

## **Rule of Law, Citizenship and Enforcement Strategies**

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*with the assistance of*  
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NS is an International Co-operation Project led by : The Honourable Jocelyne Bourgon P.C., O.C.

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## About the Authors

The Honorable Jocelyne Bourgon, P.C., O.C. is the Leader of an international collaborative effort called the New Synthesis Initiative. She has had a distinguished career in the Canada Public Service. She has served as Deputy Minister in several major departments, as Secretary to the Cabinet for federal-provincial relations, and later as Clerk of the Privy Council and Secretary to Cabinet. She is the first woman to have held the latter position in any G7 country.

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## Introduction

This paper was prepared by the NS team in advance of a three-day workshop to be conducted in collaboration with the Sarawak Civil Service in March 2015. The event will provide an opportunity to discuss emerging ideas about enforcement and compliance and to test them through exploratory discussions with more than 100 senior leaders in different domains of practice. The results will enrich the findings generated by the *New Synthesis Initiative (NS)*.

The NS Initiative is dedicated to preparing governments to be fit for the time. It is an international collaborative effort aimed at modernising public administration. It integrates academic findings from various disciplines and the lessons learned in practice from various parts of the world.

## Public Sector Reforms are Context-Specific

Malaysia is “young” in governance terms. It was occupied by the Japanese (1941-1945) and the British (1946-1963). Malaysia was formed on September 16, 1963 as a federation of Malaya, Singapore, Sarawak and Sabah. In 1965, Singapore left the federation, giving Malaysia the form that remains today.

Malaysia has set ambitious goals for itself. By 2020, it aspires to become a *high income country* that provides citizens with a high quality of life.

Malaysia’s Vision 2020 was unveiled by former Prime Minister Tun Dr. Mahathir Bin Mohamad on February 28, 1991 (Mohamad, 1991). It outlined nine goals encompassing economic, political, social, spiritual, psychological and cultural dimensions of growth, challenging Malaysia to work towards these targets in pursuit of development. Vision 2020 requires government to play a key role to steer society through a process of change and transformation. It requires public institutions and public organisations that are fit for the times and able to adapt to changing needs and circumstances. Public sector reforms must *evolve in tandem* with the transformation that government leaders

envisage for the country as a whole. In order to achieve the goals set by Vision 2020, the public sector must become an agent of change. It must be a living example of the changes government aspires to achieve in the country as a whole.

Malaysia has made steady progress towards the Vision 2020 goals. From 1991-2008, its GDP growth averaged 6.2 percent, performing relatively better than the average 5 percent growth experienced by neighbouring ASEAN countries (PEMANDU [PMO], 2010). Over the same period, the number of households living in poverty decreased by 58 percent (PEMANDU [PMO], 2010).

Education saw some of the largest gains, with mean years of schooling increasing by almost 46 percent from 6.5 in 1990 to 9.5 in 2012, while average life expectancy rose from 70.1 to 74.5 over the same period (UNDP, 2013). This progress culminated in a more than 10 percent rise in Malaysia’s score on the Human Development Index, which increased from 0.635 in 1990 to 0.769 in 2012 (UNDP, 2013). Over the period, income inequality decreased only slightly from a GINI score of approximately 46 in 1992, to 43 in 2012 (UNDP, 2014). However, despite rising trends, a 2009 report by the Government of Malaysia warns that “a tremendous effort is still required” to reach the goals of Vision 2020 (PEMANDU [PMO], 2010).

Sarawak is a multicultural mosaic of people from a diversity of cultures and ethnic groups. The population of 2.62 million people counts 27 ethnic groups. The largest groups are Iban, Chinese, Malay, Bidayuh and Malanau. Sarawak is governed through a multilayer and complex system of governance including:

- 13 ministries
- 11 departments
- 11 residents offices
- 31 district offices
- 24 local authorities and
- 22 statutory bodies

The Sarawak Civil Service (SCS) aspires to become a “*world class civil service*” (Sarawak Civil Service, 2015) recognised for high standards of performance, a culture of innovation, and a work ethic that builds trust and confidence in the public sector.

Since 2010, the SCS has launched a number of initiatives in support of this goal and the efforts are ongoing. The SCS has used High Performance Teams (HPT) to shape innovative ideas and to move the public sector reform agenda forward. These teams are headed by senior leaders. They usually work over several months to dig deep into priority areas of change and to develop action plans. The work culminates with a retreat that brings together SCS public sector leaders. This event ensures shared knowledge and coherence across the civil service in support of the SCS change agenda. The next HPT retreat will take place in March 2015.

### HPT Retreat 2015: Compliance, Enforcement, and Self-Regulation

The State of Sarawak has managed an ambitious public sector reform agenda over many years. In 2015, the HPT retreat will focus on *enforcement and safety*. This means:

- ensuring enforcement “without fear or favour”,
- resolving coordination issues “between agencies”, and
- encouraging self-regulation.

