



Photo of a starving boy posted by the Local Revolutionary Council in Madaya, starving children and a child eating grass and leaves in Madaya.

Al-Marsad Action Alert: All sides in Syria must obey International Humanitarian and Human Rights Law and end the practice of siege warfare

Al-Marsad condemns the use of starvation as a weapon of war by all sides in the conflict in Syria.

Al-Marsad, Arab Human Rights Centre in the occupied Syrian Golan

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Al-Marsad is calling on all parties to the civil war in Syria, the UN Security Council and the UN special envoy for the Syria crisis, Staffan De Mistura to take immediate steps to ensure the end of the use of hunger as a weapon of war and to lift the sieges without delay.

The figures are differing as to how many civilians are under siege in Syria. The UN's Office for the Coordination of Humanitarian Affairs (OCHA) says there are 393,700 besieged in 15 locations in Syria and that 4.5 million are living in "hard-to-reach" areas. However, Siege Watch, a monitoring network, says more than a million are living under siege while Médecins Sans Frontières put the figure at close to two million. There is tension within the international relief community over OCHA's method of determining which areas are besieged and which are "hard-to-reach". The UN defines an area as under siege if it is "surrounded by armed actors with the sustained effect that humanitarian assistance cannot regularly enter and civilians, the sick and wounded, cannot regularly exit the area."

All sides of the civil war are currently using siege as a tactic of war, including the Syrian Government, which bears the primary responsibility for protecting its people. Utilizing famine as a weapon of war is an egregious violation of international humanitarian and international human rights law. A siege that deprives civilians of the goods they need for survival can be prosecuted as a war crime and has no statute of limitations. Article 8(2)(b) of the Statute of the International Criminal Court (ICC) provides that "intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions" is a war crime. Famine as a weapon of war can also potentially be prosecuted as a crime against humanity at the ICC when it is utilized as part of a widespread or systematic attack directed against a civilian population. Siege and starvation have become routine, deliberate and systematic strategies in the conflict with all sides launching a war against civilians. All warring parties who do not demonstrate a genuine commitment to the basic tenets of international humanitarian and human rights law are liable to be held accountable under the international justice framework.

Starving a civilian population is prohibited in both international and internal armed conflicts as stated explicitly in the two 1977 Additional Protocols to the Geneva Conventions. Article 59 of the Fourth Geneva Convention states that humanitarian aid for civilians enjoys the right of free passage through battle lines when all or part of the civilian population in an occupied territory is "inadequately supplied." Sieges that deprive a population of food, water and medicine breach the following rules of customary international law:

Rule 53: Starvation as a Method of Warfare.¹

Rule 54: Attacking objects indispensable to the survival of the civilian population.

Rule 55: Denying access of humanitarian aid intended for civilians in need, including deliberately impeding humanitarian aid.

Rule 56: Restricting the freedom of movement of humanitarian relief personnel.

The prohibition of starving a civilian population as well as being a norm of customary international law is also contained in Additional Protocol II² as well as in military manuals,³ domestic legislation,⁴ jurisprudence⁵ and official statements.⁶ The prohibition of starvation does not prohibit siege warfare as long as the purpose is to achieve a military objective and not to starve a civilian population.⁷ The besieging party must allow the free passage of food and other essential supplies in accordance with Rule 55. The UN Security Council, the UN General Assembly, the UN Commission on Human Rights and states⁸ all denounced the use of siege warfare in Bosnia and Herzegovina.

Security Council resolutions 2165(2014)⁹ and 2258(2015)¹⁰ authorize UN humanitarian agencies and their implementing partners to deliver aid freely without the regime's consent. The resolutions urge all parties to immediately fulfill their obligations under international humanitarian and human rights law. The UN is delivering billions of dollars of aid to regime-controlled areas while deferring to the regime's decision not to give aid to civilians in areas outside its control thus becoming a political tool of war.¹¹ It was revealed that OCHA staff allowed Assad's officials to edit an OCHA Humanitarian report, without seeking authorization from the main regional offices in Turkey and Jordan. The government was permitted to change the word "conflict" to "crisis" and remove the words "besieged" and "siege", replacing them with "locations listed in UNSCR 2139, 2165, 2191".¹²

Areas under siege by the rebels include Fuaa and Kefraya, two predominantly loyalist villages in the North-Western Idlib province. They have been besieged since March 2015 by opposition fighters Jaysh al-Fatah (Army of Conquest), led by al-Qaeda affiliate Jabhat al-Nusra and Islamists Ahrar ash-Sham. This Sunni rebel coalition have threatened to massacre the mainly Shia Muslim inhabitants. There is an estimated 12,500 civilians trapped.

¹ "Study on Customary International Humanitarian Law", International Committee of the Red Cross (ICRC), Cambridge University Press, 2005.

² "Protection of objects indispensable to the survival of the civilian population", Article 14, Additional Protocol II.

