Legal Working Paper

National Policies & International Instruments to Protect the Rights of Future Generations
A Legal Research Paper
Executive Summary

For humanity and the earth, it is crucial that present institutions learn to respect and honour the rights of future generations, and to consider the needs of those who are yet to come. The rights of future generations are starting to be recognised as an essential part of policy decisions and even as a legal requirement in an increasing number of countries. Indeed, some countries and communities have begun to design innovative instruments to represent the voices of future generations in their policy-making processes, and to better realise these rights. The need to respect and realise the rights of future generations has also been adopted by the international community through treaty law and through the jurisprudence of eminent courts and tribunals such as the International Court of Justice (ICJ). Indeed, the United Nations General Assembly now considers the rights of future generations in global deliberations, and several proposals have been generated among experts for the creation of new international instruments to represent the voices of future generations in global policy-making. At this point in time, it is helpful to summarise and analyse the new domestic and international institutions that work to deliver on the rights of future generations. Indeed, by surveying some of the more progressive national innovations, and the principal international trends in this domain, it is also possible to recommend new options for policy-makers who wish to establish new instruments for the rights of future generations at national and international levels.

This legal research paper explores the instruments currently used for engagement in policy and law making that can affect the rights of future generations, and effective monitoring of the impacts of such policies on future generations. In particular, it reviews different existing models for the representation of future generations in national governments, including a range of instruments such as Ombudspersons or Parliamentary Commissions for the Rights of Future Generations, providing a brief discussion of their strengths and weaknesses, especially in terms of whether they have a strong mandate for engagement and intervention. Then, based on a discussion of existing international trends, recognition of rights of future generations, and potential future institutions, the paper explores the potential for new international policies, laws and institutions to monitor the impact of laws on future generations, for instance through the creation of a renewed mandate for the UN Trusteeship Council; a UN Rapporteur on the Rights of Future Generations or a UN Working Group for the Rights of Future Generations; or an Ombudsperson / Inspection Panel mechanism similar to those used by the World Bank Group of financial institutions. Based on the deliberations of the WFC Future Justice Commission in Hamburg, the paper concludes with recommendations for a new mechanism to represent the rights of future generations nationally and internationally, in light of the predicted impacts and effectiveness in terms of awareness raising and policy change. Also, taking into account the need to deliver on Future Justice priorities such as human security, ecological integrity, social equity and a culture of peace, the Hungarian model instrument is offered in an annex to the paper, as one example of a national law and institution that might inspire others while respecting the legal particularities of each country.
1. Introduction

In 1983, the UN General Assembly established the World Commission on the Environment and Development (WCED) to investigate what appeared to be a collision course between concerns for the global environment and needs of development, and to recommend ways forward. The WCED, resulted in the 1987 Report *Our Common Future*. This Report called for a world political transformation based on the concept of sustainable development, so that the parallel problems of environmental degradation and development concerns can be addressed. Sustainable development was defined as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.” The WCED formally recognised the interrelationships among crises facing citizens throughout the world: “An environmental crisis, a development crisis, an energy crisis. They are all one. Ecology and economy are becoming ever more interwoven – locally, regionally, nationally, and globally – into a seamless net of causes and effects.” The WCED further articulated the pursuit of sustainable development as an important goal for the nations of the world in the interests of future generations, explaining that “the key element of sustainable development is the recognition that economic and environmental goals are inextricably linked.” Noting that international law often lagged behind advancements in economy and industry, the Commission called for gap-filling measures, to catch up with the “accelerating pace and expanding scale of impacts on the ecological basis of development.” It went on to explain how some “forms of development erode the environmental resources upon which they must be based,” and how environmental degradation can undermine economic development and prevent the enjoyment of its benefits. In calling for a realignment of humanity’s relationship with the environment, countries were urged to reorient their development strategies towards to more sustainable paths by taking environmental considerations into account.

In the resulting world conference, the 1992 United Nations Conference on the Environment and Development, inter-generational equity was highlighted as a key principle. Over 190 states recognized that, although present generations can and do steward the Earth’s resources to pursue the needs of their own development, they cannot do this in a way that will foreclose completely on the needs or rights of future generations. The present generation must take into account the long-term impact of our activities, sustaining the Earth’s resource base and the global environment for the benefit of future generations. For humanity and the Earth, it is crucial that present institutions learn to respect and honour the rights of future generations, and to consider the needs of those who are yet to come. The rights of future generations are starting to be recognised as an essential part of policy decisions and even as a legal requirement in an increasing number of countries. Indeed, some countries and communities have begun to design innovative instruments to represent the voices of future generations in their policy-making processes, and to better realise these rights. The need to respect and realise the rights of future generations has also been adopted by the international community and at the European level through treaty law, and has been discussed in the jurisprudence of eminent courts and tribunals such as the International Court of Justice (ICJ). Indeed, the United Nations General Assembly now considers the rights of future generations in global deliberations, and several proposals have been generated among experts for the creation of new international instruments to represent the voices of future generations in global policy-making.
This legal research paper explores the instruments currently used for engagement in policy and law making that can affect the rights of future generations, and effective monitoring of the impacts of such policies on future generations. In particular, it reviews different existing models for the representation of future generations in national governments, including a range of instruments such as Ombudspersons or Parliamentary Commissions for the Rights of Future Generations, providing a brief discussion of their strengths and weaknesses, especially in terms of whether they have a strong mandate for engagement and intervention. Then, based on a discussion of existing international trends, recognition of rights of future generations, and potential future institutions, the paper explores the potential for new international policies, laws and institutions to monitor the impact of laws on future generations, for instance through the creation of a renewed mandate for the UN Trusteeship Council; a UN Rapporteur on the Rights of Future Generations or a UN Working Group for the Rights of Future Generations; or an Ombudsperson / Inspection Panel mechanism similar to those used by the World Bank Group of financial institutions.

In essence, this paper summarises and analyses the new domestic and international institutions that work to deliver on the rights of future generations. By surveying some of the more progressive national innovations, and the principal international trends in this domain, it also considers options for new instruments to give voice to the rights of future generations at national and international levels. The paper was reviewed at a meeting of the World Future Council’s global Future Justice Experts Commission, generating three sets of recommendations, and these proposals are provided in the conclusions.


The rights of future generations are not new, and neither is the recognition of the need to respect these rights in laws and policies of countries. Indeed, respect for the rights of future generations and a commitment to sustainable development is found in many Constitutions around the world, with differing degrees of commitment and enforceability depending on the specific culture, political system and division of powers in each country (see 2.1).

However, to enshrine such rights in Constitutional law is not effective unless a country also has institutions and systems in place to ensure that the environment, sustainable development and the rights of future generations are respected in national policy-making processes, and that initiatives which will impact on the ability of future generations to have their rights protected can be investigated, reviewed and if necessary reconsidered. At present, countries are experimenting with the design and implementation of new instruments to represent and defend the rights of future generations at the national level. These national instruments are structured in different ways, depending on the culture, history, social, environmental, economic and political conditions in each country. Recent experiments have included the design and establishment of National Parliamentary Commissions for Future Generations, for the Environment, for Natural Resources and/or for Sustainable Development, also the appointment of National Commissioners for the Environment or for
the Environment and Sustainable Development, and even an Ombudsperson for Future Generations. These institutions have different strengths and weaknesses, depending on the mandate, powers and selection processes for these commissions and commissioners, among other factors (see 2.2).

The recognition of the rights of future generations, and the establishment of national institutions, must also be complemented by a clear indication that national courts will defend and protect these rights. Though progress is still slow and unsteady in this regard, the rights of future generations have been recognised in leading decisions of national courts around the world (see 2.3).

2.1 Constitutional Protections for the Rights of Future Generations

Several national constitutions feature explicit references to the rights of future generations. One of the most progressive forms of such recognition involves the implicit or explicit recognition of the needs and rights of future generations in a commitment to the Earth and to others in humanity, whereby protection of the inherent rights of future generations are seen as part of the *raison d’être* for the Constitution or Charter itself. For instance, the protection of the rights of future generations was cited as one of the reasons for the creation of a Charter of Fundamental Rights and Freedoms in the Czech Republic.¹ Similarly, the French Charter for the Environment is also influenced by the preservation of the rights of future generations.² The protection of future generations is an underlying principle behind the Estonian Constitution as well: "Unwavering in their faith and with an unswerving will to safeguard and develop a state; (...) which shall serve to protect international and external peace and provide security for the social progress and general benefit of present and future generations (...)".³

In other Constitutions, the rights of future generations are seen as part of a commitment to protection of the environment, and a fundamental principle of the Constitution itself. For instance, the constitution of Andorra provides that: "The Andorran People, with full liberty and independence, and in the exercise of their own sovereignty, Willing to ring their collaboration and effort to all the common causes of mankind, and especially to those of preserving the integrity of the Earth and guaranteeing an environment fit for life for the coming generations, approve the present Constitution, in the exercise of their sovereignty (...)".⁴ Similarly, the rights of future generations are recognized under the Ecuadorian Constitution as guaranteed principles for the State’s protection of the environment: "The constitution recognizes the following environmental principles: The State guarantees a sustainable model of environmentally balanced development, respectful of cultural diversity, to conserve biodiversity and the natural regeneration capacity of ecosystems, and to ensure

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¹ Charter of Fundamental Rights and Freedoms of the Czech Republic preamble ("The Federal Assembly, (...) recalling its share of responsibility towards future generations for the fate of life on this earth, (...) has enacted this Charter of fundamental rights and freedom.").
² See French Charter for the Environment ("Considering that, (...) in order to ensure sustainable development, choices designed to meet the needs of present generation should not jeopardize the ability of future generations and other peoples to meet their own needs.").
³ Estonia Constitution preamble.
⁴ Andorra Constitution preamble.
the satisfaction of the needs of present and future generations."5 This recognition is equally clear in the constitution of Argentina, which states that: "All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations (...)"6 The South African Constitution also expressly states and affirms the rights of future generations: "Everyone has the right (...) to have the environment protected, for the benefit of present and future generations (...)"7

