



## TOWARDS THE HUMAN RIGHTS OF FUTURE GENERATIONS AND THE ROLE OF INTERANTIONAL CRIMINAL LAW

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### ABSTRACT

The challenges of the past century—such as terrorism, nuclear threats, population growth, and drug trafficking—have significantly impacted global security and human rights. Among these, the “Environmental Crisis” stands out as one of the most pressing issues facing the international community and the rights of future generations. These rights are increasingly threatened not only by terrorism and nuclear risks but also by the alarming proliferation of the COVID-19 pandemic, which has emerged as a formidable challenge in the 21st century. It is essential to recognize that these challenges constitute a substantial part of criminal conduct at various national, regional, and international levels. To effectively address the myriad forms of crimes against the rights of future generations, the adoption of a robust and effective criminal policy is imperative. However, the Rome Statute of the International Criminal Court (ICC) has not sufficiently criminalized or addressed crimes specifically targeting future generations. Nonetheless, the Statute’s provisions concerning recognized international crimes—such as war crimes, crimes against humanity, and genocide—may offer a framework for addressing offenses that infringe upon the rights of future generations. Thus, it is conceivable to pursue accountability for such crimes within the jurisdiction of the ICC.

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### Table of Contents

Introduction

1. From the Human Rights of Future Generations to the Maastricht Principles

2. International Challenges and Developments

3. Understanding the Concept

4. International Legal Standards and Criminal Proceedings

Conclusion

## Introduction

Today, the challenges and crises stemming from conflicts—particularly terrorist actions and their destructive impacts on various aspects of human life—pose a profound threat to the rights of future generations. It is therefore an undeniable necessity to address crimes that violate human activities across political, military, economic, cultural, and scientific domains, especially when these violations jeopardize the health, well-being, or long-term survival of any group or community.<sup>1</sup>

Creating a new international crime that aligns with the rights of future generations is undoubtedly fraught with challenges and criticisms. Nonetheless, crimes against these rights, particularly those involving serious violations of economic, social, and cultural rights, present a clear and detrimental perspective on these fundamental entitlements. This emerging category of crime—termed “crimes against the rights of future generations”—can be defined as actions and behaviors that have destructive effects on the health, well-being, and survival of identifiable groups or populations, as well as their living environments, which are integral to their livelihoods. Given their scale and magnitude, these actions should be recognized as international crimes.

Moreover, the concept of crimes against the rights of future generations underscores that gross violations of economic, social, and cultural rights, along with significant environmental degradation, are not solely the result of resource scarcity or structural factors. In many instances, they arise from conscious and morally reprehensible actions.<sup>2</sup>

This article seeks to investigate the crimes committed against the rights of future generations and assess how these crimes align with the framework and structure of offenses under the jurisdiction of the Rome Statute of the International Criminal Court (ICC). It evaluates the potential for confronting and suppressing such crimes in light of the regulations contained within the Statute. Notably, this research addresses a significant gap, as no prior studies in Iran have focused on this issue. This article represents a pioneering effort to examine and identify the mechanisms for addressing violations of the rights of future generations.

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<sup>1</sup> Humphreys, *Against Future Generation* (2023) 1073.

<sup>2</sup> Palarczyk, *Ecocide Before the International Criminal Court: Simplicity is Better Than an Elaborate Embellishment* (2023) 189-191.



# 1. From the Human Rights of Future Generations to the Maastricht Principles

The rights of future generations have historically been neglected in the analysis and implementation of human rights law. However, international human rights law is not confined to the present generation. Foundations for addressing the rights of future generations have been established in various international instruments over the past century. The future of humanity on Earth appears increasingly precarious as we confront threats such as human-induced climate change, biodiversity loss, geopolitical conflicts, the erosion of democratic institutions, and the unpredictable consequences of rapid advancements in artificial intelligence. In this context, the obligations of current generations towards future generations have garnered growing attention.<sup>1</sup>

The Maastricht Principles on the Human Rights of Future Generations aim to clarify the current state of international law as it pertains to the rights of future generations.<sup>2</sup> These principles consolidate the evolving legal framework and reaffirm the binding obligations of states and other actors as outlined in international and human rights law. The principles emerged from a nearly six-year process of research, dialogue, and analysis, incorporating the expertise and perspectives of current and former national and regional human rights scholars and experts. They were formally adopted in Maastricht on February 3, 2023.

