



# Institutions for Future Generations

a literature review  
on institutional models  
operation methods  
and challenges

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## Introduction

In an age that is often described as a poly-crisis, humanity faces many complex challenges that require both short-term adaptations, and a more strategic approach to tackle the roots of the problems. Climate change, biodiversity collapse, demographic challenges, geopolitical imbalance, and other critical issues require decisions in the present, but have significant consequences far in the future. More than ever, future generations are stakeholders in our decisions, but they are not able to contest our decisions when the discussions happen.

We have a moral obligation to consider their lives when we make our decisions, thus we need a way to build in that consideration into our decision-making processes. In 2023 JESC started to explore the potential ways to establish institutional solutions to this challenge. We are not the first to think about this. The rights and representation of future generations is present in many legal systems, there are guardians of Future Generations in multiple member-states of the European Union. Also, we are not the first to think about establishing such an office on the EU level - but now, more than ever, the EU needs a way to strengthening its capacity for transformational thinking over a long time-horizon.

As part of this exploration, we have collected and summarized a few previous publications on this topic, as they are guiding our thinking. The list is not exhaustive - as our Future Generations initiative develops, we hope to incorporate more ideas until we find a model that fits both the challenge we face and the political context of our times. In our selection process we were focusing on papers that are approachable without legal background and that are focusing on some aspect that is directly relevant to the institutional design of representing Future Generations - thus instead of philosophy, ethics and legal theory, we focus on working methodologies, good practices, institutional models and past proposals that fit the EU institutional framework. These short chapters are essentially edited notes that we made during reading all these materials. For anyone who wants to go deeper in the topic, we recommend looking for the original studies, most of them are available online. All these valuable ideas and lessons inform us when we develop our initiative for Future Generations in Europe - we hope our thinking process also inspires others to join the discussion.

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## Shaping legal theory in court: climate litigation

Participating in a project led by the Hungarian Jesuits' Institute of Social Reflection, Sulyok collected many relevant cases of climate litigation and explored the trends and innovations that emerged from this field. Climate lawsuits regularly cite the rights of future generations in their claims and the increasing number and success of such proceedings is paving a way for future climate law. As specific lawsuits uncover what safeguards are present in our legal systems to protect the rights of future generations, they also show critical issues where institutions, procedures or the substance of law should be improved to truly consider future generations in the application of law. For these reasons, climate lawsuits are an important source of inspiration for our thinking.

*Sulyok, Katalin. 'Trends of Climate Lawsuits in the Practice of National Courts and International Judicial Forums'. Budapest: Institute for Social Reflection, 2022.*

After defining and introducing climate lawsuits in general, the paper provides specific cases, and based on these, answers some of the argued legal dogmatic questions on climate lawsuits.

### The definition and types of climate lawsuits

The term 'climate lawsuit' refers to a category of heterogeneous processes started on various legal bases. In the broadest sense, it includes all legal proceedings related to the consequences of climate change. These can be grouped as

- Mitigation lawsuits
  - Systemic mitigation lawsuits (enforcing states' overall GHG emission mitigation action).
  - Individual mitigation lawsuits (targeting individual state decisions on GHG emission investments).
- Adaptation lawsuits: enforcing policies on adaptation measures to the unavoidable consequences of climate change.
  - Targeting compensation for the costs of adaptation.
- Compensation lawsuits in relation to the responsibility for damages caused by climate change.

The number of climate lawsuits has been rapidly increasing in recent years. The structural cause for this is that international legal regulation and diplomacy have failed in creating a mandatory legal framework of mitigation: relevant climate change treaties do not contain mandatory and quantified emission mitigation goals for states. Thus, plaintiffs attempt to enforce more ambitious climate change action from the legislative and executive powers. The legal basis for this is not only climate law, but mandatory international commitments like international human rights guarantees. In the first wave of climate lawsuits, the defendant was the state, but lately, the legal responsibility of individual emitters is more and more in the spotlight, sometimes even the individual responsibility of chief executives of corporations. The substantive legal basis is also rather varied: international human rights treaties, constitutional directives, consumer protection laws, company laws etc. are all referred to, and these vary from country to country.

## Trends

The first successful climate lawsuit was Massachusetts v EPA (2007) before the US Supreme Court. The wave of climate lawsuits reached Europe with the first instance Urgenda decision, and since then, there have been multiple proceedings in process in European courts too. This phenomenon crosses legal systems: lawsuits are ongoing in the US and developing countries in Asia and Africa too. This study focuses on the European cases (both domestic and international): mainly (systemic) mitigation cases targeting the inadequacy of national, general GHG emission reduction plans, typically based on the violation of international human rights guarantees. The plaintiffs in climate lawsuits are often individuals or NGOs, occasionally member states of federal states. Often the lawsuits are started in the name of future generations, and the plaintiffs include young adults and children (where legally possible), emphasising that the ultimate goal of these lawsuits is to ensure a liveable, stable climate and safe social and ecological conditions for the new generations.

### **Paradigm shift: Mass v EPA (2007) and the Urgenda decision (2009)**

In the beginning, climate lawsuits were merely present in literature and the first petitions were refused without examining the merits. The first breakthrough was the Massachusetts v Environmental Protection Agency (EPA) case where the US Supreme Court found the government guilty of refusing to regulate GHG emissions.

The plaintiff (the state of Massachusetts) started the lawsuit because its coastal territories are going underwater due to rising sea levels. The head of claim was directed against a certain government decision which, citing the federal Clean Air Act, refused to carry out a legislative bill that would have allowed the EPA to regulate air-polluting gas emissions by new motor vehicles. According to the environmental authority, CO<sub>2</sub> is not a polluting gas, as it is not harmful to human health and is naturally present in the air. The Court first examined whether the case has fulfilled the essential elements of standing:

1. A concrete and particularised injury that is actual or imminent;
2. The injury that is traceable to the act of the defendant (in this case, the EPA);
3. Evidence that favourable action by the EPA would help repair the injury.

In the end, the Court had to decide whether the emission by new motor vehicles was the "cause" of climate change, which caused the rise in sea levels and ultimately the shrinking of Massachusetts's territory. Causality is often problematic to determine, but the Court declared that it is an "erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum"—this is especially significant considering that at the time, the US transport sector was the third largest emitter of CO<sub>2</sub> in the world.

On the European stage, the first such breakthrough was the Urgenda decision, where for the first time, a European government was found guilty by its own supreme court and obliged it to implement stricter and faster mitigation measures. In 2019, the Dutch supreme court (Hog Raad) made its decision on the strategic lawsuit started by the Urgenda Foundation and 668 individuals: the court stated that the Dutch government is obligated to decrease its GHG emissions by at least 25% by the end of 2020. The decision was first made in 2015 in the Hague District Court, the decision was appealed twice, then finally decided by the Supreme Court.

The legal basis of the case was

- The violation of the duty of diligence declared in the Dutch civil code;
- The violation of human rights (right to life and right to private life) declared in the European Convention on Human Rights (ECHR).

The concrete GHG emission measures of the Netherlands are not nearly enough to prevent a temperature rise of dangerous levels—even though the Netherlands is a party to the treaty declaring this level to be 2°C. Parties to the UNFCCC also established as a fact that to avoid a dangerous level of climate change, countries would need to decrease their CO<sub>2</sub> emissions by 25-40% by 2020. The plaintiffs asked the court to declare, in case government measures are failing in this regard, that the Netherlands is violating human rights and the Dutch civil code.

It is important to note that originally, the Dutch mitigation goal by the end of 2020 was 30%, which was decreased in 2011 to 20% (and thus later goals were also modified). It was not clarified why the legislator would think this decrease appropriate or safe. The Supreme Court declared that the government has an obligation according to the ECHR, to implement measures that are objectively appropriate to protect the right to life and privacy. According to Article 13 of the same convention, citizens have a right to ask for effective remedy for rights violations.

And so, the Supreme Court held the second instance judgement and prescribed the scientifically based (lowest) percentage of mitigation— which means it found this obligation compatible with the principle of separation of powers. Also significant is the declaration of the proportionate responsibility of relatively small emitter states, and the fact that the Dutch court found the legal causal relations justified between Dutch emissions, climate change, and the possibility of harmful consequences.

## **Systemic mitigation lawsuits in national courts categorised by legal basis**

### **Human rights guarantees**

- The *Klimaatzaak* case— Belgium did not cut emissions by 40% by the end of 2020 and violated international and domestic laws
- Constitutional basic rights and directives
- The *Neubauer* case— GHG mitigation goals declared in the German climate act were not adequate and clearly defined

### **Internal law**

- The *Grande-Synthe* case— the protection of citizens (in the below-sea-level Grande-Synthe area) would require environmental protection measures which have not been taken
- *Friends of the Irish Environment CLG v The Government of Ireland*— the National Mitigation Plan violating laws of higher standing

### **The state's responsibility of compensation for damages caused by climate change**

- *Notre Affaire à Tous et al. v France* (2021, France)—government's duty to act

### **Lawsuits targeting national decisions related to GHG emissions**

During the environmental impact assessment process and the permission procedures for individual GHG sources, the project's climate impact should also be assessed.

- Plan B Earth and Others v Secretary of State of Transport (2018, United Kingdom)– the expansion of Heathrow airport
- Gloucester Resources Limited v Minister for Planning (2019, Australia, New South Wales Land and Environment Court)– refusal of permission for a coal mine
- People v Arctic Oil/Greenpeace Nordic Association v Ministry of Petroleum and Energy (2020, Norway, Borgarting Court of Appeal)– oil drilling on the Barents Sea
- Vienna International Airport and the Federal State of Lower Austria v the Austrian Federal Administrative Court (2017)– expansion of the airport
- Greenpeace et al. v Austria (Austria, Austrian Constitutional Court)– short distance flights

### **Lawsuits for unexploited renewable energy sources**

- Maria Khan et al. v Federation of Pakistan (Pakistan, Lahore High Court)–clean energy projects
- Syndyk Masy Upadłości ECO-WIND Construction S.A. w upadłości anciennement v Samorządowe Kolegium Odwoławcze w Kielcach (Court of Justice of the European Union)– wind turbines near residential areas

### **Mitigation lawsuits against corporations**

- Milieudefensie v Royal Dutch Shell (Netherlands, Hague District Court)–GHG emissions

### **Investor protection, shareholder rights, and consumer protection lawsuits**

- Commonwealth of Massachusetts v. Exxon Mobil Corporation (Massachusetts High Court)– falsifying climate risks to investors
- ClientEarth v Enea (Poland, Poznan Regional Court)–permission to build a coal-fired power plant

### **Financer responsibility**

- ClientEarth v Belgian National Bank (Belgium, Brussels Court of First Instance)–buying bonds from fossil fuel and other GHG emitting corporations
- McVeigh v Retail Employees Superannuation Trust (Federal Court of Australia)–pension investments

### **Adaptation lawsuits**

- Lliuya v RWE AG (2016, Germany, Essen District Court)–GHG emissions in Peru

### **Practice of international courts**

Climate lawsuits appear more and more in front of international and regional courts. The main issue in these cases is the potential legal standing of the climate change damage remedy petitions. The 2015 Paris Agreement refuses its "loss and damages" article to be interpreted as a basis for the need for remedy, these needs can arise based on international customary law.





There is a growing need for international judicial forums to take a stance on the issue of state responsibility in climate change. Some states are discussing the possibility of asking for an advisory opinion from the International Court of Justice. There is also the possibility of turning to the International Tribunal for the Law of the Sea, and petitions have also been submitted to the World Heritage Committee.

