Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

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Part I: Executive Summary

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

Overall, interest in opportunities for business to strengthen the Rule of Law was extremely strong. Participants were positive about the development of a framework and the ability of (and case for) business to take action to advance the rule of law. However, the term ‘rule of law’ needs a concise definition. What it means for business, particularly the commercial motivation, should be spelled out and how it translates into action needs demystifying.

2. Business Support for the Rule of Law in Practice

There was agreement on the importance of the rule of law. However, there was concern that the rule of law definition was not explained in clear commercial terms – the business actions seem drafted from a legal perspective and use the language of law rather than business. This was a recurring feature of the workshop discussions. There is a real need for clarity of language and thought. Also, participants felt that businesses are more constrained in terms of practical action compared to governments (e.g. they cannot ‘legally empower’ or ensure ‘responsiveness of justice’).

3. Business Case for Supporting the Rule of Law

Although supportive of the intentions of the framework, participants highlighted significant challenges in constructing a long-term viable business case for engaging in rule of law initiatives as distinct from existing corporate social responsibility commitments.

Without methods to demonstrate the positive effects of engagement with the framework (or the negative impact of not supporting the framework), many participants felt that businesses would find it challenging to justify sizeable expenditure in this area.

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

The proposed business actions are too abstract to be applicable to day-to-day business functions. In order to secure meaningful engagement from business, the proposed actions would need to be couched in commercial terms that are capable of translating directly into clear, actionable and measurable business outcomes.
The framework needs to more firmly tie to existing UN initiatives so as to be complementary to them (for example human rights and global business principles).

Participants cited the need for tools to help businesses assess the rule of law implications of their activities and to create a clear plan of action (and a robust business case).

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

It was agreed there were meaningful actions that businesses of all sizes could take to further the rule of law. The challenge of this framework is to assist businesses to identify where their unique business skills and profiles could be put to best use. Businesses want their engagement in the rule of law to be relevant to their wider business activities so as to directly support the business case — this makes it easier to make the business case and for business to take positive action.

6. Mobilising Business to Support the Rule of Law

To ensure its viability and longevity, UN Global Compact must support, promote and recognise businesses that support the framework. This will encourage uptake of the framework and business investment in rule of law activities and provide better rule of law outcomes.

UN Global Compact is in a unique position to enable and encourage positive business action on the rule of law, by creating a framework that gives multinationals a clear and authoritative starting point/reference for engaging host country governments on the necessary foundations required for trading and investing in their country. This would allow businesses to advocate on the basis of UN principles, avoiding perception that they are arguing in their own interests.

There was a feeling that business is wary of ‘lobbying’ on behalf of the rule of law given concerns over acceptability of activity and the potential for negative perception — UN can play a key role here and the framework can provide the standard that enables business to engage in this activity.

By acting as the hub for rule of law engagement, the framework can offer businesses solutions, rather than challenges and also useful tools e.g. a repository of rule of law projects and organisations and providing access to experts to discuss rule of law initiatives/actions to complement their core business practices. UN Global Compact can also connect businesses together for effective collective action.

7. Other comments or questions arising

Participants did not consider the framework sufficiently defined, compelling and practical for launch in its present form. There was broad consensus that work is required if it is to become a
success — the framework should be concise and in terms that make it easy for businesses to understand what the framework is, why they should take action (i.e. the business case), what they are expected to do and how they can do it.

In particular:

7.1 Explain clearly and concisely what the framework is and what it is trying to accomplish — the current articulation is generic and vague and legal sector oriented which means businesses cannot see at a glance what the framework is.

7.2 Clearly define the unique place, role, objective and value add of the initiative versus similar principles and initiatives by other high profile bodies including the OECD, the World Justice Initiative, etc. Participants did not want another framework that will confuse the business world — need to clearly address the questions ‘Why another framework? Why this particular framework?’