In the words of the State Secretary “the ultimate goal of enforcement is elevating the quality of life of the *rakyat* through eliminating vice, upholding integrity and securing the security of the *rakyat as a whole*”.

The HTP retreat will focus on developing practical enforcement strategies in *11 priority areas*:

- Illegal logging
- Illegal sand extraction
- Licensing of entertainment and retail outlets
- Illegal dumping
- Open burning
- Water transport safety and river cleanliness
- Water catchment
- Road safety
- Border management
- Theft of fresh fruit bunches
- Second hand selling

In the context of the HPT retreat, enforcement is taken in its broader meaning, covering activities aimed at encouraging compliance and achieving the desired regulatory outcomes. As a result, an *enforcement strategy* includes measures to:

- *Achieve positive results* (i.e., improve health and safety, safeguard legally recognised rights, etc.) through the use of tools such as information, public awareness, social media, community engagement, partnership arrangements, etc.
- *Reduce harm* (i.e., corruption, violation, non-compliance, etc.) through targeted actions including investigations, inspections and prosecutions.
- *Build a society governed by the rule of law* and promote a law-abiding culture in the citizenry through transparent governance, accountability for results, a commitment to engagement, actions to develop a civic spirit, etc.

An effective enforcement strategy provides concrete incentives for regulatees and appropriate guidelines for enforcement staff. It starts with clarity of purpose. It entails a sharing of responsibility between government, citizens and society. It encourages experimentation and learning. It monitors positive results and publicly reports on the reduction of harms.

A challenge for government is to develop and apply *enforcement strategies* that achieve the desired public outcomes while keeping regulatory costs and administrative burdens as low as possible. This paper reviews key concepts relevant to crafting enforcement strategies. It brings together foundational ideas, recent academic works and emerging practices. It proposes *a road map for practitioners* who shoulder the responsibility of crafting enforcement strategies that:

- Build a society governed by the rule of law.
- Prevent harm and reduce risks that stem from living in a modern society.
- Promote a citizenry of law-abiding citizens who enjoy the rights and share the responsibilities that come from being a member of a broader human community.

## Back to Basics: Rule-Making, Rule Enforcement

Rule-making and rule enforcement are indispensable for the orderly functioning of society. This is how the state generates the “rules of the game” for citizens, business, government and civil society. It defines how decisions are made, how we govern ourselves, live together and resolve our differences as members of a broader community.

### The Rule of Law

Regulations and regulatory enforcement are key instruments of governments to achieve societal objectives and effective compliance. These functions are at the heart of the role of government in society as the *guardians* of the public good and *the steward* of the collective interest. Serving the collective interest includes ensuring public safety and maintaining order. These functions contribute to creating a well-functioning society and building trust in government.

The importance of rule-making and rule enforcement was recognised by ancient civilisations (Aristotle, Plato). It took on an expanded meaning in the medieval period in Europe in 1215 with the Magna Carta, which recognises that no person is above the law, not even the sovereign (Angelis, 2003). A.V Dicey

popularised the expression “rule of law” in the 19<sup>th</sup> century to describe the principle that society should be governed by law rather than the arbitrary judgement of rulers.

There may be much debate about “what is a good law” and much disagreement about when to regulate or what should be the content of specific laws aimed at addressing particular issues. But a review of the literature reveals a large consensus about the *characteristics of laws* that contribute to building a society governed by the rule of law.

- Laws should be prospective and universal. They should apply to everyone irrespective of their status in society (Hiil, 2007).
- Laws should be clear, adequately promulgated and accessible to those who are expected to abide by the rules of the state (World Justice Project, 2014).
- The state should ensure fair and efficient law enforcement and independent adjudicative procedure (Lord Bingham, 2007).

The rule of law governs relationships between the state and citizens as well as among citizens. A society governed by the rule of law benefits from a number of advantages, including greater certainty and predictability, fairness and equality of treatment. These conditions are beneficial to the development of a market economy. They proved to be of immeasurable value to any society that underwent a profound transformation process associated with democratisation and industrialisation at the turn of the 20<sup>th</sup> century. The literature provides empirical evidence that the rule of law is positively correlated to economic growth and social stability (Angelis, 2003).

## The Rule-Makers and the Regulatees

The reputations of the rule-makers and the relationship of trust between government and citizens are key factors in generating a law-abiding society. A law-abiding society results from the *consent of citizens to obey the law*. This consent is not unconditional; it is influenced by the behaviour of rulers.

