



## **Resources for the Legal Right of Future Generations to Inherit a Livable Earth**

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Over the last several years, the Science & Environmental Health Network has conducted research and policy development on laws and institutions that define and protect the rights of future generations to a safe and healthy environment. Our goal is to make it a legal norm that the rights of future generations will be considered in all decisions that affect the health and wellbeing of the environment.

The idea of care for future generations is not new, but based on many spiritual and ethical precepts from various cultures. For example, the ancient Seventh Generation Principle of the Iroquois communities of the United States requires that decisions be made for the wellbeing of the seventh generation to come. Similarly, the Judeo-Christian tradition specifies that parents and older generations have obligations to leave blessings rather than sins to their children and children's children.

The materials below are a comprehensive overview of future generation policies that can be adopted at any level of government. They are intended as tools for communities to use in their efforts to protect the environment for future generations. Most of the documents can be found in one of two places. The first <http://sehn.org/guardianship-of-future-generations/> and [http://web.archive.org/web/20120707223925/http://www.vermontlaw.edu/Academics/Environmental Law Center/Institutes and Initiatives/Climate Legacy Initiative/Publications.htm](http://web.archive.org/web/20120707223925/http://www.vermontlaw.edu/Academics/Environmental%20Law%20Center/Institutes%20and%20Initiatives/Climate%20Legacy%20Initiative/Publications.htm).

### **Models for Protecting the Environment**

**By Carolyn Raffensperger, Tyler Giannini, and Bonnie Docherty.** [http://sehn.org/wp-content/uploads/2013/01/Models for Protecting the Environment for Future Generations.pdf](http://sehn.org/wp-content/uploads/2013/01/Models%20for%20Protecting%20the%20Environment%20for%20Future%20Generations.pdf)

This paper highlights how institutional mechanisms can assist in advancing the environmental interests of Future Generations. This practice of addressing Future Generations has a historic basis, particularly in Native American tribes, and has appeared in international treaties since the 1970s.

Legal mechanisms available to advance environmental protection for Future Generations include:

*Courts.* The law is often interpreted to require intergenerational equality in environmental issues, and the court is a trustee of these intergenerational rights. This precedent was used in the 1993 case *Denmark v. Norway* and applied by the International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. And in 1994, the Supreme Court in the Philippines ruled that a group of minors could sue on behalf of themselves and Future Generations because of unsustainable logging practices. Though courts are limited by precedent and jurisdiction, they can “check” other government branches, enforce related rights, appoint ombudsmen and guardians, and review decisions.

*Ombudsmen.* These are appointed by government (though they maintain fairly independent status) and are used to evaluate functions, produce reports, and serve as liaisons between government and groups. Many countries have quasi-judicial human rights ombudsmen, who promote human rights through education, investigate complaints, and make recommendations to government. The UK Sustainable Development Commission reports to the Prime Minister and refers to itself as the “government’s independent watchdog.” Appendix A offers a proposed structure for an ombudsman for Future Generations, a “person who has the duty to ensure that an existing or proposed law, policy, or reviewable action protects and promotes the environmental legal interests of Future Generations.”

*Guardianships and trusteeships.* Guardianships and trustees have a similar function—provide a voice to the underrepresented future generations. Appendix B offers a possible structure for guardians, proposing a “person representing the best interest of Future Generations who has the duty to ensure that a proposed action will provide ecologically healthy land, water, and air for the benefit of Future Generations” who would evaluate proposed actions, determine best interests for Future Generations and advocate for them, and have standing to sue if the government violates its legal obligation to future generations. Trustees hold a fiduciary duty. In the United States, National resource trustees were established under the Superfund Amendments and Reauthorization Act of 1996 to act behalf on the public regarding environmental issues on the federal and state levels. Guardians designed specifically for Future Generations do not yet exist, but they could follow the model of guardians for children. Their development could be justified by the precautionary principle in international law (when activity raises threats of harm to human health or the environment, precautionary measures should be taken)).

Appendices C and D offer examples of international and domestic legal frameworks that exist to protect Future Generations.

