Environmental challenges
Nepal, November 2018

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Historic background

- Pollution
- Protection of landscape / national parks
- Protection of endangered species
- Socio-economic concerns
- Regional planning, - economic development against nature conservation
- The global perspective; the global climate
- National environmental problems tend to be problems with a regional or global perspective.

Different rules

Rules

- National law
- International law
- Requirements from the lenders and sponsors

The challenge

- One General Environmental Law, og
- A number of Particular Environmental Laws
- Or both ? **Coordination is most important.**

- The distinction between material law and procedure law.

- The need of uniformed standards.

The Equator - principles

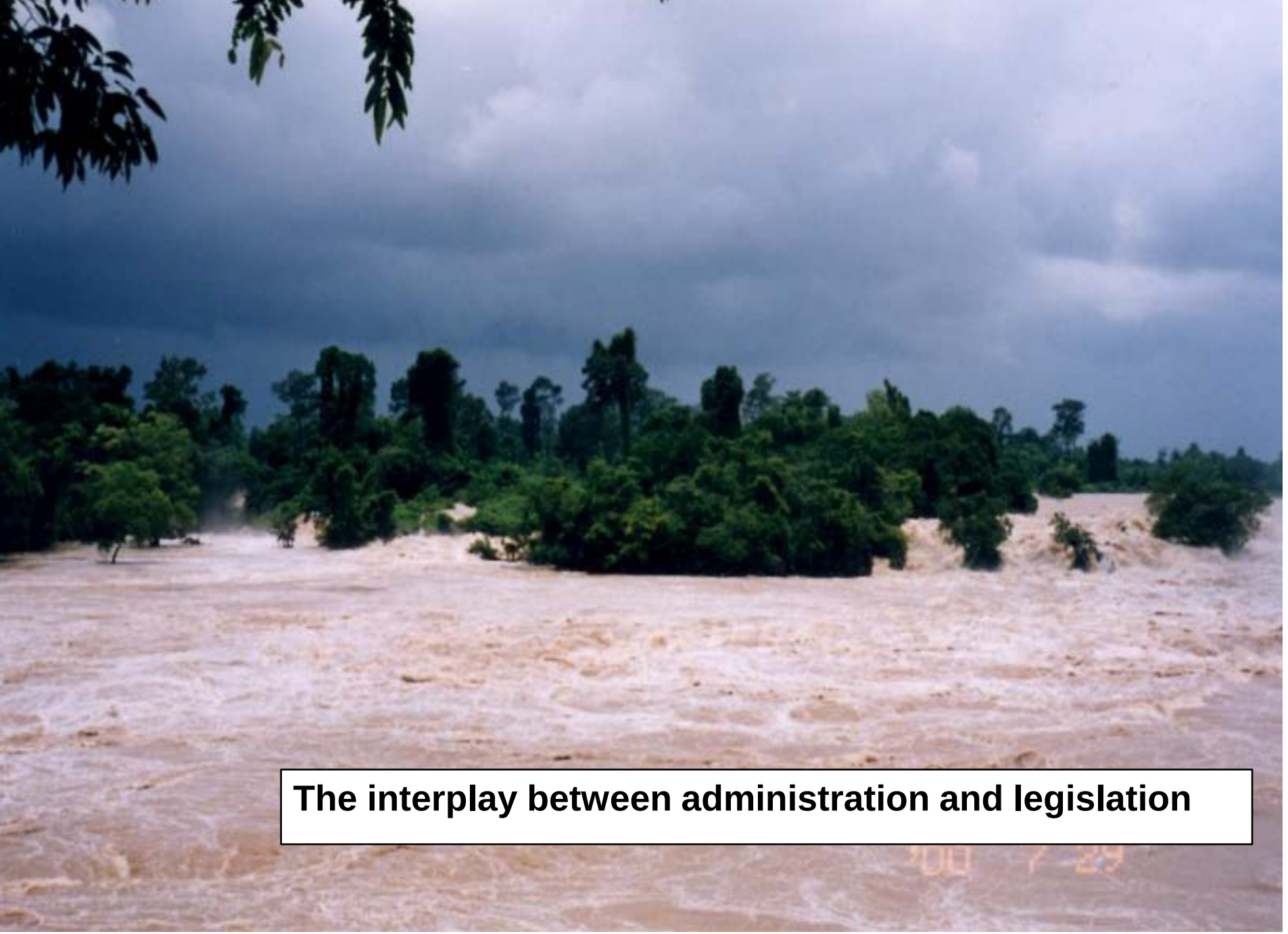
Prior to financial close:

- Environmental and social impact assessment
- Community information and consultation
- Preparation of appropriate monitoring, mitigation and remediation plans
- Establishment of a grievance mechanism

Equator Principles

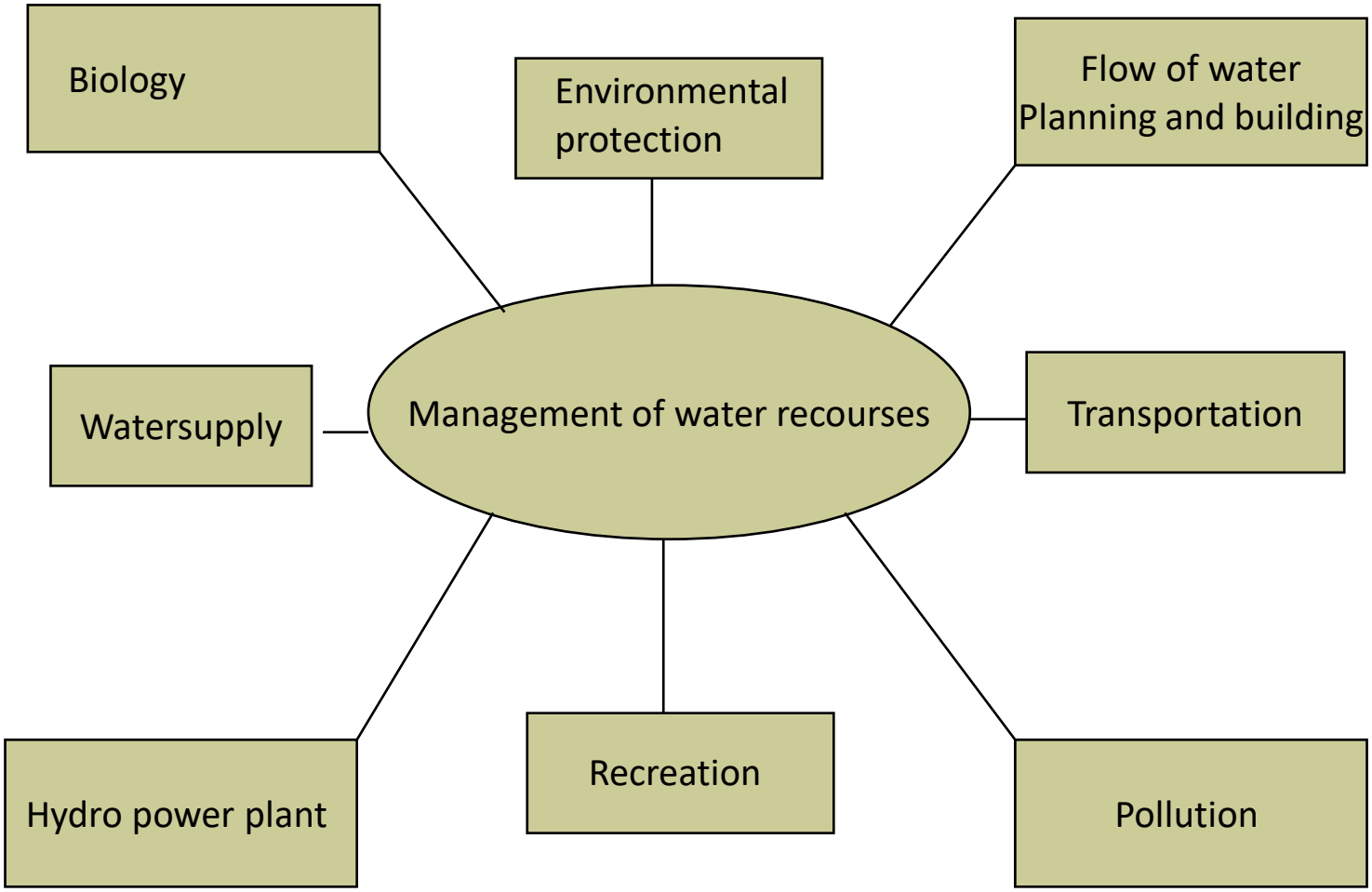
After financial close, during construction and operations:

- Covenants in financing documents
- Independent monitoring and reporting to the financial institutions.



The interplay between administration and legislation

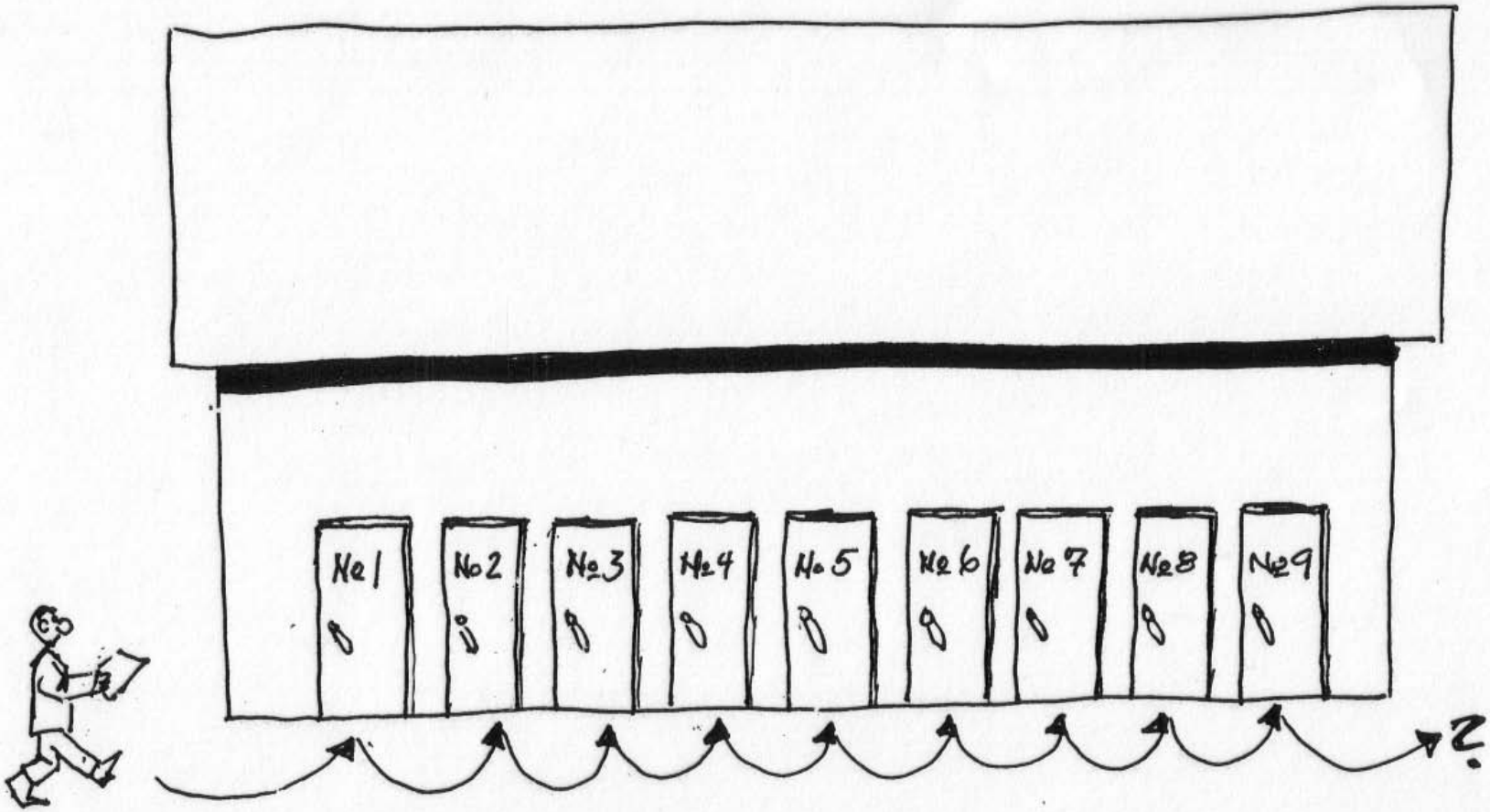
Management


Biology
Environmental protection
Flow of water Planning and building
Watersupply
Management of water recourses
Transportation
Hydro power plant
Recreation
Pollution

Conflicts

- Conflicts between different laws
- Conflicts between different institutions (ministries, agencies etc.)
- Conflicts between feuderal government and local government (municipalities, counties)
- Conflicts related to over-staffed administrations as well as in administrations with lack of competence and manpower.

