Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
India, New Delhi

DATE:
13 March 2015

HOST/FACILITATOR:
Global Compact Network India and LexisNexis
Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   - The Participants recognized that there is a need for establishing a Business for Rule of Law Framework that supports fairness and equity, empowers and encourages people to do what’s right. Since Rule of Law supports Business the Businesses too should also support Rule of Law. They expressed a willingness to support the Rule of Law from a business perspective and were vociferous in stating that Rule of Law initiatives need to be implemented effectively for smooth functioning of businesses. Rule of Law promotes business and therefore businesses should conversely support ROL initiatives. The group also expressed that ROL promotes anti-corruption and helps businesses adopt ethical practices. They also suggested that ROL should be pragmatic as it will make businesses operate responsibly, improve transparency and thereby supports government’s agenda of inclusive growth and good corporate governance.

2. Business Support for the Rule of Law in Practice [Explained]
   - None

3. Business Case for Supporting the Rule of Law
   - A recurrent theme which emerged during the discussion was that the existing laws are archaic and need to be reformed to suit current times and situations. The law is not empowering but limiting in nature. Apart from this, the groups also felt that there needs to be better enforcement of law and new laws need to be passed in certain areas of business. The groups also indicated that there needs to be a strong Rule of Law which will benefit Small and Medium enterprises.
   - Rule of Law supports/favours the rich and powerful in India as they can influence justice their way. The poor and common people are often at the receiving end. There is a need for a more equitable system where Law is same for everyone irrespective of their social and economic status.

4. Business Actions and Business Examples in Support of the Rule of Law
   - A recurrent theme which emerged during the discussion was that sometimes there is a conflict between what’s the right thing to do and what’s right for the business (growth/revenues). Hence the B4ROL framework should encourage businesses to do what’s the right thing to do.
Also, businesses that adopt and encourage business for Rule of Law framework and practices should be incentivized to encourage others to follow their example

- Government needs to be proactive by including community rights in the framework, make all strata of society as a beneficiary of ROL so that justice should not drain a person of his/her resources, erase ambiguity in the and increase awareness of law. Also empower people and make them accountable by giving more authority

- The business needs to provide a stronger support systems for whistle blowers, time bound respect for ROL initiatives needs to be emphasized, independent director as part of the internal ROL committee to implement the business action, educate employees adequately on confidentiality clauses, and latest development in law

- Need to have a ROL index to measure compliance of business entities and to have ombudsman concept to interject and assist in understanding and resolving issues emerged as the strong points of discussion among various groups

5. **Call to Action (to Business and by Business) to Support the Rule of Law**

- Design and implement a good Business for Rule of Law Framework and a measurable B4ROL Index. Provide content, literature and measurement tools that enables businesses to understand the need for Rule of Law, the process to be implemented, tools to measure their success and the advantages for implementing the same e.g. a CMMI like certification or star rating. This will help businesses improve their credibility and will help them win more trust, potential clients, deals and partnerships

- Archaic Laws need to be weeded out or modified to suit to the current needs. Also strengthen legal framework for effective implementation

- Find ways to encourage governments, administrative and regulatory bodies to incentivize businesses that adopt the B4ROL framework and perform well on the B4ROL Index and make ROL a time bound exercise

- Work with UNGCN in India and Academia to introduce a Business for Rule of Law subject/paper in higher education institutions in general and management and law schools in particular

6. **Mobilizing Business to Support the Rule of Law**

- None

7. **Any Other Comments, Suggestions or Questions**

- While the respect for Rule of Law is higher amongst multinationals the Indian businesses generally tend to be ‘flexible’ in their approach driven by their own convenience or business interests. The awareness and interest about Rule of Law is likely to be much lower across
smaller micro enterprises compared to mid to large enterprises. Hence there could be a potential need to distinguish between different types of businesses based on their segment and size.

- ROL stands for doing business responsibly. It establishes supremacy of law and equality and therefore should be promoted rigorously. There will be predictable outcomes if ROL is effectively applied. Investments are secure for corporations and business entities, if there is predictability.
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview

- The recurring topic of discussion during the workshop was the need for reformation and introduction of new laws as the participants felt that some of the existing laws are archaic and needs to be updated
- The participants also felt that the laws should be pragmatic and the existing situation was that while Rule of Law existed in theory, but in practice there were many aberrations
- **Noteworthy comments:**
  - In the welcome address, a senior bureaucrat expressed that all countries profess Rule of Law in its governance, and stated that ROL is very essential for business as it helps provide a stable environment in which businesses can flourish, promotes adopting of ethical business practices, enables a level playing field, respect for people and advocates removal of malpractices like corruption, unfair trade practices et al
  - A participant cited the example of a factory worker who died in an accident while performing his job and how both the victim’s family and the business house were keen on settling the issue amicably as neither the family had the resources to pursue a legal action, nor was it in the interest of business owner to get into an expensive litigation. However, the existing law did not allow such compensatory settlement to happen.
  - Another participant stated that prevalence of ROL will ensure that benefits provided to a special class of people are removed and are equally distributed amongst all
  - It was also noted that ROL has not been implemented properly and the people who ought to implement ROL and have the requisite wherewithal are generally themselves not very honest and are unwilling to implement it. Some even stated that the Law favours only the rich and not the poor

2. Business Support for the Rule of Law in Practice [Explained]

- None
3. Business Case for Supporting the Rule of Law

a. What does the rule of law mean in this country?
   
   o While some participants stated that rule of law means protection of life and property, some others stated that rule of law is out of reach of the poor. Some stated that there is no accountability though there is rule of law.
   
   o Many mooted the idea that strong legislation on anti-bribery, anti-child labour practices should be put in place and enforcement for violation of these laws should be effective.
   
   o Some also indicated that the protection of whistle blowers policy should be made more effective and that stronger support systems should be in place to enable effective implementation of Rule of Law initiatives.
   
   o A need was felt to introduce a Business for Rule of Law paper in Business and Law Schools.
   
   o A strong need for implementation of laws like anti-corruption and anti-child labour law, anti-harassment policies et al. Implementation of Business for Rule of Law helps businesses positively facilitate its adoption.
   
   o A suggestion was also made to have a ROL mechanism within an organisation to measure its compliance with the existing laws.
   
   o Judges do not mingle with the common man to understand the impact of the judgments delivered by them and need to be sensitized with ROL.
   
   o The application of ROL at the Central level is stable, whereas it is not the case in State governments.

b. How does business benefit when there is a strong rule of law? Alternatively, what challenges exist for business when the rule of law is weak?
   
   o Rule of law supports anti-corruption and anti-bribery, and ensures transparency in business thereby making it stable and predictable. If rule of law is implemented effectively, it helps in ease of business.
   
   o A strong rule of law ensures investment security for business entities both foreign and local.
   
   o Rule of Law supports a stable business environment thereby enabling better migration and flow of capital, technology and talent – the critical ingredients for business success.
4. Business Action and Business Examples in Support of the Rule of Law

a. Explore the meaning of the business action and how it relates to business.

- **Proposed business action 2:** Respect and support the accountability of all persons
  
  o The group of participants who deliberated on this topic felt that there should be more accountability and discretion should be minimal. The mind-set of the people should also be changed and they need to be empowered more
  
  o In addition, the group suggested that the government needs to be proactive and the regulations and procedures need to be simplified for effective implementation

- **Proposed business action 3:** (Support and encourage equal enforcement of law)
  
  o The group felt that enforcement and compliance of laws were implemented and followed by MNC’s more strongly whereas it was different in cases of local business houses. To support equal enforcement of law, the group advocated that strong anti-bribery, anti-child labor and anti-harassment policies/practices should be put in place and implemented. They also emphasized a strong support system for whistle blowers.
  
  o Many expressed that the internal code of ethics of a business entity should embed the law initiatives. Some felt that while the intent is good, there is a gap in implementation of rule of law in organizations
  
  o The group also indicated that organizations should be more open in admitting their mistakes and there needs to be transparency in the internal communication of an organisation. They also stated that there needs to be a rule of law index to measure the organization’s compliance with the laws of the land
  
  o The example cited by the group was the recent leak gate controversy where only certain low level workmen were arrested for stealing and selling confidential information about government policies and projects, and action has not been taken against any of the top officials involved in the incident
  
  o The group advocated creation of an easily implementable and measurable Business for Rule of Law index to enable organizations to be ranked/recognized for supporting the Rule of Law positively

- **Proposed business action 4:** Support initiatives that make justice accessible to all
  
  o The group felt that justice should not drain a person of his/her resources and that there should be proper awareness of the existing laws. It was also felt that laws are often limiting and not empowering
- It was also suggested that the laws need to be simpler and less ambiguous. The group reiterated the statement that whistle blower policy needs to be more effective.

- Some participants stated that the employees need to be educated on the confidentiality clauses and non-compete clauses of an organization.

