

MARRAKECH STATEMENT

Making Law Work for People, Environment, and Sustainable Development

Co-Chair and Executive Planning Committee Final Conference Statement
7th INECE International Conference on Compliance and Enforcement
in Marrakech, Morocco

INTRODUCTION

1. At this 7th International Conference of the International Network on Environmental Compliance and Enforcement (INECE) participants from more than sixty developing and developed countries from governments, international, and non-governmental organizations gathered in Marrakech, Morocco, to affirm the role of environmental compliance and enforcement in supporting the rule of law, strengthening good governance, and securing progress towards sustainable development.

THE ROLE OF INECE

2. As the only global network of independent experts dedicated to pursuing the rule of law, good environmental governance, and sustainable development at all levels of governance, local to global, INECE links the environmental compliance and enforcement efforts of more than 4,000 practitioners – inspectors, prosecutors, regulators, parliamentarians, judges, and NGOs – from 120 countries, through training and capacity building programs, raising awareness, and enhancing enforcement cooperation.

3. INECE's goals are to raise awareness of compliance and enforcement, develop networks for enforcement cooperation, and strengthen capacity to implement and enforce environmental requirements. Founded in 1990 by the environmental agencies of the Netherlands and the United States, in partnership with UNEP, the European Commission, the World Bank, the OECD and other organiza-

tions, INECE has played a crucial role in strengthening environmental compliance and enforcement around the world.

4. At this international meeting, participants identified new opportunities for INECE to strengthen environmental compliance and enforcement by closing the "compliance gap", enhancing capacity, and implementing the laws agreed at the national and international level, to promote human well-being, ensure a competitive and viable economy, conserve and improve the environment, and help achieve sustainable development.

RECOGNIZING ACHIEVEMENTS

5. Over the past 30 years, considerable efforts have been made to improve management of human relationships with nature. Countries have created environmental agencies, negotiated multilateral agreements, and undertaken new initiatives at the local, national, and international levels to protect human health, conserve biodiversity and wildlife, and manage natural resources. These efforts have involved leaders in government, parliaments, and the judiciary, in international organizations, businesses, and civil society, and in other sectors of society. Environmental officials, in particular, have often been at the forefront of efforts to promote the rule of law and good governance.

ACKNOWLEDGING CHALLENGES

6. These achievements are significant. But also acknowledged are the growing challenges. There is a need to further

strengthen our stewardship of the Earth and of all living species and natural resources, the foundation of social and economic development and the heritage of our children and grandchildren, in accordance with the precepts of sustainable development. Human activities have changed the Earth's ecosystems and climate more in the last 50 years than in any comparable period in human history. According to the Millennium Ecosystem Assessment, the most systematic survey of the state of the planet, the deteriorating condition of the environment will, unless addressed, compromise efforts to address poverty, hunger and health, as well as other development objectives established in the Millennium Development Goals.

IMPLEMENTING THE MILLENNIUM DEVELOPMENT GOALS AND WSSD

7. These challenges can be addressed. The Millennium Development Goals and the outcomes of the World Summit on Sustainable Development can be implemented, but it will require additional efforts. Faced with growing environmental challenges and persistent poverty for billions, achieving these development goals – particularly those of integrating "the principles of sustainable development into country policies and programmes and reversing the losses of environmental resources" – will require a significant commitment to strengthen governance, the rule of law, and compliance.

STRENGTHENING GOVERNANCE AND THE RULE OF LAW

8. Sustainable development depends upon good governance, good governance depends upon the rule of law, and the rule of law depends upon effective compliance and enforcement. Good governance is characterized by institutions that are open, participatory, accountable, predictable, and transparent. The rule of law supports these characteristics by ensuring that rules are applied consistently, efficiently, and fairly by independent institutions to

all, including those who govern. Securing compliance with laws is easier when there is public participation in their development, and they are founded on fundamental social values and norms. Law must also respect principles of intra- and inter-generational equity, which call for poverty alleviation, the protection of human rights, and respect for future generations. Yet, even as the number of instruments and institutions has increased, most indicators of environmental quality continue to decline. A key reason is the failure to invest in compliance and enforcement.

THE BENEFITS OF INVESTING IN COMPLIANCE AND ENFORCEMENT

9. Investing in compliance and enforcement benefits the public by securing a healthier and safer environment for themselves and their children. It benefits individuals, firms and others in the regulated community by ensuring a level playing field governed by clear rules applied in a fair and consistent manner. Economically, firms meeting or exceeding environmental standards regularly build customer loyalty, increase efficiency, and enhance their profits. Countries benefit by creating a predictable investment climate based on the rule of law thereby promoting economic development. And through strengthening compliance with international obligations, countries ensure that multilateral environmental agreements are implemented by all parties through effective domestic action.

