



Sustainable Water Integrated Management (SWIM) - Support Mechanism

Project funded by the European Union

**IMPROVING COMPLIANCE & ENFORCEMENT OF WATER LEGISLATION IN SWIM-
SM COUNTRIES**

CONCEPT NOTE FOR 2ND SC IN BRUSSELS

16 TO 17 OCTOBER 2012

ACTIVITIES PROPOSED FOR 2013 & 2014 PLAN OF ACTIONS



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I. PREAMBLE:

During the inception and first year implementation phases, it became evident that the project's orientation and the five work packages provided a useful and appropriate framework to assist SWIM PCs with the implementation of IWRM approach for the sustainable use of their country's water resources. Among the five work packages, improved water governance and mainstreaming of water considerations into non-water sector policies emerged as one of the main regional priorities.

Water governance represents the main foundation sustaining the three pillars of IWRM namely, socio-economic and environmental considerations in realizing the integrated and sustainable management of water resources. Therefore, without sound water governance including effective rule of law, IWRM principles can never be materialized.

In the rule of law, well designed and enforced water legislations can provide the vision, scope, and authority for sustainable water resources management and protection. The water legislations will be most effective if they provide the water and environment regulating agencies with the following authorities:

1. To issue regulations, guidance and promotion to implement the law.
2. To inspect and monitor regulated water sector and users, audit and access their records.
3. To require regulated water sector and users to establish self monitoring, record keeping, and self reporting systems.
4. To take legal actions against non-complying water sector and users with clear, specific and predictable sanctions.
5. To correct situations posing a threat to water resources in terms of quality and/or quantity.

As a part of their efforts towards implementing IWRM principles, all SWIM Countries have passed legislation for the protection of their scarce water resources with very modest and inconsistent degrees of success. Unfortunately, compliance does not occur automatically once requirements are issued. Overlooking the enforcement of water related law will undoubtedly lead to the spreading of a social value or a culture implying "noncompliance is tolerable and the cost of compliance can, probably, be avoided". Most of the efforts and resources spent on the reform of water sectors in the SWIM Region to improve governance and enhance management of the water resources staggered, usually, due to inadequate compliance and poor enforcement of the enacted legislations. This failure cannot be attributed to lack of legislations but repeatedly due to poor compliance and inadequate enforcement commitments and capacity.

Compliance promotion is defined as any activity that encourages voluntary compliance with water requirements. Promotion alone is often not effective. Enforcement is important to create for the regulated community clear incentives to make use of the opportunities and resources provided by compliance promotion. Enforcement alone is also not as effective as enforcement combined with compliance promotion.

As one of the main constraints discussed during IWRM regional dialogue on 13 & 14 of June and training on 10 & 11 September 2012 in Athens, effective water governance forming the foundation of IWRM concepts, particularly *rule of law*, was found to be hampered by 1- insufficient policies, 2- inadequate appropriate legislations and regulation, 3- ill prepared judiciary systems, 4- deficient technical and institutional capacities and 5- lack of modalities and operating systems to ensure compliance and enforcement.

Rules of law in the water sector involves 1- adequate water legislations; 2- capacity to promote compliance; 3- capacity to monitor, inspect, audit & report non-compliance; 4- capacity to enforce through accredited monitoring; 5- qualified law enforcement officers and prosecutors 6- a well trained and qualified magistrates in judiciary systems, 7- public access to justice, etc.



Despite the modest efforts by some SWIM-PCs, trying to improve rules of law and accountability in water resources management it was obvious that extensive effort need to be put forth by SWIM-PCs in its 2013 & 2014 plan of actions for spreading and realizing the rule of law in the water relevant sectors, while considering the prevailing ethics and norms of the region.