This initiative builds upon earlier expert legal opinions established in Maastricht, including the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), and the Maastricht Principles on Extraterritorial Obligations of States in the Field of Economic, Social and Cultural Rights (2011), along with their accompanying interpretations.

The Maastricht Principles represent a significant advancement in promoting a more sustainable future. By establishing a legal foundation for attributing human rights to future generations, these principles clarify and contribute to the development of international human rights law, outlining the obligations imposed on states, intergovernmental organizations, and businesses.<sup>3</sup>

To date, these principles have received endorsement from a diverse array of global experts and current and former UN mandate holders. A key contribution of the Maastricht Principles is their recognition of future generations as holders of internationally recognized human rights, contrasting sharply with recent UN instruments that merely refer to the “interests” of future generations. This recognition underscores that the actions of present generations have profound implications for the human rights of those born today and those who will be born in the future, potentially affecting their ability to enjoy a wide range of rights, including the right to a clean, healthy, and sustainable environment.<sup>4</sup>

This framework also entails ensuring that future generations are empowered to protect

1 Center for International Environmental Law, *The Maastricht Principles on the Rights of Future Generations* <https://www.ciel.org/issue/the-maastricht-principles-on-the-rights-of-future-generations/> accessed January 20, 2025.

2 Rights of Future Generations <https://www.rightsoffuturegenerations.org/> accessed January 20, 2025.

3 Coomans, *Towards 2122 and Beyond: Developing the Human Rights of Future Generations* (2023) 58

4 United Nations Digital Library, *The Human Right to a Clean, Healthy and Sustainable Environment* <https://digitallibrary.un.org/record/3982508?ln=en&v=pdf> accessed January 20, 2025.



their human rights through national, regional, and international legal systems, and that effective remedies are available for human rights violations. To this end, it is crucial to ensure the legal standing of representatives of future generations before international human rights courts and institutions when their fundamental rights are threatened or violated.<sup>1</sup>

The acknowledgment of the human rights of future generations is supported by fundamental principles such as the universality of human rights norms, which apply equally to all individuals, irrespective of when or where they were born. Numerous international legal instruments explicitly or implicitly recognize obligations towards future generations, including the duty to ensure intergenerational justice. Additionally, the Maastricht Principles draw upon the laws, customs, and values of states and peoples across all global regions and belief systems that recognize obligations to future generations.<sup>2</sup> They are inspired by the worldview and way of life of many indigenous peoples, which emphasize the continuity of obligations across past, present, and future generations.

The Maastricht Principles further recognize the inherent connections between past, present, and future patterns of human rights violations. They emphasize that states must impose reasonable limits on activities that threaten the enjoyment of human rights by future generations, including the unsustainable exploitation of natural resources and environmental degradation, in order to fulfill their obligations to future generations.<sup>3</sup>

At the global level, numerous political<sup>4</sup> and legal<sup>5</sup> initiatives are underway with significant implications for future generations. The Maastricht Principles seek to ensure that these initiatives are recognized within the framework of human rights. Such formal recognition can play a vital role in accelerating the development of laws, policies, and institutions necessary to guarantee that future generations can enjoy universal human rights.<sup>6</sup>

## 2. International Challenges and Developments

Crimes committed against the rights of future generations are not directly perpetrated against those generations, much like crimes against humanity are not directly committed against humanity as a whole. The term “humanity” in the context of crimes against humanity implies that such offenses evoke concern for all of humanity; the severity of these crimes is so profound that they wound and offend the collective conscience of humanity. In this regard, crimes against the rights of future generations are perpetrated against specific individuals, provided that the principal acts and behaviors constitute part of a widespread or organized attack against a civilian population.<sup>7</sup>

For a violation of international law to be recognized as an international crime under customary international law, the violated rule must not only be recognized as part of customary law, but

<sup>1</sup> Wewerinke-Singh, Garg, and Agarwalla, 2023, p. 653

<sup>2</sup> Humphreys, *ibid.* 1078

<sup>3</sup> Weiss, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions* (2021) 14-16.

