Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Turkey, Istanbul

DATE:
3 April 2015

HOST/FACILITATOR:
Global Compact Network Turkey, Baker & McKenzie and Unilever
Business for the Rule of Law
Executive Summary and Workshop Report

Part I: Executive Summary

- Participants expressed a variety of reasons for attending the session; chief among them was the desire to learn more about the topic in order to operate more effectively in their own companies, to engage with like-minded business leaders, and to support the effort to increase the rule of law in Turkey.

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

2. Business Case for Supporting the Rule of Law

- Participants emphasized that the law should be predictable, transparent, and accessible to all in order to be considered trustworthy. Some of the main problems in Turkey are lack of resources in the judiciary system; lack of predictability; the prevalence of bribery and nepotism in certain sectors of the economy such as real estate and litigation; the lack of ability to win lawsuits against the government (or companies with government connections) and the costs to your business if you manage to succeed; and the cost of firing employees who are not in compliance with internal codes of ethics since dismissed employees stand a high chance of succeeding in claims against their former employers due to Turkey’s legislation and judicial system. Finally, a major barrier to achieving stronger rule of law in Turkey is the human dimension, and the mindset of non-compliance being the norm.

- A strong rule of law benefits business by enabling it to make long-term plans and investment decisions (due to predictability); enabling business to profit from R&D and its intellectual property; providing the foundation for fair competition and thus, creating a level playing field among businesses; and combating the illegal market/underground economy.

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

- The framework is correct and complete. Attendees are concerned primarily with moving from discussion to action, especially since "respect" for the rule of law is lacking in Turkey, meaning that the "support" dimension gains greater urgency.

- Attendees emphasized that it’s everyone's collective responsibility to ensure that companies which are not compliant with local and international standards do not receive any benefits from being uncompliant. This means ensuring that our suppliers and other third parties with whom we do business maintain robust compliance programs and are rewarded for doing so or
punished for not doing so. Business needs to start affecting changes itself rather than waiting on the government to do it.

- Key issues for Turkey are difficulty accessing justice in the civil system, challenges to IP rights, and lack of predictability which inhibits investment.

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

- Attendees mentioned several actions that could be taken to support the rule of law, such as training judges, having a Q&A with the Turkish Bar Association, establishing a database to publish laws and regulations along with explanations in multiple languages, and most importantly, supporting each other in maintaining compliance with local and international laws.

- Attendees also agreed on some very concrete actions to take in support of the rule of law in Turkey. The same group of attendees will continue to meet quarterly to discuss and implement these actions.

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

- The frequent use of phrases such as "bite the bullet" when it comes to maintaining compliance and working with partners who do the same indicates that in Turkey at least, compliance is still a costly enterprise.

- Sectors such as infrastructure and real estate along with litigation were frequently bemoaned as the largest problems for organizations seeking to be compliant in Turkey.

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

- The UN should ensure that that information about the Compact is shared with everyone in signatory companies, not just the main contacts. The B4ROL initiative especially should be communicated directly to the legal departments.
Part II: Workshop Report

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

- The participants had various motivations and expectations for joining the workshop. Some common themes we heard were:
  - To learn more about compliance and the rule of law, especially in the Turkish context.
  - To contribute to the cross cultural approach to rule of law and identify the hurdles we're facing in Turkey.
  - To bring business leaders together to discuss this important topic.
  - To understand the approach to rule of law in different sectors.
  - To be able to advise clients with issues related to this topic.
  - One participant thought the discussion would be helpful since her company is planning to establish a compliance system.
  - To support the initiative from the perspective of legal theory and practice since our clients have these issues too.
  - To support the call for action. To promote B4ROL and to see progress and priorities.
  - Another participant came from a contentious industry and wanted to hear how others navigate rule of law concerns.
  - One participant stated that he cares about rule of law issues because it will impact future generations, such as his children.
  - To meet a group of like-minded people concerned about complying with and supporting the rule of law. To see others who care for the rule of law and contribute as an architect for the future.
  - To start an action plan and identify actions that will have an impact.
  - To see how business and NGOs can partner to focus on the rule of law.

