Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Uganda, Kampala

DATE:
19 March 2015

HOST/FACILITATOR:
Global Compact Network Uganda, LexisNexis and Uganda Law Society
Part I: Executive Summary

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

None

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

None

3. Business Case for Supporting the Rule of Law

There was clearly a strong sense of obligation among participants to do more to respect and support the rule of law, and a recognition of the benefits to both Ugandan business and society in doing so. Participants were also conscious of the need to do more to make Uganda a more attractive destination for inward investment and were eager to embrace international norms to help achieve this.

There was considerable criticism expressed as to the lack of strong institutions in Uganda, or consistent implementation and enforcement of the law. Corruption and lack of accountability were a big concern, and it was felt that business could do more to help tackle these, both in their internal affairs, their dealings with each other, and with government.

Participants were unanimous in recognising the benefits of the rule of law in helping to achieve a more stable, predictable and profitable business environment in Uganda.

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

Participants felt that business in Uganda still had a lot to do internally to make themselves fit for purpose as supporters of the rule of law. Many references were made to employers failing to respect the rule of law, including by not doing enough in terms of eliminating the exploitation of their workforce, and educating employees on their rights and remedies. Calls were made for business to stay apolitical and yet play a part in promoting peace and stability, and to put in place codes of conduct against which to hold themselves to account. The possibility of self-regulation was also raised.
5. **Call to Action (to Business and by Business) to Support the Rule of Law**

The participants wanted to see good corporate governance embraced in Uganda. It was felt that companies needed to adopt a set of values and business ethics based around professionalism and honesty, and for these to be well communicated both within the company and in dealings with external stakeholders.

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

There was no clear direction agreed in terms of how business might come together to achieve the aims identified during the workshop, in the main because time did not allow this to be explored. However, one important point made was that business should be proactive in looking to fund programmes that supported the rule of law so as to ensure that the rule of law agenda was not exclusively donor-driven. It was agreed that participants should look to continue the debate internally, and also that the Uganda Law Society had a good track record in keeping debate on the rule of law in the public domain, including through public interest litigation and also its Rule of Law Week events every October.

Participants suggested they would also appreciate guidance in the implementation of codes of conduct.

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

See main report below.
Part II: Workshop Report

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

The participants’ collective expectations for the workshop were as follows:

- To develop an understanding of UN Global Compact and rule of law initiatives to which private sector can contribute.
- Achieving greater clarity as to the connection between business activities and rule of law.
- To encourage greater involvement by business people in the promotion of the rule of law.
- A discussion of how to achieve a balance between profit on the one hand, and fairness and business ethics on the other.

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

One participant mentioned the following example of business supporting government:

This participant’s institution has been extensively involved in an ongoing process to liberalise the pension sector. It has contributed to the legal reform process, in particular by creating a platform for legislators to become familiar with best practice in other jurisdictions so as to assist with drafting of suitable legislation. Given how specialised the social security sector is, the institution wanted to play a role in ensuring that the legislators had an opportunity to review how things are done outside Uganda.

3. Business Case for Supporting the Rule of Law

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

- Some delegates mentioned that some leaders in Uganda have suggested that governance and democracy, and so perhaps also the meaning of the rule of law in Uganda, is different to other countries. No specific examples of this were offered.

- Generally, participants focussed on what was necessary to achieve the rule of law in Uganda. One participant said that ROL means a strong regulatory framework for the conduct for business, with applied best practices for corporate governance. The

---

1 This institution is a parastatal, although with a good level of independence from government. It reports to the Ministries of Finance and Labour.
participant felt that ROL could only be achieved if there was increased accountability and transparency in Uganda, and reduced corruption.

○ Another participant focussed on the Ugandan Constitution. He argued that a well-publicised and enforced Constitution was the starting point for the Rule of Law. This was echoed by another participant who said that strong institutions, an independent judiciary and police force, were all essential. She also wanted to see a public that itself had respect for the rule of law.

○ Responding to this, a representative from the law enforcement sector recognised the importance of public institutions respecting laws and enforcing them without fear or favour.

○ There was some dispute as to the adequacy of Ugandan legislation. One participant thought that certain areas of human and employment rights were inadequately protected. He wanted to see legislation put in place that was more responsive to the needs of society, and the particular challenges faced by Ugandans. Another participant suggested that Uganda was already well-equipped with basically adequate laws covering all areas of society. He saw the main problem as the general behaviour of citizens and civil servants. For example, he noted that labour laws had recently been modernised but were not widely enforced. This was because the behaviour of stakeholders is not correct and processes were not followed. In particular, labour inspection was dysfunctional, and employers routinely abused workers.

