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Perspectives into topical issues in society and ways to support political decision-making.

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Strengthening foresight and the role of future generations in Finnish lawmaking

Maija Airos, Toni Ahlqvist, Mikkel Knudsen, Anu Mutanen, Lauri Rapeli, Jonas Schauman, Maija Setälä, Mari Taskinen, Amos Taylor

From an international comparison, Finland already has an advanced national foresight system and can be regarded as a pioneer in future-regarding policymaking. However, there is still room for improvement in terms of using foresight and considering future generations as a part of lawmaking. Such improvement could be achieved by developing and upgrading the existing institutions and practices and by making more incremental changes in practices, modes of interaction, and attitudes. For example, foresight should be conducted more as a continuous activity, and future generations' interests and rights should be considered more systematically in legislative processes, while acknowledging the plurality of future interests.

This research supported the preparation of the second part of the Government Report on the Future.

Foresight and future generations in legislative processes, institutions, and practices

All political decision-making is oriented towards the future. Our decisions may have significant impacts on the future, and sometimes these impacts may be irreversible. For example, the failures to take measures to mitigate climate change may have drastic negative impacts on future generations.

Some countries have specific constitutional provisions to protect future generations' rights. The principle of sustainable development has been developed to protect future generations' rights and interests. There are various foresight methods utilised for identifying and estimating future developments. In advanced democracies such as in Finland and in supranational organisations such as the European Union (EU) the clear need to enhance foresight and consideration of future generations in legislative processes has been recognised.

The research project *Foresight and Future Generations in Law-Making* (FORGE) examined issues of future-regarding lawmaking in an interdisciplinary manner, combining expertise on futures studies, political science, and jurisprudence. The aim of the study was to analyse the status of future generations and their rights in current legislative processes, and to map and compare practices for foresight and consideration of future generations in different political contexts, nationally and internationally. The purpose of the project was to increase understanding on i) how future generations can be better taken into account in policymaking; ii) how foresight can be better utilised in lawmaking. FORGE's conceptual and analytical structure is pictured in the figure 1.

The FORGE-project is unique – there has not previously been a study with a similar scope in Finland and comparable international examples are, to the best knowledge of the authors, extremely rare. FORGE supported the preparation of the second part of the Government Report on the Future. The project was funded by the Government's analysis, assessment and research activities (VN TEAS) and was conducted during 1/2022–11/2022 by researchers of the University of Turku, Åbo Akademi University and Tampere University.