Other constitutions delegate the responsibility for sustainability to government institutions, seeking to operationalise it, and also commit to pursue sustainable development as an objective, together with future generations. Belgium places a constitutional obligation upon the government to take solidarity between generations into account in enacting State functions, "In the exercise of their respective powers, the federal state, the communities and the regions pursue the objective of sustainable development, in its social, economic, and environmental dimensions, taking into account solidarity between generations."8 Similarly, a requirement enshrined in the Armenian Constitution is that the State must "ensure the freedom, general well-being and civic harmony of future generations (...)"9 Bolivia also places the constitutional requirement to protect the rights of future generations onto the State, noting that: "Essential State purposes and functions, in addition to those established by the Constitutional and laws, are: (...) To promote and ensure responsible and planned use of natural resources, and promote industrialization through the development and strengthening the productive base in different dimensions and levels as well as environmental conservation, for the welfare of generations present and future."10 The same standard is highlighted in the constitution of Burundi: "The State guarantees the sound management and the efficient exploitation of the natural resources of the country, while preserving the environment and the conservation of those resources for future generations."11 This is also found in the Cuban Constitution, which provides that: "The state protects the environment and natural resources of the country. It recognizes the close links they have with sustainable economic and social development to make human life more rational and to ensure the survival, well-being and security of present and future generations."12 Further, the German Constitution requires the state to act in ways that preserve the rights of future generations: "Mindful also of its responsibility toward future generations, the State shall protect the natural bases of life by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of constitutional order."13 Finally, the Swedish Constitution also places the onus of protecting the rights of future generations on all public institutions, requiring that: "The public institutions shall promote sustainable development leading to a good environment for present and future generations."14 In contrast, the constitution of Bhutan places the responsibility of protecting the rights of future generations onto each and every one of its

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5 Ecuador Constitution art. 395.
6 Argentina Constitution art. 41 clause 1.
7 South Africa Constitution art. 24.
8 Belgium Constitution art. 7bis.
9 Armenia Constitution preamble.
10 Bolivia Constitution art. 9(6).
11 Burundi Constitution art. 35.
12 Cuba Constitution art. 27.
13 German Constitution art. 20a.
14 Sweden Constitution art. 2 sentence 4.
citizens, providing that "Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of the present and future generations (...)".¹⁵

Some constitutions recognise the rights of future generations both in principle, and as a requirement upon the State and government institutions. For instance, the Polish Constitution both calls upon its previous history to support the objective of protecting the rights of future generations: "Recalling the best traditions of the First and Second Republic, obliged to bequeath to future generations all that is valuable from our over one thousand year heritage,"¹⁶ and also provides State guarantees, requiring government institutions to defend the rights of future generations. The constitutions of Switzerland¹⁷ and the Ukraine,¹⁸ similarly, emphasize a both a collective interest in and requirement to protect the rights of future generations.

2.2 Innovations of National Instruments for the Environment, Sustainable Development and Future Generations Rights

But what exactly are the rights and interests of future generations, and how can they best be defined and protected? One theoretical framework suggests that three elements of sustainable development policy should be prioritized.¹⁹ First, to protect the rights of future generations, it is necessary to conserve options for future generations. Second, it is necessary to conserve quality of the environment for future generations and third, it is necessary to conserve access for future generations.²⁰ In the context of conserving options, there is a need for a complete national and international reorientation of legal structures which currently encourage unsustainable resource exploitation, against the rights and interests of future generation. For example, instead of encouraging the destruction of biologically valuable tropical forests, this re-orientation would entail "shifting the burden of justification" onto those who seek to deplete the forest resources by requiring them to "define criteria to justify transformation of forests to other uses, so that areas of rich biological wealth remain and other areas are put to productive, sustainable uses."²¹ In order to undertake the educational and cultural shift towards this view, there is a need for strong and innovative national institutions to defend the rights of future generations, providing a voice for the voiceless.

2.2.1 Parliamentary Commissions

2.2.1.1 Commission on Environment and Sustainable Development (Brazil)

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¹⁵ Bhutan Constitution art. 5.
¹⁶ Poland Constitution preamble; art. 74 clause 1.
¹⁷ Swiss Constitution preamble ("In the name of God Almighty! (...) are conscious of our common achievements and our responsibility towards future generations (..)").
¹⁸ Ukraine Constitution preamble ("Aware of our responsibility before God, our own conscience, past, present and future generations.").
²⁰ Ibid.
²¹ Ibid.
Several countries have established commissions on sustainable development and/or environmental issues. Such instruments have, among other points in their mandates, the responsibility to take into account the interests of future generations. For instance, the Brazilian Commission on Environment and Sustainable Development, established in 2004 by the Resolution n° 20, is a permanent organ of the Brazilian House of the Representatives. The Commission has the authority to (i) review and vote on bills related to the environment and sustainable development; (ii) promote public debates and seminars on the issue; (iii) raise environmental concerns before the Parliament; (iv) receive citizens’ complaints against governmental acts or omissions related to environmental and sustainable development matters; and (v) provide legal opinions on environmental legislation. Examples of activities carried out by the Commission include the proposition of a legislative bill to set out greenhouse gases emissions targets for the industrial and energy sectors, and denouncing deforestation to the Ministry of the Environment based on citizens’ complaints. The Brazilian Commission is a salutary initiative in Latin America, especially considering the special circumstances in Brazil, which is responsible as steward of vast areas of immense and significant biological diversity and environmental importance. Yet, the Commission might be more effective in defending the rights of future generations if it were able to be more independent, had greater support as an institution, had access to better resources, and enjoyed a broader mandate.

2.2.1.2 Commission on Natural Resources, Environment & National Resources (Chile)

Other commissions have even broader mandates that balance environmental protection with the sustainable use of natural resources and other national heritage. Like its Brazilian counterpart, the Chilean Commission on Natural Resources, Environment and National Resources is a permanent unit of the Parliament with powers to propose and review bills, as well as to promote debates with the community. To date, the Commission has hosted public debates to discuss environmental and related issues such as genetically modified organisms and sustainable use of water resources. Examples of legislative bills proposed

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by the Commission include (i) the regulation of environmental crimes committed by juridical persons; (ii) the establishment of popular action for environmental damages; and (iii) the promotion of respect for animal rights. This Commission attempts to respect the rights of future generations by encouraging environmental protection, though a narrow mandate and lack of resources or institutional support may be limiting factors affecting the success Chilean initiative.

2.2.1.3 Committee for the Future (Finland)

The Committee for the Future was introduced to Finland during the 1990s and in its initial status functioned on a temporary basis. In 2000, during a national constitutional review period in Finland, the Committee for the Future was elevated to the status of a Parliamentary Standing Committee within the Parliament. One of the key reasons that the Committee for the Future was created in its current form was the realization that issues related to the future and future generations should be addressed outside the framework of a particular Government and agenda, but rather through a free-standing entity. At present, the Committee for the Future is comprised of Members of Parliament and has the ability to comment on all but budgetary and legislative review issues.

The Committee for the Future has jurisdiction to consider a wide range of issues as they relate to the future and future generations. While it is empowered to consider the impacts of environmental concerns on the future and future generations, the Committee for the Future is not limited to environmental concerns or research. Indeed, the Committee for the Future has produced a series of research reports that address the environment, economy, employment, and science and technology. In the past, the Committee for the Future has engaged in a dialogue with the general Parliament by issuing these reports, in which the focus was on the future and future generations, receiving comments from the Parliament on those reports, and then responding to these comments with future comments on the issues raised by the Parliament. Recent areas of interest for the Committee for the Future include energy and health.

2.2.1.4 Germany

The German Parliament has established a Committee for Sustainable Development, the membership of which is derived from Parliament itself. Further, in 2006 the Bundestag created a Parliamentary Advisory Council on Sustainable Development, which is charged

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30 Finnish Parliament, Eduskunnan työjarjestys, No. 40 section 7 (2000); Tiilikinen, supra note 29 at 72.
31 Tiilikinen supra note 29 at 72 – 73.
33 Tiilikinen supra note 29 at 72 – 88.
34 Ibid. at 75.
35 Ibid.
36 Ibid. at 76 – 80.
37 Deutscher Bundestag, Drucksache 17/245 (June 12, 2009) section 1.
38 Ibid. at section 2.
with acting as an advocate for issues related to sustainability and future generations within the parliamentary system.\(^\text{39}\) Not only is the Advisory Council charged with working within the German governmental apparatus, it is also permitted to liaise with the parliaments of other governments to discuss the issues over which it has jurisdiction.\(^\text{40}\)

In addition, there are several other bodies which address sustainability and related topics to future generations, but not future generations as a dedicated topic.\(^\text{41}\) For example, the German Council for Sustainable Development was created to advise the German government on sustainability issues and legislation, identifying new projects and areas to be explored, and creating a link with the public on these issues.\(^\text{42}\) The members of the German Council for Sustainable Development are not current ministers or members of Parliament.\(^\text{43}\)

### 2.2.2 Special Commissions with Mandates to Support a Commissioner

#### 2.2.2.1 National Commission for Future Generations (Israel)

One of the broader and more flexible instruments to represent and defend the voices of future generations in national policy and law making involves the establishment and operation of a special Parliamentary Commission. For instance, in March 2001, the Israeli Parliament promulgated a chapter in the Knesset law establishing a Commission for Future Generations.\(^\text{44}\) The Commission operated as a unit of the Parliament that sought to defend the needs and the rights of future generations, with specific focus on the creation of “a dimension of the future that would be included in the primary and secondary legislation of the State of Israel.”\(^\text{45}\) The Commission’s five-year mandate (2001-2006) was broad in scope, including environmental and social related areas such as natural resources, education, health, technology, law, development, demography and any other matter of special concern to future generations as determined by the Israeli Constitution, Law and Justice Committee.\(^\text{46}\) The Commission had the authority to (i) provide opinions on bills, secondary legislation, regulations of interest for future generations; (ii) provide the Parliament with recommendations on any issue the Commissioner considered being relevant to the rights of future generations; (iii) demand any information from institutions “subject to inspection by the State Comptroller” (i.e. ministries, state corporations, local authorities, etc.); and (iv) request a parliamentary committee for “reasonable time” to collect data and prepare an evaluation regarding certain bills or secondary legislation with particular relevance for future

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40 Ibid.