7.3 Ensure the framework is practically applicable for business and action focused in its intent, approach and language.

7.4 Set out a small/focussed set of tangible, practical and measureable actions that the framework encourages businesses to take. Some of the participants were keen that this be one page only. There was a concern that similar initiatives have tried to do too much and that this ‘mission creep’ has left them largely ignored.

7.5 Explicitly spell out the near-term and longer-term tangible value add of the initiative above and beyond what businesses are already doing on their own.

7.6 Ensure the framework sits on solid theoretical foundations e.g. the absence of a firm grounding in human rights was criticised by some participants.

7.7 Back up the framework with tools, such as a decision making tool to enable businesses to assess their rule of law engagement and identify actions they could take.

7.8 Consider the role of compliance and audit.
Part II: Workshop Report

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

No comments were captured during the presentation.

2. Business Support for the Rule of Law in Practice

Participant workshop objectives and questions to understand:

- There are many initiatives – how do they interact and which should we pick?
- Demystify what the B4ROL initiative is and what the role of business is
- How do we best articulate the business case to get businesses on board with the initiative?
- How do we get business to engage at all levels?
- How can we best share practical learnings?
- What support do businesses need and what role can UN Global Compact play?
- How can we deal with the conflict of laws between jurisdictions?

3. Business Case for Supporting the Rule of Law

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

The rule of law in the UK

3.1 The UK workshop took place against a backdrop of dramatic change to the legal landscape in the UK over the last few years. The current government has, as part of its deficit reduction programme, sought to cut the amount of public money spent on the legal system. This drive to reduce public funding is manifested in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012). Despite a barrage of challenges to the cuts to legal aid, LASPO 2012:

- reduced the amount of public money available to fund legal aid
- reduced the types of cases eligible for funding, and
- increased the minimum threshold for funding

3.2 LASPO 2012 has been only one part of the structural changes to the legal landscape. Other changes have included wholesale changes to the criminal contract system — resulting in the consolidation of the criminal market and a reduction in the total number of specialist criminal firms — as well as recent increases in court fees (in some cases up to 600% their
previous amount). In light of the past years of change, the discussion of the rule of law in the UK was introduced with a question: ‘Is the UK going backwards in terms of the rule of law?’

3.3 Although concerns were expressed that the UK, through reducing access to justice in certain circumstances, had impinged on the rule of law to a degree, the general principles of the rule of law remained central to the UK:

‘The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to the laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards.’ (Report of the Secretary-General: The Rule of Law ad Transitional Justice in Conflict and Post-Conflict Societies, 2004)

3.4 Participants recognised the concept and history of the rule of law but there was some difficulty in placing the rule of law in a business context beyond simply adherence to the law of a particular jurisdiction. The challenge of applying the concept of the rule of law was a recurring feature of the workshop discussions as it became clear that the language used to define the rule of law was removed from the language of practical business. It should be couched in clear commercial terms to engage a business audience.

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 of a strong rule of law

3.5 A strong rule of law removes barriers to business and allows businesses to operate with certainty that their legitimate actions will be upheld by the courts of the particular jurisdiction.

3.6 The principle of certainty was an interesting differentiator from discussions of the harmonisation of legal approaches across jurisdictions. Certainty allows for diversity in approaches i.e. even if an approach to a particular area of law in a given jurisdiction differs from the approach in the business’ home jurisdiction, the certainty that the approach of the other jurisdiction would be enforced would allow business to make informed and robust decisions.

3.7 This certainty translates into a workable environment in which businesses can operate. Participants were keen to state their appreciation for the role of states in providing protections for their business activities through measures such as respect for intellectual property, labour rights and provision of a viable court system to resolve disputes.
3.8 However, certainty is different from fairness and justice. Although the courts of a jurisdiction could provide certainty, this did not necessarily ensure the business would be treated fairly or that the court would operate within an ethical and legal framework that the business could respect. That a legal system could provide certain, but unfair, rulings was cited as one of the key drivers in the growth of international arbitration and other forms of alternative dispute resolution. These methods essentially allow a business to choose the law under which it operates, thereby circumventing (to a degree) the court system of the jurisdiction in which the business activity took place. The use of international arbitration was framed as a reaction to the lack of the rule of law in certain jurisdictions, as it offers a way of operating in a jurisdiction with a weak legal system without becoming constantly embroiled in local legal disputes. The use of contractual arbitration was also seen as a way for business to operate without having to engage in unethical local businesses practices.

