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Tourism Legislation and the Millennium Development Goals

Netherlands

Development

Organisation

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Connecting People's Capacities

A guide
to analyse tourism legislation
in the context of the MDG 2015 targets

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Netherlands Development Organisation
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Queensland, Australia

The Sustainable Tourism Cooperative Research Centre is the world's leading scientific institution delivering research to support the sustainability of travel and tourism.

It is a not-for-profit company bringing together academic and industry participants as members and share holders in the company.

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Background

Governments of developing countries should ensure that sector specific policies, strategies and investments are integrated and aligned with the MDG poverty reduction strategies. Tourism is one of the fastest growing sectors and can make a huge contribution to national and local economies.

Tourism can make a major contribution to the attainment of the MDGs.

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Sustainable Tourism Development
and
the Millennium Development Goals

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Legal Frameworks

- The UNWTO urges governments of developing countries to include tourism in strategies and action programmes on poverty reduction and sustainable development since 'Tourism is a key component of many countries' service exports and it has the power to deliver significant international earnings that can be directed towards the fundamental world priority of alleviating poverty.' (UNWTO)

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To pursue these goals effectively

- Governments need to develop an effective and comprehensive legislative framework that includes environmental and cultural protection and enhancement; regulation of land use in tourism development; the development of appropriate infrastructure for tourism; management of and investment in tourism; and institutional and other mechanisms to provide for the full, active and equitable participation by poor communities in decision-making and enjoyment of the benefits of tourism development.

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- Each host tourism country to develop own legislative and general legal framework to meet specific requirements of local socio economic and environmental situation, while maintaining consistency with overall international and regional standards and guidelines

- Economic criteria should not overrule technical, environmental, socially and culturally equitable criteria for decision-making with regard to location, design, and operation of tourism infrastructure

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There should be:

- Coordination of institutional and inter sectoral activity

- Speedy and efficient legal processes for compensating negative impact on environment and on communities

- Compensatory provisions to cover any damage to environment and society as a whole

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- Tourism and related legislation should support and encourage private sector to follow a sustainable and pro poor approach to tourism

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UNWTO Global Code of Ethics and the MDGs

MDG 1:

- Public authorities should promote tourism-related activities that facilitate poor communities' access to the market; create and support new and traditional income generating activities in order to contribute to financial poverty and hunger alleviation

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MDG 2: Education

- Tourism industry is unlikely to contribute to improving primary education through any means other than indirect improvements in national economy of the host country

- Improvements in education, however, might be seen through encouraging private sector to invest where they operate i.e. development fund

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MDG 3: Gender Equality

- Guarantee fundamental rights of workers without gender bias in tourism and related industries;

- Ensure barriers to involvement or ownership of tourism activities or developments are removed, with respect to ethnicity and gender

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MDGs 4 and 5: Child and Maternal Health

- Plan and promote tourism that provide economic, social and cultural benefits to local populations, particularly in sharing of healthcare facilities provided for tourists with local communities, women and children;

- Ensure tourism help to raise the standard of living of local populations through linkages with local enterprises

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MDG 6

- Prohibit sex tourism and penalise offenders with the strictest of measures to reduce HIV/AIDS transmission through interaction with prostitutes;
- Ensure the private sector takes appropriate measures to safeguard security, accident prevention, health protection and food safety

Authorities may implement a rating standard system to denote quality of service

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MDG 7, Target 9: Integrate principles of sustainable development into country policies and programs and reverse loss of environmental resources

- Ensure private sector activities and developments in tourism are carried out in respect and conservation of environmental resources

- Plan for sustainable maintenance of these resources for future generations

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- Prohibit and penalise any criminal acts or offensive conduct committed by tourists including trafficking in illicit drugs, antiques, protected species

- Reduce pressure on natural, social and cultural resources at peak times

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MDG 7, Target 10: Halve by 2015, proportion of people without sustainable access to safe drinking water and basic sanitation

- Ensure private sector activities are carried out in respect of environmental resources, above all through water supply and sanitation measures, energy saving measures, and ensure such future developments are given priority

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MDG 8, Target 12:

- Carry out and/or require stakeholders to carry out market research on tourist behaviour, expectations, satisfaction; impart resulting information to develop a sustainable tourism industry;

- Ensure border crossing procedures, visas and custom formalities be adapted to facilitate freedom of travel;

- Specific taxes and levies which penalise tourism industry should be phased out or corrected;

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- Facilitate tourists with access to convertible currencies;
- Promote and facilitate exchange of tourism workers and/or professionals to benefit from study tours or educational exchanges;
- Multinationals should be encouraged to actively support local community and national development
- Support partnerships between foreign and national investors, foreign/multinational enterprises and local ones, including SMEs and TOs.

