

Partnership for Democratic Governance

Contracting Out Government Functions and Services

EMERGING LESSONS FROM POST-CONFLICT AND FRAGILE SITUATIONS



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List of Acronyms/Abbreviations

ADB	Asian Development Bank
AfDB	African Development Bank
ANDS	Afghanistan National Development Strategy
ARTF	Afghanistan Reconstruction Trust Fund
ASI	Adam Smith International
BPHS	Basic package of health services
CBO	Community-based organisations
CBTF	Capacity Building Trust Fund, Southern Sudan
CC	Control/comparison
CHT	County Health Teams, Liberia
CI	Contracting in
CIDA	Canadian International Development Agency
CO	Contracting out
CPA	Complementary package of activities
CPA	Comprehensive peace agreement
DFID	Department for International Development (UK)
DHMT	District Health Management Team
EAA	External Audit Agent
EoI	Expression of interest
FBO	Faith-based organisations
FMA	Fund Management Agent
FSG	Fragile States Group
GAA	Government Accounting Agent
GoC	Government of Cambodia
GoG	Government of Guatemala
GoL	Government of Liberia
GoNU	Government of National Unity
GoS	Government of Sudan
GoSS	Government of Southern Sudan

GPOBA	Global Partnership on Output-Based Aid
GTZ	<i>Deutsche Gesellschaft für technische Zusammenarbeit</i> (Germany)
HSCC	Health Sector Coordinating Committee
ICRC	International Committee of the Red Cross
IADB	Inter-American Development Bank
IDB	Islamic Development Bank
INCAF	International Network on Conflict and Fragility
INGO	International non-governmental organisations
iPAA	Interim Project Accounting Agent
ISA	Independent service authorities
JAM	Joint Assessment Mission, Southern Sudan
LICUS	Low Income Countries Under Stress
MDTF	Multi-Donor Trust Fund
MoCI	Ministry of Commerce and Industries, Afghanistan
MoFEP	Ministry of Finance & Economic Planning, Southern Sudan
MoH	Ministry of Health
MoHSW	Ministry of Health and Social Welfare, Liberia
MRRD	Ministry of Rural Rehabilitation and Development, Afghanistan
NGOs	Non-governmental organisations
NSP	National Solidarity Programme, Afghanistan
OBA	Output-based approaches
OC	Oversight Committee
OD	Operating districts
PA	Procurement Agent
PAA	Project Accounting Agent
PBC	Performance-based contracting
PBF	Performance-based financing
PDG	Partnership for Democratic Governance
PFMU	Project Financial Management Unit, Southern Sudan
PHC	Primary health care
RFP	Request for proposals
RIEP	Rapid Impact Emergency Project
SIAS	Integrated Health Care System (<i>Sistema Integral de Atención en Salud</i>)
SOA	Special operating agencies
SPLM	Sudan People's Liberation Movement
TA	Technical assistance

ToR	Terms of reference
UHP	Umbrella Health Programme, Southern Sudan
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USD	United States dollar
WB	The World Bank

Foreword

States in fragile and post-conflict situations are an impediment to development, growth, investment and international security. As such, they represent a global challenge. To break this cycle, these countries need help to reinforce human capacity and build democratic institutions, with the aim of improving access to key services for their citizens.

To respond to this emerging global challenge, a group of like-minded OECD members, middle-income countries and international organisations launched the Partnership for Democratic Governance (PDG) at UN Headquarters in October 2007. Operational since June 2008 and hosted by the OECD, the PDG now has a membership of 15 countries and international organisations: Australia, Canada, Chile, Denmark, Japan, Korea, Mexico, Poland, Turkey, the United States, the African Development Bank, the Inter-American Development Bank, the Organisation of American States, the OECD and the United Nations Development Programme. The PDG Advisory Unit serves as the Secretariat for the Partnership and is housed by the OECD in Paris.

The PDG is a multilateral initiative whose goal is to assist states in post-conflict and fragile situations to build their governance and improve service delivery to citizens. In combining Members' knowledge on South-South and triangular co-operation, the OECD's expertise in development and governance issues and UNDP's hands-on, country-level experience, the PDG represents an important critical mass of ideas and expertise and contributes to building a strong alliance between OECD and non-OECD countries, international organisations, and states in fragile or post-conflict situations.

From 8-9 June 2009 in Tunis, the Partnership for Democratic Governance held a conference on contracting out government functions and services in post-conflict and fragile situations. The event was co-hosted by the African Development Bank, and brought together around 80 participants from a wide range of development aid stakeholders. Workshop discussions addressed four sectors including health and education, the provision of infrastructure and utilities, public sector governance, and security and justice. These discussions were informed by a number of analytical papers, which were commissioned by the PDG Advisory Unit and form the basis of this second volume in the Partnership for Democratic Governance Series.