International climate lawsuits have not claimed such successes as the national cases. As an example, the Inuit Circumpolar Conference petitioned the Inter-American Commission on Human Rights against the US, but the Commission refused to petition citing lack of causality.

### **Practice of the European Court of Human Rights**

There are currently three climate cases in progress—the Court has not decided yet on their admissibility.

- Agostinho et al. v Portugal et al.
- Verein KlimaSeniorinnen Schweiz v Switzerland
- Greenpeace Nordic and Others v Norway

### **Practice of the Court of Justice of the European Union**

There has not been a successful climate lawsuit in front of the CJEU so far. The Court can conduct review proceedings on secondary EU legislation, their validity and compatibility with superior law, typically primary EU law and international treaties signed by the EU. This forum would provide the opportunity for plaintiffs to challenge the lack of ambition in the EU climate legislation. However, it is almost impossible for private individuals to have legal standing in review procedures.

The first such case that made rather large waves was submitted in 2018: Armando Ferrao Carvalho and Others v European Parliament and Council, better known as the People's Climate Case. According to the claims, the EU's current climate legislation is in violation of the UNFCCC, the Paris Agreement, the Treaty on the Functioning of the European Union, and the EU Charter of Fundamental Rights. The Court declared that the plaintiffs have no legal standing because of "direct and personal involvement," even though they highlighted that their homes and occupations will be directly and heavily impacted by climate change. The judgement was held up by the Court of Justice of the EU.

### **The main questions in legal dogmatics answered based on the case studies**

#### **Is the ambitiousness of climate policies a political or a legal question?**

The practice of national courts (Dutch, Belgian, French, Irish) is coherent: climate commitments are obligations that can be reviewed by courts.

#### **Is the changing of the mitigation route included in the state's discretionary power?**

Environmental science proves that CO<sub>2</sub> mitigation that was implemented later leads to a drastically warmer climate than a gradual mitigation process started earlier. This means that the impact of the two routes is different in extent and legislators cannot decrease the ambition level of mitigation in the short term, with promises of more drastic measures in the future.

### **Difficulties of identifying causality, partial causality**

Natural science includes even the smallest amount of GHG emissions in the complicated network of the causes of global warming. Law, however, is usually based on the sine qua non causality, meaning that an act can only be the cause of damage if the damage would not have occurred without that act. Thus, even if a factor contributed to the result, maybe even had a significant role, it still might not count as a relevant cause.

The Hungarian Civil Code uses the term 'foreseeability' to narrow down legally relevant causes and consequences. With this, the damager is only responsible for consequences which he did or should have foreseen. But with the synergies and cumulative impacts of emissions, 'foreseeable' and 'direct' are not easily defined.

Another possible solution is recognising partial causality. According to this, any damager can be considered the cause of the damage regardless of only having a small contribution to the impacts.

### **Responsibility of small emitter states: partial responsibility**

Small emitter states routinely reason with having only a small contribution to global GHG emissions. However, their responsibility has been established multiple times by courts. The judgement in the Neubauer case declares that the state has a constitutional obligation to fight climate change even if they are evidently unable to remedy the problem alone.

### **Defining a state's fair share in mitigation**

To examine the inadequacy of national commitments, Courts need evidence-based scientific calculations. International legal obligations only talk about temperature goals, but this has to be translated into the allowed emission of the countries, the so-called carbon budget. This can be calculated based on IPCC reports globally. However, dividing the global carbon budget is not solely a scientific question, it is also based on normative considerations. Thus, climate lawsuits so far have relied either on national calculations independent from governments, or on estimates made by independent international organisations.

### **Can a court declare the appropriate extent of mitigation?**

According to the Supreme Court of the Netherlands, the court can determine the pivotal numbers of climate policies, as it does not infringe on the government's ability to choose between concrete legislative steps. According to the Belgian courts, this is incompatible with the separation of powers.

### **Issues of proof: Scientific uncertainty, climate attribution**

Determining a legally relevant causality between climate damage and emissions is also problematic. Natural science only talks about high probabilities and uncertainties, while a court's task is to judge with certainty, in compliance with the standard of proof. Complete certainty in natural sciences is impossible to attain, considering the randomness of natural processes, the complexity of the examined systems, and the natural scientific methodology. Additionally, even if we can determine the cause of global cumulative emissions, it is chemically impossible to "fingerprint" GHG molecules to know where it was emitted from. The constantly expanding scientific and legal literature of climate attribution is focused on this



problem: determining the ratio of natural and anthropogenic contribution, more specifically determining causal relations and thus the basis for legal responsibility.

However, the trustworthiness of emission data is questionable, as these are usually based on self-reporting. Calculating states' carbon footprints is also subjective, if we take for example outsourced production capabilities– does a company's carbon footprint belong to the place of production, or the headquarters of the parent company? In any case, using certain estimation methods, it would be theoretically possible to assign harmful consequences to specific emitters, if we determine the responsibility of an emitter in relation to their share in global GHG emissions.

### **Human rights violations caused by climate change in the framework of the European Court of Human Rights**

Expanding on the cases mentioned above, the ECHR currently has three climate cases pending admission: two of them claiming systemic inadequacy in mitigation measures, and the third one targeting fossil energy investments approved by the state authorities. The ECHR does not contain explicitly and separately the right to a healthy environment or a safe climate but has declared violations relating to the right to life and privacy. However, there are various specific issues related to the ECHR's practice.

One of the conditions of examining a case is whether the plaintiff can be considered a "victim" of a human rights violation. In some cases, the violation caused by climate change will only appear in the future, and it is uncertain whether the court will determine legal standing based on potential victim status. The future element also makes it unsure whether environmental degradation and pollution have a direct and harmful impact on the human rights of the subjects.

There is also the issue of the territorial jurisdiction of the ECHR, in the case of extraterritorial violations. In this respect, the practice of the ECHR is inconsistent, contradictory even. Thus, it is not obvious whether a state is responsible for the human rights violations caused by climate change outside its own territory.

Another question is what climate obligations do states have based on the current rules of the ECHR: passive (refraining from infringing on private life) or active (creating and implementing protective measures)? Furthermore, it is uncertain how the ECHR will determine the scope and substance of active obligations based on environmental legal practice so far.

According to Article 8 of the Convention, states possess a certain authority to weigh the choice of specific protective legal tools, and it is unsure how much this discretionary right will include the choice on the level of ambition in mitigation policies. Based on the national cases so far, this freedom of decision does not cover taking inadequate measures. A related issue is what scientific bases to choose in order to determine the adequacy of the states' mitigation measures. It will be instrumental to see how much the Court will aim to boil the ECHR guarantees down to the mitigation paths' choice, change, details and chosen technological solutions.

## **A proposal for the UN: a High Commissioner for Future Generations**

Ward puts together a clear argumentation for a Future Generations Office in the UN framework for why it is needed to have good examples that should guide the implementation of such office. Although our project focuses on the EU institutional/legal landscape, the many years' experience of campaigning for a similar office in the UN level informs our thinking and shapes the legal possibilities available to European campaigners.

Ward, Halina. 'Committing to the Future We Want: A High Commissioner for Future Generations at Rio+20'. Foundation for Democracy and Sustainable Development, 2012.

This discussion paper was written in 2012 with the goal of influencing the Rio+20 sustainable development conference and making the case for a High Commissioner for Future Generations within the United Nations framework. Although the zero draft of the Rio+20 outcome document contained the commitment of "further considering" the establishment of such an office, the author states that this is not enough and that the document should commit UN members to a clearly defined and time-bound process leading to the establishment of a High Commissioner for Future Generations (HCFG).

### **Why is it needed?**

People around the world are facing, among others, increasing resource scarcity, rapid population growth, and a consequent strain on our ability to provide for everyone's basic needs. Although progress has been made in tackling these challenges, the high pressure to identify solutions to the crises of the world increases the temptation for short-termism in decision-making on every level. Ensuring sustainability requires structural changes in both politics and society, but on a large scale, these are always thwarted by immediate short-term interests. Oftentimes, however, the interests of present and future generations are not in conflict, but decision-makers are not aware of or do not think about the burdens they are placing on future generations.

As it is incorporated into the UN Charter, there is an imperative to protect 'succeeding generations' from war. With the security threats emerging from all kinds of social and environmental challenges, the UN also has a responsibility to take a longer view. The question is, how to provide the most appropriate institutional underpinnings capable of delivering long-term, lasting outcomes? Future generations are recognized in dozens of international agreements and declarations, and the UN is obviously equipped to adopt initiatives of considerably longer time horizons than a typical election cycle. Although the need is recognised to hand over to future generations a healthy planet with prospects of a good life, the political reality does not comply with this. Due to poor resourcing, poor commitment and poor implementation, planetary boundaries are being breached and the goals set are not being met.

Even legally binding international commitments are not sufficient so long as the institutional guarantees of their implementation are lacking. Thus, the role of the HCFG would be correcting system failures, seeking out and reporting on areas where short-termism is undermining sustainable development, educating, and promoting. They would also have an agenda-setting role: the challenges of our planet are so complex and intertwined that the



solutions must match them in nature. There is no purely environmental, economic, or social response: an integrated approach is needed, and governance systems are able to tackle inequality and unfairness by complying with the founding principles of sustainable development.

### How does it build on existing commitments and international law?

- 1987 Brundtland report
  - The main mission of the HCFG would be to “promote and protect the interests of future generations in the context of the imperative to meet the needs of the present without compromising the ability of future generations to meet their own needs.”
  - The present and future generations are already the focus of sustainable development.
  - No priority is given to present over future needs: we must understand intragenerational and intergenerational equity as linked and indivisible.
- Sustainable development: the process and goal to which the world’s nations committed at the 1992 UN Conference on Environment and Development.
- There is no international instrument (as of 2012) that provides a comprehensive basis for matters concerning future generations—the closest is the Declaration on the Responsibilities of the Present Generations Towards Future Generations, adopted by UNESCO’s 1997 General Conference. The Declaration also calls for states to promote the ideals laid down in the document, as well as encourage their recognition and effective application.
- There is a strong case to frame the mission of the HCFG in terms of future generations’ ‘interests’ that relate to their ‘needs’. ‘Rights’ are somewhat more difficult to reason about, but needs are included in the original definition of sustainable development, and interests can shift over time and be revised.
- The international legal principle of the common heritage of mankind is also related to the intergenerational aspect of sustainable development, as can provide a reference point.

### Other positions providing inspiration and example

#### UN High Commissioner for Refugees

- Established in 1951 on the basis of a 1949 General Assembly Resolution. A further resolution adopted the Statute of the office and called on states to cooperate with it.
- Entitled to monitor, report on and follow up its interventions with governments, and play a role in the capacity-building of relevant authorities, judges, lawyers, and NGOs.
- Extensive supervisory functions in relation to the 1951 Convention Relating to the Status of Refugees.
- Executive Committee of 85 UN member states
- Reports annually to the General Assembly through ECOSOC

#### UN High Commissioner for Human Rights

- Established by a 1993 General Assembly Resolution, which also contains the guiding principles for the implementation of the mandate.
- Secretariat services to human rights treaty bodies, but not a wide range of supervisory functions. Complaints and communications can be made to most treaty bodies (not directly to the HC).
- Responsibilities are less specific than the other HC.

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- Reports annually to the Human Rights Council (subsidiary body of the General Assembly), and to the General Assembly through ECOSOC.