42 German Council for Sustainable Development, “Mandate given to the German Council,” online: <http://www.nachhaltigkeitsrat.de/en/the-council/mandate-given-to-the-german-council/?size=gyiehtebudq&blstr=0>.

43 Ibid.


45 Knesset at 3.

46 *Ibid.* at 4 and 18. Nevertheless, national defense and foreign affairs were excluded. See Shoham & Lamay at 246.
generations. Given this mandate, the Commission might best be described as an advisory of consultative organ restricted to the legislative work of the Israeli parliament, with little legal authority to propose bills, carry out inquiries or adjudicate disputes. Notwithstanding this limited and somewhat reactive role, the Israeli Commission for Future Generations can be regarded as an avant-garde and significant initiative. It challenged “business as usual” in a troubled region, and provided a representative voice for future generations in policy-making processes, with the ability to participate in activities and processes that cut across environmental, economic and social topics and fields of policy and law with a commendably holistic perspective.

2.2.2.2 Parliamentary Commissioner for the Environment (New Zealand)

A second, more focused type of instrument involves the establishment of a Parliamentary Commissioner to protect the environment, with a view to preserving ecosystems in the interest of future generations. For instance, the Parliamentary Commissioner for the Environment (PCE) emerged amidst New Zealand’s environmental administrative reform in 1980s. The PCE was empowered by the Environmental Act 1986, which set out the Commissioner’s role as an independent environmental ombudsman with a five-year mandate. In this regard, the Commissioner’s major authorities include: (i) investigating “the effectiveness of environmental planning and management carried out by public authorities”; (ii) investigating “any matter in respect of which, in the Commissioner’s opinion, the environment may be or has been adversely affected”; (iii) reviewing “the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources”; and (iv) if requested by the House of the Representatives, inquiring on matters that have a significant environmental impact. The reviews and investigations carried out by the PCE derive mainly from the Commissioner’s discretion or as a result of citizens or civil association complaints.

Up to the present, the PCE and their staff have reviewed and investigated matters related to lignite, emissions trading schemes, national policy statements and national environmental standards for efficient environmental management, water allocation and others. It can be said, thus, that the New Zealand Commissioner plays an active role in preventing and remedying environmental harms derived from governmental or private activities which, in turn, have a direct impact on the rights of future generations. Additionally, while their mandate may appear to specifically focus on considering mainly environmental impacts in the Commissioner’s mandate, in practice the PCE and staff experts have incorporated issues such as social and economic rights within their research. Essentially, the PCE has created certain latitude to move beyond the purely environmental realm in relation to the protection of future generations. For example, the PCE has issued several studies which examine the relationship between social and economic rights and the protection of future generations.

47 Knesset at 13-16.
51 See “See Change: Learning and education for sustainability,” Parliamentary Commissioner for the Environment (2004) online:
The PCE has also been commended by world-renowned Maori indigenous leaders for their willingness to solicit and respect the views and traditional knowledge of indigenous peoples. One weakness and strength is that under the terms of the creating Act, the emphasis in the PCE mandate is on the Commissioner’s discretion, which means that a great deal depends on the actual individual who occupies the position and the advice of the individual’s staff. Depending on who is appointed to the role, the Commissioner may or may not feel the need to take up an active voice as an advocate for the rights of future generations.

2.2.2.3 Environment and Sustainable Development Commissioner (Canada)

Building on the Parliamentary Environmental Commissioner model, but with slightly broader original mandate, several countries have established Sustainable Development Commissioners. Canada provides one example. The Canadian proposal for an independent Commissioner originally focused mainly on environmental protection, as advocated in 1989 when a group of twenty-eight environmental NGOs presented a document entitled “Greenprint for Canada” to the Canadian Ministry of the Environment. The idea gradually won acceptance by the general public and politicians, but the mandate was expanded to include a broader remit for sustainable development, and the Commissioner’s office was implemented in 1995 through amendments to the Auditor General Act of Canada. The position of Commissioner for Environment and Sustainable Development is part of the Office of the Auditor General of Canada. The Commissioner’s main responsibility is to assist the Auditor during his/her 10-year tenure. According to Subsections 21(1), 22(1), 23(3) of the Auditor General Act, the Commissioner has a mandate to (i) “provide sustainable development monitoring and reporting”; (ii) “make any examinations and inquiries that the Commissioner considers necessary”; and (iii) receive, record and forward citizens petitions on environmental issues to the appropriate authority. In addition, the Federal Sustainable Development Act (2008) and the Kyoto Protocol Implementation Act (2007), respectively, established

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<http://www.pce.parliament.nz/reports_by_subject/all_reports/sustainable_development/see_change>

53 Williams, supra note 37.
55 Auditor General Act, supra note 39.
that the Commissioner has the responsibility to review and report the federal government’s progress in implementing the sustainable development action plan and the *Kyoto Protocol*.56

The institution of the Commissioner in Canada was preceded by a coordinated public campaign, with high levels of participation and advocacy from civil society. Similar to the New Zealand experience, the Commissioner’s actual mandate is not overly broad, though it does include sustainable development, as well as environmental protection, and this implies both social development and economic elements to the work of the Commissioner. A great deal still depends on the individual who is selected for the position, as the Commissioner has discretion to undertake studies and produce reports on issues that they consider necessary. The practice in Canada is to appoint the Commissioner through an independent merit-based civil service recruitment and selection process, which appears laudable. As an agent of the Auditor General, a strong individual has scope to produce high quality investigations and reports, but not to act independently to secure compliance with Canadian commitments related to the rights of future generations.

### 2.2.3 Parliamentary Commissioner for Future Generations (Hungary)

One additional model, which is different from Commissioners who report to Environment Ministers or Auditor Generals, involves the establishment of an ombudsperson to defend the rights of future generations. Under Hungarian law, Parliament is required to select a Parliamentary Commissioner for Future Generations “in order to ensure the protection of the fundamental right to healthy environment.”57 This position was created as part of an overarching statute creating an Ombudsman for Civil Rights, and the Parliamentary Commissioner has the same status as a special Ombudsman as a matter of law.58 The universe of potential candidates for the Parliamentary Commissioner position is limited by requirements that candidates be lawyers, have extensive experience with environmental law, and meet a strict set of personal characteristics, as well as by requirements to ensure that there are no conflicts of interest.59

Once selected, the Parliamentary Commissioner has wide jurisdiction. He is required to monitor legislative developments and proposals at the state level in order to ensure that they will not pose a threat to the environment and future generations.60 This requirement includes providing opinions to members of Parliament, as well as other entities which seek to take actions that could impact the environment and future generations.61 The Parliamentary Commissioner may conduct investigations into potential or alleged violations or threats to the environments and future generations.62 The Parliamentary Commissioner’s role is not limited to the national government level; he is given the ability to review the actions of and assist municipal and other local governments as well.63 In terms of sanctions, after an

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57 Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (ombudsman) art. 27/A
60 *Ibid.* at art. 27/B.
investigation, the Parliamentary Commissioner has the ability to order that an action be stopped or modified in order to protect the interests of the environment and future generations.\textsuperscript{64}

The Parliamentary Commissioner for Future Generations occupies a unique place among the positions discussed above. Although the mandate of the Parliamentary Commissioner does include environmental concerns, they are expressed in terms of protecting future generations, tying the position directly to future generations rather than the secondary or inferential links which are found in other positions and their mandates. The Parliamentary Commissioner is given broad jurisdiction, subject to a set of guidelines for investigations, and has the ability to investigate and sanction public institutions, which gives the position a sense of independence. And the terms of office in this statute are such that they make removal of the Parliamentary Commissioner difficult without cause, which is important to avoiding the political concerns which have manifested themselves in other systems. However, the statutory definition of the Parliamentary Commissioner’s mandate is such that it is focused on the relationship between the environment and future generations, which ignores other areas of concern to the protection of future generations, such as sustainable development and trade laws. In summary, the Parliamentary Commissioner statute used in Hungary is an innovative law that places future generations at the forefront of the position’s advocacy and investigation powers. There are limits on the extent of the entity’s jurisdiction, however overall this is arguably a good starting framework for the crafting of laws and oversight bodies that protect and advocate for future generations. This particular model, given its unique characteristics, focused but broad mandate as a ‘guardian’ for future generations, and quasi-judicial role, was selected by the World Future Council’s Future Justice Commission as an example to be considered by national or even regional policymakers in their deliberations, in hopes that it might inspire the creation of similar instruments that are appropriate to diverse national and regional structures. As such, an annex provides a summary and explanation of the Hungarian statute, as a source of potential inspiration for policy makers.

2.2.4 New Independent National Bodies for Future Generations (Afghanistan/US)

Many non-profit foundations and initiatives have also been established in a manner independent of government, taking as their mission to promote the rights of future generations through education, research or advocacy. For example, Future Generations Afghanistan is a registered non-profit organization in the Islamic Republic of Afghanistan. Its mission is to strengthen the resourcefulness of communities, ensure community ownership, and promote partnerships with government for a secure, equitable, and sustainable future.\textsuperscript{65} It is supported by, and works in partnership with the New-York based Future Generations Graduate School, which is a 501(c)3 non-profit institution of higher education that is a candidate for initial accreditation from the North Central Association of Colleges and Schools of the Higher Education Policy Commission. The Graduate School was established in 2003 by Future Generations, an international civil society organization (www.future.org). The Graduate School offers a two-year Master’s Degree in Applied

\textsuperscript{64} Ibid.