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Corrado Scognamillo and James Eberlein from the OECD/PDG Advisory Unit contributed to the development of these papers and helped shape the editorial content of this publication, while Suzanne Bouchy provided contractual support.

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Preface

The issue of states in fragile and post-conflict situations has increasingly been on the radar of the international community for the past 15 years, both on the research and policy sides. Research has made huge progress in analysing the causes and impacts of fragility, and in recommending responses. On the side of practitioners, the international community has strived to adapt and expand policies, instruments and mechanisms in order to respond more effectively to this challenge.

These effective responses are desperately needed, because efforts to strengthen state capacities in fragile situations are often faced with a series of dilemmas. This includes the overarching concerns of reinforcing state legitimacy, responding quickly to people's needs and – all the while – keeping in mind the long-term priorities of national capacity development.

In fragile situations, state capacity gaps have been bridged through a variety of arrangements. Non-state actors often perform – to various extents – the functions that we would expect to be performed by the state. This can range from standard technical assistance to so-called contracting-out arrangements, which are understood to mean the transfer of competencies or authority for a given period of time based on a contractual arrangement between the delegating authority (the government) and a third party (a contractor).

We are aware of the argument that contracting out bypasses the state, inhibits the strengthening of state capacities and, ultimately, threatens state legitimacy. Contracting out also poses serious challenges in terms of the responsibility of – and accountability to – the government regarding capacity development and exit strategies.

We cannot ignore these concerns.

We have no intention to *promote* contracting-out. We have no intention to favour the contracting out of government functions as the best response to the challenges of fragile situations. Our objective is, rather, to investigate the experiences and practices of contracting out in fragile and conflict-affected environments, and to debate these questions in a co-ordinated, systematic and evidence-based manner to eventually answer the question: When and under what circumstances can external contractors be effectively used to help bridge state capacity gaps?

This publication is a first step in this direction.

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Chapter 1.

Contracting out Health Services in Post-Conflict and Fragile Situations: Lessons from Cambodia, Guatemala and Liberia

Wendy B. Abramson

Abstract

There are numerous experiences of contracting out in the health sector throughout the developing world as well as in post-conflict and fragile states. The health sector has provided leadership at the global level of government contracting out services to the non-government sector, and is an excellent starting point for fragile states in the process of rebuilding their country's infrastructure and work force and regaining the confidence of their citizens.

Executive summary

A number of post-conflict states – including Afghanistan, Cambodia, the Democratic Republic of Congo, Rwanda and South Sudan – are using performance-based contracting to increase access to basic primary health care services. Similarly, countries like Bangladesh, Guatemala and Haiti are using contracting to target geographically and/or culturally difficult-to-reach populations.

This study presents case studies from Guatemala, Cambodia and Liberia of public agencies contracting NGOs or private for-profit companies in the health sector. The cases also serve as examples from which other post-conflict or fragile countries may draw lessons.

Under a loan agreement with the Asian Development Bank, the Ministry of Health (MoH) of the Royal Government of **Cambodia** implemented a project for managing and delivering a basic package of health services through NGO contracting. To understand the most cost-effective approach, two different pilot models of district-level contracting (contracting in the management of MoH staff, and contracting out the complete health service) were set up in order to compare results with control districts (which remained under MoH management). The contracts were performance-based and had penalties for failing to achieve targets. The results showed a large positive effect on contracted service utilisation rates with both contracting in and contracting out districts, on use of public facilities.

There was little effect on non-targeted service use rates, and negative effects on the perceived quality of care and the incidence of reporting an illness and diarrhoea. While contracting reduced private out-of-pocket costs per capita, it increased public spending per capita, and consequently there was no overall change to total health spending. In addition, there was an increase in access to basic health care and lower per capita private spending by the underserved. Since the pilot phase ended in 2005, the government has moved to a hybrid model focusing on “internal contracting” or performance-based contracting among different levels and entities of government.

With over 25 diverse indigenous groups dispersed across its mountainous terrain, **Guatemala** presents a number of formidable geographic, cultural, and language barriers to accessing health services. Its central government and Ministry of Health adopted contracting in the late 1990s to expand access to and improve the quality of health services for the country’s rural and indigenous populations. This reflected commitments made in a series of peace agreements, ratified by Guatemala and four other Central American countries that ended Guatemala’s decades-long civil war. Since the ministry lacked adequate infrastructure it turned to civil society, including community-based NGOs, to provide a package of basic health services to the poorest sectors of society. Community-based NGOs have a long history of providing social services to low-income indigenous communities. The Ministry of Health was receptive to this approach because the legal framework authorises it to sign agreements with health sector NGOs. Support from both NGOs (who were sceptical of becoming “employees” of the government) and the government was critical to the contracting approach, especially because certain other sectors, particularly medical labour unions, opposed the change. Initially funded under an International Development Bank (IDB) loan, there are now contracts with over 100 NGOs across the country for integrated primary care with an emphasis on services (the “Basic Package of Health Services to Rural Populations”). Performance measures look at service, activity, quality and productivity. Efforts required for management and administration are low since data collection and monitoring are already provided by the health ministry. Monitoring takes place every two months and a contract evaluation occurs every year.