## **A Law of the Ecological Commons for Present and Future Generations**

**By Carolyn Raffensperger, Burns H. Weston David A. Bollier.** [http://sehn.org/wp-content/uploads/2018/04/Rec\\_01-Law\\_of\\_Commons.pdf](http://sehn.org/wp-content/uploads/2018/04/Rec_01-Law_of_Commons.pdf)

This recommendation discusses the framework for creating law that addresses the protection of the ecological commons ----- the entirety of society and nature that is inherited by all members of society from one generation to the next. The elements that make up the ecological commons are nature-based, and therefore are limited in resources. Each generation is responsible for managing these resources, which mandates accountability of the polluters. The publication suggests the most efficient way to do so is to implement a structure, based on ten principles, that places the government and intergovernmental bodies as the main facilitator and guardian of the commons, with the support of members of the commons, to protect the ecological commons for Future Generations. These ten principles are:

1. A life-sustaining, community-nourishing, and dignity-enhancing ecological commons is a fundamental human right of present and future generations.
2. It is the duty of each generation to pass the commons on to future generations unimpaired by any degradation or depletion that compromises the ability of future generations to secure their rights and needs.
3. The services and infrastructure of the Earth necessary for humans and other living beings to be fully biological and communal creatures shall reside within the domain of the commons.
4. All commoners (the public or a defined community) have rights of access to, and use of, the ecological commons without discrimination unrelated to need. Such rights shall not be alienated or diminished except for the purpose of protecting the commons for future generations.
5. Publicly owned commons belong not to the state but to the commoners (the public or a defined community), both present and future, who are entitled to the benefits of their commons.
6. It is the responsibility of government to serve as trustee of commons assigned to it by law for present and future generations. In fulfillment of this responsibility, governments may create new institutions and mechanisms as well as authorize responsible parties to manage the commons or resources therein. All actions taken by government or its designees must be transparent and accountable to commoners.

7. The precautionary principle is a useful guide for protecting the commons for present and future generations.
8. Eminent domain (the “taking” of private property for a public use and subject to payment of just compensation) is the principal legal process for moving private property into the commons and protecting or enhancing the commons.
9. The market, commerce, and private property owners shall not externalize damage or costs onto the commons. If the commons are damaged, the polluter, not the commoners, pays.
10. Future generations shall not inherit a financial debt without a corresponding commons asset.

### **A Model State Constitutional Provision**

**By Jason Steffan Bonnie Docherty, Carolyn Raffensperger, Joseph H. Guth.**

[http://sehn.org/wp-content/uploads/2013/01/Model Provisions Mod1E7275.pdf](http://sehn.org/wp-content/uploads/2013/01/Model-Provisions-Mod1E7275.pdf)

This report proposes a constitutional provision that defines the right of future generations and the responsibilities of government to protect those rights.

Article I: Right to an Ecologically Healthy Environment includes “the right to enjoyment of clean air, pure water, and scenic lands,” “freedom from unwanted exposure to toxic chemicals,” and the right to “seek redress in state courts against alleged violators.” This article focuses on Future Generations as well as the present one. The phrase “includes but is not limited to” is broad and allows for much interpretation, but the article provides enough specifics to be useful. Section 2 declares this right to be self-executing, so there is no legal ambiguity. Individuals and groups can enforce this right; the attorney general has enforcement power, as well. Public and private actors are both liable for violations of constitutional environmental rights, providing clarity for the courts. Section 4 says that environmental rights are fundamental, and other fundamental rights may not supersede this environmental right of Future Generations.

Article II: Responsibilities says the state has the duty “to conserve, protect, and improve these resources for the benefit of present and Future Generations.” The state must take a precautionary approach to natural resources and the development of new technologies.

### **A Model Statute**

**By Jason Steffan, Bonnie Docherty, Carolyn Raffensperger, Joseph H. Guth.**

<http://sehn.org/wp-content/uploads/2012/12/Model-State-Constitutional-Provision-and-Model-Statute.pdf>

This model legislation establishes the rights and responsibilities of current and Future Generations to maintain, improve, and restore the environment, as well as the consequences and actions to take and by whom when destruction of the environment occurs. It can either be a stand-alone statute or used to implement a constitutional provision defining the right of future generations to inherit a healthy environment.