One-stop-shop or one window system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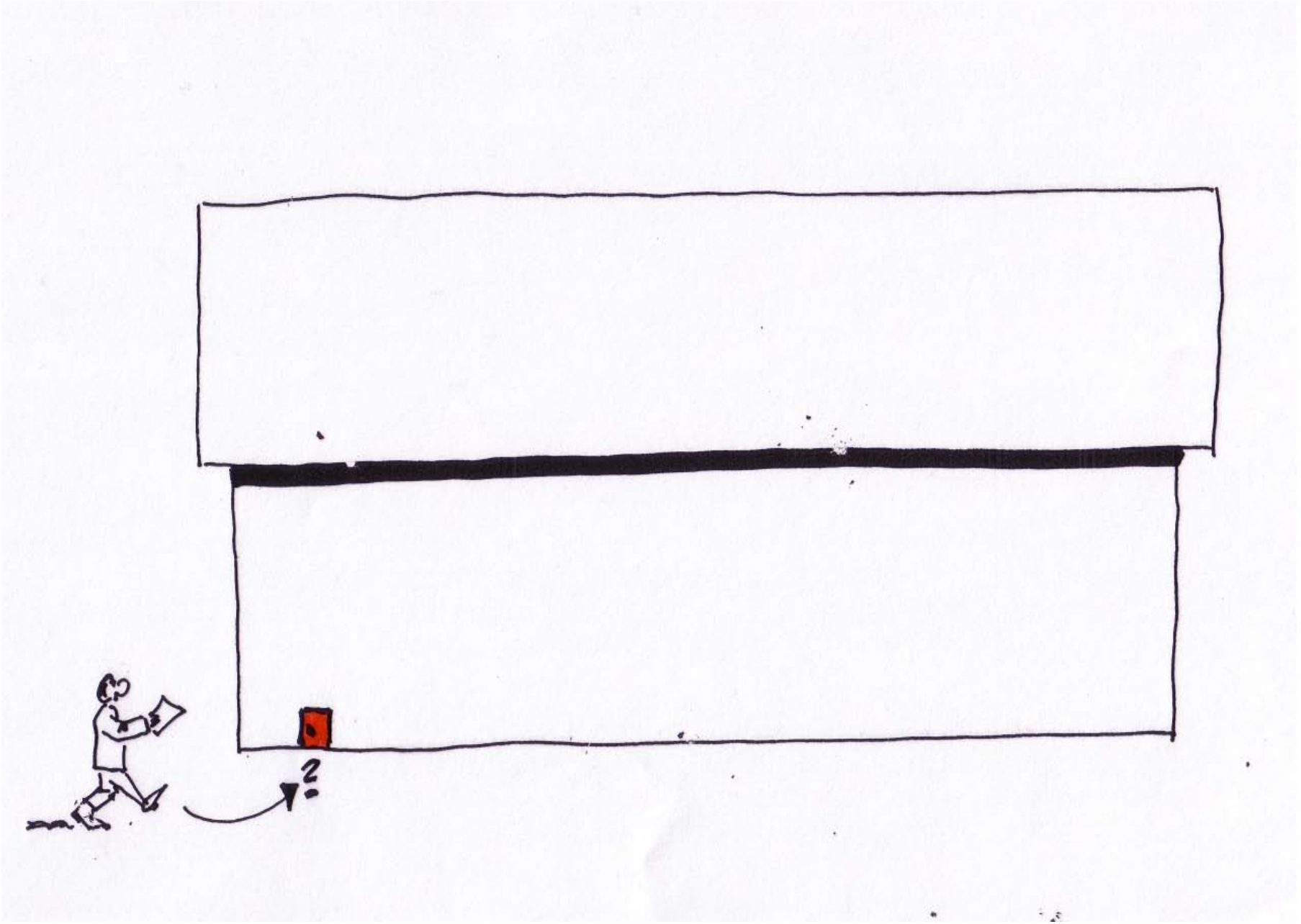
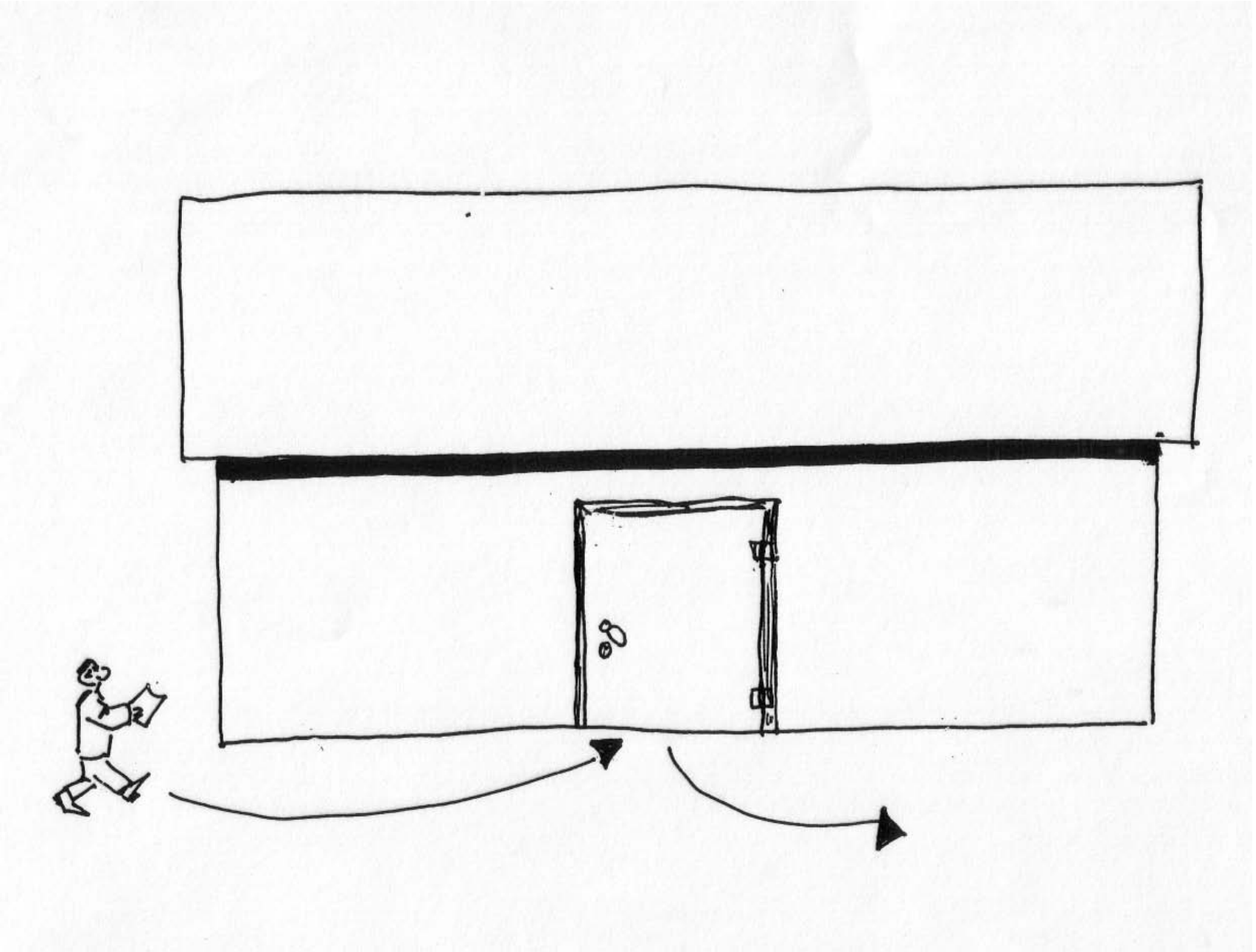




The problems with a global standard for environmental rules

Basis for legal rules

- Conventions
- Treaties
- Protocols
- Customary law

Standards adopted

- Polluter pays principle
- The precautionary principle
- The principle of sustainable development
- Environmental procedural rights
- Common heritage
- Warning of neigbouring states

World Commission of Dams - WCD

World Commission on Dams (WCD)

- Background, - some dam-projects could be described as:

- **a) Economically questionable**
- **b) Environmentally harmful**
- **C) Socially disruptive**

WCD

- Change in context:
  - From techno-economic interest to greater emphasis on rights and interest of peple and communities affected
  - NGOs will play a more important role
  - Private sector will play a more important role as well
  - **Stakeholders should not only be consulted but be empowered to negotiate in the taking of key decisions affecting them.**
  - The concern of human rights are growing steadily stronger.