Community Change and Conservation and conducts research on the effectiveness of community-based approaches for achieving impact in the areas of child health, nature conservation, and peace building. As a civil society foundation, and an educational institution, both Future Generations Afghanistan and the Future Generations Graduate School are not able to take a strong role in government decision-making, or in reviewing laws and policies which might impact on the rights of future generations. However, through long-term education, training and partnerships, they hope to make a lasting difference in the most difficult circumstances, and to bring tangible change for peoples in Afghanistan where new black letter laws and policy initiatives often appear less than effective in any case. The strength of this model is its complete detachment from policy-making processes, but this is also its weakness as its reach is only as far as its funding and volunteer base can go.

2.3 Recognition of the Rights of Future Generations in National Courts

The rights of future generations are also increasingly being upheld in national courts, though a great deal more is needed. A few leading decisions are highlighted below, to be followed by analysis in the second draft of this paper.

2.3.1 Massachusetts v EPA66 (United States)

In April 2007, the Supreme Court of the United States decided a case filed by twelve states and several cities against the Environmental Protected Agency (EPA). The plaintiffs challenged the EPA’s alleged omissions in regulating carbon dioxide and other greenhouse gases. Justice Stevens’ majority opinion67 supported the standing of the plaintiff State of Massachusetts to bring the suit, finding that:

“While it may be true that regulating motor-vehicle emissions will not by itself reverse global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to slow or reduce it. See also Larson v. Valente, 456 U.S. 228, 244, n. 15, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982) (“[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury”). Because of the enormity of the potential consequences associated with man-made climate change, the fact that the effectiveness of a remedy might be delayed during the (relatively short) time it takes for a new motor-vehicle fleet to replace an older one is essentially irrelevant. Nor is it dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere. (…)In sum--at least according to petitioners’ uncontested affidavits—the rise in sea levels associated with global warming has already harmed and will continue to harm Massachusetts. The risk of catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek. We therefore hold that petitioners have standing to challenge EPA's denial of their rulemaking petition.”

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67 Ibid. at 1455-1459
On this basis, the Supreme Court considered the actual harm as well as the risk of harm from global warming to Massachusetts’ shoreline which suggests, although not explicitly, that states might “serve as representatives for future generations” before US Courts. 68 With that in mind, this case may provide us with a concrete and valuable example of intergenerational equity within the juridical sphere.

2.3.2 Minors Oposa v. Secretary of the Department of Environment and Natural Resources (Philippines)

One domestic court decision on intergenerational equity, in both its "intra-" and "inter-" dimensions, is a 1993 Philippine Supreme Court Case, Minors Oposa v. Secretary of the Department of Environment and Natural Resources ("DENR"). The case addressed intergenerational equity in the context of state management of public forest land. In a novel situation under Philippine law, the Philippine Supreme Court permitted a class action -- although it has yet to issue a decision -- brought by Filipino children acting as representatives for themselves and future generations. The petitioners wanted to halt governmentally licensed timber cutting with in the remaining national forests. The plaintiffs alleged that present and continued logging violated their right to a healthy environment under the Philippine Constitution and would entail irreparable harm to them and future generations of the nation. The Court considered the issue of intergenerational responsibility and decided that the petitioners had locus standi, i.e., were qualified to sue, on behalf of present and future generations in the Philippines. In rendering its decision, the Court accepted petitioners' statistical evidence regarding the amount of forest cover required to maintain a healthy environment for present and future generations.

These cases are of particular note because they are in countries which do not include the rights of future generations in their constitutions and have not established institutional mechanisms for protecting the rights of future generations. Despite a lack of precedent, however, both cases indicate willingness on the part of countries that are vastly different in terms of development and wealth to examine the issue of the rights of future generations at the judicial – if not political – level.


Reference to the need to respect and take into account the rights of future generations can be seen in seminal documents of international law as the Charter of the United Nations and the

Indeed, the United Nations Committee on Economic, Social and Cultural Rights has interpreted provisions of the ICESCR to include rights which affect future generations, such as the right to water, in a way that seeks to implicitly protect, as well as recognize, the rights of future generations. The need to respect the rights of future generations was also recognised in the United Nations Framework Convention for Climate Change, and its Kyoto Protocol, among other international treaties on sustainable development. Additionally, the rights of future generations are protected in a variety of regional agreements.

The intergenerational aspects of state activities have been addressed in opinions of the International Court of Justice. At the ICJ, the implications of inter-generational equity were discussed in Judge Weeramantry’s lengthy separate opinion on “equity” in the Maritime Delimitation in the Area between Greenland and Jan Mayen case (Denmark v. Norway) case, and in his dissent in the Nuclear Tests case (New Zealand v. France). In Denmark v. Norway, Judge Weeramantry’s comments referred to intergenerational equity, and specifically to "...the concept of wise stewardship [of natural resources]...and their conservation for the benefit of future generations..." These statements were included in his separate concurring opinion as dicta, and were not decisive in the Court's decision regarding delimitation of a maritime boundary. In his dissenting opinion in the Nuclear Tests case, Judge Weeramantry stated that:

"The case before the court raises, as no case before the court has done, the principle of intergenerational equity - an important and rapidly developing principle of contemporary environmental law... The court has not thus far had occasion to make any pronouncement on this rapidly developing field... [The case]... raises in pointed form the possibility of damage to generations yet unborn."

In the Nuclear Tests case, the ICJ rendered its decision on other grounds before it had the opportunity to address the normative status of intergenerational equity. It is nevertheless noteworthy that the concept has been included in the discussions of the ICJ, albeit in separate opinions.

Furthermore, in the 1997 Gabčíkovo-Nagymaros case, the ICJ found that there is a need to balance between the needs of protecting the environment and development. Separate and dissenting opinions such as those provided by Judge Weeramantry in this and the above cases, are useful in offering alternative interpretations on the relevant subject matter and often contribute to the ICJ’s role in developing and clarifying international law on controversial issues. It is likely that future cases before the ICJ involving international environmental issues will directly address the status of intergenerational equity in international law.

The precautionary principle is another major norm reflected in international treaty

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63 See, e.g., TOKYO DECLARATION FOR THE DYNAMIC AND ENDURING ASEAN-JAPAN PARTNERSHIP IN THE NEW MILLENNIUM, Association of South East Asian Nations (2003); North American Agreement on Environmental Cooperation (1994).
instruments which works to avoid prejudice to the rights of future generations. The precautionary principle is directed at addressing the issue of potential harm in the face of scientific uncertainty. It has been employed across the spectrum of international environmental issues in many instruments from regulation of the transport and disposal of hazardous wastes in the Bamako Convention,74 to conservation of living natural resources, as demonstrated in the United Nations Convention on Biological Diversity75 and the UN Convention on the Law of the Seas Straddling Stocks Agreement.76 The precautionary principle is most commonly expressed in the words found at Principle 15 of the Rio Declaration, which reads: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."77

Thus, we see that the rights of future generations have slowly worked their way into international jurisprudential thought, if not majority opinions themselves. This progression in recognition and discussion is important to the framing of the rights of future generations. While there a case has not yet come before the tribunals to directly endorse or explain the rights of future generation, this should by no means be considered a negative, as it provides the space in which advocates for the rights of future generations can craft a meaningful and concrete definition that is part of a cohesive international understanding of the right and its requirements. Thus far, the rise of prominent, well-reasoned conceptions of the rights of future generations by advocacy groups and governments has been paralleled by increasing judicial recognition of these rights. This is promising and allows for advocates and the judiciary to build their individual and collective understandings of the rights of future generations and their ramifications at the same time.

3.2 International Proposals for Institutions to Respect and Take into Account the Rights of Future Generations.

Several proposals have been raised to recommend that the international community could better take into account and protect the rights of future generations. These proposals include establishing a new mandate of Trustee for Future Generations for the UN Trusteeship Council (see 3.2.1); advocating the creation of an international body building on the model of the World Bank Inspection Panel, to safeguard the rights of future generations in all international projects and initiatives (see 3.2.2); or activating the special procedures of the UN Human Rights Council to appoint a Special Rapporteur on the Rights of Future Generations, or establish a Working Group on the Rights of Future Generations (see 3.2.3). This third option, together with the recommendation that regional ‘future generations ombudsperson’ instruments should be further investigated and recommended for supra-

national organizations such as the European Union, was considered the most reasonable and viable by the World Future Council’s Future Justice Experts Commissions, in its deliberations, as will be seen below.

3.2.1 United Nations Trusteeship Council

One proposal that has been put forward by experts would involve replacing the mandate of the United Nations Trusteeship Council with a new mandate to protect the environment, or to represent the interests of future generations.

The Trusteeship Council was made up of the five permanent members of the Security Council - China, France, Russian Federation, United Kingdom and United States. In setting up the International Trusteeship System, the countries that drafted the UN Charter established the Trusteeship Council as an organ of the United Nations and assigned to it the task of supervising the administration of Trust Territories placed under the Trusteeship System. Major goals of the System were to promote the advancement of the inhabitants of Trust Territories and their progressive development towards self-government or independence. Under the Charter, the Trusteeship Council was authorized to examine and discuss reports from the Administering Authority on the political, economic, social and educational advancement of the peoples of Trust Territories and, in consultation with the Administering Authority, to examine petitions from and undertake periodic and other special missions to Trust Territories. The aims of the Trusteeship System were deemed to have been fulfilled to such an extent that all Trust Territories had attained self-government or independence, either as separate States or by joining neighbouring independent countries (whether willing or not). As such, the UN Trusteeship Council suspended its operations on 1 November 1994, with the independence of Palau, the last remaining United Nations trust territory, on 1 October 1994. By a resolution adopted on 25 May 1994, the Council amended its rules of procedure to drop the obligation to meet annually and agreed to meet as occasion required -- by its decision or the decision of its President, or at the request of a majority of its members or the General Assembly or the Security Council.

The original mandate and operational modes of the UN Trusteeship Council are both more conscribed than, and extremely different from, the mandates of the national parliamentary commissions and councils for future generations and the environment that are analysed in Section 2 above. As such, a completely new mandate, operational methods and institutional models would likely be needed to transform the UN Trusteeship Council into an environmental institution. Furthermore, the UN Trusteeship Council, while likely a valuable institution during a certain period of history, was questioned by many developing countries, particularly as these countries continue their struggle to survive and overcome combined legacies of colonialism, mercantilism and military dominance from overseas empires.

