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Tackling Air Pollution through Legislation

Legislation for robust and participatory air quality governance



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Background: First Global Assessment of Air Pollution Laws (GAAPL)



Why is national air quality legislation important for public health outcomes (or ‘rights to clean air’)?

- Lack of global treaty for air quality governance, legal mechanisms to **implement regional cooperation**
- Domestic legislation as ‘key institutional tool’ for implementing **WHO air quality guidelines (AQGs)** at national level
- **Enforceability** of ambient air quality standards, and of administrative processes for delivering them
- Creates a legal framework for **public participation, access to justice** and **legal rights** relating to air quality – air quality legislation ‘sets the stage’ for effective rights and their scope/direction



The global picture of national air quality legislation

- NB data as at December 2020
- **Heterogeneous approach** to embedding air quality standards in law and governance globally
- Risk of masking weak ambition and legalizing unclean air
- Air quality law looks different in **different systems of government**
- **Technocratic nature** of much air quality governance, with public health objectives of legal regimes not always clear
- Many countries in process of **developing** or **reviewing** air quality law
- In at least 34% of countries, ambient air quality was **not yet legally protected**

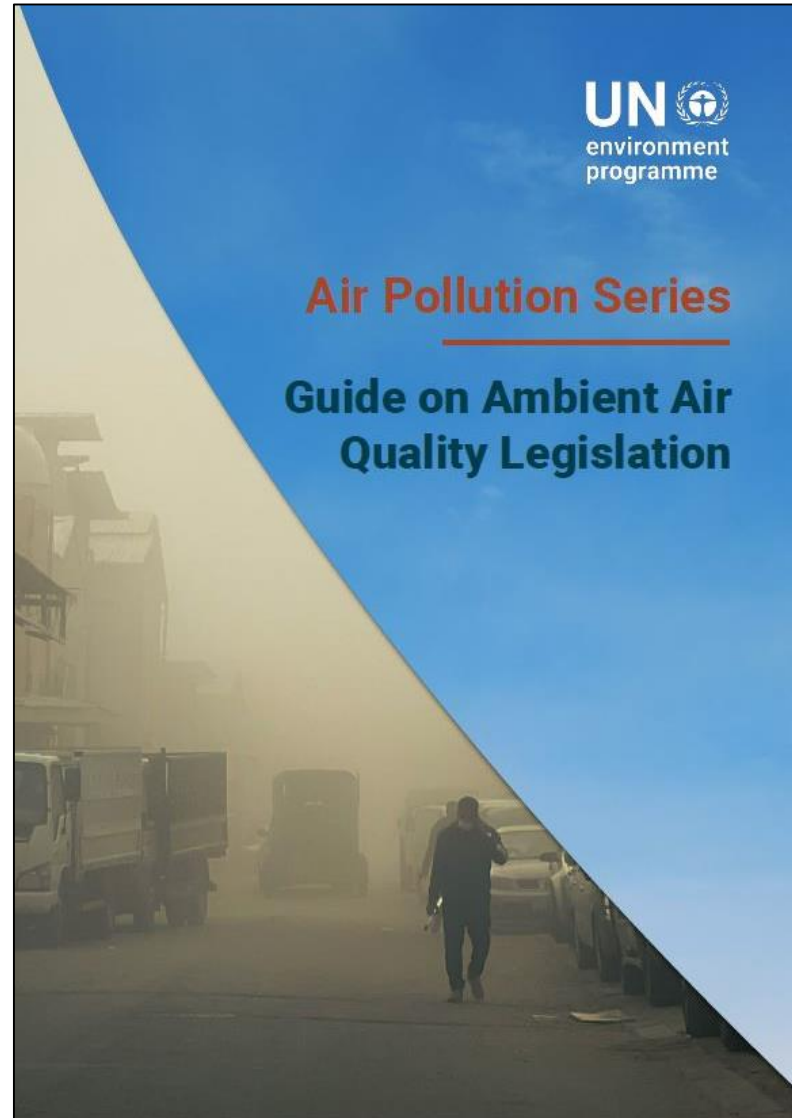


The global picture of national air quality legislation

- **Institutional responsibility** for attaining standards was weak globally – only 33% of countries imposed obligations to meet legally mandated standards.
- **Monitoring** was not legally required in at least 37% of countries.
- Major challenges to develop governance regimes for **indoor air quality** and **transboundary air pollution**
- **Air quality litigation** increasingly defining and enforcing aspects of air quality regimes (e.g. on standard-setting, air quality planning, monitoring), supported by constitutional rights in some countries



