

Enforcement and Safety

Speech presented at the HPT Retreat

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Introduction

We live in a turbulent world.

Governments today are serving in a world defined by an interdependent global economy, hyper connected society and an increasingly fragile biosphere.

Governments are facing issues of rising complexity that respect no boundaries. More than ever, the economic, social and political dimensions of local problems are intertwined at the global scale. They respect no boundaries and do not fit the borders we have created.

Our interdependence has left us prone to volatility and unpredictability. The effects of crises in one part of the world are felt around the globe.

Our hyper-connected world generates great wealth but also increasing inequalities where the disruptive capacity of modern IC Technologies outpaces the absorptive capacity of many countries.

We live in a disorderly world that displays increasing frictions and little common understanding on how to resolve conflicts.

This is a good time to be in government.

The demand for change from citizens and elected officials has not been this strong in a long time. People in government today are inventing new ways to govern our society and solve problems that have remained intractable to date.

This is a good time to re-think the role of government in society, re-position the contribution of our public organisations, re-frame public policy issues from a different perspective, and re-conceptualise the functioning of the public sector in a contemporary context.

This time calls for changes going beyond incremental progress. This is a time to lead the public sector through a transformation process to serve in the changing landscape of the world we live in.

Malaysia's Vision 2020

Malaysia has set an ambitious agenda for itself. It aspires to become a high income country with the means to provide citizens with a high quality of life by 2020.¹

Much progress has been accomplished towards this goal since it was launched in the early 1990s. From 1991-2008, Malaysia's GDP grew by an average of more than 6% per year and the number of households living in poverty fell by 58%.²

1 The Honorable Dato Seri Dr. Mahathir Bin Mohamad. Malaysian: The Way Forward (Vision2020). (1991). Retrieved from: <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan003223.pdf>

2 PEMANDU. Government Transformation Program. (Putrajaya, Malaysia: Unit Pengurusan Prestasi Dan Pelaksanaan [Performance and Implementation Management Unit, Prime Ministers' Office], 2010).

From 1990 to 2012, Malaysian life expectancy rose from 70.1 to 74.5 years.³ Most impressive of all, education saw massive gains over the period as the average years of schooling in Malaysia increased by 46% (from 6.5 to 9.5).⁴

These gains show that achieving Vision 2020 is well within reach. While achieving the Vision is important, building the capacity of the public sector to lead transformation and steer society through a period of profound change is equally significant. The challenge for government is to build public institutions that are fit for the challenges of the times and that are able to prepare society for the challenges that lay ahead.

This is the most important task faced by people in government today. It may also be their most important and lasting contribution to the well-being of their country.

This is the path the Sarawak Civil Service chose when it embarked on its transformation journey in 2010 and it is the goal that the State Secretary has set for the Sarawak Civil Service as it works towards an ambitious reform agenda. The capacities to adapt, invent and innovate are the most precious assets of a “world class civil service”.⁵

Leading transformation requires a different way of thinking and openness to a different way of doing things. This brings us to the High Performance Teams Retreat 2015.

HPT Retreat 2015

The theme of this retreat is “Enforcement and Safety”. This theme goes to the heart of the role of government in society.

Enforcement and safety speak to the responsibility of the State to make and enforce rules that promote the collective interest, ensure public safety and maintain order.

In every society, rulemaking and enforcement contribute to building a society where people:

- can live in peace with one another,
- make a living and raise a family with confidence, and
- live their life and pursue their individual interests while accepting the constraints that stem from being part of a broader community.

3 UNDP. Malaysia. (New York: United National Development Program, 2013).

Retrieved from: <http://hdr.undp.org/sites/default/files/Country-Profiles/MYS.pdf>

4 Ibid.

5 Sarawak Civil Service. “Vision”. (2015). Retrieved from: http://www.sarawak.gov.my/web/home/article_view/183/199/

Some of the most important crises around the world today are taking place in countries that do not suffer from too much government but rather from a “lack of State” with the authority to make rules and the legitimacy to have them enforced.