WCD

- **Compliance with good rules inhibited by:**
  - Lack of good regulations
  - Non-enforceability of international law
  - Underspecification of social and environmental requirements.
  - Corruption and lack of transparency
  - Lack of public participation in the decision making process
  - Weak legal recourse and appeals mechanisms
  - The absence of an independent judiciary
  - Lack of political will and interest
  - Lack of human, organisational and financial capacity

To change this situation WCD suggest:

- Clear, rationalized and enforceable regulatory framework
- Integrity pacts – in which all principals and agents contractually agree.
- Social and environmental performance bonds
- Licenses that require periodic reappraisal of the state
- **Reporting requirements, allowing stakeholders to compare performance with promised action**

International Water Law

International water law (1)

- **Boundaries separating to adjacent states**
- **Upper and lower riparians – sharing a watercourse**

- Process:
  - A) A convention / treaty – is subject to
  - B) Ratification
  - C) Acceptance
  - D) Approval or accession

International water law (2)

- Issues:
  - Navigation
  - Pollution
  - Water flow – irrigation
  - Sharing of benefits - (hydro power)
  - Ground water
  - Salinity issues

International water law (3)

- Basic principles:
  - **Equitable and reasonable utilization (sharing of water)**
  - **Nor harm may be caused by one watercourse State to another**
  - **Peaceful settlement of watercourse disputes**

International water law (4)

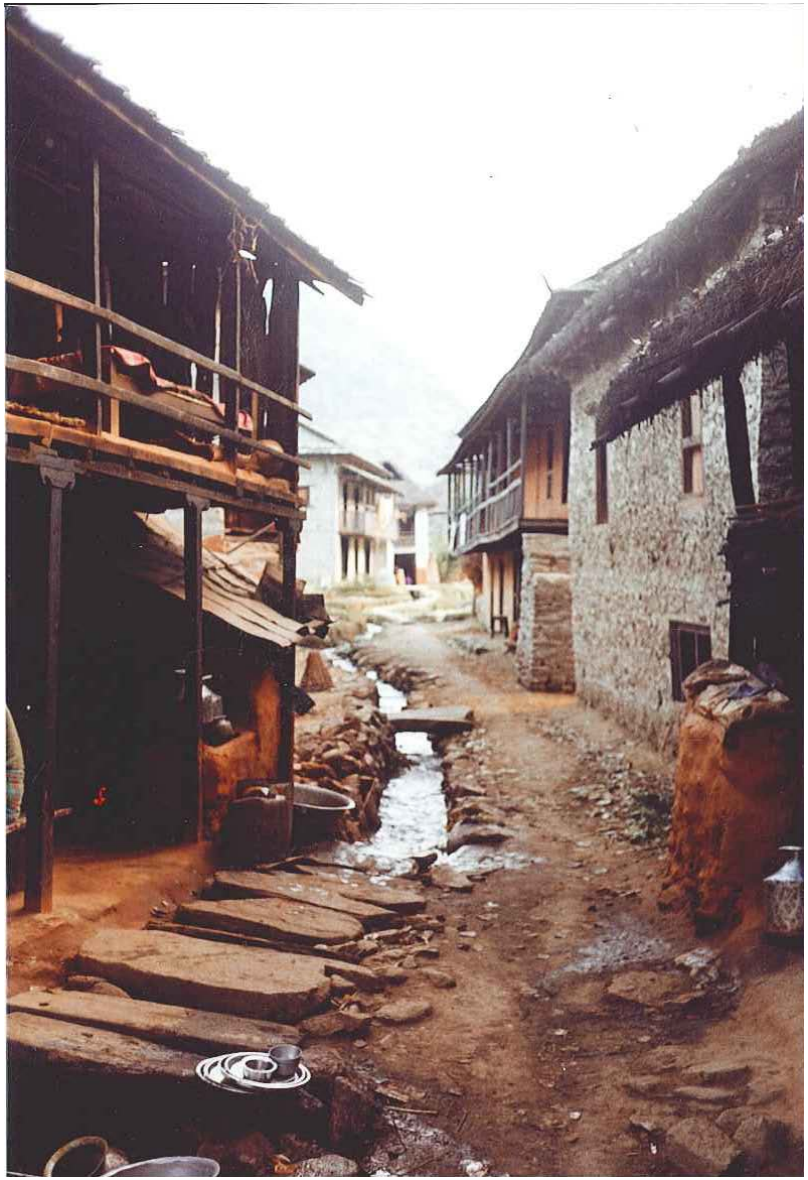
- Conventions:
  - Helsinki-convention from 1992
  - Convention on the law of Non-navigational uses of international watercourses - 1997 (UN)
  - The Espoo Convention on environmental impact assessment in transboundary context. (adopted in 1991 and entered into force in 1997.

International water law (5)

- Cases:

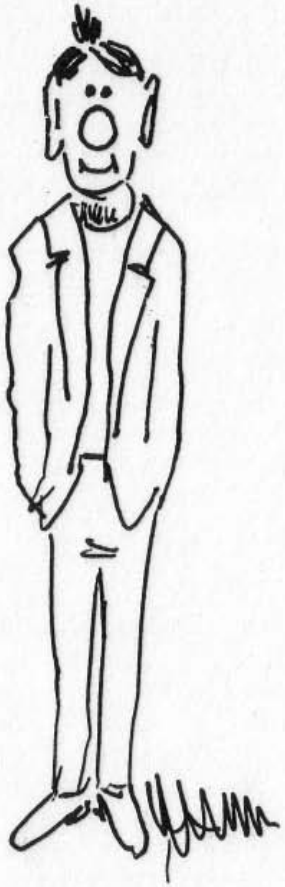
- A) The Gabcikovo – Nagymaros Case (1997)
- B) Treaty of 1996 between India and Bangladesh, sharing Ganges.
- C) Indus Water Treaty of 1960.
- D) The Aral Sea Basin case.

