

Regulating Air Quality: Assessing National Air Quality Legislation

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<https://www.unep.org/resources/report/first-global-assessment-air-pollution-legislation>





Key findings – part 2

International law picture and transboundary air pollution, monitoring & zones,
procedural rights for air quality, a right to clean air?

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Air Pollution Series

Regulating Air Quality

The first global assessment of air pollution legislation

- Not a new regulatory issue
- Historical influence of 'model' statutes

- Big picture?
 - Patchwork – **Heterogeneity**
 - **Complexity**
 - Ambient air is very unequally protected

Country	Legislative instruments containing ambient air quality standards (original version) [see section 5]	Source [primary source unless otherwise indicated] ²	Made up primary empow legislat [see sec
49. Honduras	Reglamento para el control de emisiones generadas por fuentes fijas (2011)	Data not publicly available	Yes
50. Hungary	4/2011. (I. 14.) VM rendelet a levegőterheltségi szint határértékeiről és a helyhez kötött légszennyező pontforrások kibocsátási határértékeiről	https://net.jogtar.hu/jogszabaly?docid=a1100004.vm	Yes
51. Iceland	920/2016 Reglugerð um brennisteinsdíoxíð, köfnunarefnisdíoxíð og köfnunarefnisoxíð, bensen, kolsýring, svífrýk og blý í andrúmsloftinu, styrk ósons við yfirborð jarðar og um upplýsingar til almennings	www.reglugerd.is/reglugerdir/eftir-raduneytum/umhverfisraduneyti/nr/20277	Yes
52. India	National Ambient Air Quality Standards (2009)	https://sccimines.com/env/DOCS/NAAQS-2009.pdf	Yes
53. Indonesia	Government Regulation No. 41/1999 on Air Pollution Control (1999)	Data not publicly available	Yes
54. Ireland	Air Quality Standards Regulations 2011 (Statutory Instrument [SI] No. 180 of 2011)	http://www.irishstatutebook.ie/eli/2011/si/180/made/en/pdf	Yes
55. Israel	Clean Air (Air Quality Values) Regulations	https://perma.cc/ZM5B-HRW6	Yes

The international law picture

- The impact of **NO multilateral treaty** on ambient air quality protection
 - No such forum = no systematic discussions at global level on air quality law...
 - But we could « feel » a need for more interaction, more capacity → for regulating transboundary air pollution *and* for national law reform
 - References to WHO guidelines fill **a gap**
 - « **Speaks to** »
 - Focus on numerical values as core of air quality norms
- But overall:
- Uneven protection
 - No « level-playing field »
 - **Bindingness? Enforceability?**

Figure 9: National legal provisions for transboundary air pollution among countries surveyed

