

Policies, measures, institutions and systems
needed to enable the judiciary system to handle
cases of violation of water legislation

High level policy dialogue on
enforcement of water laws in SWIM-
SM countries

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Raya Marina Stephan

Outline

- In the legal framework
- At the institutional level
- At the judiciary level



I. In the legal framework

In the Water Law and related regulations:

- Clear definition of the water uses, the rights and obligations and the required procedures :
 - ➔ clear definition of the infraction
- Declaration / Authorization (permitting system)

Institution in charge of instructing the file

Required documents

Granting conditions

Period of instruction



I. In the legal framework

Clear definition of the sanctions

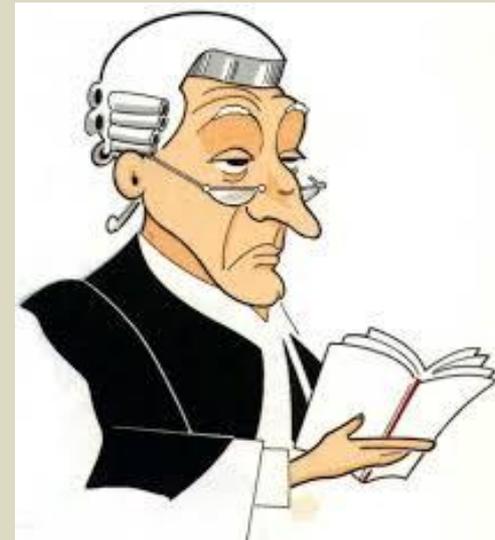
Sanctions to be progressive depending on the gravity of the infraction

Administrative and criminal sanctions

- tendency: development of administrative sanctions
- need to go fast, slow judicial procedures

However

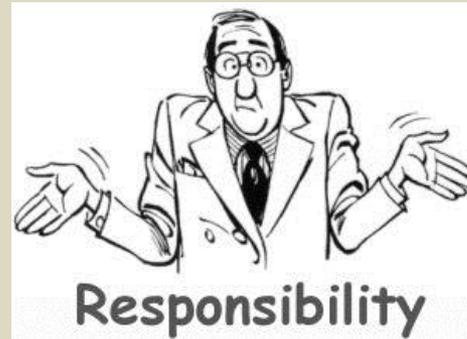
- resorting to the judge remains a guarantee
- Possibility of appeal must exist/remain



II. At the institutional level

Clear definition of the role of each institution in the water sector

→ problems of dilution and overlaps in responsibilities



→ important to know who is responsible for what, who is in charge of sanctioning

→ coordination mechanism

II. At the institutional level

Necessary to organize control & inspections:

- Advisory role
- Conformity to the prescriptions
but impact on the environnement
requiring more stringent measures
- Non conformity to the prescriptions
→ evidence : sanction either by the authority or
to the court



II. At the institutional level

Qualified inspectors to undertake the controls

- Good number
- Technical and legal competences & skills on water issues (training)
- Assermentation
- Official appointment (by the Minister in charge of Water ?)

Appointment at central level, mission in close cooperation with local/decentralized authorities



II. At the institutional level

Setting up an effective control can require the elaboration of the following:

- Territorial control plans/strategies:
 - ✓ When to control
 - ✓ Possible external request: NGO, municipality, civil person...?
 - ✓ What appropriate level? The basin? Or an administrative level such as the department?

Suggestion: the basin



- Technical and legal guidelines for the inspectors
- Templates for control reports

III. At the judiciary level

- Criminal procedures require high standard of evidence of the offense, and to prove the violator's intention.



- Offenses against water legislation
 - ➔ Prosecutor and judge : clear understanding of the legislation, and the importance of the impact of the offense on the resources
 - ➔ determining the proper sanction

III. At the judiciary level

➤ Evidence: inspectors



➤ Experts with the court: external competences on specific topics → to include environment and water experts

➤ Establishing a specific chamber in the tribunal for environmental crimes

III. At the judiciary level

- National network/database with easily accessible documentation
- Creating a specific training for judges and prosecutors : input by scientists, economists, medicals ...

→ *regional level?*



III. At the judiciary level

Role of NGOs

- Civil party at a penal court
- Party at a civil court

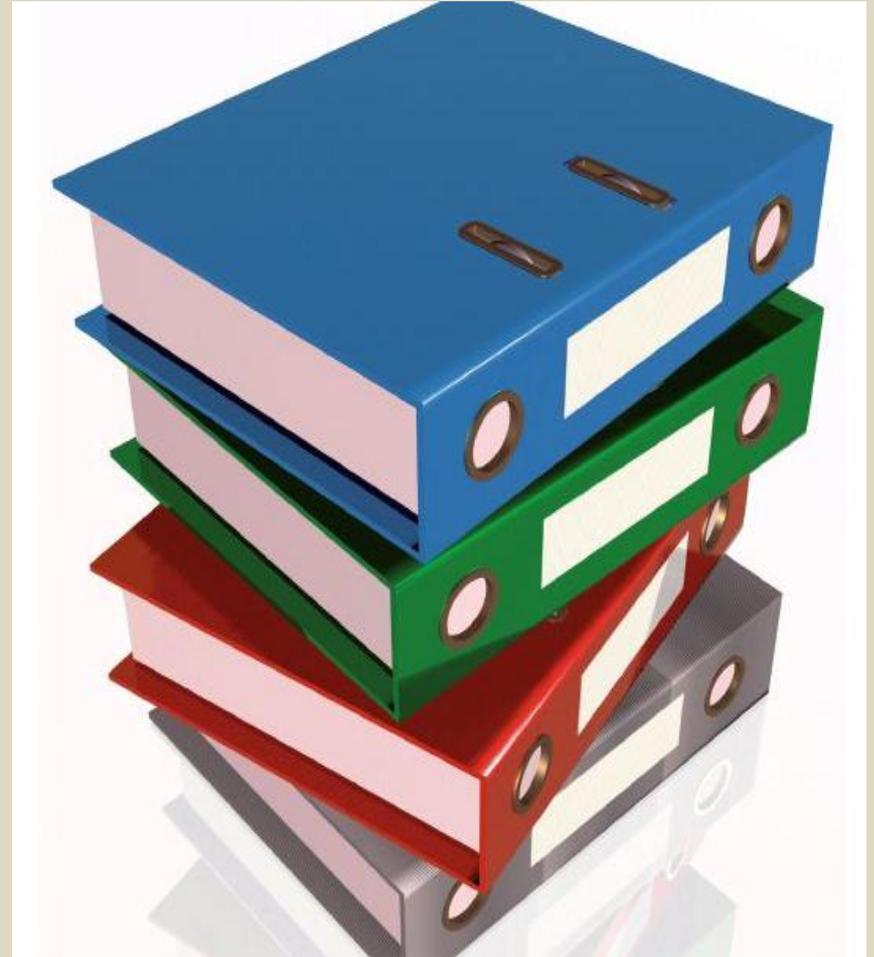


- Material & legal elements against the author of the offence

III. At the judiciary level

Administrative procedure

- *Case of an appeal against an administrative sanction*
- *Contesting an administrative decision affecting the water resources*



Thank you for your attention