Rule-makers should be concerned about making “good rules” when needed, and equally concerned about behaving in a manner that elicits respect and encourages voluntary compliance (OECD, 2000). The behaviour of law-makers and law enforcement officers is a key factor in maintaining a relationship of trust between government and citizens. Their conduct should reflect their commitment to behaving in accordance with the law they have authority to promulgate and enforce (American Bar Association). This view is not new. It was endorsed by ancient Asian philosophers including Confucius. Law-makers should obey the law to earn public trust, and refrain from making or enforcing rules in a manner that displays cruelty, oppression, injury or mean spirit (Shin, 2012).

The cardinal rule of law enforcement is that *no country can enforce all its laws and regulations on its own*. The acceptance of citizens is needed to uphold the law at a reasonable price and without recourse to increasingly coercive measures. A country develops a law-abiding society when:

- Citizens recognise the authority of the state to make law to serve the collective interests.
- The state is able to ensure compliance on a voluntary basis *in most cases*.
- The state has the capacity to enforce its rule to deter non-compliance in *cases* that harm the collective interest.



## Different Times, Different Ways

Public office holders must have a good appreciation of the fundamental principles of governance that have given rise to their role in government and in society, but they must also adapt their practice to the changing landscape of the world we live in and to their specific circumstances, including history, culture and capabilities. They must constantly explore new ideas and experiment with what may work in practice to address emerging public policy issues.

## Emerging Trends in Enforcement Agencies

In preparation for the HPT retreat, the NS team scanned recent literature to identify emerging trends in regulatory enforcement and compliance. Most notable is the work of Sparrow (1994, 2008), Lodge and Wegrich (2014), and Baldwin, Cave and Lodge (2012). A number of trends are worth noting. They are described below.

**A different relationship with the public:** Enforcement agencies are reconsidering their relationship with the public. In many countries, there are notable examples of efforts made by enforcement agencies to work with the public to build a relationship of trust, develop a common understanding of the risks and concerns of the communities and agree on intervention priorities.

*Learning from Practice: Spanish National Police*

*In 2009, the Spanish National Police initiated a social media campaign designed to leverage the assistance of society in reducing crime. The campaign involved the launch of a Twitter feed, Facebook page and YouTube account to increase public awareness of emerging criminal activities. The campaign encouraged citizens to report illegal activities. According to the Spanish National Police, useful tips received from citizens have led to approximately 350 arrests and the seizure of more than 450 kilograms of drugs.*

**A greater concern for accessibility and responsiveness:** This trend may take many forms. Some agencies encourage a single point of contact, provide integrated services to span multiple agencies or encourage one-stop-service delivery.

*Learning from Practice: Fishery Compliance in New Zealand*

*In New Zealand, difficulty accessing official information on fishing regulations (catch size etc.) reduced the ability of citizens to comply with fishery standards and environmental regulations. To enhance compliance, the Ministry of Fisheries designed a smart-phone application to update fishermen on changes to the minimum size and number of fish that can be caught each day, as well as access on the different rules across fishing zones.<sup>1</sup>*

**A re-definition of the unit of work:** Enforcement agencies are shifting their attention from incidents, violations or cases of non-compliance, to a higher level of aggregation. The work is organised around problems, risks or "clusters of harm," whatever makes the most sense to achieve measurable progress in practice. This involves grouping incidents into problems areas, analysing the multiple factors and interests involved, shaping an intervention, and monitoring the impact of the implemented solution.

*Learning from Practice: Unlawful Removal of Shoreline Vegetation*

*The Florida department of Environment identified a problem with the unlawful removal of shoreline vegetation in central Florida. It initiated a one-year targeted enforcement strategy (1999-2000). Ninety-four violations were identified in a given area; ninety were resolved through voluntary restoration projects. The four enforcement actions led to prosecution, and expedient legal decisions sent a powerful message about the commitment of government to address the issue. It led to a significant reduction of violations in the area and other parts of Florida.*

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<sup>1</sup> For more information on this case, please visit <http://nsworld.org/discoveries/technology-enabled-fishery-compliance-new-zealand>

**Transparency about risks and priority-setting:** There are not, and never will be, enough resources to address all offences. Enforcement, and in particular inspection agencies, are practising new forms of transparency with the public. They cease to defend the myth of complete coverage and instead engage in public conversation about the need to make choices and set priorities. They set targets in specific areas and report on the impact of their efforts publicly.

*Learning from Practice: Reducing Tax Evasion*

*Systemic corruption had long been a problem for the City of Medellin, Colombia. The government recognised that it could not address all aspects of the problem, choosing instead to focus on two major concerns: public procurement and tax evasion. In 2003, the city had procured a mere 7 billion pesos to pay 84.4 billion worth of bills. To address the issue, the city launched a transparency campaign to increase awareness of the financial problem. Signs were placed at the sites of all public works projects proclaiming “Here are your tax dollars at work,” and providing citizens with a description of the project and the costs. The campaign reassured citizens that their tax dollars were being well spent and led to a nearly 45 percent increase in tax return submissions from 2003-2007.*

**A Diversity of Approaches:** The range of tactics, tools, instruments and approaches to tackle problems is expanding. Successful strategies are likely to include education, information, partnership with other agencies, negotiated settlements as well as warnings, arrests and prosecution, and various forms of citizens’ engagement. Effective solutions increasingly require collaboration among a number of agencies to access the knowledge and the tools needed to bring about a viable solution.