- The group also indicated that the mind-set of the people regarding rule of law needs to be changed. They think that rule of law means compliance and nothing more than that. They felt that rule of law should benefit all and not just a section of the society.

- **Proposed business action 5: Respect applicable contract and property laws**

  - The group stated that it is imperative for the top management to know the latest development in law. The management should also increase the awareness of laws both internally and externally to suppliers and vendors, besides having a time bound respect for rule of law.

  - The group indicated that simple language should be used while drafting contracts and also have an ombudsman to interject and assist in understanding the contract.

  - The group expressed interest in having a ROL index within the organization to address issues. This is to be done by forming an internal committee to resolve issues.

  - Apart from contract and property rights, the group indicated that community rights should also be included in the framework.

  - They cited the example of a company which blacklists vendors who have created issues in the past. The organization does not engage these vendors in future.

- **Proposed business action 6: Advocate business respect and support for rule of law**

  - The group mentioned that organizations need to have a system of educating its own employees about their business ethics through workshops and discussions. They expressed that ethics should be adhered to by the entire organization without any exception.

  - They cited the example of how an NGO printed zero denomination notes and gave it to people who demanded bribes. This demonstrated that they adhered to the policy of not giving bribes but still made a point against bribery.

- **Some Business examples:**

  - Example 1 - Leakgate controversy: The issue involved passing on of highly sensitive and strictly confidential data to a third party by some business houses engaged in direct discussion with a certain ministry for a high profile business venture. None of
the business houses came forward to take responsibility of the incident. Only some workmen have been arrested. None of the top brass have been held accountable as yet

- Example 2 — A company has a system of blacklisting vendors who have created problems in the past while executing certain contracts
- Example 3 - An NGO printed zero denomination notes and gave it to people who demanded bribes. This demonstrated that not only did they adhere to the policy of not giving bribes, they still made a point against bribery

b. Explore how the business action can be implemented by business by sharing an actual or hypothetical example.

c. Are these the correct business actions to include in the Framework?

d. Are there business actions that are missing from the Framework that should be included?

- Participants stated that the word business is too generic and indicates only big business houses, excluding small and medium enterprises and suggested that these words should also be included in the framework

5. Call to Action (to Business and by Business) to Support the Rule of Law

a. What are some concrete steps business can take to respect and support the rule of law?

- Define Business for Rule of Law framework well and ensure its effective implementation, and measurement
- Incentivize businesses that perform well on Rule of Law index
- Accountability should be made and activities should be streamlined to make it more transparent
- Why are political actors not included in the discussion for ROL

b. What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, and equality before the law, capacity building and other such action?

- The participants felt that government should be more proactive in implementing rule of law. Some stated that the business houses have lost faith in the system and the government should step in to ensure that the faith is restored
Some opined that Regulations and procedures should be simplified and the justice system should be strengthened for effective implementation of rule of law.

It was felt that there could be a potential Business for Rule of Law paper that can be introduced at an Academic level to build awareness early.

High profile cases need to be dealt on priority and all must be treated as equals in the eyes of law.

Regular training and workshops to be conducted to employees to understand the business ethics and policies.

Court fees must be reduced.

6. Mobilizing Business to Support the Rule of Law
   a. What obstacles, if any, does your organization experience that prevents it from supporting the rule of law in this country or in any other country it has an interest in, such as investments, operations, business relationships?

   Sometimes, there is a conflict between doing what is right (supporting ROL) vis-à-vis the existing business compulsions.

   b. How can the UN Global Compact, and other actors, support business to take action in support of the rule of law (e.g. information sharing via webinars on specific rule of law topics, in-person events, leveraging online resources, strategic partnerships)?

   Some of the participants expressed that UN should engage political leaders in a conference to discuss the issues which impede the effective implementation of rule of law.

   Some also stated that the UN could assist companies to have more transparent laws to regulate issues like bribery and corruption.

7. Additional Comments, Suggestions or Questions
   • Overall, the participants remarked that the workshop was well organized.
   • The break-out sessions and chance to network with each other was well received.
   • The participants indicated that political leaders should also be included in such workshops.
   • Prevalence of ROL will ensure that benefits given to a special class of people are removed and are equally distributed to all.
• The word ‘business’ found in the draft is too generic and it needs to include both large and small businesses

• There needs to be transparency, predictability, stability and adherence to due process of law

• ROL needs to be connected with the governance structure for better implementation

• Strengthening the justice system should be the first step in effective implementation of ROL

• In some countries, economic crisis could not be controlled since ROL was not effective

[Workshop Report End]