STRENGTHENING EFFORTS AT DOMESTIC AND INTERNATIONAL LEVELS

10. The need to strengthen compliance was recognized by heads of state and government at the 1992 Rio Earth Summit. Agenda 21, the blueprint for sustainability, thus directs countries to collaborate to enhance their compliance and enforcement capacity. At the international level, countries must respect their commitments in multilateral environmental agreements. At the domestic level, efforts are required at

all stages of the regulatory cycle – design, implementation, enforcement, evaluation and feedback – to ensure regulatory systems are feasible and fair, effective and efficient.

DESIGNING RULES FOR COMPLIANCE

11. Laws and policies must be designed with compliance and enforceability in mind. For the regulated community to comply, it must be aware of the rules, willing to comply, and able to comply. Laws must therefore be no more complex than necessary, cost-effective to comply with, and consider the social, cultural and psychological profile of the regulated community. Rules running counter to cultural practices or ignoring economic incentives are likely to fail. Rules that reward environmental leadership, build on best practices, and ensure a level playing field are more likely to succeed in securing compliance.

ENHANCING COMPLIANCE ASSISTANCE AND INCENTIVES

12. Well designed rules may still pose difficulties to those who lack technical, financial, or administrative capacity. Securing compliance therefore calls for renewed efforts to raise awareness of the law, to strengthen compliance assistance programs, and to enhance incentives for compliance. Efforts at the national level must be designed to address the needs of small- and medium-sized enterprises, and, at the international level, the needs of the least developed and developing countries. International institutions and donors have a particular role to play in supporting these efforts.

ADDRESSING NON-COMPLIANCE

13. Countries have a responsibility to protect those who comply with the law not merely by assisting those who cannot comply, but by finding and sanctioning those who do not comply. Compliance assistance and incentives are only effective if backed by a credible threat of penalties

and sanctions. By communicating the outcomes of enforcement actions, penalties and sanctions also deter others from breaking the rules. Efforts to address non-compliance should be firm but fair, transparent and consistent, and proportionate to the magnitude of public risks, the seriousness of the violation, and the need for deterrence. At each stage in the regulatory process, efforts should be made to evaluate effectiveness and to feed the results back into activities to enhance the contribution of key actors in strengthening compliance and enforcement.

THE CONTRIBUTION OF KEY ACTORS IN STRENGTHENING COMPLIANCE AND ENFORCEMENT

14. Strengthening environmental compliance and enforcement requires renewed efforts by individuals and institutions everywhere. Government officials, particularly inspectors, investigators, and prosecutors, must exercise public authority in trust for all of their citizens according to the standards of good governance and with a view to protecting and improving public well-being and conserving the environment. Legislators play a key role in creating legislation that can be effectively enforced to achieve its goals. The judiciary has a fundamental contribution to make in upholding the rule of law and ensuring that national and international laws are interpreted and applied fairly, efficiently, and effectively.

15. The regulated community and the public have a responsibility to comply with the letter and spirit of the law and to encourage compliance by others. Non-governmental organizations play a leading role in public education and assisting enforcement agencies. The media has a responsibility to raise public awareness by providing objective analysis and information about environmental challenges and efforts to address them. The international community, including donors and international organizations, has a responsibility to strengthen domestic efforts through capacity building, technical and financial support,

and by promoting an enabling environment for more effective compliance and enforcement.

A PROGRAM OF ACTION

16. The Co-Chairs and Executive Planning Committee of this International Conference call on regulators, legislators, courts, networks, negotiators, tribunals, development banks, the media, businesses, industry certifiers, lawyers, scientists, engineers, financial experts, NGOs, and individuals working at all levels – local, national, regional, and international – to:

a. Recognize the imperiled state of the environment and the need to build capacity to establish and strengthen the rule of law, good governance, and ecologically sustainable development in order to conserve natural resources and ensure human health, ecosystem integrity, and economic development.

b. Urge the international community and policymakers in each and every country to acknowledge the importance of compliance and enforcement with environmental laws at all levels as critical to achieving rule of law, good governance, and ecologically sustainable development.

c. Affirm the importance of providing capacity building to those countries, firms, and individuals that lack the capacity to comply, and of identifying cases of non-compliance and enforcing appropriate and equitable sanctions to punish those that violate environmental laws and to deter others.

d. Improve the ability of environmental agencies to gather and analyze information to develop effective and efficient environmental regulatory programs.

