

# Violations of Economic, Social and Cultural Rights as Components of International Crimes

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## Introduction

Can violations of economic, social and cultural rights (ESCR) amount to international crimes? In this doctoral research project, I analyse the substantive definitions of international crimes such as genocide, crimes against humanity, war crimes and torture and inquire if and how international law, *de lege lata*, includes violations of ESCR within the definitions of these crimes. The hypothesis of this study is that ESCR violations are contained in current definitions of the most serious crimes of international concern.



**Figure 1.** ESCR are sometimes viewed as inherently unsuitable for judicial determination.  
© Alston, P., and K. Tomasevski. *The Right to Food*. Boston: M. Nijhoff, 1984, p. 82.

## Common objections

The suggestion that considerations of ESCR should inform our thinking on international criminal law has been met with objections and concerns:

1. *The Expansion Argument:* ESCR abuses ≠ within ambit of international criminal law
2. *The Inherent Unsuitability Argument:* Nature of ESCR inherently unsuitable (vague, progressive, structural?)
3. *The Trivialisation Argument:* Pandora's Box of claims, failure to strictly construe definitions of crimes?
4. *The Practical Impossibility Argument:* Insurmountable difficulty to gather evidence and prove *mens rea*, for failures to act rather than active conduct?

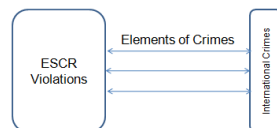
Implicit in these objections is the belief that existing case-law has so far not dealt with ESCR violations.

By showing that ESCR violations do form part of the underlying offences of current definitions of international crimes, I will critically put these four concerns into perspective.

## Methods

The study examines the conditions under which violations of rights, such as the right to housing, food, education, work or health, can constitute components of an international crime. By so doing, the study identifies the *area of overlap between the substantive definitions of ESCR violations, rooted in international human rights law, and the elements of existing international crimes.*

**Metamodel: Demonstrating the Overlap Between ESCR Violations and International Criminal Offences**

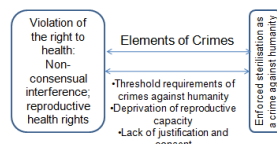


**Figure 2.** Illustration of a simple metamodel outlining the relationship which needs to be analysed in order to demonstrate that an overlap exists between violations of ESCR and international criminal offences.

### Two-step analysis

1. Selection of one or several ESCR violations which are likely to be concerned when a certain crime is committed: Establish that an act or omission constitutes a violation of ESCR as defined in human rights law.
2. I will then turn to the second building block of the model and examine the circumstances under which such violations can be accommodated within the existing definition of the analysed crime.

**Metamodel Application: Enforced Sterilisation as a Crime Against Humanity**



**Figure 3.** An example of how overlap between the law on ESCR and international criminal law can be analysed.

## Results

The elements of current definitions of international crimes encompass violations of ESCR as part of various underlying offenses. To mention just a few findings:

- Forced evictions (≈ violations of the right to housing) can constitute the crime against humanity of forcible transfer.
- The institution of forced labour (≈ violation of the right to work and to just and favourable conditions of work) can amount to enslavement as a crime against humanity.
- The destruction of homes (≈ housing rights violation) on discriminatory grounds can constitute persecution.
- Violations of the right to work, to education, to housing, food and health are integral to the crime of apartheid.
- Violations of reproductive health rights can constitute enforced sterilisation as a crime against humanity; or genocide.
- Violations of the right to health, water, food, etc. can constitute the crime against humanity of 'other inhumane acts'.
- ....



**Figure 4.** Defendant K. Brandt (medical trial) in Nuremberg, 1947: Convicted, inter alia, of crimes against humanity.

Case-law since World War II confirms that some abuses of ESCR can amount to international crimes.



**Figure 5.** Violations of the Right to Housing, amounting to the crime against humanity of forcible transfer of population.

Satellite images of Porta Farm, Zimbabwe, on 22 June 2002 and on 6 April 2006, before and after Operation Murambatsvina.

© Digital Globe, Inc. (2006).

## Conclusions and implications

What human rights law today conceptualises as violations of economic, social and cultural rights violations at least partially falls within the ambit of international criminal law.

The jurisdictional, remedial and other legal and political consequences of international crimes therefore apply to some ESCR violations.

The implication of the demonstration that some ESCR violations constitute international crimes is first and foremost that there are no legal reasons to conclude *a priori* that ESCR violations should or can not be addressed by attempts to deal with an abusive past; and these attempts include, but are not limited to criminal prosecutions.

Hence, other approaches of transitional justice, such as truth commissions, institutional reform initiatives or reparations programmes, can be considered to be empowered to deal with ESCR abuses as soon as they are given a mandate related to international crimes which encompass ESCR violations as their underlying offences.

## Key literature

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## Further information

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