³ See, e.g., the military manuals of Argentina, Australia, Belgium, Benin, Canada, Colombia, Croatia, France, Germany, Hungary, Kenya, Republic of Korea, Madagascar, Netherlands, New Zealand, Nigeria, Russian Federation, Spain, Togo and Yugoslavia.

⁴ See, e.g., the legislation of Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Ethiopia, Germany, Lithuania, Slovenia) and Yugoslavia.

⁵ The prohibition of starvation was applied by the District Court of Zadar in the *Perišić and Others case* in 1997.

⁶ See, e.g., the statements of Belgium, Colombia, France, Germany, Holy See, Iraq, Nigeria, Philippines, Sweden, United States and USSR and the reported practice of Belgium, Malaysia and Rwanda.

⁷ The prohibition of starvation "clearly implies that the city's inhabitants must be allowed to leave the city during a siege" Israel, *Manual on the Laws of War*.

⁸ See, e.g., UN Security Council, Res. 761, Res. 764 and Res. 859; UN General Assembly, Res. 48/88, 49/10, 49/196; UN Commission on Human Rights, Res. 1994/72 and the statements of Albania and Pakistan.

⁹ Available at: <http://unscr.com/en/resolutions/doc/2165>.

¹⁰ Available at: <http://unscr.com/en/resolutions/doc/2258>.

¹¹ "The U.N. Knew for Months That Madaya Was Starving", Roy Gutman, January 15th, 2016, Foreign Policy, available at <http://foreignpolicy.com/2016/01/15/u-n-knew-for-months-madaya-was-starving-syria-assad/>.

¹² "People still dying of starvation in besieged Syrian town despite aid delivery", January 16th 2016, Middle East Eye, available at: <http://www.middleeasteye.net/news/people-still-dying-starvation-besieged-syrian-town-despite-aid-delivery-1283601589>.

at: 1283601589#sthash.cbhgibXw.dpuf.

Areas under siege by the Government of the Syrian Arab Republic include Moadamiya with approximately 45,000 residents under siege for the past seven consecutive months. In addition, the regime is beleaguering a further 181,200 in various locations in eastern Ghutah, as well as in Darayya and Zabadani in Rif Dimashq. Furthermore, as retaliation for the siege of the Shi'ite villages in the North, Madaya, the Sunni city near the Lebanese border has been under siege since July by Syrian army forces and their Lebanese allies, the militia group Hezbollah. The Madaya situation is the most severe with food prices having hit astronomical levels, rice costing \$256 per kilogram¹³ and powdered baby milk costing \$300 for 900g. There are an estimated 40,000 residents trapped inside with at least 25 checkpoints that prevent people from leaving. Civilians have resorted to eating domestic animals, weeds and grass and have been killed from landmines and snipers as they try to escape or scavenge for food. Between the 15th of January 2015 and the 15th of January 2016, 32 people died from malnutrition in Madaya.¹⁴

Areas under siege by ISIS include Kobani, the Kurdish town on the border with Turkey which has been under siege since September 2014. ISIS is also besieging 200,000 civilians in Deir Ezzor. According to the UN, around 70% of the city's remaining residents are women and children. The Assad regime is denying aid distribution from the inside. The regime claims that it's unsafe to airlift aid into the airport however the regime is flying up to 10 flights a day to supply its own soldiers.

Aid deliveries are arriving far too late and on an ad hoc basis. Al-Marsad calls on the UN Security Council to immediately take action and issue a resolution condemning the use of siege warfare and calling for a halt of the targeting and exploitation of civilians as a tactic of war. The Security Council has a moral obligation to work rapidly to establish stronger responsibility and accountability against those who employ the deliberate use of starvation as a weapon of war. The Security Council has the responsibility to protect civilians' right to survival and fundamental human rights by guaranteeing the flow of basic supplies. The Council must demand as a matter of urgency, the unobstructed humanitarian access to all Syrians in need and make it clear that all perpetrators of siege as a method of warfare will be brought to justice.

The UN and the international community must exert pressure on the Syrian Government and any other parties which have influence to allow humanitarian access. We call on the UN special envoy for the Syria crisis, Staffan De Mistura to ensure that humanitarian aid is granted access to all areas under siege, without taking affiliations into account. Humanitarian efforts must surpass political differences; the politicization of the crisis has led it to become the worst tragedy of the twenty-first century.

The government as well as opposition and rebel groups have intentionally hindered aid delivery and removed medical supplies from aid convoys. These atrocious, unacceptable acts are prohibited under international humanitarian law. Access to emergency assistance is an obligation stemming from the Geneva Conventions and not a political bargaining tool. All sides must adhere to their obligations under international humanitarian law, comply with Security Council resolutions and guarantee unhindered and sustained humanitarian access. Al-Marsad calls on all parties to the conflict to abide by their commitments under international law, to put an end to the targeting and exploitation of civilians as a tactic of war and lift all sieges.

¹³ See note 10.

¹⁴ The World Food Program's spokeswoman Bettina Luscher said on the 15th of January in Geneva.