### **Commissioner for Human Rights in the Council of Europe**

- Independent, non-judicial institution, playing a watchdog and a promotional function.

### **OSCE High Commissioner on National Minorities**

- Early warning and “early action” role in identifying and seeking to resolve ethnic tension

### **Ombudspersons**

- Typically investigate organisational or functional maladministration, exercising of functions.
- (Quasi-)judicial dispute resolution function, responding to and investigating complaints, issuing opinions as an independent watchdog.

### **Commissioner for Future Generations in Hungary**

- One of four Parliamentary Commissioners (at the time).
- Investigating complaints related to a broad range of environmental issues, policy advocacy for sustainability issues in legislation and public policy, undertaking and promoting sustainability-related research projects.

### **UN Ombudsman system**

- The Ombudsman and Mediation Services are designed for workplace resolution relating to UN employees.
- **No UN-wide operating standards** or safeguards in relation to future generations and in interstate matters relating to future generations, complaints and compliance matters are treaty- or organisationally based.

### **What should the UN High Commissioner on Future Generations be like?**

- The thematic scope of the HCFG should only be limited by the scope of the Brundtland definition of sustainable development.
- Concern for social injustice and inequity must be deeply embedded within their modus operandi.
- Must be independent and impartial, capable, with visionary leadership, high personal integrity and expertise, general knowledge and understanding of people with different cultural contexts, negotiation skills, the capacity of moral reasoning and policy analysis, and the ability to engage with law and legal reasoning.
- Must be ‘UN-savvy’: inspire strategic commitment across the UN, catalyse institutional innovation on multiple levels, be able to build consensus, cajole and highlight good practice. Much of their power to secure implementation would be through soft power: negotiation, media, publicity, and political acuity.
- Must embody a goal of democratisation and bring UN processes, policies, institutions and instruments closer to the people to allow and encourage them to participate in protecting future generations and criticise processes. This comes with public transparency in their work, also allowing for confidentiality in appropriate cases, however, the existence of any confidentiality agreement should be made public.



- Must have authority of their own motion to initiate inquiries, issue statements, act independently from political concern, and conduct and coordinate multi-stakeholder country reviews.
- Should provide early warning of system faults and provide possible solutions, find gaps and omissions, as well as areas in any part of decision-making, execution or implementation that undermine the UN's ability to meet the needs of the present without compromising the ability of future generations to meet their own needs. They should also foster institutional development and help build capacities on multiple levels.
- Could develop a real-time ongoing system of receiving information from multiple sources.
- Should build a body of advice, analysis, and practice to facilitate a systematic approach, and to develop alternative solutions by asking: "Could there be a better way?"
- The supporting staff will need to take a highly multidisciplinary approach.

### **Institutional design**

- The Office should be funded from the regular UN budgets, to not divert funds from development programmes. Additional funding and voluntary contributions may be acquired, but the core funding must be enough to carry out its mission efficiently.
- The HCFG should report annually to the General Assembly, and submit a strategic review at least once every five years.
- The HCFG should have the power to present their views—in order to share results or findings, or initiate dialogue—before any relevant intergovernmental UN committee or the General Assembly.
- Should be linked to an umbrella body for sustainable development, but not to one of exclusively environmental dimensions: it spans a wide range of issue areas.
- It is not immediately necessary to transfer functions from existing institutions or nest the body under a (revised or existing) umbrella sustainable development architecture. The HCFG should be independent from other institutions or agencies, with day-to-day operational accountability to the Secretary-General, and the above-mentioned annual reporting.
- The Office should be created through a General Assembly resolution that could already incorporate a Statute. The Resolution should also contain the powers, responsibilities and guiding principles of the mandate, and a call on governments to cooperate with the HCFG on a range of listed matters.
- One of the HCFG's first tasks will be to establish a UN-wide strategy for future generations and to call on all UN bodies to consider how their actions and procedures impact and address future generations.

### **Powers and responsibilities**

#### **Agenda-setting and leadership**

- To enhance international cooperation with institutions, treaty secretariats, initiatives and states.
- To act as an advocate in the UN family to make the implementation of its mission a central commitment and enhance support for relevant bodies.
- To play an active role in removing obstacles and meeting challenges to realise its mission.
- To engage in dialogue with states on the implementation of its mission.
- On request, to offer advice on the implementation of existing intergovernmental commitments.





- To develop or initiate proposals to include future generations in international legal frameworks.

#### Monitoring, early warning and review

- To provide states and the UN family with early warnings and recommendations for action.
- To propose, coordinate and report on progress based on conducted reviews.
- To request UN organisations and specialised agencies to report to the HCFG on how their norms and procedures address future generations.

#### Public participation

- To advocate for, promote, and facilitate engagement and participation of the public in identifying and resolving issues related to its mission.

#### **Innovation capacity**

- On request from or with the consent of the states concerned, to help build capacity at the national and subnational levels through cooperation.

#### Public understanding and evidence

- To catalyse and develop UN education and public information programmes.
- To catalyse and develop independent research to promote learning.

#### **Reporting**

- To report annually to the General Assembly and any other body or agency designated by the General Assembly.

#### **Further development**

Over time, the strategy and role of the HCFG should evolve. For example, as there is currently no overarching future generations programme, the HCFG should lead its development. After the strategy has been adopted, the HCFG should be charged with leading it. Developing a strategy for the High Commissioner's Office is also needed, as well as outlining work programmes in relation to capacity-building, engagement within the UN family, network development and public participation, media and communications, and review processes. The paper also advises that the HCFG initiate a development process for a People's Charter for Future Generations, which would set out the minimum safeguards that people around the world could expect the UN to follow. This would lay the basis for the HC to investigate representations from individuals and civil society groups.

International law related to sustainable development and future generations has a progressive development linked to new needs arising. The High Commissioner for Future Generations could take a leadership role in this process and provide analysis and assistance to ensure the necessary process of legal adaptation. Ultimately, a framework convention could place a formal legal duty on states to cooperate with the HCFG, and it could also provide a new responsibility: to supervise the application of the convention, as well as propose improvements or modifications as required.



## **Towards international recognition of Future Generation's rights: UN principles**

In the United Nations another process focusing on future generations is taking place, the previous study was also a part of this. This year another milestone document was published, that is preparing the way for further steps on the formal representation of future generations.

United Nations System Chief Executives Board for Coordination. 'Common Principles on Future Generations'. UN, 2023.

To support sustainable development, the United Nations High-level Committee on Programmes (HLCP) defined three strategic areas to work on in the coming years, the second of which is a set of prioritised set of actions under the label of "duties to the future." There is also an ongoing intergovernmental process set to finish by September 2023, which is developing a Declaration for Future Generations.

The HLCP working group of UN system entities drafted a concise set of principles to guide the UN's work on future generations, which document was endorsed by the United Nations System Chief Executives Board for Coordination in May 2023. Aside from ensuring common values, the aim of these principles is to ensure greater clarity on terminology and to be used across various contexts (strategic planning, policy advice etc.) within the UN system, and each entity should implement these principles based on their respective mandates, procedures and regulations.

Before introducing the principles, there are some disclaimers that are important to note regarding future generations. Just as present generations, future generations will include people of all ages, so it is important to consider the needs of all age groups. Focusing on future generations does not mean the neglect of non-human life: safeguarding the ecosystems and biodiversity of the planet is intimately connected to the lives of present and future generations. It also does not mean the neglect of current generations: upholding the rights and meeting the needs of present generations in a just and inclusive way, in the spirit of sustainable development, is a precondition for the well-being of future generations. Anticipation, adaptation capabilities, and future-focused planning are also needed as the future is unpredictable and there is a need for flexibility in facing the realities around the globe in the future. The principles build on the UN's long history (starting with the Charter) of recognizing the importance of safeguarding future generations and as the UN has a mandate for promoting global long-term governance, the focus and principles on future generations can help anchor long-term thinking in policy choices, programming, and governance.

### **The principles**

1. Promote a vision for future generations based on human rights and equity;
2. Pursue fairness between present and future generations;
3. Recognize and foster an interconnected world;
4. Think, plan and act with future generations in mind;
5. Ensure meaningful representation of future generations and their interests;
6. Foster open science, data and knowledge for the future;
7. Foster a future-oriented organisational culture and capabilities;
8. Strengthen inclusive partnerships and global cooperation.

## **Representing Future Generations in the EU**

Jávor, a former MEP who was also a leading member of the coalition that facilitated the establishment of the Hungarian Ombudsman for Future Generations, also worked in the European Parliament towards the establishment of a similar office in the EU. This document outlines the thinking behind this campaign.

Jávor, Benedek, and Judit Rácz, eds. *Do We Owe Them a Future?* Budapest: Védegylet, 2006.

The book was published by the Hungarian ecopolitical NGO Védegylet, which played a central part in establishing the Ombudsman for Future Generations in Hungary. The book was published in 2006, which means that much of the legal and political environment is rather different today. However, the goal of protecting the rights of future generations is the same, and many of the arguments and the foundations laid down are still very relevant and can aid the establishment process today. Many of the studies were written by people involved in their countries' future generations representation institutions and their writings contain not only scientifically sound ideas but also personal experiences.

The foreword makes it clear that politics has an ethical responsibility towards future generations, but for this to lead to concrete action—instead of just a guilty conscience—, it must be translated into the code of social activity that is the language of law and politics. The book contains individual studies with the contribution of international experts, philosophers, lawyers, political scientists, and EU specialists, and aims to initiate a professional and political debate on the institutional protection of future generations in the EU, as well as provide a set of possible proposals.

### **Philosophical foundation**

The first part of the book stresses that we have a responsibility not to pass burdens unnecessarily to the next generations, as it is already recognized, and even legally codified in many countries. An obstacle in adapting this kind of long-term thinking is the democratic system: the short election cycles encourage short-term thinking through the need to appease the electorate - however, democracy must not be discarded when thinking about the future, rather, it is one of the most important legacies we can leave behind for the next generations. For this, we need to create a good, "humane" governance, and a mechanism with capabilities to represent and guard the rights and interests of future generations. The first steps have already been taken: constitutions around the world refer to protecting intergenerational justice ecologically, financially, and/or generally. There are, however, significant differences in wording, and the width of the intersection between morality and law. The second study details the makings of an effective constitutional clause defending the rights of future generations from wording through counter-arguments, to potential exceptions.

### **Case studies**

The second part introduces case studies. In Finland, the Committee for the Future in the Parliament has turned out to be an innovative political body working in the inner circles of the parliamentary system and proving that parliamentary measures can be used to take the initiative within a democracy. As it has become rather international in character, it provides an excellent vantage point, and an opportunity for politicians to broaden their views even beyond



their own country, and many of the then-current government's Ministers had been members, as well as the leader of the opposition.

In the case of Israel's Commission for Future Generations in the Knesset, its clearly defined legal focus was the legislative process, but when acting in defence against offensive legislation, it often found itself siding with certain NGOs, public initiatives, and companies that are already campaigning to promote or prevent the given legislation. Although this calls into question the exclusivity of the position, it also opens the door to a new function: using its unique position, the Commission became a facilitator that channels information, ideas, and professional legal advice into the parliament from these actors, after scanning them thoroughly to eliminate foreign interests.

In his conclusions, the author (the Commissioner at the time) states that for such a position to be effective, it must be familiar with the work of the executive branch (and demand information from it) and its influence on society, as well as have the capability to act vis à vis the government. For an effective solution for guarding future generations, a comprehensive and holistic solution is needed. The Commission has the important role of passing on values and knowledge, but the orientation toward the long-term must be incorporated into all government level. For such, the Commission would need much larger financial and human resources- and even then it may not be able to deal with all government activities itself.

