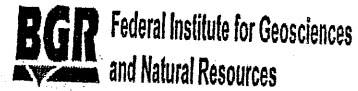




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## *COMPLIANCE & ENFORCEMENT OF WATER LEGISLATION IN THE ESCWA REGION*

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*Seminar on Water Governance: Role of Stakeholders  
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## **STATEMENT OF FACTS**

- All ESCWA-MS have passed legislation for the protection of their water resources with various but chiefly modest degrees of success.
- Compliance in ESCWA countries did not occur automatically once requirements were issued.
- Overlooking the enforcement of water regulation in ESCWA countries often led to the spread of a **social value or a culture** that implies “noncompliance is tolerable & compliance is probably not important”.

• **How Can we Achieve Compliance?**

1. Issue the water legislation - regulation.
2. Promote compliance through communication of regulation & publication of its relevant information.
3. Enforce legislation through the following:
  - Development of **inspection** capacities, **credible** monitoring & **accredited** measuring systems.
  - Preparation of procedures for **investigations of violations & rules for assessment of penalties**.
  - Identification of measures to compel compliance without resorting to formal court action.
  - Development of measures to compel compliance through court action.

**OBJECTIVES OF THE PRESENTATION**

• **The main objectives are:**

1. To overview the general state of compliance with water legislation in ESCWA Region.
2. To identify feasible approaches for enforcement of water legislation in ESCWA Region.
3. To identify the means to promote compliance with water legislation in ESCWA region.

## IMPORTANT QUESTIONS

1. Are water quality & quantity violations likely to be detected?
  2. Is the official response to violations swift & predictable?
  3. Does the response include a proportionate sanction?
- The answer in most cases is **NO**

## WHAT ARE THE FACTORS AFFECTING COMPLIANCE WITH WATER LEGISLATION IN THE ESCWA REGION?

### 1- DETERRENCE:

- It is the phenomenon of people changing their normal behavior to avoid a painful sanction.
- Inadequate monitoring, inspection, reporting & poor response of authorities to water violations led to inapplicability of deterrence.
- **Deterrence is considered at its infancy stage in most ESCWA-MS.**

## **2- ECONOMIC FACTOR:**

To eliminate any economic gain reaped by violating the requirements, the monetary penalty would ideally at least equal the amount the violator would save by not complying. To add to this the deterrence factor (1,2,3,..) based on probability of being caught.

- **Such modality is not existing in ESCWA countries.**
- Methodology needed for penalty calculation is nearly nonexistent in the region.

## **3- INSTITUTIONAL FACTOR:**

The history & social norms of noncompliance with water legislation in some ESCWA-MS can be attributed to the lack of institutional capacity for the following reasons:

1. Some institutions enacted water laws that are unenforceable due to defects in their design such as lack of stakeholders participation, lack of economic consideration, etc. during preparation.
2. The implementing institutions often lack adequate monitoring, inspecting & reporting resources.
3. Some large-scale national development projects (particularly food-security, development of new communities & greening-deserts projects) with socio-political ramifications are politically exempt from complying with some water laws.

#### **4- SOCIAL FACTORS:**

- In some ESCWA-MS, personal connections, social status, political ranking & clout play a pronounced role in determining the degree of enforcement of the water legislation.

#### **5- PSYCHOLOGICAL FACTORS:**

- **Fear of change** is one of the major factors observed in ESCWA region. For instance,
  - Agricultural engineers & farmers believe that familiar & inherited old ways of water management are working & safe.
  - Farmers also believe that complying with new water conservation legislation might represent unnecessary & probably unacceptable risk to their productivity.
- **Inertia** is what makes water users resist change because of the perceived effort it will require to enact water legislation.

## **EVOLUTION OF COMPLIANCE WITH WATER LEGISLATION IN ESCWA-MS**

### **1- COMMAND & CONTROL APPROACH:**

- In this approach, the Water Regulating Authorities (WRA) is assumed to:
  1. Prescribe the desired changes through detailed requirements.
  2. Promote compliance with these requirements.  
Then,
  3. Enforce compliance with these requirements.
- This is the most preferred & prevailing water resources management formula in the ESCWA region.

## **2- MARKET BASED/ECONOMIC INCENTIVE APPROACH:**

- It uses market forces to achieve behavioral changes.
- It permits individual violators to choose among a range of alternatives to match costs with benefits.
- The main instruments for economic dis-incentives:
  - Fee system
  - Tradable permits
  - Virtual water
  - Auctions
- The use of market based approach is of extremely limited use in the region except in the case of water utilities in some countries.