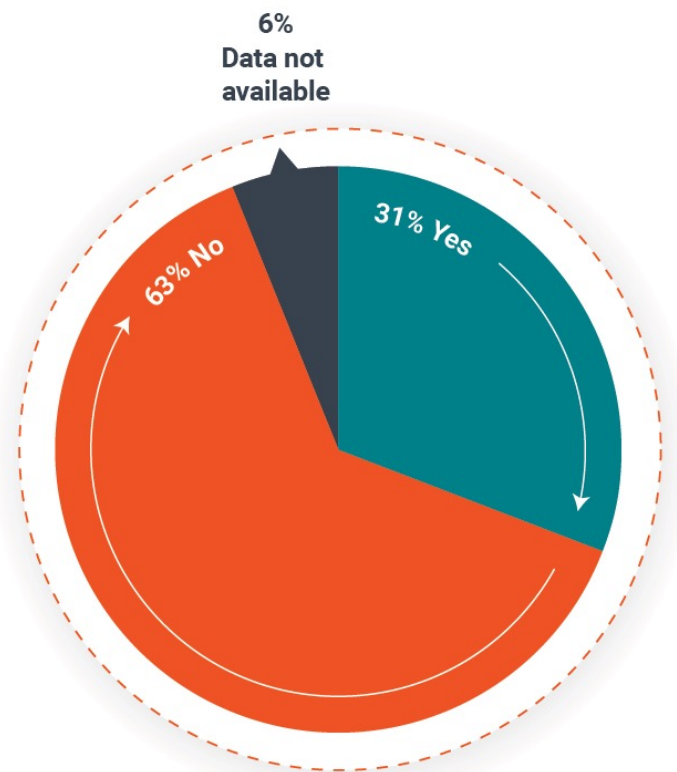


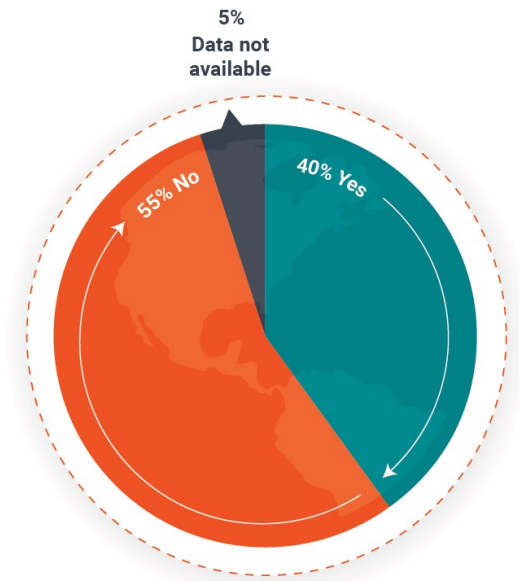
Figure 22: Legislative requirements for air quality governance



Zones have very different aims and meanings

Figure 26: Countries with legal requirements for air quality zones

- Aim to ease evaluation
- **‘Pollute up to’** areas
- Restrict coverage:
AAQS... only in nature parks
- Industrial areas
- Same people everywhere

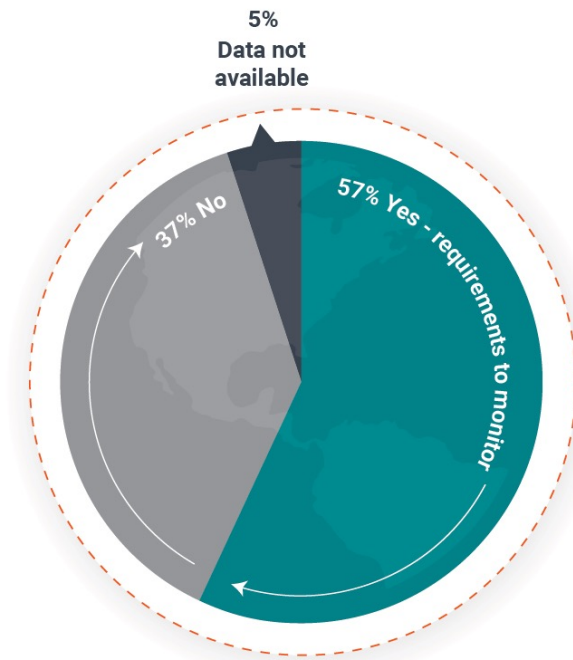


Monitoring

Figure 25: Percentage of countries with legal requirements to monitor air quality

« Some countries engage in air quality monitoring without any legal framework to dictate or constrain this process. This can be problematic in ascertaining the rigour of monitoring that is undertaken, and for the accountability of those who undertake this important aspect of air quality law. »

- Now a matter for judicial control



Importance of procedural rights

Figure 28: Percentage of countries with publicly available air quality legislation