For the third case, Benedek Jávör wrote about the processes concerning the bill that later (in 2007) led to the establishment of the Ombudsman for Future Generations in Hungary. The main takeaways are that

- Political support for such an initiative can only be built up very slowly, so the claim for the establishment should be maintained for years.
- There is a greater chance of expanding the functions of an existing institution than setting up a new office, as there are strong calls for deregulation and a smaller state.
- The Guardian/Ombudsman needs to be a clearly defined institution with both soft and hard tools that complement each other.

We are also introduced to the concept of future councils, advocated by the Swiss Future Council Foundation. Instead of approaching from the perspective of representation, this chapter is based on the question: how can the decision-making process be organised so that it is anticipatory, transparent, and able to deal with long-term issues? When the current institutions are unable to deal with the new problems and tasks, they either have to be reshaped, or new ones have to be created, tailored to the task at hand. The proposal for this is a third institution besides Parliament and Government: future councils, which would aim to reflect on paths of development, deal effectively with long-term issues, and strengthen the necessary competencies of the institutions. The council should be able to discuss its propositions in public, bring its opinion and advice to the government and parliament in advance, make propositions of its own, set a deadline for dealing with important issues, connect the parts of the Constitution with long-term goals and have the right for a qualified veto.

### **Legal background in the European Context**

The third part of the book introduces the legal and institutional background for setting up an institution for the representation of future generations on the European continent. Firstly, it outlines the foundations of intergenerational equity, its (then-)current legal status—that



although it is a widely recognised principle, it is not a binding legal obligation or a legal right—and the representation of future generations in international law. Then, it provides a list of factors that should be considered (although not exclusively and heavily depending on each other) when finding options for institutional representation. It includes the composition, the question of legal personality, the location, the scope, the funding, and some possibilities on the parent organisation: the EU, the European Environmental Agency, the UNECE, the OECD, the Council of Europe, the UNCSD, or even as a self-created and/or self-standing entity. No conclusion is reached on the optimal solution: this is merely a list—albeit a very useful one—on weighing all the options for the best possible solution.

The fourth part is a proposal for the institutional representation of future generations in Europe. It does not deal with theoretical issues but proposes three practical solutions that focus on integrating the FGR into an existing institution at the EU level. The integration of guardian activity for future generations into the duties of:

- The Office of the European Ombudsman
- A Committee of the European Parliament
- The EU Agency for Fundamental Rights (in the process of being established at the time of writing).

The proposal is detailed, and although a choice is not made, the options are evaluated and compared based on practicability, power, suitability, independence, field of activity, and time dimensions. Lastly, some possibilities are explored for an institutional solution through related international organisations.

## **Options within the EU institutional framework to establish a Future Generations' Office**

In this paper, IEEP tackled one of the central questions of our challenge in a very practical way: what the legal basis for such an institution is, what is the necessary political process, and what are the likely blueprints for a Future Generations office. A future campaign has to envision the process in a similar manner, but we believe that there are options not discussed in this paper that are promising.

Nesbit, M, and A Illés. 'Establishing an EU "Guardian for Future Generations."'. London: IEEP, 2015.

Despite knowing that multiple policy fields have an implicit or explicit influence on the well-being of future generations, policymakers tend to respond to the wishes of their voters: the current generation. We are still creating policies based on cost/benefit analyses that place value on the options available to the current actors. Many of the challenges which require a response at a European level involve the interests of future generations, and short-term thinking creates a structural bias against future generations—which is why this report examines the potential of establishing a new EU-level role that would act as a guardian for the rights of future generations.

It examines the lessons learned from cases where such guardians have formal legal status as independent institutions (Hungary, Canada, and Wales) and it also includes examples of purely administrative roles such as the ones in Finland, Germany, Israel, Malta, Sweden, and the UK. Then, the potential legislation, relevance, support, and proposals made so far are considered in order to find out what would be the most effective way of establishing such an office.

### **Changing TFEU**

As a conclusion, treaty provisions are preferred, as they would be a visible signal of collective endorsement and a guarantee for the permanence of the new body: they would make it difficult to change or remove the role, and this would allow the Guardian to provide assessments and advice without fear of jeopardy. However, triggering a treaty change would be extremely demanding, not to mention risky, and it would not guarantee the actual impact of the institution on policy-makers—it would be important to press and ensure that other institutions and individual post-holders pay attention to it by putting an emphasis on legitimacy and communicating results.

### **Adapting existing roles**

There is precedent for creating new roles through the Treaties, like the creation of an EU Ombudsman by the Maastricht Treaty, but it would also be possible—and potentially much quicker—to adapt an already existing role. The potential institution giving a home to the role could be:

- The European Environmental Agency, but this is concluded to not be a good option as it would be too focused on purely environmental affairs.
- The European Ombudsman (based on the Hungarian example), but there is a significant conceptual difference between an Ombudsman role and a Guardian for Future Generations.



An ombudsman is essentially an impartial investigator who is called to action by complaints but has no specific policy-making role. It deals with concerns about the administrative standards being applied, whereas the Guardian will need to have close involvement in the policy-making process to ensure that the interests and rights of future generations are reflected in the legislation. Another obstacle would be exactly what makes this strong and permanent: the EU Ombudsman is defined by the Treaty, which makes amending it difficult.

- The Fundamental Rights Agency, which collects and analyses data on fundamental rights issues, conducts surveys and research, and prepares handbooks. It was created by Council Regulation No 168/2007 and its work is based on the Charter of Fundamental Rights of the European Union. The Charter states that environmental protection and improving the quality of the environment must be integrated into EU policies and there is also a reference to future generations, but more as a limitation on the exercise of broader issues covered in the Charter. With the FRA's narrow focus on the Charter—and the potential risks and challenges involved in renegotiating the Charter—it would be difficult to adapt the FRA to serve as a Guardian for future generations.

However, the will among member states and institutions to renegotiate the Treaties is very low. Its impact on the policymakers still would not be guaranteed, even with a treaty basis, so it would also be important to ensure its effectiveness in practice by placing a strong emphasis on the legitimacy of its interventions, the communication of its findings, and the pressure of institutions and position holders to pay attention and commit to its advice.

### Separate legislation

Separate legislation is also an option, it would have the added benefit of acquiring the support and agreement of all three institutions, thus cementing its longevity. However, it would likely have many of the same problems as a treaty modification: special care should be taken to ensure the Guardian's impact on policymakers, and its continued relevance. Establishing a Guardian role could work as

- stand-alone legislation focused on creating a new body. According to the paper, the limited attention given to sustainability by the (then-current) Juncker Commission, and the need for broad institutional and cross-party support (because of the co-decision process) makes such an option unlikely. A long-term campaign by civil society organisations could potentially shift this tendency, if able to prove the role's importance and relevance.
- Provisions included in another piece of legislation to establish an institution that supports the implementation of that legislation. There are precedents for such sectoral legislation, but their roles are extremely narrow. A slightly better option would be to establish an action programme with a very broad environmental scope, but this would mean that the role is focused explicitly on environmental policy and exclude the societal and economic impacts on future generations.

Until a long-term solution is achieved, we should utilise opportunities that provide a less legally secure, more opportunistic option by building on current proposals by the commission and amending those. A way to do this is to introduce provisions into sectoral legislation, but that limits the scope of the role to the scope of the legislation. Amending the Juncker Commission's (since adopted) proposal for an [inter-institutional agreement on better regulation](#) would have been an attractive solution for progress in the short-term (despite potential difficulties with funding, the institutions pulling out of the agreement, and the lack of



political will) - especially as the proposal is not concerned with long-term sustainability issues. To achieve this, again, a concerted push by interest groups is needed.

As backup options, short-term solutions can be pursued through ad-hoc administrative arrangements such as

- an EP secretariat role or changes made to the Commission's Regulatory Scrutiny Board.
- An entirely independent institution with no formal role, funded through philanthropic sources.

Based on the analysis of the national examples, solutions like this would not guarantee the longevity of the role (which can limit the freedom of expressing concerns about policies). It would also lack one of the main purposes of a Guardian by being able to advise only one of the institutions and not all 3 of the major ones. We should also tread carefully with purely administrative roles, as they can weaken the case for a more formally established independent body, so in case it is needed to fall back to these kinds of solutions, it should be done with the mind of taking a step towards a treaty change or a stand-alone legislation and explicitly agreeing that they are experimental and leading towards a more formal and permanent arrangement.

## **Is it possible to represent Future Generations in a democracy? - A participatory approach**

Who are Future Generations? What are their needs or rights? A key challenge in our endeavour is the fact that future citizens are not able to contest our thinking in the present. How to give legitimacy to the representation of them? One potential response to this question is creating a participatory process, where citizens have the responsibility to think long term, and inform the decision-making process based on their best judgement.

Smith, Graham. *Can Democracy Safeguard the Future? Democratic Futures*. Cambridge UK; Medford, MA: Polity, 2021.

Democracies have a blind spot when it comes to developing robust long-term policies that safeguard the interests of future generations. Climate change is a paradigmatic case of this acute short-termism, even though policymakers are aware of the urgency of the situation. According to this book, there are four main reasons for this: the absence of future generations representation, the shortness of the electoral cycle, entrenched interests, and the broader capitalist system.

### **Institutional weaknesses of democratic systems**

Regarding future generations, they cannot put political pressure on decision-makers because they do not yet exist. However, they still need representation as it is argued that when policies are worked out without the input of the politically excluded constituency (women or minorities are good examples of this), they are unlikely to engage all relevant concerns. But in the case of future generations, any democratic design for representation will have to be a second-best solution, a surrogate representation, as they cannot represent themselves or elect their own representatives. After painting a detailed and constructive picture of the problem, the book goes on to consider modifications to the structure of democracy to facilitate long-term decision-making.

Electoral cycles are short, and political decisions are always made with a constant eye on the next election. Long-term policies are usually not considered a vote-winning strategy, as the more immediate benefits we are pursuing, the more we are pushing the solution of problems to the future. Another challenge in this area is that even if a government introduces a long-term strategy, it will have to be applied consistently by the next administrations- but that is a practical obligation, not a legal one. Government decision-making is structured on tools that systematically favour immediate economic gratification. Citing research conducted by Will Jennings, the public considers politicians to be so influenced by established interests and so obsessed with capturing short-term media headlines that democratic politics no longer represent the interests of everyday citizens.

Talking about established interests, the political agenda is also shaped by various interest groups-and the incumbent interest groups usually apply pressure to preserve the status quo. Broader cultural and economic processes influence the activities of democratic institutions as well-the capitalist system is in focus here. Market logic is applied in resource distribution, businesses operate based on quarterly reports and short-term share price and market value, banks apply short-term investment strategies, and austerity is enforced instead of long-term





investments. The media is also a party in this, and the focus on the short-term places a constraint on the capacity of democracy to safeguard the future.

Our democratic institutions today are not very different from what we had in the 19th century: they were designed for a completely different set of challenges than the ones we are facing today. Democratic institutions must be reinvigorated and restructured in order to be able to respond to the current long-term challenges.

The more veto points there are in a legislative system, the more consensual decision-making is, and this way, the system will deliver outcomes that are more sensitive to long-term considerations. To transform the system, the first consideration is the establishment of a parliamentary committee with long-term considerations across all policy areas as its mission, with the examples of Finland and Germany and similarly aimed bodies in the UK and Scotland.

