



POLICY NOTE ON ENFORCEMENT AND COMPLIANCE WITH WATER LEGISLATIONS IN SOUTHERN MEDITERRANEAN COUNTRIES¹

Background:

- One of the main challenges towards implementing Integrated Water Resources management (IWRM) concepts in South Med Countries (SMCs) is poor water governance in the form of ineffective rule of law. This fact was re-emphasized by experts during a regional dialogue¹, where (1) inadequate accredited monitoring systems, (2) meager inspection, (3) insufficient water rules and regulations, (4) poor compliance and (5) lack of enforcement capacities including ill prepared judiciary systems were identified as main constraints towards good water governance and for the effective implementation of IWRM in the region.
- Most SMCs are taking legal actions to protect their scarce water resources within an IWRM context. However, the majority of these countries were found to base their water resources management strategies on legal requirements and legislation that are often inadequate, fragmented, technically inappropriate, or economically unaffordable, and ultimately unenforceable.
- The lack of comprehensive, cohesive, and effective systems for the enforcement of the enacted legislation in some SMCs has led, in many cases, to modest degrees of success in achieving compliance with water laws and regulations.
- In some SMCs, government-owned facilities were found to have little incentives to ensure compliance with the enacted water regulations. In many cases, monetary penalties for noncompliance, if imposed, are paid out of a central government budget, thus would have no impact on individual attitude.
- Deterrence as a main factor influencing compliance with water regulations is not genuinely practiced in some SMCs. The modality of eliminating economic gains resulting from non-compliance is hardly practiced. In addition, clear methodology for penalty calculation that would incorporate deterrence factors, or minimization of economic gain, is merely non-existing.
- Lack of institutional credibility, political power, and adequate resources on the side of the regulating parties, and the inadequate knowledge and technology on the side of the regulated parties, are representing additional barriers to compliance in many countries of the region.
- The command and control approach is the most favored and prevailing water management modus operandi in most SMCs. This approach, which consists of developing requirements, promoting, and enforcing compliance with the regulations was adopted but partially failed to produce the desired results, especially because most of the effort was allocated to develop the command measures, neglecting the much more costly and demanding control measures.
- The market based/economic incentives approach that uses market forces to induce behavioral changes and the risk-based approach, which establishes priorities for compliance and enforcement, based on the potential for reducing risks to water resources are practically applied by very few SMCs.
- All SMCs have issued water laws giving various degrees of authority to the regulating agencies, and establishing the institutional framework required for enforcement. However, many of these laws were found to be non-consistent, fragmented, overlapping, and sometimes conflicting with already existing laws.

¹Morocco, Algeria, Tunisia, Libya, Egypt, Palestine, Jordan, Lebanon, Israel



- Many SMCs are currently developing a number of integrated water regulations, which establish in greater detail compared to laws, the general requirements that must be met by the regulated community. In nearly all cases, the developed regulations are fragmented and catered for single medium regulations (separate regulations for water, air, marine, aquifers, etc.) that naturally require single medium monitoring, inspection, and enforcement systems.
- Requirements for reporting information through self-monitoring, self-inspection, and self-reporting programs were non-existent in most of SMCs. On the other hand, requirements for periodic permits and licenses, which control activities related to water, are widely used as simple, affordable and effective enforcement tools both at the national and local levels.
- Except in very few cases, remote sensing and over-flight techniques are not used for area monitoring. In most SMCs citizens' complaints are one of the most prevailing sources of information in order after inspections. However, this source of information is often sporadic, non-consistent, and in many cases unreliable.
- Inspections are a predominating source of information in the region, providing the most relevant and reliable information and constituting the backbone of most water enforcement programs. Yet, field inspection capacity in many countries is still in need for further development.
- Various types of actions are taken by SMCs in order to respond to water violations ranging from 1- informal and formal administrative actions such as notice of noncompliance and/or warning letters, 2- civil judicial actions such as cases conveyed to court at the request of the regulating agency, 3- to criminal judicial actions when a regulated party has knowingly and willfully committed a violation of the water law. Informal and formal administrative actions are the most widely used in many countries of the region. On the other hand, the efficiency of court systems, required for judicial actions, varies widely among SMCs. In most cases the number of judges, familiar with water laws in the region, was found to be extremely insufficient.
- The means and criteria that are commonly used to insure the credibility of evidence for noncompliance in SMCs were found to suffer from inadequate Quality Assurance/Quality Control (QA/QC) in sampling and analysis of water. Furthermore, many of the countries are unfamiliar with chain-of-custody that allows (1) the handling of water to be traced at any moment in time and (2) from insufficient documentation of all information about samples from collection to test results.
- Most countries suffer from the near absence of experts with adequate training who can testify in courts of law.
- Penalties either in the forms of incarceration or monetary fines are customarily used to realize deterrence. It also ensures that violators do not obtain economic advantage. In SMCs the monetary penalty is not based on a clear calculation methodology that reflects the seriousness and gravity of the violation. Furthermore, the water regulations in the region do not provide the maximum statutory penalty to set the basis for estimating the potential maximum penalty liability.

