

## Barbara Harrell-Bond Lecture 2022

# What Justice for Starvation Crimes?

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### Opening remarks about Barbara Harrell-Bond

It's an honour to be with you this evening and to be presenting the Barbara Harrell-Bond memorial lecture for 2022.

Precisely forty years ago, in Michaelmas term of 1982, Barbara launched a weekly seminar series entitled 'The Crisis of Mass Exodus'. The seminar was held in the Barn – at that time Queen Elizabeth House was on St Giles and the medieval building adjacent to the road was known as the Barn. Characteristically, Barbara didn't just ask undergraduates to attend the seminar series but gave them – us, I was among the first three – responsibility for co-organising it, including inviting speakers. The seminars became the Refugee Studies Programme and in turn the Refugee Studies Centre. So this is something of a homecoming for me.

Barbara was freshly back from Sudan that summer, working on her book on Ugandan refugees. In Oxford at that time, it was bold and refreshing to see Sudanese academics and professionals treated on a par with the Oxford professoriat. We convened a conference on 'alternative viewpoints' on assistance to refugees in early 1984. It was notable because we invited refugees to participate and to present, and because for lunch we served the World Food Programme basic ration. I remember several of the UN officials attending slipped away to the Royal Oak instead.

Barbara was small in physical stature but chiefly in her bearing. She chain smoked in her office – at first she ran the programme from the attic study of her flat in Rawlinson Road – and in the seminars. She was utterly committed to the principles and people in which she believed, ready to defy anyone and anything; sinking her own money in to the programme when she couldn't secure outside funds; confronting the complacencies of those in authority; vexatious to her peers; unafraid to make enemies; generous to both her students and a stream of refugees who stayed in her spare bedroom; and in return demanding of total loyalty among her own staff and students.

And in return Barbara vested her students with ambition and a sense of vocation. She inspired many pioneers of the field that became humanitarian studies. Her book *Imposing Aid* was of its time, but her institution has stood the test of time. So too has her combination of academia and activism. It took a certain bloody-mindedness to get the Refugee Studies Centre up and running. Barbara was key in launching me on my career.

## **The Experience of Starvation**

My study of starvation began here in Oxford at that time. For my DPhil research, which I started in 1984, I had planned to study refugees in western Sudan – Darfur – but on arriving there in the middle of the famine of that year, the overwhelming reality was the famine, so in line with Barbara's guiding principle of addressing the issue of the hour, I studied that. Perhaps at first with more energy than method. But with one insight, which is that those who had gone through the experience of famine had something very valuable to tell us, the so-called experts who arrived from outside with ready-made templates for how things should be done.

In preparing for this lecture, I went back to some of my field notes and diaries, from Darfur in 1985 and 1986, and from the war-famines in southern Sudan and Tigray, Ethiopia, in 1988 and 1989. It was in that second round of research, that I began to work on starvation as a crime. I joined Africa Watch – part of Human Rights Watch – and wrote a report on human rights abuses and the creation of famine.

I also remembered something, not in my notes, but in my own impressions from those dozens of interviews with women and men who had undergone the utmost hardship and deprivation. The matter-of-fact responses to questions about the famine masked the level of trauma. The astonishing resilience of people in keeping themselves alive concealed the profound damage to the social fabric. My people-centred definition of famine was 'threat to a way of life, involving hunger and destitution', but the true meanings of famine, experienced in that way, was not evident at the time, at least to me.

The silences around the famines I studied were as important as what I recorded and wrote about.

Historians of Ireland have observed this. It was well over a century – three generations or more – before the great hunger could be talked about frankly, before the first public memorials could be built.

Is this because of the physiological effect of prolonged deprivation of essential nutrition? Or is it – as I suspect – the quotidian humiliations of everyday life under such extreme stress? The way in which famine creates a 'grey zone' in which perpetrator and victim become blurred?

What does it mean to sell one's family heirlooms, one's land inherited from parents and grandparents, at pathetically low prices, to buy a few meals, at a horribly inflated price? What does it mean to abandon one's young child on the doorstep of a better-off household in the hope that your child will be fed and well-treated? To condone your teenage daughter selling her body so she can bring home some coins or a bag of food? How does a parent choose to buy medicine to treat the fever of one child, but not another? How do you turn the beggars away from your door when you have enough food for the next few days, but you're not sure about after that? What of those shameful recollections of stealing food from someone no less hungry than you? And what if you are that slightly better off villager who buys the plot of land, or the sheep, at fire-sale prices, or the sexual services of your neighbours' daughter?

