situations in Ethiopia

Between 1974 and 1991, Ethiopia experienced a series of civil wars which resulted in dire food crises across the country.²³⁴ The most severe famine in Ethiopia's recent history occurred between 1983 and 1985, which killed up to a million people and was largely attributed to the then-government's collectivization and the use of starvation as a method of warfare.²³⁵

After the civil war ended in 1991, Ethiopia established a new government and adopted a new Constitution; it also developed a suite of programs to improve food security across the country.²³⁶ During 2000–2015, with increasing social and political stability, Ethiopia observed a significant decline in hunger and malnutrition;²³⁷ however, food insecurity continued to be a concern, as it took time for Ethiopia to recover from the lasting impact of the civil war.²³⁸ Ethiopia was also affected by “recurring droughts,” which had an adverse impact on agricultural production and food availability.²³⁹

Following a period of steady decline, there was a steep rise in acute hunger and malnutrition due to a civil war that started in November 2020 when the country's Prime Minister Abiy Ahmed ordered military operations against Tigray—a regional state in northern Ethiopia.²⁴⁰ The

234. *See, id.* at 16, 24 (stating that Ethiopia experienced multiple and simultaneous civil wars between 1974 and 1991, along with several famines during this period).

235. *See id.* at 24 (providing that the last great Communist famines were in Ethiopia in 1983-1985).

236. *See id.* at 14, 16 (stating that the government of Ethiopia has established several programs to address the issue of hunger).

237. *See id.* at 14 (providing that Ethiopia has become more politically stable and hunger levels have fallen substantially after the civil wars of the 1990s and 2000s); *see also* Sam Loewenberg, *World Report: Conflicts Worsen Global Hunger Crisis*, 386 THE LANCET 1718, 1720 (2015) (explaining that Ethiopia and Bangladesh have reduced chronic malnutrition from more than fifty percent to about forty percent).

238. *See* 2015 Global Hunger Index, *supra* note 17, at 16 (describing that despite Ethiopia's reductions in hunger, the hunger levels in Ethiopia are still serious).

239. *See id.* (providing that recurring droughts and Ethiopia's heavy dependence on rainfed agriculture, which is plagued by low productivity levels, present ongoing challenges for food security).

240. *See* Luber, *supra* note 64, at 705 (explaining that constant warfare since the Ethiopian government's civil war launch is increasingly threatening the bare survival of the Ethiopian nation and state); *see also* The Joint FAO/WFP Report, *supra* note 9, at 28 (stating that the Humanitarian Response Plan estimated that 20.4

operations were ostensibly in response to an alleged attack on federal army camps, although it was widely believed to be retaliation for the region holding its own regional elections and defying the central government.²⁴¹

As of May 2023, the civil war, involving the Tigrayan forces and the Ethiopian National Defense Force,²⁴² has killed tens of thousands of people²⁴³ and forced millions into displacement.²⁴⁴ Mass displacement has resulted in the abandonment of agricultural land.²⁴⁵ Those who decide to stay have been struggling to farm due to stolen seeds and other agricultural inputs, deliberate crop destruction, attacks on agricultural infrastructure, and the killing of livestock.²⁴⁶ The damage caused to the agricultural sector is particularly devastating for people in Tigray and the surrounding areas, as three-quarters of the population heavily rely on agriculture as their primary source of food and income.²⁴⁷ In late 2022, the FAO and the WFP identified Ethiopia as a hunger hotspot of highest concern, and predicted a high likelihood

million people were acutely food insecure across Ethiopia in 2022 because of conflict and drought).

241. See GEOGLAM CROP MONITOR, NORTHERN ETHIOPIA: CONFLICT AND FOOD INSECURITY 1 (2022) (stating that in November 2020 Ethiopia's prime minister ordered a military assault against Tigray in response to an alleged attack on federal army camps).

242. See The Joint FAO/WFP Report, *supra* note 9, at 29 (detailing the conflict between the Tigrayan forces and the Ethiopian National Defence Force, including the particular security and military forces that supported the National Defence Force).

243. See Luber, *supra* note 64, at 705 (stating that since November 2020, constant warfare has killed at the minimum tens of thousands of people).

244. See Anthony Morland & Obi Anyadike, *Tigray's Long Road to Recovery*, THE NEW HUMANITARIAN (Apr. 20, 2023), <https://www.thenewhumanitarian.org/news-feature/2023/04/20/tigrays-long-road-recovery> (noting that about 1.8 million people are displaced).

245. See GEOGLAM CROP MONITOR, *supra* note 241, at 1 (noting the "direct attacks on the agricultural and livestock sectors"); see also The Joint FAO/WFP Report, *supra* note 9, at 30 (explaining the deprivation of services and resources indispensable to survival, including food).

246. See GEOGLAM CROP MONITOR, *supra* note 241, at 1 (describing that crops that were able to be sown have often been pillaged and burned before they were able to be harvested).

247. See *id.* (explaining that "in the Tigray region, three-quarters of the population are farmers that grow on less than a hectare of land and depend on subsistence agriculture for their basic food and income needs").

of large-scale famine.²⁴⁸ In fact, Tigray and the surrounding areas have been suffering from acute hunger and malnutrition since the start of the civil war in 2020,²⁴⁹ and a growing number of people have been forced to turn to humanitarian agencies for help.²⁵⁰ However, parties to the conflict,²⁵¹ particularly the Ethiopian Government, imposed “movement restrictions, roadblocks, [and] blockages,” making it difficult for humanitarian workers “to deliver the necessary aid to households in need.”²⁵² Many scholars, such as Jordan Luber, argue that the government’s deliberate starvation of civilians constitutes a violation of Protocol II.²⁵³

In November 2022, the African Union (“AU”) stepped in as a mediator and facilitated a “permanent cessation of hostilities” agreement between the two key parties to the conflict: the Ethiopian Government and the Tigrayan People’s Liberation Front.²⁵⁴ Humanitarian assistance has resumed to some extent, alleviating hunger and malnutrition in Tigray and the surrounding area.²⁵⁵ The AU initiative has achieved some level of success; however, it is still a

248. See The Joint FAO/WFP Report, *supra* note 9, at 3 (explaining that Ethiopia has been identified as a hunger hotspot of highest concern for the October 2022 to January 2023 outlook in the FAO-WFP Hunger Hotspots report from September 2022).

249. See Luber, *supra* note 64, at 723–24 (detailing that the famine in Tigray has grown in reach and intensity, with increasing numbers of Tigrayans in phase five famine).

250. See *id.* at 705 (arguing that Ethiopia’s actions against the Tigrayan population are causing a famine and is a consequential violation of Protocol Additional II to the Fourth Geneva Convention).

251. See The Joint FAO/WFP Report, *supra* note 9, at 29 (detailing the military and security forces that are involved in the conflict between the Tigray and Ethiopia).

252. See GEOGLAM CROP MONITOR, *supra* note 241, at 1 (explaining why much of the Tigrayan population relies on humanitarian aid); see also Luber, *supra* note 64, at 723–24 (stating that “Ethiopia has kept food and other humanitarian aid from reaching Tigray’s seven million people”).

253. See Luber, *supra* note 64, at 705 (arguing that Ethiopia violated Protocol II by starving the Tigrayan population by destroying supplies indispensable to the civilian population, ruining harvest, and blockading the region—effectively causing a famine).

254. The Joint FAO/WFP Report, *supra* note 9, at 29.

255. Antony J. Blinken, *Statement Marking Six-Month Anniversary of the Cessation of Hostilities in Northern Ethiopia*, U.S. DEP’T OF STATE (May 2, 2023), <https://www.state.gov/statement-marking-six-month-anniversary-of-the-cessation-of-hostilities-in-northern-ethiopia>.

developing situation, as not all parties to the conflict endorse the agreement.²⁵⁶ There remains a long road ahead for all parties to “negotiate in good faith toward a mutually acceptable resolution.”²⁵⁷

E. UKRAINE

1. *Obligations Under International Law*

Different from the four case studies above, Ukraine is involved in an international armed conflict with Russia. It is therefore necessary to investigate both parties’ international obligations. In fact, Ukraine and Russia are State Parties to the UDHR,²⁵⁸ the ICESCR,²⁵⁹ the CRC,²⁶⁰ the CRPD,²⁶¹ the CEDAW,²⁶² Geneva Conventions III²⁶³ and IV,²⁶⁴ and Protocols I and II.²⁶⁵

Under international law, they both have legal obligations to fulfill the right to food in times of peace and conflicts.²⁶⁶ However, Ukraine and Russia are not parties to the Rome Statute, and therefore, bear no obligations under it.²⁶⁷

It is worth noting that, despite being a non-State Party to the Rome

256. The Joint FAO/WFP Report, *supra* note 9, at 29.

257. Blinken, *supra* note 255.

258. *Signatories for Universal Declaration of Human Rights*, *supra* note 122 (recording Ukraine and Russia’s ratification of the Universal Declaration of Human Rights).

259. *Status of Ratification Interactive Dashboard*, *supra* note 120 (for Ukraine’s ratification, select Ukraine on the left side panel and for Russia’s ratification, select Russian Federation on the left side panel) (recording Ukraine and Russia’s ratification of the ICESCR in 1973).

260. *Id.* (recording Ukraine’s ratification of the CRC in 1991 and Russia’s ratification of the CRC in 1990).

261. *Id.* (recording Ukraine’s ratification of CRPD in 2010 and Russia’s ratification of the CRPD in 2012).

262. *Id.* (recording both Ukraine and Russia’s ratification of the CEDAW in 1981).

263. Geneva Convention III Ratification Status, *supra* note 125 (both Russia and Ukraine ratified the Geneva Convention III in 1954).

264. Geneva Convention IV Ratification Status, *supra* note 126 (both Russia and Ukraine ratified the Geneva Convention IV in 1954).