*Learning from Practice: Community Water Transportation Initiatives*

*Water transportation is the blood line for many communities. It entails economic, social, environmental and technological dimensions. It requires a coordinated approach across government agencies and an integrated approach to development and enforcement including infrastructure development (public utilities and sewage treatment), safe landing sites, licensing of a diversity of users (small, large, tourism), community engagement and targeted enforcement. These are some of the lessons of community-based initiatives conducted in Bangladesh, Indonesia and Malaysia with the support of UNDP.*

The challenge for regulatory agencies and law enforcement officers is to figure out *the mix of practices* and the *sequencing of actions* that may yield the best results. How can new practices complement existing approaches and **how do they all fit together?** This is where the New Synthesis (NS) comes in.

## From Ideas to Actions: The New Synthesis Initiative

The NS-Initiative is dedicated to preparing government for the challenges of serving in the 21<sup>st</sup> century. It explores the new frontiers of public administration in theory and practice by blending lessons from innovative practices and multi-disciplinary academic findings.

*The NS-Initiative is an applied process of discovery.* It provides practitioners with a road map to explore the dimensions of the challenges they face in practice (Bourgon, 2014).

A roadmap is not the journey. People in their context will map out and take on a journey to lead public transformation. Public sector leaders create their own “New Synthesis” to address the challenges they are facing in practice by bringing together the role of government, the active participation of citizens (and communities) as well as the active contribution of multiple agents across government and across sectors.

## The New Synthesis Roadmap

**Figure 1: The New Synthesis Framework**



Source: Jocelyne Bourgon, *A New Synthesis of Public Administration* (Montreal, Kingston: McGill-Queens University Press, 2011), 36.

Public administration is more than systems, structures and organisational charts. It is a relationship that binds government, citizens and society together. The NS framework is built on four independent but inter-related vectors. The key elements can be summarised as follows:

- The role of public organisations, programs and services is to serve a **public purpose**. Public organisations must position their actions and the use of their resources in the broader context of system-wide and societal results.
- The authority of the state, although vast, is insufficient to generate solutions to all the problems we face as a society. The authority of the state can be used to leverage the contribution of multiple agents across government and the collective power of society. Producing public results is a shared responsibility.
- Citizens (their families and communities) are public value creators. Their actions and decisions are essential for building a society worth living in. Government must engage citizens as public value creators and build the resilience of society to adapt to the changing landscape of the world we live in.
- 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 role of government in society and of its authority for rule-making and rule enforcement.

At the crux of every governance system, there are tensions to manage, trade-offs to evaluate and choices to make. Governing is a search for balance. There is a broad and expanding range of choices open to government. The challenge for practitioners is to uncover a combination of actions and elements to generate the desired public outcome at the lowest overall cost to society.

An NS exploratory journey accepts no ifs and buts. It is about achieving results of value to society with the resources, skills, talents and capabilities available at this time and in this place. The starting point

is reality as it is. One of the key findings of the NS Initiative is that there are always enough resources to make progress.

The NS Framework will be used to facilitate the discussion of 11 teams confronted with a diversity of enforcement challenges during the HPT retreat in March 2015. The challenges faced by regulatory agencies and enforcement officers have **particular and unique dimensions**. In preparation for the HPT retreat, the NS team has undertaken new work to explore the implications of the NS framework most relevant to the compliance and enforcement role of government.

## Generating Public Goods AND Reducing Public Harms

Enforcement agencies face a different set of challenges than other government agencies. Like them, they must encourage the production of public goods and positive results for society. But unlike them, they are also responsible for the reduction, control and containment of particular classes of harms (Sparrow, 2014). This is a *distinctive characteristic of law enforcement agencies*.

Their operational enforcement strategy flows in two directions at once; they use their authority to encourage *positive results* and to prevent *negative results*. The first dimension revolves around a distributed effort for building support, encouraging awareness, using incentives that encourage self-responsibility and responsible behaviour. The second involves targeted efforts, intelligence-gathering, forensic analysis, arrest and prosecution. Both are needed and inescapably linked.

For instance, it is unlikely that smallpox would have been eradicated if the focus had been exclusively on promoting healthy living. A mass vaccination campaign combined with ring-containment of outbreaks was needed. Campaigns for road safety have significantly reduced road accidents. But targeted enforcement efforts to prosecute drunk drivers, enforce safety belt requirements and get dangerous drivers off the road were needed to convince the public that governments were serious in their efforts.