3.9 Many of the workshop participants represented companies with a strong global presence and therefore had experience in emerging markets. From the discussions it became clear that a key consideration for businesses looking to expand into an emerging market was the relative stability of the region. This stability was not simply a risk factor for employees in the region, but was also crucial in calculating the long-term viability and growth of the business in that market. The principles of the rule of law sit very closely with international indicators of wider social and economic justice — so the rule of law plays a key role in providing stability in society, which in turn allows businesses to thrive.

**Making the business case for the framework**

3.10 The framework must include a clear and concise business case, in language that will be immediately understandable by the business community and inspire engagement. This is lacking in the existing framework.

3.11 The key potential benefits to business of a UN-backed framework were highlighted as:

- offering a way for companies to be proactive in regions where the rule of law is not the norm
- allowing greater centralisation/harmonisation of approach
- reducing regulatory burdens and barriers to business
- boosting reputation of business

3.12 However, the business case for the framework rests on the ability of businesses to justify investment in rule of law activities to their leaders and other stakeholders to secure necessary budget. It will be easier to achieve this if proposed actions have a direct relationship to core business activities.
3.13 Although the participants could see the value in furthering the rule of law, there were concerns around the way in which support for the rule of law could be meaningfully incorporated into business functions rather than simply as a form of philanthropy. To address this, the business case for the framework must be made in clear commercial terms and needs to demonstrate a tangible benefit to the business. This is not to say that businesses will not engage without monetary incentives, but that the long-term viability of the framework will require businesses to clearly justify their involvement as a way to advance their core business activities and interests.

3.14 However, despite concern that it might be difficult to secure funds or potentially senior involvement for proactive engagement, participants agreed that businesses could take positive steps to further the rule of law through their business activities.

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.

   The language of the business actions

4.1 Throughout discussions, the recurring theme was the need to use business language and to structure the framework in terms that will immediately allow businesses to understand the concept, how it relates to their business, what actions they can take and how they can implement them. The more philosophical/legal nature of the current language is an immediate barrier to understanding and applying the framework and seems vague. It was felt that the wording was too lengthy for decisive actions. The proposed business actions would benefit from being:

   - concise business language
   - being focussed on practical outcomes, so it is clear at a glance what business is to do, and
   - with a clear and focussed set of examples for each action/outcome so business can easily identify how that action might be achieved

B4ROL in context

4.2 The issue of adhering to the Ten Principles of the UN Global Compact and supporting the broader UN goals and issues raised an important question for most of the businesses at the UK workshop: ‘How does the B4ROL framework differ from or align with other UN initiatives?’ This should be clearly addressed in the framework.
4.3 There was some concern among the participants that the B4ROL framework could struggle to differentiate itself from other local and global initiatives to improve business practices. This was not an attack on the intention of the framework but a concern that, without clarity on the differences/alignment with other initiatives, the framework could suffer.

4.4 There was concern that the first proposed business action highlighted the lack of direct reference to human rights legislation and other key UN legal conventions and resolutions. It was felt that closer alignment with existing legal principles would strengthen the framework and encourage businesses to consider the framework alongside their existing international legal obligations.

Lobbying, engagement and advocacy

4.5 A number of the proposed business actions focus on the ways in which businesses can shape the development of the rule of law by encouraging positive legal developments and supporting the application of the law. Although the participants agreed that businesses have the power to influence the development of good laws, the framework lacks any recognised structure for this sort of lobbying activity and neglects the potential negative impression of lobbying and the history of quid pro quo agreements between lobbying parties and states – participants highlighted that lobbying efforts on the part of some businesses have been targeted at watering down legislation so as to protect business interests which, although legal, run contrary to furthering the rule of law. In addition, a key point was that some of the proposed business actions are not in the remit of business but governments, for example ‘Improve the quality of rules applicable to commercial relations’. Here business can influence but cannot directly make or change legislation.