265. Protocol I Ratification Status, *supra* note 127; Protocol II Ratification Status, *supra* note 128.

266. ICESCR, *supra* note 36, art. 11.

267. The State Parties to the Rome Statute, *supra* note 129.

Statute, Ukraine has twice exercised its prerogatives to accept the jurisdiction of the ICC over alleged crimes under the Rome Statute occurring within its borders.²⁶⁸ Furthermore, Russia revoked Protocol I in 2019, claiming:

The Commission [established under Protocol I] has not actually performed its functions since 1991. It does not include a Russian representative, while Russia continues to make annual contributions to the budget of the Commission. In addition, the risk of the abuse of the Commission's powers for political purposes by unscrupulous states has increased considerably.²⁶⁹

2. Domestic Regulatory and Institutional Frameworks

At the national level, Ukraine provides an explicit constitutional protection for the right to food.²⁷⁰ Article 48 states, “[e]veryone shall have the right to a standard of living sufficient for themselves and their families including adequate nutrition. . . .”²⁷¹ Article 9 also specifies that Ukraine is a monist state,²⁷² stating “[international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.”²⁷³

As for Russia, it does not provide an explicit constitutional right to food. However, it does protect this right through broader human rights, such as the right to social security²⁷⁴ and the right to life.²⁷⁵

268. Situation in Ukraine, INT'L CRIM. CT., <https://www.icc-cpi.int/situations/ukraine> (noting that Ukraine “has twice exercised its prerogatives to accept the Court’s jurisdiction over alleged crimes under the Rome Statute occurring on its territory.” The first declaration was about “alleged crimes committed on Ukrainian territory from 21 November 2013 to 22 February 2014,” and “the second declaration extended this time period on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20 February 2014 onwards”).

269. *Law Revoking Protocol Additional to the Geneva Conventions of August 12, 1949*, KREMLIN (Nov. 12, 2019), <http://en.kremlin.ru/acts/news/62025>.

270. CONSTITUTION OF UKRAINE June 28, 1996, art. 48; *see also* Sheehy & Chen, *supra* note 35, at 666 (discussing the national implementation of the rights-based approach to food security and outlining which countries have an explicit constitutional protection to the right of food).

271. CONSTITUTION OF UKRAINE June 28, 1996, art. 48.

272. ALICE DONALD & PHILIP LEACH, PARLIAMENTS AND THE EUROPEAN COURT OF HUMAN RIGHTS 157 (2016).

273. CONSTITUTION OF UKRAINE June 28, 1996, art. 9.

274. CONSTITUTION OF THE RUSSIAN FEDERATION Dec. 12, 1993, art. 7.

275. *Id.*, art. 20.

Furthermore, the Russian Constitution expressly acknowledges its obligations under international law. Article 15.4 provides:

The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.²⁷⁶

Article 17.1 also states, “[i]n the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution.”²⁷⁷

To summarize, both Ukraine and Russia have established constitutional protection for the right to food in the national contexts, albeit with varying degrees of explicitness. Furthermore, their respective constitutions acknowledge their international obligations to respect, protect, and fulfill human rights, including the right to food, as enshrined in international law.

3. *Food Insecurity Situations in Ukraine and Beyond*

Despite the well-established international norms and obligations, Russia proceeded with the invasion of Ukraine in 2022, causing a humanitarian crisis in Ukraine and beyond. Although conflict-inflicted food insecurity in Ukraine is not as severe as those in Sudan, Somalia, Congo, and Ethiopia, the country has encountered some availability and accessibility issues, especially in the eastern region most affected by the conflicts.²⁷⁸ At present, food insecurity in Ukraine is largely attributed to population displacement,²⁷⁹ supply chain disruptions, and

276. *Id.*, art. 15.4

277. *Id.*, art. 17.1.

278. See Joe Janzen & Carl Zulauf, *The Russia-Ukraine War and Changes in Ukraine Corn and Wheat Supply: Impacts on Global Agricultural Markets*, 13 *FARMDOC DAILY* 1, 1 (Feb. 24, 2023), <https://farmdocdaily.illinois.edu/wp-content/uploads/2023/02/fdd022423.pdf> (referring to a recent estimate by the Kyiv School of Economics which suggested the destruction of over \$6.6 billion in agricultural infrastructure).

279. Elizabeth Bryant, *War in Ukraine: How a Humanitarian Tragedy Fed a Global Hunger Crisis*, U.N. WORLD FOOD PROGRAM (Feb. 24, 2023), <https://www.wfp.org/stories/war-ukraine-how-humanitarian-tragedy-fed-global->

deliberate starvation and destruction of agricultural infrastructure (including seed banks) by the Russian army.²⁸⁰ Research also predicts “below normal levels” of harvests in Ukraine for the 2022–2023 season because of “lower acreage planted and lower input availability” in the country.²⁸¹

The Russia-Ukraine war has driven a global food crisis beyond the conflict zone.²⁸² This is attributed to the fact that globalization and increased international trade in the past few decades have led food-importing countries, particularly those low-income food-deficit (“LIFD”) countries,²⁸³ to be more dependent on a small number of food-exporting countries.²⁸⁴ Russia and Ukraine are the world’s top agricultural producers and exporters, particularly of wheat, barley, maize, and sunflower oil.²⁸⁵ According to Fakhri, “[thirty-six] countries depend on the Russian Federation and Ukraine for more than half of their wheat imports, including some of the poorest and most vulnerable countries in the world.”²⁸⁶ The Russia-Ukraine War has caused significant disruptions to global food supply chains,²⁸⁷ leaving

hunger-crisis.

280. Fakhri, *supra* note 48, ¶ 17; *see also* Press Release, U.N. Office of the High Comm’r Hum. Rts., Ukraine: Millions of Displaced Traumatized and Urgently Need Help, Say Experts (May 5, 2022), <https://www.ohchr.org/en/press-releases/2022/05/ukraine-millions-displaced-traumatized-and-urgently-need-help-say-experts> (urging action to protect internally the nearly 12.8 million people displaced in Ukraine); Emmet Lyons, *Russia Used “Starvation Tactics” against Ukraine Civilians, Investigators Claim in New War Crime Allegation*, CBS NEWS (June 2, 2023), <https://www.cbsnews.com/news/russia-ukraine-war-crime-starvation-tactics-civilians-investigators> (discussing reports of starvation tactics used by Russia against Ukrainian citizens, including the blockade of ports and grain).

281. *See* Aminetzah et al., *supra* note 99.

282. U.N. GLOBAL CRISIS RESPONSE TASK TEAM, BRIEF NO. 1: GLOBAL IMPACT OF WAR IN UKRAINE ON FOOD, ENERGY AND FINANCE SYSTEMS 8 (2022), https://unctad.org/system/files/official-document/un-gcrg-ukraine-brief-no-1_en.pdf [hereinafter U.N. Brief No. 1].

283. Aminetzah et al., *supra* note 99 (emphasizing that more than 1.4 billion people live in “highly vulnerable” areas which “rely heavily on grain imports, have limited stocks, and have low purchasing power”).

284. *U.N. Brief No. 1*, *supra* note 282, at 9.

285. *Id.*, at 3.

286. Fakhri, *supra* note 45, ¶ 22; *see also* *U.N. Brief No. 1*, *supra* note 282, at 8 (discussing the volatile wheat and maize prices since the start of the war).

287. *U.N. Brief No. 1*, *supra* note 282, at 3.

importing countries vulnerable to market volatility.²⁸⁸ Many importing countries are compelled to seek food assistance from the WFP and other humanitarian agencies.²⁸⁹ Nevertheless, humanitarian agencies also struggle to secure additional funding to deal with this crisis.²⁹⁰ For example, in June 2022, the WFP reported that its “annual operational requirements [were] at an all-time high of US \$22.2 billion, with confirmed contributions so far at US \$4.8 billion (twenty-two percent).”²⁹¹ Furthermore, Russia is a major export of fertilizers and energy—which are essential inputs for modern agricultural production.²⁹² The economic sanctions against Russia have caused a sudden surge in the cost of agricultural inputs, creating additional challenges for individuals and households that depend on agriculture as their primary source of food and income.²⁹³

The war has significantly reduced food availability and accessibility both locally in Ukraine and globally. As the UN notes, “[t]he impacts of the war in Ukraine are being felt not only regionally, but around the world because of the region’s significant contribution to food and energy supplies.”²⁹⁴

F. SUMMARY

All the nations in the case studies discussed above have accepted the international legal obligations to uphold the right to food, both

288. *Id.*, at 8, 9.

289. See Fakhri, *supra* note 45, ¶ 23 (highlighting the shift from depending on Ukraine for wheat to increased reliance on WFP as a substitute); see also WFP Staff Writers, *Bulk Carrier Sets Off from Ukraine with Grain for WFP in First since Start of War*, WORLD FOOD PROGRAMME (Aug. 16, 2022), <https://www.wfp.org/stories/bulk-carrier-sets-ukraine-grain-wfp-first-start-war> (describing the logistics of “the first shipment of Ukraine grain for World Food Programme operations since the war with Russia began”).

290. *E.g.*, Fakhri, *supra* note 45, ¶ 23 (noting that WFP is facing a huge challenge in securing additional funding and resources to deal with the global hunger crisis).

291. *War in Ukraine Drives Global Food Crisis*, WORLD FOOD PROGRAMME (Jun. 24, 2022), <https://www.wfp.org/publications/war-ukraine-drives-global-food-crisis>.

292. See UN Brief No. 1, *supra* note 282, at 3 (pointing out that energy includes natural gas and oil).

293. See *id.* (specifying food prices are 34 percent higher this year as compared to last year).

294. *Id.* at 8.

within and beyond their respective borders. Their domestic legal systems also provide various degrees of protection for this right. However, conflict-induced food insecurity persists, undermining the survival and development of millions of people in these countries.²⁹⁵ Conflicts have resulted in devastating hunger and malnutrition in Sudan, Somalia, Congo, and Ethiopia. Although Ukraine has witnessed a lower degree of food insecurity, the war with Russia has triggered a larger scale of food crisis that extends beyond the conflict zone.