<sup>4</sup> United Nations General Assembly, *A/RES/79/1*, 22 September 2024 <https://documents.un.org/doc/undoc/gen/n24/272/22/pdf/n2427222.pdf> accessed January 20, 2025.

<sup>5</sup> United Nations General Assembly, *A/77/L.58*, 1 March 2023 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-03-00-en.pdf> accessed

<sup>6</sup> OpenGlobalRights, *The Maastricht Principles: Safeguarding Human Rights of Future Generations* <https://www.openglobalrights.org/maastricht-principles-safeguarding-human-rights-future-generations/> accessed January 20, 25.

<sup>7</sup> Mavrommati et al., *Representing Future Generations in the Deliberative Valuation of Ecosystem Services* (2020) 12.



the breach must also result in individual criminal responsibility. To satisfy this latter condition, there must exist a stable and integrated governmental system that demonstrates a commitment to the criminalization of prohibited behaviors and has established clear and consistent examples of punishment for such violations through national and international courts and tribunals.<sup>1</sup> While actions against future generations may pertain to behaviors currently prohibited by international law, there remains a significant challenge in rendering these behaviors punishable under customary law.<sup>2</sup>

Recent developments in the international criminal law system, particularly concerning the evolution of crimes against humanity, illustrate that the application of international criminal law cannot be expanded without the establishment of judicial precedents. Crimes against humanity emerged in international law in the aftermath of World War II, particularly during the drafting of the Charter of the International Military Tribunal at Nuremberg.<sup>3</sup> During the negotiations leading to the Nuremberg Charter, it became apparent that certain crimes committed by the Nazis could not be addressed within the existing legal framework, particularly the atrocities inflicted by German forces against their own citizens. To rectify this gap, the Allies introduced a third category of crimes known as crimes against humanity, which filled the void left by the regulations governing crimes against peace and war crimes.<sup>4</sup>

The proposal to establish a crime against the rights of future generations, akin to crimes against humanity, would address existing gaps in both rights and prohibitions against unacceptable human behavior. This could include criminalizing actions in peacetime that would otherwise be classified as war crimes, thereby enhancing the legal framework for accountability.<sup>5</sup>

The process of developing such a declaration must be open, transparent, and inclusive, involving consultations with member states as well as relevant stakeholders.<sup>6</sup>

Moreover, there are significant advancements in international environmental law that bolster the case for recognizing crimes against the rights of future generations. Increasing acknowledgment of individual responsibility for environmental damage<sup>7</sup> or protection,<sup>8</sup> often articulated in relation to the rights of future generations, is particularly relevant.<sup>9</sup> As noted by the International Law Commission in its resolution on responsibility and response under international law for environmental damage, international environmental law is forging new

1 *Prosecutor v Tadić* (1995) 84.

2 The concept of crimes against the rights of future generations is based on several principles of international criminal law, international human rights law and international environmental law. Paragraphs 1(a), (b), (d), (f), (g) and (i) will criminalize behavior that is currently prohibited as a violation of international economic, social, cultural or other international conventions. However, sub-paragraph 1(a) would criminalize conduct already prohibited as a crime against humanity without the need to prove an attack on any civilian population, and sub-paragraphs 1(c), (e), (h) consider behavior in peacetime as a crime, which is currently prohibited as a war crime. There is clear support in various fields of international law for the request to prohibit criminal behavior that equates to a crime against the rights of future generations.