In post-conflict **Liberia** the Ministry of Health and Social Welfare (MoHSW) initiated a massive health reform effort that included a new public-private partnership model for health service delivery. Although it received strong support from the international donor community, impetus for the performance-based contracting (PBC) programme came from within MoHSW itself. To initiate the process, MoHSW contracted an outside consulting firm to help its Planning Division and Finance team assess Liberia’s capacity to contract NGOs to deliver a basic package of health services. Based on the assessment, MoHSW developed a contracting policy, strategy and operational plan. An important element was the ministry’s approach to engaging stakeholders and gaining their support from the very beginning. Although sceptical at first, NGO partners warmed to the concept as they learned more. A pool fund was established as a tool for aid effectiveness in order to increase ownership and alignment of funding to the Liberian health sector. Several European donor agencies worked with MoHSW to finance the pool fund, which was to be responsible for managing most of MoHSW’s future contracting. MoHSW’s PBC policy, procedures and processes guide the efforts of other donors, such as USAID, which is also supporting PBC activities in Liberia. By working with key stakeholders throughout the process, MoHSW has ensured a relatively smooth transition from humanitarian relief to development. The fact that the impetus for contracting came from the Government of Liberia and is supported by its stakeholder partners bodes well for the future sustainability of contracting.

Key lessons learned from the three experiences include the following:

- ▶ Government leadership and stakeholder involvement are critical for success.
- ▶ Contracting out should be a true partnership between the public and private sectors.

- ▶ It is important to assess the private market when deciding to contract and design health services contracts with private providers.
- ▶ The need for basic health care systems should not be underestimated.
- ▶ Strong management of both purchaser and provider is essential.
- ▶ Management contracting works best when there is a basic functioning health infrastructure base.
- ▶ Information systems and record keeping, along with contract oversight and evaluation, are often difficult hurdles to overcome in contracting.
- ▶ With some assistance, governments can effectively design, manage and monitor health service delivery contracts.
- ▶ Finally, although there is no conclusive evidence as yet, contracting out may help to foster confidence in the governments of fragile states.

Introduction

This paper explores performance-based contracting (PBC – see definitions below) and the factors that have led up to PBC between either the international donor community or host-country government and the non-government sector (*i.e.* NGOs and/or the commercial sector). The actual process of contracting and managing private services is the cornerstone to the success of PBC. In the health sector, experience has shown that in post-conflict or fragile states that are trying to rebuild core public services (*e.g.* Afghanistan, Cambodia, Guatemala, Liberia and South Sudan), ministries of health are not naturally enthusiastic about using public finances to purchase private services – whether they are commercial for-profit or not-for-profit services – since this is very different from how core public health services have been delivered in the past.

In some countries attempts have been made to establish new service purchasing organisations external to ministries of health. However, without substantial sector reforms (*e.g.* Liberia), frequently these agencies can only be given control of special funds through international financing institutions or donor grants/loans (*e.g.* Cambodia and Guatemala), which can be seen as an initial step in contracting.

The particular interest of the OECD is to describe three different types of public sector contracting: (i) a full service delivery package; (ii) facility management contracting; and (iii) contracting of technical assistance to help inform policy development. This paper describes three examples of government PBC of the non-government sector:

Contracting out full implementation of a service delivery package of healthcare in Cambodia and Guatemala.

- i) Contracting in for the management of civil servants at the facility level in Cambodia.
- ii) Contracting out technical assistance to help inform the Ministry of Health and Social Welfare's development of a PBC policy in Liberia.
- iii) Subsequently this paper also describes the Liberian-led PBC initiative, including assessment, stakeholder buy-in, policy development, and contract design and implementation.

The paper was developed through a desk review of pertinent literature, including journal articles, technical papers and grey literature on the subject. Data were collected through guided and semi-structured interviews – either in person, by telephone or by email – of key informants with knowledge and experience of the subject in Cambodia, Guatemala and Liberia.

While the cases presented here are not unique, they were chosen because they represent a range of scenarios in terms of contractor type (e.g. indigenous or local/international NGOs or community-based organisations) and goal (policy development, management or implementation).