## **3- RISK BASED APPROACH:**

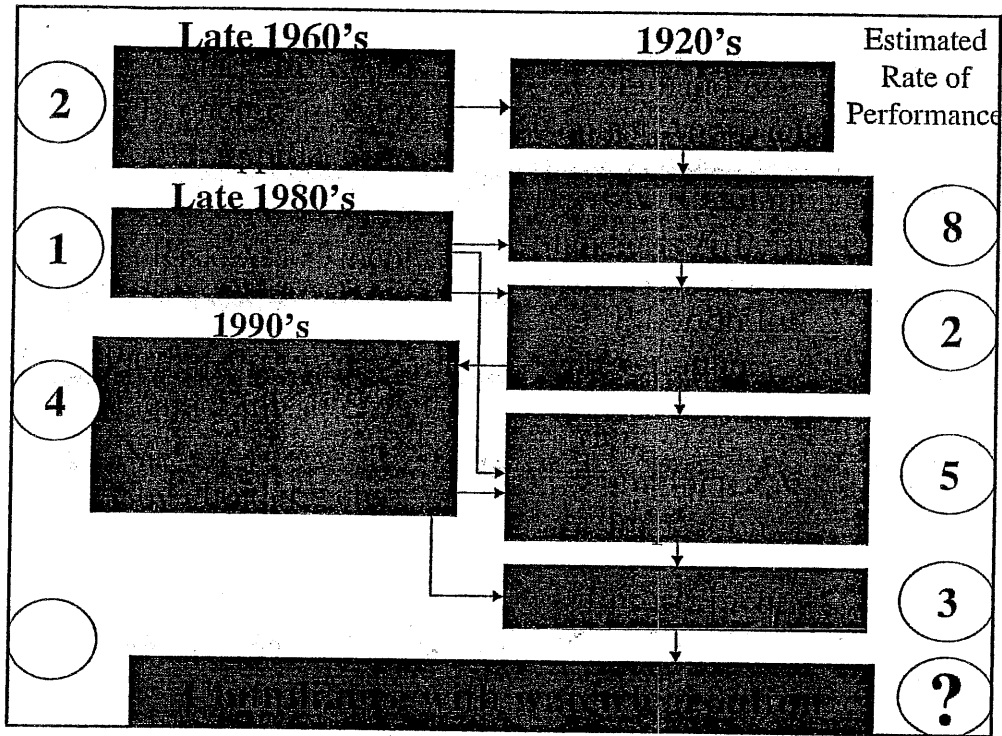
- It establishes priorities for compliance & enforcement in the water sector based on the potential of reducing the risks posed to sustainability of water resources, economic losses, public health & environmental degradation.
- There is a limited capacity available in ESCWA region to implement this approach. This can be attributed to inadequate & unreliable quantitative & qualitative data & information required to link socio-economic & ecological risks with mismanagement of water resources.



#### **4- Participatory Approach:**

Some government agencies in the ESCWA Region are neither willing nor able to cooperate with stakeholders in managing water resources. Engaging the grass root public in decision making faces the following challenges:

1. According to the prevailing culture, traditions & political norms in some ESCWA-MSs, the decision-making hierarchy still could not easily tolerate participatory bottom-up approach, or accept public pressure.
2. Some decision makers in the region usually express concern about the temptations of local NGOs to imitate what is being considered as immoderate & some time extravagant actions carried-out by other international NGO groups.
3. Public participation requires disclosure of water quality and quantity information. Water related information is considered by some government authorities as sensitive and can lead to public confusion or panic & might affects tourism & trade.



### CREATION OF WATER LEGISLATION FOR COMMAND & CONTROL APPROACH IN ESCWA-MS

- Legislation are at the heart of regulatory command & control approach.
- The first step in ensuring compliance is to ensure that water legislation are enforceable.
- In order to be enforceable, regulations should **not** rely on expensive, unreliable or unavailable techniques.

## **1- WATER LAWS:**

- They provide the vision, scope & authority for water resources protection & conservation
- They are most effective if they provide the regulating agencies with the following authorities:
  - To issue regulations & guidance to implement the law.
  - To inspect & access records.
  - To take legal action against non compliers.
  - To correct situations posing a threat to the resource, ecology or environmental health.
- Some of the laws issued by ESCWA-MS suffer from inconsistency, fragmentation & overlap.

## **2- WATER REGULATIONS:**

- They establish in greater detail, than specified by laws, the general requirements that must be met by the regulated community.
- In nearly all cases, the developed regulations in ESCWA region suffer from fragmentation among various sectors.

### **3- PERMITS AND LICENSES:**

- Permits are usually designed to control activities related to construction &/or operation of water related facilities such as drilling wells, irrigation schemes, etc.
- Licenses & permits are widely used in ESCWA region due to their versatility, flexibility, centrality & the minimum administrative & technical requirements needed to enforce these requirements. Also because they are renewable annually.

### **PROMOTION OF COMPLIANCE WITH WATER LEGISLATION IN ESCWA REGION**

- Compliance promotion is defined as any activity that encourages compliance with water legislation.
- Promotion alone (**carrot alone**) is often not effective. Enforcement (**stick**) is important to create for regulated community clear incentives to make use of the opportunities & resources provided by promotion.
- Enforcement alone is also not as effective as enforcement combined with promotion (**carrot + stick**).