4.6 The framework should provide a standard that allows business to constructively lobby on behalf of the rule of law. Businesses need clear examples of appropriate activity and guidance on suitable levels of support/association with relevant government departments/lobbying organisations. The framework should give multinationals a clear and authoritative starting point/reference for engaging host country governments on the rule of law. This will enable businesses take positive action without being perceived negatively. Given the connotations around the term ‘lobbying’, participants preferred terms such as engagement and advocacy.

4.7 Business for the rule of law should lead and enable business to lobby for consultation on legal developments, especially in countries where laws change quickly/without warning or consultation, and for reasonable transition/implementation periods once a new law comes into force.
4.8 UN Global Compact can uniquely be a figurehead, bringing business together under its umbrella to be potentially more effective than businesses on their own (or in smaller coalitions of businesses). Also some participants felt that the UN could also help prevent a perception of favouritism. An example of this is sponsoring judicial training; a business had done this almost in a blind trust arrangement. They funded a university to provide the training on condition that the judges did not know who had funded it. They thought this was important as the business was potentially a litigant in those courts and they did not want allegations that their money had gained judicial favour.

Respecting the law

4.9 The business actions that relate to respecting the law (i.e. not engaging in bribery) were the easiest for the participants to grasp and agree with, as they fit in with the day-to-day running of a business rather than sitting outside core business functions.

4.10 However, respect for the law was said to stem more from the laws applying in the business’ ‘home’ country than from particular jurisdictions in which it operates. For instance, a UK-owned business would not engage in bribery, even in a country where bribery was not a criminal act, due to the nature of the UK's Bribery Act 2010. In addition, if businesses have a concern with the legal situation in a particular jurisdiction, there are ways to circumvent the relevant court system.

Access to justice

4.11 All participants recognised that their business could take steps to improve access to justice. However, the concept of supporting justice raised an initial point of concern. It was felt that, although businesses had resources that could be deployed in this area, any framework would have to recognise that businesses with different profiles and resources would face different challenges in directly supporting access to justice. For example, it was noted that businesses that have a legal dimension have a more obvious role to play in increasing access to justice, and can do so within their core business activities. To make the framework applicable to all businesses, clearer articulation and focused examples should be used so any business can immediately grasp what action might mean for them and why they should take the action.

4.12 For businesses without a strong legal focus, the challenge would be to support access to justice in a meaningful way that extends beyond simple philanthropy. Supporting local organisations and knowledge sharing were highlighted as potential ways in which businesses could support the rule of law (see below). However, there was concern that any such support would require careful consideration on the part of the business before any support was arranged. For example, if a business wanted to support a university law clinic,
the business would need to conduct due diligence/auditing to ensure the actions of the law clinic were appropriate and in line with the company’s principles.

4.13 The creation of internal complaints systems were cited as an example of businesses trying to improve access to redress for their customers. However, as these operate outside the domestic court system, there were concerns that, without independent oversight, internal complaints systems could suffer from a bias in favour of the business.

**Contract and property rights**

4.14 The participants felt that this is something a business would do naturally as it is in their direct business interests. However, as mentioned previously, businesses would be reluctant to use dispute resolution procedures in countries where the rule of law was weak, as to do so would open the business to undue risk and uncertainty.

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

4.15 Although the intentions of the business actions were seen as positive, the business actions suffered from a lack of direct applicability to business scenarios. The participants want the business actions to offer demonstrable strategies to embed the rule of law within their core business activities, which would make commercial sense to invest in, rather than a less directly applicable list of positive attributes.