Definition of terms and rationale for contracting out in fragile states

As a country rebuilds itself after civil strife, relationships that were once *ad hoc* and informal at best among the public and private sectors become more formally structured. Contracting out and performance-based financing are linked. Contracting is a tool used to operationalise performance-based financing, which is closely linked to the “incentive theory” which states that the environment brings out behaviour¹.

- ▶ **Contracting** is the purchasing mechanism used to acquire a specified service, of a defined quantity and quality, at an agreed-on price from a specific provider for a specified period.
- ▶ **Contracting out (CO)** is the design and implementation of a documented agreement by which the government (purchaser) provides compensation to another party outside of the government (provider) in exchange for a definite set of services for a specific target population.
- ▶ **Contracting in (CI)** is where the national or central level of government contracts local government in a decentralised setting.
- ▶ **Performance-based contracting (PBC)** is a specific form of contracting and can involve either contracting out or contracting in. PBC involves transferring competencies for a defined period of time based on a formal written agreement (contract). Payment is made by a government authority (the state) or a donor or donor-funded project to a contractor (provider) and is based upon achieving predetermined results. In other words, the transfer of money or material goods is linked to a concrete and measurable action or to achieving a target; rewards are provided for reaching or surpassing targets.

Broadly defined, there are three categories of *contracting out*:²

- i) International donor agency to government. This is based on a model of “conditionality” formally used in the 1980s and early 1990s by the international financing institutions as requirements for loan disbursements, as well as some of the present day methods for paying for performance used by the Global Alliance for Vaccines and Immunizations and the Global Fund for Malaria, AIDS and Tuberculosis.
- ii) Within the public sector from one level of government to another. Examples include the Costa Rican Social Security Institute’s model of contracting between levels of care and the model implemented in Brazil with budget transfers from central government to municipal level.
- ii) Between any “purchaser” and “provider”, for example between an international donor agency and non-government provider or between government and non-government provider (this is the more common model seen in Afghanistan, Colombia, Guatemala, Haiti, Nicaragua, Rwanda and, most recently, Liberia). Another example is between government provider or private provider and health worker. Examples include Cambodia CO and CI models, Rwanda, and, in the future, Liberia.

Governments have a much greater need to link health service expenditure to performance objectives. Contracting out sets specific targets that ideally will reflect the public sector's health policy and objectives. To gauge results, these contracts should include a variety of indicators to measure areas such as coverage, quality and efficiency (Abramson, 1999).

In the health sector, public sector contracts with non-governmental organisations (NGOs) to deliver health services are increasingly being used in the developing world and, most recently, in post-conflict or fragile states. Contracts with NGOs are an effective way to expand services quickly to the most marginalised and underserved. Thus, there is increasing interest in developing countries in contracting NGOs and the for-profit private sector to deliver a wide range of services in the health sector, including:

- ▶ facilitating stakeholder involvement in health reform policy development;
- ▶ health policy development;
- ▶ delivery of key public health goods or services such as supply chain management;
- ▶ procurement of medicines or medical supplies; and

conducting specific public health services, such as training in technical norms and service delivery protocols and, most recently, for a package of essential health care services, particularly primary health care.

Experience from other sectors, and from the health sector in both industrialised and developing countries, suggests that health services delivered through these mechanisms can be more effective than publicly-provided health services, which are often inefficient. Even with the potential advantages of contracting health services, there have been few evaluations of how well contracting works in practice in developing countries though many lessons and conclusions can be drawn upon examination of experiences in the field. This paper aims to provide lessons on those experiences.

Cambodia

Rationale and institutional arrangements

During the 1960s and 1970s Cambodia experienced massive, traumatic social upheaval from war and the murderous polices of the Khmer Rouge regime. At the end of 1979 that regime was removed, but Cambodia's health system infrastructure had been severely damaged, particularly in rural areas. Health indicators in Cambodia were among the worst in the Asia Pacific region, with an average life expectancy at birth in 1996 of only 56.4 years and high rates of infant and maternal mortality (Loevinsohn, 2001).

Many years of war and political upheaval left essentially no functioning health centres, district hospitals, or ministry of health (MoH), and only an estimated 50 medical doctors in the entire country. Though public health services were supposedly free prior to the contracting reforms in 1996, they often did not reach the poor and largely benefited the wealthy, further exacerbating inequities in the system. Eighty percent of the population lived near or below the poverty line and private out-of-pocket expenditure accounted for upwards of three-quarters of total expenditures on health, with much of these out-of-pocket payments being informal fees for low quality services (Bloom and Choynowski, 2003).