Environmental protection agencies are responsible for environmental stewardship AND pollution control. Police forces must work with citizens and communities to promote public safety, AND they must be able to control crime, make arrests and prosecute criminals. This double dimension of an operational enforcement strategy recognises that in spite of all efforts, *bad* things happen that must be contained. The two dimensions require a different mental map, a different way of thinking and different operational approaches. Failure to *reduce harms* negatively affects public support for government actions and discourages voluntary compliance.

The NS-Initiative has primarily focused on improving the likelihood of successful government actions to generate desired public outcomes. The following sections give special attention to the reduction of *harms*. It takes into account the emerging trends identified during the literature review.

## The Building Blocks of Harm Reduction Strategy

Several authors have put forward their views of the main steps to craft an *enforcement strategy*. Baldwin, Cave, Lodge (2012) described the main steps for enforcing regulation in the following way:

**Detecting:** Gaining information on undesirable and non-compliant behaviour.

**Responding:** Developing policies, rules and tools to deal with the problems.

**Enforcing:** Applying selected strategies at the ground level.

**Assessing:** Measuring the success or failure of the enforcement activities.

**Modifying:** Adjusting tools and the selected strategy to improve compliance and deter the non-compliant behaviours.

This is a useful starting point and a reminder that, whatever the merits of the selected strategy, there is a constant need to learn and adapt in light of what is happening in practice. That said, from a practitioner's perspective, it may be useful to consider a more *expansive cycle* to craft a harm reduction strategy starting with identifying the problem and framing the issues.

### 1. Picking the Scale of Intervention

Framing the issue is of critical importance for a successful harm-reduction strategy. It requires a careful consideration of the scale and scope of the problem. When the frame of the issue is too broad, it exceeds the authority of enforcement agencies even when working together (e.g. climate change and poverty alleviation require political leadership more than law enforcement). When it is too narrow, the work gets lost in individual cases and incidents.

Sparrow (2008) argues that the most successful harm reduction strategies are framed in the *space between*. This means that the problem must be large enough to reveal a pattern of cases but smaller than a general class of harm. He proposes five levels at which harms can be defined.<sup>2</sup> Building on his work, the NS team has generated a simplified version that HP teams may find useful in their deliberations in March.

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<sup>2</sup> For more information on Sparrow's taxonomy of successful harm reduction, see: Malcolm Sparrow, (2008), *The Character of Harms: Operational Challenges in Control*. (New York, USA: Cambridge University Press).

**Table 1: Problems Patterns and Opportunities**

<p><b>Societal and national issues</b></p>	<ul style="list-style-type: none"> <li>• Broad categories of harm (e.g. poverty, corruption) requiring political support.</li> <li>• Involve competition among desirable public choices and trade-offs.</li> <li>• Involve ideological preferences.</li> <li>• International comparative data available.</li> </ul> <p><i>Opportunity for government-wide priority-setting</i></p>
<p><b>Crises and emergencies</b></p>	<ul style="list-style-type: none"> <li>• Specific harms that have escalated to crisis proportions.</li> <li>• Visible to the public.</li> <li>• Getting political attention.</li> <li>• Failure to control is a source of embarrassment.</li> </ul> <p><i>Opportunity for inter-agency cooperation and public innovation</i></p>
<p><b>Grey middle ground</b></p>	<ul style="list-style-type: none"> <li>• Large enough to merit intervention but small enough to provide time for experimentation.</li> <li>• Visible to the relevant enforcement agencies.</li> <li>• A time for detecting patterns of harms and risks and preventing further harm before it reaches crisis proportions.</li> </ul> <p><i>Opportunity for targeted harm reduction strategy</i></p>
<p><b>Problems and patterns</b></p>	<ul style="list-style-type: none"> <li>• Sufficiently small for early detection and preventative action.</li> <li>• A propitious time for experimentation with non-regulatory instruments.</li> </ul> <p><i>Opportunity for education and prevention</i></p>
<p><b>Daily dashboard</b></p>	<ul style="list-style-type: none"> <li>• Daily cases or incidents.</li> <li>• Handled through routine processes.</li> </ul> <p><i>Opportunity for intelligence-gathering and improving timeliness</i></p>

**Learning from Practice: Preventing Piracy in Nigeria**

The Nigeria Copyright Commission was confronted with pervasive piracy of material. Instead of deploying enforcement efforts in all areas where illicit material could be sold, the strategy targeted 50 optical disk plants. By identifying and targeting the main point of vulnerability, the agency reduced piracy with limited efforts. As a result, Nigeria was removed from the list of countries where piracy and counterfeiting is regarded as pervasive. From 2005-2007, the STRAP program led to the seizure of more than 8 million pirated works valued at almost \$11 million (USD) (Castonguay, 2008). [Note: the latest data shows further progress in 2011].