A successful enforcement strategy is one that brings together three inter-related sets of actions by government. It supports measures to:

- Encourage positive public results (i.e. improve health and safety and safeguard legally recognised rights) using tools such as communication, public awareness, community engagement and partnership arrangements.
- Reduce harm to society (i.e. corruption and non-compliance) through targeted actions such as investigations, inspections, and prosecutions.
- Build a law abiding society and citizenry through transparent governance, accountability for results, actions to develop a civic spirit and a commitment to engagement.

A relationship of trust between government and citizens is a key factor in generating a law abiding society. It is not sufficient to make laws, launch new programs and provide public services. The conduct of rule makers, public servants and law enforcement officers must display their commitment to putting the collective interest above all else, and they must themselves behave in accordance with the laws that they have the authority to promulgate and enforce.

Rule makers must act in a manner that elicits respect and encourages the voluntary compliance of citizens with the law. A law abiding society is one where people accept to be governed by laws. Without rules there is no order, and without law abiding citizens, there is no peace and no safety.

A cardinal rule of law enforcement is that no country can enforce all its laws and regulations. The acceptance of citizens is needed to uphold the law at a reasonable price and without recourse to excessive coercive measures.

The High Performance Teams

In advance of this retreat, eleven High Performance Teams have been hard at work, exploring how to address issues that have remained intractable in spite of best efforts to date.

Members of High Performance teams are Master Practitioners. They have vast experience in government and a deep knowledge of the communities they serve. Their expert knowledge and practical experience make them well positioned to invent solutions that will work in practice and in the context where they are expected to take root.

Over the coming days, the HP Teams will push their work further. Their challenge is to figure out what concrete actions would address the issue at hand and what combination of measures would generate better results, reduce harm and encourage voluntary compliance? This is not an easy task.

The Teams will need to figure out what can best be achieved through regulation and enforcement actions and what should be done through other means. They will need to determine how the proposed actions can best fit together to yield better public results, encourage voluntary compliance and propel society forward, as well as uncover the best way to deploy existing capabilities and resources to achieve the desired outcomes.

As a participant, your challenge is to generate strategies that will work in practice. As a group, your challenge is to help each other come up with actions that will achieve Vision 2020—a better future and higher quality of life for the people of Sarawak. Collectively, your challenge is to build a world class civil service.

The New Synthesis

This is where the NS Initiative comes in handy. It will help you explore the vast range of options open to you.

The New Synthesis Initiative is dedicated to practitioners. It blends academic findings, innovative ideas from the world of practice, and the current realities faced by practitioners to create a framework designed to support practitioners as they serve citizens. The NS Initiative brings together the contribution of government, citizens and society to achieve results of high public value.

NS is a tool in the hands of practitioners. It provides a road map to explore how a combination of instruments may work together to generate better results for society. NS is an applied process of discovery. It will not give you answers but it will help you frame the questions and identify the lines of inquiry.

NS Roadmap

The NS Framework is built around four independent but inter-related vectors.

The vertical vectors represent the results pursued by public institutions. Practitioners are encouraged to move beyond agency results to encourage a more balanced approach by re-discovering their public purpose in light of the inter-relationships between societal, system-wide, and agency results.

Public agencies, programs and services serve a public purpose. Their role is to generate results of ever increasing value for society. Public organisations must position their contribution in the broader context of system-wide and

societal results (e.g. tickets for speeding, reduced fatalities, public safety). They cannot fulfill their mission by working alone.

The horizontal vectors explore how to achieve better public results by engaging the contributions of others. In every country, a small group of people have the legal right to use the authority of the State to achieve public results. This is the authority to tax, spend, regulate and ensure compliance through coercive measures.

The authority of the State, although vast, is insufficient to solve many of the problems we are facing as a society. They require the active contribution of multiple organisations across government, among levels of government, and across sectors to bring about viable solutions.

Some results exceed the capacity of government working alone. The question is not so much about what government can do but rather how government can use its authority to lever the contribution of many others and harness the collective power of society.