Indeed, in the example of Nauru, it has been widely accepted that the UN Trusteeship

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Council violated the terms of its mandate. These countries are now the vast majority of members of the UN, and key players in any international effort to protect the rights of future generations. While there are significant advantages to building on existing institutions within the UN, there is a risk that in renewing the mandate of the Council, those concerned about the environment and their rights of future generations in the countries of others might find themselves unjustly accused of similar motives. However, it is possible that by inventing entirely new mandates and institutional structures that are more appropriate to today’s ways of working, this legacy could be overcome and the UN Trusteeship Council revived.

3.2.2 Building on World Bank Ombudsperson & Inspection Panel Experiences

A second option might be to seek to establish a quasi-judicial ombudsperson or inspection panel for international initiatives and projects that might impact on the rights of future generations. A relation aspect of this choice could be to seek more explicit recognition of a responsibility to protect the rights of future generations within the mandate of the World Bank Inspection Panel itself, and expand the scope of the existing Panel’s responsibilities to extend beyond projects funded by the World Bank Group.

The World Bank Group includes an International Finance Corporation, which is one of the key financiers that aim to involve civil society as an important stakeholder in projects. The IFC’s mission is to reduce poverty and improve lives. It entertains this sector’s contribution from policy development to project-specific input. IFC materials highlight promoting community consultation, participation and environmental protection; extending project reach and benefits to the poorest and most vulnerable; and introducing flexible and innovative approaches to difficult environmental and social concerns. As a sustainable policy rule, IFC measures development results of investment projects using criteria that include a project’s business success (or financial performance); its return to society (or economic performance); its social and environmental performance; and private sector development impacts (such as demonstration effects, linkages, impacts on the investment climate, or corporate governance aspects). The IFC reports on its development effectiveness at least once a year, and approaches sustainability with programming on climate change, poverty, corruption, HIV/AIDS, participation of women in private sector development, and the preservation of natural resources. In the IFC, one mechanisms of interest to the present study is the independent Compliance Advisor/Ombudsman (CAO), which offers recourse to communities that are directly affected by IFC projects. This legal body was formed in 1999. They have engaged in public consultation in maintaining environmental and social safeguards. The three functions of the CAO office involve (1) Compliance (audits) to independently assess whether IFC and MIGA have complied with their environmental and social Safeguard Policies, guidelines and procedures, in investing in (IFC) or providing political risk insurance to (MIGA) projects; (2) Advisory services (advisory projects) to

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81 IFC; CISDL IDLO Financing Manual
82 For further information see: http://www.ifc.org/ngo.
83 For further information see: <http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_ByTopic>.
85 For further information see: http://www.cao-ombudsman.org/ (text copied).
provide independent, timely, and objective advice to the president of the World Bank Group and management of the IFC and MIGA. This advice relates only to broader environmental and social policies, guidelines, procedures, resources, and systems; and (3) Ombudsman (complaint resolution) to provide an accessible and effective mechanism for handling complaints from persons who are affected (or are likely to be affected) by the social and environmental impacts of IFC- or MIGA-sponsored projects.

The Operational guidelines of CAO were announced after a public consultation with MIGA, NGOs and private sector from development and developing countries. There are important limitations to the CAO’s powers, though the broad mandate makes the three roles together very powerful. For example, although the CAO is not a judge, court, or the police, there are influential ways in which it can define issues to be addressed in a complaint, make creative and practical proposals for settling an issue, and encourage parties to engage in dialogue.86 Although the CAO cannot force outside bodies to change their behaviour or abandon existing practices, it can call on the leverage of the IFC and MIGA in urging parties to adopt recommendations.87

The role of Ombudsman is an innovative solution to problems involving international development projects and initiatives that might affect the rights of future generations. It involves taking a proactive role in ascertaining conflicts and grievances rather than just responding to complaints which provides them with the ability to contribute to effective policy making levelling the field for all stakeholders.88 The complaints lodged with CAO are considered on merit and will be resolved in a timely and prompt manner depending on the nature and scope of the grievance. Complaints can be kept completely anonymous, and confidentiality can be maintained while resolving the complaint at hand. All guidelines are accessible online89 which makes it convenient for investors, policy makes, private and public actors, and civil society to follow a procedure and thus contribute to transparent and sustainable project development.90

A related mechanism also worth certain consideration is the World Bank Inspection Panel. The Inspection Panel was established by the Executive Directors of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) on September 22, 1993.91 The primary purpose of the Inspection Panel is to address the concerns of the people who may be affected by Bank projects and to ensure that the Bank adheres to its operational policies and procedures during design, preparation and implementation phases of projects. The Inspection Panel consists of three members who are appointed by the Board for non-renewable periods of five years.92 Members are selected on the basis of their ability to deal thoroughly and fairly with the requests brought

86 CISDI IDLO Financing Manual
88 CISDI IDLO Financing Manual
89 For further information see: http://www.cao-ombudsman.org/about/whoarewe/documents/EnglishCAOGuidelines06.08.07Web.pdf.
90 CISDI IDLO Financing Manual
92 Ibid
to them, their integrity and independence from the bank Management, and their exposure to developmental issues and living conditions in developing countries. The Panel's method of functioning is laid out in Operating Procedures developed by the Panel members to implement the resolutions of the Bank’s board of executive directors (the Board) that created the Panel. Because this is the first body of its kind to give voice to private citizens in an international context, the Panel's operational procedures and its operations appear to have stayed fairly innovative and fluid. Forty two formal requests have been received since Panel operations began in September 1994. The texts of Panel reports are publicly available. In order to file a request for inspection to the Panel, requesters must show in writing that they live in the project area (or represent people who do) and are likely to be affected adversely by project activities; they believe that actual or likely harm results from failure by the Bank to follow its policies and procedures; and their concerns have been discussed with Bank management and they are not satisfied with the outcome. During a normal process, the Panel receives a request and decides whether the request is within its mandate. If it is, the Panel sends the request to World Bank Management, who prepare a response to the allegations and submit it to the Panel. The Panel then makes a preliminary review of the request, conducts and independent assessment of the merits of Bank Management's response to it, and recommends to the Board whether the claims should be investigated. If the Board approves a recommendation to investigate, the Panel proceeds with the investigation. When the Panel finishes an investigation, it sends its findings to the Board and to Bank Management. Bank Management then has six weeks to submit its recommendations to the Board on what actions the Bank should take in response to the Panel's findings. Based on the Panel's findings and Bank Management's recommendations, the Board takes the final decision on what should be done.

Such inspection panel or ombudsperson roles partly resemble the final national model of the more juridical Future Generations Ombudsperson or Parliamentary Commissioner discussed in Section 2 above. In that model, the authority of the Commissioner is not constrained to an auditing role, but rather is focused on reviewing projects and initiatives for compliance with operating procedures and policy objectives, and where necessary even recommending alternatives. If independent, the panel would have both the advantages and disadvantages of a completely new institution or project, with no legacy to overcome, but also no support from existing systems and institutions, and an acute vulnerability to ‘regulatory capture’. If linked to the World Bank, it would have disadvantage of serious feasibility challenges such as the need to convince the Bank to change the mandate of its Inspection Panel, and the need to convince others to accept a broadened scope. It would have the advantage of an existing institution, resources and system of governance and support, particularly given that the World Bank does actually include concern for future generations, the environment, sustainable development and gender, among other issues, in its current operational policies. However, the viability of this option, in terms of making fundamental changes to the World Bank institutions, or establishing a wholly independent institution, was questioned by the

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93 Ibid
94 Ibid
95 Ibid
96 Ibid
97 Ibid
98 Ibid
99 Ibid
World Future Council’s Future Justice Experts Commission members in their deliberations. While the option remains a very interesting one to investigate, in terms of practical realisation, a third option was considered more promising.

3.2.2 Special Procedures of the UN Human Rights Council

A second proposal might involve establishing a new Special Rapporteur on the Rights of Future Generations, or a Working Group on the Rights of Future Generations under the Special Procedures of the UN Human Rights Council. Special procedures is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic challenges that are global in nature. Currently, there are 31 thematic and 8 country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates.

Special procedure mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities. Special procedures are either an individual (called "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert") or a Working Group usually composed of five members (one from each region). The mandates of the special procedures are established and defined by the resolution creating them. These resolutions must be proposed, negotiated and agreed by the States in the UN Human Rights Councils. A mandate-holder’s tenure in a given function, whether it is a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders). Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfill their functions in all impartiality.100

Most Special Procedures receive information on specific allegations of human rights violations and send urgent appeals or letters of allegation to governments asking for clarification. In 2008, a total of 911 Communications were sent to governments in 118 countries. 66% of these were Joint Communications of two or more mandate holders. Mandate holders also carry out country visits to investigate the situation of human rights at the national level. They typically send a letter to the government requesting to visit the country, and, if the government agrees, an Invitation to Visit is extended to the mandate holder. Some countries have issued "standing invitations", which means that they are, in principle, prepared to receive a visit from any special procedures mandate holders. As of September 2009, 65 countries had extended standing invitations to the special procedures mandate holders. After their visits, special procedures mandate-holders issue a Mission Report containing their findings and recommendations. These findings and

100 See Fact sheet N.27
recommendations are required to be impartial, carefully researched, and very independent, and must not exceed the mandate.