## WHAT ESCWA-MS DID TO PROMOTE COMPLIANCE WITH WATER

### 1- BY EDUCATION, INFORMATION DISSEMINATION & TECHNICAL ASSISTANCE

- Education, information dissemination & technical assistance lay the groundwork for compliance & are essential to overcome barriers of ignorance or inability that lead to noncompliance.
- In most of the cases, ESCWA-MS conducted some education but failed to undertake the technical assistance campaigns needed to promote compliance with water resources legislation particularly with water quality management.

### 2- BY BUILDING PUBLIC SUPPORT & STAKEHOLDERS INVOLVEMENT:

- The public can be a powerful associate in promoting compliance. They alert officials to undetected cases of noncompliance & create a social culture of compliance.
- Water Associations may also become involved in enforcement by detecting noncompliance & where the law allows, taking legal action against a violator.

### **3- BY PUBLICIZING SUCCESS STORIES:**

- Positive publicity about a project compliance success can enhance its reputation & public image.
- Water associations with successful record of management and compliance with water legislations should be rewarded, publicized and acknowledged.

### **4- BY DEVELOPING ECONOMIC INCENTIVES**

- Economic incentives might include:
  - Fees
  - Tax Incentives
  - Subsidies for Complying Facilities
  - Promotion Credits

**HOW ESCWA COUNTRIES MONITOR FOR COMPLIANCE WITH WATER LEGISLATION?**

- Monitoring compliance is the most important element of any enforcement program, for the following reasons:
  1. It detects and corrects noncompliance
  2. It assesses the enforcement program progress
  3. It provides evidence to support enforcement actions

ESCWA-MS rely upon 3 main sources of compliance information:

**1- INSPECTIONS BY PROGRAM OFFICERS:**

- Inspection is defined as the process by which inspectors determine that a water user is in or out of compliance. Water inspectors, water police, etc.
- It includes survey & examination of quality & quantity records & other operating conditions.
- It is considered as the backbone of most enforcement programs in ESCWA-MS where it is the most predominating source of information. However, it requires unaffordable budgets, technical & managerial resources to be carefully targeted.

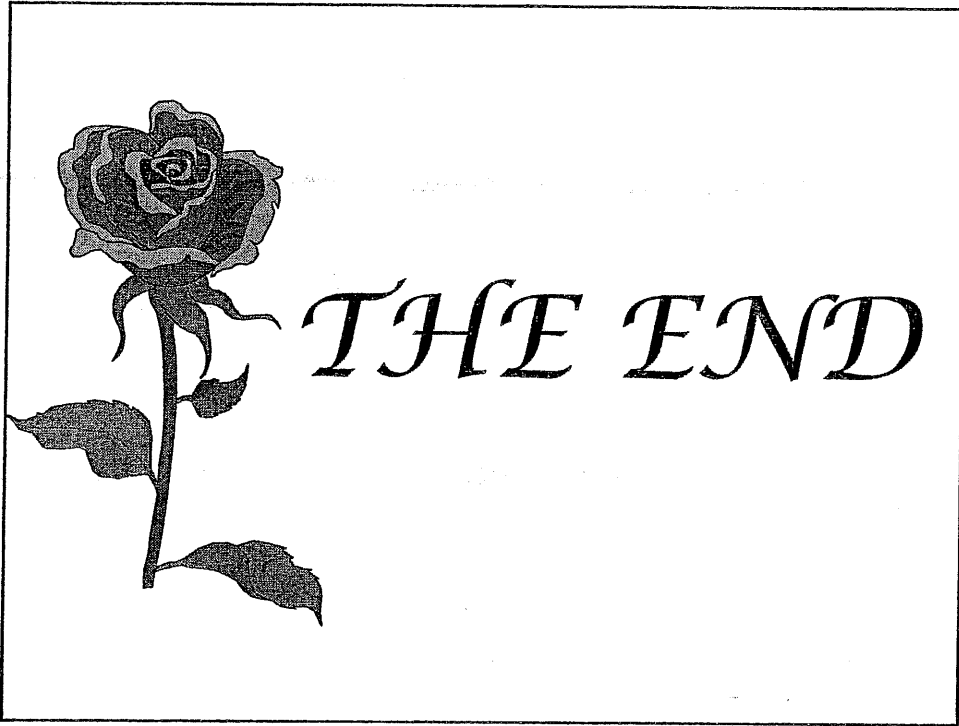
## **2- SELF-MONITORING, SELF-RECORD KEEPING & SELF-REPORTING**

- In self-monitoring, the regulated facility measures its performance parameter that provides information on the quantity & quality of water used or discharged.
- In self-record-keeping, the regulated facility is responsible for maintaining its generated records of a certain regulated activity.
- In self-reporting, the regulated facility is required to provide the water authority with self-monitoring or record-keeping data periodically and/or upon request.

## **3- CITIZEN COMPLAINTS**

- The public complaint process is one of the most common mechanisms for public input in enforcement of water legislation.
- Some ESCWA-MS developed, with the assistance of NGOs, programs to encourage citizen involvement by providing a financial reward for any citizen complaint that leads to a conviction of the non-complying facility,





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