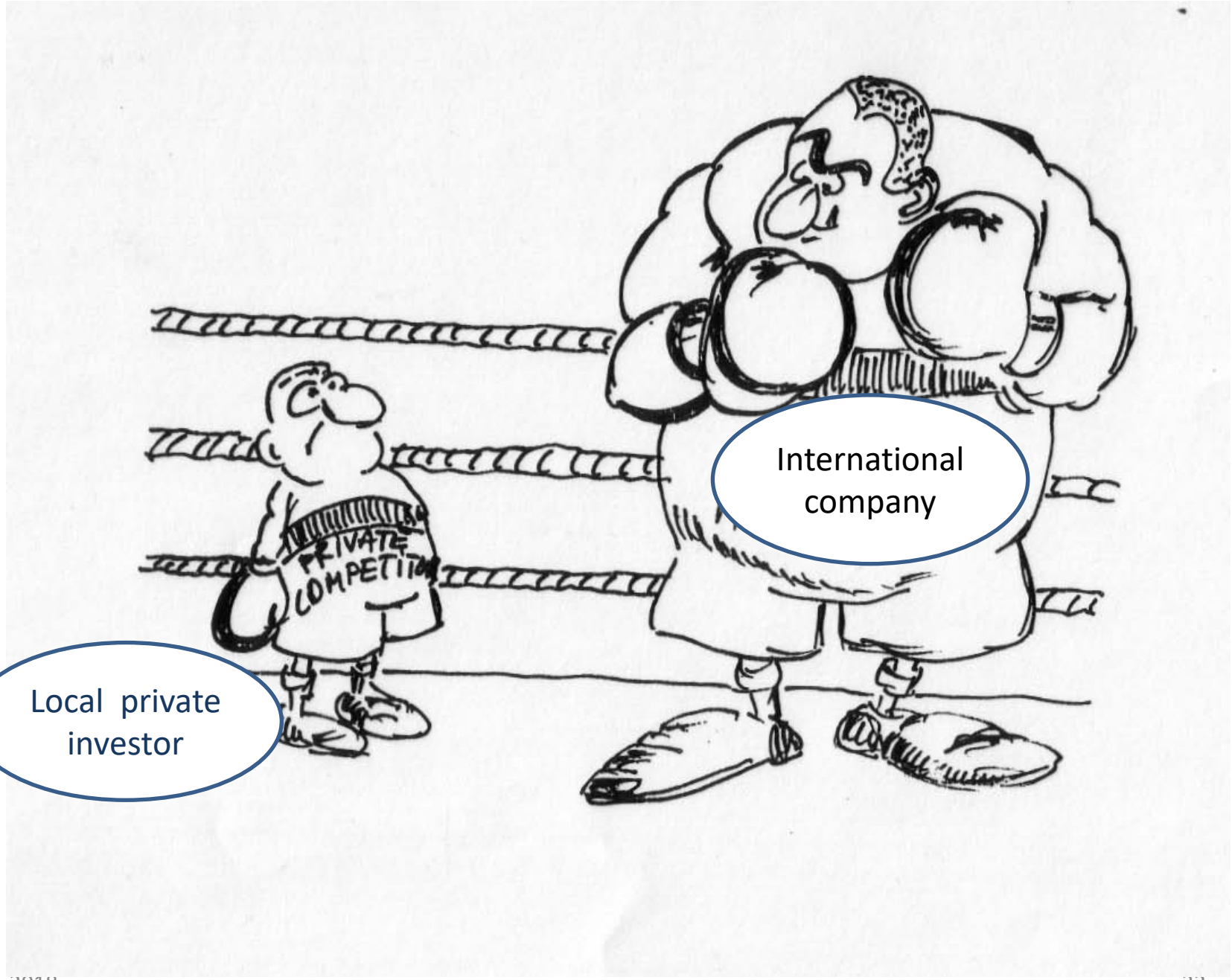
Economic growth or environmental protection ?



Global standards

- Challenge:
- **To what extent is the rich countries solutions applicable and reasonable in undeveloped and poor countries ?**



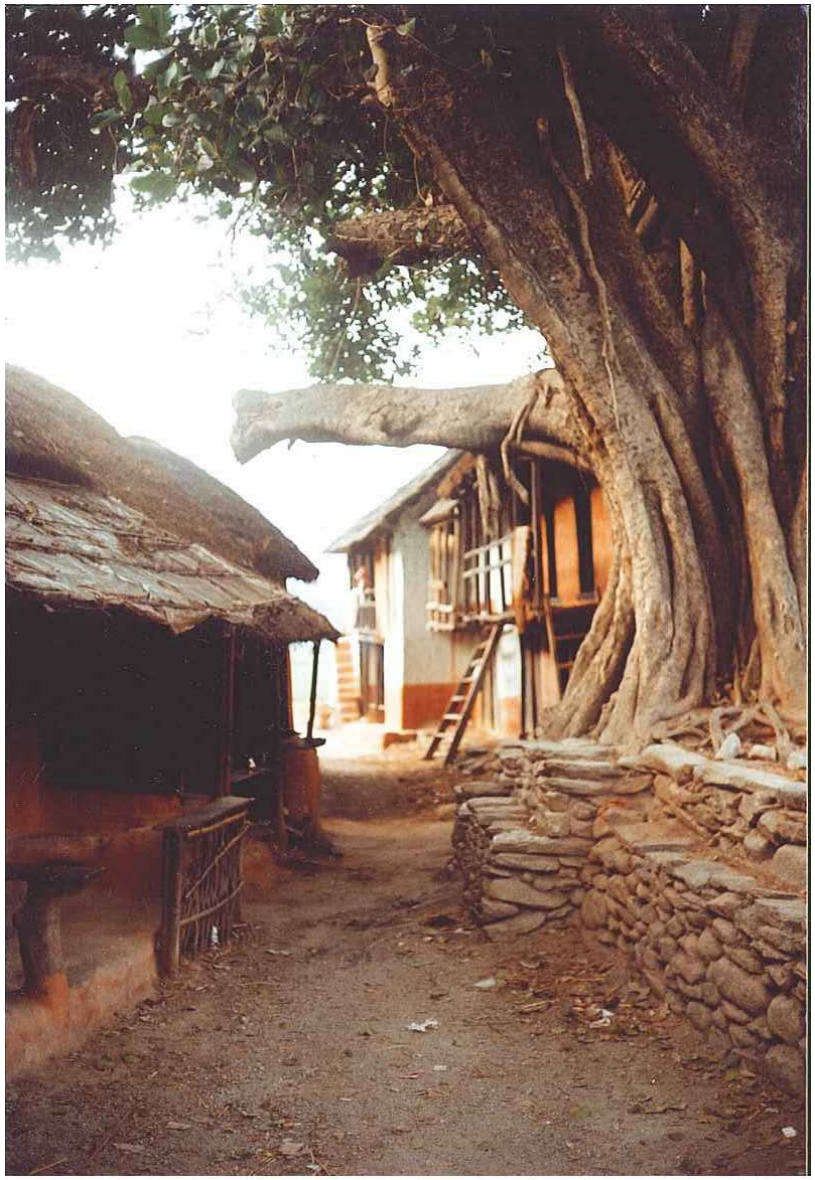

International company
Local private investor

The major challenges

- How to balance the political targets related to economic growth having due regard to the environmental issues.
- To provide simple rules to alleviate the administrative implementation.
- To establish a system which will provide predictability for the stakeholders.