Starting June 2006, the Human Rights Council engaged in an institution building process, which included a review of the special procedures system. On 18 June 2007, at the conclusion of its fifth session, the Human Rights Council adopted a Resolution 5/1 entitled "Institution-building of the United Nations Human Rights Council," which included provisions on the selection of mandate holders and the review of all special procedures mandates. The review was conducted throughout 2007 and 2008. All thematic mandates were extended. New thematic mandates were also established, namely on contemporary forms of slavery (2007), on access to safe drinking water and sanitation (2008) and on cultural rights (2009). Country mandates were extended with the exception of Belarus, Cuba, the Democratic Republic of the Congo and Liberia. At its 11th session, the Human Rights Council created the mandate of independent expert on the situation of human rights in the Sudan which replaced a previous country mandate, for a period of one year. The independent expert was appointed at the 12th session of the Human Rights Council. In June 2007, the Council also adopted Resolution 5/2, containing a Code of Conduct for special procedures mandate holders. At the Annual Meeting of special procedures in June 2008, special procedures mandate holders adopted their Manual, which provides guidelines on the working methods of special procedures. At the same meeting, they also adopted an Internal Advisory Procedure to review practices and working methods, by which the Code of Conduct and other relevant documents, including the Manual, are implemented to enhance the effectiveness and independence both of the special procedures system as a whole and of individual mandate-holders. At its 8th session, the Human Rights Council adopted a Presidential statement concerning the terms of special procedures mandate holders and their compliance with the Code of Conduct.

Depending on the mandate and terms of reference, the initiation of a Special Rapporteur for the Rights of Future Generations would resemble the domestic Commissioners for the environment, sustainable development, or future generations, as analysed above. The advantages and disadvantages of such an approach are clear – a great deal would depend on the individual chosen and the scope of their mandate, and such a person would likely at best play the role of an auditor rather than an intervenor. However, UN Human Rights Special Rapporteurs have an excellent reputation, and are famed for their ability to bring issues forward and give them legitimacy in the eyes of the world. It is an interesting option. Perhaps a stronger option, which would avoid some of the challenges faced by an individual approach, would be the establishment of a Working Group on Rights of Future Generations, as also contemplated in the special procedures. Led by five highly reputed individuals from major regions of the world, and a broader mandate, the Working Group on Rights of Future Generations could act as more of a ‘global moral voice’, lead global fact-finding missions, investigate potential impacts, and issue reports, making solid recommendations in a way similar to the successful Parliamentary Commissions for Future Generations analysed above. This option was recommended by the World Future Council’s Future Justice Experts Commission in their deliberations, to be further explored with receptive governments and other partners, through the development of a series of briefing papers and consultations with policy-makers and others.
3.2.4 Building on Future Generations Non-Profit Education Experiences

One complementary option, nearly outside the scope of the present paper but worthy of consideration, might be the establishment of an international educational programme, similar to the national and partnership efforts of the Future Generations Afghanistan initiative. Such a programme would focus on education and capacity-building, rather than policy review and advocacy, taking a longer term approach. It is possible that such an entirely new institution or programme, outside of the existing UN and economic frameworks, may gain greater legitimacy for the protection of the rights of future generations, especially among developing nations. Such an institution might even be possible to initiate as a programme of the World Future Council itself. However, there are very serious questions regarding the feasibility and efficiency of creating such an entity or programme on a global scale. These questions include basic issues of voting structure and representation as well as respect for the cultural values of all members. The latter concern is of particular importance as the conception of rights of future generations is universal, but its specific nature in each community is heavily dependent on social and cultural views, indigenous and traditional wisdom, and the ecological conditions themselves.

5. Options & Recommendations

In the view of the World Future Council, there is considerable potential for policy innovation for the voices and rights of future generations. The Council recommends action at three levels:

First, at the national level, it is clear that leading countries have begun to reflect the rights of future generations in national constitutions, and have started to adopt new instruments to give voices for future generations in national policy-making structures. These instruments are specific to the ecological conditions, political and social realities, and level of economic resources available in each country, but they are a valiant first step and offer valuable lessons for international and other national decision-makers. Further, in some jurisdictions which have not made future generations a priority, courts are still willing to enforce a certain minimum standard of respect, and even standing. Examples, including those cited above, may be useful to inspire policy-makers in countries with similar concerns, willingness to act, and economic, social and political structures. One example in particular was chosen by the World Future Council, simply to illustrate some of the most interesting possibilities of such national institutions. Accordingly, attached to this Draft Final Paper is a brief case study of the Hungarian Parliamentary Commissioner for Future Generations legislation, focusing on mandate, scope and functions. This case study provides one illustration of the legal and structural elements in a well-regarded and successful policy-making and review instrument for the protection of the rights of future generations.

Second, at the international level, it is clear that many treaties have been negotiated and ratified, some with nearly universal membership, both recognising and respecting the principle of intergenerational equity. International courts and tribunals have also begun to pronounce on this issue, and will likely soon be offered an opportunity to make decisive statement with regards to the rights of future generations, perhaps guided by ancient wisdom and the courageous advice of Justices who traced the initial juridical pathways in this area.
There is an opportunity to advance the proposal that new instruments are needed to represent these interests globally. A UN Human Rights Council Special Rapporteur or Working Group instrument could be further investigated, as a method of protecting and promoting the rights of future generations. Both these options have their challenges, given the limitations and history of existing international institutions, voting and geopolitical considerations, but they also have considerable potential to investigate and raise questions specific to the rights of future generations in international society, and to stimulate independent international deliberations, research, analysis, debate and policy dialogue that is much needed today. In the UN Human Rights Council, membership rotates to ensure that cultural biases do not become entrenched in the workings of the institution. There is a delicate balance between the rights of future generations of all regions, and it is important not to recommend the creation of an instrument that would guard the rights of present and future generations in one region to the detriment of the rights of the poor and future generations in another region. The Council also has a legitimacy and recognition that is most worth building upon, for a concept like the rights of future generations that is still being defined and better understood in the international system. To develop a proposal for one of these options, consultations would be needed with receptive governments, and further research and analysis would also be required, in order to further detail the considerations to be taken into account, as well as the specific scope and content of the mandate for such an instrument, how it can build on the work of other UN Human Rights Council Rapporteurs and Working Groups, and how it would be supported by partners from all sectors of society.

Third and finally, it will be very important to consider and engage in discussions with leading regional organizations such as the European Union. Given the World Future Council presence in Brussels, a first draft legislation for a Guardian for Future Generations that could be established without amendments of the Lisbon Treaty has been developed. Please contact the WFC at maja.goepel@worldfuturecouncil.org if you would like to learn more about this proposal and developments on the European level.
ANNEX 1

Executive Summary
Hungarian Parliamentary Commissioner for Future Generations legislation

The Hungarian Parliament has enacted legislation that creates and enables a national Parliamentary Commissioner for Future Generations. The Parliamentary Commissioner for Future Generations is a position filled by the Hungarian Parliament, with clear qualification requirements related to experience with and work in environmental protection and natural conservation laws and practices.101

The Parliamentary Commissioner for Future Generations has two essential functions, one legislative function and one investigatory and punitive function. In terms of legislation, the Parliamentary Commissioner for Future Generations is tasked with monitoring laws and proposed legislation in order to ensure that they promote “the sustainability and improvement of the situation of the environment and nature.”102 In terms of investigation and subsequent punishment, where applicable, the Parliamentary Commissioner for Future Generations is given broad discretion and jurisdiction to investigate allegations of actions which violate the overall promotion of “the sustainability and improvement of the situation of the environment and nature.”103 The Parliamentary Commissioner for Future Generations’ role is not limited to domestic concerns, however, as he has an advisory role over international agreements to which Hungary may become a party and is tasked with representing Hungary at appropriate EU bodies.104

When the Parliamentary Commissioner for Future Generations determines that acts of pollution or other violations of laws which relate to the environment and nature have occurred, he may issue orders to stop the activity, or refer the matter to other prosecutorial bodies for further action under their authority.105 The enabling statute for the Parliamentary Commissioner for Future Generations sets out the framework for the administrative proceedings within which the Parliamentary Commissioner for Future Generations is to work both within his own portfolio and in relation to other administrative entities.106 Additionally, the Parliamentary Commissioner for Future Generations has jurisdiction to review municipal and local acts and decisions as well as those of national entities and actors.107

101 Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman) (Hungary) section 27/A (2) (stating that the Parliamentary Commissioner for Future Generations shall be “disposing of outstanding theoretical knowledge or having at least ten years professional practice in the area of environmental protection and/or nature conservation law who has considerable experience in the conduction and supervision of proceedings affecting environmental protection and nature conservation or in the enforcement of the right to healthy environment.”).
102 Ibid. at 27/B (1).
103 Ibid. at 27/C.
104 Ibid.
105 Ibid.
106 Ibid. at 27/E.
107 Ibid. at 27/F.
Hungarian Parliamentary Commissioner for Future Generations
Summary of Relevant Laws and Legislation

In Act LIIX, the Hungarian Parliament enacted the Parliamentary Commissioner for Future Generations legislation “in order to ensure the protection of the fundamental right to healthy environment.”

This legislation established the position of Parliamentary Commissioner for Future Generations, as a position elected by the Parliament itself. In order to qualify for election, a potential candidate for the position is required to have extensive professional experience with and in the fields of supervising “proceedings affecting environmental protection and nature conservation or in the enforcement of the right to healthy environment.”

Once elected, according to Act LIIX, the Parliamentary Commissioner for Future Generations has two essential categories of tasks. The first is legislative and the second is both investigatory and, where applicable, punitive. The Parliamentary Commissioner for Future Generations’ legislative tasks involve supervising laws and pending legislation in Hungary and commenting on the appropriateness – or lack thereof – of pending legislation for the interests of environmental sustainability and the conservation of natural resources. The Parliamentary Commissioner for Future Generations’ investigatory and punitive tasks involve examining questions of whether an individual or entity – private or public – has violated the law, particularly in regards to illegal pollution of the environment. In this context, the Parliamentary Commissioner for Future Generations has the authority to request that a polluter cease his/her actions or may refer the matter to other governmental authorities with jurisdiction over the activity and ask that the particular authority investigate the activity. The Parliamentary Commissioner for Future Generations also has the ability to become involved in relevant investigations, administrative proceedings, and court proceedings which he has not directly brought.

