Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Mexico, Mexico City

DATE:
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HOST/FACILITATOR:
Baker & McKenzie
Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   - The participants were very interested in learning about the Framework and understanding that their contributions and opinions in the workshop were going to be part of the Framework.
   - Some of the participants were already acquainted with UN Global Compact. They were surprised by the implementation of the B4rol Initiative considering the background of the Organization more exclusively focused on Human Rights.
   - It was also considered that a very positive feature of UN Global Compact was the obligation of the participants to inform on a periodic basis the advances on their committed actions, through personal assessments and the mechanisms under which non-compliant participants are deregistered. They wanted to recommend that this feature be continued to drive compliance.
   - It was stressed that it is important to have an effective monitoring body to increase participants' accountability and drive adoption of measures adequate to obtain real compliance on commitments assumed by the parties.

2. Business Support for the Rule of Law in Practice [Explained]
   - A general opinion was that in Mexico, many companies desire to be certified as a Socially Responsible Corporate Entities to enhance their reputation or just because their competitors may have the "seal of approval", but many of the companies do not implement the necessary actions to be in compliance with the guidelines of corporate social responsible initiatives and because there is not a monitoring process in place. This type of "seal of approval" may lose credibility if it is not backed up by verifiable and credible actions.
   - In analyzing the meaning of the Rule of Law in Mexico, the participants agreed that we have in place a reasonable legal framework, that is compliant with human rights. The Constitution itself was recently amended to emphasize the basic protected rights as inherent human rights. The major problem, however, persists in the enforcement of the rule of law, which is not expeditious and sometimes there is poor access to justice.
   - Regarding the poor application of the rule of law, the participants considered that this derives from:
- Cultural aspects, basically a general belief that it is acceptable to not comply with the laws.
- General deficiency in the education in connection with the importance of compliance with the law and its close relationship to economic development.

- There is also a lack of involvement of the private sector in the lawmaking process. Normally, the entities participating in the process defend their own specific interests, or at most sectorial interests, and do not participate with a vision of more general well being for all of the governed.

- All the above require a cultural change and a modification of mindsets, in the society.

- A substantial improvement is required on compliance with legal standards. This must be undertaken beginning with the government entities, considering that the first entities that should exemplify the correct compliance of the law are governmental bodies and important companies, increasing also transparency. The audience perceived that there are too many cases of non-transparent transactions between companies and governmental bodies, performed under unacceptable social responsibility standards.

- That the above requires an improvement in the social organization and social participation.

- The participants agreed that the most important reasons for business support for the rule of law are:
  - The need for a fair and evenly applied set of rules, conditions and opportunities to achieve fair competition.
  - Certainty that allows companies better planning.

### 3. Business Case for Supporting the Rule of Law

- In Mexico we do have a good legal framework but the problem is the lack of enforcement of the law, and inequality in the access to justice. In such an environment, the Rule of Law lacks compliance due mainly to cultural and educational factors.

- Companies have to see the bigger picture, what can they do to help. Not just aiming to comply with minimum standards but creating momentum for greater compliance, joining forces with NGOs and materially supporting the Rule of Law.

### 4. Business Actions and Business Examples in Support of the Rule of Law

- In general all 6 proposed business actions were seen as a benefit for businesses and should be included in the Framework; nonetheless participants also suggested that there has to be someone in charge of overseeing the compliance of these actions. In other words, without enforcement, the proposals will remain only fond wishes.
5. **Call to Action (to Business and by Business) to Support the Rule of Law**

- Some of the suggested business actions (steps) that the participants made were: lobbying for professionalization in the following manners: strengthening the Compliance function in each company, organizing a structure of mandatory supervision and control for the law profession (i.e. Bar exams, mandatory membership in the Bar Associations), making licensing mandatory for lawyers, generalize the use of Best Practices and Ethical Codes, generating educational clinics addressed to smaller companies for legal knowledge and compliance, and how to do Pro Bono work, etc.