○ Another participant agreed with this assessment. She wanted to see better adherence to legal processes at all stages, and laws enforced effectively. She also wanted to see better access to justice on the basis that if people are informed of their rights and the process to enforce them, the rule of law is more likely to flourish. She was supported in this by another participant who thought that access to justice was key. People needed to be empowered to get redress through justice system. Illiteracy and ignorance of the law were both obstacles to this.

○ Another participant was hopeful that Uganda’s international treaty obligations would bring about a positive influence on the country, so that even if domestic legislation didn’t cover an important aspect of law, adoption of international norms should do so.

○ Finally, one participant wanted to see a greater harmonisation of domestic legislation with international norms. She felt that establishing a benchmark between national laws and international standards would bring about better laws and thus the rule of law instead of the rule by law.
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?

- One participant suggested that where corruption was unchecked, there is a lack of ROL. Eliminating corruption enhances profitability, reduces the cost of doing business and leads to business efficiency.

- Another participant underlined the need for fair laws that were properly passed, and had the institutions in place to enforce them. She felt that this would lead to a conducive business environment for investment. This was echoed by another participant who stressed that the ROL creates a level playing field for all businesses to compete fairly.

- One of the facilitators suggested that a key benefit of ROL was certainty in business decisions. He felt sure that businesses would welcome the increased predictability and transparency that ROL can provide. He also stressed the importance of awareness of the law, saying that “when people are aware of rules and regulations, then there can be no shortcuts.”

- Another participant agreed. He thought that business would benefit from being able to make long-term plans when there is certainty and security. Also, some companies would want to ensure that communities around them benefit from their success. So where there is ROL, there is the potential for business to implement sustainable and inclusive community initiatives.

- Another participant urged business to develop internal processes that would enable them to tap into the advantages offered by a good ROL environment.

- One of the facilitators referred to the World Bank’s Rule of Law Index. These and other indices provided insight into how different countries were doing in terms of areas such as the enforcement of property rights. She thought that countries should be doing everything possible to become attractive investment destinations and that business in those countries had a key role to play in achieving this. She added that certainty in areas such as the taxation and human rights were vital to enable long-term planning for business.

4. Business Action and Business Examples in Support of the Rule of Law

a. 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 The group presented their thoughts on what could be done to create awareness about ROL amongst employment stakeholders, including workers, customers and suppliers. They wanted to see respect for ROL embedded in all company policies and procedures.

o The group also wanted to see an end to the practice of “partisan politics” both internally in businesses and also in dealings with local or national government. They felt it was important for business leaders to act neutrally and eschew party political priorities so far as possible.

o They also wanted to see business act ethically, putting in place suitable internal policies to protect marginalized groups, and especially children and women. For example, in the context of compensation payable for land purchases by business, the company concerned should take steps to ensure:
  - that they record how much is paid and to whom;
  - that the compensation is not automatically paid to the (male) head of the household and that consider whether it is necessary to divide it between different members of the household.

o The group felt that it was important, as with this example, that companies are proactive in seeking to do the right thing, even where the law does not require it.

o The group wanted to see good corporate governance embraced in Uganda. They felt that it was impossible to separate the long-term success of a business from this. They wanted business to imbue a set of values (code of conduct and business ethics) of which they could be proud, based around professionalism and honesty, and for these to be well communicated both within the business and to external stakeholders.

o Alongside this, the group wanted companies to adopt an effective corporate structure with clear reporting lines and allocation of responsibilities. They felt that this would be conducive to facilitate the promotion of ROL within the business.

o Finally, they wanted to see internal disciplinary measures put in place and applied fairly to all employees.

o The group gave some examples. One company has inserted a clause in sugar supply agreements to prevent employment of children under the age of 18. Another has put in place a daycare centre on their premises so that women have opportunity to work if they want.

b. Support and encourage the equal enforcement of the law, and independent adjudication of the law, consistent with international norms and standards.

  o The group felt that business should support and encourage equal enforcement of the law. In particular, they wanted to see business put in place initiatives that contributed
to ensuring that the weaker party in an employment relationship can expect equal
treatment and a fair hearing.

○ In the same mold, the group thought that it was incumbent on business to support
legal advice activities and particularly the provision of legal aid.

○ The group also recommended the business should:
  ▪ Support ADR initiatives
  ▪ Have faith in the independence of the judiciary and sign up to ethical codes of
  conduct that promote judicial independence

c. Support initiatives that make justice accessible to all.