### **Proposals for fundamental change**

It goes on to propose modifications to electoral systems and constitutions. In the case of elections, the longer the political terms, the easier it will be for far-sighted policies to be established. However, this may also have the unintended circumstance of putting even less of a brake on the tendency to privilege the above-mentioned entrenched interests, so the focus should be not on how often we vote, but on how to change the characteristics of the electorate. Most democracies have ageing populations, which means lower proportions of younger voters: political parties recognise this, and appeal to the short-term interests of older generations to gain votes. In turn, young voters will feel that they are not heard, and tend to become less politically active, which in turn increases the political influence of older voters.

A solution for this, to provide surrogate representation for future generations, would be to set aside seats (around 5%) in the parliament for surrogate future generations representatives. All citizens would have two votes in the elections: the second one being for future generations. Governments would be incentivised to put forward more long-term policies in order to counter minority action. As this may be a controversial proposal, a less radical solution would be to grant a sizeable minority in legislation the right to delay or to require a referendum on a bill they believe threatens serious harm in the long term.

However, all these ideas are reimaginings of the current practices and institutions, which are inadequate for handling long-term decision-making. Democracies need independent institutions that are designed with the specific purpose of defending the interests of future generations and embedding long-term thinking into democratic systems. Agencies like this have been established in the UK, Hungary, Israel, and Wales, however, their powers were removed or reduced as soon as they attempted to restrict the government's and parliamentarians' room for manoeuvre by doing specifically what their mandate required. The book explains their challenges and suggests possible solutions to create independent offices that will work effectively.

### **Challenges and solutions of independent future generations offices based on the examples**

- Potential overlap and tensions between independent institutions with different policy mandates (UK)
- These bodies have limited influence across the government (UK)



- Although a parliamentary commission may be created by a parliament to amend its own shortcomings, it may also be abolished because its influence is felt by the elected politicians; restricting the government's and parliamentarians' room for manoeuvre (Israel and Hungary). A lesson here is that the more power an institution has, the more it feels like a threat and the more likely it is to be restricted.
- The competence to decide what is good for future generations can be called into question (Israel). However, the goal is not to choose what future generations will want but to preserve the broadest spectrum of choices possible for them. If the main concern is the individual choice of the commissioner, a collegial system can be a solution.
- Being in conflict with financially significant supporters of the governing regime can also lead to the abolishment or restriction of the body (Hungary)
- The question of democratic legitimacy: should non-elected bodies intervene in the political actions of elected representatives? But it is often forgotten that such features are granted by the law: these offices are created by elected politicians.
- Compared to most independent agencies, future generations ombudsman offices are vulnerable politically because they lack a strong constituency that would offer political support in case of a threat. A political and institutional context needs to be created, in which the OFG can defend itself against short-term dynamics. Constitutional protection is a solution. Public participation enhances the political robustness of these institutions, like the ability to submit complaints (Hungary), national conversations (Wales), and a form of 'downward accountability' with the agency being responsive to the citizens. The complaint system also brings in a diversity of perspectives and gives the office a track to focus on (Hungary).

Deliberative mini publics are suggested to further a participatory approach, but in the long term, DMPs alone would not work. We need experiments to develop these processes (the Future Design movement in Japan is producing interesting results), and we need to think not only about the political realm, but also to create participatory approaches in other power centres, like economic organisations. The currently dominant strategies for designing future generations institutions miss the direct involvement of the people, which is a critical component of a well-functioning and sustainable institutional system. The optimal solution will appear after blending the different strategies explained in this text.

## **Addressing controversies: representation or dictatorship in the name of the future?**

Göpel in this book chapter addresses some counterarguments and critical voices who doubt that Future Generations should or could be explicitly considered in democratic decision-making processes. A leading intellectual behind the campaign of World Future Council, she addresses these questions with a practical approach, offering good examples and potential solutions to challenges.

Göpel, Maja. 'Ombudspersonen Für Zukünftige Generationen: Diktatoren Oder Bürgervertreter?' In *Kann Demokratie Nachhaltigkeit?*, 89-110. Springer, 2014.

Sustainability is not failing because we lack knowledge, but because implementation is lacking. The main problems are:

- Separate disciplines and silo thinking instead of integrating the environmental, social, and economic dimensions. Ministries are organised in a monolithic manner, without considering the crucial interconnectedness between their fields. Institutions are thus limited by their mandates.
- And the fact that long-term interests are difficult to pursue. Short-term lobbying successes and electoral manoeuvring take priority over long-term gains.

Although European support, in general, is high for the protection of future generations, proposals for the institutional strengthening of this agenda on a national level get rejected harshly and repeatedly in Germany based on terms such as "eco-dictatorship" or "communist planned economy"— the paper details the possible reasons for this, and seeks to prove, through examples, that the German fears are unfounded and that standards and requirements keep ombudspersons as effective and democratic guardians of the future.

### **Future generations in law**

The protection of future generations is not solely a moral responsibility, but something explicitly declared in international treaties (such as the Charter of the United Nations, the Charter of Fundamental Rights of the European Union) and some national constitutions; future generations are legal subjects by law and they are bearers of interests, needs or rights (depending on the subject area). Thus, sustainability and protecting future generations have a strong human rights basis, and long-term orientation in politics and business should appear not as a restriction of freedom rights, but as a guarantee of freedom in the future, and as an investment in making political work more effective and resilient. Even so, right now, sustainability is seen more as a chore than a key objective.

Actors with seemingly opposing interests should also be convinced considering that it is a vicious cycle: there can be no stable business in a destroyed environment, and without stable business, there is little social security and justice, which decreases trust in politics and business, which in turn stifles the potential for collective change processes and the environmental destruction will continue.



## The German debate

According to the German Advisory Council on Global Change (WBGU), technological development alone is not sufficient to deal with the crisis: a new social contract is needed, with a culture of mindfulness, participation, and obligation towards future generations. They also propose that the German Basic Law, a “future chamber” should be included as a binding state goal, explicitly focusing on long-term oriented expertise. Ombudspersons are also proposed, to increase direct democratic participation. Supporting sustainable development through changing values and verifiable public opinions is emphasised.

In the reviews of the WBGU report, however, the parts aiming to strengthen democracy—or to be more exact, any institution that increased accountability—were denounced as planned economy or eco-dictatorship. The head of WBGU said in a personal interview that the “dictatorship of the now” should be overcome, that is, the comprehensive plundering of the future and the past.

The Former President of the Federal Environment Agency also pointed out that Germany is consistently failing in a national goal laid down in the Basic Law: for the state to protect the natural foundations of life and animals and take responsibility for future generations. He calls for the Federal President to be made an “advocate for sustainability,” with a 60-person advisory council whose members are elected by the Federal Assembly for 15 years and must not hold any other positions or mandates. But even these individual proposals cannot eradicate short-term decision-making when governments are fighting for the renewal of their legitimacy every four years.

## The ombudsman mandate based on international examples

Among the future generations' representations, legal studies have identified the ombudsman system to be the most effective, and at the same time, as a promoter of democracy. In Hungary (until 2011), as the main example, the designated task of the Future Generations Ombudsman is to protect the constitutionally enshrined human right to a healthy environment for future generations. This can be done through studies, consultations, impact assessments, laws, and programmes. With the constitutional change, the institution was supposed to be abolished and the individual right to a healthy environment taken out of the constitution, but due to major protests from civil society, both continue to exist - although the FGO was severely weakened.

The ombudsperson in Hungary showed how directly an intact environment is intertwined with economic, social, and cultural development, by conducting integrated analyses. A great weakness of the position compared to a council was that the ombudsperson’s personal qualities and perception are determining the effectiveness of their work heavily. Therefore, it is important to make the institution strong, and with a permanent staff (around 35-40 people in the Hungarian example), or to upgrade a council with the FGO functions. The fundamental difference between an ombudsman and a council is that the ombudsman is not a purely expert chamber but works on citizen complaints and gives democratic feedback.

The institution must also be integrated organically and with broad legitimacy into the existing legal framework. In some countries, ombudspersons are responsible for implementing environmental laws, but they only have ex-post reporting and mediation capabilities. The ombudsman’s mandate should be proactive, and not only cover the environment. In Israel, for example, the aim was to create a “future dimension” of the Knesset’s legislative work, and the



FG Commissioner made recommendations in twelve policy areas. Other important characteristics of an ombudsperson are:

- Independence: from any institution, including its budget, and the staff members should be without any other obligations or roles, so that they can freely represent the interests of future generations. Even parliamentary commissioners are dependent on the parliamentary budget, Israel's FGC was abolished on the grounds of austerity.
- Right to access all documents relevant to the complaints it is investigating—from the governments, and third parties like companies or research centres. Israel's and Hungary's FG representatives both had this power, except in cases of national security issues.
- Transparency: clear and direct mandate, reports available in easy-to-understand language and all languages spoken in the given country. It is also important that completed studies or research be published without changes or approval by governmental authorities and that the authors, sources, actors, and positions be clearly named. Also, the complaints should be listed and the reason for their acceptance/rejection briefly explained. This is because of the importance of trust in the institution.
- Legitimacy: the ombudsperson has a high degree of democratic legitimacy, as it is based on citizens' complaints and it is needed as institutional support for upholding certain general interests, rights, or overarching goals.
- Effectiveness: the power to halt projects and policy proposals, if there are valid concerns about their impact, as early as possible. Then the opportunity is given for the decision-makers to submit a different statement, submit information later, or change the proposals. In Hungary, the Ombudsperson had the ability to refer the case to a court—this power was not used, but the “shadow of enforcement” was enough to put pressure on actors.

With these features, the ombudsperson would ensure more forward-looking and integrated analyses and decisions, and more awareness of costs and impacts: we can think of it less as a curtailment of current consumption, and more as an investment in future well-being. Through this office, sustainability is given an active voice, it connects directly to the people, and the citizens' complaints also function as an early warning system for emerging trends and loopholes in policy or implementation. The ombudsperson can also work as a mediator between conflicting parties, and policy coherence will increase because laws will be examined from an integrated perspective.

### German criticism and refutation

#### **An ombudsperson with veto powers sounds like a dictatorship, how does that fit with democratic ideals?**

The word “ombudsman” means citizen representative, and although they are not directly elected by citizens, there is a selection process and an election by Parliament. The criteria for candidates generally exclude membership in parties or other interest groups. The office is also directly accessible for citizens, collects information from government offices to the public, and thus strengthens information exchange and the duty of integrity between elections. This is in keeping with the spirit of democracy, and also lets citizens have a much more direct opportunity to exert influence—but the ombudsperson only deals with cases which fit in their mandate, defined by human rights, state goals, or binding political goals—it cannot pass its



own laws. In case of vetoing, the action doesn't mean the end of the project or proposal: an independent court will decide on the justification of the concern for future generations, and this way, democratic discrimination against the citizens is ruled out.

### **Why should future generations be prioritised when current generations are still suffering from poverty?**

Because the two generations' needs are not in conflict with each other; the abolition of poverty and the full and dignified participation of all people in social and economic development is a prerequisite for the well-being of future generations. Today's problems need to be solved in a sustainable manner, to preserve the peace and freedom of choice for future generations.

However, integrated thinking does not automatically mean an explicitly long-term perspective. Malta is a good example of dealing with this: they have a sustainability network, a permanent secretariat, and a secretariat for strategic policies, as well as a guardian for future generations.