This is akin to what Primo Levi describes as the 'grey zone' in the concentration camp, when the line between victim and perpetrator becomes blurred, when every tiny gradient in the

hierarchy of means becomes a matter of life and death. This is the memory of famine, the shame of what became of people and their most intimate relationships, when they cannot get enough food. This is the theme of Breandán Mac Suibhne's remarkable book on the society that the famine made in Ireland, *The End of Outrage*.

Meanwhile, the men – and they are almost all men, 'man-made famine' is one of those cases in which old-fashioned gendered language is called for – the men who made the famine are far away. Military commanders, government officials, these men are usually unknown to those whom they have plunged into misery.

Like the sexual abuse of a minor, or indeed rape and sexual violence more widely, collective starvation is one of those crimes in which the perpetrator is often very effective at enlisting the mind of the victim as an accessory to the cover-up. Those who have experienced starvation in a community don't want to talk about its most compelling impacts. They are of course the survivors, and they feel guilty. They feel ashamed of what they have endured and what they have done. In the aftermath of famine, society is reorganised in subtle but far-reaching ways; the trauma becomes normalised in such a way that it becomes the framework for the new, post-calamity way of life.

Is it that the societal disruptions are so profound that life beforehand becomes something beyond reach, in a similar way to those forced into exile recall their homeland, only in this case they are living in the same physical spaces? Except in the case of famine, those familiar spaces that are everyday reminders of pain that should never have happened.

The most fundamental act of justice for starvation crimes is to acknowledge the crime. To affirm to those who live in the silent shadow of shame and self-doubt, that this was not their failing, but was a crime perpetrated by others, is an act of emancipation.

This was something I discovered in the course of my more recent research and advocacy. Recognising the crime is hugely important. And failing to recognise it, smothering solidarity with a victim of crime with charity that remains silent of the perpetrator of the crime, is equally a hugely important failing.

## **Clarifying our Terms**

Before proceeding further let me clarify out terms, partly because it is helpful to chart the narrative and argument, and partly because the keywords can be used to obscure as well as to enlighten.

### **Famine**

- Amartya Sen refuted the misconception that famine was a shortage of food.
- In his book, *Poverty and Famines: An essay on entitlement and deprivation*, he identified famine as the phenomenon of people not being able to get food, not the phenomenon of there not being enough food.
- Over the last two decades, in drawing up metrics for famines, there has been a debate over whether to focus on magnitude or intensity (breadth or depth).

- Those who study historical famines tend to use measure of magnitude: the total numbers of people who died from hunger and related causes. In my own historical survey I used a cut off of 100,000 excess deaths.
- That's not much use when we want to prevent those deaths from occurring. The Integrated food security phase classification system (IPC), developed by operational agencies in the early 2000s, uses a clutch of indicators: nutrition, localised food security, and mortality, to identify locations of intense food insecurity to sound the warning about famine.
- This has the downside that we only declare famine in the very worst localities, and where there is widespread or protracted food emergency, we can have very large numbers of hungry people and excess deaths without there being a famine.
- There's no definition of famine in law. It may be useful context for a prosecution for a crime of starvation to demonstrate that a famine resulted, but it's not necessary.

### Starvation

- Starvation is an act or a process. It can be transitive or intransitive.
- The concern of the law is with the act of starvation. That act can be purposeful: intended to produce the outcome of starvation, or reckless – an act that is likely to have that outcome in the normal course of affairs. There's a legal debate as to whether the crime of starvation needs a special intent (*dolus specialis*) or not; or whether any deliberate act that produces starvation is prohibited.
- While a famine can only afflict an aggregate, starvation can be either individual or collective; our concern here is with mass starvation. The law is concerned with starving a civilian population, a collectivity – it doesn't specify how big that needs to be.

### Food insecurity and its relation to armed conflict

- The relationship can be direct, indirect; purposeful or reckless.
- Starvation can be a deliberate tactic of war, extermination or genocide;
- it can be the foreseeable outcome of war tactics conducted with other goals in mind,
- or the outcome of economic policies adopted to finance the war,
- or the economic calamity that can follow in its wake.
- It can target the other side, or it can be a burden imposed on one's own side, for example for the provisioning of an army or diversion of funds to buy weapons.