STRENGTHENING THE CONTRIBUTION OF INECE

17. INECE has a crucial role in advancing these objectives and improving the institutional capacity of, and coordination among, major actors in the field of environmental governance. INECE is pursuing these goals through a diverse array

of activities including, for example, through developing accepted performance measures. To help public agencies strengthen their management and improve their effectiveness and efficiency, INECE is developing indicators that measure environmental compliance and enforcement. INECE offers teaching, training and capacity building courses, and maintains extensive internet resources, such as interactive forums, digital libraries, and searchable databases. Through international conferences, INECE presents practitioners world-wide with the opportunity to acquire the knowledge and build the long-term relationships needed to tackle the challenges of environmental compliance and enforcement. To strengthen these efforts and to deepen the contribution of INECE to its members, governments, and the public the Co-Chairs and Executive Planning Committee of INECE:

a. Call upon all INECE practitioners to share information and practices, through INECE and other channels, to promote compliance and enforcement that ensures that environmental regimes are effective and efficient.

b. Encourage INECE to continue expanding its training and capacity building initiatives, and to strengthen its partnerships with international, regional, and national organizations, as well as NGOs and academic institutions, with a view to pooling their respective comparative advantages, avoiding duplication, and optimizing the use of available resources.

c. Reaffirm INECE's commitment to strengthen and develop regional networks, especially in Latin America, Asia, Eastern Europe, Caucasus and Central Asia, and Africa, including a new network for North Africa.

d. Recognize the important role non-governmental organizations can play in enforcement and compliance, as independent actors and as supporters to government enforcement and compliance efforts, and call on INECE to support their creation and contribution to compliance and enforcement.

e. Encourage INECE to continue its efforts to collaborate with national part-

ners, academic institutions, international organizations and other partners in the research community to develop and help implement a multidisciplinary research agenda that supports the INECE mission.

f. Call upon INECE to continue to develop and pilot INECE Environmental Compliance and Enforcement Indicators, in cooperation with regional networks, with a view to improving performance, public policy decisions, and environmental governance globally, as well as the quality of the environment.

g. Call on INECE to strengthen its work in collaboration with other partners to enhance the capacity of parliamentarians in the field of international law and institutions for sustainable development.

h. Call on INECE to encourage networks of judges for the environment and to organize a forum where different networks can meet and exchange views.

i. Call on INECE to work with partner organizations to collect success stories, case law, and other practical examples of the application of the principles set out in the 1992 Rio Declaration on Environment and Development, in accordance with the INECE strategic plan's objective of analyzing "key regional and international developments of relevance to the work of INECE".

j. Call on INECE to promote best practice on citizen involvement and fundamental citizen rights, such as access to information, public participation, and access to justice.

k. Call on INECE to develop a wildlife enforcement and compliance network, inviting the participation of national and international enforcement agencies, institutions and specific networks (e.g. INTERPOL Working Group on Wildlife Crime and the Lusaka Agreement Task Force), as well as NGOs with expertise in enforcement and compliance and other relevant partners.

l. Commit INECE to build upon its accomplishments including its conferences, publications, training courses, and website, and to develop new products and services to support a growing network of

experts working on compliance and enforcement world-wide.

CONCLUSION

18. The Conference's Co-Chairs and the Executive Planning Committee gratefully acknowledge the assistance and support of the Moroccan government and express our deep gratitude for the generous hospitality provided. We also thank our sponsors and partner organizations, including the US Environmental Protection Agency, the Ministry of Housing, Spatial Planning and the Environment in The Netherlands, the US Department of State, the Finnish Ministry of the Environment, the European Commission, the Environment Agency of England and Wales, the World Bank, the OECD, Environment Canada, and the International Fund for Animal Welfare, as well as the embassies of the United States and The Netherlands.

19. The challenge of our generation is to change the attitudes and actions of individuals, organizations and the regulated community and to modernize our regulatory systems to ensure sustainable development for the generations to come. History will judge us harshly if we fail to foster a stronger sense of responsibility for the Earth.

20. Key to meeting this challenge is building fair and sustainable societies based on the rule of law and principles of good governance. This is a task that many – including INECE and its partners – have taken up. As we confront this challenge, we urge new partners to join us in developing and implementing a program of action to strengthen compliance and enforcement, and to advance the broader effort of converting common principles and shared values into the meaningful action required to create a better and more sustainable future for all of the world's people.