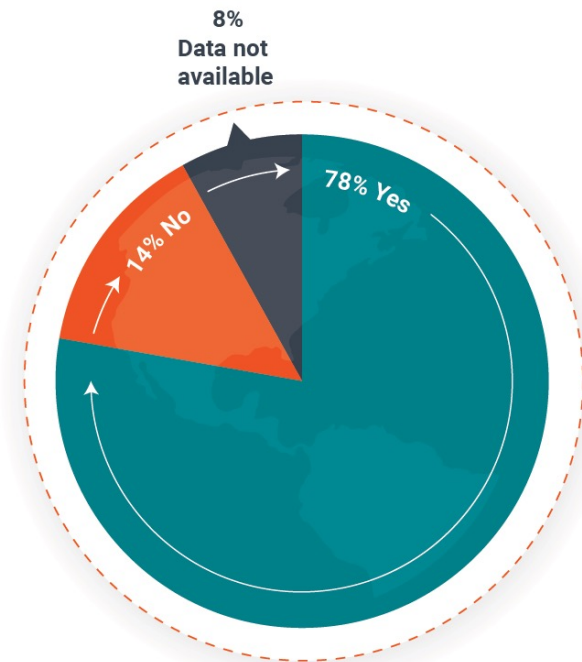


Figure 27: Percentage of countries with legal rights to information on air quality

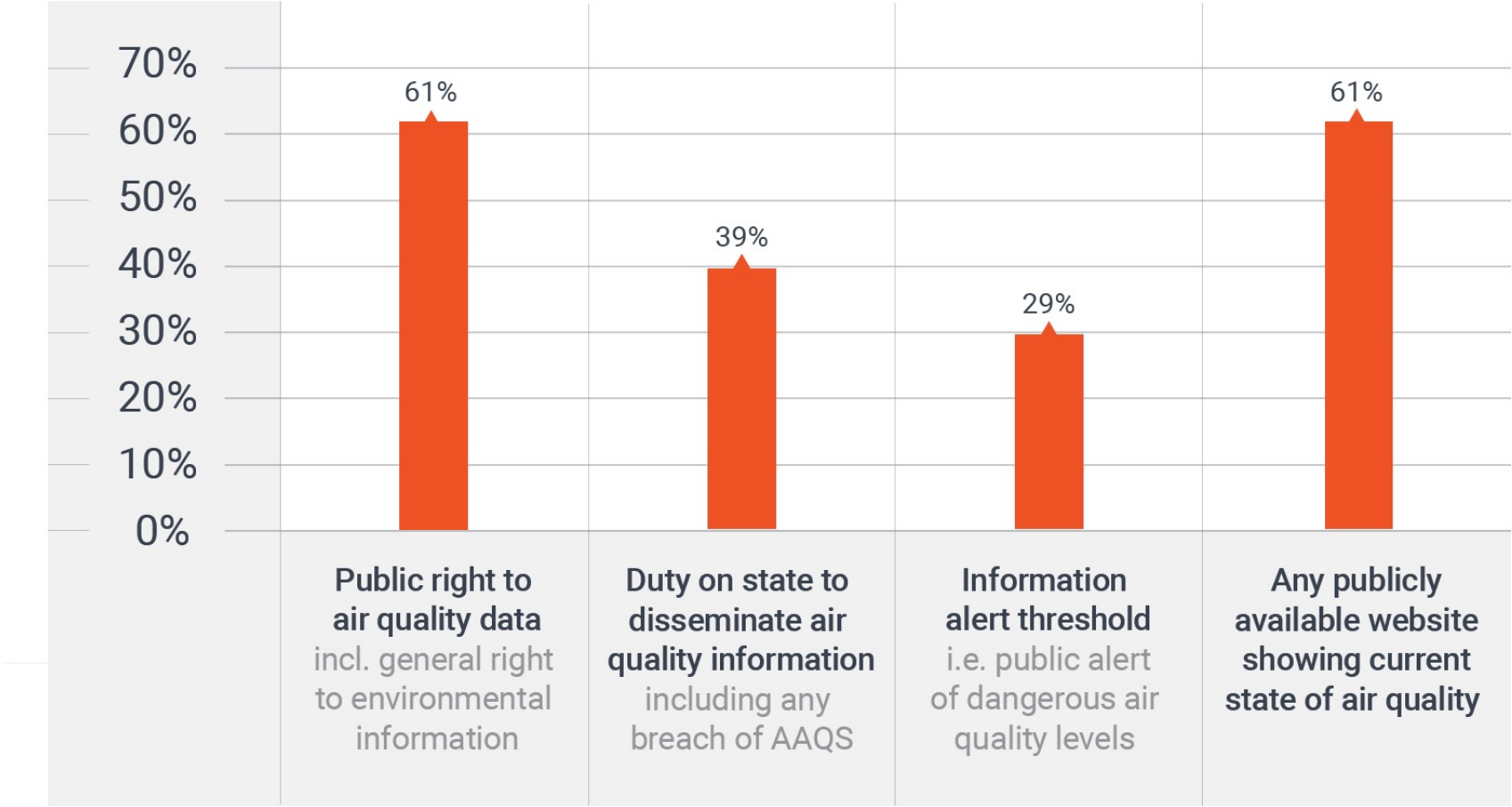
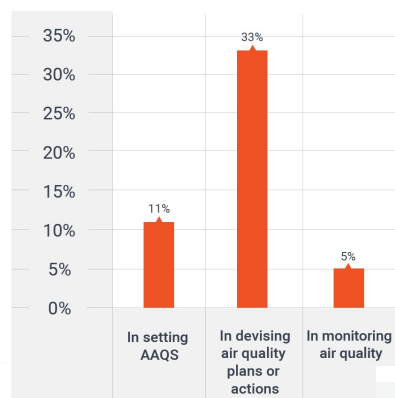