### **How do ombudspersons know what future generations want?**

Nobody needs to know exactly what they own, do, or want to regulate- it is about preserving the fundamentals, the basic human rights to shelter, food, education, and an intact environment, to also preserve their freedom of choice. These efforts are often sacrificed for economic gains or due to poor implementation. In the case of the EU, the European Commission has proposed the establishment of national-level environmental ombudspersons, or that existing European ombudspersons be given the mandate to monitor the implementation of environmental legislation.

### **Why do we need a new institution? Isn't it redundant and expensive?**

Governmental institutions function primarily by pursuing their own sectoral programs. The establishment of an integrated and coherent policy-making structure is difficult, and many countries solve this by creating sustainable development strategies, and councils and committees to oversee implementation. An ombudsman's office can strengthen and supplement the well-functioning elements of these architectures.

Since no country has a sustainable development model yet, how can we think that we can make do with the same old institutions? Incoherent legislation stands in the way of a systematic restructuring of the economic system, but if we invest in resilient and integrated policymaking in time, we can avoid higher costs and irreversible damage in the future. For example, mandatory environmental impact assessments are seen as an annoying formality, but non-compliance with EU laws on the environment leads to damages equal to 50 billion euros a year. The costs of an ombudsman institution could be financed by fines paid for environmental violations by companies or individuals or the abolition of demonstrably environmentally harmful subsidies.

### **Is the ombudsman untouchable and all-seeing, then?**

The ombudsman, as with all other institutions, must meet its own requirements. It has an intensive and comprehensive reporting obligation, which can be supplemented by liability laws: informant complainants why their complaints were/weren't accepted, or the prosecution of the ombudsperson if a reported but not prosecuted case leads to environmental damage. If complaints accumulate against the office, the person should be replaced first, and (instead



of abolishing the office), a search will be made for weaknesses in the mandate and an external evaluation could also be prepared. In case of demonstrable and persistent ineffectiveness, the institution can be abolished by the Federal President.

### **Outlook based on Rio+20**

Sustainable development is in conflict with many deeply rooted values and organisational logics: the psychological tendency to prefer the near present, the democratic election cycles, and the quarterly reports incentivising companies to produce quick profits and exponential growth. These must be made compatible with natural and social sustainability, and centrally designed policies must be reconciled with decentralised development processes. In formulating the documents on the implementation of sustainability, political decisions from the perspective of one's quality of life, as well as our children's and grandchildren's quality of life speaks more directly to people than just the technocratic term "sustainable development."

This is not something that can be accomplished in just one step, so we need to aim for small but effective mechanisms, catalysts, that can change the direction of the dynamics of the system at a few but important leverage points. An ombudsman's office cannot work miracles with only around 40 employees, but important progress can be made in formulating long-term strategies, implementation, and integrated analyses. After the 2012 UN summit, where a proposal to appoint a high-ranking representative for sustainable development and future generations was removed by the hosting Brazilian government, the Secretary-General was asked to write a report on intergenerational solidarity, which concluded that explicit institutional representation is needed, preferably as a High Commissioner.



## **Clarification and Networking: an operation model for Future Generations Offices**

Fülöp, the first - and in its original form the last - Ombudsman for Future Generations in Hungary outlines the operating model for his office: what is the mission of such an office and given the available tools, what is his interpretation of effective long-term representation of future generations? Beyond the individual cases his office worked with, he envisioned a role for shaping policymaking and facilitating the development of legal applications in general.

Fülöp, Sándor. 'Clarification and Networking. Methodology for an Institution Representing Future Generations.' In *Environmental Democracy and Law*, 155-71. Europa Law Publishing, 2014.

The author, the first Parliamentary Commissioner for Future Generations in Hungary details his experiences of the creation and operation of the institution, evaluating the most important factors and patterns in its effectiveness. First of all, he reiterates the importance of such an institution: despite the overwhelming evidence, scientific data and warnings, conferences and diplomatic discussions, commitments and implementation are still lacking. Countries are playing prisoners' dilemmas and continuing free-rider policies to keep up "economic development," while waiting for others to take the first step and save the world. The goal of such an institution (at least in the case of Hungary) is to confront the decision-makers and break through the familiar patterns of convenient policies that are disguised as sustainable development. For this, a careful, consequential multidisciplinary clarification is needed of the background, motivation, processes and outputs of environmental conflicts.

A single institution cannot run a successful environmental campaign: networking is an indispensable methodological trait of institutions working for intergenerational justice, and it determined the internal structure of the Hungarian FGO. The institution also needs to be innovative, and not a replication of other administrative bodies—which do not take advantage of clarification and networking— that are single-issue, narrow-minded, and thus prevented from offering substantial solutions. The Hungarian FGO tailored its work toward multilevel ecological degradations and threats, and set up its internal structure, working methods and outside networks to solve both smaller and larger environmental conflicts. The office also took advantage of up-to-date social science knowledge about network society, and the psychological and institutional defence mechanisms that prevent individuals, groups, and societies from confronting the threats and challenges of ecological catastrophes. Because these will lead to global famine, thirst, lack of sanitation, pandemic, loss of habitats, social aggression and more. The main challenges are:

- System of ecological catastrophes— not only climate change, but a complex system of global issues, which requires complex and global solutions
- Pollution in the waters, soil, and air that can support almost no living system
- Loss of resources leading to the halt of large-scale food production (phosphates), and the chemical industry (fossil fuels)—technological development might be able to tackle these issues
- Environmental degradation will require thousands of years to recover- not compatible with human life.
- Environmental sceptics receive much higher media attention than they would merit proportionally and morally





- Countries' short-term economic gains and old patterns of rivalry in diplomacy over cooperation and ambitious initiatives and effective implementation
- Psychological defence mechanisms on the personal and on the social level: denial, separation, slicing, and projection

The only practice that can tackle these challenges effectively is clarification: taking the facts and fully gauging them, surveying tasks, responsibilities, and chances, discussing them on public for a, and occupying a solid space in the system of counteracting.

Another challenge is that in developed societies, trust as social capital is decreasing, giving way to short-sighted strategies and institutions reacting more and more aggressively to anything that challenges their status quo. However, these too can be countered through new technologies, by processing and disseminating information that can change the economy, power systems, and the attitudes and values of people. The widespread availability and increased value of information might lead the way to the age of networking, where the current ruling forces of our society will be complemented by participatory democracy, bottom-up community media and transdisciplinary sciences. If we consider the historical, philosophical, and psychological approaches, we can conclude that these social changes will result in a paradoxical growth in individualisation, where people will be less dependent on hierarchical powers, but instead, will be much more interconnected via horizontal networks. This way, orders and coercion will give way to contractual and consensual relations.

### Experience based on the Hungarian future generations institution

The initiative of an environmental ombudsman was raised in Hungary in 1989 during the writing of the constitution, and then the codification of environmental law in the 90s. In 2000, with the help of László Sólyom, the NGO Védegylet (Save the Future) produced a textual legal draft. Two years later, the NGO convinced some MPs (both government and opposition) to issue a joint bill in Parliament about the institutional representation of FG. This initiative failed, but Védegylet managed to keep the issue on the agenda, and in 2007, harnessed a rare political stalemate: the Ombudsman Act was amended, and an independent ombudsman for future generations was created.

The leading idea of building up the structure of the new office was "clarification and networking," which—in retrospect—ensured the right track of organic development without arbitrary experiments, and led to good results in solving environmental problems on different scales.

The office had 40 colleagues, based on multidisciplinary of and effective internal network building. As the ombudsman is a parliamentary position, almost half of the employees were lawyers with an environmental or constitutional legal background. The other half was representing various professions like physics, chemistry, biology, medical science, or environmental economics. Lawyers and experts were strongly encouraged to work in teams, and internal meetings received high priority. The FGO operated like a council, rather than an office headed by a figurehead, which ensured a systematic approach. This effective internal network facilitated the clarification of the background of all cases to a surprising level, making the concerned stakeholders eventually change their legal practices.

The office worked with an iterative methodology: they visited the sites several times, as well as the concerned communities and the competent authorities. The draft statements were consulted with all the participants, and their inputs were considered and included in some



way. Through its cases, the FGO created a map of environmental conflicts, highlighting the most important ones, allowing them to systematically review the major types of conflicts and put focus on the most controversial ones. They conducted interviews, research, and scientific conferences, and published detailed reports and proposals concerning legislation and legal practice. For all this, the FGO used its outside network of NGOs, scientific institutions, universities, churches, international organisations, and the media, while their findings were also widely used and referred to by the members of the network.

However, even when their projects did not directly hurt any interests, they often received defensive reactions and counterattacks. The successful cases also resulted in resentment from influential economic circles, making the office's political situation more and more difficult. When the Hungarian constitution was rewritten, the institution was to be completely eradicated—it was only somewhat preserved (as a deputy of the general ombudsman, a consultation body with no examination power or separate resources) due to the large social network of NGOs, academia, and church leaders putting pressure on the government.

## International examples

### Parliamentary Commissioner for Future Generations in New Zealand

- Since 1987
- Not dealing with individual cases, but via individual suggestions
- Environmental problems, but also sustainable agriculture, energy and climate issues, water management etc.

### New Jersey chief prosecutor for environmental protection

- 1990-1994: eradicated by conservative measures
- No direct commitment toward future generations, but creative positioning, high level of independence, multidisciplinary staff and methodology, widespread networking, popularity and outstanding successes

### Parliamentary Commission of the Future Generations in Israel

- Issues that might concern future generations: culture, childcare, pensions, free access to the seashore...
- Power to halt legislative processes of bills in the Knesset - proponents of the bills realised it was better to work together and compromise

### Welsh Government's White Paper on Sustainable Wales

- Cross sector representation, independent, recommending and monitoring indicators of progress, solution-focused, interdisciplinary, ensuring civil engagement, and long-term establishment with stable resources
- Oriented by the explicit definition of sustainable development: respecting the limits of the natural and cultural environment, and promoting social justice and intergenerational equality

## Suggestions

According to studies by the World Future Council and the British Foundation for Democracy and Sustainable Development, the major characteristics of such an institution are long-termism, bringing authorities to agreed-upon sustainability goals, holding governments and



private actors accountable for delivering on them, and connecting citizens with decision-making procedures. It is at once a(n)

- Ombudsperson (conveying citizen concerns)
- Interface (creating incentives for integration and preventing policy incoherence)
- Advisory body (recommending solutions)
- Auditing body (tracing conflict of interest and roadblocks to implementation)

For all this to work effectively, a Guardian for Future Generations must be:

- Independent: they should not hold another post in the structure of the state, they must have long-term budgetary arrangements and an exclusion of re-election.
- Effective: meticulous, consequential clarification of the reasons and nature of environmental conflicts in coalition with stakeholders, with legally binding decisions, as the "shadow of enforcement" is very important even if not used.
- Transparent and accessible: in order to increase trust, with a clear and direct mandate and regular reports and inputs from all stakeholders, maintaining a wide scale of relations with environmental scientific, civil and governmental circles as well as churches.
- Legitimate: large public support, good relationships with all stakeholders during investigations, and widely communicated results.
- System-oriented: holistic, multidisciplinary, and transdisciplinary, aiming cross-sectoral representation and integration.
- Future-oriented: long-termist, proactive, agenda-setting, and actively recommending solutions.
- Multilevel-oriented.

The Guardian must have the power to

- initiate inquiries and issue statements on their own motion
- set agendas and exhibit leadership (including dialogue, advocacy, and advice)
- conduct monitoring, early warning and multi-stakeholder reviews (interdisciplinary, systematic surveys)
- facilitate capacity building for innovation on multiple levels
- foster understanding and analysis
- maximise the value of networking, engagement and dialogue to create transparency but allow for confidentiality if needed
- support public participation via advocacy, promotion, advisory services, technical assistance, education and public information programmes.