It is important to highlight that people in conflict-affected areas are most vulnerable to food insecurity. During times of peace, food insecure individuals may resort to other coping mechanisms for help, such as engaging in additional activities for other sources of income or using social networks for support. However, during armed conflicts, coping mechanisms often fail, and humanitarian access may also be constrained, whether by the deliberate actions of conflicting parties or as unintended consequences arising from the conflict itself.²⁹⁶ There is an urgent need to address conflict-induced food insecurity and work towards viable solutions.

IV. THE OBSTACLES TO UPHOLDING THE RIGHT TO FOOD DURING ARMED CONFLICTS

While the implementation of the right to food faces universal challenges shared with other areas of international law,²⁹⁷ its complexities extend beyond that. There are two key impediments to

295. See Moyo, *supra* note 21, at 107 (noting that “[c]onflict situations or ‘man-made disasters’ appear to be an even more important cause of food insecurity in Africa than natural disasters”); see also GLOBAL NETWORK AGAINST FOOD CRISES, 2022 GLOBAL REPORT ON FOOD CRISES 7 (2022) https://docs.wfp.org/api/documents/WFP-0000138913/download/?_ga=2.115740036.364634638.1684199016-1606896140.1679014589 [hereinafter 2022 Global Report] (showing how conflict/insecurity is the main driver of food crises).

296. See Sassi, *supra* note 8, at 12 (depicting this as a common practice in South Sudan).

297. See generally Matuš Štulajter, *Problem of Enforcement of An International Law – Analysis of Law Enforcement Mechanisms of the United Nations and the World Trade Organization*, 33 J. MOD. SCI. 325, 325–30 (2017) (discussing the United Nation’s lack of enforcement power, such as the absence of necessary frameworks to safeguard the implementation).

upholding the right to food in conflict-affected areas: state's failure to perform its obligations, and inadequate international humanitarian aid.

A. CHALLENGES IN IMPLEMENTING STATE OBLIGATIONS

To address the challenges in implementing state obligations, it is important to consider two scenarios. The first scenario is when states are unwilling to commit to their obligations under international law, and in some cases, deliberately violate them. The second scenario is when states are unable to fulfill their commitments to safeguard their citizens' right to food.

1. *States Unwilling to Commit to Their Obligations*

The Ethiopian Government, led by Prime Minister Abiy Ahmed, is an example of when a state has breached its international obligations by intentionally starving the Tigray people and restricting food aid from reaching those in need.²⁹⁸ It has been reported that the Ethiopian National Defense Force that occupy the Tigray region have deliberately destroyed food supplies and agricultural inputs such as fertilizer, seeds, and farm equipment, which are crucial for the survival of civilian populations.²⁹⁹

Russia, amidst the conflict with Ukraine, is another example of a state engaging in the deliberate starvation of civilians for military purposes. Despite the prohibition of civilian starvation under Geneva Convention IV,³⁰⁰ the Russian army has reportedly deliberately deprived Ukrainian civilians of food to coerce them to surrender,³⁰¹

298. See Tom Dannenbaum, *Siege Starvation: A War Crime of Societal Torture*, 22 CHI. J. INT'L L. 368, 371–72 (2022) (noting that Ethiopia has “used a range of starvation tactics in Tigray in what has quickly become one of the world’s most severe humanitarian catastrophes”); see also Luber, *supra* note 64, at 705 (explaining the tactics employed in Ethiopia included destroying civilian supplies, ruining harvests, blockading the region, and causing a famine).

299. See *Conflict in Ethiopia*, COUNCIL ON FOREIGN RELATIONS (Aug. 28, 2023), <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> (reporting that “Ethiopian soldiers and officials were stealing massive amounts of food”).

300. Geneva Convention IV, *supra* note 49, art. 55.

301. See Stuart Anderson, *Russian Strategy To Starve Ukrainians Creates Misery And Refugees*, FORBES 2 (Mar. 22, 2022), <https://www.forbes.com/sites/stuartanderson/2022/03/22/russian-strategy-to-starve-ukrainians-creates-misery-and-refugees/?sh=6fdc5d571a44> (showing cities in Ukraine such as Mariupol are affected).

which is a grave breach of Russia's obligations under international law.³⁰² Furthermore, according to the Center for Strategic and International Studies, there have been numerous accounts of the Russian army attacking Ukraine's agricultural infrastructure, such as farms and food storage facilities,³⁰³ undermining Ukrainian civilians' food availability and accessibility since February 2022.³⁰⁴

In both examples, States' unwillingness to fulfill their international obligations has led to food insecurity. In fact, Ethiopia and Russia have directly violated the right to food by deliberately starving civilians for military purposes. However, as of today, no actions have been taken to address the violations of international law by Ethiopia and Russia, indicating a failure of the international justice system.³⁰⁵ This is a challenge that needs to be taken into consideration when determining solutions to food insecurity in times of armed conflicts.

2. *States Unable to Perform Their Obligations*

Conflict disrupts government operations in various ways.³⁰⁶ For example, during armed conflicts, governments often struggle to maintain law and order in their day-to-day administration.³⁰⁷ They also experience financial constraints because of resources being allocated

302. Protocol I, *supra* note 54, art. 54.

303. See Caitlin Welsh, *Russia, Ukraine, and Global Food Security: A One-Year Assessment*, CTR. FOR STRATEGIC AND INT'L STUD. (Feb. 24, 2023), <https://www.csis.org/analysis/russia-ukraine-and-global-food-security-one-year-assessment> (explaining 84,200 pieces of agricultural machinery have been damaged).

304. See KELLY ADAMS ET AL., GLOB. ACCOUNTABILITY NETWORK, *RUSSIAN WAR CRIMES AGAINST UKRAINE: THE BREACH OF INTERNATIONAL HUMANITARIAN LAW BY THE RUSSIAN FEDERATION*, 59, 88, 91 (2022), The Joint FAO/WFP Report, *supra* note 9, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4106901 (detailing these acts have killed at least 1,500 civilians).

305. See *Conflict in Ethiopia* *supra* note 299; Welsh, *supra* note 303.

306. See generally Huseyn Aliyev, *Precipitating State Failure: Do Civil Wars and Violent Non-state Actors Create Failed States?*, 38 *THIRD WORLD Q.* 1973–89 (2017) (recognizing the often-asserted connection between civil war and state failure, but arguing that it is the presence of violent non-state actors that is linked to state failure).

307. See Derick W. Brinkerhoff, *Rebuilding Governance in Failed States and Post-conflict Societies: Core Concepts and Cross-cutting Themes*, 25 *PUBLIC ADMIN. & DEV.* 3, 6 (2005) (describing such services include health, education, electricity, water, and sanitation).

to military efforts.³⁰⁸ These disruptions prevent governments from effectively fulfilling their duty to protect their citizens' right to food.

In 2022, the FAO and the WFP reported that the Transitional Government of Sudan had demonstrated some effort to facilitate the delivery of food aid, particularly through the “easing of [its] legal frameworks regulating humanitarian operations.”³⁰⁹ However, humanitarian agencies still struggled to reach those in need.³¹⁰ For example, their requests for road access, such as the one leading to Kauda in South Kordofan, were “left unanswered” by the relevant authorities.³¹¹ Although excessive bureaucratic constraints are considered important factors for the widespread food crisis in Sudan,³¹² it is also true that “[c]onflicts . . . reduce government revenue and increase unproductive spending, including military expenditures, leading to fiscal crises . . . government dysfunctionality and weakening of institutions.”³¹³ As such, despite some efforts, the Transitional Sudanese Government was unable to develop “comprehensive directives at the national level” to support the effective delivery of food aid; it also faced criticism for “regular communication disruptions” and “delays in approval of technical agreements.”³¹⁴ The dysfunctionality of government has severely undermined the effectiveness of humanitarian responses in Sudan.

While improving government operations is crucial for the protection and promotion of the right to food, it becomes challenging during armed conflicts as the scope for improvement is limited. Hence, the need for food aid increases, and it is essential to make it more efficient.

308. See Montfort Mlachila & Rasmane Ouedraogo, *Impact of Conflict and Political Instability on Banking Crises in Developing Economies*, INTERNATIONAL MONETARY FUND: IMF BLOG (Jul. 29, 2020), <https://www.imf.org/en/Blogs/Articles/2020/07/29/impact-of-conflict-and-political-instability-on-banking-crises-in-developing-economies> (pointing out a banking crisis is 2.5 times more likely in a country affected by conflict).

309. The Joint FAO/WFP Report, *supra* note 9, at 43.

310. *Id.*

311. *Id.*

312. *Id.*

313. Mlachila & Ouedraogo, *supra* note 308.

314. The Joint FAO/WFP Report, *supra* note 9, at 43.

B. OBSTACLES WITH THE DELIVERY OF FOOD AID

In a general sense, international food aid presents a range of benefits. Notably, it provides vital supplies to vulnerable populations,³¹⁵ alleviating hunger and malnutrition and saving people's lives.³¹⁶ However, it is not the most reliable source for food-insecure populations.³¹⁷ During armed conflicts, the delivery of food aid faces two major obstacles: (1) the uncertainty of food aid and (2) the fragmentation of the humanitarian aid system.³¹⁸ A comprehensive understanding of these obstacles is a prerequisite for the development of effective solutions.

1. *The Uncertainty of Food Aid*

Food aid is susceptible to uncertainties, and in some cases, undesirable restrictions.³¹⁹ This section will examine the three main issues associated with food aid, with the first two being relevant in both peacetime and armed conflict situations, while the third holds great significance during armed conflicts.