3 Cassese, *International Criminal Law* (2003) 70. & Cassese, *Violence and Law in the Modern Age* (1988) 109.

4 Bassiouni, *Crimes against Humanity in International Criminal Law* (1992) 24

5 Many international crimes are directed towards gross and serious violations of human rights. International criminal law has so far focused on behavior that violates civil and political rights, such as the right to life, personal liberty, and freedom from quasi-crime. In light of the principle of equal respect for all human rights, there is limited authority to restrict the scope of international criminal law to only one category of rights. Considering that crimes against the rights of future generations focus on gross violations of economic, social, and cultural rights, the lack of international criminal responsibility attached to such violations is generally unjustified.

6 **United Nations**, *Declaration on Future Generations* <https://www.un.org/en/summit-of-the-future/declaration-on-future-generations> accessed January 20, 2025.

7 United Nations, *Rio Declaration on Environment and Development* (1992).

8 United Nations, *New Delhi Declaration* (1998).

9 United Nations, *Stockholm Declaration on the Human Environment* (1972).



connections with the concept of intergenerational equity, affecting issues of responsibility and accountability.<sup>1</sup>

Consequently, the aforementioned concepts, along with the principles of international criminal law, international law, human rights, and international environmental law, provide a robust foundation for imposing individual criminal responsibility for behaviors that constitute crimes against the rights of future generations. Such behaviors should be subject to punitive measures.

### 3. Understanding the Concept

Efforts to address crimes against the rights of future generations aim to facilitate the effective development of the international community and the international criminal justice system, particularly in declaring individual criminal responsibility for violations of international law that evoke concern for the global populace.<sup>2</sup> From the mid-1990s to the early 2000s, the international community established several international or mixed (dual) criminal courts in response to crimes committed during armed conflicts.<sup>3</sup> This evolution culminated in the establishment of the ICC, driven by a concerted and organized effort led by civil society actors worldwide.

The creation of a new category of international crimes presents considerable challenges, marked by various obstacles and shortcomings. The concept of crimes against the rights of future generations is grounded in a combination of rights and principles derived from international criminal law, international human rights law, and international environmental law. While this concept seeks to advance international law, it does so through the principle of imposing appropriate criminal penalties for behaviors deemed prosecutable and intolerable by the international community.<sup>4</sup> Consequently, the notion of establishing a new international crime against the rights of future generations is intrinsically linked to both reinforcing existing prohibitions on acceptable behavior and to the punishment and prevention of immoral actions.<sup>5</sup>

Crimes against the rights of future generations can be defined as any of the following acts occurring within the context of human activities—whether political, military, economic, cultural, or scientific—when there is a clear awareness of the high probability of harmful effects on the health or long-term survival of any group or community:<sup>6</sup>

1. **Coercive Labor and Living Conditions:** Forcing members of any definable group or population to work or reside in conditions that jeopardize their health and safety, including forced labor, forced prostitution, and human trafficking.
2. **Exploitation of Resources:** Illegally appropriating or exploiting public or private resources and properties belonging to members of any definable group or population,

1 Vicuna, *Eighth Commission Rapporteur: Responsibility and Liability Under International Law for Environmental Damage Resolution* (1997) 34

2 Jagger, *Crimes Against Present and Future Generations* (2014) 45

3 Moazzami and Namamian, *The Third Generation of International Criminal Courts: Achievements, Norms and Challenges* (2014) 114.

4 Conseil Constitutionnel, *Generations Futures Programme* <https://www.conseil-constitutionnel.fr/sites/default/files/2024-02/generations-futures-programme-en.pdf> accessed January 20, 25.

5 Kumar, *Future Generations* (2018) 63

6 Jodoin and Saito, *Crimes Against Future Generations: Harnessing the Potential of Individual Criminal Accountability for Global Sustainability* (2017) 121.



including grand embezzlement or the improper allocation of such resources by public authorities.