One of the most fundamental roles of government is to transform people into citizens. The role of government is to generate civic results that convert diverse human communities into a citizenry able and willing to live and build a better future together.

People are not born citizens; we become citizens as we accept the constraints and responsibilities that stem from being a member of a broader community. The actions that people take and the decisions they make in their private life have a significant impact on the overall performance of society.

- There is no law abiding society without law abiding citizens.
- No literacy without people's commitment to learning.
- No public safety without people caring for each other. Citizens are public value creators.

Governing is a search for balance - too much reliance on state authority stifles innovation and imposes a high cost to society. At the same time, too much reliance on market and civil society increase risks and erodes public confidence in the capacity of government to advance the public interest.

The State is the guardian of the public good and the steward of the collective interest in all circumstances. This role cannot be delegated. It is at the heart of the responsibility of the State to steer society, build a better future and improve the human condition.

Positioning: The Power of a Broader Mental Map

Public servants serve a public purpose. Their work contributes to a “bigger cause” that extends beyond the job they hold or the boundaries of the agencies that pay their salaries.

How an issue is framed affects the range of policy options available to solve it. Positioning involves expanding the range of policy options open to government by exploring the inter-relationship between agency, system-wide and societal results.⁶

Think Public Purpose

Articulating this broad public purpose helps to align the contribution of individual programs and services to achieve better societal results. It reconciles the short-term actions of government with the long-term needs of society. It optimises the effectiveness of the whole (societal results) rather than the efficiency of the parts (agency results).

Learning from Practice - Children at Risk

Agencies dealing with children at risk have the statutory authority to remove children at risk if suffering significant harms. In many countries, these agencies have been faced with a growing workload and a limited budget. Coping with the increased workload using the same level of resources is generally seen as a sign of success. However, focusing on the challenge at the agency level obscured the larger problem - that more and more children were facing harm.

What we want to celebrate as a society is the reduction of children at risk—even better would be that all children enjoy the support of families able to fulfill their care-taker role. Re-framing the problem moves agencies upstream to focus on the broader goals of prevention and risk reduction.

The information needed for preventative action already exists in police stations, schools, hospitals, communities. Through re-positioning, the challenge becomes one of inter-agency cooperation, working with others, and sharing knowledge and information to reduce potential risk.

Through cooperation, agencies were able to identify factors for high risk. This allowed for early intervention.

The same factors can be used to identify other families at risk, such as those living in poverty, with low literacy, or with a poor attachment to the labor force. For enforcement agencies, working across and focusing on early intervention in high risk areas could help to improve results.

Think Total System

System-wide results are particularly important for enforcement agencies. Enforcement is part of an overall system of administration. This total system must:

- work efficiently across agencies,
- provide incentives for voluntary compliance, and
- offer a solid basis for enforcement activities.

Enforcement activities cannot compensate for the deficiencies of the administrative systems we have created. Complicated and lengthy approval processes, intricate regulatory requirements and conflicting agency mandates encourage non-compliance. More often than one would like to believe, governments have some responsibilities in non-compliant behaviours.

It is up to government to ensure that it is possible for well-intended people to comply with regulations easily and cost-effectively. The administrative and regulatory system as a whole must be designed to encourage compliance.

Learning from Practice - Illegal Logging in Indonesia

Indonesia has a serious problem with illegal logging. However there have been signs of progress. Data reveals a declining trend in illegal logging since the early 2000s. This is due to the combined effect of a number of factors:

- The signing of the Indonesia-EU VAP that imposes new norms and provides economic incentives.
- The introduction of national level mandatory requirements for verifying the legality of the log source.
- A shift towards using plantations rather than natural forest harvesting.
- Some progress in the recognition of indigenous peoples' rights.

While each factor brings along modest improvements, taken together, they provided an improved basis for enforcement activities and fighting corruption.⁷

Mapping the existing administrative system may be a useful exercise to reveal whether citizens can act in a manner that complies with regulations. This may be particularly helpful when multiple agencies are involved. Mapping the system is the equivalent to walking in the footsteps of those who need to comply with all the regulatory requirements of all the relevant agencies and of the various levels of government.

