Recommendations to the United Nations Environment Programme
Draft Access-to-Information Policy
31st March 2015
by Transparency International

Introduction

Transparency International (TI) welcomes the United Nations Environment Programme’s (UNEP) effort to evolve its information disclosure policy for the purpose of enhancing “transparency and openness in its work” pursuant to the Programme’s Governing Council in 2013. Further, TI appreciates UNEP’s recognition “that transparency, accountability, and openness can become a catalyst for achieving a greater impact,” and that it is of “fundamental importance to make available relevant information to stakeholders and the public in general.” It is also commendable that in case of a refusal of a request UNEP is “guided by the principle of seeking amicable solutions in the context of the request and the parties who may be affected by the release of the information.” TI respects the Programme’s “obligation to protect the confidentiality of certain information.”

Upon review of the UNEP’s Draft Access-to-Information Policy, TI assesses that the current Draft could be significantly improved and strengthened to reflect these principles. Generally, the Draft’s language employs broad terms and concepts which allow for a wide ambit of discretion to avoid disclosure of information in and of the public interest. This language needs to be further explained and fine-tuned to enable sufficient assurances regarding UNEP’s transparency, particularly with regard to decision-making regarding allocation of public resources and accountability for public finance uses. Further, the Draft’s procedural requirements require strengthening to ensure that the policy demonstrates fairness, accessibility and integrity. Thus, some concrete textual changes are proposed for consideration, below.

In addition, as a part of the Programme’s overall policy on transparency, TI recommends that UNEP join the International Aid Transparency Initiative (IATI) and that its Board meetings are webcast and invite the physical participation of observers with only minimum and clearly defined restrictions. Regarding the latter, when and if Board meetings are closed to outside observers, the Board should provide a clear explanation for its decision. This should include its assessment as to why the necessity of a closed Board discussion outweighs the greater public interest of citizens’ rights to know.
§ II.5 Public access to information
This paragraph should provide further that:

Publicly disclosed information shall be accurate, comprehensive, clear, coherent and timely, particularly regarding UNEP’s information on its executive functions, projects and programmes.

No information should be withheld solely on the basis that it contains exempted information. UNEP shall publish or provide access to redacted documents respecting § II.4 Exceptions.

Further, the frequency by which such information should be updated should be determined and elaborated in a separate Annex to this Policy.

§ II.6 Public access to information
The non-exhaustive list of documents that will be made available to the public on UNEP public website should also include:

(j) Board meeting webcast links;
(k) UNEP’s Anti-Corruption Rules and evidence of compliance including its fiduciary standards and grievance mechanisms;
(l) List and access to contracts in which UNEP is a contracting party that entered into force after 1st January 2010. This shall include information regarding fiduciary, environmental and social standards and contractual requirements which UNEP applies to any executing entity or contractor which receives financing through UNEP or otherwise carries out UNEP project or programme work;
(m) Information which assesses and evaluates the compliance of UNEP and any sub-financed or contracted entity according to standards referred to in the previous subparagraph.

The disclosure of the above information is critical for the upward and downward accountability and integrity of the Programme. It is crucial too for the prevention and deterrence of corruption, fraud and any other malfeasance and abuses. Equally, the disclosure is essential to ensure compliance with environmental and social safeguards.

§ II.7 Public access to information
Article 7 should be revised to ensure access to information by all stakeholders and not limited to those assessed as “key stakeholders.” The following language is therefore recommended:

With regard to UNEP’s projects, where relevant to the projects concerned and within the framework and available resources of such projects, UNEP will make the following information publicly available in a timely manner, as well as accessible to all stakeholders, including project affected groups and civil society organizations, in a form and language understandable to them: (a) Draft environmental and social impact assessments; (b) Documentation of the consultation process; (c) Draft mitigation plan.
However, the clause “where relevant” should qualify who determines what is relevant and on what basis.