UNEP Guide on Ambient Air Quality Legislation



BAOQ
BETTER AIR QUALITY
CONFERENCE



Providing a legal resource for developing robust national ambient air quality legislation



- **Legislative requirements for air quality governance**
- **High-level policy/law informing AQS**
- **Delivering AQS through law & policy**
- **Clear review process**

Guide priorities

- AAQS should be **set in a legal instrument**, to be embedded within a wider legal structure setting out levels of ambition, processes of enforcement and accountability, and citizen rights, as well as to establish legal certainty for economic operators
- Designing **ambitious legislative purposes** to inform entire regime
- **Regular review** of legislation over time
- **WHO AQGs** provide the starting point for national evaluation of AAQS, alongside other design considerations for robust standard-setting (beyond pass/fail nature of limit values)
- Key questions of **scope**: pollutants, geographical area, transboundary pollution, vulnerable populations
- Legal construction of air quality monitoring systems e.g. location requirements, confidence in data
- Clear **legal accountability** on state, strong **compliance and enforcement** measures
- **Legal coordination** of policymaking and interconnected/sectoral regulation
- **Procedural rights** in relation to air quality

Applicability in different countries

- Specific national legal expertise will be needed to adapt and apply the Guide within national contexts
- Legal contexts: nature of legal system, maturity of air quality legislation and any planned revisions, legal doctrine and civil procedure rules, case law interpreting and supporting regimes
- Constitutional arrangements and governmental structures

Does your country have a constitutional or wider legal framework that will influence the interpretation of national air quality legislation?

This may include constitutional rights to life, health, a clean, healthy and sustainable environment, and so on, and national doctrines of public law, which may affect the interpretation of, or required content of, national air quality laws.

- Environmental conditions: air quality drivers and nature of receptors
- Cost and capacity constraints; political contexts

Setting legislative quality standards for ambient air



Israel

Clean Air Law 5768-2008 (unofficial translation)

Section 6

(d) The Minister shall examine, from time to time, and at least once every five years, the need to update the air quality values that they set.

- Basing the country's AAQS based on **2021 WHO guideline values** (level of ambition, scientific case)
- Considering **other kinds of mutually reinforcing air quality standards**, *in addition to* concentration-based AAQS
- Considering and reviewing the **key technical aspects** of setting AAQS
- **Legislative processes** for setting standards and reviewing them over time, including relevant matters to consider
- Taking into account **views of stakeholders and the public**, including vulnerable communities disproportionately impacted by air pollution

Purposes of legislative regimes in setting air quality standards



The Supreme Court of the United States of America has interpreted the delegated rulemaking power of the Environmental Protection Agency to set AAQS under section 109(a) of the United States of America Clean Air Act as being informed by a public health purpose alone, with no consideration of economic considerations permitted: *“The agency should be allowed to have some discretion in setting the guidelines. However, the agency decision-maker does not have the discretion to consider the financial impact of its environmental regulations. The Clean Air Act contains no support for the view that Congress intended cost to be a relevant factor in the agency’s determinations”*

(Whitman v American Trucking Associations, Inc. 2001).