Promoting water legislations through communication, publicity and dissemination (carrot alone) is often not effective. Enforcement (stick) is important to create a climate in which members of the regulated community have clear incentives to make use of the opportunities and resources provided by promotion (carrot). Enforcement alone is not as effective as enforcement combined with promotion (carrot +



Policy Options to Ensure Enforcement with Water Legislation:

- Water regulations are most effective if they are enforceable, in other words clear, understandable, accurate and precise in defining the requirements². In order to ensure enforceability, SMCs have to (1) improve the social climate and create a culture for compliance, (2) analyze the ability to comply, (3) involve the regulated community, stakeholders, and the enforcement officials in developing the requirements.

If regulating authorities in SMCs fail to ensure compliance they will jeopardize their own credibility as well as the validity of the promulgated legislations. Without enforcement, these legislations will become “paper-tiger” with no actual improvement in water resources management

supported by the insertion of additional tools and measures that would further catalyze, synergize, encourage and promote compliance. These complementary tools and measures include voluntary approach, , market-based economic incentive approaches, participatory approaches, etc.

- SMCs have to ensure that the issued requirements are economically affordable, technically applicable and socially acceptable. Furthermore, the laws need to provide the necessary authorities for enforcement and that requirements are clear and practical.

The practicality and acceptability of the requirements have great impact on the ultimate level of compliance. Despite the sincere desire of the regulated community to comply, it will not succeed if the requirements are too expensive or the necessary technologies are unknown or not

- The best management approach or mix of approaches that culminate into maximum possible degree of compliance with water legislations has to be identified by the regulating authorities. The identification of management systems that ensure compliance should be based on each country’s technical, financial, human and institutional capacities. Major factors that should be considered are the level of public awareness, discipline, behavior and education in addition to cultural aspects and social norms.
- The identified management approaches for water resources management in SMCs need to be discussed in terms of their feasibility. The command and control approach needs to be addressed as the fundamental management approach widely accepted in all SMCs.
- The command and control management approach needs to be reinforced and
- As a part of their efforts towards improving compliance with water regulations, regulating authorities need to publicize and promote compliance through (1) Education, (2) Information dissemination, (3) Technical assistance, (4) Building public support & partnership, and (5) Publicizing success stories of compliance.
- When developing their water regulation SMCs need to fulfill the following sequence of provisions to end-up with an enforcement action that are (1) Clear and understandable, (2) Accurate in defining what water activities are subject to the regulation, (3) Precise in defining the regulations and the conditions for any exceptions or deviation, (4) Clear in defining how compliance is to be achieved by specifying methods and procedures, (5) Clear in stating deadlines for compliance, (6) Flexible enough to be constructively adapted in permits or licenses, and based



on control and monitoring technologies that are available, affordable and reliable.