As in many developing countries, a root cause of poor performance of public institutions was low and irregularly paid salaries (USD 10-30/month), forcing health workers to seek alternative sources of

income. As a result, many health workers opened private clinics to supplement their salaries (USAID, 2006). There was often poor management at the district level. This resulted from the appointment of managers on the basis of political connections rather than ability, and exacerbated the low morale of the workers. All these issues resulted in a primary health care system that was unable to deliver an adequate level of services. In addition, there were very few NGOs operating in Cambodia at that time.

Types of contracts: service delivery implementation and management

To address these issues, in 1996 the Ministry of Health devised a plan to increase access to and coverage by essential health care services. This was supported by a loan from the Asian Development Bank (ADB). The plan was to test the effectiveness and efficiency of two different contracting models.. Twelve districts (of a total of 77) were randomly chosen, with populations ranging from 100 000 to 180 000, were selected for the pilot test. Health centres would offer a minimum package of basic preventive and curative care – such as immunisation, family planning, and treatment of respiratory tract infections – and one referral hospital would offer a complementary package of activities.³ The following three approaches were tested:

- i) Contracting out (CO): a complete service delivery contract whereby the contractors have absolute responsibility for service delivery, including hiring, firing and setting wages; procuring and distributing essential drugs and supplies; and organising and staffing health facilities.
- ii) Contracting in (CI): commonly known as a management contract. The external contractors work within the MoH system to strengthen the existing district structure through a management contract. The contractors cannot hire or fire district health workers although they can request their transfer. Drugs and supplies are provided to the district through the normal MoH channels. The contractor receives a yearly budget supplement of USD 0.25 per capita to spend on incentives for staff, operating expenses, etc.
- iii) Control/comparison (CC): the management of services remains in the hands of the district health management team (DHMT) and drugs and supplies continue to be provided through normal MoH channels. As with the CI, the DHMT receives a budget supplement of USD 0.25 per capita per year to spend on incentives for staff, operating expenses, etc.

The initial contracting project under the ADB loan ran from 1999 to 2003 and covered a total population of about 1.26 million people, or about 11% of Cambodia's population (Bloom, *et al.*, 2006). The 12 districts were randomly assigned into three groups of four districts (Table 1.1): (i) those eligible to receive CI bids; (ii) those eligible to receive CO bids; and (iii) a comparison group. Both the CI and the control districts received their operating costs and goods from the national budget and were also able to receive a subsidy of USD 0.25 per capita per year paid for by the ADB based upon submission of a plan. The CI managers were permitted to use the USD 0.25 subsidy to augment staff salaries. The control districts used the subsidy to improve immunisation coverage. After this pilot, contracting was expanded to additional districts, but not as a randomised pilot (Bloom, *et al.*, 2006).

Bidding and forming a contractual relationship were new to many NGOs, with some feeling that the principles behind contracting were contrary to their charitable philosophy. Meetings were held with NGOs in-country to elicit input when developing the bidding documents and contracts; this allowed bidding and contract conditions to be revised, where appropriate, to meet the NGOs' concerns and to encourage their participation in bidding.

Table 1.1 Characteristics of programme districts

Treatment Status	Staffing	Procurement	Budget Supply	TA & MGMT Training	Contract Project Payments	Number of Districts
Contracting out-full-service delivery contract	Hired at market rates, MoH staff could take leave of absence	NGO	No	No	USD 3.98	2
Contracting in-management contract	MoH staff on government salary, usually given performance-based bonus	NGO, through MoH system	Yes	No	USD 1.05	3
Comparison control district	MoH staff on government salary, often given supplement from user charges	MoH, through MoH system	Yes	Yes	0	4
Not successfully contracted	MoH staff on government salary, given supplements from user charges	MoH, through MoH system	No	No	0	3

Source: Bloom E., I. Bhushan and D. Clingsmith, *et al.* (2006), *Contracting for Health: Evidence from Cambodia*, unpublished working paper, Brookings Institution, Washington, DC.

To ensure adequate understanding and buy-in to the process of formalising relationships between the state and the NGOs, the contracting process took place over a two-year period from the initial decision to contract to the actual signing of the contracts. An international competitive bidding process was used to select contractors after advertising in the international press and sending letters to consulting firms registered with the ADB. To alert organisations without a presence in-country of the upcoming project, an advertisement for expressions of interest was published several months before actually calling for bids.

A “two envelope” system comprising separate technical and financial proposals was used for evaluating bids. A committee was formed to analyse and rank the proposals (Loevinsohn, 2001). During 1997 and 1998 the groundwork for contracting was prepared, and bidding and award of contracts completed. There was a total of 10 bidders from 14 organisations (8 NGOs already working in Cambodia, 4 consulting companies and 2 university groups). Since there were very few indigenous NGOs working in Cambodia in 1997, all the awardees were international NGOs. Two CO and three CI contracts were signed, and in January 1999 contractors began work (Fronczak *et al.*, 2000).