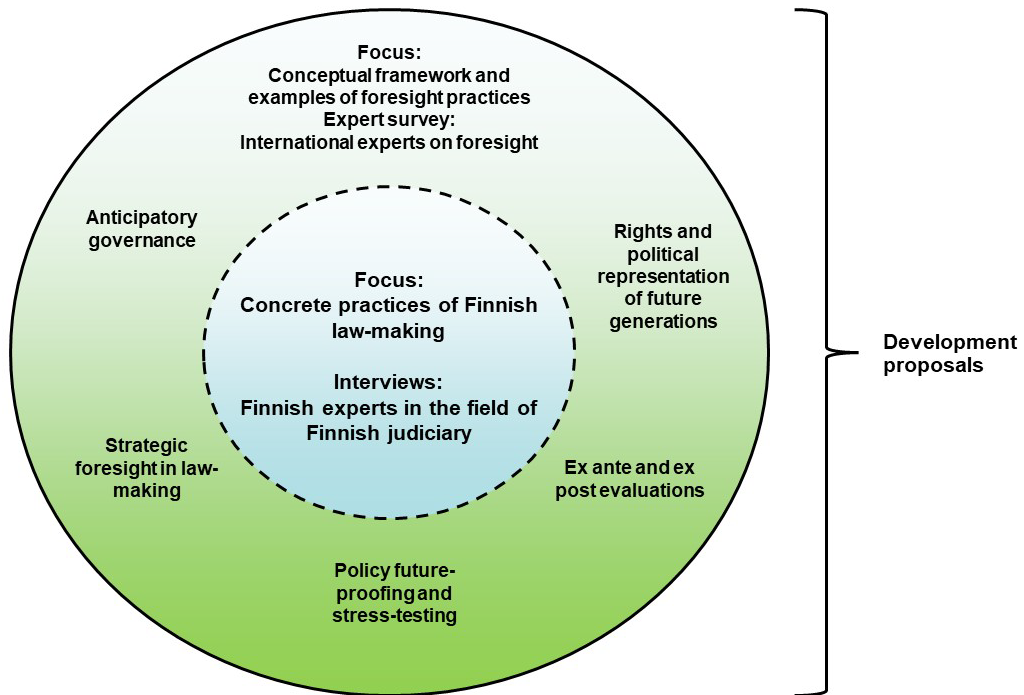


Figure 1. FORGE's conceptual and analytical structure.

Methods and material used in the project

The FORGE project conducted a survey, interviews and a workshop. The aim of the survey was to gather information from both Finnish and international experts regarding foresight and future-regarding policymaking more generally. The survey included questions pertaining to, for example, identification of the most important foresight actors and good governmental foresight practices. Altogether 65 national and international experts responded to the survey.

In addition, expert interviews were conducted in order to examine the role of foresight and future generations in Finnish law-making process. FORGE interviewed 11 Finnish experts in the field of Finnish judiciary, law and public administration. The interviews were semi-structured; the interview had some fixed questions with additional questions being asked when necessary.

The project arranged a co-creation workshop in June 2022 in order to identify issues and suggestions for improvement regarding foresight and future generations in law-making. The workshop had 22 participants from Finnish ministries, experts working with foresight and futures studies, as well as experts on sustainable development.

In addition to the material produced during the project, FORGE also collected material from literature, peer-reviewed research, and source of laws and so-called grey literature such as organisations' reports and documents. The project used different research methods such as content analysis, literature review and legal systematisation.

Results and conclusions

The challenges of long-term decision-making

The argument regarding “democratic myopia” states that elected representatives often fail to give sufficient attention to future impacts of policies and future generations' interests (Jacobs 2008). There are various reasons for democratic myopia. Policymakers favour issues that they believe are important for the current voters. There are also situations where current voters are unwilling to make sacrifices in order to ensure future generations' welfare. Long-term problems are also often quite complex, and the future effects remain uncertain and abstract, which further complicates future-regarding policymaking.

Moreover, the idea of future generations and their rights remains vague and debatable. The so-called all-affected principle, discussed in political philosophy, highlights policymakers' moral responsibility to take into consideration the interests of all those significantly affected (e.g., Näsström 2011). This applies also to those affected groups who are not able to participate in policymaking processes themselves, including those not yet born. Since the scope of affected groups depends on causal impacts of policymaking, it varies between different policy domains. This interpretation suggests that the definition of “future generations” in policymaking may be dependent on the context and the political problem at hand.

A striking result of the FORGE survey was the lack of consensus of a definition or agreed temporal scope of the concept “future generations”. However, FORGE experts most often understood future generations as “Future people whose lives will be significantly affected by our decisions”. Unfortunately, this interpretation does not provide any straightforward guidance for the daily work of lawmakers. Rather, it highlights the importance of contextual impact assessments, including impacts in the distant future.

Legal and political representation of future generations

The idea of sustainable development, by definition, highlights future generations' interests and rights. An increasing number of constitutions mention the rights of future generations, especially in relation to the protection of the environment. Nowadays, over 60 countries have mentions of future generations in their constitutions (Villadiego 2020).

The growing number of cases of climate litigation also demonstrates the increasing relevance of future generations' rights. Litigation has been a way to get visibility for potential violations of future generations' rights. However, in some cases such as in Germany, litigation has actually been a way to force governments to adopt a more ambitious climate policy (Neubauer, et al. v. Germany 2021).