- In terms of other actors such as Government and Academia, the proposed actions in general were: improve the educational system, implement a new way to fulfil social service by inviting law students to help solve matters as a Pro Bono work to help them learn about various areas of Law in practice. And strengthening Government Institutions in general to renew the people’s trust in them.

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

- Corruption was seen as the main obstacle for companies to support the Rule of Law, also the lack of government’s support and guidance, having to compete with other companies that engage in corruption, dilution of responsibility and accountability due to general lawlessness, absence of Pro Bono work incentives, etc.

- The UNGC can help business take action by strengthening their transparency guidelines, enforceability methods, monitoring and applying sanctions to the companies that are not supporting the rule of law in all of the countries where they operate and exposing them publically, certifying third-party due diligence providers to oversee compliance issues.

7. **Any other comments or questions (including “quotable quotes” that may be included in the Framework)**

- "What could help the most in supporting the Rule of Law in each country would be transparency and guidelines, if everything is crystal clear there’s less room for corruption."

- "The first thing to do is educate people in the Rule of Law and show good examples of successful, socially responsible and ethical businesses."

- "We need transparency: in criminal cases, in corruption cases, in everything. If a company is not supporting the rule of law, its leaders should be ashamed."
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview
   - Some of the participants already knew some of the ROL basics, also a few of them suggested that, in order to become a member of the UNGC companies must communicate whatever actions they are taking in terms of supporting the Rule of Law, human rights and anti-corruption.
   - They were very interested in learning about the Framework and understanding that their opinion was going to help in the building of this document.
   - Most relevant comments:
     - It was argued that in Mexico there's a lack of commitment from several stakeholders. There was a suggestion that transnational companies that have presence in other countries may establish actions in support of social responsibility, but in Mexico it seems "normal" to sit those issues out and let the US take the lead.

2. Business Support for the Rule of Law in Practice [Explained]
   - The main opinion was that in Mexico, many companies look forward to get the SRC (Socially Responsible Company) Certificate for publicity purposes or just because other companies have it, but most of them won't follow ACTIONS to support the ROL or any other initiative.
   - The quality of education was one of the most discussed themes, with participants saying that there should be an official Bar or Association to recognize every law undergraduate who wants to work as a professional lawyer to be sure that they are well prepared and will seek the application of the Rule of Law.
   - Also the lack of confidence in Institutions was brought up, many saying that it's the government's fault that people in general don’t trust the institutions mainly because of corruption. There was one person who made a point, he said that in Mexico there are more good people than bad people, it's just that we’ve learned to focus on the bad things rather than work to improve them. Sometimes it’s easier to point fingers at others than to make changes in one's self.
   - Also, it was commented that falling into normative assumptions without understanding the context is the worst that can happen when applying the law or seeking justice.
3. Business Case for Supporting the Rule of Law

a. What does the rule of law mean in this country?
   - The discussion at this point turned into a brainstorm in which every participant added some examples or words that helped build the definition, some of those ideas were: enforcement and compliance, respecting human rights, framework and starting point for creation of other laws.
   - It was also said that in general terms, the Legal Framework in Mexico is quite good, the problem is enforcement, application and access to justice overall in certain disadvantaged groups.
   - There’s an important cultural aspect to consider in the understanding of the Rule of Law, most of the time people learn how to break the law instead of taking actions to comply with it. A participant said "In our minds it may seem acceptable to break the law "in certain cases" but we have to change that: it is never acceptable to do so under any circumstance."

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?
   - The benefits are a level playing field, the ability to build up competitive strength and eventually compete on the world market, confidence in long-term investments as opposed to an attitude of spending on immediate gratification because one never knows what will happen tomorrow.
   - The disadvantages of the absence of the rule of law are that the most effective and efficient companies are not usually the winners in a corrupt environment and so are more likely to disappear and not arrive at the stage of being able to become world-class companies. Countries that do not have the rule of law as a strong principle very seldom are the birthplace of strong global companies.
   - In environments where the rule of law is weak, companies or individuals who have capital tend to hoard and not invest in productive activity, unless they can assure a return based on corrupt dealings. As a result, capital is spent more often than is optimal on immediate gratification instead of on productive activity that can provide employment to others.
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.