7 Alison Hoare and Laura Wellesley, *Illegal Logging and Related Trade: The Response in Indonesia*. Chatham House Assessment, (London: Chatham House: 2014).

It is a humbling experience because it reveals the deficiencies of the systems we have created. These deficiencies must be corrected. Enforcement actions can only do so much.

Think High Impact

There will never be enough resources for enforcement agencies to address all non-compliant incidents.

Enforcement agencies must use their scarce resources strategically. They need to target high risks areas and select interventions with high symbolic value. In summary they must achieve high impact with limited resources.

Learning from Practice - Nigeria Copyright Commission

The Nigeria Copyright Commission was confronted by a pervasive problem of piracy of copyright material. Instead of deploying enforcement efforts in all areas where illicit material could be sold, the enforcement agency targeted fifty optical disk plants. In two years the program led to the seizure of 8 million pirated works valued at 11 million \$ USD.⁸ Nigeria was removed from the list of countries where counterfeiting is regarded as pervasive. The latest data indicates further progress in 2011.

A successful harm reduction strategy requires a careful consideration of the scale of intervention. The key is to identify “clusters of harm” large enough to merit intervention and small enough for experimentation.

A targeted enforcement strategy helps to achieve substantial progress over a reasonably short period of time. Progress builds public confidence and encourages voluntary compliance.

Leveraging: The Collective Power

Leveraging recognises that no individual, agency or government possesses all the tools and levers to generate the results we aspire to achieve as a society.

Vision 2020 provides an example of this. Efforts to become a high income country able to generate a high standard of living for its citizens cannot be achieved by government alone. It requires a collective effort by all public agencies, an active contribution by the private sector and civil society, as well as the active participation of citizens.

8 Sylvie Castonguay. STRAP and CLAMP - Nigeria Copyright Commission in Action. World Intellectual Property Organization Magazine, 2008. Retrieved from: http://www.wipo.int/wipo_magazine/en/2008/05/article_0009.html

Think State Building

The good news is that government does not need to do it all for the collective interest to be well served. In many cases, better results can be achieved by government leading when necessary and taking a step back when it is possible to rely on the strength of others.

Leveraging is an exploration of how to pool resources, knowledge and capabilities wherever they may reside to achieve the desired societal, system-wide and agency results at the lowest overall cost for society.

This implies that public organisations are able to:

- Work across multiple boundaries to support government-wide priorities or to address complex issues.
- Steer vast ecosystems of inter-relationship in government and across sectors.
- Rise above the administrative silos we have created when the public interest demands it.

Learning from Practice - Waste Management in South Africa

If government makes it illegal to dump waste in some areas, then government must make sure that it is possible for well-intended people to remove waste legally and at reasonable cost.

In South Africa, problems with waste management led to the adoption of Integrated Waste Management Plans (IWMPs). These include the provision of waste bins, increased frequency of waste collection, alternatives for specific waste streams, public awareness and citizen's engagement in waste management. A strengthening of the by-laws and law enforcement efforts complemented municipal efforts. Since the creation of the IWMPs, illegal dumping has decreased significantly and citizens have benefitted from the improvements to their community.

Co-operation does not happen by accident and it cannot be left solely to good will. It must be supported by systems, practices and incentives. Your plan of action should identify measures that would help you work cooperatively across agencies.

No challenge is too big or too small. Leveraging achieves better public results because governments make better use of available resources.

Think Harm Busting

Discovering a point of vulnerability is another dimension of leveraging that is of particular importance for enforcement agencies.

Crafters of successful harm reduction strategies engage in a rigorous analysis of the actions they wish to eradicate. Discovering a point of vulnerability complements this approach.

In this case, enforcement officers are not looking for ways to encourage voluntary compliance or improvements that may make it easier for well-intended citizens to comply. They are targeting people who are deliberately pursuing illegal activities for their own benefit even if harmful to society.