### **Legal instruments**

How can existing environmental law be an effective tool to protect future generations? Direct references to future generations' interests are seldom addressed in law (not to mention 'rights'), but more general and basic considerations can give us guidance.

- Principle 3 of the Rio Declaration on intergenerational justice
- Principle 15 of the Rio Declaration on the precautionary principle  
Trial and error experiments are unacceptable with the future of humanity at stake
- Non-retrogression principle
- Polluter pays principle
- Principle of common but differentiated responsibility



- Mentions of future generations in national constitutions
- We need to clarify the situation, create solutions, and establish these as values (general principles) that will then determine the legal system. After the above principles are accepted on multiple levels, plans and policies should be built around them, and the legal institutions and techniques necessary for their implementation should be created in harmony with the rule of law:
- Substantial legal requirements that infiltrate the whole legal system
- Institutions that implement them in an integrative way
- Procedures for implementation and enforcement
- Sanctions
- Etc.

Creating Guardians for Future Generations with a controlling balance function is a logical next step in the legal protection of the environment and could greatly reinforce already existing legal tools.



## **Institutional examples from around the world**

Göpel and Pearce offer examples of institutions that already exist and represent Future Generations in various models. Analysis of such offices strengthens the legal basis for establishing a similar office and offers models for setting up its tools and mandate.

Göpel, Maja, and Cathrine Pearce. 'Guarding Our Future - How to Include Future Generations in Policy Making'. Hamburg: World Future Council, 2018.

The starting problem of this paper is that there is enough wealth on the planet to provide peace and well-being for everyone right now and for the future generations too, but the way we manage it currently is inadequate and unsustainable. Our institutions tend to be independent and fragmented with narrow mandates and closed decision processes. GDP growth is at the centre of policy-making, and other factors impacting people's well-being are sacrificed, such as health, work, social contact, democracy, or free time. Short-term gains triumph over long-term interests and decision-making groups and institutions are divided. The introduction of a Guardian for Future Generations, an Ombudsperson, could mitigate many of these problems by

- Conveying citizens' concerns to the legislating units;
- Creating incentives for policy integration and preventing incoherence;
- Acting as an advisory body and recommending solutions;
- Acting as an auditing body that traces conflicts of interest and roadblocks to implementation.

Therefore, speaking up for future generations and acting as a form of checks and balances in policymaking. By having a clear overview of policy developments and impacts, they can keep in mind and facilitate long-term solutions, while ensuring information flow and exchange. Thus, this office could eventually become the core of integrated policymaking. We can see different solutions to this proposal already in several countries.

### **The examples**

The Parliamentary Commissioner for the Environment (established in 1986) in New Zealand, is an independent officer of the Parliament, focused on giving advice to the Parliament and the public. Their role is broadly defined but allows them to investigate environmental matters, propose legislation on the same theme and submit reports and advice on the investigations and legislation. The advice and reports contain non-binding recommendations, but many of these are implemented by the government, or incorporated into the policies of the opposition parties. The decision of commencing an investigation or submitting a legislation proposal lies with the Commissioner, but it can be requested by Members of the Parliament or spurred by public concerns. They have a 5-year mandate and an assisting office of 20 multidisciplinary staff.

The safeguarding of future generations' rights in Wales is based on the 2015 Well-being of Future Generations Act, which imposes a sustainable development duty on public bodies and obliges them to work with each other and the public, set and publish well-being objectives and ensure that they are met, aided by the seven well-being goals identified in the legislation: global responsibility, prosperity, resilience, health, equality, cohesive communities, and a thriving culture and Welsh language. Public bodies have to follow five criteria: long-term policymaking, prevention over reaction, integration of efforts, collaboration, and involving the



communities. The Act also established a Future Generations Commissioner, as well as Public Services Boards (PSBs) that provide aid in achieving the well-being goals. The Future Generations Commissioner safeguards the rights of future generations by providing advice and support to public bodies and PSBs, researching the application of the well-being principles, conducting reviews, and making recommendations based on them, and preparing a Future Generations Report every 5 years to assess improvements.

The National Commission for Future Generations in Israel was established in 2001 as an inter-parliamentary body to audit legislation on the impacts on future generations. A challenge in establishing the office was the question of which policy areas were of particular interest to future generations, which ended up aligning with the principles of sustainability (although the initiators were apparently unfamiliar with the concept). The Commission was the first explicit representation of future generations within government, with informal veto power in law-making. However, after the first five-year term, the government changed and no new Commissioner was appointed due to budgetary reasons.

In Hungary's case, the need for the state to protect the environment and preserve them for future generations was first recognized by the Constitutional Court in 1994 and then stated in the Fundamental Law in 2011. The Ombudsman for Future Generations was created in 2007 and although its institutional setup and legal status have gone through several changes over the years, its goals have remained the same. At first, the Ombudsman led an independent office similar to the Parliament's General Commissioner and the other two specialised Parliamentary Commissioners, but these offices were merged later on, making the Ombudsmen the Deputies of the General Commissioner. The Ombudsman is elected for a six-year term by a two-thirds majority vote in the Parliament. It may initiate or participate in investigations, have access to all the relevant documents, examine legislation, partake in the formulation of non-binding statements and proposals, monitor policy developments and legislative proposals, and propose that the General Commissioner turn to the Constitutional Court in case the given piece of legislation is believed to violate the Fundamental Law. With the merging of offices, the Ombudsman's room for manoeuvre was cut significantly and the first Ombudsman resigned.

### **Lessons learned**

Based on the examined cases, for such an office to become a strong mechanism for checks and balances, it needs to be:

- Independent: legally, as well as in terms of holding no other governmental post;
- Transparent: with a clear and direct mandate and regular reports about its results;
- Legitimate: enjoying large public support, maintaining good relationships with stakeholders during investigations, and communicating results widely. Note: a position created by legislation (as in the case of Wales) enjoys more legitimacy;
- Able to access information and have extensive authority to request relevant documents;
- Accessible: to allow inputs from stakeholders and ensure direct access for citizens through petitions.

This would not only safeguard the rights of future generations but also help citizens re-engage with policymaking and reorient decision-makers towards a common vision and a mind of long-term solutions for the whole world.

## **The rights, duties, and activities of the Hungarian Parliamentary Commissioner for Future Generations**

Fülöp the first holder of the office in Hungary, introduces in detail the legal and operational design of the Parliamentary Commissioner for Future Generations.

Fülöp, Sándor. 'Die Rechte, Pflichten und Tätigkeiten des Ungarischen Parlamentsbeauftragten Für Zukünftige Generationen'. In *Kann Demokratie Nachhaltigkeit?* 67-83. Springer, 2014.

There is a growing awareness of the global threats to the environment, a serious situation recognized by scientists, and earmarked by a series of ecological catastrophes that we are facing, especially in the key areas of climate change, biodiversity, and soil degradation. These threats are here, right now and not in a remote place and time.

But the greater the danger, the more intensively the social defence mechanism works. We attempt to stave off the task of confronting these problems by shifting them to a later time and a different place so that we can continue living our lavish lifestyles that deplete the natural resources of our survival. We are living on credit from future generations. We are running our systems and institutions with excessive specialisation, which creates a false belief that our research is always truthful - but they are only correct within the limited framework of their respective disciplines. The holistic view and the problem-oriented system approach are less and less present in our education, culture, and social habits in general.

The most important task to combat this is for environmental organisations to systematically clarify the direction and true environmental impact of societal investments, which are the main drivers behind the loss of green space, biodiversity, potable water, and fresh air. Decision-makers need to be aware of the consequences of their actions before and after they become visible. Stabilising the environmental system and developing new parameters besides the GDP are tasks of the highest priority. Information available to decision-makers should be multidimensional, through the participation of representatives of all professional interests. Dr Sándor Fülöp gives an account of his experiences as Future Generations Ombudsman in Hungary, with specific cases listed and detailed, highlighting the importance of such clarification and networking.

As an example, in the case of electricity generation and shipping projects on the Danube, the Ombudsman's office was informing the public and decision-makers about the plans, which were hardly accessible to the general public and bringing in multiple perspectives. They organised a conference involving researchers from 17 fields, representatives from environmental organisations, other NGOs, authorities, business entities, and churches. All these viewpoints are important, and the clarification of differentiated environmental problems cannot be realised without such networking. With regard to administrative institutions, cross-departmental, multidimensional consultation and decision-making processes should be introduced with the participation of independent control bodies. The processes and the scientific bases should be multilevel and interdisciplinary. If the implementation is incorrect, that means the causes can be found in the decision-making processes or the legislation.

As for the history and legal background of the Hungarian FGO, the idea was already raised in 1989, and it was thanks to the NGO Védegylet that it managed to stay on the agenda. In 2000,





a text was drafted for necessary legislation by László Sólyom, and the new legislation was finally accepted in 2007 almost unanimously. However, the selection of the new Ombudsman proved rather troublesome, as instead of negotiating with the parties behind the scenes, candidates were chosen through open consultation with environmental experts and NGOs—it took four rounds of ballots to choose the Ombudsman.

### Functions

- The historical functions of an ombudsman: dealing with complaints from citizens, NGOs and communities. The most common issues are urban noise, air pollution and spatial planning. The large number of complaints indicates that legislators are dealing poorly with these local environmental conflicts—local problems are incredibly complex from a legal point of view, but a systemic approach by an FGO gives a great advantage in resolving them.
- Analyses and statements, participating in the annual parliamentary discussion of the bills.
- Environmental think tank: initiating and supporting research projects, acting as an interface between science, administration and NGOs, organising conferences and networking events etc.

### Ways of working, tools, and experiences

The most important task of the office was to define their area of responsibilities in day-to-day work. This required carefulness: although they tried to define their area of work broadly—taking cases in mining, agriculture, water management, shipping, cultural heritage, transportation etc.—, they did not want to risk shifting from the reality of environmental conflicts to the more symbolic world of some branches of law. So, the Hungarian FGO did not deal with issues that are distantly connected to future generations, like raising children, pension insurance and other demographic problems.

The selection of cases also depends on the mandates and values set out in the Ombudsman Act or in direct legal constraints. There are certain procedural conditions and requirements in the Ombudsman Act for a case to be accepted, such as

- The exhaustion of all regular legal channels
- The decision affecting the matter not being older than a year
- The exclusion of lawsuits in cases where a court decision has already been made

However, these procedural barriers can be overcome when help is truly necessary and possible. In addition, the most important and fundamental principle of the selection is striving to find ways to handle cases where the office believes they can actually help resolve an environmental conflict that would otherwise remain unresolved.

The FGO has certain legal instruments. Although normally excluded from cases where the court has been consulted, they have the right to participate in certain civil and administrative court proceedings. The Ombudsman Act also allows them to overrule the enforcement of government decisions where the environment would suffer serious damage. This tool is useful, as it gives weight and persuasive power in negotiations, but using it with such a small office is risky and difficult, so it only happened once. The FGO also has the right to make official inquiries to individuals and companies whenever environmental damage can be prevented or remedied.





According to a new section of the Ombudsman Act, the FGO also has a say in international affairs. This right is difficult to exercise due to the Ministry of Foreign Affairs in Hungary being reluctant in giving access to confidential documents on EU directives. Nevertheless, the Hungarian FGO was asked to participate in the activities of the Hungarian EU presidency [in 2010].