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MDG 8, Target 14: Address special needs of landlocked countries

- Support development of airport, rail and road travel-related infrastructures to facilitate movement of tourists in and out of country

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Role of law
in sustainable development
of
tourism and poverty alleviation

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Governments need to preserve a policy of pro poor sustainable tourism development in legislation and, in local regulations

This legislation should provide for a coherent institutional framework for sustainable tourism development

- Create legal framework which fosters development of sustainable tourism;
- Ensure that it fits within country constitution and legal framework;
- Ensure that State body responsible for tourism is efficient, dynamic and works within legal norms;

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- Provide for participation of representatives of the poor in decision making process;
- Empower local communities to take advantage of opportunities to benefit from tourism development;
- Provide supportive structures and financial assistance for micro-enterprises and SMEs;
- Create a supportive structure for private sector;
- Provide a framework for cooperation between public and private sectors;
- Facilitate development of professional standards;

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Ensure that the country has tourism laws that:

- Reflects international standards
- Is consistent with international obligations
- Is consistent with country's membership, or aspirant membership, of the World Trade Organisation and GATS
- Reflects best practices
- Builds on country's laws, customs and traditions of hospitality

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The legislation needs to be comprehensive and should cover:

- Responsibility for management of tourism resources;
- Power to establish tourist sites and tourist attractions;
- Provision of inter-ministerial cooperation on tourism-related matters;
- Role of provincial and local authorities in tourism development;

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- General obligations on consumer protection;
- Encouragement of trade associations to develop codes of conduct;
- Continuing professional development;
- Display of price lists;
- Crafts authentication scheme;
- Establishment of a tourist assistance office;
- Education, training and research;
- Safety and security of tourists;
- ....

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Nature and Sources of National Legal Systems

It is essential that those drafting tourism legislation ensure that it fits in with the general legal framework of the State.

Sources of law in most States comprise:

- Constitutional law
- Legislation
- Religious law
- Political or philosophical sources
- Custom and tradition

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- International treaties, conventions and agreements: UN Conventions against abusive sex tourism, protection of indigenous people, against illegal trafficking of endangered species and of historical artefacts ...

Any tourism legislation must take into account these sources. Furthermore, they should be examined closely as they often contain provisions protecting rights of disadvantaged groups and promoting their economic and social well being

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International Harmonisation and Best Practice

Very few States have a comprehensive tourism law; most have a number of sets of regulations for different sectors of the tourism industry, often failing to reflect changes in practice brought about by technology and globalisation

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If Governments are to take advantage
of their tourism sector potential
to make a major contribution to the realisation
of their MDGs and Poverty Alleviation Targets,
they will need to provide a modern institutional
and regulatory framework in which
the private tourism sector can thrive by ensuring
high professional standards
and developing
quality tourism products

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Worldwide, there is a process of convergence
of travel and tourism law

At the same time as there are powerful forces of
convergence, harmonisation and standardisation,
there is a need for sensitivity
to specific regional and national factors

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Role of Law in Tourism Development

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- Organisations such as UNWTO have emphasised distinct requirements of legal regulation of the travel and tourism industries
- In the construction of an efficient travel and tourism industry, tourism law is a fundamental aspect of any holistic approach
- If commitment to fulfilling MDGs is to be made real and be the driving force in tourism development, it needs to be enshrined in the law
- If a country does not have a sound legal system for tourism, it will act as a disincentive to investment

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Need for coherent institutional and legislative framework

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Without a strong tourism ministry
or an autonomous NTA or NTO,
the industry is often
neglected or misunderstood
at national level

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Need for institutional capacity building

- If tourism is to be a spearhead economic sector in the drive to achieve the MDGs, there needs to be an NTA and/or an NTO
- The NTA/NTO needs to be staffed by a commercially aware, financially sophisticated and experienced group of tourism professionals
- They must be aware of and committed to the contribution tourism can make to achieving the MDGs

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Other legal issues impacting on tourism

While tourism law should be comprehensive, there will be other areas of law directly or indirectly impacting on tourism

- Where these weaken contribution that tourism can make to reaching MDGs, the NTA/NTO should pursue an advocacy role in getting these changed
- The NTA/NTO should consult widely to what should be in the tourism law and what should be the balance between national and local decision making when it comes to tourism development

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Micro-enterprises, SMEs and human resource development

- The MDGs emphasise importance of encouraging more young people to work in the private sector. However, jobs in some parts of the tourism sector are viewed as unattractive because of low pay, poor working conditions and job insecurity. Such jobs frequently lack status;

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- Governments can address this in cooperation with the private sector by pursuing three objectives: create a culture of entrepreneurship, foster a culture of employability, promote and encourage adaptability

- The NTA/NTO can enhance the value of human resources in and available to the tourism sector by supporting training programmes and developing 'best training practices'

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Trade associations and self regulation

Although tourism law will usually set out a licensing and qualification framework for the sector, the government may also wish to encourage trade associations, as they develop, to adopt their own ethical standards

In order for codes to be accepted by the NTA, they should satisfy 5 criteria:
- Be fair and reasonable; rights and obligations of parties should be equitably distributed;

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- Be clear: code should be precise. It should be clear what it is that you are required to do in order to comply;
- Be known: code should be widely disseminated and commonly understood;
- Not be in breach of an express rule of law: natural justice and existing State regulations take precedence; and
- Not to be designed or enforced in such a way as to discourage new entrants to the trade i.e. unnecessary capital requirements

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The analytical framework in this guide is
a methodology to assess existing tourism
legislation and policies in the context
of the MDGs
and to assist countries to develop a legal
and policy framework for tourism
so that it agrees with,
and promotes the MDG targets

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Thank you

and follow the guide!

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