### **(Belatedly) Recognising Starvation as a Crime**

As I was completing my DPhil in 1988, a second famine struck Darfur, or to be more precise, southern Sudanese stricken by war, massacre and starvation fled to the southern marches of Darfur in an often-futile search for succour. The death rates in the camps for displaced southern Sudanese were higher than in the drought-stricken villages and nomadic camps of Darfur that were the topic of my DPhil. Not just a bit higher, an order of magnitude higher. At their worst, seventy times higher than those terribly elevated death rates in the 1984/85

famine. The reason was that all the mechanisms whereby rural people survived hardship – eating wild foods, casual labour on farms, selling their animals or their jewellery – were impossible, because everything they had had been stolen, and anything they tried to do was prevented by soldiers and militiamen. Commenting on that crisis, I wrote for the first time that the verb ‘to starve’ is transitive (something people do to one another).

The law prohibiting and criminalising starvation reached the same point through a rather different path. I was tempted to write that the path was long and narrow, but in fact it is short and narrow. It is just 45 years old.

The laws of war began by recognising the legitimacy of the warrior and his war, and codifying what is to be considered honourable and what is not. Starvation is among the oldest and most efficient of weapons. From Carthage onwards, siege and scorched earth have been routine.

President Abraham Lincoln commissioned the German-American jurist Franz Lieber to draw up the legal code for the Union army in the American Civil War in 1863. Article 17 of the Lieber Code reads as follows:

‘War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.’

Also in the second half of the 19<sup>th</sup> century there was a parallel and related effort to codify the rights of warships to intercept neutral shipping and seize cargoes, with arguments going to and fro over whether foodstuffs should count as contraband, and whether goods destined for neutral countries could be intercepted if there were a suspicion that it could be transported from that neutral country to a hostile power.

These restrictions were rendered moot when the British parliament refused to ratify the 1909 London Convention on the laws of war at sea, on the grounds that to do so would restrict the Royal Navy’s right to wage total war on the economy of an adversary. And indeed this is what the Royal Navy did against Germany, Austria-Hungary and the Ottoman Empire during the Great War, and also immediately after the armistice, with the aim of imposing peace terms on the defeated Germans.

World War Two was a war of starvation. The Nazis used it, the Allies used it. As many people died from hunger as were killed in combat, bombing or direct violence against civilians. The German Hungerplan for Eastern Europe and the Soviet Union envisaged starving 30 million people to death. The American blockade of Japan was candidly named ‘Operation Starvation’. Millions died in China, India, Vietnam, and hundreds of thousands in Greece, Yugoslavia and even the Netherlands.

It was all lawful. There was just one hint that starvation might not be tolerated. In 1948, in the post-Nuremberg High Command Trial, American prosecutors brought charges against Field Marshal Wilhelm von Leeb, including for crimes committed during the German army’s siege of Leningrad. But there was no legal basis on which to find Leeb guilty of starving the city, or even of sustaining the pressure of hunger on the residents by firing artillery at civilians trying to leave. The judges found von Leeb’s orders extreme but not criminal – although they added that they wished the law were otherwise. They cited the Lieber Code. Von Leeb was acquitted of that charge.

In the parallel Ministries Trial, Hitler's minister of food and agriculture Walther Darré, an ideologue of 'blood and soil' and Germany's aggressive eastward expansion, was found guilty of crimes against humanity, plunder and despoliation, and sentenced to seven years in prison but released after just two. The judges didn't find his economic theories criminal, writing in their decision: 'Some of his ideas were novel and somewhat bizarre, but it is not a crime to evolve and advocate new or even unsound social and economic theories.' Darré had been removed from office before the Hungerplan was adopted – and its main architect, Herbert Backe, escaped prosecution by committing suicide – so we don't know what criminality the tribunal might have found in the plan to starve 30 million people to death. It's striking, however, that at Darré's trial, the Hungerplan was not mentioned by name.

Britain and the US lobbied successfully for the revised Geneva Conventions of 1949 to remain silent on starvation. A decade later, the British counter-insurgency in Malaya included a forced villagization programme candidly named 'Operation Starvation'. French military doctrine in Indochina and Algeria could be read as a handbook for how to apply hunger as a weapon.