The question may arise: how much societal impact does the FGO's work actually have in resolving the country's environmental conflicts? Although the Ombudsman's opinions, motions and recommendations are non-binding, the greater part of the initiatives results in actions or substantial changes. The most important factors leading to this are the interdisciplinary approach, the inclusion of multiple viewpoints, and the access to information. Systematic clarification in the official analysis is done through access to all official and other documents of the concerned authorities, institutions, and private individuals. The hints and cross-references within these documents give the results a particular strength, and so does the interdisciplinary legal approach, in which not only the legal environmental aspects are taken into account, but also the neighbouring subject areas. In most important cases, they also try to show the scientific, social, and economic background of the environmental conflicts, leading to complex understandings and solutions.

The office uses an iterative method in its cases: visiting the sites, speaking to the individuals concerned, NGOs and authorities, and collecting any viewpoints expressed. Then, before publishing statements, the drafts are consulted with the stakeholders. All this makes their analyses and statements well-founded and practical.

In controversial cases, careful clarification is not enough to convince the actors concerned. The FGO can also turn to the population through the press, NGOs, local communities etc. In matters of urgency, the Ombudsman can also approach the Parliament and request appropriate resources.

### **Typical cases and projects**

Preserving agricultural genetic heritage in Hungary was supported through parliamentary representation, individual cases, safeguarding the body of material, supporting local communities in cultivating their historic fruits and vegetables and creating local markets.

A large and impactful case was the "environmental investment" destroying the environment in the Tokaj Wine Region: the planned use of renewable energy resources in energy production proved to be environmentally unfriendly due to megalomaniacal implementation. The huge biomass power plant would have required so much fuel that around 200 trucks would have traversed the Tokaj World Heritage site each day. Although the idea to transform agricultural waste into energy should have been environmentally friendly, the disproportionate implementation would have brought dramatic changes: the landscape where energy grass cultivation was planned, and even the special microclimate that is decisive for wine production in Tokaj. Previous environmental impact assessments concluded that the plant would not cause harm to the area, because the authorities had the investors separately calculate the environmental impact of the transport and the power plant. The FGO also found that those responsible for protecting cultural heritage have not used their powers to prevent the investment. The FGO started administrative and civil legal proceedings in the regional courts, which were dismissed, but by the end of the processes, the investor lost its reputation and financial backers, and the project collapsed. Apart from the legal analysis, the FGO's



investigation showed that various economic, agricultural, environmental, and financial frameworks at the EU and national levels significantly contributed to the situation in which such a plan could be designed. The side effect of the case was that the FGO was asked by the Ministry of Culture to participate in the drafting of the new law on the Hungarian world cultural heritage.

Hungary loses around 130 hectares of green space each year due to spatial development plans that replace agricultural areas, forests and other green spaces with shopping malls, logistic centres, roads, and housing. The FGO's work in this area is to make it obvious to local communities that their local councils are not making decisions that are in the best interests of future generations. A specific case was "The Golf Course Project" which would have eliminated the green belt connecting the village of Páty with neighbouring villages. The arguments and social movements were translated into legal demands through the analysis and the opinion of the FGO, and the investor had to withdraw. In some cases, the FGO was only notified after the fact, but the FGO's work and analysis can aid future efforts in preventing and mitigating destructive actions.

The FGO has also dealt with a number of bills related to the national budget. They discovered that funds from the Kyoto Emission Unit Remuneration were going to be used to reduce the national budget deficit, instead of channelling the money to its intended environmental purpose. They also published reports on the environmental aspects of the annual budget before and after it was accepted and pointed at various opportunities to generate high revenues and save costs through small investments in home insulation projects, restructuring transport subsidies, and agricultural policy changes. The proposals for a generally greener direction of the budget were based on intensive networking.

The FGO also received complaints about small local environmental conflicts, whose societal importance is grossly underestimated. The FGO's office has limited resources, so in these cases, through unification and generalisation, it develops new methodological solutions and responses. With an overview, as well as some practical and procedural advice, they have found that the complainants can usually handle their local environmental conflicts themselves with a good success rate. In order to develop a deeper understanding of these kinds of local problems, the office designed an approach to reach some general conclusion, publishing two important statements with very detailed analyses of the legal situation and proposing bills related to urban noise and air pollution.

### **Societal impact and activities**

The FGO's main factor in influencing society is the systematic clarification of environmental conflicts, identifying system errors, and provoking press work and expert attention—as well as legal proceedings, although it cannot give binding instructions to institutions. The FGO's staff are also popular speakers at environmental conferences, universities, and other lectures. They do not turn down invitations, because it is not only an opportunity to share findings, but also to exchange opinions with participants and students, learn a lot, and build a professional network. As for press work, the FGO's office almost never seeks out media, but they are always available upon request.

During the conceptual drafting of the new Hungarian Constitution, the FGO compiled a collection of cases where the FGO's work prevented significant changes in the environment. Hundreds of local communities and NGOs benefit from and use their methods, and the



positive social impact of the office has completely justified the original concept and ideas of those who pushed for the establishment of a separate institution for future generations in Hungary.



## Well-Being of Future Generations in Wales

Wales operates one of the classical blueprints of a Future Generations office: an independent body, having mainly soft powers, facilitating a healthy discourse focusing on long-term questions. It cannot force government branches to change policy, but engaging them in a discourse, it is possible to shape policy outcomes in the long run.

Sustainable Futures Division of the Welsh Government. 'Well-Being of Future Generations (Wales) Act 2015 - Essentials Guide'. 2021.

The goal of the Well-being of Future Generations (Wales) Act is to improve and further the social, economic, environmental, and cultural well-being of Wales. The Act aims to do so by detailing the way certain public bodies must work, focusing on prevention and long-term thinking to achieve seven well-being goals. The goals are based on the sustainable development principle, and they are created to make sure that the public sector considers the long-term impact of decisions and is equipped to tackle social and economic challenges so that current and future generations can have a good quality of life.

### The national well-being goals:

1. A prosperous Wales that is innovative, productive, low-carbon, recognises the limits of global resources and uses them efficiently, has a skilled and well-educated population, and has an economy that generates wealth and provides employment opportunities.
2. A resilient Wales that enhances a biodiverse environment and healthy ecosystems that support the capacity to adapt to changes, and economic, social and ecological resilience.
3. A healthier Wales in which physical and mental well-being is maximised and people are making informed decisions about their health.
4. A more equal Wales that enables people to fulfil their potential.
5. A Wales of more cohesive communities that are attractive, safe, viable and well-connected.
6. A Wales of vibrant culture and thriving Welsh language that is promoted by the society and in which people are encouraged to participate.
7. A globally responsible Wales that takes into account whether the action it takes to improve the well-being of its people is a positive contribution to global well-being.

According to the Act, public bodies must set and publish well-being objectives that are designed to maximise their contributions to sustainable development, and they must also take all reasonable steps within their jurisdiction to meet these objectives. The focus of all these measures is to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. The public bodies must implement the following way of working:

- Collaborating with other public bodies and different parts of the bodies;
- Considering how the impact of their decisions upon their well-being goals, other objectives and the objectives of other bodies and integrating these;
- Involving people and communities with an interest in the well-being goals, while also reflecting the diversity of the area that the body serves;
- Balancing short-term needs with safeguarding long-term needs;
- Focusing on prevention.



The Act lists the public bodies that are required to follow it: the Welsh Ministers, local authorities and health boards, the Public Health Wales NHS Trust, the Velindre NHS Trust, National Park as well as Fire and Rescue Authorities, Natural Resources Wales, the Higher Education Funding Council, the Art Council, the Sports Council, the National Library, and the National Museum of Wales.

To evaluate effectiveness, the Welsh Ministers must set national indicators and milestones that can be measured. The Act also allows them to review and amend the indicators and milestones to stay relevant and up-to-date. They are required to publish an annual progress report. Within one year after a Senedd election, the Ministers must also compile a Future Trends Report predicting likely future trends related to the well-being of Wales, as well as analytical data and information to back up the findings. Each of the national well-being indicators belongs in multiple of the seven well-being goals. For example, “adults with qualifications” belongs to the goals of prosperity, health, and equality, while “looking after cultural heritage” is connected to resilience, cohesive communities, and vibrant culture.

There are also measures in place to ensure that the public bodies apply the sustainable development principle and show people the progress. One of these is the well-being statement that needs to be published with each objective—why it is important and relevant and how it helps achieve the goals—while involving people. They must also publish annual reports on the progress made, and they must publish their response to recommendations made by the Future Generations Commissioner. In case they do not follow the recommendations, they must explain why and what alternative action they are going to take instead.

The Act also establishes Public Service Boards (PSBs) for each area, which include the local authority, the Local Health Board, the Welsh Fire and Rescue Authority, and the Natural Resources body of Wales, as well as invited participants. PSBs must publish a Local Well-being Plan that lays out their objectives and the steps to meet them, as well as an annual report showing the progress made based on the local well-being plans—this all must be done with wide consultations.

The function of the Future Generations Commissioner is to guard the well-being of future generations and support public bodies in achieving well-being goals. They can do this via

- Advice, encouragement and promotion;
- Research;
- Carrying out reviews assessing how long-term views are taken into account, and based on the findings,
- Making recommendations that the public bodies must take all reasonable steps to follow;
- Publishing a report a year before the Senedd elections on what improvements public bodies should make.
- The Auditor General of Wales ensures that public bodies are held to account in relation to implementing the Act. To this end, the Auditor may carry out examinations to assess
- The extent to which a body has been acting in accordance with the sustainable development principle;
- Setting well-being objectives,
- And taking steps to achieve them.



## **Commissioner for Sustainable Development & Future Generations in Gibraltar**

In Gibraltar a different model operates: the Future Generations representative is part of the central government – where real decisions are made, as the argument goes. Less independent position more impactful institutional context. This dichotomy represented by Wales and Gibraltar also informs our potential suggestions for an EU institutional context. Both models have arguments pro and contra.

This short summary was compiled based on an archived webpage of the Office of the Commissioner for Sustainable Development & Future Generations in Gibraltar.

In Gibraltar, the institution responsible for preserving the rights of future generations is the Office of the Commissioner for Sustainable Development and Future Generations. The Commissioner's role is to advocate for long-term thinking and integrated strategies, to help create a culture of accountability, responsibility, and learning, and to challenge "business as usual."

The Office was created in 2018, based on the experiences, institutional structure, and guidance of other Commissioners with similar responsibilities. The work of the Office is also helped by international reports, strategies, and other documents from places with future generations representation and advocacy like Wales, Finland, Germany, and Australia, among others—these documents are available on the website.

The Office is primarily concerned with eliminating short-term thinking, integrating policies across different areas, as well as engaging with the public and protecting the rights of future generations.

The Office works towards four main goals:

- Foresight: horizon scanning, commissioning assessments and reports, creating opportunities for communities to define their preferred futures, and identifying strategies and action plans that will realise these visions.
- Policy and commitment making: seeking explicit policy intent from government and policymakers, defining duties for public bodies and embedding commitment into their strategies, setting targets and mapping possibilities to initiate progress across public bodies, as well as supporting businesses, communities and other stakeholders in taking up commitments
- Creating tools, support and incentives: developing policy briefs, accounting mechanisms, capacity building through education, showcasing good practice, encouraging common learning and sharing
- Accountability mechanisms: reporting on progress and targets, providing information for the Parliament, establishing an expert advisory panel, and exploring innovative political processes