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

- These comments are reflected in subsequent portions of the report.
3. Business Case for Supporting the Rule of Law

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

- The first question most participants answered was actually, "What does the rule of law mean?" It means that laws should be publicized, stable, and just; people should be able to trust the judiciary system. It also means that government and its officials along with private entities and people are accountable under the law - no exceptions or special treatment. Finally, enforcement should be quick, accessible, fair, not expensive, and timely. Most importantly, the whole process should be predictable and have trust from society.

- In terms of Turkey specifically, two points of concern are the lack of resources in the judiciary system; the limited number of judges and the lack of education among them is a problem. Under-resourcing in terms of courts, judges, prosecutors, lawyers, etc. has an effect on the whole system. The second problem is that the judiciary is not separate from the government. The lack of predictability in Turkey right now makes it difficult for legal professionals to advise clients or their own entities on best practice. A lawyer from a multinational tobacco company pointed out that legislation is not understandable or clear; in the tobacco industry, two different laws are applicable but they have very different outcomes depending on how they are applied.

- A chief legal counsel from a major multinational consumer goods company explained that he presides over a wide swath of territory covering Turkey, Southeast Asia, Russia, Pakistan and the Middle East, and that in these countries, the rule of law is unknown; it’s like trying to survive in a jungle. Since the company has shareholders in the US and operates according to a very high standard of compliance with their own internal code of ethics and international standards such as the FCPA, they are concerned about the rule of law globally.

- One participant stated, "We never do business with the government."

- Another participant commented that in Turkey, there are conflicting laws and there is a need for clearer sector specific legislation. For example, in certain sectors there are two laws which are equally applicable but with radically different consequences based on which one is applied. One results in a small fine or "slap on the hand" while the other results in a major fine and revocation of license. It is impossible to predict which law will be used to assess the consequences of a company’s actions.

- Another example is regarding treatment of employees. Some companies have internal ethics standards or ethics boards that have standards higher than the local labor law. The company has to give the right message to its staff. This sometimes means taking risks and “biting the bullet” in terms of financial consequences; for example, if it becomes necessary to fire an employee who is not in compliance with the internal
code of conduct. Due to the fact that Turkey's court system is often seen as favoring the employee, dismissed employees who file lawsuits against the company stand a good chance of winning.

- One participant discussed the proximity of the compliance department with the legal department as a major advantage. The legal department should not be disconnected from the compliance team; they need to work closely together.

- In regulated sectors, sometimes lawsuits are actually against the government. When that's the case, the questions are 1) can you win against the government (or a company with government connections) and 2) at what price? In Turkey, most participants agree that the odds of succeeding against the government are not good.

- Over ten years ago it was difficult to predict the outcome of lawsuits, because bribery was a common occurrence. Sometimes there were rumors about a particular litigator such as, "he can never win the suit because he won't pay a bribe." For the last ten years it was getting better, and bribery was decreasing, until the past 2-3 years. Now, it's getting worse and the quality of judges is decreasing. We need to look toward forms of alternative dispute resolution in order to reduce cost and increase predictability. One attendee remarked that our ranking in indexes such as Transparency International has also decreased this year (Turkey is almost a red zone country), supporting this observation.

- Finally, a major barrier mentioned by participants is the human dimension, the need for a mindset change in terms of morals, behaviors and attitudes. This will not happen overnight.

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?**

- A strong rule of law benefits business in many ways. First, you need predictability in order to be able to make long-term plans or investment decisions. You need to be certain that key issues such as financing, sector-specific regulations, etc. will not change rapidly. Secondly, you need to be protected from unfair competition. If innovations are not protected under relevant IP laws and anti-trust/competition approvals, R&D activities may be a waste of resources. Global competition between companies means that business will consider the level of legal protection in a country more and more prior to making investments. Countries without a sufficient level of protection for IP rights may miss out on the significant employment and economic opportunities that come with investments from multinational entities.

- The illegal market is a huge challenge to business. One example given by a lawyer from a multinational tobacco company is that 20% of the tobacco market in Turkey is illegal. The underground economy is very real in Turkey.
Companies are on a level playing field when there is strong rule of law to ensure that all are abiding by the same rules. For example, some companies earn larger profits by tax dodging.