## 2. Think Dynamic System

Acting at the most favourable scale improves the likelihood of a successful enforcement strategy. This is the beginning.

Crafters of harm-reduction strategies engage in a systematic and open-minded inquiry about the issue. They are seeking to understand the *dynamics* of the various components of the harm they want to eradicate. An important step is to gather data and information about the issue, the scale, the scope and the relevant elements. How much is really known about the issue? This is not about lengthy analysis but about the capacity to pool existing knowledge from a diversity of sources, across government agencies, across levels of government and publicly available sources. (Baldwin, Cave, Lodge, 2012).

Crafters of harm reduction strategies are looking for patterns of incidents and concentration of risks, formulating and testing hypotheses about contributing factors, and searching for a nexus of vulnerability to unravel the issues. They are looking for *patterns of incidents*, then molding and testing different problem definitions. What makes this approach efficient is that one only needs to find one *point of vulnerability* to make progress.<sup>3</sup>

### *Learning from Practice: Drug Smuggling at the US-Mexico Border*

*During the 1990s, port-runners were frequently used to smuggle drugs at some US-Mexico border crossings. The approach was simple enough; they would stop at the inspection point but if detained for questioning they would drive through, smashing other cars out of the way or anyone foolish enough to get in front. A number of strategies were tested, all increasingly costly and dangerous 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.*

Some harms are the result of organised groups (e.g., drug-smuggling, border-crossing, counterfeiting). Some are mostly invisible with low rates of reporting (e.g., white-collar crime, corruption). Some result from ignorance and inadequate awareness of the regulatory requirements. Different issues require different operational enforcement strategies.

Part of this work is to consider the interests at play. Why do offenders behave the way they do? What is in it for them? What are the causes, rewards and risks? What can be learned from those who voluntarily comply?

## 3. Map out the Existing Administrative System

Some problems cannot be resolved through enforcement efforts. Capturing, mapping and critiquing existing administrative practices are an essential part of the process. It is a humbling experience. The question is: to what extent *is government part of the problem* or even the cause of non-compliance?

More frequently than one would imagine, governments have some responsibilities in non-compliance. To limit non-compliance, government must ensure that it is possible for citizens *to comply*. In other words, it must be possible to avoid the behaviour that regulation prohibits:

- If it is illegal to *dump waste* in some areas; then sites for dumping waste legally must be available.
- *Burning illegal waste* means that government must ensure it is possible to get approval to do so legally in a healthy, timely and safe manner.

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<sup>3</sup> For more information, please see p 15-20 in Jocelyne Bourgon. (2013). *A Self-Help Guide for Practitioners*. (Ottawa: Public Governance International).

Mapping the existing administrative system helps to reveal whether a reasonable person can act in a manner that complies with state requirements and regulations.

Non-compliance could result from other *administrative deficiencies* such as (Doern, Prince, Schultz, 2014):

- Regulatory requirements that accumulate over time and create a maze of inextricable complexity.
- Regulatory agencies whose mandate is rife with contradictions, conflicts and rivalry.
- Conflicting actions between levels of governments.
- The absence of priorities or the inability to get necessary policies and rules approved in a timely way.
- Lengthy or slow approval process.
- Delayed justice.

A *mapping exercise* can be done relatively quickly. It is essentially done by “walking in the footsteps” of regulatees to fulfill all the regulatory requirements of the relevant agencies and at various levels of government. With the map in hand, it is then possible to bring agencies together to streamline the process. Small changes may make a big difference for people who prefer to avoid the risks of non-compliance if the system could take their needs and circumstances into account. It is also possible to involve interested parties in co-creating policy with government in order to simplify regulatory requirements without compromising the desired public outcome (Bourgon, 2011). Some problems can best be resolved by rethinking existing administrative practices.

***Learning from Practice: Illegal Logging in Indonesia***

*Indonesia has a serious problem with illegal logging and the associated trade. Data reveal some improvements since the early 2000's when the government began re-thinking the overall approach and the administrative system to support it. This includes the signing of the Indonesia-EU VAP; the introduction of national-level mandatory requirements for verifying legality; a broader engagement with stakeholders and civil society, some progress in the recognition of indigenous peoples' rights, and a shift towards plantations rather than natural forest harvesting. This provided an improved basis for targeted enforcement and fighting corruption (Chatham House, 2014).*

***Learning from Practice: Waste Management in South Africa***

*In 2007, the Hibiscus Coast Municipality launched the “Siyazenzela” initiative to address illegal dumping resulting from a lack of regular garbage collection by local authorities. The program employs local citizens as “waste collectors” tasked with removing waste from households and maintaining neighbourhood cleanliness. As payment for their service, the municipality provides waste collectors with basic household supplies and fresh produce on a bi-weekly basis. Once a week, the municipality removes waste collected by the citizen collectors from a central collection centre.*

The state has a responsibility to make it possible for people to obey the law in a responsible and economical way. It has a responsibility to provide administrative systems that work, make sense, and operate in a coherent manner. This requires more than public awareness and the enforcement of disaggregated elements. It requires a government-wide approach to problem-solving and enforcement.