First, donor states can contribute to the ineffectiveness of food aid. As noted, food aid is provided on an ad hoc basis and is often driven by donor states' political, diplomatic, and economic interests.³²⁰ Food aid, when not provided based on the actual needs, can be ineffective, as it fails to provide hungry populations with consistent access to adequate food and nutrition. Furthermore, when food aid becomes a political, diplomatic, or economic tool for donor states, it deviates from the intended purpose, which sometimes exacerbates existing challenges already faced by food-insecure populations.

315. *Trade, Food Security, and Human Rights*, *supra* note 111, at 143.

316. *Id.*

317. *See id.* at 144 (explaining food aid is not driven by the needs of the people).

318. *See* Daniel Maxwell, *Global Factors Shaping the Future of Food Aid: The Implications for WFP*, 31 *DISASTERS S25, S25* (2007) (noting that humanitarian food aid is often late and unreliable).

319. *See id.* (detailing how food is unproportionable to other forms of humanitarian aid).

320. *See* CHRISTOPHER B. BARETT & DAN MAXWELL, *FOOD AID AFTER FIFTY YEARS: RECASTING ITS ROLE* 18–19 (2005) (explaining how this has shifted the objective away from the interests, needs, and rights of recipients); *see also Trade, Food Security, and Human Rights*, *supra* note 111, at 143–44 (showing donor's objectives often do not match those of the individuals requiring aid).

For example, in the 1970s and 1980s, the United States used food aid programs to dispose of its food surplus and protect American farmers' economic interests.³²¹ Indeed, the dumping of American food surplus brought life-saving relief in emergencies and offered affordable food supplies to many low-income food-deficit countries.³²² However, it also created undue dependence among many recipient countries and impeded their long-term food security,³²³ as food surplus was not consistently available and accessible, especially when the United States started vigorously promoting the production of biofuels—a type of fuel “derived from “organic feedstocks, such materials such as plants and animals”³²⁴—in the early 2000s.³²⁵

Second, navigating government restrictions and coordinating the efforts of multiple stakeholders adds complexity to the process. For example, the United States Congress requires that fifty percent of all American food aid shipments be transported by the U.S.–flagged vessels (known as “the cargo preference mandate”).³²⁶ This mandate has resulted in high transportation costs and reduced funds for food procurement.³²⁷ Despite appeals from members of Congress and from

321. See *Trade, Food Security, and Human Rights*, *supra* note 111, at 143–44 (describing these acts were a guise for food aid programs).

322. See *Protecting the Right to Food*, *supra* note 22, at 38 (noting these countries already struggle with development).

323. See *id.* at 28 (making these countries more susceptible to increased global food prices).

324. Joseph Kinyanjui Muiruri et al., *Poly (hydroxyalkanoates) (PHAs) based Circular Materials for A Sustainable Future*, 10 AM. CHEM. SOC. SUSTAINABLE CHEM. & ENG'G 3387, 3394 (2022).

325. See *Biofuels Explained: Biodiesel, Renewable Diesel, and Other Biofuels*, U.S. ENERGY INFO. ADMIN. (June 29, 2022), <https://www.eia.gov/energyexplained/biofuels/biodiesel-rd-other-use-supply.php> (noting that the use of biofuels in the U.S. has gained popularity since the early 2000s).

326. See Philip G. Hoxie et al., *Food Aid Cargo Preference: Impacts on the Efficiency and Effectiveness of Emergency Food Aid Programs*, 65 J. L. & ECON. 395, 396 (2022) (explaining also how at least 50 percent of American food aid had to be provided under US programs sourced in the US).

327. See *id.* at 408–09 (specifying the cost was 68 percent higher than the comparable foreign rates resulting from competitive bidding); see also U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-105160, MARITIME ADMINISTRATION: ACTIONS NEEDED TO ENHANCE CARGO PREFERENCE OVERSIGHT 30–31 (2022), <https://www.gao.gov/assets/gao-22-105160.pdf> [hereinafter *Maritime Administration GAO Report*] (explaining how the 3-year waiting period also limited the supply of vessels to deliver food-aid).

non-governmental humanitarian agencies and other stakeholders to waive this requirement,³²⁸ the mandate remains unchanged and continues to restrict the ability of the United States Agency for International Development (“USAID”) to effectively deliver food aid to those in need.³²⁹

Third, conflict is characterized by its inherent unpredictability; it disrupts infrastructure, logistics, and supply chains, making it difficult for humanitarian agencies to provide consistent and timely delivery of food aid.³³⁰ The five case studies above provide compelling evidence of this challenge.

2. Fragmentation of The Humanitarian Aid System

The existing humanitarian aid system is fragmented.³³¹ First,

328. See Teresa Welsh, *US Lawmakers Call for Cargo Preference Waiver to Ease Food Aid Costs*, DEVEX (Oct. 25, 2023), <https://www.devex.com/news/us-lawmakers-call-for-cargo-preference-waiver-to-ease-food-aid-costs-103739> (stating that Republican Rep. Michael McCaul has urged President Biden to waive the cargo preference mandate in light of the political escalation in Ukraine); see also Sara Nitz Nolan, *NGOs Sign Statement in Support of Congressional Resolution to Waive Cargo Preference Requirements on Food Aid Until 2025*, INTERACTION (Oct. 25, 202), <https://www.interaction.org/blog/ngos-sign-statement-in-support-of-congressional-resolution-to-waive-cargo-preference-requirements-on-food-aid-until-2025> (highlighting NGOs—such as InterAction’s—support for measures in Congress that would temporarily waive the requirement that mandates 50% of U.S. food aid exports be shipped on U.S.-flagged vessels from now until 2025).

329. Hoxie, *supra* note 326, at 395 (stating that the cargo preference mandate limits USAID’s ability to provide aid for millions of families annually); Maritime Administration GAO Report, *supra* note 327, at 36.

330. See generally Aleš Bulíř & A. Hamann, *How Volatile and Unpredictable are Aid Flows, and What are the Policy Implications?* 3–37 (IMF Working Paper No. 2001/167, 2001) (stating that the welfare implications of highly volatile and unpredictable aid flows can be substantial in countries that receive large volumes of aid).

331. See Hilal Elver, *At the Brink of Famine in Conflict and Natural Disaster Zones: Human Rights Approach to Extreme Hunger and Malnutrition*, 9 TRANSNAT'L L. THEORY 191, 205 (2019) [hereinafter Elver] (contending that the humanitarian aid structure—consisting of governments, NGOs, religious organisations, and private entities—suffers from fragmentations); see also Jacinta O’Hagan & Miwa Hirono, *Fragmentation of the International Humanitarian Order? Understanding “Cultures of Humanitarianism” in East Asia*, 28 ETHICS & INT’L AFF. 409, 409–42 (2014) (arguing that tensions between actors, suspicion of their motives, and concern surrounding a lack of professionalism and coordination has contributed to fragmentation in the international humanitarian order).

multiple actors, such as governments, non-governmental humanitarian organizations, and the private sector, are involved in humanitarian responses. These entities often operate independently, pursuing their own goals and employing different approaches.³³² Second, there are a wide range of food aid programs.³³³ For example, the most common aid programs include: (1) program food aid, which is government-to-government assistance under the scheme of “foreign aid;” (2) project food aid provided to governments and international organizations “to be used in development projects or initiatives;” and (3) emergency food aid in times of emergency.³³⁴ These programs often overlap, and in some cases, create gaps in terms of humanitarian aid coverage.³³⁵ Third, there are also various channels of distribution, such as bilateral channels between governments, and through humanitarian agencies like the WFP that may subcontract local distribution to local agencies.³³⁶ The coordination and collaboration among diverse humanitarian actors, aid programs, and distribution channels can be complex and inefficient, often resulting in undesirable consequences, such as duplication of efforts, gaps in coverage, and inconsistent delivery of food aid.³³⁷

According to Akihiko Nishio, the World Bank Vice President of Development Finance, and Gaiv Tata, an International Development consultant, there was an increase in “Official Financial Flows” (“OFF”) and a “proliferation in donors and donor funding entities” during 2000–2019.³³⁸ This was good news for not only humanitarian

332. See Daniel Maxwell, *Global Factors Shaping the Future of Food Aid: The Implications for WFP*, 31 DISASTERS S25, S26–27 (2007) (stating that the global mechanisms and institutions that govern the allocation, utilization, and reporting of food resources are outdated and dysfunctional); see also Elver, *supra* note 331, at 205 (explaining that the humanitarian aid system’s accountability structure is relatively weak due to a lack of leadership and coordination, poor communication, bureaucratic restrictions, corruption, and costly duplicative administrative systems).

333. Elver, *supra* note 331, at 205.

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.* (listing the factors—poor communication, bureaucratic restrictions, corruption, costly duplicative administrative systems—that make the humanitarian aid system inefficient).

338. Akihiko Nishio & Gaiv Tata, *Insights on Proliferation and Fragmentation to Boost Aid Effectiveness during Crises*, WORLD BANK: WORLD BANK BLOGS (Oct.

agencies, but also those in urgent need of food relief. It also demonstrated the global community's growing commitment to the UN's sustainable development goals ("SDGs"), particularly the goal of eliminating hunger and malnutrition by 2030.³³⁹ However, the surge in donors of OFF did not translate into improved food security. On the contrary, recipient countries found themselves inundated with a diverse range of delivery channels originating from diverse sources.³⁴⁰ As Nishio and Tara observe, the persisting fragmentation of the food aid system primarily contributed to the inefficiency of international aid.³⁴¹

The Syrian civil war that began in 2011 also demonstrates the fragmented nature of the international food aid system and the undesirable consequences that may arise from such fragmentation.³⁴² As José Ciro Martínez and Brent Eng note, during the war, the WFP relied on the Syrian Arab Red Crescent ("SARC"), a local non-governmental humanitarian agency, for the local distribution of food aid, mainly due to security concerns and access restrictions imposed by the Syrian Government.³⁴³ Although the WFP was "adamant in its adherence to the principle of neutrality" throughout the war and

25, 2023), <https://blogs.worldbank.org/voices/insights-proliferation-and-fragmentation-boost-aid-effectiveness-during-crises>; WORLD BANK GROUP, A CHANGING LANDSCAPE: TRENDS IN OFFICIAL FINANCIAL FLOWS AND THE AID ARCHITECTURE 27–28 (2021); Max Stephenson, Jr., *Making Humanitarian Relief Networks More Effective: Operational Coordination, Trust and Sense Making*, 29 DISASTERS 337, 338 (2005).