Contracting out and the state

It is not clear whether contracting out to NGOs had a negative impact on state legitimacy. What is known is that the pilot phase in the contracting model (prior to 2005) was designed and seen by the government as a temporary measure to rapidly improve service delivery in pilot districts and improve contracting pilot phase of increasing government capacity for contract management, the move from CO to a hybrid NGO contracting model after 2005 is a clear indication of the government’s desire to regain ownership of contracting arrangements.

It is important to note that although the initial phase of contracting was a pilot, contracting has always been a part of government strategies and plans. Contracting was an indicator in the First

Health Sector Strategic Plan 2003-2008: “Allocate financial resources to improve accessibility of health services for the poor through alternative health financing schemes”. Indicator 21 in this plan mentions contracting as a strategy to improve access in poor areas.⁴ Subsequently, in the *Second Health Sector Strategic Plan 2008-2015*, contracting is one of the major policy packages for implementing the plan during its consolidation phase (2008-10); see Box 1.1.

Box 1.1. Cambodia’s health sector strategic plan: consolidation phase, 2008-10

- ▶ Define a package of key policies and develop implementation tools, including a policy on contracting supported through royal sub-decree on special operating agencies (SOA), and including both internal and external contracting.
- ▶ Institutional development and capacity strengthening at all levels to implement the above policy packages, including contracting in the initial pilot operating districts (OD).
- ▶ Implement defined policy packages and prepare for scaling up.
- ▶ Scale-up phase: 2011-15.

Service delivery versus long-term capacity development

Monitoring and evaluation: measuring and paying for performance

All providers under the CO and CI models applied performance-based incentives to staff. In the CO districts these incentives included a fixed salary supplement above government salaries as well as a performance-based bonus. Staff in these districts could be fired for underperforming. Interestingly, two of the five CO districts attempted to restrict double employment in private practice while the other three tried to restrict outside employment by forcing staff to be present during their assigned hours in the health facility. At the same time, the CI managers found that it was difficult to improve morale and performance in their districts without monetary incentives (Bloom *et al.*, 2006).

During project design and implementation, there were extensive discussions among the MoH, NGOs and other stakeholders about how the contracting process should be evaluated. The contracts provided for a MoH monitoring group to evaluate progress in the contracted districts towards meeting targeted goals and allowed the MoH to withhold payments to the contractors if progress was not satisfactory. Structural, process and health indicators were measured at both health centres and referral hospitals and covered immunisation, family planning, antenatal care, provision of micronutrients and other nutritional support, simple curative care (access, quality, efficiency), and quality of primary health care. A baseline survey was carried out in 1997 (Xingzhu Liu, *et al.*, 2008).⁵

Results

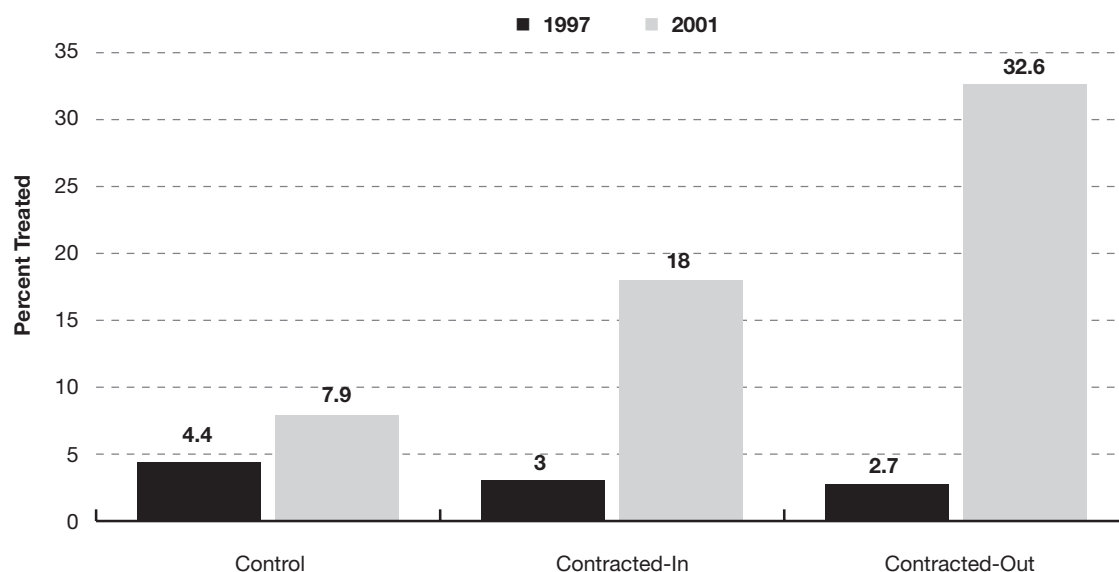
During the study, coverage indicators improved across the board; the CO programme achieved the greatest improvement – doubling the rate of increase in coverage by contracted services compared to areas with no contracting (Figure 1.1). In CO districts improvements in service delivery became evident quite quickly, with marked increases in the use of reproductive health and family planning services. An in-depth assessment of the contracting experience showed that districts with health services contracted out to NGOs delivered care more efficiently and equitably than those that

remained under government control (Loevinsohn and Harding, 2005). Data showed that not only did the CO and CI facilities increase primary health care coverage but that the control districts also increased coverage rates, perhaps due to a trickle-down effect.