Administrative frameworks for compliance with legislative AAQS

Monitoring

- Designing necessary legal requirements to monitor air quality
- Delineation of government responsibility for monitoring

Data

- Setting location requirements to support robust data collection
- Instilling scientific and public confidence in air pollution data used for compliance
- Modelling air quality data to support monitoring
- Engaging citizens, academic institutions, and other actors

Zoning

- Zoning for management of high pollution areas
- Granting regulatory powers for adequate local management



Administrative frameworks for compliance with legislative AAQS – legal consequences



In 2019, CJEU held that, under European Union law, the siting of sampling points is a matter for judicial review. The location of sampling points is central to the air quality monitoring system provided for the European Union legislation, the very purpose of which would be compromised if sampling points were not correctly located. National courts are thus required to ensure that all necessary measures are taken so that sampling points are sited in accordance with applicable legal criteria (Case C-723/17 *Lies Craeynest and Others v Brussels Hoofdstedelijk Gewest and Another* 2019).

Compliance and enforcement measures

- Ensuring **enforceability** of air quality laws
- **Legal responsibility** of the government to achieve AAQS
- Complementary liabilities or duties imposed on **individual polluters** where non-compliance has been established
- Duty of the government to develop **compliance plans** after establishing the reality of non-compliance
- Duty of the government to take **emergency action** to address hazardous concentration levels of air pollution
- Establishing **reporting** obligations



Compliance and enforcement measures

Are there effective avenues for legal enforcement of AAQS in your country's legal system?

Countries should review their general constitutional and public law doctrines and any specific enforcement mechanisms within applicable air quality regimes to determine whether there are adequate avenues for the effective legal enforcement of AAQS, supported by judicial intervention as required. Where this involves legal enforcement against the government, this is more easily facilitated in systems of multilevel governance, or where there are strong traditions of constitutional rights or *actio popularis*.



Ensuring procedural rights for AAQS



**European Union
CAFE Directive 2008
Article 26**

The [air quality] information shall be made available free of charge by means of any easily accessible media including the Internet or any other appropriate means of telecommunication.

- **Publicly available** AAQS legislation
- **Public participation** in the adoption and revision of AAQS
- Public involvement in air quality management planning
- Dissemination of **monitoring results** to the public
- Rights of **access to justice** in relation to air quality legislative obligations

Public participation in air quality governance



Armenia

Law on Atmospheric Air Protection 1994 (official translation)

Article 9

[P]ublic organizations according to the legislation of the Republic of Armenia and their charters have the right to participate in realization of actions on protection of atmospheric air.

Citizens have the right to assist the state bodies in realization of actions on atmospheric air protection by direct participation in works on protection of atmospheric air, submission into the state bodies and public organizations of proposals on improvement of protection of atmospheric air, informing about infringements of the legislation on atmospheric air protection.

At realization of actions on atmospheric air protection the state bodies are obliged to take into account proposals of public organizations and citizens in the order established by the legislation of the Republic of Armenia.



Air quality and constitutional rights



On 18 March 2022, the High Court of South Africa (Trustees for the time being of *Groundwork Trust and Another v Minister of Environmental Affairs and Others 2022*) declared that poor air quality in a certain area breached residents' constitutional right to an environment that is not harmful to their health and well-being. It ordered the urgent improvement, management, and maintenance of the air quality monitoring station network to ensure that verified, reliable data are produced, and that real-time emissions data are publicly available online and on request.



Substantive legal rights to air quality – role for legislation?

- **Clean Air (Human Rights) Bill** – private members Bill in UK Parliament

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Establish the right to breathe clean air; to require the Secretary of State to achieve and maintain clean air in England and Wales; to involve the UK Health Security Agency in setting and reviewing pollutants and their limits; to enhance the powers, duties and functions of various agencies and authorities in relation to air pollution; to establish the Citizens' Commission for Clean Air with powers to institute or intervene in legal proceedings; to require the Secretary of State and the relevant national authorities to apply environmental principles in carrying out their duties under this Act and the clean air enactments; and for connected purposes.

Coordinating air quality governance

- Designing mechanisms to **coordinate different legal obligations and tools** of air quality control
- Implementing legal obligations to **coordinate government policymaking** in relation to AAQS
- Aligning government's priorities to attain AAQS
- Developing effective **cross-sectoral regulations** for individual pollution sources to ensure achieve AAQS



Thank you

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