Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
South Africa, Johannesburg

DATE:
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HOST/FACILITATOR:
Global Compact Network South Africa, LexisNexis, Webber Wentzel (in alliance with Linklaters) and Unilever
Business for the Rule of Law
Executive Summary and Workshop Report

Part I: Executive Summary

As the Consultative Workshop began, one of the delegates reminded us that the preamble of the Constitution of South Africa is critical to creating a context for our deliberations and outcomes. To illustrate his point, he highlighted the importance of government’s political will to enforce the rule of law when faced with situations where better-resourced business flexes their influence to the disadvantage of less powerful citizens and communities.

The Preamble of the Constitution of the Republic of South Africa reads:
“We, the people of South Africa, RECOGNISE the injustices of our past; HONOUR those who suffered for justice and freedom in our land, RESPECT those who have worked to build and develop our country; and BELIEVE that South Africa belongs to all who live in it, united in our diversity. We, therefore… adopt this Constitution as the supreme law of the Republic so as to

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law
- Improve the quality of life of all citizens and free the potential of each person; and
- Build a united a democratic South Africa able to take its rightful place as a sovereign state in the family of nations

May God protect our people…”

This opened the discussion to a variety of comments which reflected delegates’ experiences and understanding of the rule of law, it also provided an opportunity for them to explore the responsibility of the State and, also of business, towards maintaining the rule of law.

Unfiltered comments from participants:

- Everyone agrees that each company should adhere to good citizenship and ethics; what we are all struggling to do is to institutionalise corporate citizenship and compliance to ethical standards into the culture of the organisations. Companies should, for example, be rewarded and recognised for compliance with benchmarks that are institutionalised in the organisation…. this will create an environment where the rule of law will follow but it has to be done in a manner that goes beyond paying lip service to the rule of law.

- The imperative to employ ethical and fair trading practices should be embedded as a rule of business and, also, as a conduit to creating a balance between good corporate citizenship and
human rights. Within the context of our Constitution and legal framework, we need to encourage compliance with existing law…which would lead into support for human rights.

- What does it (the Rule of Law) mean? What are the practical things they (business) need to be doing in order to comply and also to uphold the rule of law?

- We need to put some common guideline and framework together, such as ISO compliance for management systems which will set out what a compliance function is about and what organisations are expected to do in order to comply to this framework.

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

   - The most important requirement of the Compact and each country’s input is the internalisation of the principles, contribution and support for their implementation — we, as South African businesses, owe something substantive to society: what we owe is to go beyond minimalistic compliance with the law.

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

   - In terms of providing support to the Rule of Law in practice, business not only needs to implement (and respect) the law that exists but also to provide more impetus to existing law within the context of a retreating State, where business is becoming more influential and occupying more space. In South Africa, examples are provided by organisations such as an insurance company that has positioned itself as an innovative and proactive partner of local government and municipalities in facilitating road safety and legal compliance by providing Pointsmen (and women) at congested intersections in Pretoria and Cape Town, the legislative and Parliamentary capitals of South Africa, and Johannesburg, which is the hub of our economy, to ease the flow of traffic during peak hours. This act not only provides additional and much-required capacity to the traffic department, it also “creates job opportunities in underprivileged communities.” CrimeLine (https://www.crimeline.co.za/), an anonymous tip-offs line owned by a major media player and owner of radio stations and an online news channel is another example of a South African business that has taken the initiative to provide members of the public with a resource that contributes to creating safer communities within our country. The essence of business support for the Rule of Law is understanding what *additional steps* business can take in their engagement with the public in order to enhance the rule of law.

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

   - The discussion about the Business Case for supporting the Rule of Law was a rich one which focused much on the divide between the “haves” and “have nots” as delegates debated points about access to the Rule of Law. The focal point around which the deliberations on this question centred was that we all understand the definition of the Rule of Law and that what was more important for us to debate was the question “why is it not working?”. This question
brought the competence and willingness of the State to maintain the Rule of Law into question and highlighted the increasing self-regulation that has resulted from the perception about the State’s inadequacy in this regard.

4. Business Actions and Business Examples in Support of the Rule of Law
The deliberations about business actions and business examples was a robust one where delegates expressed consensus about its importance and a wish for more time than the workshop structure allowed. After delivery of the feedback, the facilitator raised questions that he had expected would be addressed from the group discussions but were not, specifically:

- What is the role of organised business?
- What about Labour Rights? Consider the appropriateness of South Africa’s labour laws for our country (these have a strong leaning in favour of the workers and are often bemoaned as ‘onerous and restrictive’ by businesses operating in South Africa).
- What about the environment?
- Trade practices: relationships between big business and small / medium businesses?

5. Call to Action (to Business and by Business) to Support the Rule of Law
- The key issues that were raised during the “Call To Action” related to empowerment and provision of access to legal education and resources by companies and, also, for the Global Compact to provide Boards of Directors and Ethics Committees with the imperative to support the Rule of Law.

6. Mobilizing Business to Support the Rule of Law
- No discussion took place beyond the “Call To Action”.

7. Any other comments or questions (including “quotable quotes” that may be included in the Framework)
Part II: Workshop Report

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

   No comments from delegates.

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

   No comments from delegates.

3. Business Case for Supporting the Rule of Law

   a. What does the rule of law mean in this country?

      Delegates’ contributions revealed an understanding of and general consensus on the meaning of the Rule of Law, its purpose and what is required for it to be maintained within society. Their discourse very quickly tended towards “but why is not working?” where they debated the politics and circumstances that detract our citizens from complying with the Rule of Law.