3. **Deprivation of Basic Necessities:** Deliberately depriving members of any definable group or community of essential resources for survival, such as preventing access to water and food sources, or contaminating these resources through harmful organisms or pollution.
4. **Forcible Displacement:** Forcibly expelling members of any definable group or community in a systematic or organized manner from their place of residence.
5. **Endangerment of Health Services:** Imposing measures that threaten the health of members of any definable group or community, such as obstructing access to health services, failing to provide necessary medical information, or conducting unjustified medical or scientific tests.
6. **Cultural Suppression:** Preventing members of any definable group or community from exercising their cultural rights, including religious practices, language use, and the preservation of cultural customs and institutions.
7. **Barriers to Education:** Denying access to primary, secondary, technical, vocational, and higher education for members of any definable group or population.
8. **Ecosystem Destruction:** Causing extensive, long-term damage to the natural environment, including the destruction of entire species, subspecies, or ecosystems.
9. **Illegal Pollution:** Polluting air, water, or soil through the release of substances or organisms that threaten the health or survival of members of any identifiable group or population.
10. **Similar Endangering Actions:** Committing other acts that grossly endanger the health, safety, or means of survival of members of any definable group or population.
11. **Widespread Harm:** Any of the aforementioned actions that result in serious, widespread, and long-term damage to human health and the rights of future generations, characterized by indiscriminate and uncontrollable effects.

By framing these actions within the context of international law, we can better understand the imperative to protect the rights of future generations against a range of threats that compromise their health, safety, and well-being.

#### 4. International Legal Standards and Criminal Proceedings

The standards and legal norms established in the Rome Statute encompass various articles related to crimes such as war crimes, genocide, and crimes against humanity. As such, the ICC holds a significant position regarding the investigation and exercise of jurisdiction over these crimes. While the provisions of the Rome Statute have not extensively addressed the rights of future generations, it is still possible to assess the court's jurisdiction concerning crimes that infringe upon these rights.

War crimes are defined as gross violations of customary rules or conventions that are part of international humanitarian law, primarily codified in the 1907 Hague Conventions, the 1949



Geneva Conventions, and the 1977 Additional Protocols. Certain war crimes can be applied to prosecute behaviors that may also be classified as crimes against the rights of future generations.<sup>1</sup>

The primary distinction between these war crimes and similar offenses against the rights of future generations lies in the limited scope of the former. The Rome Statute specifies that war crimes listed in Article 8, paragraphs (a) and (b), pertain only to armed conflicts that do not have an international character. Situations characterized by internal chaos, such as rebellion or sporadic acts of violence, fall outside this scope. The Appellate Division of the International Criminal Tribunal for Yugoslavia defined armed conflict in the *Tadić case*<sup>2</sup> as the resort to armed forces between governments or ongoing violence between organized armed groups within a country. Additionally, the ICC's elements of crimes stipulate that actions must occur within the framework of an armed conflict and be related to it, along with the perpetrator's awareness of the conditions indicating the existence of such conflict.<sup>3</sup>

The Rome Statute defines crimes against humanity as actions directed at any definable group or population based on political, racial, national, ethnic, cultural, religious, gender, or other internationally recognized contexts. These acts fall within the jurisdiction of the ICC, which prohibits inhumane actions that cause pain, suffering, severe physical injury, or damage to mental or physical health. Whether a specific act qualifies as an inhumane act requires a case-by-case examination<sup>4</sup> of factors such as intensity, character, inflicted harm, intent, and the connection between the act and the resultant harm.<sup>5</sup>

Article II of the Convention on the Prevention of Genocide and its Punishment defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. These acts include:

- A. Killing members of the group.
- B. Inflicting severe physical or mental harm on members of the group.
- C. Deliberately imposing living conditions calculated to destroy the group's physical existence.
- D. Actions aimed at preventing births within the group.
- E. Forcibly transferring children from one group to another.

To utilize these definitions in prosecuting behaviors that could be categorized as crimes against the rights of future generations, it is essential to expand the material elements of these crimes to encompass violations of economic, social, and cultural rights, similar to the framework for crimes against humanity.

Acts falling within this framework may include rape, non-lethal violence causing severe

<sup>1</sup> Sub-paragraphs (c), (e), (h) in the draft definition of crimes against the rights of future generations, relate to existing war crimes, including the killing of civilians due to starvation (Rome Statute ICC, Article 25(5)(2)(8)), subjecting people to medical or scientific experiments (Rome Statute ICC, Article 10(b)(2)(8)), and causing severe and long-term damage to the natural environment (Rome Statute ICC, Article 4(b) and 2-8).