§ III.8 Exceptions
The current language in Article 8 which refers to the possibility of harm to specific parties or interests, requires further clarification. UNEP should qualify what and how it will determine the likelihood and scope of harm anticipated, the foreseen harmed parties, and the particular interests vulnerable to said harm, in commentary or Annex to the Policy. Further, the paragraph which allows for the non-disclosure of information which purely refers to exempted information, overly restricts public awareness of the mere existence of information and should be struck from the text. Therefore, the recommended language for Article 8 is suggested as follows:

*UNEP does not provide access to information whose disclosure could, in UNEP’s opinion, cause harm to specific parties or interests, as elaborated in Annex X to this Policy. Accordingly, UNEP does not provide access to documents that contain the information listed in paragraphs 9-15.*

§ III.9 Exceptions
The clause “on the understanding of confidentiality” requires further clarification as to what an “understanding” is. More specific language, such as “contractual agreement regarding confidentiality,” would eliminate discretionary interpretations of what an “understanding” may or may not entail.

§ III.10 Exceptions
Similar to § III.8, the repeated language of “would likely” suggests the need for a determination of probability. *How such likelihood is determined in connection with anticipated harms needs to be further elaborated.* Further, the provision can be strengthened by an explanation of the concept of “rights and legitimate privacy interests” in subparagraph (d). These elaborations are critical as they can guide an unbiased, fair application of exceptions conceived in this paragraph.

§ III.11 Exceptions
The provision in Article 11 deals with the non-disclosure of information which poses security risks. However, it also limits access to information which “is likely to .... prejudice the ...proper conduct of any operation or activity of UNEP.” The rationale for the latter exception begs clarification. *UNEP should explain why and in what circumstances such an exception should be justified.*

§ III.13 and § III.15 Exceptions
Both Articles can be strengthened by including a clause which provides: “*Notwithstanding the above, UNEP will ensure that all factual information related to deliberative and policy-making processes shall be disclosed to the public prior to and pursuant to a decision being taken.*”

§ III.14 Exceptions
As UNEP is largely understood to be a publicly financed and operated UN institution, UNEP should declare what its financial interests are. That declaration should be cross referenced to this Article. Further, UNEP should provide an explanation of the type of commercial and financial interests of third parties. The Programme should also explain what particular information could harm those stated interests. By these delineations, the use of redacted documentation can aid in greater access to information.
§ IV.19  Request for information
The current Article allows an extraordinarily long request handling period. Appreciating that in some cases, sixty working days may be needed, the following revised text is suggested:

All information requests should be handled promptly. The requestor should expect to receive an acknowledgment of receipt of the request within ten (10) working days. UNEP will handle all requests within thirty (30) calendar days, after the acknowledgment of receipt is sent. However, depending on the complexity of the request, an extension of thirty (30) calendar days may be permitted.

Further, regarding the Article’s provision that UNEP be enabled to charge information request fees, TI’s recommendation is that permissible fees may include material and shipping costs but should not entail labour fees. Regarding the former, UNEP should publish a list of material and shipping costs so that requestors are informed clearly what costs can and will be involved in connection with their requests.

§ IV.20  Request for information
UNEP should clarify vague terminology “excessive demand” and “frivolous” in subparagraphs 20(b) and (c), respectively. Further, in cases of denial, the additional provisions is recommended:

§ III.20 bis
UNEP shall provide clear reasons in cases of denial referring to how and which exception(s) apply.

§ V.21  Review and appeal process
Article 21 can be strengthened to include incidences which may not qualify but amount to a denial of information. Accordingly, the following revision is suggested:

If a request of information is not responded to, denied partially or in whole, or if the requestor disputes the fee charged, the requestor may seek the review of the decision by addressing a letter to UNEP Access to Information Panel (hereinafter the “Panel”), providing reasons for the appeal....

§ V.23  Review and appeal process
Similar to the recommendation provided for § IV.19 above, the Article should be revised as follows:

That review should normally be completed within thirty (30) working days of being requested. The outcome of the review will be communicated to the requestor in the form of a reasoned decision.

§ VI. Access-to-Information Panel
UNEP should include an Article which provides for how the independence, accountability and integrity of the Access-to-Information Panel will be ensured. Thereto, it is recommended that the Panel be subject to independent oversight such as would be determined by the UNEP executive board.