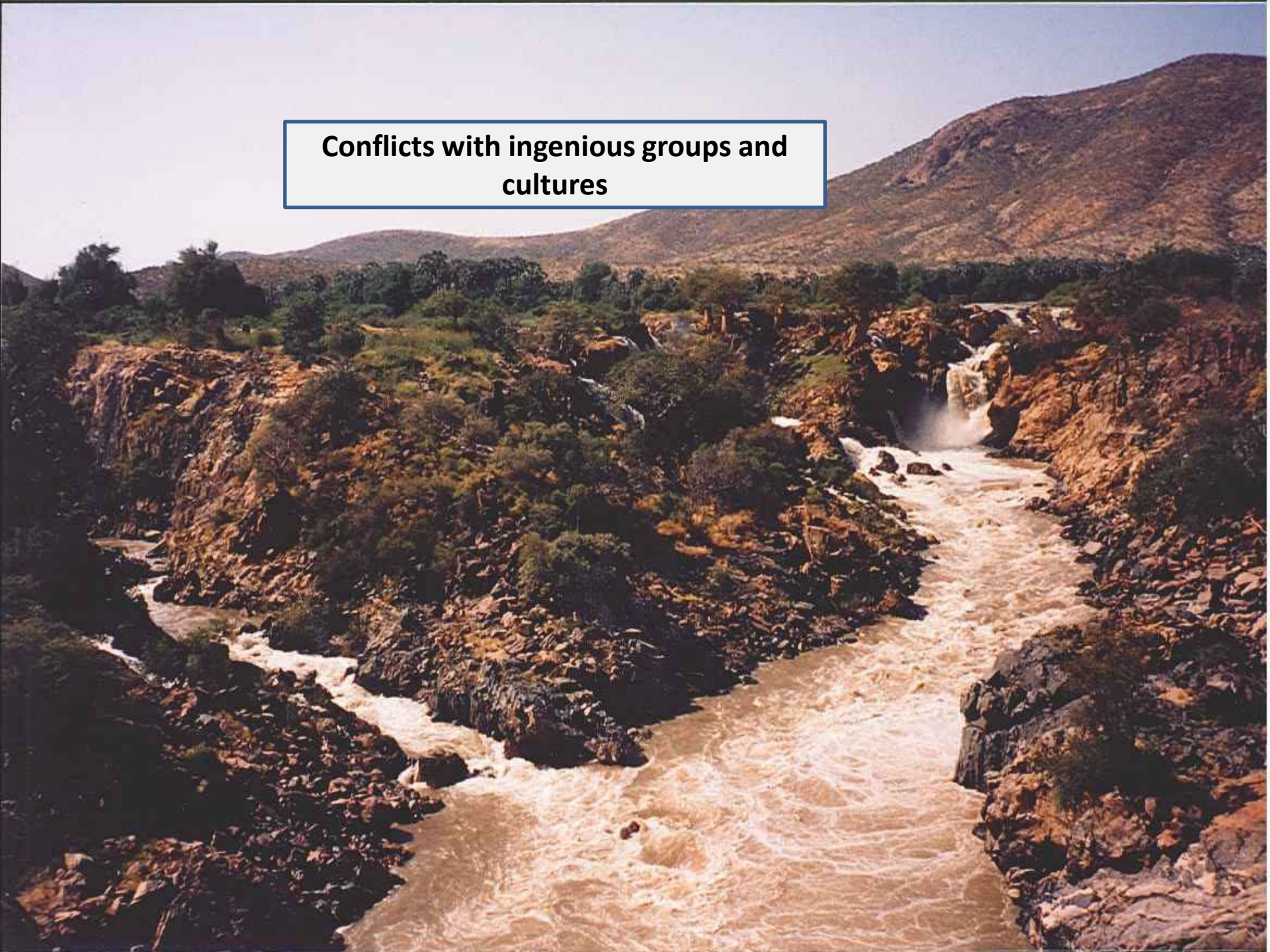
Expropriation and compensation to the local community

NGOs claiming preservation



Challenges related to green-field hydropower

- Socio-economic impact / resettlement
- Flooding, inundation
- Land-slides, - erosion
- Damage caused to local farming and fishing


Conflicts with ingenious groups and cultures

Examples

- Slash-and-burn agriculture
- Poaching in wildlife reservations or national parks
- Hindi-religious rituals closely linked to water (funerals)
- Holly montains and holly sites

The structure of the legal framework

The structure of the legal framework

- **Objectives**
- **Rules and standards**
- **Control and administration**
- **Punishment/ penalties**

”Christmas Cards”

- **” The Water Management shall be based on the principle of human solidarity and common interest through cooperation of the public administration, water users, representatives of the local communities and population, in order to obtain the maximum social benefit.”**

Penalties

- Important to have the legal right to punish a person as well as a company (or both).

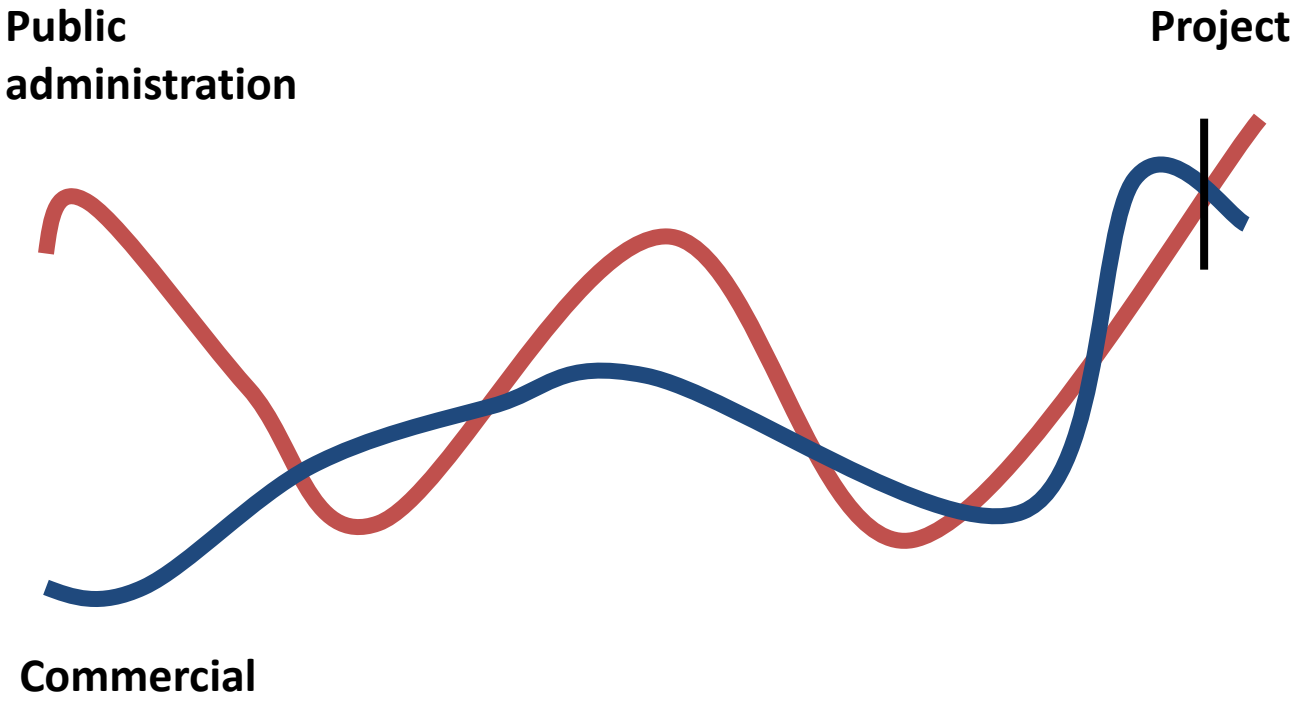
- A distinction has be made between:
  - Negligence
  - Gross Negligence
  - Willful misconduct
  - Strict liability for prosecution / damages.

