Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Myanmar, Yangon

DATE:
31 October 2014

HOST/FACILITATOR:
LexisNexis
Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   - Participants expressed a common desire to learn about the meaning of the rule of law from a business perspective in Myanmar, which includes learning from other businesses on how to support the rule of law and overcome the obstacles that arise.

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

3. Business Case for Supporting the Rule of Law
   - The general sentiment is that the Myanmar legal landscape suffers from a lack of clarity and certainty. As a result of this, the rule of law as a concept lacks proper understanding. It is seen as an abstract and philosophical concept which is difficult for local lawmakers, businesses and lay people to grasp. A step forward would be to contextualise the rule of law by showing its actual practical effect on everyday realities.

4. Business Actions and Business Examples in Support of the Rule of Law
   - A common theme which emerged was how the proposed business actions could bring a commercial benefit to the businesses themselves - through the levelling of the playing field and the improvement of transparency in dealing with government authorities.

   - Generally, the proposed business actions were seen as relevant and useful to the Framework. However, Proposed Business Action 2 needs further clarification and definition, while Proposed Business Action 4 should be widened in scope.

5. Call to Action (to Business and by Business) to Support the Rule of Law
   - Businesses should invest in long-term capacity building programmes in the public sector.

6. Mobilizing Business to Support the Rule of Law
   - Corruption is a common obstacle which businesses experience in their efforts to support the rule of law in Myanmar due to how bribery is ‘embedded’ culturally.

   - The UN Global Compact should introduce more capacity-building initiatives such as localised training in order to better support businesses in upholding the rule of law in Myanmar.
7. Any Other Comments, Suggestions or Questions

- Overall, participants provided positive feedback of the workshop.

Part II: Workshop Report

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

- A common theme in participants’ comments was the unsatisfactory state of Myanmar’s legal landscape — laws are often complex, lack clarity, and inconsistent. As a participant remarked, the confusing legal situation could be best seen in how each state and town in Myanmar has its own legal system.

- Sharing their personal objectives for attending the Workshop, a majority of participants expressed their intention of discovering what the rule of law means from a business perspective in Myanmar. A significant number also mentioned their desire to learn from other businesses on how to support the rule of law, especially in navigating the challenges which arise from the country’s complex legal landscape.

- Noteworthy comments:
  
  - While a participant spoke of how the business community can come together as “a powerful lobby” to encourage more change which will support the rule of law, another raised the need to understand what are the boundaries between business organisations promoting the rule of law, and advancing political goals — at what point are businesses stepping into the political debate by supporting the rule of law, and when would this be beyond acceptable limits?
  
  - It was noted that the lack of rule of law in the country is used as an advantage by certain business organisations to move their business intents and commercial interests.
  
  - participant from Malaysia welcomed the workshop as an opportunity to learn from the lessons in upholding the rule of law in Myanmar, and to bring these lessons back to implement in Malaysian civil society.
  
  - Two participants, who are recent returnees to Myanmar from abroad, expressed a similar sentiment to see the local business community take on advocacy which will contribute to long-term nation-building aims.

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?**

   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 Strong rule of law would mean a more transparent and efficient decision-making process by the government. A participant cited Singapore as an example of how strong rule of law is able to attract investment, in contrast to Cambodia and Vietnam. Additionally, businesses will know where they stand and will not need to rely on the opinion of a government officer.

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

   a. **Proposed Business Action 2.**

      o Participants in the breakout group initially faced difficulty in understanding the meaning of Proposed Business Action 2, and suggested more examples of the business action being implemented to better understand it. There needs to be an explicit reference to law-making.

      o The group noted that the business action made no reference to how to achieve consistency with international laws and standards.

      o It was pointed out that subsection (d) (“Encourage appropriate consultation in the drafting of laws”) is inadequate as it deals only with the consultation process, but omits the implementation process - similar to the legal issues in Myanmar where implementation is poor.

      o Further, it was suggested that subsection (d) be widened to: “Encourage appropriate consultation and transparency in the drafting of the law”. The group reasoned that the absence of such a reference would imply that the drafting has adequate transparency - which is not the case in Myanmar.

      o There is also no reference to how businesses can get involved in the law-making process in a healthy and balanced way without overstepping appropriate boundaries. To this point, the group suggested that businesses and other stakeholders should be permitted to give their input on how this can be done to avoid the issue of businesses wielding undue influence in the lawmaking process.

      o As for examples, the breakout group suggested that businesses can utilise their core business to support the legislative process for the general public good, as an aspect of corporate social responsibility (CSR). However, business should go beyond this “CSR
model” into respecting and supporting the rule of law — business incentive structures may help encourage this.

b. **Proposed Business Action 3.**

- The group said that businesses should support Proposed Business Action 3 as it may result in increasing trust and confidence in the business itself. Further, Proposed Business Action 3 would even reduce transaction costs. Additionally, the playing field can be levelled through the Business Action’s effect of upholding meritocracy.