Figure 30: Percentage of countries with public rights to participate in air quality law



Box 11: Argentina case study – legally constructed public participation in setting air quality standards

Argentinian air quality law establishes a participation process in the adoption of AQS. This allows any interested party to submit its opinion to the Enforcement Authority, based on the proposal of the Permanent Advisory Council, within a period of ten business days after the proposal is publicized. After analysing the proposals, the Enforcement Authority must issue the relevant administrative act justifying the taking into account or rejection of the proposals made by the interested parties.

Ley N° 1356 - Regúlese la preservación del recurso aire y la prevención y control de la contaminación atmosférica (2004) arts. 16-18.

Box 9: Brazil case study – litigating the right to information on air quality

On 29 May 2019, the Deputy Attorney General, in the exercise of the position of Attorney General, filed a Direct Unconstitutionality Action against the unconstitutionality of the National Law of the Environment (CONAMA) Resolution No. 491/2018 establishing new AAQS, different levels of protection and insufficient enforcement of the constitutional right to a healthy environment **and to the obligation to provide environmental information to the public**. The argumentation was founded on the constitutional principle of the right to information.

Box 10: Mexico case study – fundamental link between air quality monitoring and public access to air quality data

The National Human Rights Commission produced General Recommendation No. 32/2018 on the violations of the human rights to health – including recommendations for an adequate standard of living, a healthy environment, and public information – relating to urban air pollution. It recommended a review of the applicable AQS, taking due account of the WHO guidelines, and guaranteed access to information concerning their technical basis. It also recommended an improvement of the air quality monitoring network. In its recommendations, the Commission pointed out that the lack of access to air quality data is a violation of the right to health.

Box 2: EU case study – linking legal AAQS and legal rights

“Whenever the exceeding of the limit value could endanger human health the Member States must be in a position to rely on the right of the citizen to be able to assert their right to the fixing of a limit value in a provision the nature of which is undeniable is also that all those whose activities are nuisances may ascertain precisely the nature of the nuisances to which they are subject.”

Case C-59/89 TA-Luft [1989] ECLI:EU:C:1989:269 (European Court of Justice)

Box 12: Case study – access to air quality justice in Indonesia

Since 1997, the main Act on Environmental Management has ensured the right of communities to file class actions, in their own interests or the public interest, in relation to issues of environmental pollution or damage. After the Supreme Court promulgated the Regulation of the Supreme Court of the Republic of Indonesia Concerning Class Actions in 2002, cases have been filed concerning pollution by haze.

What « makes »
a right to clean air?