The HP teams should pay special attention to existing administrative practices across agencies. They should look for ways to bring about coherence, simplicity, clarity and timeliness to the administrative functions of government. This would generate favourable conditions for enforcement and harm-reduction strategies.



#### 4. *Monitor Progress and Report Publicly*

Enforcement strategies for harm reduction should monitor and report on reduction of harms to society rather than reporting on efforts.

Regulatory agencies may never be able to prove a direct causality between action and impact. They may not be able to measure the impact of preventative actions. Leaving that aside, people care if the crime rate is declining and thieves are prosecuted, the death toll due to car accidents is reduced and endangered species are protected. People and government need to know if their efforts yield results, generate progress as a society and if things are moving in the right direction.

Tracking and reporting the reduction (or increase) of risks, harms and incidents is important to gain public support for government actions. It is also necessary to adjust enforcement strategies to take account of changing risk patterns and emerging issues. No strategy is fit for all times; they need to adapt and co-evolve with society.

#### 5. *A Justice System that Encourages Compliance*

At the end of the day, a harm-reduction strategy promotes the understanding that non-compliance causing harm to society will be punished. A well-functioning justice system provides credibility for the law enforcement efforts of the state.

People accept not to take justice in their own hands because they trust public institutions to ensure that justice will prevail. Citizens expect that law-abiding behaviour will be rewarded and that those who break the law will be punished. They expect *justice of outcomes and of procedure* (Tyler, 1990). The lack of evidence of either discourages voluntary compliance.

Justice W. Gladstone coined the phrase "justice delayed is justice denied" in the 19<sup>th</sup> century. It is an important reminder that the court system must be able to fulfill its duties expeditiously and efficiently. But many other circumstances may erode public confidence in the justice system, such as:

- Repeat offenders not being sanctioned because of their connections.
- Convictions being overturned in court due to poor case work by law enforcement officers.
- Excessive delays.
- Bribes and corruption of law enforcement agencies, public-office holders or judges.
- Political interventions in court proceedings or a lack of adequate separation between the executive, legislative and judiciary.

Litigation is costly for society and for law-enforcement agencies. It is not the preferred course of action but a necessary and indispensable part of the system for a society governed by the rule of law. Improving enforcement actions may have limited impact if they cause cases to pile up in courts and if ultimately, there are few rewards for obeying the law.

## Law-abiding Citizens: The Key to Successful Law Enforcement

Citizen's expectations of government are changing. They expect to have a say in matters that interest them most and to play an active role *with* government to produce results of value to them and society. Furthermore, modern information and communication technologies give them the means to ensure their voice will be heard (Bourgon, 2014). These changes also provide government with an opportunity for a different sharing of responsibilities with citizens, their families and communities. They offer the possibility of changing a subservient relationship to one of mutuality and shared responsibility to produce results of higher value to society.

### *Voluntary Compliance*

The essential ingredient of a law-abiding society is a citizenry that voluntarily obeys the law adopted by law-makers. The willingness of citizens to obey the law is driven by a desire to live in a secure and orderly society. This result cannot be achieved individually. It requires a collective recognition of the authority of the state to make law, and a general acceptance of the obligation to respect the law (Oded, 2012).

A key question therefore is what can government do to encourage voluntary compliance and law-abiding behaviour? Or put differently, what can government do to ensure that citizens pursue their individual interest in a manner that also promotes the collective interest? A review of the literature reveals some avenues that may be of interest to the HP teams.

### *Regulation if Necessary but Not Necessarily Regulation*

An OECD study (2000) revealed a negative correlation between increased legislation and compliance, in particular for regulation affecting business. When the burden becomes too high, people just give up. Furthermore, less rigid and less costly avenues should be explored first wherever possible.

#### *Learning from Practice: Centre for Children Working on Ankara's Streets*

*In Ankara, internal migration and unplanned urbanisation had led many children from underprivileged families to seek employment on the streets by shining shoes, wiping car windshields, and selling tissues, pencils, and Turkish bagels. Recognising that traditional punitive measures were unable to contain the child labour problem, the Ankara Metropolitan Municipality established the Centre for Children Working on Ankara's Streets. The centre provides underprivileged children with access to educational resources, physical recreation training programs (judo, football, wrestling), social and cultural activities (such as picnics and painting classes), and serves a free lunch. Since the centre was opened, the number of children working on the streets has fallen from 5,000 in 1997 to 1,000 by 2012.*

### *Co-creation and Co-production*

People are likely to be more supportive of government actions if they feel they were given a chance to contribute. *Co-creation* brings together public agencies, interested stakeholders and those most directly affected, to shape a policy response adapted to the context of where it will be implemented and where it must take hold. This approach has been used successfully to resolve conflict at the community level and forge consensus around pragmatic solutions.<sup>4</sup>

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<sup>4</sup> For more information on co-creation, co-production, and citizen engagement, please see: Jocelyne Bourgon. (2013). *A Self-Help Guide for Practitioners*. (Ottawa: Public Governance International).