339. See Nishio & Tata, *supra* note 338 (stating that OFF commitments increased by 187 percent in real terms over the last 20 years).

340. A Changing Landscape, *supra* note 338, at 29 (asserting a diverse set of channels and implementing agencies make it more difficult to implement aid).

341. Nishio & Tata, *supra* note 338 (citing to their previous findings to conclude that there is an increased proliferation of official finance providers and implementing entities, and a continued fragmentation of donor-funded development activities).

342. Susan Power, *Siege Warfare in Syria: Prosecuting the Starvation of Civilians*, 8 AMSTERDAM L.F. 1, 1 (2016) (citing Amnesty International's categorization of the Syrian conflict as the "worst humanitarian crisis of our time").

343. José Ciro Martínez & Brent Eng, *The Unintended Consequences of Emergency Food Aid: Neutrality, Sovereignty and Politics in the Syrian Civil War, 2012-15*, 92 INT'L AFFS. 153, 161–62 (2016) (stating that The World Food Programme (WFP), the largest UN operational agency funding and organizing food distribution inside Syria, and the ICRC depended heavily on SARC and 27 government approved NGOs to reach areas they could not access due to security concerns and restrictions by the Syrian government).

focused on humanitarian work only, it was the Syrian Government that exercised actual control over SARC and its decisions concerning the distribution of food aid.³⁴⁴ The WFP made an effort to maintain positive relations with the government to gain access to all affected populations;³⁴⁵ however, the allocation of food aid still favored areas under the control of the Syrian Government.³⁴⁶ It is evident that the Syrian government's own agenda largely restricted the WFP's operations, leaving it with limited options to address the situation.³⁴⁷ Having several parties involved in the distribution of food aid, such as the WFP, SARC, and the Syrian government created a fragmented humanitarian aid system that contributed to the uneven distribution of food aid in Syria. This could have been avoided if there had been less interference and more neutrality to create a more effective distribution channel and ensure that all vulnerable populations receive the food aid they need.

In summary, the realization of the right to food during armed conflicts faces various challenges. States may engage in the deliberate starvation of civilians for military purposes, which is a grave breach of international law. States may not have the ability to protect this right due to conflict-induced disruptions and resource constraints. The reliability of food aid is also questionable, as it depends on availability and accessibility, and is heavily influenced by donor states' own interests. Furthermore, the fragmented nature of the international food aid system adds another layer of complexity. The following section will explore solutions that may effectively fulfill the right to food during armed conflicts, despite the hindering factors mentioned above.

344. *Id.* at 161–62 (quoting WFP's country director in Syria: "Our work with the Syrian Arab Red Crescent and over a dozen local partners inside Syria is strictly humanitarian and beyond any political considerations.").

345. *Id.* at 158 (citing an external evaluation of the WFP, which stated maintaining close relationships with the Syrian government ensured that the maximum number of people will receive food).

346. *Id.* at 159 (stating that "assistance has been concentrated in government-held areas, while other parts of the country are deemed 'inaccessible' or 'hard to reach' so as not to compromise claims to neutrality").

347. *Id.* (citing the UN's documentation of how the Syrian government blocks the delivery of food aid to civilians to ensure that external resources assist the regime rather than opposition forces or those under their control).

V. UPHOLDING THE RIGHT TO FOOD DURING ARMED CONFLICTS

Upholding the right to food during armed conflicts is of paramount importance. As noted, conflict-affected populations are most vulnerable to hunger and malnutrition due to violence, displacement, destruction of agricultural infrastructure, and various other factors.³⁴⁸ On the other hand, only limited avenues are available to address food insecurity in such circumstances. Although existing international and national frameworks provide some guidance for actions and interventions to support the realization of the right to food, they are inadequate as conflict continues to be one of the key drivers of acute hunger and malnutrition worldwide.³⁴⁹ Effective solutions are required to improve food security during armed conflicts.

This article advocates for two approaches that may significantly improve the implementation of the right to food during armed conflicts and mitigate food insecurity in conflict-affected areas. First, states that are unwilling to support the realization of the right to food, particularly those that engage in the deliberate starvation of civilians, must be held liable for their actions under international law. Second, the international community must collaborate to improve the efficiency and effectiveness of international food aid programs, particularly by improving reliability and reducing fragmentation. It is the hope that States that are incapable of safeguarding their citizens' right to food can get the necessary support, and vital food supplies can reach those in need.

A. PUNISHING THE DELIBERATE STARVATION OF CIVILIANS

1. *Starvation as a War Crime*

As noted, Geneva Convention IV prohibits civilian starvation and

348. *Conflict and Violence are the Primary Causes of Hunger and Famine, Special Rapporteur on the Right to Food Tells the Human Rights Council*, U.N. OFF. OF THE HIGH COMM'R FOR HUM. RIGHTS (Oct. 25, 2023, 10:34 AM), <https://www.ohchr.org/en/news/2023/03/conflict-and-violence-are-primary-causes-hunger-and-famine-special-rapporteur-right> [hereinafter *Conflict and Violence*].

349. *Id.* (asserting that armed conflicts are the biggest driver of acute hunger).

regulates relief operations during armed conflicts.³⁵⁰ Protocols I³⁵¹ and II³⁵² also ban the weaponization of food in IACs and NIACs, respectively. Furthermore, intentional starvation of civilians for military purposes constitutes a war crime under Article 8(2)(b)(xxv) of the Rome Statute; the ICC holds jurisdiction over this crime primarily in the context of IACs, and in some cases, NIACs.³⁵³ Despite these rules, conflicting parties continue to use civilian starvation as a military tactic, as demonstrated by the case studies of Ethiopia and Ukraine. To date, no charges or prosecutions, let alone punishment, have been undertaken for the war crime of starvation.³⁵⁴

The absence of punishment indicates that the international justice system has failed to achieve its goal of “put[ting] an end to impunity for the perpetrators of [international] crimes and contribute to their prevention.”³⁵⁵ There is an urgent need to address and rectify these deficiencies, particularly through the prosecution for the war crime of starvation. This notion is supported by calls for stronger action against those who commit this crime. For example, Wayne Jordash, Catriona Murdoch, and Joe Holmes contend that an international criminal

350. Geneva Convention IV, *supra* note 49, arts. 23, 55, 59.

351. Protocol I, *supra* note 54, arts. 54, 70.

352. Protocol II, *supra* note 55, arts. 14, 18.

353. DeFalco, *supra* note 74, at 1143 (stating that the Rome Statute provides jurisdiction over various war crimes including the intentional starvation of civilians as a method of warfare).

354. Leanne Digney, *The Rome Statute and Hunger as a Weapon of War - The Journey Towards Ending Impunity for Starvation Tactics*, INST. OF INT’L EURO. AFFS.: BLOG (Oct. 25, 2023), <https://www.iiea.com/blog/the-rome-statute-and-hunger-as-a-weapon-of-war-the-journey-towards-ending-impunity-for-starvation-tactics#:~:text=Geneva%20Conventions,and%20non%2Dinternational%20armed%20conflicts> (noting that the Geneva Conventions prohibit the use of starvation of civilian populations as a method of warfare); Wayne Jordash et al., *A Comprehensive Review of Existing IHL and ICL as it Relates to Starvation*, in ACCOUNTABILITY FOR MASS STARVATION: TESTING THE LIMITS OF THE LAW 107, 119 (Bridget Conley et al eds., 2022) (noting that “only two prosecutions of the modern era have pleaded starvation as a distinct crime, all on the domestic level (Croatia and Ethiopia)”; District Court in Zadar, Apr. 24, 1997, Verdict, K.74/96 (Croat)).

355. INT’L. CRIM. CT., WHAT IS THE ICC AND WHAT DOES IT DO? (2023); Alan Baker, *The Failure of the International Criminal Court (ICC)*, INT’L. CRIM. CT. (Oct. 25, 2023), <https://jcpa.org/article/the-failure-of-the-international-criminal-court-icc> (stating that the objective of establishing the ICC was to bring perpetrators of the most egregious crimes “to trial before an independent, apolitical, international juridical body”).

prosecution for the deliberate starvation of civilians is “long overdue.”³⁵⁶ It is critical to “encourage the use of prosecutions for the crime of starvation with a proper criminal label,” and to “ensure effective penal sanction and proportionate stigma for the underlining misconduct.”³⁵⁷ Furthermore, Professors Alex de Waal,³⁵⁸ Tom Dannenbaum,³⁵⁹ and Randle C. DeFalco³⁶⁰ all advocate for increased efforts to prosecute the crime of starvation. Luber also calls for the punishment of the Ethiopian Prime Minister Abiy Ahmed for the deliberate starvation of the Tigray people.³⁶¹

There are many underlying justifications for the punishment of war criminals, including those engaged in the deliberate starvation of civilians in armed conflicts. Those who have committed these crimes “deserve punishment” because “punishment is an appropriate

356. Wayne Jordash et al., *Strategies for Prosecuting Mass Starvation*, 17 J. INT'L. CRIM. JUST. 849, 879 (2019), <https://doi.org/10.1093/jicj/mqz044> (acknowledging that an international criminal prosecution for the crime of starvation is long overdue); Dannenbaum, *supra* note 298, at 394 (stating that “condemnation is central to what stakeholders seek to control and harness to their political ends,” and therefore should be encouraged).