The role of the Parliamentary Commissioner for Future Generations is not limited solely to domestic law and policy. The Parliamentary Commissioner for Future Generations is required to be involved in the reporting requirements which exist as a result of Hungary’s ratification of international treaties and agreements that are relevant to the environment, the conservation of nature, and “affecting the common heritage and concerns of the mankind.” In addition, the Parliamentary Commissioner for Future Generations is required to be involved with the treaty negotiation and implementation process at the international level. As a member of the European Union, Hungary has a voice and role in the promulgation of EU policy and law. The Parliamentary Commissioner for Future

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108 Ibid. at 27/A (1).
109 Ibid. at 27/A (2).
110 Ibid.
111 Ibid. at 27/B(1).
112 Ibid.
113 Ibid.
114 Ibid. at 27/B (3).
115 Ibid.
116 Ibid.
117 Ibid.
Generations is designated as the Hungarian representative and voice in EU bodies which address issues under the purview of the Parliamentary Commissioner for Future Generations at the domestic level. Additionally, the Parliamentary Commissioner for Future Generations has jurisdiction over actors and entities at the local and municipal levels, not just the national level. Thus, the Parliamentary Commissioner for Future Generations is involved with issues within his portfolio at all levels of government.

The Parliamentary Commissioner for Future Generations legislation also sets out procedural rights and requirements for the Parliamentary Commissioner for Future Generations and those whom he is investigating during the course of the investigation. Further, the legislation provides a broad ability for the Parliamentary Commissioner for Future Generations to use the Hungarian local and national courts to pursue actions against persons and entities which he believes have violated the environmental and other sustainability-related laws of the state.

Based on the above, it is evident that the Parliamentary Commissioner for Future Generations legislation is an important step toward advancing environmental protections for future generations in Hungary. However, the guarantees of the Hungarian constitution are such that they would provide a strong basis to support the extension of the Parliamentary Commissioner for Future Generations’ mandate to go beyond the environment and examine future justice protections from a holistic level that includes human security and social, economic and cultural rights.

The Hungarian constitution protects human rights, the rights of children and youth, the rights of national and ethnic minorities, the right to health, and guarantees non-discrimination in the same manner that it provides for the right to a healthy environment. Thus, given the success of the Parliamentary Commissioner for Future Generations in the realm of environmental protections, it is arguable that the expansion of the Parliamentary Commissioner for Future Generations’ mandate, or the creation of several separate Parliamentary Commissioners for each of the guaranteed rights of future generations, would provide a proven and effective model for implementing the rights provided in the Hungarian constitution.

This discussion of the Hungarian Parliamentary Commissioner for Future Generations is important for the larger debate regarding the protection of future generations overall as well as in Hungary itself. The general tenor of the Parliamentary Commissioner for Future Generations statute reinforces the idea that future generations are most commonly linked with the protection of the environment and environmental rights of future generations. The

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118 Ibid.
119 Ibid. at 27/F.
120 Ibid. at 27/B (4).
121 See generally ibid. at section 27.
122 Hungarian constitution art. 8.
123 Ibid. at arts. 16, 67.
124 Ibid. at ch. V.
125 Ibid. at art. 70D.
126 Ibid. at art. 70A.
127 Ibid. at art. 18.
Hungarian example is particularly useful for a discussion of the rights of future generations because it demonstrates that such mechanisms can work, and that there is a set of legal principles (here, the Hungarian constitution) which provide for protections of human security and rights, and social, economic and cultural rights that broaden the common understanding of future generations and future justice by shifting it away from a sole focus on the environment. Thus, Hungary is in many ways a microcosm for the larger debate regarding the content and extent of the rights of future generations and the ways in which to protect them, and there are legal principles similar to those in the Hungarian constitution found in domestic and international systems.

For a copy of Act LIX, see: http://jno.hu/en/?menu=legisl&doc=LIX_of_1993#legalstat
About the World Future Council

The World Future Council brings the interests of future generations to the centre of policy making. Its up to 50 eminent members from around the globe have already successfully promoted change. The Council addresses challenges to our common future and provides decision makers with effective policy solutions. In-depth research underpins advocacy work for international agreements, regional policy frameworks and national lawmaking and thus produces practical and tangible results.

In close collaboration with civil society actors, parliamentarians, governments, business and international organizations we identify "best policies" around the globe. The results of this research then feed into our advocacy work, supporting decision makers in implementing those policies.

The World Future Council is registered as a charitable foundation in Hamburg, Germany. Our work is not possible without continuous financial support from private and institutional donors. For more information see our website: www.worldfuturecouncil.org

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About the Centre for International Sustainable Development Law

The mission of the Centre for International Sustainable Development Law (CISDL) is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

The CISDL is an independent legal research centre which collaborates with the McGill University Faculty of Law in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. The CISDL also works in cooperation with a network of developing country faculties of law, and is developing closer ties with the Oxford University Faculty of Law and the Université de Montreal, as well as the Yale Law School and the Cambridge University Faculty of Law. It has guidance from the three Montreal-based multilateral treaty secretariats, the World Bank Legal Vice-Presidency, the United Nations Environment Programme and the United Nations Development Programme, and a memorandum of understanding with the International Institute for Sustainable Development (IISD).

With the International Law Association (ILA) and the International Development Law Organisation (IDLO), under the auspices of the United Nations Commission on Sustainable Development (UN CSD), CISDL chairs a Partnership Initiative, International Law for Sustainable Development that was launched in Johannesburg at the 2002 World Summit for Sustainable Development, to build knowledge, analysis and capacity about international law on sustainable development.

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Biographies of CISDL-WFC Advisors & ‘Instruments for Future Generations Rights’ Project Group Members

Ms. Alexandra Harrington, D.C.L. candidate (McGill University), J.D. (Albany Law School of Union University), B.A. (New York University) is the Senior Manager of the Centre for International Sustainable Development Law. She was admitted to the New York State Bar in 2006. During her studies at Albany Law School, she served as Editor-in-Chief of the Albany Law Journal of Science & Technology. In 2007 she graduated summa cum laude from Albany Law School with a LLM in International Law. She is currently a Doctor of Civil Law candidate at McGill University’s Faculty of Law and is affiliated with the International and Comparative Law Institute. Ms. Harrington was awarded a Provost’s Graduate Fellowship and a MacDonald Graduate Scholarship from McGill University. Ms. Harrington’s doctoral thesis, conducted under the supervision of Professor Frederic Megret, will examine the transformation of territory in international law. She has published over twenty law review articles and book chapters on a variety of topics – including international and regional environmental law, human rights law, military law, criminal law, corruption law, international trade law, food law, constitutional law, privacy law, international and comparative law, religious law, aviation law, international organizations, health law and international policing – and has given numerous conference talks on many of these issues. Ms. Harrington has served as a Professor at CERIUM’s International and European Environmental Law: Adaptation to Climate Change Institute and as a consultant for the Commission for Environmental Cooperation. She speaks English and French.

Ms. Raquel De Souza, LLM Thesis candidate (Environmental Option) (McGill University), M.Phil (University of Cambridge), Postgraduate Diploma (University of Brasília), LLB (University of Brasília), is an active member of the CISDL Legal Research Group. Prior to joining CISDL, Ms. De Souza was a law clerk at the Supreme Federal Court in Brazil. She has also worked as a lawyer at a major Brazilian law firm practicing in the areas of environmental, civil and administrative law. In 2001, she was awarded a Chevening Scholarship in order to pursue a Masters degree in Land Economy at the University of Cambridge. In addition, Ms. De Souza has carried out research in the field civil liability, taught, as a part-time lecturer, in local Brazilian universities/institutions besides having been engaged in a research fellowship programme at the Permanent Court of Arbitration in the Hague, Netherlands. She is currently a LLM Thesis candidate (Environmental option) at McGill University’s Faculty of Law and was awarded a Provost’s Graduate Fellowship. Her legal research interests include environmental liability, human rights and the environment, sustainable trade and biodiversity.

Prof Marie-Claire Cordonier Segger, MEM (Yale), BCL & LLB (McGill) is a leading international legal scholar in the field of sustainable development. She serves as Director of the CISDL in a pro bono academic capacity; as a Fellow of the Lauterpacht Centre for International Law (LCIL) at Cambridge University Faculty of Law in the United Kingdom; and as a Visiting Professor at the University of Chile Faculty of Law. She is also Senior Director, Research for Sustainable Prosperity, a green economy policy research network (on interchange from the Government of Canada). At the CISDL, she serves as a mentor for CISDL lawyers and fellows, writes and edits international law research and publications, trains senior officials and high court judges, and provides international legal advice, through the United Nations, to countries in the Americas, Africa and Asia on the implementation of sustainable development accords, including trade and investment agreements, the Cartagena Protocol and the Kyoto Protocol. Prof Cordonier Segger has authored over 50 papers, and has published 14 books on sustainable development law and policy in three languages, including Sustainable Development Law: Principles, Practices and Prospects (Oxford University Press, 2004) with A. Khalfán; Sustainable Justice: Reconciling Economic, Social and Environmental Law (Martinus Nijhoff, 2004) with former Vice-President of the International Court of Justice, Judge C.
G. Weeramantry; Sustainable Development in World Trade Law (Kluwer Law International, 2005) with Dr. M. Gehring; and Sustainable Development in World Investment Law (Kluwer Law International, 2010) with Dr. M. Gehring and Prof A Newcombe. Also in her personal capacity with the CISDL, she serves on the board of the International Law Association (Canadian Branch), as an expert on the International Law Association's (ILA) Committee on International Law on Sustainable Development, as a councillor of the World Future Council, and as a chair of the IUCN Environmental Law Commissions' Expert Group on Trade and Environment Law. She chairs a joint CISDL - ILA - IDLO Partnership on International Law for Sustainable Development that was launched at the 2002 World Summit for Sustainable Development, is a fellow of the Royal Society of the Arts, is profiled by the United Nations Environment Programme in their global 'Who's Who of Women and the Environment', has twice been appointed to an AVINA Fellowship, and has held several valuable international awards including a Chevening and a SSHRC Fellowship for a Ph.D. in International Law at Oxford University (Exeter College). In her previous position, she led International Affairs at Canada's Ministry of Natural Resources, acting often as Director General for External Affairs. For Natural Resources Canada, she served on the Advisory Board of the International Trade and Investment Centre (Conference Board of Canada), on the Management Committee of the Extractive Industries Transparency Initiative (EITI) Trust Fund and the Governance Committee of the EITI Board, and on the Board of the UN's International Panel on Sustainable Resource Management. She has served as a Visiting Professor at the University of Victoria Law Faculty and at the International Development Law Organization (IDLO); coordinated international law seminars at Oxford University; taught international environmental law at the CERIUM, University of Montreal; directed a collaborative Americas Portfolio for the International Institute for Sustainable Development (IISD); and served as a Fellow at the Royal Institute of International Affairs in London, UK; among other positions. She is fluent in French, English and Spanish, and also speaks German and Portuguese.