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.
   
o) 2) Companies that are non-compliant sometimes gain unjust benefits. It's our job to make sure that companies which are compliant can benefit in the long term. In the long term, non-compliant companies will suffer because their business model is unsustainable, but the entire country can ultimately suffer along with them.

o) 3) Elicited complaints regarding competitors who are not in compliance and do not behave respectfully. However, businesses which respect Rule of Law gain benefits in the long term rather than the short term. Businesses should have a code of conduct/code of ethics. Companies should have an internal compliance program following international norms and standards; e.g. FCPA, UK Bribery Act, with 3rd party due diligence.

o) 4) Access to justice is very difficult in Turkey — the biggest problem area is in the civil system. First, you must prove that you are poor by providing documents from the Social Security Administration in order to get counsel. If you can't do that, the laws and regulations for court procedures are very complicated and nearly impossible for a lay person to follow. Plus, legal fees must be paid upfront, which makes it difficult for people to file lawsuits.

o) 5) IP rights are a significant challenge because having your trade name used in another country or by an unauthorized third party can damage your reputation, and the constant court battles necessary to prevent it are expensive and time consuming. In Turkey, the renewable energy law is also an issue; since prices for renewable energy generation are not fixed, companies cannot make investments since they have no predictability. Guarantees regarding the financing of major infrastructure projects such as bridges and airports are not trustworthy; major international companies are hesitant to invest because they can't plan in the long term. Turkey has developed a strong legal framework in many areas but implementation is still a problem, especially with the amount of patronage still existing in Turkey. Government often prepares a "well-defined" tender specification (i.e. only possible for one specific supplier to achieve) meaning that it is not a competitive marketplace.

o) 6) We can't wait for the government to accomplish these goals; we need to effect change ourselves. We can start by making sure that the businesses we work with do
not gain from non-compliance, but actually experience a negative economic impact. We can also create awareness within the public.

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

- 2) This group gave the example of advertisements in the FMCG sector. A government body supervises advertising. Sometimes this body deems an advertisement inappropriate and can ask to stop the advertisement in the media. Companies suffer from the suspension because they have invested in making the ad but it does not gain its value in return. Often, the company's PR team wants to fight the ruling while the legal department wants to accept it. The legal department needs to make sure that rules within the organisation are respected. Companies have to start internally. The legal department should not be seen as one that prevents business but as a business partner; this involves changing mind-sets and showing no tolerance for those within the company that are not compliant with the business code of conduct or ethics. This requires marketing and sales teams to respect the legal department. People need to be held accountable internally. Also, business should be more active in NGOs and in interacting with bureaucrats to increase focus on compliance.

- 3) A large multinational company labels third party suppliers according to their level of compliance with national and international regulations and provides a "carrot and stick" approach by both rewarding compliant companies and blacklisting those that are found not in compliance. Two other companies have similar programs in place. One has an award for its suppliers; while the other rewards suppliers who meet standards on manufacturing, employment and product liability requirements with contracts (they do not work with any non-compliant firms). This practice is designed to improve the overall business ecosystem. Black-listing for non-compliance was also mentioned as an approach. Attendees emphasized under this point that whistleblowing should also be supported internally to encourage people with compliance-related concerns to speak out.

- 4) A hypothetical example would be for an association to provide free legal counselling for specific groups, e.g. women and children, including alternative dispute resolution so they can avoid the courts entirely. Another possibility would be for business to create an online database of legal records, court filings, and administrative procedures which is easily accessible for everyone. The legal clinics could go hand-in-hand with the online database since people seeking additional information after searching the database could visit the legal clinic.

- 6) Similar to what was mentioned under point 4, creating competitions between suppliers to encourage them to be compliant is an effective mechanism. One multinational consumer products manufacturer in attendance stated that they use just
such a competition system and give prizes to encourage compliance. The company creates a global competition amongst suppliers and awards are issued for the most compliant supplier. This year two of the awarded suppliers were from Turkey. We should not only punish non-compliance with a stick but rather encourage compliance with a carrot approach.

- Another company has yearly targets that must be achieved in order to get bonuses, but everyone is evaluated based on two dimensions: whether or not they achieved the target, and how they achieved it. The “how” part of the review encompasses compliance with internal and external regulations along with attitude of the team member. The manager will assess if they achieved the targets with compliance to policies and with the right attitude, and will review if any complaints were made against the individuals. Managers are taught how to give feedback to team members and evaluate. This moves the team away from short term benefits toward more long term behaviour and benefits.