In the research literature, there are various proposals for enhancing the representation of future generations in policymaking, ranging from elected representatives for the future to specially appointed officials for future generations. In addition to research literature, there are growing political pressures to defend future generations' rights. Several international organisations and political actors have made suggestions for new institutions and practices to protect future generations.

So far, three countries (Wales, Israel, and Hungary) have appointed specific officials for future generations in order to safeguard future generations' interests. The experiences of officials for future generations are rather mixed. The responsibilities of the Welsh Future Generations Commissioner are based on the Well-being of Future Generations Act. In both Israel and Hungary ambitious initiatives for protecting future generations were watered down after subsequent changes of government. Especially the case of the Israel's Knesset Commissioner for Future Generations shows how such institutions are vulnerable to political pressures. The Israeli case shows that the right of one actor to represent future generations and to interfere with the work of elected representatives can be easily questioned.

Foresight practices in lawmaking

One of FORGE's tasks was to identify best foresight practices in different stages of lawmaking. It must be noted that identifying "the best" practices is based on some normative assumptions and thus cannot be done only with empirical methods. Moreover, the expert survey shows that it is not straightforward – even for experts – to distinguish institutions for future generations from foresight institutions. Sometimes this may be because future-regarding institutions have both types of functions.

This been said, the most interesting and advanced examples of foresight practices can be found in international and supranational organisations such as European Commission and Parliament, OECD (Organisation for Economic Co-operation and Development) and UNESCO (the United Nations Educational, Scientific and Cultural Organization). National examples of foresight systems that could serve as inspiration for Finland include New Zealand, Singapore and Canada.

The current EU Commission champions strategic foresight as a means to generate information regarding both continuous and disruptive developments relevant to policy-making. The EU Parliament advances policy stress-testing as a novel method to simulate and investigate possible effects of high impact, low probability (HILP) on legislation existing or under preparation. OECD promotes strategic foresight and anticipatory innovation governance as means to both a more efficient public administration and better regulation. UNESCO has developed Futures Literacy (FL). Futures Literacy is the capability that allows for a better understanding of the role of the future through perceptions and actions.

One of the key findings of FORGE is that all national examples of foresight practices found during the project focus either on the starting point or on the final stages of legislative processes. FORGE project found no examples of foresight used throughout the law-making process. The stages of legislative processes where foresight is mostly used are in identifying regulatory needs, during preparation of legislation in ministries, and in some limited cases, for ex-post evaluation. Figure 2 illustrates the different roles of different foresight actors and/or representation of future generations as a part decision-making.