Equity

CO programmes not only significantly expanded coverage overall, but also lowered costs for users and improved equity and access. Equity gains were brought about by fundamental regulatory and financing reforms that increased public expenditure on health services and formalised user fees at a level lower than the pre-reform informal payments. One factor that contributed to improved coverage was the proximity of health facilities to consumers, particularly in rural areas. Reduced transportation costs – and the resulting increased effective demand for health services – improved equity. CO reduced the financial burden of health care on the poor; private out-of-pocket health care expenditures by the bottom half of the population fell by 70% over the contract period. The reduction in out-of-pocket costs was greater among this population than among the overall population, indicating the successful targeting of the poor (Bloom *et al.*, 2006).

Figure 1.1. Household use of district health services, 1997 and 2001
(Bottom half of socioeconomic group)



Source: Bhushan *et al.* (2002). Asian Development Bank. *Achieving the Twin Objectives of Efficiency and Equity: Contracting Health Services in Cambodia*. Policy Brief Series. Economics and Research Department Number 6.

Contracted services were more costly to the government than direct provision. On a per capita basis, CO increased public health spending by a significant and very substantial USD 2.93 per capita in 2003, against a comparison mean of USD 1.59 (Table 1.2). However, some scholars have concluded that total costs per capita did not increase from a societal perspective, largely because the intervention reduced household out-of-pocket expenditures. They also argue that contracted NGOs performed better than public institutions with similar amounts of total financial input due to the former's stronger management policies and practices (Xingzhu Liu, *et al.*, 2008).

Table 1.2. Average annual recurrent expenditure per capita (in USD)

EXPENDITURE CATEGORY	CONTRACTED OUT	CONTRACTED IN	GOVERNMENT
NGO technical assistance	1.28	0.77	0.0
Staff salaries ^a	1.32	0.55	0.53
Drugs, supplies, operating expenses ^b	1.28	1.08	1.12
TOTAL	3.88	2.40	1.65

a. Salaries, bonuses, other allowances.

b. Drugs, medical supplies, travel, fuel, per diems, office supplies, communications, building and vehicle maintenance and repair, utilities.

Source: Xingzhu Liu, *et al. The Effectiveness of Contracting-out Primary Health Care Services in Developing Countries: A Review of the Evidence.* Health Policy and Planning 2008:23, 1-13.

Despite not being obliged to do so, contractors in CO districts hired most of the paramedical staff working there and increased their previous government salaries, in some cases up to 10 times more. This may account for the better results from the CO districts. Hence, the difference in cost between CO and CI reflects the increased salaries paid to staff. This new salary was fixed and the possibility of dismissal included in their contract (versus traditional public sector employment which does not base continuation of staff on performance and whereby dismissal for poor performance is difficult). One of the negative effects of the CO model was that in order to work for a contractor, MoH staff had to take leave of absence from their government jobs, which most of them did (Loevinsohn, 2001).

In the CI districts progress was not as rapid, although there did appear to be some improvement in service delivery. The relationship between contractor and MoH staff was less clear; therefore, it took longer to implement changes. Although staff received some incentive payments from the budget supplements and user charges, they expressed concern that contractors' expectations would interfere with the time they had available to earn money from private practice (Hill, 2007). In addition, some senior district staff requested transfers to other districts in order to continue to work double shifts in government facilities as well as in private practice.

There was considerable concern that neither CO nor CI is sustainable in Cambodia, given the extra costs involved in both models, particularly CO. It is possible that costs will decrease in future contracts if there is greater competition. As more indigenous NGOs become involved, the administrative costs of international non-governmental organisations (INGOs) could significantly decrease. That said, the Cambodian experience did not necessarily have a clear vision for long-term implementation; rather, it was an initial pilot project to see how these two models could positively increase primary health care coverage. It is important however to reiterate that external contractors were required to transfer management capacities and responsibilities to MoH district managers before the end of the contract period to support long-term capacity-building.