In this context, enforcement officers are thinking like saboteurs. Their aim is to discover a point of vulnerability to eradicate a system of illegal activities.

The smaller and the more precise the point of vulnerability, the more cost efficient the enforcement actions.

Learning from Practice - Drug smuggling in Mexico

In the 1990s, port-runners were frequently used to smuggle drugs at some border crossing between Mexico and the USA. The approach was simple enough; they would stop at the inspection point, but if detained for questioning they would drive through the crossing, smashing other cars out of the way or anyone foolish enough to get in front.

A number of costly strategies were tested until someone discovered the point of vulnerability; port runners need rapid escape. The solution was to put concrete barriers in zig-zag formation at inspection points.

The customs agency reports that wherever this configuration was put in place the port-runners stopped coming.

Enforcement agencies must think like nation builders to achieve better public results and like saboteurs to reduce harms. This double dimension recognises that in spite of all efforts bad things happen that must be contained.

The two dimensions require a different mental map and different operational approaches. Failure to reduce harm erodes confidence in government and in the capacity of public organisations to protect citizens.

Engaging: Citizens as Value Creators

Citizens are breaking out of their subservient relationship with government (vote, pay taxes, obey the law). They expect to have a say and to play an active role with government in matters of interest to them.

This presents new opportunities for government. Producing public results is a shared responsibility of government AND citizens. “Engaging” explores how a different sharing of responsibilities may yield better public results at a reduced cost.

Think Citizens

Some enforcement agencies are reconsidering their relationship with the public. In some countries there are notable examples of efforts to work with the public to develop a common understanding of the risks and to jointly set intervention priorities.

Some agencies have made a special effort to improve accessibility and responsiveness. They encourage a single point of contact that provides integrated services on behalf of multiple agencies. These measures build a relationship of trust between government and citizens, and encourage co-operation and voluntary compliance.

Other agencies are exploring a different sharing of responsibilities that allow public agencies and citizens to make better use of each other’s assets and contribute to each other’s successes.

Learning from Practice - Spanish National Police

In 2009, the Spanish National Police initiated a social media campaign to increase public awareness of emerging criminal activities (including fraud, drug trafficking, etc.). The campaign used Twitter, Facebook and YouTube to alert the public about emerging scams and recent criminal activities.

The campaign encouraged citizens to be vigilant and report illegal activities. According to the Spanish National Police, useful tips received from citizens led to 350 arrests and the seizure of more than 450 kilograms of drugs.

Use Regulation with Moderation

Much can be done without using rules, ordinances and enforcement. In fact, a regulatory approach may be counterproductive to address some issues.

Regulation and enforcement should be used in moderation. Public administrators should satisfy themselves that more flexible and less costly approaches are used whenever possible.

Learning from Practice - Centre for Children Working on Ankara's Streets

On the streets of Ankara, one could find children from underprivileged families seeking to survive by shining shoes, wiping car windshields or selling pencils. Recognising that punitive measures (arrests, juvenile courts, etc.) could not address the problems of poverty and child labour, the Ankara Metropolitan Municipality established a centre for children working on the street. The Centre provides access to education, offers recreational activities and serves a free lunch for children from underprivileged families.

Since the opening of the Centre, the number of children working on the street has fallen from 5,000 in 1997 to 1,000 by 2012.

Regulatory instruments are powerful but they also have their limitations and drawbacks.

They are difficult to keep up to date. They accumulate over time and create rigidities. They are costly to implement. Regulation and enforcement should be used selectively and in combination with other instruments.

Conclusion

Creating a law-abiding society is no small task. It involves working to ensure that the State's authority is recognised and respected by citizens and that the systems in place facilitate and support voluntary compliance.

The state must be able to ensure its dominance while realising its authority is not unconditional. Government must should to build trust with citizens to grow public support and consent. The authority of government is earned, not granted.

Exploring new avenues for thinking about compliance and enforcement can help improve the options available to practitioners as they work to uphold the rule of law and sustain a security and law-abiding society.

And so the journey continues...

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