      Key points that were raised during the discussion were:

      • **Code of Conduct**

         o Presence of a “suite of laws” that governs how we behave socially, economically, within the business environment, within municipal boundaries; and enforcement of relevant sanctions in the event of a breach thereof.

         o A set of ideals that are respected and codified into law — the challenge for South Africa, as a developing society and economy, is reconciling the reality of poverty to the set of rules that we have agreed to abide by. Government’s role, as a guardian and enforcer of the law, is to balance compliance with the rule of law with society’s need for development.

      • **Political Will and a Competent State**

         o In a reference to Francis Fukuyama’s work “Political Order and Political Decay”, one delegate described the prerequisites for a well-ordered society as: (i) democratic accountability; (ii) the rule of law and a strong (competent) state. South Africa’s maladies stem from the absence of a competent state.

         o Political will is a critical requirement for upholding the Rule of Law and this, together with the concern about whether South Africa can be concerned to be a strong / competent State were points that seemed to find consensus amongst participants.
• **Legitimacy and Societal buy-in**
  
  o South Africa is beginning to self-regulate — we increasingly witness the diminishing respect for the law based on citizens’ interpretation of circumstances and, on this basis, “doing their own thing”
  
  o Legitimacy, willingness to adhere to a common set of laws that all aspire towards — a South African example of the lack of such legitimacy is the situation of e-tolls [where, in South Africa, the poor consultation process leading up to the construction and implementation of the electronic toll-collection system has been widely denounced and rendered ineffective through widespread non-compliance and organised protest]. *Service-delivery protests in South Africa have increasingly become a feature of the South African landscape…*

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 following points were raised as the benefits that would derive to business as a result of the existence of a strong rule of law.

  o Sustainability of business concerns;
  
  o Certainty based on business entities’ compliance to the “Rules of Engagement” within the business environment and context — a situation where knowledge of the rules (you know what the rules, therefore you know what you should do / not do within that specific context);
  
  o Protection of business interests in the event that something goes wrong “because we are the last custodian of the Rule of Law”.

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.
   
   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?

• **Business Action Plan 2:** “Respect and support the accountability of all persons, institutions and entities, public and private, to laws that are publicly promulgated and which are consistent with international norms and standards…”
o Make every effort to engage in meaningful processes of consultation to obtain real buy-in, rather than engaging in “tick box” exercises

o In order to ensure that all citizens are equal before the law, businesses in urban areas [better resourced / more privileged] should establish a modus for supporting people from rural / marginalised [less privileged] communities

o Give thought to and design more meaningful consultative processes; create opportunities to educate communities with which we, as business, consult

o During such consultative processes, take deliberate steps to not favour the vested interests of parties that are involved in the consultative process

o Encourage transparency through implementing mechanisms to support and protect whistleblowers

• **Business Action Plan 3:** “Support and encourage the equal enforcement of the law, and independent adjudication of the law, consistent with international norms and standards...”

  o Take steps to improve the regulation of the legal profession — provide resources and contribute to the effort to make the law accessible to all citizens

  o Provide education and capacity-building

  o **For citizens:** build education on the Bill of Rights into curricula. Also judges, law practitioners making the law simpler and more understandable for citizens

  o **For legal practitioners:** Re-evaluate legal culture so that a more holistic understanding of the law is imparted to all legal practitioners

  o Infuse a culture of considering the public interest / greater good rather than only the interests of one’s clients

• **Business Action Plan 4:** “Support initiatives that make justice accessible to all”

  o Establish **Pro Bono** desks at the courts in order to make Pro Bono services visible and accessible to citizens;

  o Business can partner with and provide funding to NGOs to provide access to legal services for their employees. This would include South African Project Finance, Energy and Mining ventures following the international practice of providing affected communities with access to legal services

  o Corporates should make available information about their business activities, especially those that are affected by and have an impact on the application of the law (they often hide behind business confidentiality, pricing sensitivity information that may have a negative impact on the application of the Rule of Law).
• **Business Action Plan 5:** “Respect applicable contract and property rights”
  
o Document and abide by a code of ethics that supports civil society movements to ensure that business is not contravening the rule of law in their employment practices (such as, for example, the employment of child labour). Also signing co-operative agreements to stem the use of stolen intellectual property.

• **Business Action Plan 6:** “Advocate business respect and support for the rule of law in our business relationships and share our own experiences in this area”
  
o Make every effort to engage in meaningful processes of consultation to obtain real buy-in, rather than engaging in “tick box” exercises
  
o proactively and voluntarily providing information that is required for an optimal consultation and not frustrating the process by unnecessarily withholding information from stakeholders of the consultative process;
  
o standing by the outcome of adjudicated or consultative process
  
o Contribute to open industry events and fora that make business activity information available to citizens and communities who are affected by these activities;
  
o In all business conduct, lead by example — such as not being in relationships with companies that are known to be corrupt

“Our Constitution is predicated on 3 principles: equality, dignity and freedom which should be infused into all our laws, frameworks and practices. It is the job of business to ensure that these principles are protected and infused into all interactions with citizens”

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 Relieve marginalisation: empower people to be able to access the law
  
o Support legal education by getting it onto the budgets of corporates
  
o Regularly assess and evaluate business partners’ processes, practices and partnerships in relation to their impact on enhancing or denying citizens’ access to the Rule of Law and, also, your organisation’s requirement to adhere to the Rule of Law.
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?
   - Letter from the Global Compact to Social and Ethics Committees of top companies in South Africa to put the matter of the “Business for Rule of Law” onto their Board agenda and create organisational commitment to it, supported by quarterly monitoring and reporting.

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?
   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)?

7. Additional Comments, Suggestions or Questions

   No additional comments, suggestions or questions.

[Workshop Report End]