   - Businesses HAVE TO take actions to improve their practices in support of the Rule of Law, it has to be an obligation because it’s not just the government’s responsibility but business and companies can support it too.

   - In Mexico, some companies are looking at actions to keep their privileges, so the first thing to do is change business support way of thinking towards the Rule of Law in the whole country.

   - Business actions to support the Rule of Law must be an integral part of the business model and not an unrelated action that is added on as an after-thought. Businesses must radically change the way they do business and not simply apply a thin veneer to dress up corrupt ways of doing business.

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

   - Some of the ideas to help business action were: implement a complaint system regulation in every company to give employees the opportunity to report any malpractice, abuse or negative situation happening within the organization. And not just bring it from the company's headquarters, but adjust it culturally and socially to each business needs.

   - Lobbying for greater transparency in government procurement processes and challenging cases where this is not followed.

   - Driving cultural change to include a broader variety of perspectives, capabilities and ways of working. Where the rule of law is not strong, traditionally favored groups will have a monopoly on ways of doing business, excluding persons from different ethnic backgrounds, socioeconomic backgrounds, persons beyond a certain age or of a certain gender. Broadening that horizon and being more inclusive will unleash the innovative and creative power of a substantially larger proportion of the population and bring greater well-being to the society as a whole. Companies that drive environments of inclusiveness are much better prepared to compete on a global level, but need to be protected by the rule of law on a local or national level.

   - Ensure that rules within a company are fair and transparently applied, just as the company would like to be treated at the national level by authorities.

   - Drive self-regulation by industry associations to promote civic awareness and real social responsibility.
c. Are these the correct business actions to include in the Framework?
   o Yes, if they are included in the Framework development it would be very helpful to have more examples of how businesses can support the Rule of Law.

d. Are there business actions that are missing from the Framework that should be included?
   o To include: the professionalization on lobbying and working together with the government, or at least some Public Institutions.

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?
      o Some of the proposed steps were:
      o Third party due diligences in other companies' practices and services.
      o Give lectures/classes in Universities or Colleges as Pro Bono work to introduce the concept of social responsibility matters to law students.
      o Partner and ally with NGO's, Academia and other companies to provide public knowledge and information on legal subjects.

   b. What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, equality before the law, capacity building and other such action?
      o The transparency law in Mexico has been a really good resource in anticorruption subjects and matters, but it’s not fully enforced
      o Represent persons in dispute resolutions before authorities in a Pro Bono Way.
      o The society must generate a law enforcement mindset. Follow the rules and make sure to comply with the Rule of Law.
      o Government can help people recover their trust in Public Institutions by being more transparent and taking action on justice matters.
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?
   
   o Mainly corruption matters in every process, public and private sectors are involved in this.
   
   o Lack of trust in Government’s bodies.
   
   o Companies lack of interest in supporting the Rule of Law, because it is perceived to be an obstacle to greater profits.
   
   o Competing with other companies who engage in corruption to obtain unfair advantages.
   
   o Diluted responsibility in the sense that responsibility or liability is rarely assigned on a personal level.

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)?
   
   o The UNGC can help business take action by strengthening their transparency guidelines, enforceability methods, monitoring and applying sanctions to the companies that are not supporting the rule of law in all of the countries in which they do business and exposing them publically, setting up third party due diligences to oversee compliance issues.
   
   o Also the UNGC may share or publicize useful information regarding the Rule of Law subject.

7. Additional Comments, Suggestions or Questions

   • More contact with the Local Network
     
     o Some participants suggested that the Local Network should be more involved in this initiative and help businesses to create actions in support of the Rule of Law in Mexico.

[Workshop Report End]