Humanitarian concern for civilians had emerged more generally after World War Two and this is manifest in the new spirit of the 1949 Geneva Conventions. But it was only when those conventions were revised and expanded nearly thirty years later that, for the first time ever, those governments that had long practiced economic warfare, including blockade and scorched earth pacification, began to change their tune.

Article 54 of Additional Protocol One of 1977 reads: 'One: Starvation of civilians as a method of warfare is prohibited.' That's just 45 years ago, within the lifetimes of many of us. It continues:

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

Note several important things about this definition.

First, it is designed for land warfare not naval warfare or blockade. Note the focus on protecting 'objects' not 'activities'; there is no mention of depriving or blocking trade, free movement, or banking. Possibly those could be incorporated within an expanded notion of 'objects indispensable for survival' – OIS – but it would be contentious.

Second, the legal definition of starvation departs from the lay one. Objects indispensable for survival include not just food but water, medicine, shelter and (one that I always personally add to the list) maternal care for young children.

Third, and this is a matter of widespread misunderstanding among lawyers, the prohibition applies whatever the outcome. Starvation is an act of deprivation which is forbidden even if it is an incidental outcome of an action pursued for another reason, such as gaining advantage on the battlefield. It is also prohibited even if no-one actually dies of starvation.

Fourth, is the matter of humanitarian relief. I won't cite the specific articles of the Additional Protocols relating to relief supplies. It suffices to say that the belligerents have a high degree of control over those supplies, and military necessity can in most cases override humanitarian aid.

A distilled version of the same formula is found in the Rome Statute of the International Criminal Court, finalized in 1998, which came into force in 2002. Article 8(2)(b)(xxv) of the Rome Statute specifies that starvation is a war crime. It prohibits

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Convention.

Three additional observations are pertinent. Let me continue my previous list. Point five is that 'wilfully impeding relief supplies' is added and strengthened.

In passing, we should note and remember that the primary focus of the prohibition and the war crime is depriving civilians of OIS, not impeding relief. Most media and diplomatic attention is on impeding relief, not the primary crime of starvation.

Point six is that the Rome Statute prohibition applies only to international armed conflicts. There was no counterpart article for non-international armed conflicts. This was probably a simple oversight by the drafting committee. But it's a significant oversight because it shows the lack of interest in the issue when the Rome conference was meeting less than 25 years ago. That oversight was remedied by an amendment to the Rome Statute in 2019, but few states have ratified that amendment.

And lastly, the wording of 'depriving' civilians of OIS may just, perhaps, open the door to a prohibition on blockade including depriving a population of trade goods or banking facilities. That's improbable. In Rome, there was an attempt, by Cuba, to introduce a provision that outlawed blockade, but the US and others blocked it. This was also when western sanctions on Iraq were reported to have caused many hundreds of thousands of child deaths, and US Secretary of State Madeleine Albright infamously said that those deaths were a price worth paying (a statement she later regretted).

So the intent of the Rome conference was not to criminalize blockade, sanctions or economic warfare. A generous reading of the prohibition might prohibit, rather than regulate, those actions.

Nonetheless, it's only when a case is brought to court and a judge makes a determination that we will see how widely the concept of deprivation of OIS might be interpreted.

Thus far there have been no prosecutions for the war crime of starvation at the ICC or with explicit reference to the wording of the Rome Statute. On the whole, prosecutors in various special tribunals, such as in Cambodia, Former Yugoslavia and Ethiopia in the 1990s, have paid little or no attention to starvation. This is either because of a misapprehension that the war crime of starvation requires people to starve to death in large numbers (this was the reason it wasn't a charge for the siege of Sarajevo), because the prosecutors wanted quick

convictions without exploring new law (in Cambodia), or because the prosecutors were simply overwhelmed by their caseload (as in Ethiopia in the 1990s).

Starvation is also prohibited under human rights law, as crime against humanity (extermination) and as an act constitutive of genocide. We can cluster all these prohibited acts together under the umbrella of 'starvation crimes'.