Dr. Yvonne Wong, J.S.D. (University of California, Berkeley) is a lawyer, scholar and writer who recently completed her Doctor of Laws (JSD) at Berkeley Law School, and serves as an Associate Fellow at the CISDL. Other than her JSD, Yvonne holds a Master of Laws (LLM) from Berkeley Law School; a Bachelor of Laws (LLB) and Bachelor of Commerce from University of Sydney, Australia; and a Certificate in Chinese Laws and Chinese Legal Systems from East China University of Law and Politics, Shanghai. Professionally, Yvonne has worked as a lawyer and consultant in law firms, investment banks, international organisations, government institutions and NGOs in Australia, Samoa, Cambodia, UK, Japan and the USA. As a scholar, Yvonne's research interests center on how laws, customs and politics shape and direct global interactions, the role of race and gender in the international arena, and the causes, consequences and solutions for transnational injustices. Her teaching credits include Law and Economics and International Human Rights Law at the University of California, Berkeley. Yvonne has also featured in numerous panels and participated in various conferences. She has held a number of scholarships including the Rotary International World Peace Fellowship. She currently resides in San Francisco.

Mr. Sébastien Jodoin, L.L.M. (LSE), L.L.B., B.C.L. (McGill) is a Legal Research Fellow with the Centre for International Sustainable Development Law in Montreal, Canada. Sébastien is also a member of the board of governors of the CISDL. At the CISDL, Sébastien is involved with the human rights and poverty eradication programme, the climate change and vulnerability law programme and the cross-cutting issues programme relating to international sustainable development law and governance. Sébastien's recent work has focused on the principle of integration, human rights and adaptation to climate change and on the notion of crimes against future generations. Sébastien holds an L.L.M. in public international law, with distinction, from the London School of Economics and Political Science as well as an L.L.B. (common law degree) and a B.C.L. (civil law degree) from the Faculty of Law of McGill University, where he graduated with distinction and where he was a J.W. McConnell Scholar. He also studied, on exchange, in the D.E.A. international
law programme at the Université Libre de Bruxelles. Sébastien was recently awarded a John Peters Humphrey fellowship by the Canadian Council on International Law to undertake research on international human rights law and sustainable development. He has also been the recipient of an International Bar Association Fellowship in international criminal law and a Young Professionals Award from the Government of Canada. Sébastien previously worked in the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in The Hague, The Netherlands as well as the Trial Chambers of the International Criminal Tribunal for Rwanda in Arusha, Tanzania. He has served as Executive Editor of the Québec International Law Review, as a research assistant to professors and researchers at McGill University and the British Institute of International and Comparative Law, as a legal researcher for the McGill Legal Clinic for the Special Court for Sierra Leone and as a legal, political and operational risk analyst for Aon Canada and Exclusive Analyst Ltd. Sébastien has been involved in a number of legal consulting, capacity-building and research projects with governments, NGOs and IGOs. In particular, he leads the CISDL’s research activities on Quebec and has participated in Parliamentary commission and public consultation sessions on Quebec’s sustainable development law. He has also written a number of legal and policy briefs commissioned by governments and NGOs. He regularly presents papers at academic and public policy conferences and lectures at learning courses and workshops, including those organized by the United Nations Commission on Sustainable Development (UNCSD) and United Nations Framework Convention on Climate Change (UNFCCC). He has led CISDL delegations to many international conferences and organised side-events at these conferences, most notably the UNCSD and the UNFCCC. Originally from Montreal, Canada, Sébastien has lived in England, The Netherlands, Tanzania, France and Belgium. He speaks English and French and has notions of Kiswahili and German.

Ms. Tracy Coates, LL.B (Osgoode Hall Law School), M.E.S. (Master of Environmental Studies degree in International Dispute Resolution, York University), h.B.A. (Bachelor of Arts Honours degree in Comparative Behaviour Studies and Social Development, Carleton University), is a Legal Research Fellow of the CISDL, and a senior policy advisor with the Assembly of First Nations in Canada. Ms. Coates has extensive experience in social development work within the non-governmental sector and has long been an advocate for Indigenous rights, climate justice and the environment. Ms. Coates is a member of the Board for Learning for a Sustainable Future; and the Canadian Environmental Network, where she has also been a National Council Aboriginal Representative since 2006. Ms. Coates is a Member of the Executive Committee of the Aboriginal Law Section of the Ontario Bar Association and also holds memberships with the Canadian Bar Association and the Indigenous Bar Association. Ms. Coates was called to the Bar in June 2009 after completing an articling placement with Amnesty International Canada. Some of Ms. Coates’s other recent accomplishments include founding the Visiting Indigenous Elder Speaker Series at Osgoode Hall Law School, being the founding Chairperson of the African Youth Initiative on Climate Change, participating in land claim negotiations for a Native Title Representative Body in Western Australia, and being a Community Legal Education Program Fellow with the NGO Bridges Across Borders. During her time with Bridges Across Borders she wrote and edited “street law” teaching and learning manuals, an introductory guide to the ECCC Khmer Rouge Tribunals in Cambodia, and assisted with the development of Clinical Legal Education Programs in Cambodia, Thailand and Vietnam, an was part of a team teaching CLE workshops to Professors at the Vietnam National University (Hanoi). Ms. Coates’s most recent research work has focused on dispute resolution and international negotiations between non-state stakeholders and state governments. Focusing primarily on historical and modern negotiations between Indigenous peoples and colonial governments, this research has also included non-state stakeholder participation in the UN system, the impacts of Climate Change on Indigenous and economically disadvantaged peoples, and opportunities for economic development from Indigenous-led climate change initiatives. She eventually plans to pursue a PhD in the area of Indigenous People’s participation in international multilateral agreements.
Mr. Jaykumar Menon, B.A. (Brown), M.I.A. (Columbia), J.D. (Columbia), is a legal research fellow at the CISDL. He is also an attorney with the Center for Constitutional Rights in New York City. He is exploring commercial law solutions to the sovereign debt crisis that may be of use in courts and other fora. He was formerly with the New York boutique law firm of Rabinowitz, Boudin, which specializes in the representation of developing country governments in U.S. courts, where he worked on matters on behalf of South Africa, Angola, Cuba, and other countries. With the Center for Constitutional Rights, he has worked on a variety of cutting-edge transnational litigation matters, serving as co-counsel in a case against Royal Dutch Shell for environmental degradation and human rights violations in Nigeria, lead counsel and co-counsel for student leaders from Tiananmen Square in a human rights suit against the former Premier of China, and on a trial team that won a $4.5 billion judgment on behalf of victims of the Bosnian genocide. He was a co-finalist for the 2000 Trial Lawyer of the Year Award from Trial Lawyers for Public Justice. He has drafted a chapter on domestic, third-county litigation for a report commissioned by the U.S. Congress on legal options for addressing the Cambodian genocide. He has served as a judicial clerk in New Orleans for the Honorable Helen G. Berrigan, U.S. District Judge for the Eastern District of Louisiana, working on both civil and common law cases. He was a National Merit Scholar at Brown University, an International Fellow at Columbia University and twice a Harlan Fiske Stone Scholar at Columbia Law School.

Prof Sumudu Atapattu, Ph.D (Cantab) & LLM (Cantab) is Lead Counsel for Human Rights and Poverty Eradication with the CISDL, and an Attorney-at-Law of the Supreme Court of Sri Lanka. She held a Senior Fulbright scholarship at the New York University Law School and the George Washington University Law School in 2000-2001. She taught International Law and Environmental Law as a Senior Lecturer at the Faculty of Law, University of Colombo, Sri Lanka for several years. She also served as Consultant to the Law & Society Trust, Colombo. She has edited several publications and coordinated research for the annual State of Human Rights Report of the Trust. In 2002, she edited the State of Human Rights Report. In 2001 she served on a panel of experts on liability and compensation issues for the WHO’s Framework Convention on Tobacco Control. Her book titled “Emerging Principles of International Environmental Law” was published by Transnational Publishers in November 2006 and in August 2006 she started working as the Associate Director of the Global Legal Studies Initiative at University of Wisconsin Law School where she has been teaching International Environmental Law for several years.

Prof Salim A. Nakhjavaní, LLM (Cantab.), BCL & LLB (McGill), is Lead Counsel for Crosscutting Issues at the Centre for International Sustainable Development Law (CISDL). He is Lecturer in Public Law at the University of Cape Town, where he conducts undergraduate and postgraduate teaching and research in general public international law and international criminal law. He previously served as Associate Human Rights Officer at the UN Office of the High Commissioner for Human Rights (2005) and Assistant Legal Adviser in the Office of the Prosecutor of the International Criminal Court (2003-2004). He was elected to the Whewell Scholarship in International Law in the University of Cambridge in 2002. He has lectured on international human rights law and specialist topics in international criminal law in Germany, Italy, Norway and Australia. His current research work focuses on international criminal law and procedure. He has published CISDL-related articles on compliance-building in international sustainable development law and state responsibility for breaches of international environmental law. In 1999, he was commended by the Government of Quebec for his work with young musicians. A citizen of Canada and the United Kingdom, Mr. Nakhjavaní currently resides is Cape Town, South Africa with his spouse. He is fluent in French and English, with notions of isiXhosa.