### **A Model Executive Order**

**By Carolyn Raffensperger, Joseph Guth, Burns H. Weston.** [http://sehn.org/wp-content/uploads/2018/04/Rec\\_10-Legal\\_Guardian\\_Exec\\_Order.pdf](http://sehn.org/wp-content/uploads/2018/04/Rec_10-Legal_Guardian_Exec_Order.pdf)

Executive orders direct executive branch agencies to take a course of action, and though they may be overturned by legislation, they do not require ratification by the legislative branch. The President and many U.S. governors have issued executive orders on climate change, environmental justice, and children’s environmental health.

This is a model executive order to establish the office of legal guardian for Future Generations. These guardians need training and certification to obtain the required specialized knowledge and ethic. They can then be appointed as officials in the executive branch, masters in court, advisors to legislators, or commissioners in U.N. or other intergovernmental organizations. The training can be offered as a track in law schools, as a specialty within a state bar, through specialized programs for lawyers, and through the [National Guardianship Association](#)—which has a model code of ethics that could be adapted for this specialization. These guardians will need scientific knowledge of ecology and decision-making in the face of uncertainty as well as knowledge of economics to best determine the impacts of decisions on Future Generations.

### **Courted Appointed Special Masters**

**By Carolyn Raffensperger, Burns H. Weston.** [http://sehn.org/wp-content/uploads/2018/04/Rec\\_12-Special\\_Masters.pdf](http://sehn.org/wp-content/uploads/2018/04/Rec_12-Special_Masters.pdf)

With the expected increase in climate change cases that focus on economic issues as opposed to solely scientific ones, there is an increased need for special masters and expert witnesses who will serve as a form of legal guardian for Future Generations in court. Expert witnesses, who are appointed by judges, testify in court and are cross-examined by lawyers while special masters are appointed to investigate and inform a future action by the court but are rarely cross-examined. The Supreme Court encouraged this action in *General Electric Company v. Joiner* (1997) and the following year, the American Association for the Advancement of Science began to identify such scientific experts that were available to judges. There are three main objections—scientists often reject emerging science, finding

experts without financial conflicts of interest is increasingly difficult, and advising judges before evidence goes to a jury is undemocratic—that can be overcome by appointing an expert as a certified Legal Guardian for Future Generations. They would have no financial conflicts of interest due to the code of ethics, they would be experienced with scientific uncertainty and giving the benefit of the doubt to Future Generations, and they could help the judge help the jury make decisions that address the interests of Future Generations.

### **A Draft U.N. Declaration on the Rights of Future Generations**

**By Burns H. Weston, Katherine L. Moll, and Suzan M. Pritchett, with the assistance of Carolyn Raffensperger.** [http://sehn.org/wp-content/uploads/2018/04/Rec\\_13-UNGA-Declarations.pdf](http://sehn.org/wp-content/uploads/2018/04/Rec_13-UNGA-Declarations.pdf)

In response to the growing threat of climate change, this draft U.N. Declaration takes into account the role of present generations in protecting Future Generations from environmental damage and resource loss in the interest of “the human family.” It establishes the right of Future Generations to a “clean, healthy, ecologically balanced, and sustainable environment.”

Article I: Confirms the “universal, indivisible, and interdependent” right of all humans to “live in a clean, healthy, ecologically balanced, and sustainable environment within, across, and beyond national boundaries.” This right is dependent upon the maintenance of “ecosystem integrity and quality.” Article I protects the right of Future Generations to benefit from the biodiversity of resources that prior and current generations have benefited from, therefore entitling them to freedom from harm to the environment;

Article 2: Commits “all members of present generations” to undertaking practices that will protect Future Generations from a damaged environment.

Article 3: Commits all lawmaking bodies, including intergovernmental organizations, ecological commons communities, and other juridically competent representatives” to supporting and implementing legislature and policy that will protect Future Generations from a damaged environment.

Article 4: Resource allocation in the present should take into account the needs of the future.

Article 5: Future Generations should be protected from environmental consequences of war.

Article 6: The United Nations will establish an Office of Legal Guardian for Future Generations, “charged with responsibility to safeguard the ecological rights and interests of Future Generations.”

Article 7: All members of Future Generations will benefit from these, regardless of race, sex, class, or any other factor.

Article 8: All legislative bodies and other institutions have an obligation to protect and promote these provisions.