Since the adoption of the Rome Statute twenty years ago, international humanitarian agencies, including especially the UN's World Food Programme, have found that most of their programming is in areas of armed conflict, and the norms and principles governing how they are treated by belligerents are deeply inadequate. In Syria, South Sudan and Yemen, among others, humanitarian aid has been negotiated on an ad hoc basis using a raft of different procedures. The UN Security Council has adopted resolutions, which are specific to each individual conflict.

An attempt to remedy this shortcoming, and adopt a common, standard norm came to fruition in 2018 with a UN Security Council resolution on armed conflict and hunger. This is resolution 2417, sponsored by the Netherlands and adopted unanimously. It doesn't introduce new law, but it affirms that starvation as a method of war may be a war crime – without restricting that to international armed conflicts – requires the UN Secretary General to swiftly report to Council in cases in which armed conflict threatens to cause widespread food insecurity, and opens the door to sanctions against offenders.

It was an important step. It recognized and affirmed the law that does exist. It sparked a hope that there would be political will to act on the promise.

### **Testing Political Will**

Four years on we can answer that question. And the answer is no, the political will is not there.

We can see this in the responses to two food crises involving criminality, Ukraine and Ethiopia.

The Russian invasion of Ukraine set in motion a crisis of food exports from Black Sea ports. Ukraine and southern Russia between them produced a substantial proportion of the world's internationally traded wheat (and some other agricultural commodities). There is enough production capacity in other major wheat exporting countries, notably in North America but also in the southern hemisphere, in Argentina, to make up for any shortfall of grain coming onto the market, but for obvious reasons this cannot be done in less than a growing season. Certain countries such as Egypt and Sudan are highly reliant on contracts to supply this grain and cannot easily negotiate new contracts in short order.

The Russian forces imposed a blockade on Ukrainian ports. It was an unusual blockade in that it prevented an essential commodity getting out, rather preventing it getting in.

In February and March we saw a spike in food prices worldwide. It was especially sharp in those poorer countries dependent on Black sea grain. This was very bad news for millions of



people who were already spending a large proportion of their disposable income on food. It was bad news for governments that subsidize wheat through a public distribution system.

It was bad news for food aid. The World Food Programme buys as much as half of its wheat from the Black Sea. Its budget already squeezed by a 44 percent increase in its operating costs because of fuel prices and shortages, the WFP's delivery to food insecure countries was put under even more pressure.

Russia's primary aim was to crush the economy of Ukraine, but it found itself also destabilizing world food markets and supplies to developing countries. This was both a bargaining chip and a diplomatic liability. Russia could use its leverage to try to loosen European and American sanctions. But Russia was also trying to persuade the nations worst-hit by food price rises that it wasn't an aggressor and had no intention of harming them.

Price volatility can be good for commodity traders and agribusiness, especially the four transnational megacompanies that control the sourcing, shipping and storage of food – the so-called 'ABCD' of Archer Daniels Midland, Bunge, Cargill and Louis Dreyfus. In previous global food crises, such as 2008 and 2011, these corporations profited handsomely, along with brokers in Paris and New York. This time around the ABCD are all aware of the reputational risks, both of continuing to operate in Russia, and of being seen to reap windfall profits from price increases.

In public statements at the back-to-back UN conference and Security Council meetings on conflict and food security in May, UN Secretary General Antonio Guterres and by US Secretary of State Antony Blinken, among others, said that the Black Sea grain crisis threatened worldwide famine. Their sounding of the alarm had, at least, the desired effect of pressing Russia to lift the blockade and also minimizing profiteering by the big conglomerates.

The outcome was the Black Sea grain initiative, brokered by Turkey and the UN, to allow Ukrainian food exports to resume. Guterres has called it his finest achievement during his time in office.

The Black Sea grain initiative is a success, in the sense that it has stabilized global food markets. It has not, of course, addressed the underlying reasons for the vulnerabilities of that global food market, which include the dominant role of the ABCD agro-industry conglomerates and the dependence of huge swathes of middle-income and low-income countries on cheap foodgrains grown in a handful of major producers on other continents.

The international effort, also hasn't addressed the link between armed conflict and famine. Although many western leaders framed the Ukraine blockade and its impacts by referring to resolution 2417 on armed conflict and hunger, that resolution was not designed for this kind of crisis. As the Russian ambassador pointed out at the Security Council, almost all the conflict-related food crises were already on the Council's agenda before the war in Ukraine.