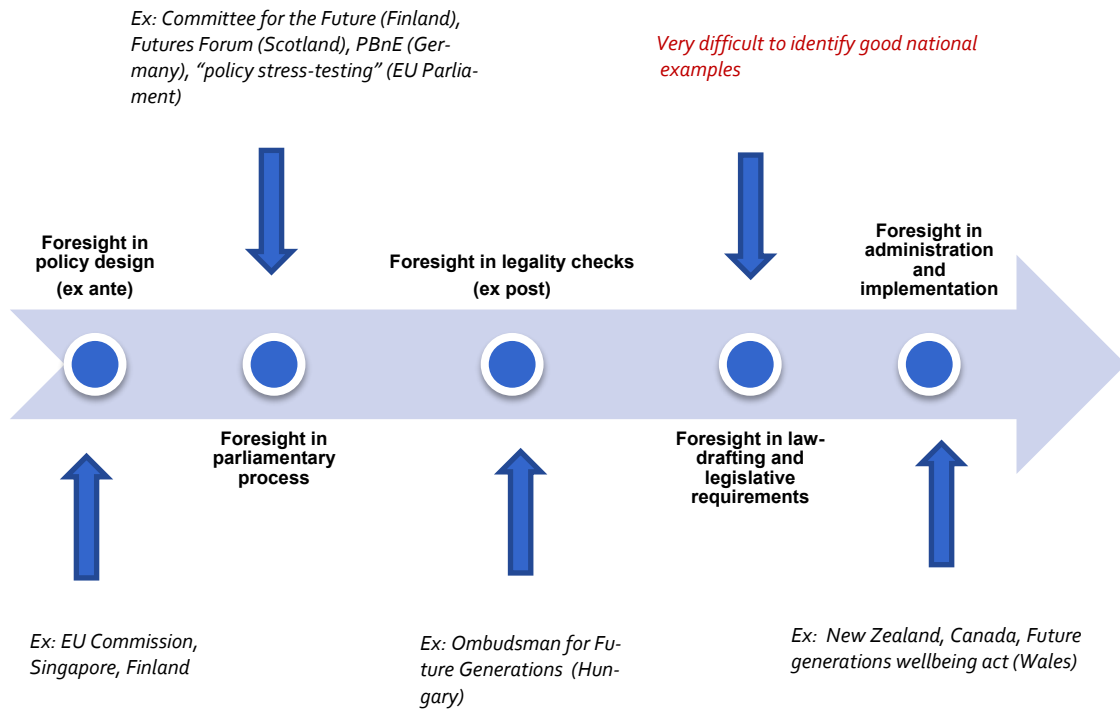


Figure 2. Examples of foresight institutions and representing future generations as a part of policymaking.

Future-regarding lawmaking in Finland

The Constitution of Finland does not refer to future generations or their rights specifically. In addition, there are currently only few references to future generations in the Finnish legal doctrine. Moreover, Finland does not have a specific official or ombudsman for future generations. Only Ministry of Environment and Ministry of Finance have defined the protection of future generations as part of their responsibilities.

At the same time, Finland has an advanced governmental foresight system, which is embedded in the parliamentary work through the Government Report on the Future, which forms the basis of future-oriented dialogue between the Government and the Parliament. Committee for the Future in the Finnish Parliament has served as a model for parliamentary committees for the future in several countries in different parts of the world. However, Finland's foresight system is not yet directly linked to the legislative process.

FORGE aimed to identify the state of the art of in each stage of the Finnish legislative process; namely identifying regulatory needs, preliminary preparation, regulatory drafting, impact assessment and consultations, and ex-post evaluation. The project identified different areas of development, for example, in the identification of regulatory needs, the use of expert advice in lawmaking, and consideration of long-term impacts and future generations' interests in impact assessments or public hearings.

Development proposals

There are multiple proposals in the literature for new institutions safeguarding the future. Since Finland already has rather developed institutions and practices for foresight, we propose developing and upgrading the existing institutions and practices rather than creating new ones. In other words, future-regarding policymaking can be enhanced in Finland through more incremental changes in practices, modes of interaction, and attitudes.

FORGE puts forward 12 development proposals for future-regarding lawmaking in Finland. These proposals are based on the view that future-regarding lawmaking should be based on consideration of various types of expert information and diversity of interests. The proposals were influenced by certain tensions identified in future-regarding policymaking: first, the tension between policymakers' preference for exact quantitative information and the fact that foresight knowledge is often qualitative; second, the risk that increasing use of expert information may narrow down the opportunities for citizen participation and influence in policymaking.

There are three further comments on the proposals. First, since Finland already has multiple institutions that support future-regarding decision-making, it seems meaningful to build on already existing institutions. Second, the implementation and the success of the proposals are ultimately based on society's values and attitudes. More concretely, the responsibility for implementation should be shared between ministries and the parliament. Third, recent reports identify a variety of problems in law-making practices (e.g., Keinänen & Pajuoja 2020), and FORGE's proposals are partly in line with the proposed remedies to these problems. Resolving more general problems of lawmaking can also help facilitate future-regarding policymaking.

Foresight and future generations in lawmaking

Keeping these remarks in mind, the FORGE project makes twelve development proposals on future-regarding policymaking. First, FORGE recommends generating techniques for the identification of regulatory needs and the preparation of laws that reflect

on alternative futures. Concretely, this means, for example, making uncertainties visible and testing different actions and their impacts in different future scenarios. The second recommendation is to make foresight a continuous activity throughout the legislative process and political decision-making more generally.