Different sentences or reactions

- Imprisonment
- Fines
- Compensation and mitigation of damage
- Withdrawal of concessions/ permits/ licenses
- Confiscation of profit

The issues related to control

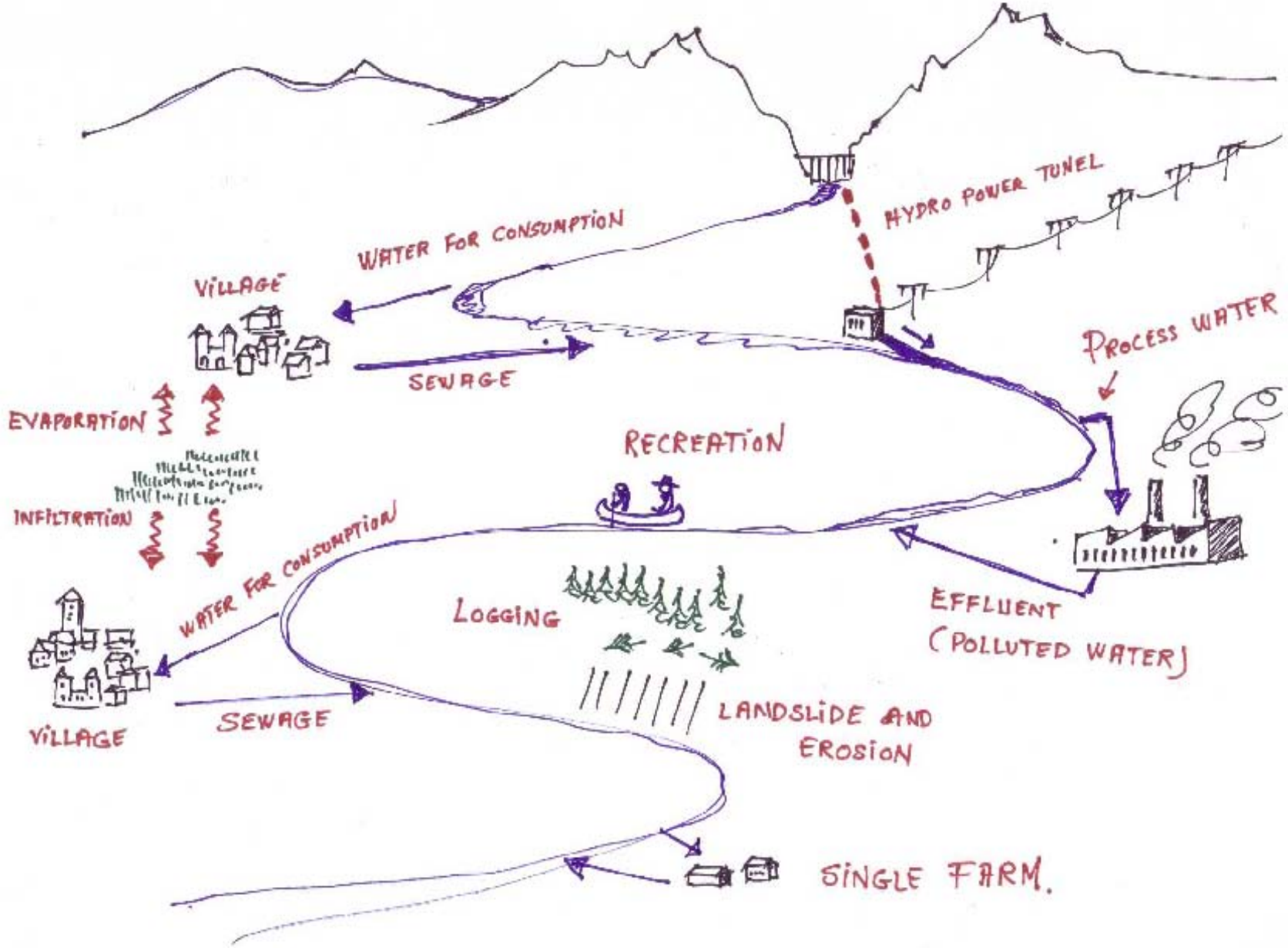
- A) State or public control
- B) Self-monitoring within companies
- C) Voluntary participation in systems like the pan-European environmental audit and management system
- D) NGOs and mass-media

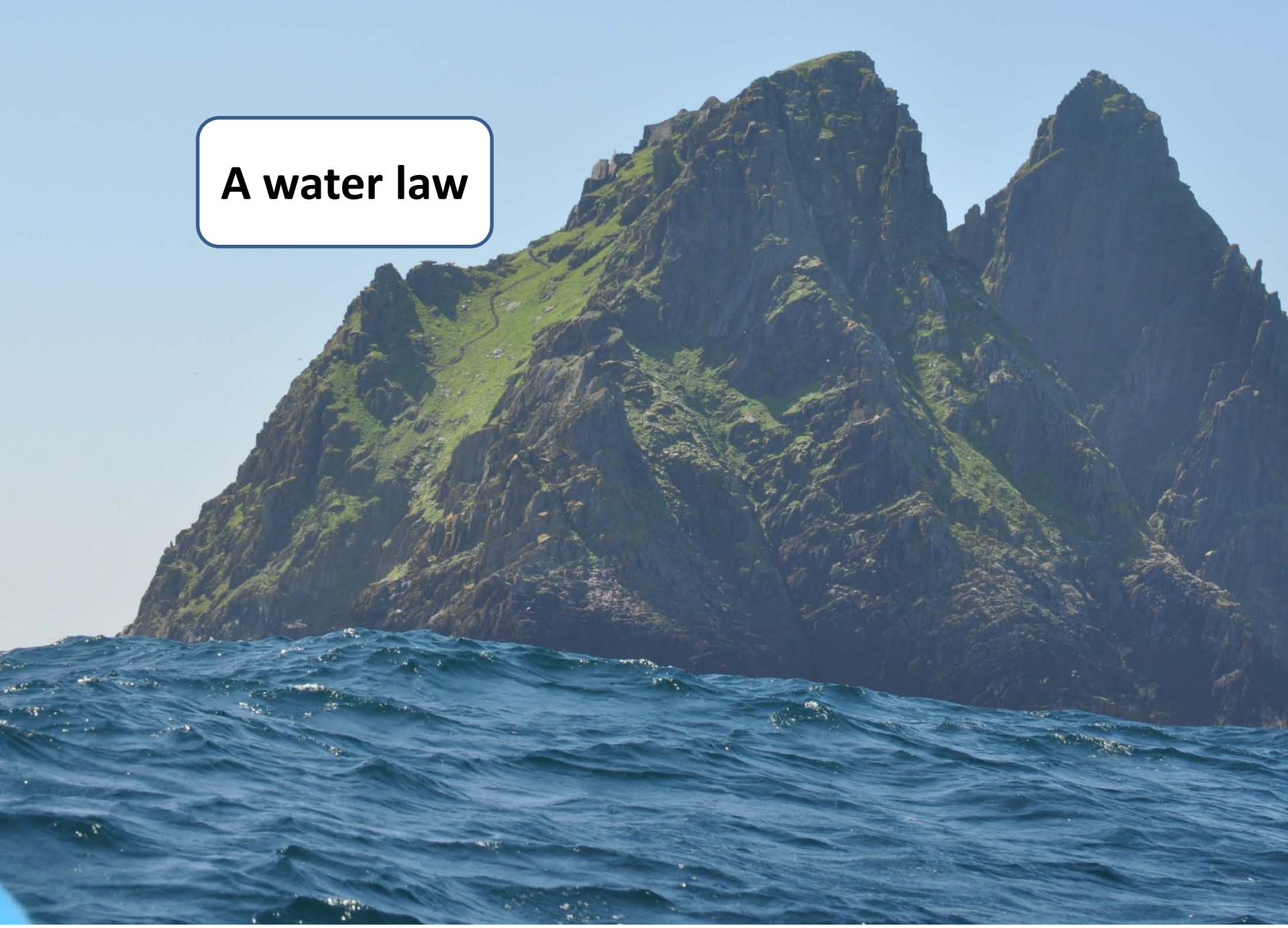

Public
administration
Project
Commercial

Environmental risks

Environmental risks

- Socio-economic impact/ resettlement
- Flooding/ inundation
- Land slides/ erosion
- Damage caused to local farming and fishing