**This link is most dramatically illuminated by Ukraine itself.**

**Russia has been using starvation as a weapon in its war, for example in its siege of Mariopol. No-one, of course, responded to this by proposing that food aid be shipped into Ukraine. If we ever wanted an illustration of the fact that starvation does not equal failure of national food supply, Ukraine this year is it. Yet in other parts of the world, where starvation is being used as a weapon, the international narrative is still, let's send food.**

### **Tigray**

**The case in point is Tigray, Ethiopia. This is the other kind of blockade, the classic kind where a belligerent, having implemented a systematic scorched earth policy to destroy all kinds of objects indispensable to the survival of the civilian population, has been denying trade, banking and humanitarian assistance with the intention of starving people to the point of surrender or collapse. Food supplies are needed but even more so, an end to the war crime of starvation.**

**Most of the international talk about Tigray subsumes that famine within the wider food security crisis of the Horn of Africa, which is caused in part by the climate crisis. The implication is that the immediate response must be sending food. Yes, the Horn needs food. No, shipping more food aid won't reach the people of Tigray without an end to the war crime of starvation.**

**In September, the UN Security Council held a special session on the agenda of 2417. It was, to say the least, disappointing to those of us who hoped that that resolution marked a breakthrough.**

**What it demonstrated was a set of unerring reflexes**

- to shift from criminality to mercy,
- from acts of deprivation to obstacles to remedies
- from a focus on the destruction of objects indispensable to survival to the modalities for delivering humanitarian aid.
- It was a shift from the active voice to the
- passive voice,
- from the transitive sense of starvation to its intransitive sense.

The response to this critique, from officialdom, is that there is a trade-off. It's only by staying silent about the man-made causes of starvation that it is possible for a relief giver to win the cooperation of those men, on whose goodwill we depend to reach the starving.

I remember the words of one NGO worker during that terrible war famine in Sudan in 1988, when the Sudanese army and militia were starving the southern Sudanese IDPs, 'I would sup with the devil to get food to Abyei.' (Abyei being a town particularly victimized.)

Those suppers have become more routine and more intimate.

I see the point but I don't agree.

Failing to call out starvation crimes becomes the norm not the exception; those who should be aiding the victim end up giving succour to the villain, and become complicit in this. I would argue that calling out starvation crimes at the highest level can be a means of setting the context and the terms for pressing for humanitarian aid.

In 1991, after the faminogenic military regime in Ethiopia was overthrown, the incoming government, headed by the TPLF, set up a special prosecutor's office to try officials of the former regime for atrocity crimes. They contemplated including starvation crimes on the agenda but didn't pursue it, for several reasons including the complexity and novelty of the process, and because they didn't want to offend international agencies that be shown in a bad light. That was, in retrospect, an error.

They did prosecute and convict a number of senior officials and generals for war crimes and mass murder and torture committed during the Red Terror. Some of those individuals served their sentences, were released, and returned to advising the new government of Abiy Ahmed in its military campaigns. There was no international outcry against this.

The post-1991 transitional justice process in Ethiopia did not achieve the goal of securing a guarantee of non-repetition. International memories are too short, it seems.

You will have seen that last week, the Federal Government of Ethiopia and the TPLF signed a peace agreement in South Africa, promising to silence the guns.

This agreement came two years, less one day, after a needless war was waged in that region. A region infamous among many of my generation for being the epicentre of the famine of 1984/85, which had outraged Bob Geldof among many others. A region that had

not seen starvation for thirty years due to the combined efforts of a government determined to avoid such calamities in future, and international aid donors who were also anxious not to see man-made famine stalk the land.

Over the last 2 years, that war cost probably one tenth of Tigray's pre-war population of 6m, due to hunger and disease plus hundreds of thousands more on the battlefield on both sides. Tens of thousands also may also have died in the neighbouring regions of Afar and Amhara. Millions of Tigrayans have been forcibly displaced, including from the most agriculturally productive areas. Most of the essential infrastructure has been destroyed—stolen, ransacked, vandalized. Hospitals lack the most basic supplies. People's life savings are locked away in bank accounts that have been frozen. And there has been a starvation siege imposed, whereby only about 15 percent of the essential food needs have been permitted through by the joint besieging powers of the Federal Government of Ethiopia and its ally, the State of Eritrea.

