



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

ACTIVITIES PROPOSED FOR 2014 PLAN OF ACTIONS



1 PREAMBLE:

As one of the main constraints discussed during the IWRM regional dialogue held in Athens on 13 & 14 of June 2012, effective water governance, and particularly the rule of law, was found to be often hampered by insufficient policies, inadequate legislative and regulatory frameworks, ill prepared judiciary systems, limited technical and institutional capacities and lack of appropriate modalities and operating systems to ensure compliance and enforcement.

Rule of law in the water and/or environment sectors essentially involves, but is not restricted to, the following main elements: (1) adequacy of water legislations; (2) degree of compliance; (3) capacity to monitor, inspect, audit & report non-compliance; (4) capacity to enforce through accredited monitoring; (4) qualified law enforcement officers, prosecutors and judiciaries; (5) public access to justice, etc.

In order to support SWIM-SM countries in facing these challenges and bridging the gaps as appropriate, the SWIM-SM project devised an integrated series of activities for the years 2013 and 2014. These activities started in 2013 with an assessment of the degree of compliance and the available enforcement capacities in selected SWIM-SM countries. It also included the development of guidelines aiming at improving compliance and enforcement of water and environment legislations. In parallel, a capacity building activity was undertaken through training and exposure through a study tour to best practices in three European countries known for their advancement in this domain.

In 2014 the series of activities shall include an assessment of the adequacy of water and environmental legislations in terms of their compliance and enforcement in addition to an assessment of the institutional and judiciary capacities (prosecutors and judges responsible for water and environment) to handle cases of water and/or environment violations. Furthermore, as a concluding step in this series of activities, SWIM-SM is planning to convene a high-level meeting to debate the subject and draw a road map for countries of the region on policy options, measures and tools to adopt and enforce the rule of law in the water and environment sectors with the view of achieving compliance.

Given the above and the SWIM-SM overall objective towards improving water governance and IWRM implementation, the project has developed and implemented a continuum of integrated activities in this respect. More specifically, in its 2012 plan of action SWIM-SM included the following:

1. Produced 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 i) provide an assessment of achievements, constraints, challenges and shortcomings of the current water plans, ii) identify opportunities and iii) formulate recommendations and socially sensitive policy options towards effective implementation of water plans and/or strategies in PCs within an IWRM context.
2. Organized a regional dialogue to review, discuss, complement and validate the findings of the regional review of national water plans particularly with the view of confirming the series of policy options for further actions towards mainstreaming water resources management.
3. Held a regional capacity building 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.

Stemming from the 2012 fields of action and recommendations, the SWIM-SM activities during 2013 have included the following:

1. The development and execution of a capacity development program for water & environment prosecutors and investigators, including a 3-day workshop followed by a 12-days study tour in 3 European countries (activity completed)
2. The development of regional guidelines on measures for improving compliance with water legislations and assessing the available enforcement capacity and mechanisms currently practiced in the SWIM-SM region to enforce water legislation with focus on 5 SWIM-SM PCs (completed and undergoing peer review).

2 OBJECTIVES OF THE PROPOSED COMPLIANCE AND ENFORCEMENT ACTIVITIES FOR 2014.

Despite the modest efforts exerted by some SWIM-PCs towards realizing the rule of law and accountability in water resources management, it has been found that extensive effort still needs to be put forth by the SWIM-SM project to assist the PCs in spreading the rule of law in water and environment sectors, with due consideration to prevailing ethics and norms.

The specific objectives of the activities during 2014 are: (1) to assess the institutional and legislative capacities for the prosecution of non-compliance with water and environment legislations and (2) to hold a regional, high-level event on prosecution of violations of water and environment legislations. The aim of the regional event is to draw a road map for countries of the region towards enforcing the rule of law in the water and environment sectors with the view of achieving compliance.

PROPOSED ACTIVITIES:

ACTIVITY I: ASSESSMENT OF INSTITUTIONAL AND LEGISLATIVE CAPACITIES FOR THE PROSECUTION OF NON COMPLIANCE WITH WATER AND ENVIRONMENT LEGISLATIONS IN THREE SELECTED COUNTRIES

Objective: To assess the institutional & legislative capacities needed for the prosecution of non-compliance with water and environment legislations in three selected PCs.