357. Jordash et al., *supra* note 356, at 879 (highlighting that “one of the vital steps must be to encourage the use of prosecutions for the crime of starvation with a proper criminal label, to ensure effective penal sanction and proportionate stigma for the underlining misconduct”); Dannenbaum, *supra* note 71, at 394 (stating that designating a violation a war crime entails a stronger moral claim about the wrongfulness of the underlying conduct).

358. Alex de Waal, *Mass Starvation is a Crime—It's Time We Treated It That Way*, BOS. REV. (Jan. 14, 2019) (recommending that the individuals/groups responsible for the famine in Yemen “should be brought to justice”).

359. See Tom Dannenbaum, *Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence*, 55 VAND. J. TRANSNAT'L L. 681, 686-87 (2022) (noting that “the current resurgence has motivated calls for accountability in a context in which there are now the legal tools necessary to pursue that objective”); see also Elver, *supra* note 1, ¶¶ 27-34, at 70-90 (explaining how “famine and forced starvation is forbidden under international law”); see also de Waal, *supra* note 358 (explaining how the crime of starvation in Yemen should be prosecuted through focusing on bringing the parties responsible for the famine to justice).

360. DeFalco, *supra* note 74 at 1147-49, 1186-87 (explaining how the portions of the Rome Statute that deal with war crimes “may also criminalize certain famine-inducing behavior in certain circumstances”).

361. Luber, *supra* note 64, at 702-06 (explaining how Ethiopia's prime minister created a famine and how this “constitutes a war crime under international law”).

response to moral atrocity,”³⁶² and it also upholds justice and may deter or prevent future crimes.³⁶³ Furthermore, Professor Bill Wringer presents another argument that can translate into justifying the punishment of those who deliberately starve civilians. He contends that punishments can “communicate or express particular messages.”³⁶⁴ Therefore, punishing those who engage in the deliberate starvation of civilians would send a clear message that it is an arbitrary use of power and a grave violation of international law.³⁶⁵

2. *Holding Perpetrators Accountable for Their Actions*

The Rome Statute has established a set of rules and procedures³⁶⁶ to prosecute international crimes.³⁶⁷ Although “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,”³⁶⁸ the ICC can intervene in a situation “where a State is unable or unwilling to genuinely carry out the investigation and prosecute the perpetrators.”³⁶⁹

362. See Bill Wringer, *Why Punish War Crimes? Victor’s Justice and Expressive Justifications of Punishment*, 25 L. & PHIL. 159, 159 (2006) (providing a rationale of why many individuals may think that those who commit war crimes should be punished); see also John Cottingham, *The Varieties of Retribution*, 29 PHIL. Q. 238 (1979) (explaining the concept of retribution and why this idea is utilized as a rationale for punishment).

363. See Wringer, *supra* note 362, at 159 (noting that “if war criminals are punished, those who are tempted to commit atrocities in the future may be deterred from doing so”); see also Anthony Ellis, *What Should We Do With War Criminals*, in WAR CRIMES AND COLLECTIVE WRONGDOING: A READER 97–110 (Aleksandr Jokic ed., 2001) (explaining how punishment itself can provide “equality before the law”).

364. Wringer, *supra* note 362 at 160 (explaining that through punishing war criminals, that this can send out a certain message).

365. *Id.* (explaining the justification behind punishment of war criminals).

366. Rules of Procedure and Evidence, Int’l Crim. Ct., (2019), reproduced from Assembly of State Parties to the Rome Statute of the International Criminal Court, First Sess., U.N. Doc. ICC-ASP/1/3 (2002) [hereinafter ICC Rules of Procedure and Evidence].

367. WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT, 206–12 (4th ed. 2011) (explaining that war crimes are defined in the Rome Statute to make it easier for individual States and their courts to be able to “exercise jurisdiction”).

368. Rome Statute, *supra* note 70, pmbl.

369. UNDERSTANDING THE INTERNATIONAL CRIMINAL COURT, *supra* note 70 at 6 (explaining the only instances in which the International Criminal Court is able to intervene).

Pursuant to Article 13 of the Rome Statute, there are three ways in which a case can be referred to the ICC. First, any State Party can refer a situation to the Office of Prosecutor where “one or more of such crimes” within the jurisdiction of the ICC has occurred.³⁷⁰ Second, the UNSC, acting under Chapter VII of the UN Charter, can refer a situation to the Prosecutor.³⁷¹ Third, a non-State Party can also voluntarily accept the ICC’s jurisdiction “with respect to crimes committed in its territory or by one of its nationals, and request the Office of the Prosecutor to carry out an investigation.”³⁷²

For example, for a proceeding against Prime Minister Abiy Ahmed to be initiated, Ethiopia must be “unable or unwilling to genuinely carry out the investigation and prosecute the perpetrators.”³⁷³ This prerequisite is not difficult to meet given that the Ethiopian Government is under the effective control of Prime Minister Abiy Ahmed. However, the challenge is that Ethiopia is not a State Party to the Rome Statute and has no obligation under it, and that limits the options in terms of how this case can be brought before the ICC. Ethiopia itself cannot refer the situation to the ICC, and it is also unlikely to voluntarily accept the ICC’s jurisdiction for the same reason stated above. The first two approaches may be viable. However, considering Ethiopia is engaged in a civil war without significant international ramifications, the probability of Rome Statute State Parties referring the situation to the ICC is low.³⁷⁴ On the contrary, the UNSC’s referral holds great importance in the context of NIACs, as it has been previously accomplished, although the cases are unrelated to the war crime of starvation. For example, in 2005, the UNSC referred the situation in Sudan to the ICC in Resolution 1593

370. Rome Statute, *supra* note 70, arts. 13(a), 14.

371. *Id.*, at art. 13(b); U.N. Charter, *supra* note 30, at ch. VII.

372. See UNDERSTANDING THE INTERNATIONAL CRIMINAL COURT, *supra* note 70, at 31 (explaining the process in which cases come to the Court); Rome Statute, *supra* note 70, arts. 13(c), 15 (“The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.”).

373. UNDERSTANDING INTERNATIONAL CRIMINAL COURT, *supra* note 70, at 6 (explaining that “the International Criminal Court can only intervene where a State is unable or unwilling to genuinely carry out the investigation and prosecute the perpetrators”).

374. *Situation in Ukraine*, *supra* note 268 (explaining that since Ukraine is engaged in an IAC with international ramifications, “the ICC Prosecutor announced he would seek authorization to open an investigation into the Situation in Ukraine”).

(2005), despite Sudan not being a State Party to the Rome Statute.³⁷⁵ As a result of the UNSC's referral, the ICC commenced the investigation and charged several suspects, including Sudanese government officials, Militia/Janjaweed leaders, and leaders of the Resistance Front, for genocide, war crimes, and crimes against humanity.³⁷⁶ Therefore, the UNSC can refer the situation in Ethiopia to the ICC.

The UNSC can serve as a crucial strategy to resolve jurisdictional issues concerning non-State Parties' breach of Article 8(2)(b)(xxv). However, as for the situation in Ukraine, it would be difficult to get a UNSC referral due to the high chance that Russia would veto the resolution.³⁷⁷ Nevertheless, in early 2022, the ICC received several individual State Party referrals³⁷⁸ and a group State Party referral, enabling the Prosecutor to "open an investigation into the situation in Ukraine."³⁷⁹

3. *The Challenges*

A major challenge in ensuring accountability for the war crime of starvation is that when the Rome Statute was first adopted, the ICC's jurisdiction for this crime extended exclusively to IACs, but not to NIACs.³⁸⁰ That means, the ICC can apply Article 8(2)(b)(xxv) of the Rome Statute to the Ukraine situation, as Ukraine is involved in an IAC with Russia.³⁸¹ On the contrary, the ICC may find it challenging

375. *Situation in Darfur*, ICC-02/05, INT'L CRIM. CT., <https://www.icc-cpi.int/darfur>.

376. *Id.*

377. *Voting System*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/voting-system> (noting that Russia, as one of the five permanent members, has the "right to veto").

378. *Situation in Ukraine*, *supra* note 268.

379. *Id.*

380. See Digney, *supra* note 354 (explaining that resolution 2417 "makes no distinction between international armed conflict ('IAC') and non-international armed conflict ('NIAC')"); see also GLOB. RIGHTS COMPLIANCE (GRC), THE CRIME OF STARVATION AND METHODS OF PROSECUTION AND ACCOUNTABILITY-ACCOUNTABILITY FOR MASS STARVATION: TESTING THE LIMITS OF THE LAW 3 (2019) (noting that the crime of starvation is not "available as a NIAC").

381. Press Release, Int'l Crim. Ct., Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova (Mar. 17, 2023) <https://www.icc-cpi.int/news/situation-ukraine-icc-judges->

to investigate and prosecute those using the same starvation tactic on the Tigray people, as the situation in Ethiopia is a NIAC and the ratification of the new provision—Article 8(2)(e)(xix)—has not gained much traction.³⁸²

The Global Rights Compliance (“GRC”) and the World Peace Foundation (“WPF”) criticize the application of the Rome Statute in Yemen, Syria, and other states, which mirrors the situations in Ethiopia. They state,

As a matter of legal analysis, this is a distinction apparently without any rational legal basis. In practice, this lacuna acts to seriously limit the Rome Statute’s ability to allow relevant and effective prosecutions and achieve much needed accountability for contemporary starvation. [. . .] Unfortunately, as most (if not all) instances of starvation occurring today are in the context of NIACs, the victims of starvation in Yemen, Syria, South-Sudan, north-eastern Nigeria, and Somalia, to name but a few, will, on that basis alone, be denied access to international justice under the current Rome Statute, Article 8 framework.³⁸³

As mentioned earlier, although Resolution ICC-ASP/18/Res.5 amended Article 8 of the Rome Statute and extended its application to NIACs,³⁸⁴ it is still a recent development with very few states having deposited their instrument of ratification. No one has been charged with the crime of starvation yet in the context of IACs or NIACs.³⁸⁵ The Resolution’s impact remains to be seen.