HYDRO POWER TUNEL
WATER FOR CONSUMPTION
VILLAGE
SEWAGE
PROCESS WATER
EVAPORATION
RECREATION
INFILTRATION
WATER FOR CONSUMPTION
LOGGING
EFFLUENT
(POLLUTED WATER)
VILLAGE
SEWAGE
LANDSLIDE AND
EROSION
SINGLE FARM.


A water law

The structure of an environmental law Example – Romania 2007

- General provisions
- Water Use Regime
- River Beds Use Regime
- Servitudes and Expropriation Regime
- Water Management
- Participation of the public
- Inspection of the water management activity
- Water Economic Mechanism – and penalties

The objectives of the law

- A sustainable water management
- Ensuring water requirements for agriculture, industry, power generation, transport, aqua-cultur, tourism, recreation etc.
- Progressive reduction of ground water pollution
- The best reachable ecologic and chemical status to be ensured to the surface water.


An EIA law

The EIA law (Serbia – 2004)

- Basic provisions
- Strategic assessment procedure
  - Subject of the strategic assessment
  - Hierarchy framework and basis
  - Preparation stage
  - Strategic assessment report – of potential impact
  - Environmental status monitoring program

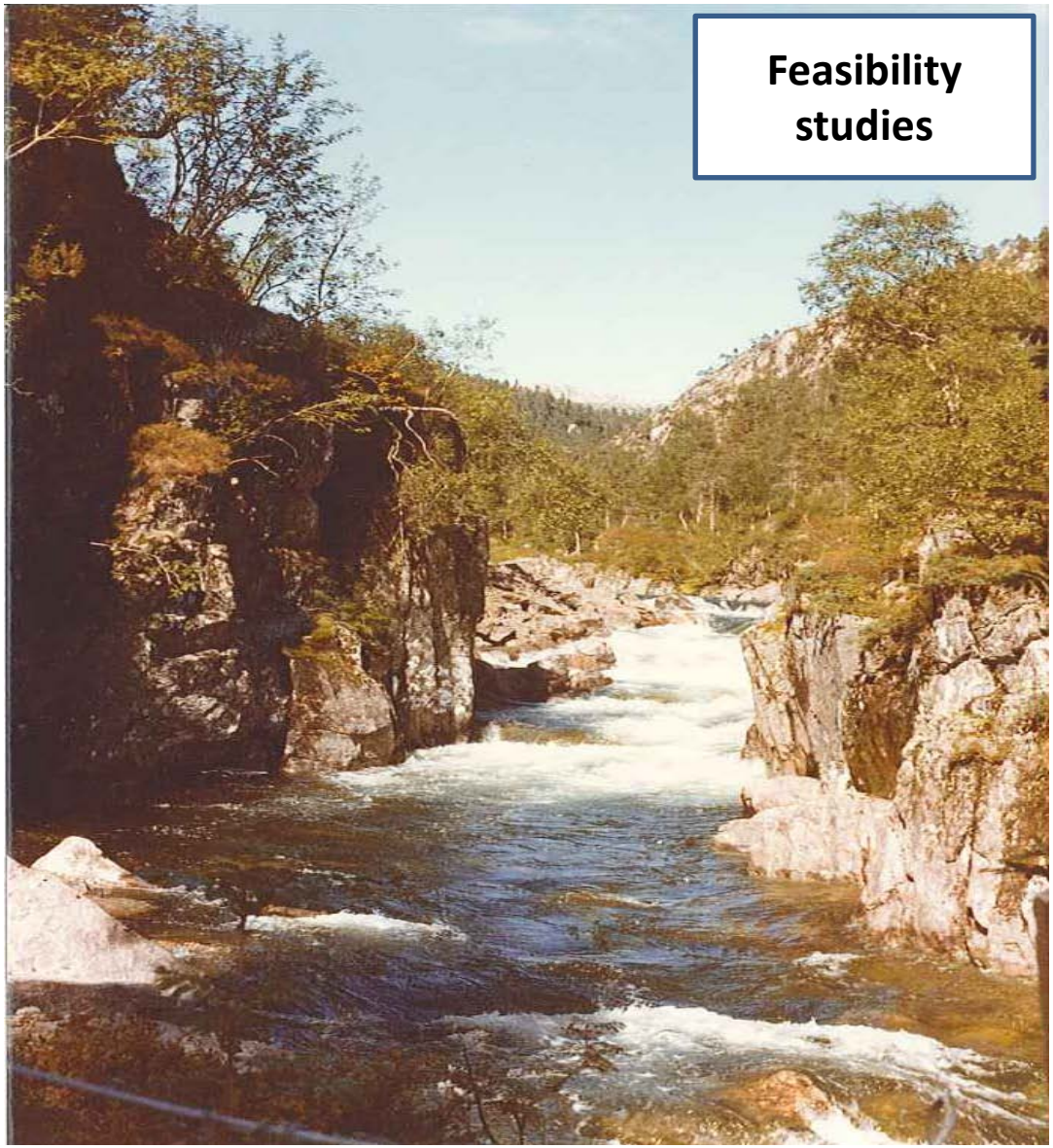
EIA law
(Serbia – 2004)

- Decision making procedure
  - Participation of authorities and organizations concerned
  - Public participation
  - Evaluation of the strategic assessment report
  - Approval of the strategic assessment report
  - Exchange of information on transboundary impacts
  - Access to information

Criteria for determination of the potential significant impact, (EIA act, Serbia)

Impact on,

Air, water, land, climate, flora and fauna, bio-diversity, protected natural resources, population and health, cities and other settlements, cultural-heritage, infrastructure, other man-made values.


Feasibility
studies

Feasibility study

- To be used for bidding
- To be used by the sponsor
- To be used by the lenders

What should the feasibility study contain ?

- Summing up of technical, economic and environmental issues related to implementation of the project
- List of all contracts needed (contract structure)
- Management Agreement
- Funding
- Projected cash flow statement
- The market
- Environmental issues
- Concession/ license – and PA

Stages of project preparation

- Pre-feasibility study
- Feasibility study
- Preliminary Design
- Detailed Design
- Project Specifications (tender documents)
- Evaluation of the bids
- Negotiations related to the best bid

Impact characteristics to consider

- Probability;
- Intensity;
- Complexity/reversibility
- Time dimensions (duration)
- Spatial dimension (location, size of area and population.
- Cumulative and synergistic nature of impact


Thank you for your attention