Expected outputs:

1. An assessment of the adequacy of water and environmental legislations in terms of their compliance and enforcement in three selected PCs.
2. An assessment of institutional and judiciary capacities (prosecutors and judges responsible for water and environment) to handle cases of water and/or environment violations in three selected PCs.



3. A simple guidelines & recommendations for the establishment of water and environment prosecution systems and magistrates as part of the national judiciary systems in the SWIM-SM countries.

Scope: This activity shall be materialized through the following:

1. Overview of the legal aspects in water resources protection policies in relevant line ministries in three selected countries.
2. Assess the adequacy of water legislations including laws, decrees, by-laws, standards, regulations and requirements.
3. Evaluate water legislations currently in force in terms of their feasibility, cost of compliance, comprehensiveness, overlap, integration, coordination and potential fragmentation.
4. Assess the institutional and technical capacities of the judiciary system, including magistrates, in addressing water and/or environment violations.
5. Prepare modalities for investigation of water violations and methodology for establishing the rules for assessing proportional penalties.
6. Develop simple guidelines & recommendations for the establishment and institutionalization of water and environment prosecution systems and magistrates as part of the national judiciary systems.

ACTIVITY II: HIGH LEVEL POLICY DIALOGUE ON PROSECUTION OF VIOLATORS OF WATER & ENVIRONMENT LAWS

Objectives: The main objective of the 2-day high-level policy dialogue in Athens (location TBC) is to discuss and reach a consensus on policy options and draw a road map to improve compliance and enforcement of water and environmental legislations. The ultimate aim of the event is to help SWIM-SM countries enforce rules of law in the water and environment sectors with the view of achieving conformity with the existing and planned frameworks. This shall encompass the suggestion of policies and identification of measures, tools and capacities to be developed in SWIM-SM countries to ensure compliance with water legislations.

Approach: This regional policy dialogue will take stock from the 2012 & 2013 assessments, collected data/information, conclusions and recommendations achieved by the SWIM-SM program. The dialogue shall be attended by the following representatives from each PC: (1) one high-ranking water policy maker, (2) one high-level representative of national environmental regulating authority (3) two specialized judiciaries (one prosecutor and one judge). In addition, (1) two eminent international experts, (2) two regional NGOs and (3) two academicians from relevant disciplines will be invited to contribute to the discussions. This activity will be coordinated and conducted in synergy with relevant regional and international organizations such as EEA, UNEP-MAP, etc.

Expected outputs:

1. A road map to improve compliance and enforcement of water and environmental legislations.
2. Suggested policy options, recommended measures and tools catered for SWIM-SM countries to ensure conformity with water and environment legislations.



3. Identification of major areas where legislative and technical capacities are in need for further development/strengthening.

The dialogue shall encompass and deliberate the following issues:

1. Rule of law as a fundamental pillar for good water and environmental governance in the SWIM-SM region.
2. Constraints, gaps and challenges leading to the inadequate compliance with water and environment legislations prevailing in some SWIM-SM countries.
3. Adequacy of water and environmental legislations in SWIM-SM PCs to identify the main challenges, gaps and suggest measures to bridge them.
4. Policies, measures, tools and capacities in need for further development in SWIM-SM countries to ensure conformity with water and environment legislations.
5. The means and measures to reform and gear water and environment regulations to commensurate with the command & control approach commonly used in SWIM-SM PCs.
6. Feasible mechanisms and tools needed to communicate water and environment requirements to the regulated community to promote compliance.
7. Measures to create an enabling environment for compliance including activation of economic instruments, public participation and technical support.
8. Measures to motivate the regulated community to comply using incentives, disincentives, penalties and deterrence.
9. Policies, measure and capacity needed to monitor and verify compliance.
10. Policies, measures, institutions and systems needed to enable the judiciary system (prosecutors and judges) to handle cases of violation of water and/or environment legislations.
11. Credibility of the indicting evidences of noncompliance and establishment of credible enforcement response systems to violations.
12. Systems to assess and incorporate proportionate penalties to water and environment violations including a mechanism to assess adequate deterrence.