



UNEP

United Nations Environment Programme

GUIDELINES FOR THE DEVELOPMENT OF
NATIONAL LEGISLATION ON
ACCESS TO INFORMATION, PUBLIC PARTICIPATION
AND ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS

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Improving access to environment information, public participation in decision-making and access to justice on environmental matters will be among the litmus tests of a strong and forward-looking outcome at Rio+20 in June 2012.

These issues, underpinning sustainable development and the role of everyone in society to be able to play their part and fulfill their responsibilities towards the environmental pillar, was specifically recognized in Principle 10 of the Rio Declaration of 1992 and remains as relevant today as it was almost two decades ago.

In order to catalyze and to accelerate action in terms of implementing Principle 10, governments adopted the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters at the 11th Special Session of UNEP Governing Council/Global Ministerial Environmental Forum in Bali, Indonesia.

These Guidelines though voluntary, demonstrate a willingness by Governments to more thoroughly engage the public at all levels to protect and manage the environment and related resources.

They also underline recognition of the need to fill gaps in legal norms and practices so as to encourage broad access to information, public participation and access to justice in environmental matters within the framework of national legislation and processes.

As a follow up to their adoption and their implementation, UNEP is pleased to present these Guidelines in this brochure, and looks forward to their wider application and practical demonstration as the world heads again to Rio to accelerate and scale-up decisive and definitive change under the twin themes of a Green Economy in the context of sustainable development and poverty eradication and an institutional framework for sustainable development.

GUIDELINES FOR THE DEVELOPMENT OF NATIONAL LEGISLATION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

The purpose of these voluntary guidelines is to provide general guidance, if so requested, to States, primarily developing countries, on promoting the effective implementation of their commitments to Principle 10 of the 1992 Rio Declaration on Environment and Development within the framework of their national legislation and processes. In doing so, the guidelines seek to assist such countries in filling possible gaps in their respective legal norms and regulations as relevant and appropriate to facilitate broad access to information, public participation and access to justice in environmental matters.

The guidelines should not be perceived as recommendations to amend national legislation or practice in cases where existing legislation or practice provides for broader access to information, more extensive public participation or wider access to justice in environmental matters than follows from these guidelines.

I. ACCESS TO INFORMATION

GUIDELINE 1

Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request (subject to guideline 3), without having to prove a legal or other interest.

GUIDELINE 2

Environmental information in the public domain should include, among other things, information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information.

GUIDELINE 3

States should clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, taking into account the public interest served by disclosure.

GUIDELINE 4

States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment.

GUIDELINE 5

States should periodically prepare and disseminate at reasonable intervals up-to-date information on the state of the environment, including information on its quality and on pressures on the environment.

GUIDELINE 6

In the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public¹ to take measures to prevent such harm is disseminated immediately.

GUIDELINE 7

States should provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

II. PUBLIC PARTICIPATION

GUIDELINE 8

States should ensure opportunities for early and effective public participation in decision-making related to the environment. To that end, members of the public concerned² should be informed of their opportunities to participate at an early stage in the decision-making process.

GUIDELINE 9

States should, as far as possible, make efforts to seek proactively public participation in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.

1 “The public” may be defined as one or more natural or legal persons and their associations, organizations or groups.

2 “The public concerned” may be defined as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. For the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law should be deemed to have an interest.

GUIDELINE 10

States should ensure that all information relevant for decision-making related to the environment is made available, in an objective, understandable, timely and effective manner, to the members of the public concerned.

GUIDELINE 11

States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

GUIDELINE 12

States should ensure that when a review process is carried out where previously unconsidered environmentally significant issues or circumstances have arisen, the public should be able to participate in any such review process to the extent that circumstances permit.

GUIDELINE 13

States should consider appropriate ways of ensuring, at an appropriate stage, public input into the preparation of legally binding rules that might have a significant effect on the environment and into the preparation of policies, plans and programmes relating to the environment.

GUIDELINE 14

States should provide means for capacity-building, including environmental education and awareness-raising, to promote public participation in decision-making related to the environment.

III. ACCESS TO JUSTICE

GUIDELINE 15

States should ensure that any natural or legal person who considers that his or her request for environmental information has been unreasonably refused, in part or in full, inadequately answered or ignored, or in any other way not handled in accordance with applicable law, has access to a review procedure before a court of law or other independent and impartial body to challenge such a decision, act or omission by the public authority in question.

GUIDELINE 16

States should ensure that the members of the public concerned have access to a court of law or other independent and impartial body to challenge the substantive and procedural legality of any decision, act or omission relating to public participation in decision-making in environmental matters.

GUIDELINE 17

States should ensure that the members of the public concerned have access to a court of law or other independent and impartial body or administrative procedures to challenge any decision, act or omission by public authorities or private actors that affects the environment or allegedly violates the substantive or procedural legal norms of the State related to the environment.

GUIDELINE 18

States should provide broad interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice.

GUIDELINE 19

States should provide effective procedures for timely review by courts of law or other independent and impartial bodies, or administrative procedures, of

issues relating to the implementation and enforcement of laws and decisions pertaining to the environment. States should ensure that proceedings are fair, open, transparent and equitable.

GUIDELINE 20

States should ensure that the access of members of the public concerned to review procedures relating to the environment is not prohibitively expensive and should consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

GUIDELINE 21

States should provide a framework for prompt, adequate and effective remedies in cases relating to the environment, such as interim and final injunctive relief. States should also consider the use of compensation and restitution and other appropriate measures.

GUIDELINE 22

States should ensure the timely and effective enforcement of decisions in environmental matters taken by courts of law, and by administrative and other relevant bodies.

GUIDELINE 23

States should provide adequate information to the public about the procedures operated by courts of law and other relevant bodies in relation to environmental issues.

GUIDELINE 24

States should ensure that decisions relating to the environment taken by a court of law, or other independent and impartial or administrative body, are publicly available, as appropriate and in accordance with national law.

GUIDELINE 25

States should, on a regular basis, promote appropriate capacity-building programmes in environmental law for judicial officers, other legal professionals and other relevant stakeholders.

GUIDELINE 26

States should encourage the development and use of alternative dispute resolution mechanisms where these are appropriate.

ANNEX

USEFUL LINKS

Below useful links to institutions and initiatives related to access to information, public participation and access to justice in environmental matters.

<http://www.unep.org/DEC>

<http://www.unep.org/civil-society>

<http://www.unitar.org/egp/rio-principle-10-projects>).

<http://live.unece.org/env/pp/welcome.html>

<http://www.wri.org>, <http://www.accessinitiative.org>,

<http://www.ciel.org>

<http://www.i-c-e-l.org/>

Following the adoption of the Guidelines for the Development of National Legislation on Access to Information, Public-participation in Decision-making and Access to Justice in Environmental Matters in 2010, UNEP is collaborating with partners to promote the application of these Guidelines around the world. Additionally to the Guidelines, published in this text, there are Commentaries to the Guidelines that have been developed, taking into account the comments received from Governments and civil society groups from around the world. UNEP is collaborating with UNITAR to assess the application of the Guidelines in selected pilot countries in various regions for the purpose of identifying gaps that can be addressed in the process of strengthening national legislation. UNEP responds to requests from countries and Major Groups and Stakeholder of Civil Society to provide advisory services and technical assistance for developing and strengthening national environmental legislation and practices including legislation related to access to information, public participation in decision making and access to justice in environmental matters.

In UNEP, the Division for Environmental Law and Conventions (DELIC) and the Major Groups and Stakeholder Branch of the Division for Regional Cooperation work closely together in providing support for the implementation of the Guidelines.

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