SWIM-SM Relevant Activities During 2012:

Within the context of water governance and IWRM, SWIM-SM developed and implemented its 2012 plan of action that included the following:

1. Production of a report entitled "Regional Review of National Water Plans and/or Strategies". The report aimed at providing the PCs with an assessment and close-up look on the status of national water planning in SWIM-SM PCs. The report analyzed and interpreted information in order to provide an assessment of achievements, constraints, challenges and shortcomings of the current water plans, identify opportunities and formulated recommendations and socially sensitive policy options towards effective implementation of water plans and/or strategies in PCs within an IWRM context.
2. Organization of a regional dialogue to review, discuss, complement and validate the findings of the regional review of national water plans with the view of suggesting a series of policy options for further actions towards mainstreaming water resources management.
3. Holding a regional training workshop for training of Government Officials on the Preparation of Water Plans/Strategies to expand the capacity of water and environment stakeholders in PCs in developing and implementing IWRM plans and strategies and to introduce mainstreaming and participation as basic measures in planning and implementation of IWRM
- 4.

Following the fact finding missions undertaken by SWIM-SM during the inception period and implementation of the first phase of the project the following facts were revealed:

1. In most of the SWIM-SM PCs, rule of law suffers from inadequate technical and judicial capacity to ensure equitable compliance with water regulations and insufficient enforcement capacity to avoid noncompliance.
2. Technical assistance is needed to assist SWIM-SM PCs in improving compliance with water legislation and enhance enforcement capacity through development of accredited monitoring, reporting and inspection capabilities.
3. Capacity development of water regulators, legislators, prosecutors and magistrates to address non-compliance with water laws.

II. REACTION TO STAKEHOLDERS RECOMMENDATIONS:

Based on the outcomes of the regional review of water plans, one of the main challenges hindering the implementation of IWRM was ineffective rules of law. This fact was reemphasized during the regional dialogue where inadequate accredited monitoring systems, meager inspection, insufficient water rules and regulations, poor compliance and lack of enforcement technical and institutional capacities including ill prepared judiciary systems were identified as main constraints towards the effective implementation of IWRM.

Presently, command and control is the most preferred approach to achieve compliance with water legislation in most of the SWIM-PCs, therefore, legislations come at the heart of regulatory command & control approaches. However, the first step in ensuring compliance with water legislations is to ensure that requirements are enforceable and that the enacted laws provide the necessary authorities and tools for enforcement, and that requirements are clear and practical. Furthermore, in order to be enforceable, requirements should not rely on expensive, unreliable, or unavailable technologies.



The market based economic incentives / dis-incentives where market forces are applied to achieve behavioral changes towards compliance are not fully practiced in most of the SWIM-SM PCs for a number of reasons. In general, the inadequacy of policies and institutions that are capable of monitoring compliance with standards and therefore operate economic instruments is and will continue to represent real constraint towards the implementation of market based economic instruments to reinforce compliance required for the implementation of IWRM concepts. If well designed and enforced, water legislations can provide the vision, scope, and authority for sustainable water resources management and protection within an IWRM context.

Based on these facts, SWIM-SM is refocusing its water governance and IWRM scope of work towards supporting PCs in:

1. **Promoting compliance with water laws**
2. **Enforcing water legislations** through:
 - Development of guidelines for SWIM-SM PCs for establishing **competent** inspection capacities, **credible** monitoring systems, **accredited & standardized** measuring systems, **conformed** chain of custody and **certified** reporting system.
 - Development of guidelines for the identification of measures to compel compliance.
 - Development of measures to enforce water laws through administrative and court actions by engaging well trained water regulators, prosecutors and magistrates.
 - Build capacity of SWIM-SM PCs in all aforementioned aspects.

III. OVERARCHING OBJECTIVES OF PROPOSED COMPLIANCE AND ENFORCEMENT ACTIVITIES FOR 2013 & 2014.

1. To identify measures to improve compliance and feasible approaches for the enforcement of water legislation in SWIM-SM PCs while considering the Region's cultural and socio-economic specificities.
2. To develop capacities to ensure full compliance with water legislations. This will encompass capacity development for (i) promoting compliance, (ii) establishing accredited monitoring, (iii) enhancing inspection & monitoring systems for the provision of legal evidences for compliance or violations, and (iv) developing the capacity of judicial system including training of water regulators, prosecutors and magistrates to address violations of water laws.