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

4.16 The framework would benefit from fewer, more targeted business actions. Too many actions and use of vague language hinders business understanding and application of the framework and therefore makes it less likely to lead to positive action beyond endorsement. Brevity and clarity creates less room for interpretation and ambiguity and would encourage a more focused approach to the framework. Each action could be given a clear and focussed example, so business can see at a glance how it translates into business activities.
Reporting and monitoring

4.17 There was a feeling that the business actions and framework neglected to offer clear practical actions/examples through which businesses could demonstrate the effect of the framework. The creation of feedback actions beyond simply sharing experiences would provide a number of benefits:

- reporting goals ensure the framework does not slip off the business agenda
- positive outcomes strengthen the business case for continuing to support the framework, and
- publicity for the framework drives uptake and protects businesses already supporting the framework by providing a level playing field with their peers

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?

Self-assessment

5.1 There was a strong feeling that one of the most important steps a business can take is to ensure it is upholding the rule of law itself. Any business seeking to be involved with the framework should first look internally to align and articulate what the rule of law means to their business. A useful initial step for any business considering signing up to the framework would be to assess their rule of law engagement:

- Does our business conduct support the rule of law?
- What is our rule of law profile (respectful, supportive, negative)?
- How are we embodying the rule of law in our business policies?

5.2 After conducting this initial assessment, a business can then undergo a further assessment to ascertain their appetite/ability to support the rule of law:

- direct action with core business activities [most desirable]
- strategic social investment and philanthropy
- public policy engagement and advocacy
- partnership and collective action — industry/trade/specialist groups
5.3 This approach allows for different businesses to engage with the rule of law in a way that is meaningful to their business, rather than a vague adherence to an intangible set of principles.

5.4 Companies should not only respect the law but also be transparent/public about the fact — businesses face challenges with internal alignment on the rule of law principles:

- embedding as an enforceable principle in a code of conduct or policy which also aids communication
- ensuring everyone in the business is aware of the principle and aligned to it
- making it real — ‘walk the talk’

**Knowledge sharing and role model behaviour**

5.4 Participants agreed that their business had knowledge that could further the rule of law in the jurisdictions in which they operate. Without surrendering their competitive advantage, businesses could engage with counterparts to share knowledge and good practice as a way of improving business practices and the rule of law in a given region.

5.5 Role model behaviour has the potential to shape the conduct of local businesses and the local business community, by reducing business activities that run contrary to the rule of law.

5.6 Framework member activity might extend to knowledge sharing such as teaching/training. A number of participants were already engaged in some form of teaching and believed this was a way to build on a businesses’ core activities to further the rule of law. A good example was a participant working as part of a network of practising lawyers which runs a series of university law lectures across South America. The attraction of this type of activity was advocated by participants because:

- teaching (especially law) directly benefits the rule of law
- resources and costs are shared across a network of companies/lecturers
- there is a simple business case (low cost, high impact, low risk)
- it does not run counter to any individual business interests

5.7 Knowledge sharing and role model behaviour was widely supported by the participants and is a practical way in which the framework and UN Global Compact can support, enable and motivate business (see below).

**Transparency**
5.8 One of the most tangible ways in which business can further the rule of law is through increased transparency in business activities. Driving transparency is relatively low-cost to business but is a useful tool in furthering the rule of law. However, any effort to increase transparency would have to be set in a business context, complementary to existing transparency efforts and be measurable.

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?

Judicial training

5.9 Improving the court system is one of the most significant ways in which the rule of law can be strengthened. As such, judicial training in jurisdictions with burgeoning legal systems would be a real benefit to businesses as it would allow them to have increased faith in the domestic court system and would encourage them to engage more fully with local dispute resolution.

One idea demonstrating how UN Global Compact and the framework could bring business together to take action is to have a branded and co-ordinated rule of law teaching and training initiative for lawyers in the public sector and judiciary in jurisdictions where the rule of law is substantially challenged. Several participants are already engaged on an individual basis in such initiatives in Latin America. Bringing an initiative such as this under the framework (UN Global Compact) banner would make it even more powerful.

Government lobbying/engagement

5.10 Although businesses recognise they can play a key role in furthering the rule of law, it was acknowledged that the actions of governments would always have a greater impact. Negotiations and diplomatic relations between governments offer the opportunity to place rule of law at the heart of international development. Any actions taken by businesses must be set in the context of wider international governmental support.

