**Answer to the Questionnaire provided by the
 Hungarian Ombudsman for Future Generations**

The Hungarian Ombudsman for Future Generations (FGO) is a Deputy to the Commissioner for Fundamental Rights (the Hungarian NHRI), a supervisory organ attached to the Hungarian Parliament. The FGO has a specific constitutional mandate anchored in three different clauses of the Fundamental Law: (i) to safeguard the common heritage of the nation (meaning environmental and cultural heritage) for future generations, (ii) to oversee the enforcement of the right to a healthy environment and (iii) the right to physical and mental health. The FGO is independent from the government and is tasked with reviewing the conduct of state authorities in environmental matters and can also act as a general “watchdog” for any sustainability issues it deems significant for future generations. A more detailed description of the powers and institutional structure of FGO can be found in Annex I to this questionnaire.

**1. Please provide examples of ways in which toxic environments—characterized by unhealthy levels of pollution and high risks of exposure to toxic substances—are having adverse impacts on human rights.**

i) The Fundamental Law stipulates that providing access to drinking water is one of the tools ensuring the right to physical and mental health. For that reason, the FGO in its practice regards ensuring an access to safe and clean drinking water to be an essential element to the right to health and the right to a healthy environment. The pipeline systems of old residential buildings connecting to the public pipeline grid still contain lead and asbestos and constitute a typical source of pollution endangering access to safe drinking water. In certain districts of cities such private pipelines have not yet been replaced, which causes a major public health risk threatening with a violation of the right to health and to a healthy environment.[[1]](#footnote-1)

ii) Relaxing regulatory oversight of access to common water resources may also violate the right to a healthy environment. An example from our cases: the FGO submitted *amicus curiae* brief to the Constitutional Court in an *ex-ante* constitutional review procedure initiated by the Head of State against an amendment to the Water Management Act. The amendment sought to abolish the statutory permitting requirement for drilling wells even down to 80m in order to relax liability for not meeting permitting obligations in the past and to reduce costs and administrative burdens of households. In the amicus brief, the FGO stressed that the intended relaxed regulatory oversight of the drilling process would greatly endanger the quality and quantity of groundwater resources. The Constitutional Court decision No. 13/2018 (4. IX.) found a violation of the right to a healthy environment and declared the amendment to be contrary to the Fundamental Law confirming the arguments of the amicus brief.

**2. What are the most heavily polluted places in your State? Are any areas in your State designated as “sacrifice zones” because of extreme pollution? Are there any examples of heavily polluted places that have been comprehensively cleaned up and rehabilitated? If not, what are the barriers to cleanup and rehabilitation.**

i) A leading water and soil pollution problem in Hungary lies in contaminated sites that are waiting to be remediated. The majority of such sites has seen heavy industry and also Soviet military bases operating in the country between the ‘50s and ‘80s. Toxic chemicals deposited without proper containment seep into the ground and reach aquifers contaminating drinking water reserves and thereby causing a violation of the right to a healthy environment and the right to health. The FGO found that such violations occurred when the state failed to abate such pollution in an effective way.[[2]](#footnote-2)

ii) Air pollution is also a serious environmental health issue in Hungary. The PM10 air quality index in Budapest and its suburbs, in the north-east Sajó-valley, the northwest area of Győr-Mosonmagyaróvár, in towns Baja, Kecskemét, Békéscsaba and Szeged regularly exceed the legal limitations – affecting approximately 3 million people. The major anthropogenic sources are low-chimney emissions of traffic and inappropriate household heating practices, in particular burning of wastes. One of the main problems is the lack of proper analytic data, which would be essential of any effective air quality plan. The FGO has extensively worked on these problems and issued two comprehensive reports[[3]](#footnote-3). As a result of his initiations, one new automatic air quality monitoring station has been already established in Szentgotthárd, and one other is being put in place in Békéscsaba.

**3. What are the specific obligations of States and responsibilities of businesses in terms of preventing exposures to unhealthy levels of pollution and toxic substances, rehabilitating toxic sites, and providing compensation to adversely impacted individuals?**

The Hungarian Environmental Protection Act imposes a joint and several liability on the owner and the user of a particular land for any environmental damage found on the premises. This constitutes an effective legal tool to allocate liability for soil and groundwater pollution that can be causally linked to that particular land and without naming economic operator. The landowner is able to free itself from liability if he/she can identify the operator responsible and proves beyond doubt that responsibility does not lie with the owner. The jurisprudence of the Court of Justice of the European Union in several cases confirmed that this scheme is compatible with the EU Environmental Liability Directive. Yet, the efficiency of this liability regime is hindered by the fact that the owner can escape financial liability if it is insolvent or under liquidation.

Aiming to elaborate and strengthen the application of the polluter pays principle and the general environmental liability scheme in line with international legal norms, amongst other the Environmental Liability Directive, the FGO has developed – in cooperation with environmental NGOs, business associations and legal experts - and sent to the competent ministries at the end of 2019 a complex legislative proposal. One of the fundamental elements of this legislative initiative is to make the actors of the economy interested in the prevention of environmental damages and to introduce a scheme that ensures taking financial responsibility for the environmental damages that they have caused.[[4]](#footnote-4)

**4. Please provide specific examples of constitutional provisions, legislation, institutions, regulations, standards, jurisprudence, policies and programmes that apply a rights-based approach to ensuring toxic-free environments**.

i. Constitutional provisions in the Fundamental Law

The Fundamental Law in its Preamble (National Avowal) states that “we bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.”