That's about the same level of rations permitted into the Warsaw Ghetto by the Nazis in 1941.

Both sides committed abuses against civilians. For only one side—the joint Eritrean-Ethiopian side—was abusing civilians the aim of the war.

We heard next to nothing about this crime and this tragedy because of an information blackout. The last foreign journalist who was allowed in was in June—June 2021 that is. A tiny number of United Nations and humanitarian workers were allowed to operate, on strict orders to keep their lips sealed. They weren't allowed to collect the essential, simple data that would allow the world to know what is happening.

Over the months, especially since August, there has been a massive military assault on Tigray in which the Federal Government and its ally Eritrea were ready to sacrifice scores of thousands of conscript soldiers to wear down the other side. That ground down the Tigrayan defences, in a manner that some humanitarians from the generation before mine will recognize from Biafra. The Tigrayans didn't lose the battles. They lost the famine.

As in Biafra half a century ago, the key weapon was hunger. The people of Tigray were dying in appalling numbers. They could not survive. Their cries for help went unheeded.

The peace settlement was extremely favourable to the federal government. Essentially what happened was that the Tigrayan leadership calculated that their society could no longer withstand the onslaught. And their appeals to the world to end the war crime of starvation were not being heeded. So they sued for peace.

I don't know if the peace deal will hold. On paper it's a desperately weak deal that depends on the good will and sound strategic judgement of the Federal Government—qualities that have been notably lacking up to now. It also relies on vigilant and stern monitoring and response from international aid donors, which have also been notably lacking. A week after the agreement, the UN is still sending aid only to those towns controlled by government forces, not to the cities, towns and villages held by the Tigray Defence Forces.

What the deal signals is that starvation works. It's an advertisement to war-makers and autocrats around the world, for how to get your way. Hunger is cruel, efficient, and silent. And, with few exceptions, governments and international agencies don't object.

### **What Justice for Starvation Crimes?**

Despite these disappointments, the issue of justice for starvation crimes is at least on the agenda.

Prosecution of the perpetrators is the holy grail. A prosecution for starvation crimes in an international court would provide high profile to the issue, a genuine punishment for an offender and a threat to others, and clarification of the law through the ruling of the court.

The most feasible case would be for the war crime of starvation in Ukraine.

- Acts prohibited under the relevant article of the Rome Statute have been perpetrated
- It's an international armed conflict, so the original article of that statute is in force
- There's a high level of documentation
- The perpetrators are not in favour in western countries
- Although Ukraine is not a member of the ICC, it invited ICC to investigate after the 2014 conflict broke out, so it has jurisdiction

It will take a while for this, or other cases, to come to court. Let's keep trying.

Another encouraging sign is that UN Human Rights experts are focusing on starvation in a number of cases. Among them, South Sudan and Tigray. Starvation crimes may become a routine focus for international investigation.

There are measures other than criminal accountability that can be pursued. The transitional justice agenda can include:

- truth-telling
- Memorials
- apologies
- compensation and reparations
- Guarantees of non-repetition
- Political accountability

Each has its limitations and controversies.

- Truth can be denied.
- Memorials can be defaced, as happened to one of the Ukrainian memorials to the victims of the Holodomor—Stalin's famine in Ukraine—which was damaged by unknown people, before the invasion.
- There's a problem with compensation to be paid by a bankrupt government. For example, British taxpayers paid for water infrastructure, medical services, schools and agricultural projects in Tigray. They are now destroyed—deliberately vandalized and looted by Eritrean and Ethiopian federal forces. Should our taxes go, without complaint, to rebuilding?
- There's a problem with restitution: going back to how things were before is not satisfactory where people were precarious and vulnerable beforehand.

Let's at least discuss these issues and keep them on the public agenda.

The first element in justice for starvation is the act of recognition. Starvation is always an injustice and often a crime. We should name it correctly. It's a fundamental honesty, it is a gesture of solidarity and empathy and an act of emancipation.

Famine won't be ended by law or by mercy. It will be ended when the injustice of hunger and the criminality of starvation are so morally toxic that they cannot be tolerated. Getting this reality recognized will require the kind of stubborn bloody-mindedness and intolerance for complacency that was Barbara Harrell-Bond's signal trait.