IV. EXPECTED OUTCOMES:

- Guidelines to improve compliance and enforcement of water legislations.
- Shortcomings in accredited monitoring and inspection systems are identified and assessed.
- Legislative and technical gaps for compliance and enforcement of water legislations are identified and measures and guidelines to bridge these gaps are provided.
- National technical and legislative capacities are developed for improving compliance and for enforcing water legislations.



V. PROPOSED ACTIVITIES:

ACTIVITY I **Develop regional guidelines on measures for improving compliance with water legislations and assess the available enforcement capacity and mechanisms currently practiced in SWIM-SM region to enforce water legislations with focus on 4 SWIM-SM PCs (Morocco, Jordan, Israel, and Egypt). In synergy with IUCN-Geneva, UNEP-ROWA. (2013)**

This activity would include the following:

1. Evaluation of the general state of compliance with water legislations; identify constraints, gaps and challenges in achieving compliance; identify opportunities and capacity needed to bridge the gaps.
2. Development of guidelines and policy options for SWIM countries on measures for improving compliance by devising awareness raising programs for the regulated parties to advise them on the most acceptable and economically feasible means of compliance with the issued legislation. The guidelines would encompass mechanisms for securing public support; publicizing success stories and for developing economic incentives for the regulated parties.
3. Assessment of the available enforcement capacity and mechanisms currently practiced in SWIM-SM PCs to enforce water legislations. Identify achievements, constraints, gaps, challenges and available opportunities for improvement.
4. Support SWIM-SM PCs develop their national enforcement capacities by devising guidelines and policy options on (i) the establishment competent water inspectorates; (ii) development of credible monitoring systems; (iii) formation of an improved auditing scheme; (iv) development of regulated self-monitoring and self reporting systems, (v) identification of accredited and standardized measuring methods and monitoring tools; (vi) development of chain of custody system; (vii) preparation and implementation of a certified reporting system.

Year of Implementation: (2013)

Potential Partners: IUCN-Geneva, UNEP-ROWA

Work Package: WP-1

ACTIVITY II **Develop and execute a capacity development program for water & environment prosecutors and investigators including two days workshop to be followed by 12 days study tours in 3 European countries in collaboration with IUCN-Geneva and UNEP-ROWA. (2013)**

This activity would include the following:

1. Develop training materials for water and environment professionals and prosecutors on (i) Accreditation and credibility of water & environment monitoring systems; (ii) establishment of formal water and environment auditing scheme; (iii) development of credible self-monitoring and self reporting systems, (iv) identification of accredited and standardized measuring methods and monitoring tools with minimum quality control and quality assurance policies that can stand in courts of law; (v) development of flawless certified chain of custody system; (vi) preparation and implementation of a certified reporting system.
2. Conduct a training workshop on the identified issues in collaboration with specialized agencies and organizations.



3. The training workshop to be immediately followed by a 12 days study tours in three European Countries to expose environmental and water professional in addition to prosecutors to experienced gained and best practices in European countries in this domain.

Year of Implementation: (2013)
Potential Partners: IUCN-Geneva and UNEP-ROWA
Work Package: WP-2

ACTIVITY III: **ASSESSMENT OF INSTITUTIONAL AND LEGISLATIVE CAPACITIES FOR PROSECUTION OF NON-COMPLIANCE WITH WATER LEGISLATIONS.**

1. Assess the current legislative capacity and legal procedures employed in the prosecution of violators of water legislation in the WWIM-SM PCs.
2. Develop guidelines and policies for the establishment of water prosecution systems and water magistrates as a part of national judiciary systems.
3. Prepare modalities for the investigation of water violations and methodologies for establishing the rules for assessment of penalties.

Year of Implementation: (2014)
Potential Partners: IUCN-Geneva and UNEP-ROWA
Work Package: WP-1

Activity IV: **DEVELOPMENT OF CAPACITY OF WATER AND ENVIRONMENT MAGISTRATES:**

Develop and execute a capacity building program of water & environment magistrates - judges including two days training workshop followed by 8 days study tour.

Year of Implementation: (2014)
Potential Partners: IUCN-Geneva and UNEP-ROWA
Work Package: WP-2