- Another point emphasized during the discussion is that start-ups should be encouraged to comply with relevant international and domestic regulations from the beginning; the attitude at many start-ups is that compliance may come later as the company grows, but by then bad business practices are an entrenched part of the company culture.

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

- Yes, very minimal discussion on this point. Attendees see the “respect” dimension lacking in the Turkish market, so the discussion focused on “supporting” their business partners and the government in efforts to increase the rule of law.

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

- None are missing. The most important thing emphasized by participants is moving from discussion to action.

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?

- We could train judges, since they are the ones at the forefront of efforts to increase the rule of law, and make the application of laws more predictable.
- We could create a Q&A with the Turkish Bar Association to explain how foreigners can file a lawsuit.

- An ambitious step: we could link the work of UNGC B4ROL to higher goals. For example, the Ministry of Justice of Turkey has goals in relation to the EU justice commission. We could link their achievement of these goals to work with the UNGC.

- We could form an IPR Board between the EU and Turkey.

- We can support each other in maintaining compliance. In other words, only work with companies that you know to be in compliance or even those which are taking the extra step to support compliance more broadly in their own supply chains. Rewarding compliance was a major theme of the talk.

- The attendees all agreed on some very specific next steps:
  - Companies agreed to be active in the UNGC B4ROL agenda by connecting with UNGC contact point inside their company and engaging with this agenda on an ongoing basis.
  - Continue meeting quarterly in this group to develop a coalition in support of B4ROL. The next meeting will be held at Baker & McKenzie in June 2015.
  - Agreement to share contact details with each other and stay in contact and to support each other in achieving or maintaining internal compliance best practices.
  - Share the photo/meeting announcement via Baker & McKenzie and UNGC channels.
  - Share inputs to the next meeting agenda, and potential participants who were not present or stakeholders that were not represented at the first meeting.

- Attendees’ suggestions for next meeting (to be discussed/agreed later):
  - Expand the list of participants in this group
  - Communication of activities to wider audience and enrol support for B4ROL. Communication should encompass other organizations such as TOBB, YASAD, TUSIAD, Investment agency and other platforms.
  - Establish a committee to measure progress, create accountability and define responsibilities.
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?

- There was a general consensus that business cannot rely on government to improve the rule of law. Therefore, there was limited discussion on how government could support business with this initiative. There was agreement that more civil society institutions should become involved in the effort and could play a major role in mobilizing players across various industries to conduct us with opportunities to work together.

- Small and mid-sized business also has an important role to play, since in Turkey, these are often the types of businesses that form crucial links in supply chains and which do not have strong internal compliance or ethics policies.

- One attendee took collective action for clean customs. People undersigned that they would not undertake business with a customs broker who is not acting in a clean manner (i.e., demanding a bribe). They did not rely on government but business leaders took the lead on that activity.

- Transparency international is creating a corporate pledge — we can align with this activity by signing the pledge.

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?

- This point was not a main focus of discussion, partially because most of the companies in attendance do support the rule of law, especially when it comes to their own internal standards.

- However, the frequent use of phrases such as "bite the bullet" when it comes to maintaining compliance and working with partners who do the same indicates that in Turkey at least, compliance is still a costly enterprise.

- Sectors such as infrastructure and real estate along with litigation were frequently bemoaned as the largest problems for organizations seeking to be compliant in Turkey.

- The legal system which favors employees in lawsuits against employers sometimes makes it difficult to fire employees who are not in compliance with internal policies.
In some cases, companies take a risk in firing them due to the threat of facing lawsuits.

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)?

- First, UNGC can ensure that information about the Compact is shared with everyone in signatory companies, not just the main contacts. The B4ROL initiative especially should be communicated directly to the legal departments. Everyone in the company should be able to contact and identify the main liaison to UNGC.

- Play a role in facilitating interaction between the different stakeholders (big business, SMEs, and NGOs most especially) and bring these diverse groups together. UNGC's local office could play an especially important role in determining which NGOs could support these efforts, since the business community does not always have contacts with the NGO community, and bring them to the table for future meetings.

7. Additional Comments, Suggestions or Questions

None

[Workshop Report End]