From regulating
air pollution
to laws on
air quality governance

Figure 5: Percentage of countries surveyed with national constitutional guarantees for clean air or a healthy environment

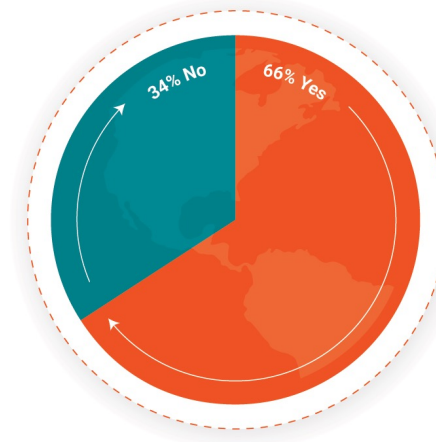
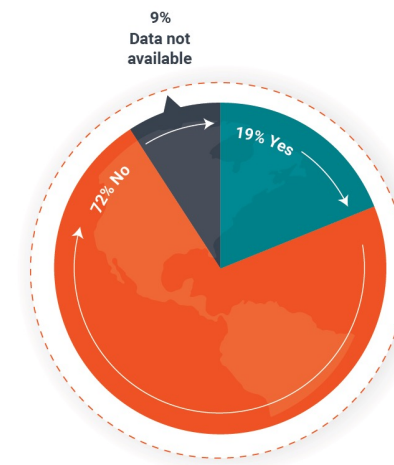


Figure 31: Percentage of countries with legal rights of access to justice within air quality regimes



A robust air **quality** governance system

- Requires governments to **develop and regularly review applicable AQS**, taking into account **public health objectives**

But also:

- determines **institutional responsibility** for those standards
- **monitors compliance with AQS**
- **supports the implementation** of AQS with appropriate and coordinated air quality plans, regulatory measures and administrative capacity
- is **transparent and participatory**
- **defines consequences for failure** to meet them

= architecture for 'bindingness' and enforceability

Figure 13: Countries in which new or updated legal air quality standards are expected in the near future, at the time of assessment

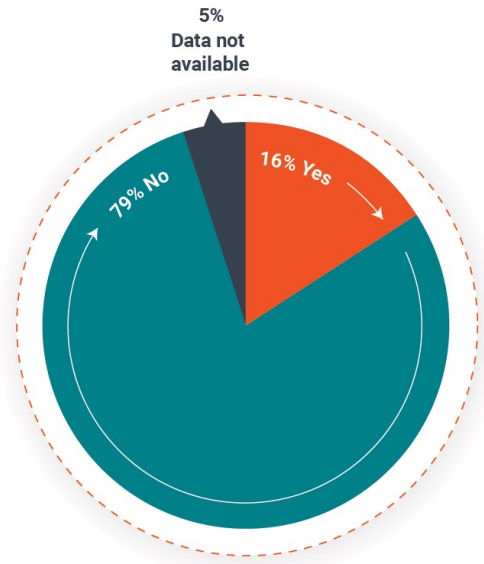
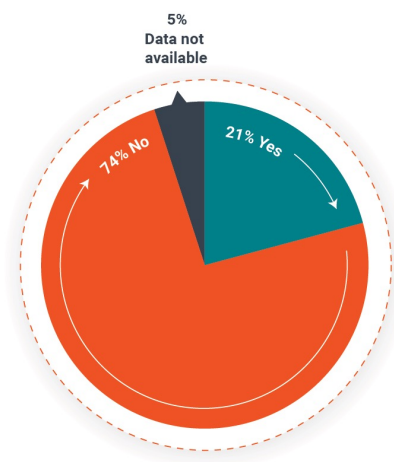


Figure 12: Countries in which air quality law was being reviewed or revised at the time of assessment



Select recommendations

- **Secondary legislation** promulgating AAQS should be subject to adequate oversight and scrutiny processes (no « dead end »)
- All air quality legislation – including policies or guidance issued under such legislation – should be **publicly available**
- States **should be legally responsible** for attaining legislative AAQS
- **Zoning techniques should not be used to restrict coverage of AAQS across the geographical area of a country**
- Suitable **legal requirements for monitoring** should be adopted in national air quality law
- Implementation of air quality law should be supported by **citizen empowerment**