  • The group advocated the following initiatives for business to pursue:
    ○ Looking to improve access to justice through partnerships with communities, NGOs
      and government to support legal aid clinics and the industrial courts.
    ○ Offer support for access to legal information
    ○ Put in place internal procedures so that employees have improved access to justice.
    ○ Promote public awareness of rights and remedies through CSR programmes such as
      sponsored training and workshops.
    ○ Simplifying or translating relevant laws into local dialects²

d. Respect applicable contract and property rights.

  • The group advocated the following initiatives:
    ○ An analysis of the gaps in property legislation by business³
    ○ Business should make recommendations on necessary changes to that legislation
    ○ Business should engage policy makers to lobby their views
    ○ Businesses should subscribe to a self-regulatory code of conduct that complies with
      national and international best practices on property rights
    ○ Business should promote ADR processes and, where appropriate or necessary, establish
      private sector operated dispute resolution procedures⁴.

² Scribe’s note: The Uganda Law Reform Commission has a statutory mandate to do this
³ Scribe’s note: it was not clear which organisation would lead this
⁴ Scribe’s note: no mechanism or group was suggested to carry this forward
e. Advocate business respect and support for the rule of law in our business relationships and share experiences in this area

- The group's conclusions were as follows:
  - Businesses should comply with laws as a matter of policy and not only when they are enforced.
  - Business should promote a positive culture of compliance and respect for ROL, both internally and in dealings with other companies.
  - Business should make a point of recognising and engaging with unions and labour organisations, and share experiences of promoting positive labour relationships with other organisations.
  - Business should advocate for greater self-regulation
  - Businesses should respect their contractual obligations.

One participant noted that for Ugandan companies, winning contracts with international companies often requires them to have certain compliance mechanisms in place, particularly in relation to the environment and human rights. The participant wanted to see Ugandan businesses imposing similar requirements on their domestic supply chains.

Another participant called for business to take joined-up action to support human rights generally: and particularly in the context of access to justice, human rights, promotion of good governance. She wanted business to continue the debate as to how this might be achieved.

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

- The participants were satisfied with the business actions proposed.

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

- None suggested.

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?
One participant raised the question of the legacy of conflicts in Uganda, particularly in the north of the country. She asked what business could do to contribute to ongoing efforts by government and NGOs to bring about reconciliation in the region, which would be a vital precursor to the creation of an enabling business environment there.

One participant lamented the fact that donor partners were overwhelmingly setting the agenda for development in Uganda. She felt dissatisfied with Ugandan organisations and business failing to get involved in issues of human rights and governance. NGOs and civil society were too dependent on donor funding — which allows the donors to drive projects and outcomes. She wanted to see an alternative and sustained source of funding to be provided to NGOs and civil society by Ugandan business.

Another participant highlighted the role that corporates can play in promoting stability during elections. In Kenya, businesses had acknowledged that there was a disconnect between electioneering and business. The Kenyan Federation of Employers regretted its arms’ length approach to elections. He felt strongly that business should have a role to play in helping to ensure that the electioneering process was peaceful so that businesses can continue to thrive both during and after elections.

A participant from a law firm advocated for business to do more public interest litigation in support of issues that are often neglected. The group noted that this kind of intervention by businesses had worked wonders in India [although no examples were cited], and tended to promote the development and wider understanding of the law.

A participant from a parastatal stressed the importance of business doing more to cultivate transparency and public confidence through the manner in which they dealt with their customers. His own institution used to be synonymous with bad publicity. It was bad at communicating with its members, at paying out benefits to its members, and at operating in a transparent way. There was a culture of quiet denial of information to customers, even though the right to information is enshrined in the constitution and other legislation. There was also a widespread public belief that government had access to the institution's funds and could use these for its own ends. To turn this around, the institution has now set up a digital platform so that the public can access information about their personal accounts, and has taken other steps to comply more proactively with its statutory access to information obligations.

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?**

   - Not discussed specifically, but many points above relate.
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?

Collectively, participants identified the following obstacles:

- Ignorance of the law, with CEOs or investors often unfamiliar with local legislation or refusing to engage with regulators
- An entrenched culture of unfair competition by other businesses (for example, competitors not paying their taxes)
- Failure of government to implement or enforce policies, or enact laws to regulate certain practices and industries
- Lack of a competition law regime in Uganda
- Selective implementation or enforcement of the law

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)?

The facilitators proposed that the next step for participants would be to hold discussions with the boards and CEOs of their organisations to brainstorm the ways in which they could respect and support the rule of law, both individually and collectively with other businesses.

However, there were also calls for business to seek guidance from external actors like the UNGC\(^5\).

7. Additional Comments, Suggestions or Questions

[Workshop Report End]

---

\(^5\) Scribe’s note: UNGC Local Network Uganda and the Uganda Law Society will be the best people to talk to as to how to take this forward.