

Labour and Business

Rule of law in the context of business and labour

*Address by Business NZ Chief Executive Phil O'Reilly to World Justice Forum,
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The issue of the rule of law as applied to business and labour is obviously critical and of utmost importance to any country. The reason is simple; it is through the workplace that the wealth of the nation is created. As we all know in this room, in an international sense the rule of law as it relates to the workplace is underpinned by the conventions of the International Labour Organisation. And although the decisions and conventions emanating from that institution are a policy overlay and therefore, from an employer perspective, sometimes controversial, what we can all agree on is the need to observe fundamental principles and rights at work

In thinking about how I might contribute today, I was drawn to the four universal principles that the World Justice Project uses to define an effective rule of law. I thought I might pull out one or two key issues under three of those headings that I think are important in terms of business and labour.

One of the universal principles the World Justice Project uses to define an effective rule of law is that laws are “clear, publicised, stable and fair, and protect fundamental rights, including the security of persons and property.” In some countries we obviously see a lack of protection of fundamental rights – sometimes even outright abuse of those rights. Here I might refer to Burma where forced labour is clearly an issue but single examples do not help to answer the larger question.

In more general terms I think it is the role of business and labour to ensure rules really are clear, publicised, stable and fair because too often they are not. In other words, business and labour have a role in holding government to account. It seems to me there is real opportunity for better cooperation between Governments and workers’ and employers’ organisations so that laws are properly understood, are based on proper evidence, on the unique needs of each country and so on.

Another universal principle which the World Justice Project identifies is that “the process by which the laws are enacted, administered and enforced is accessible, fair and efficient”. One of the key issues here is that labour laws are often founded on policy that is not appropriate. In a very useful discussion at the International Labour Conference of 2007 there were some agreed conclusions around the prerequisites for sustainable enterprises. I certainly recommend participants to familiarise themselves with those conclusions. They essentially make the point that, among other things, laws need to be fit for purpose. Regrettably, often employers experience labour laws that are not fit for purpose. This manifests itself in a variety of ways – sometimes laws are too partisan, sometimes, in practice, they cannot be properly implemented.

Almost always, a lack of fitness creates endless disputation, widespread abuse and non-compliance.

It seems to me very important that the social partners and Government ensure an evidence-based framework that enables laws to be promulgated and complied with, taking into account of the circumstances of the country in question. Ideally laws should be based on the idea of sustainable enterprise growth, a concept too often ignored or paid too little attention.

Another principle requires that “the laws are upheld, and access to justice is provided by competent, independent and ethical law enforcement officials, attorneys or representatives, and judges, who are of sufficient number, have adequate resources and reflect the make up of the communities they serve.”

In regard to business and labour, a significant issue with the rule of law is corruption. Just a few weeks ago I was employer vice chair and spokesperson at an International Labour Conference discussion on rural employment for poverty reduction. One of the big issues that came up during the discussion was that employers in rural areas of developing countries often face corrupt labour inspectors. This - at least in part – may be because Governments under-resource their labour inspectorates. Corruption amongst Government agencies, employees and the politicians themselves is clearly an issue for us here in this forum.

Another issue under this principle is that though laws might seem fit for purpose they are not upheld by Governments or upheld in a very lax way. This is commonly because they are simply not enforceable. Lack of resources, monitoring systems or even the will to enforce can all be contributing factors. But failure to enforce sends companies confusing messages and compromises their ability to comply.

Where does this leave us in terms of what we should be doing? First, we should ensure we make a clear and unequivocal commitment to fundamental principles and rights at work. Second, we should be thinking hard about encouraging countries to have laws that are genuinely fit for purpose. And we should be ensuring those laws are properly enforced so that they contribute to sustainable enterprise growth – and that means proper monitoring.

Next we should be ensuring the social partners can properly play their role – in my view most important if we want true democracy and a proper upholding of the rule of law. The players - worker organisations and employer organisations - need to be able to do their part. And very commonly in developing countries they are simply not capable of that.

The ILO is already doing a lot of good work to ensure policies are in tune with the rule of law and first and foremost I think we should be linking with their work programmes. Particularly, from my perspective, this means working through the International Organisation of Employers. By linking with those programmes I think we will add real value to work in progress – and that is not only an efficient use of resources but also the best use of relevant agencies.