- With regards to examples of the business action in practice, the group suggested that businesses share ideas and best practices with each other. Additionally, businesses should refrain from attempting to influence judges; instead, they should advocate for the increase in salary of government staff to reduce bribery. Further, the group emphasized the need for continuous education and training in order to create a common culture within and outside the organisation.

- The group also provided some interesting ideas of promoting Business Action 3. They suggested the use of technology to reduce bureaucracy and promote transparency - for example, the government should publish information on websites. Local chambers of commerce can also engage with the government to promote transparency.

- A particularly interesting idea mooted by the breakout group was in the suggestion of establishing a mentoring system within the business community, with an emphasis on small and medium-sized enterprises (SMEs). The UN Global Compact may be able to utilise the current network of businesses to pioneer such a mentoring system. This mentoring system can make use of senior members of the local business community to advise younger counterparts on rule of law issues. Alternatively, business networks and communities from different countries with better levels of rule of law can be tapped into, in order to avoid the issue where senior management is often to blame for objecting to practices which support rule of law within the business.

c. **Proposed Business Action 4.**

- The breakout group suggested that the Proposed Business Action should be expanded to include access to efficient, cost-effective alternative dispute resolution mechanisms. This is especially relevant in countries like Myanmar where there is a general distrust of the courts and the legal system, which forces locals to resort to traditional and customary resolution mechanisms outside the formal legal system.

- It was also proposed that Business Action 4 be widened to cover access to education, specifically legal education. This will bring greater legal literacy and respect for the rule of law in the long term. Other long-term benefits include greater compliance with the law and legal agreements with fewer disputes - any legal dispute will also be resolved at a higher level of understanding.
As for examples of business action, it was suggested that businesses support access to education by providing scholarships for students to experience a different environment abroad, or initiate exchange programmes for these local students. Businesses can also provide support and advocacy for the appointment of an ombudsman to oversee alternative dispute resolution mechanisms and ensure the availability of non-judicial remedies.

It was also suggested by the group that a new business action be created specifically to “support law-making”. This specific provision can also fall under Proposed Business Action 2, thus adding to the general opinion that Proposed Business Action 2 should be made clearer.

d. **Proposed Business Action 5.**

- Generally, the scope of Proposed Business Action 5 was agreed upon by all and the discussion instead centred upon examples of how businesses can support it.
- The group highlighted the need for proper internal documentation (“paper-trail”) to allow for clarity in business dealings.
- Businesses can benefit from Proposed Business Action 5 through the levelling of the playing field and to avoid allegations of unfairness in the future. Both benefits carry commercial and business advantage.
- Interestingly, it was proposed that business organisations embed a code of ethics/conduct into the legal contracts they enter into. This code of conduct can incorporate the UN Global Compacts framework into these legal agreements. For example, Telenor Myanmar’s ‘Agreement on Responsible Business Conduct” legally obliges suppliers to comply with their Supplier Conduct Principles, which ensures a responsible and sustainable supply chain.

e. **Proposed Business Action 6.**

- The breakout group concluded that this Proposed Business Action was unproblematic and recommended similar business action examples as Proposed Business Action 3.

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?**

- Businesses should redirect business investment into the public arena for the long-term, especially the education sector.
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?
   - Participants suggested widening this question to cover governmental, non-governmental, and inter-governmental organisations such as the UN and the World Bank. The reference above should also include the media, which can act as the multiplier of the message above.

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?
      - Most participants agreed that corruption was an obstacle as bribery is embedded into the culture of the country - there is an expectation for businesses to bring gifts when meeting with authorities.
      - Another cultural issue in Myanmar which can prove to be an obstacle is how people have a mindset of trying to “get around” the law.
      - Participants agreed that internal training, education and supervision of employees will help reduce the aforementioned obstacles. One of the participants stressed the importance of multinational corporations upholding good practices in business. Responsible business needs to be prioritised over the aim of making a quick profit.
   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)?
      - Participants mentioned the need for more capacity building initiatives — specifically, localised training sessions and train-the-trainer sessions.
      - There should be effort in increasing awareness of the UN Global Compact. A suggestion was made that each national Bar Association of every country in the world should be connected to the UN Global Compact. Additionally, more success stories of business supporting the rule of law should be highlighted.

7. Additional Comments, Suggestions or Questions
   [Workshop Report End]