If the ICC can establish its authority over the Ethiopian case, it will still be fraught with numerous challenges in every single step of the criminal proceedings. For example, the Ethiopian Government is unlikely to be cooperative during the investigation for the reason

issue-arrest-warrants-against-vladimir-vladimirovich-putin-and (explaining that the situation in Ukraine has been referred to the ICC and that arrest warrants for Vladimir Putin and Maria Alekseyevna Lvova-Belova have been issued; however, the indictments are not related to the deliberate starvation of Ukrainian civilians).

382. *10g Amendment to Article 8 of the Rome Statute*, *supra* note 76.

383. GLOB. RIGHTS COMPLIANCE, *supra* note 380, at 3 (explaining that victims of starvation will not be able to access the international justice system afforded to them under the Rome Statute, specifically victims in Yemen, Syria, South-Sudan, Nigeria, and Somalia).

384. Int’l Crim. Ct. Res. ICC-ASP/18/Res.5 (Dec. 6, 2019); *10g Amendment to Article 8 of the Rome Statute*, *supra* note 76.

385. *10g Amendment to Article 8 of the Rome Statute*, *supra* note 76.

stated above. It is doubtful that Prime Minister Abiy Ahmed and other suspects will present themselves to the ICC or be arrested for the pre-trial hearings. This issue is intrinsic to the ICC due to the absence of enforcement mechanisms.³⁸⁶ This has already become apparent with the situation in Sudan (under Resolution 1593 (2005)) and the fact that Omar Al-Bashir is still at large and has evaded arrest despite the ICC issuing two arrest warrants for him.³⁸⁷ Furthermore, the ICC faces institutional challenges, such as political influence from powerful states, and resource constraints.³⁸⁸ The ICC has also been criticized for its “cumbersome procedures, ineffective prosecutions against high-level alleged perpetrators, and weak internal management.”³⁸⁹

In summary, the criminal punishment of the war crime of starvation has the potential to support the realization of the right to food during armed conflicts; however, it is a complex and challenging endeavor. The international community needs to intensify its efforts to improve the international criminal justice system, particularly the efficiency and effectiveness of the ICC.³⁹⁰

386. See generally, Gwen P. Barnes, *The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir*, 34 *FORDHAM INT'L. L. J.* 1584, 1587 (2011) (highlighting the lack of enforcement mechanisms that the ICC has, specifically through the example of “Chad’s refusal to arrest President Al-Bashir”).

387. *Situation in Darfur*, *supra* note 375.

388. See Steven C. Roach, *How Political Is the ICC? Pressing Challenges and the Need for Diplomatic Efficacy*, 19 *GLOB. GOVERNANCE* 507, 507–15, 520–21 (2013) (noting that there are several political challenges that the ICC has faced in a variety of countries and reviewing the diplomatic challenges and solutions that were brought forth in the countries of Libya, Kenya, Uganda, and Sudan); see also Stuart Ford, *Funding the ICC for Its Third Decade*, in *THE INT'L CRIM. CT. IN ITS THIRD DECADE: REFLECTING ON L. AND PRAC.* (Carsten Stahn ed., 2023) (explaining that one of the concerns looking at the 2023 ICC budget is the possibility that the Court may run out of money before the fiscal year ends).

389. Elizabeth Wilmschurst, *Strengthen the International Criminal Court*, CHATHAM HOUSE (Jun. 12, 2019), <https://www.chathamhouse.org/2019/06/strengthen-international-criminal-court> (explaining the criticism that the ICC has faced, and several recommendations for reform which include realistic expectations and culture change).

390. E.g., Göran Sluiter, *Using the Genocide Convention to Strengthen Cooperation with the ICC in the Al Bashir Case*, 8 *J. OF INT'L. CRIM. JUST.* 365, 365–66, 378–82 (2010) (explaining how utilizing the “Genocide Convention as a basis to cooperate offers significant advantages for the Court”); see also INT'L BAR ASS'N, *ENHANCING EFFICIENCY AND EFFECTIVENESS OF ICC PROCEEDINGS: A*

B. IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF INTERNATIONAL FOOD AID PROGRAMS

Food aid is vital for saving lives and mitigating hunger and malnutrition. It serves as a key solution when states are unable or unwilling to ensure food security during armed conflicts. However, many factors undermine its efficiency and effectiveness. Particularly, the unreliability of food aid and the fragmented humanitarian aid system largely hinder relief efforts. There is an urgent need to address these challenges.

First, it is critical that donor states prioritize the needs of hungry people over their own economic, political, or diplomatic interests. They should also remove unnecessary restrictions that impede the effective procurement and delivery of food aid, for example, the cargo preference mandate as mentioned previously.³⁹¹ These recommendations are supported by the fact that conflict-affected populations are most vulnerable to hunger and malnutrition; for them, it can be a life-and-death concern.³⁹² Ensuring vulnerable populations have access to sufficient food should outweigh all other considerations. Second, while conflicts are disruptive by nature, it remains imperative for conflicting parties to safeguard the uninterrupted flow of food aid. Adherence to the humanitarian principles prevents further human suffering and helps preserve basic human dignity.³⁹³ Notwithstanding these recommendations, the

WORK IN PROGRESS 8–11 (2011) (explaining how the International Bar Association has put forth a recommendation and supports efforts to continuously review “the court’s level of efficiency and strengthen its institutional framework”); *see also* Press Release, Int’l Crim. Ct., Enhancing the Court’s Efficiency and Effectiveness - A Top Priority for ICC Officials (Nov. 24, 2015), <https://www.icc-cpi.int/news/enhancing-courts-efficiency-and-effectiveness-top-priority-icc-officials>.

391. *See e.g.*, Hoxie et al., *supra* note 326, at 395–98, 408–17 (demonstrating the impact that the cargo preference mandate had on international food aid shipping costs).

392. *See* Pejic, *supra* note 3, at 1099 (recognizing that the starvation of civilians as a method of combat is prohibited in both international and non-international armed conflict).

393. *See European Civil Protection and Humanitarian Aid Operations: Humanitarian Principles*, EUROPEAN COMM’N., https://civil-protection-humanitarian-aid.ec.europa.eu/who/humanitarianprinciples_en#:~:text=The%20principles%20of%20humanity%2C%20neutrality,attention%20to%20the%20most%20vulnerable (emphasizing the importance of the principles of humanity, neutrality,

biggest challenge is whether donor states or parties in conflict are willing to execute them.

Third, the importance of enhancing collaboration and coordination in the humanitarian response cannot be overstated. While acknowledging that alternative approaches, such as fostering trust among stakeholders,³⁹⁴ may also lead to positive outcomes, this Article emphasizes the value of having a central body that is capable of effective coordination and collaboration in humanitarian response. A well-functioning central body has the potential to optimize the operational performance and impact of food aid programs. In fact, the UN General Assembly has already instituted a dedicated body to facilitate the coordination and collaboration of international humanitarian efforts.³⁹⁵ The United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”) was created in 1991 to “bring together humanitarian actors to ensure a coherent response to emergencies.”³⁹⁶ It “contributes to principled and effective humanitarian response through coordination, advocacy, policy, information management and humanitarian financing tools and services.”³⁹⁷ Despite the existence of such an agency, the humanitarian aid disasters encountered in Sudan,³⁹⁸ Somalia,³⁹⁹ and Ethiopia⁴⁰⁰ suggest that the OCHA has considerable scope for improvement. The

impartiality, and independence in humanitarian law).

394. See Stephenson, *supra* note 338, at 339, 343 (examining the role of trust in cross-organization cooperation and coordination).

395. See *This is OCHA*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFF., <https://www.unocha.org/ocha> (explaining the role of the OCHA).

396. See generally *OCHA, U.N. CREATIVE CMTY. OUTREACH INITIATIVE*, <https://www.un.org/en/ccoi/ocha-united-nations-office-coordination-humanitarian-affairs#:~:text=OCHA%20is%20the%20part%20of,to%20the%20overall%20response%20effort> (describing OCHA’s mission to ensure that humanitarian actors work together to generate coherent responses to emergencies).

397. See *This is OCHA*, *supra* note 395 (describing how OCHA responds to humanitarian crises).

398. See The Joint FAO/WFP Report, *supra* note 9, at 42–43 (discussing ways that the conflict has impacted food security and humanitarian-access constraints in Sudan).

399. See 2015 Global Hunger Index, *supra* note 17, at 19 (emphasizing that Somalia is one of the most food insecure countries in the world).

400. See generally GEOGLAM CROP MONITOR, *supra* note 241, at 1 (providing an overview on conflict and food insecurity issues in Ethiopia); see also Luber, *supra* note 64, at 723–24 (discussing the hunger crimes taking place in Ethiopia).

following section investigates how the OCHA can enhance its performance and impact in the context of armed conflicts.

1. Information Management

The OCHA has been inadequate in its efforts to collect information,⁴⁰¹ which impedes its ability to make comprehensive needs assessment⁴⁰² and mitigate duplication of efforts, gaps in coverage, and inconsistent delivery of food aid.⁴⁰³ Jayshree Bajoria's research indicates that, many humanitarian aid agencies "lack the resources to coordinate with OCHA," and that they also "tend to manage information in a way that makes it difficult to share."⁴⁰⁴ While the OCHA is not responsible for other humanitarian actors' constraints in information sharing, lack of information and misinformation still impede the efficacy and effectiveness of humanitarian efforts. Effective communication serves as the cornerstone of information sharing, and the OCHA may consider taking the initiative to engage with other humanitarian agencies and obtain important data and insights from them. This approach helps enhance the OCHA's ability to produce more accurate needs assessment and to respond to humanitarian crises in a more effective way.⁴⁰⁵ Furthermore, stronger collaboration with local communities improves data collection and strengthens the understanding of local mechanisms in terms of

401. See U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFF. (OCHA) POLICY BRANCH, OCHA'S STRATEGIC PLAN 2023-2026: TRANSFORMING HUMANITARIAN COORDINATION 20 (2023) (noting that information management is one of the OCHA's core responsibilities).