<sup>2</sup> **International Committee of the Red Cross**, *ICTY: Prosecutor v Tadić* <https://casebook.icrc.org/case-study/icty-prosecutor-v-tadic> accessed January 20, 2025.

<sup>3</sup> *Report of the Preparatory Commission for the International Criminal Court* (2000).

<sup>4</sup> *Prosecutor v Kordić and Čerkez* (2001).

<sup>5</sup> *Prosecutor v Kayishema* (1999) 7.



injury, and actions designed to instill terror or intimidation.<sup>1</sup> The ICC has acknowledged the intentional creation of living conditions calculated to physically destroy a group, which encompasses conditions leading to death from neglect, including lack of housing, clothing, health care, or excessive labor. It is also pertinent to note that actions such as rape, starvation, and the systematic reduction of essential medical services can be included in this category.

In summary, the elements of crimes defined by the ICC largely reiterate that living conditions can involve intentional deprivation of essential survival resources, such as food or medical care, as well as organized forced evictions. Additionally, the imposition of measures intended to prevent reproduction within a group—including sterilization, forced birth control, and prohibiting marriage—aligns with the crimes outlined in international law.<sup>3 2</sup>

Overall, the prosecution of acts equivalent to crimes against the rights of future generations as established international crimes necessitates the presence of elements primarily associated with direct physical violence. War crimes must occur in the context of an armed conflict, crimes against humanity must be part of a widespread or organized attack against civilian populations, and genocide must be committed with the intent to destroy a national, ethnic, racial, or religious group, in whole or in part.<sup>4</sup>

## Conclusion

While there are various avenues to declare crimes against the rights of future generations within the framework of international law, the most effective approach would likely involve amending or supplementing the Rome Statute of the International Criminal Court (ICC). The Rome Statute explicitly allows for the possibility of amending its provisions concerning criminal proceedings.

Currently, the ICC is well-positioned to consider these cases for inclusion within its jurisdiction. However, there are two significant reasons that suggest a long-term effort to create crimes against the rights of future generations is vital. First, within international criminal law, these crimes can be distinguished from other unique cases, such as drug trafficking and terrorism, that may also warrant inclusion in the Rome Statute. Second, while the idea of establishing a new crime to protect future generations is essential for the advancement of international law, it is equally important to ensure that such actions align with the criminal consequences recognized by the international community.

Moreover, creating crimes against the rights of future generations addresses two persistent concerns within international law: 1) the undue prioritization of civil and political rights over economic, social, cultural, and environmental rights, and 2) the need to end impunity for violations of international law that pose serious threats to the life, dignity, and well-being of individuals.

To facilitate these changes, the following recommendations are proposed to amend the provisions related to crimes under the jurisdiction of the ICC:

### **1. Inclusion Proposal:** During future review conferences, governments should propose

<sup>1</sup> *Prosecutor v. Seromba* (2008) 46.

<sup>2</sup> Dangor, *Amending the Rome Statute and Peoples: Crimes Against Present and Future Generations (CPFPG)* (2021) 73.

<sup>3</sup> *Prosecutor v. Kunarac* (2002) 86.

<sup>4</sup> *Prosecutor v. Kordić and Čerkez* (2004) 87.



the addition of at least one regulation to the Rome Statute to incorporate an addendum specifically addressing crimes against the rights of future generations, in accordance with Article 121 of the Statute.

- 2. Domestic Legislation:** Governments should enact domestic regulations that comprehensively support and protect the rights of future generations. These regulations should aim to create a legal framework for international exposure and collaboration, ultimately fostering a global consensus on the recognition and prosecution of crimes against the rights of future generations, with the backing of relevant United Nations institutions.

By taking these steps, the international community can move towards more robust protections for future generations, ensuring that their rights are recognized and upheld in the face of emerging global challenges.



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