Thirdly, FORGE recommends processes for the use of foresight knowledge at all stages of the legislative process and in collaboration between ministries. This foresight model involves a shared view on the current situation, increasing foresight capability by continuous and cross-sectoral dialogue, and focus on phenomena that might happen in the future. Numerous foresight methods such as future workshops and trend and scenario analyses can support this model.

The fourth recommendation is to adopt EU's recommendation concerning the increased use of strategic foresight and OECD's recommendation concerning developing foresight capability. FORGE's fifth proposal is to improve the "future sensitivity" of current legislation with ex-post evaluations since foresight can highlight how existing regulation is fitted to possible future trends. The sixth recommendation is to lower the costs and the demands of expertise in the creation of foresight knowledge by organising cross-sectoral trainings and using user-friendly foresight methods. The seventh proposal is to utilise foresight to pursue sustainable development goals by e.g., using PESTEV-analysis.

The other five development proposals pertain to the consideration of the future generations and their rights and interests as a part of legislative processes. The eighth recommendation is to define the term "future generations" within Finland's system of fundamental rights and separately in relevant legislative projects. The ninth proposal is to promote the role of foresight and sustainable development in negotiations on the formation of a government. This means that negotiation parties are encouraged to consider sustainability aspects of the proposed legislative projects.

In its tenth proposal, FORGE recommends making more systematic impact assessments of legislation through different time spans, while recognising uncertainties. The proposal requires better use of different types of data and foresight in impact assessment. In practice, this could mean, for example, "science sparring" where government officials and scientists engage in an intense dialogue in relevant legislative projects.

The eleventh development proposal is to include more systematic evaluations of future impacts of legislation in parliamentary proceedings, especially in committee reports. The role of the Parliamentary Committee for the Future could be strengthened by encouraging other committees to ask statements regarding future impacts by the committee, and by increasing the weight of these statements the legislative process. Finally, FORGE recommends requesting for views regarding long-term impacts in

public consultations, with special focus on young people, and organising and embedding deliberative mini-publics into policymaking.

12 DEVELOPMENT PROPOSALS FOR FUTURE-REGARDING LAWMAKING

- 1) generate techniques for the identification of regulatory needs and the preparation of laws that help reflection on alternative futures,
- 2) make foresight a continuous activity throughout the legislative process and political decision-making more generally,
- 3) outline processes for the use of foresight knowledge at all stages of the legislative process, which should be reformed to facilitate collaboration between ministries,
- 4) adopt EU's and OECD's development proposals concerning foresight capabilities and strategic foresight,
- 5) improve the "future sensitivity" of current legislation with ex-post evaluations,
- 6) lower the costs and the demands of expertise in creation of foresight knowledge,
- 7) make use of foresight to pursue sustainable development goals,
- 8) define the term "future generations" within Finland's system of fundamental rights and separately in relevant legislative projects,
- 9) promote the role of foresight and sustainable development in government formation negotiations,
- 10) make more systematic impact assessments of legislation through different time spans while recognising uncertainties,
- 11) include more systematic evaluations of future impacts of legislation in parliamentary proceedings, especially in Committee reports, and to strengthen the role of the Parliamentary Committee for the Future in this
- 12) request for views regarding long-term impacts in public consultations and to organise deliberative mini-publics on long-term issues.

Further reading

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Further information:

Project leader, professor of political science, PhD Maija Setälä, University of Turku, p. 046 923 7859, [maiset\(at\)utu.fi](mailto:maiset(at)utu.fi).

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Project's steering group's chairperson:

Secretary-General of Government Report on the Future Jaana Tapanainen-Thiess

Prime Minister's Office, Government Strategy Department, jaana.tapanainen-thiess@gov.fi



Government's analysis, assessment and research activities