402. See *Protecting the Right to Food*, *supra* note 114, at 146 (explaining that the lack of an accurate needs assessment system is an important factor contributing to the failure of food aid programs).

403. See Elver, *supra* note, 331, at 205 (recognizing some of the common problems encountered in humanitarian response).

404. E.g., Jayshree Bajoria, *Improving UN Responses to Humanitarian Crises*, UN CHRONICLE, <https://www.un.org/en/chronicle/article/improving-un-responses-humanitarian-crises> (stating that humanitarian clusters "often choose systems that lock data in tools and formats that cannot be easily shared").

405. E.g., Jérôme Chandès & Gilles Pache, *Investigating Humanitarian Logistics Issues: From Operations Management to Strategic Action*, 21 J. MANUF. TECHNOL. MANAG. 320, 332-34 (2010) (discussing the importance of collaborative approach to humanitarian response).

delivery and distribution of food supplies.⁴⁰⁶ Despite advocating for proactive engagement, it is acknowledged that the OCHA does face resource constraints⁴⁰⁷ as well as practical difficulties in engaging with other humanitarian actors and local communities.⁴⁰⁸ UN agencies are widely known for constantly grappling with funding issues,⁴⁰⁹ and it is not always possible for UN agencies to engage with local aid agencies and local communities due to security concerns and government restrictions,⁴¹⁰ as evidenced by the Syrian civil war discussed earlier.⁴¹¹

It is also important to have accurate donor information as it provides critical insights into resource availability, enabling the OCHA to

406. See generally U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFF., *OCHA on Message: Community Engagement* (Nov. 13, 2015), <https://reliefweb.int/report/world/ocha-message-community-engagement> (defining community engagement and explaining how OCHA promotes engagement).

407. E.g., Josie Lee, *The Polycrisis and the Urgent Case for Boosting Australia's Humanitarian and Development Funding* DEVPOLICY BLOG (Apr. 5, 2023) <https://devpolicy.org/urgent-case-for-boosting-australias-humanitarian-funding-20230405/> (noting that “OCHA has called for USD51.5 billion for life-saving support in 2023, the highest request on record. But global funding for humanitarian aid has fallen short by 44% over the last five years. [. . .] wealthy countries are failing to meet our moral obligation to the world’s poorest and most vulnerable people.”).

408. E.g., Bajoria, *supra* note 404 (defining the humanitarian “cluster” system as “groupings of UN agencies, non-governmental organizations, and other international organizations concentrating on a specific sector during a humanitarian crisis” that “often choose systems that lock data in tools and formats that cannot be easily shared”).

409. See generally Press Release, *U.N. Secretary-General, People in Need of Humanitarian Assistance at Record Levels, Secretary-General Tells Economic and Social Council, Urging More Aid Funding, Efforts to Resolve Conflict*, U.N. Press Release SG/SM/21852, (Jun. 21, 2023), <https://press.un.org/en/2023/sgsm21852.doc.htm#:~:text=Halfway%20through%202023%2C%20we%20have,Palestinian%20Territory%2C%20Afghanistan%20and%20Yemen> (acknowledging the “chronic underfunding and record levels of humanitarian need”).

410. See Dapo Akande & Emanuela-Chiara Gillard, *Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare: The Underlying Rules of International Humanitarian Law*, 17 J. OF INT’L. CRIM. JUST. 753, 754 (2019) (noting that “humanitarian action can provide a lifeline for people in need but also faces numerous challenges: insecurity from ongoing hostilities or a breakdown in law and order, and bureaucratic and other impediments imposed by belligerents”).

411. See generally Martínez & Eng, *supra* note 343, at 159–60 (discussing the consequences of emergency food aid in the Syrian civil war).

formulate a plan that can optimize food aid for maximum impact. However, the OCHA has yet to adequately fulfill this task. As Nishio and Tata observe, humanitarian aid efforts have been compromised by poor planning and coordination; particularly, there is a lack of information regarding donors, their respective contributions, and their delivery channels.⁴¹² It is critical that the OCHA increase its efforts to improve donor data collection. Admittedly, this is not an easy task. The OCHA needs to navigate the complex landscape of diverse donors in both the public and private sectors. Donors have different interests, priorities, and their own operational mechanisms. Their intentions to donate and resource availability are also subject to change.⁴¹³

Information dissemination is another crucial aspect of humanitarian aid operations. The OCHA has been effective in this aspect. For example, it has created *ReliefWeb*, which is a website that provides “24-hour coverage of disasters, conflicts and crises for the international aid community.”⁴¹⁴ It has also created the *Humanitarian Data Exchange* (“HDX”), which is “an open platform for sharing data across crises and organizations.”⁴¹⁵ These online platforms help improve crisis communications and management.

In sum, effective information management can provide the OCHA with the necessary tools to develop a strategic plan that considers both resource availability and the needs of vulnerable populations. It also aligns with the OCHR’s objective of providing “people-centred” and “context-specific” food aid.⁴¹⁶

412. See generally Nishio & Tata, *supra* note 338 (noting that recipient states often found themselves inundated with a diverse range of delivery channels originating from diverse sources).

413. See Michael Barnett & Peter Walker, *Regime Change for Humanitarian Aid*, 94 FOREIGN AFF. 130, 130–31 (2015) (noting that key donors often cut their contributions).

414. See generally *We Inform*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFF., <https://www.unocha.org/we-inform> (explaining that OCHA provides various humanitarian tools that help make informed decisions).

415. See generally *Frequently Asked Questions: About the Humanitarian Data Exchange*, HDX, <https://data.humdata.org/faq> (describing the function of the Humanitarian Data Exchange).

416. See OCHA’S STRATEGIC PLAN 2023-2026, *supra* note 401, at 53 (addressing the root causes of the need for humanitarian assistance).

2. *The “Command and Control Authority”*

Professor Max Stephenson, Jr. observes that, the OCHA does not have “command and control authority” over other UN agencies that provide humanitarian aid, let alone over other stakeholders.⁴¹⁷ The lack of authority restricts the OCHA’s ability to coordinate international humanitarian efforts and respond to conflict-induced food crises.⁴¹⁸ For example, as previously discussed, in NIACs, the high contracting party is not required “to accept and facilitate international humanitarian assistance within its borders,” unless it is mandated by the UNSC.⁴¹⁹ This suggests that the OCHA does not have the authority over humanitarian matters in NIACs. In fact, it has no authority in any context and only serves as a coordination and advisory body within the UN system.⁴²⁰ Arguably, granting the OCHA some form of “command and control authority” may help strengthen its impact.⁴²¹ However, with the UN itself having limited authority and often being referred to as a “toothless tiger,” it is questionable how the OCHA would be granted “command and control authority” in humanitarian response.⁴²²

To summarize, international food aid plays a vital role in supporting conflict-affected populations, but increased efforts are required to enhance its efficiency and effectiveness. Improving the OCHA’s information management system and granting it some form of authority may bring about positive changes to the humanitarian sector. However, challenges coexist, and the scope for action is constrained.

417. See Stephenson, *supra* note 338, at 338 (explaining the OCHA’s lack of authority); see also NICOLA REINDORP & PETER WILES, HUMANITARIAN COORDINATION: LESSONS FROM RECENT FIELD EXPERIENCE 47 (2001) (highlighting the obstacles that the OCHA has faced in the past).

418. See generally Stephenson *supra* note 338, at 338–39 (describing the restrictions that the OCHA deals with due to its lack of authority); see also REINDORP & WILES, *supra* note 417, at 47–49 (presenting findings on OCHA’s role, and outlining some of OCHA’s successes, failures, and obstacles to change).

419. Buckingham, *supra* note 27, at 296–99.

420. *This is OCHA*, *supra* note 395.

421. See REINDORP & WILES, *supra* note 417, at 48–49 (assessing whether the OCHA could expand its limited power).

422. See Paul Lewis, *The World: Cheer at the U.N.; Rare Unity Brings Smile to a ‘Toothless Tiger’*, N.Y. TIMES (Sept. 20, 1987), <https://www.nytimes.com/1987/09/20/weekinreview/the-world-cheer-at-the-un-rare-unity-brings-smile-to-a-toothless-tiger.html>.

VI. CONCLUSION

The right to food is a fundamental human right protected by both international and national laws. It is realized “when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”⁴²³ However, as the UN notes, hundreds of millions of people in conflict zones are still suffering from “the most severe threats of hunger and even famine.”⁴²⁴ Armed conflicts undermine food availability as well as the physical and economic accessibility for populations within, and sometimes beyond, conflict zones.⁴²⁵

During armed conflicts, states often struggle to fulfill their obligations to protect their citizens from food insecurity due to resource and other constraints. In some cases, States are unwilling to uphold this right, and even deliberately violate it by starving civilians or destroying objects essential to the survival of civilians for military purposes. The international humanitarian sector also grapples with the complex challenge of delivering food aid to those in need. There is an urgent need to address these issues. It is crucial to hold violators of international law accountable for their actions. Furthermore, effective food aid programs can save lives and mitigate food insecurity. Although there remains much to be done to ensure conflict-affected populations are free from hunger and malnutrition, with commitment the world can work collaboratively to improve food security for conflict-affected populations.

423. Comm. on Econ., Soc. and Cultural Rights, General Comment 12, *supra* note 19, ¶ 6.

424. See Press Release, Security Council, Conflict Zone Populations Face Gravest Threat of Hunger amid COVID-19, Aid Experts Tell Security Council, Warning Food Insecurity Worldwide Expected to Double by Year’s End, U.N. Press Release SC/14308 (Sept. 17, 2020) (describing the condition of people in conflict zones).

425. The Joint FAO/WFP Report, *supra* note 9, at 2; see also Akande & Gillard, *supra* note 410 (noting that conflict can have a negative impact on “the availability of and access to food.”).