*Co-production* sees people as assets and value creators. It recognises that government cannot do it all. It has been used successfully by various countries to resolve issues such as cyclist accidents, public safety, etc.

***Learning from Practice: Singapore Prison Service (SPS)***

*In Singapore, high rates of recidivism presented significant costs to society. To help re-offenders, the SPS altered its focus from an organisation designed to keep prisoners in jail to one that worked on integrating ex-offenders back into society. To do so, the SPS engaged actors from outside the prison system, using the collective resources and capacities of social workers, policy makers, community members and the judicial system. Through an approach emphasising prevention, rehabilitation, reintegration and after-care, the SPS reduced the rate of recidivism from 44.4% in the late 1990s to 26.5% in the following decade.<sup>5</sup>*

***Behavioural Incentives***

Behavioural insights are gaining popularity as a low-cost option to encourage compliance. It recognises that non-compliance is not always ill-intended. People want to do the “right thing” but a busy pace of life sometimes gets in the way of good intentions. This insight was used successfully by some countries to ensure people pay their taxes on time by reminding them that their neighbours had already paid their taxes (UK website, 2012). It was used by others to encourage energy conservation measures (OECD, 2014). (Behavioural Insights Team, 2015)

***Learning from Practice: The City of Seoul’s Eco-Mileage Program***

*In 2009, the City of Seoul launched the Eco-Mileage Program in an effort to reduce the greenhouse gas emissions produced by the city. The program used a variety of incentives including public transportation-card replenishment, gift certificates, etc. to encourage citizens to conserve energy without making new bylaws (NYC Global Partners, 2014). By 2013, the City had reduced energy consumption by the equivalent of 153,375 tons of oil, and carbon dioxide emissions by 297,565 tons.*

***Learning from Practice: Envision Charlotte***

*Envision Charlotte is a public-private initiative aimed at reducing energy consumption in Charlotte, USA, by 20% over five years. The program uses technologies that allow individuals and companies to monitor energy use in real time, empowering citizens to make better energy conservation decisions. So far, the program has led to a 6.2% reduction in energy consumption in uptown Charlotte.<sup>6</sup>*

In summary, no government can implement and ensure the enforcement of all laws and regulation. A law-abiding society depends first and foremost on the behaviour of law-abiding citizens. This must be taken into account in the:

- way government chooses to address public policy challenges;
- decision to use regulatory instruments or other tools;
- crafting of enforcement strategies;
- decisions to engage citizens to work with government to achieve results of value to society.

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<sup>5</sup> For more information on the case of the Singapore Prison Service, please see: Lena Leong. (2011). “The Story of the Singapore Prison Service: From Custodians of Prisoners to Captains of Life” in Jocelyne Bourgon. (2011). *A New Synthesis of Public Administration*. (Montreal-Kingston: McGill-Queens University Press).

<sup>6</sup> For more information, please visit: <http://www.envisioncharlotte.com/>

## Conclusion

Many factors are at play in forging a law-abiding society. Policy makers and law enforcement agencies are not the only source of authority in society. Society operates within a *system of authority* that has civil, private, social and religious dimensions.

The state must be able to ensure its dominance in some but not all aspects of life in society. In a law-abiding society, the state must ensure that its authority in law-making and law enforcement are recognised and respected. People as citizens must adhere to the law of the State. They must reconcile their voluntary compliance with the law as citizens with other aspects of their value system including religious beliefs, their belonging to ethnic groups, cultural communities or their chosen community of interest. When the relationship of trust with government is broken or when support for government actions clashes with other deeply held values, internal coherence is challenged. This leads to non-compliance and, in the most extreme cases, to civil disobedience.

Respect for the authority of the state is not optional and not unconditional. It requires public support and, in many ways, public consent even in the most authoritarian regimes. Governing with authority and legitimacy is earned day by day. It is generated by the acceptance of government policy decisions, the manner in which they are implemented and whether they generate public results that propel society forward and improve the human condition.

This paper opens up new avenues for thinking about compliance and enforcement. It is intended to stimulate discussion in an event that will engage eleven dedicated teams of senior leaders of the Civil Service of Sarawak in crafting enforcement strategies to address problems that have remained intractable to date. The NS team is honoured to contribute to this ambitious effort and is eager to learn from the collective wisdom of the master practitioners engaged in this exploratory journey.

And so the journey continues...

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