6. Mobilising Business to Support the Rule of Law
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)?

Business tools

6.1 As stated, there was concern about the proposed business actions’ lack of clarity and ambiguity of language. How can they achieve the actions through their business activities, especially when in many instances they can but influence rather than directly change. One way to address this would be to create supplementary business tools — such as decision-making frameworks — to assist businesses.

6.2 An example of the decision-making framework that the Danish Institute for Human Rights has used was cited as an example of a tool that businesses would benefit from when seeking to incorporate the rule of law into their business.

6.3 Tools should also help a business to build a business case internally — a fiscal case and one that will enlist leadership and other stakeholder support.

6.4 Participants agreed that supplementary tools would allow the framework to be translated into meaningful business actions that would be clear, actionable and measurable.

Supporting businesses

6.5 UN Global Compact can play an important role in promoting the B4ROL framework to governments and businesses across the world. There were concerns that businesses that sign up to the framework could be isolated without robust support from the UN in advocating the framework.

6.6 A key follow-up question is the role of compliance/audit and measurement of the framework.

6.7 With this in mind, some felt that the framework would benefit from some form of kite-marking element. This would require the UN Global Compact to:

- monitor business compliance with the framework
- award rankings to businesses based on their adherence to the framework, and
- promote businesses who support the framework as preferential bidders

UN “Kite-Mark” could be awarded to businesses that sign-up to and comply with the B4ROL principles. Large corporations could then encourage and incentivise smaller businesses in
their supply chain to adopt the B4RoL kite-mark, which could be a powerful lever to drive large scale business compliance with B4ROL principles and conduct throughout the world. Adopting the kite-mark could be based on business self-evaluation to keep the effort manageable, but to be credible it would require auditing of businesses’ compliance on a sample basis.

6.8 Others felt UN Global Compact could strengthen the framework through the introduction of reporting and feedback actions. This feedback could then become part of a ranking process allowing UN Global Compact to introduce an element of compliance/enforcement. However, there was a contrary view that detailed compliance/enforcement might prove difficult, thus the point above on self-evaluation as a potential option.

6.9 It was felt the lack of an explicit register of compliance or any mechanism to encourage compliance may weaken the framework as businesses would not feel as compelled to go beyond lending their name or basic compliance if there was no differentiator between companies or the risk of negative consequences for compliance lapses.

**Vetting organisations**

6.10 UN Global Compact could provide a valuable service in vetting organisations that business could support/partner with in relevant jurisdictions. Identifying relevant, worthwhile business actions was seen as a significant barrier to business engagement. By identifying suitable organisations (fellow framework supporters), UN Global Compact could reduce the burden on businesses and provide a more targeted approach to furthering the rule of law. This vetting and matching of organisations could follow the businesses’ self-assessment (see para 5.1) and would allow UN Global Compact (and other organisations in the UN system) to match businesses to relevant schemes/organisations.

**Access to experts and local networks**

6.11 If the framework is to become a feature of business activity beyond philanthropy, businesses would benefit from access to experts (both local and at a UN level) to discuss rule of law questions and concerns. Any recourse to an UN-backed expert could be noted and constitute part of any kite-marking/compliance process and the overall evaluation of a business’ engagement with the rule of law.

6.12 A practical example of this was raised in the workshop when one participant raised the question: ‘What can we do to reconcile conducting business and supporting the rule of law in jurisdictions where the rule of law is not respected?’ This question gave rise to further questions that it would be useful for businesses to seek advice on:
• What compromises are we making vis-à-vis our business principles?
• Should we consider market exit until the rule of law improves?
• If not, what options are available?
• Where does the balance lie?

6.13 Although acknowledging that conducting business in jurisdictions where the rule of law is weak is challenging, participants were also conscious of the negative impact that withdrawing from a jurisdiction can have on that jurisdiction. It is in this sort of situation that the framework could offer invaluable guidance and support for businesses.

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