### **A Draft U.N. Declaration recognizing the Atmosphere as a Global Commons**

**By Burns H. Weston, Wan-Chun Dora Wang, and Suzan M. Pritchett.**

[http://web.archive.org/web/20101221005155/http://vermontlaw.edu/Documents/CLI%20Policy%20Paper/Rec\\_13%20-%20\(UNGA%20Declarations\).pdf](http://web.archive.org/web/20101221005155/http://vermontlaw.edu/Documents/CLI%20Policy%20Paper/Rec_13%20-%20(UNGA%20Declarations).pdf) (pg 10)

This draft U.N. Declaration recognizes the atmosphere as a global commons and is based upon the acknowledgment that the atmosphere is a common resource shared by all human life, past, present, and future, and that carbon emissions and other harmful gases are endangering it. Damage to the atmosphere is therefore a threat to the health and wellbeing of Future Generations, and the “human family” as a whole.

Article 1: Recognizes the atmosphere as a “Global Commons” shared by all of humanity.

Article 2: Protects the health of the “Atmospheric Commons” in the interest of the health of present and future human communities.

Article 3: Establishes the responsibilities of individuals and institutions in the present to protect the Atmospheric Commons for the future.

Article 4: Establishes that any activity that threatens the Atmospheric Commons “shall be subject to international as well as national oversight and governance.”

Article 5: Governments, the United Nations, and other agencies must all cooperate to enforce these provisions.

Article 6: All Member States shall contribute research that will add to the protection of the Atmospheric Commons.

Article 7: The Secretary-General will evaluate the progress of implementing these provisions.

### **International Court of Justice and Future Generations**

**By Andrew L. Strauss.**

[http://web.archive.org/web/20101221001903/http://vermontlaw.edu/Documents/CLI%20Policy%20Paper/Rec\\_16%20-%20\(ICJ\\_Advisory\\_Jurisdiction\).pdf](http://web.archive.org/web/20101221001903/http://vermontlaw.edu/Documents/CLI%20Policy%20Paper/Rec_16%20-%20(ICJ_Advisory_Jurisdiction).pdf)

This document shows how the International Court of Justice, the judicial body of the United Nations, is underused and its jurisdiction should expand and have authority over climate change and environmental damage cases. This body would primarily deal with cases of

member states, however, it would also put pressure on corporations to comply to climate change regulations. This court could set precedents for the types of behaviors allowed by corporations in regards to greenhouse gas emissions, for example. This body would be the reinforcement for the ideologies laid out in previous recommendations, in so far as it holds states accountable to the environmental damages they have contributed to, in order to leave the environmental commons in an unharmed, or better condition than it was inherited for Future Generations.

Additional Resources:

Tedx talk by Carolyn Raffensperger on future generations with an overview of the precautionary principle. <https://www.youtube.com/watch?v=wHYKBnI-Kfw>

.August 2013 Report to the U.N. General Assembly from the General Secretary on Intergenerational Solidarity and the Needs of Future Generations.

<http://sustainabledevelopment.un.org/content/documents/2006future.pdf>

United Nations Environment Program and World Futures Council July 2013 Conference summary on Implementing Intergenerational Equity.

<http://www.futurejustice.org/blog/event/global-conference-on-implementing-intergenerational-equity-bringing-future-perspectives-to-the-status-quo-2/>

Article on human rights and future generations by Karen Moir.

<http://ohrh.law.ox.ac.uk/failure-to-protect-future-generations-undermines-universality-of-law/>

Overview of the rights of future generations particularly regarding the long-term problems left by mining. By Carolyn Raffensperger

<http://sehn.org/wp-content/uploads/2013/11/Raffensperger-Kosmos-Article.pdf>

Principles of Perpetual Care describes the basic principles and mechanisms necessary for protecting the long term interests of future generations using the Giant Mine in Yellowknife, Northwest Territories as a case study. There are some sites and facilities that will be hazardous for hundreds of thousands of years. These abandoned mines, hazardous waste and nuclear facilities require unique considerations. This paper provides guidance on dealing with those problems and preventing new ones.

<http://sehn.org/wp-content/uploads/2012/12/The-Principles-of-Perpetual-Care-Giant-Mine-December-2011.pdf>