Article P) enshrines the concept of “the common heritage of the nation”, including in this concept natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets. The protection, maintenance and preservation of such common heritage for future generations should be the obligation of the State and everyone else. This concept is less couched as a human right, but rather as a state objective. It is increasingly cited as a strong basis for enacting biodiversity related measures.

Article XX spells out the right to physical and mental health and one of the tools for ensuring this fundamental right lies in ensuring the protection of the environment.

Article XXI includes a right to a healthy environment as a human right. The Constitutional Court established that the right to a healthy environment entails the non-regression principle, according to which the State is not allowed to step back from the level of environmental protection it already guarantees (this principle is relevant to substantive, procedural and institutional issues as well).

The FGO within the Hungarian NHRI is a unique institution which, through its case practice applies a rights-based approach to ensuring a toxic-free environment. The FGO (through applications for constitutional reviews and amicus briefs submitted) has a kind of cooperation with the Constitutional Court in developing jurisprudence and crystallizing important legal principles, such as principles of prevention and precaution, non-regression, necessity and proportionality, intergenerational equity, Public Trust doctrine.

**5. If your State is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment, has this right contributed to preventing, mitigating, or rehabilitating toxic environments? If so, how? If not, why not?**

The Fundamental Law (adopted in 2012) contains numerous provisions on environmental protection as detailed under question no. 4. The aforementioned Article P) recognizes the right of not only current, but also future generations to a safe, clean, healthy and sustainable environment. Article P) provided the basis for establishing the mandate of FGO. As discussed in Appendix 1 in detail, the FGO has a human rights-based mandate meaning that all its investigations are triggered by suspected violations of the constitutional right to a healthy environment including the interest of future generations and its recommendations are rooted in national and international human rights standards. The exact ways in which the human rights-based advocacy of FGO relates to preventing, mitigating, or rehabilitating toxic environments is mapped under the specific questions of this questionnaire.

**6. Please provide specific examples of good practices in preventing, mitigating, or rehabilitating toxic environments. These examples may occur at the international, regional, national, sub-national, or local level. Examples may involve monitoring concentrations of toxic substances in air, water, soil, food and people; guaranteeing procedural rights (e.g. public access to information, public participation in decisionmaking, access to remedies); legislation, regulations, standards, jurisprudence and policies that address toxic substances; and initiatives to achieve toxic-free environments (e.g. banning the use of specific substances, reducing air and water pollution, remediation projects). Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices.**

The National Remediation Program, which provides financial resources from the central budget to remediate certain contaminated sites could be a major tool to mitigate pollution originating from historical environmental damage (so-called orphan damage). This program is run by the government, hence the order of priority in which sites are to be remediated is determined by the competent ministry. Its effectiveness is, however, constrained due to the limited resources allocated to the Program. The FGO issued a package of legislative recommendations on environmental liability to boost the effectiveness of the Program and prevention of future contamination sites by *inter alia* reforming the scope of its financial input.[[5]](#footnote-5)

**7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to toxic environments (e.g. women, children, persons living in poverty, members of Indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial, religious or other minorities, migrants and displaced persons). How can these populations be empowered to protect their rights?**

i) Additional protection for children and the next generations is offered through the mandate of the FGO who acts as a quasi-guardian of children, pregnant women and the unborn generation through safeguarding the common heritage of the nation - more detail in Appendix I. To allow for a change in the mindset of the next generations for a more sustainable lifestyle, it is essential that children be provided with adequate information about the importance of environmental protection, including that of toxic environments. Their education should increasingly focus on holistic approach of environmental questions.

ii) Energy poverty is a serious social problem in Hungary. It can be traced back to three main reasons: low incomes, high energy costs and low energy efficiency of residential buildings. As a result, low- income households often incinerate waste or lignite to warm up their homes. This way, energy poverty directly contributes to unhealthy level of PM10 concentration in the air, affecting the health and the life-expectancy of the most vulnerable groups of the society, including the Roma minority.

The FGO published a report in 2016, in which he initiated urgent legislations to ban the trade of the cheapest and worst quality coal (lignit) to the population, meanwhile providing them wood as part of the social care system. On the other hand, the FGO emphasized that the subsidy program for the energy-efficient renovation of buildings should also be rethought to enable it to reach this most marginalized group.[[6]](#footnote-6) Modernizing the heating systems in residential buildings would reduce the number of households currently heating with waste or lignite, significantly worsening the air quality in the winter months

**8. Are the actions of high-income States linked to increased risks of exposure to toxic substances in low- and middle-income States? What are ways in which high-income States should assist low-income States in preventing and rehabilitating toxic environments?**

This question is not directly related to the practice of the FGO.

**9. For businesses, what policies or practices are in place to ensure that activities, products, and services prevent risks of toxic exposures and meet human rights standards, especially those articulated in the Guiding Principles on Business and Human Rights?**

This question is not directly related to the practice of the FGO.

Sincerely,

Gyula Bándi

1. case number: AJB-677/2013. [↑](#footnote-ref-1)
2. case numbers: AJB-813/2012., AJB-831/2012. [↑](#footnote-ref-2)
3. case numbers: AJB-3360/2012, AJB-2031/2014. [↑](#footnote-ref-3)
4. case numbers: AJB-1495/2019. [↑](#footnote-ref-4)
5. case number: AJB-1495/2019. [↑](#footnote-ref-5)
6. Summary of the Hungarian NHRI’s engagement with the SDGs, Annex I, point 7.2, available at: https://www.ajbh.hu/documents/14315/2872607/Summary+of+the+Hungarian+NHRI%27s+engagement+with+the+SDGs/e3aa1667-4c81-cd5a-2571-ba4a80a978e1 [↑](#footnote-ref-6)