- The regulated parties often need to simply know what regulations they are subject to, why to abide, how to conform, and when to comply with the imposed regulations. The regulating authorities should provide immediate answers to these questions and provide education, technical assistance, and technological solutions. These necessities constitute the central foundation for effective compliance with water obligations before resorting to enforcement.
- One of the primary goals of the regulating authorities is to change the present human behavior to adhere with water requirements through (1) Motivating the regulated community to comply, (2) Removing obstacles that prevent compliance such as excessive cost, technical difficulties, etc., and (3) Overcoming existing factors that encourage non-compliance such as lack of economic incentives, disincentives, deterring penalties, poor monitoring and inspection, etc.
- The regulating authorities need to motivate compliance of the regulated community through (1) Imposing penalties to deter violators, (2) Applying consistent economic incentives and disincentives, (3) Ensuring institutional credibility by sending a message that compliance is imperative, (4) Capitalizing on social factors such as the fear of high ranking officials and public figures from tarnishing their image and reputation if they allow noncompliance with water regulations.
- Monitoring compliance is the most important element of any enforcement program. Regulating authorities should design a national compliance strategy that is based on the establishment of (1) A compliance monitoring program, which sets out the priorities and rationale for conducting on-site inspections and other types of monitoring and (2) An

enforcement response policy, which details the appropriate level of enforcement actions. This enforcement policy should also detail the principles and rationale for determining the seriousness of various types of violations as a factor for assessing penalty amounts.

Policy Options to Enforce Water Legislation:

- In fostering compliance SMCs need to ensure that the issued water legislations are enforceable and that requirements are clear and practical.
- **Inspection** is considered as the backbone of any enforcement program. Inspections are usually carried-out by government officials such as inspectors affiliated with the regulating authorities. Regulating authorities should start immediately (concurrent with the development of an inspection legal framework) the establishment of an inspectorate accompanied by a clear program of inspections and investigations that are complemented by spot checks.
- **Monitoring** compliance is the most important element of any enforcement program. Regulating authorities in SMCs need to establish a credible monitoring system to verify compliance that stands on the three pillars (1) Self-monitoring, record-keeping, and reporting, (2) Area monitoring using remote sensing to check water conditions on large scale, (3) Promoted mechanisms for citizens' complaints to unveil and expose non-compliances that are not detected by inspection or self-monitoring systems (4) Civil society has a pivotal role to play in monitoring and reporting noncompliance.

Civil society and the public at large can be powerful associates in promoting compliance with the issued regulations. They can also serve as watchdogs that alert officials to undetected cases of noncompliance.



- **Evidence:** Enforcement of water legislations necessitates the submission of unchallenged indictment evidence of violations to the court of law, if deemed necessary. Documentation of violation evidence must be accurate, authenticated and complete. It is therefore important for the regulating authorities to develop systems that can furnish certified credible evidence for the purpose of legal enforcement of regulations.

Deterrence is among the factors found to influence compliance. Unfortunately it is not genuinely practiced in many of the SMCs.

- **Response to Violations:** Regulating authorities need to design a consistent enforcement response system that encounters noncompliance. The system should be based on the seriousness and harm of violation, intent of the violator, his history of compliance, his attempt to conceal information and his willingness to cooperate with the regulating authorities.
- **Enforcement Actions:** Regulating authorities need to institute three gradually increasing levels of legal actions pursuant to the appropriate statute to enforce water legislations. These would include (1) Formal and informal administrative actions (2) Civil judicial actions in a court system at the request of the regulating authorities, (3) Criminal actions when a regulated party has knowingly and willfully committed a violation of the law.
- **System to Assess Penalties:** SMCs need to establish a system to assess the appropriate penalties for the settlement of civil and administrative actions. The system should be designed so that violators whose actions, or inactions, result in a significant economic benefit and/or harm or threaten water resources would pay the highest penalties. The

penalties should (1) Be large enough to deter noncompliance, (2) Insure that violators do not obtain an economic advantage over their competitors, (3) be consistent and predictable across all geographical locations, and (4) Be based on a logical calculation methodology to promote swift resolution of enforcement actions.

Reference:

1. Experts Group Meeting on planning of water resources in SWIM-SM countries held on 13 and 14 of June, 2012 in Athens, Greece.
2. Office of Enforcement and Compliance Assurance United States Environmental Protection Agency (US-EPA) (September 2000) "Profile of the Agricultural Chemical, Pesticide, and Fertilizer Industry".
<http://www.epa.gov/compliance/resources/publications/assistance/sectors/notesbooks/agchem.pdf>.