In Cambodia there were numerous discussions at the highest level of government as to whether to continue with contracting, and if so, what type. In 2005, a decision was made to revert to performance-based management within the public sector involving different levels and entities within the government. This shift was initiated by two important reforms: (i) the decentralisation and de-concentration of health services; and (ii) the introduction of special operating agencies (SOA) to provide community or civil society oversight of government services, initiated through a Royal Decree in 2008 with the objective of increasing effectiveness of public service delivery. Therefore, CO officially ended in 2005 and the state shifted ownership and control over contracting through a "hybrid" model of contracting, to be implemented in 11 districts between 2005 and 2009. The MoH is

finalising a manual for implementing SOA in the health sector. These 11 operational districts shifted to SOA status in 2009.

Guatemala

Rationale and institutional arrangements

The initial impetus for contracting in Guatemala was the series of peace agreements that ended Guatemala's three decades-long civil war (Box 1.2). The 1996 Peace Accords stated that the Guatemalan Ministry of Health (the ministry) needed to rapidly extend coverage to the most underserved people – the poor, rural and indigenous populations. There were huge disparities between the Spanish-speaking urban and peri-urban populations and the native non-Spanish speaking indigenous rural populations.⁶ This latter group was to be the primary focus of the government's efforts. The Central American Peace Accords in 1997 were the impetus for formalising arrangements with civil society (NGOs). However, this occurred under the leadership of the President, the Ministry of Finance and the Ministry of Health and Social Welfare under the National Health Code and Article 23 of an internal ministry regulation (which stipulates that primary health care coverage will be implemented through health posts and community centres).

Box 1.2. Health and the 2000 Guatemala peace accords

Peace accords to be reached by 2000 committed the Government of Guatemala to the following:

- ▶ Increasing public spending on health by 50% of GDP compared with spending in 1995.
- ▶ Allocating at least 50% of government spending to preventive care.
- ▶ Reducing infant and maternal mortality to 50% of the existing 19% rate.
- ▶ Encouraging social participation in health.
- ▶ Maintaining the certification of the eradication of poliomyelitis and achieve the certification of the eradication of measles.

Initially, the government considered contracting additional personnel into the ministry to build up health infrastructure, and to create more vacancies to fill those facilities, etc. However, this would be a lengthy process. Because government terms are relatively short, it would be impossible to implement such a strategy. Therefore, the ministry turned to civil society to extend coverage to the poorest sectors of society and to provide a defined package of basic health services.

The NGOs and community-based organisations (CBOs) had provided basic survival services through relief and emergency efforts during the civil war. However, this occurred in isolated conditions and in a sporadic and, at best, disjointed manner. The armed conflict precluded any co-ordination or collaboration with the government. The community's inherent lack of trust in the state after the war and the need to reach populations which were both geographically and culturally difficult to access, meant that a more traditional model of pure public sector health service delivery would not be feasible.

Therefore, the ministry decided to formalise its relationship with NGOs to expand access to and improve the quality of health services for rural and indigenous populations, mainly in remote areas. In 1997, with initial funding from an Inter-American Development Bank (IADB) loan, the Program to Extend Coverage of Basic Health Services was adopted, involving formal agreements in three pilot departments with four NGOs. The original agreement called for a three-year pilot project that would be evaluated and subsequently expanded. Although the increase in expenditure was significant, just six months after the original agreement was signed, the government saw a dramatic increase in the extension of coverage as the pilot was applied nationwide. Within three years this pilot had successfully been scaled up to include 137 agreements with 90 NGOs. Presently there are 85 NGOs contracted by the ministry to offer basic health services in 20 departments and 424 jurisdictions across the country, reaching 4.3 million people in rural Guatemala.

Under agreement with the central government, all donations and loans for the new coverage programme were to be put into a single fund along with Ministry of Health national funds. The only exception to this was the United States Agency for International Development (USAID), whose funds were administered by the United Nations Development Program (UNDP) and administered and managed by Plan International. Since 1997, all recurrent costs have been covered by the ministry. In 2008 the IADB budget support ceased, and World Bank funding was added.

Types of contracts: full service delivery implementation

In Guatemala, the ministry's role is to oversee and develop norms and protocols for service delivery. The NGOs are responsible for delivering health services in accordance with pre-established performance indicators.

Ministry payments were made to NGOs as budgetary transfers from two ministry budget lines. Contracted NGOs were each responsible for delivering a basic package of primary health care to a geographically targeted population of approximately 10 000. Under agreements made between 1997 and 2004, NGOs were paid prospectively (up front or in advance), through a global payment mechanism, a fixed amount through capitated payments based on population estimates each quarter for a total of four yearly instalments. The only prerequisite for payment was proof of expenditures of at least 75% of total advanced payments. The payment covered the direct cost of the basic package plus administrative expenses, as well as expenditures related to institutional strengthening.

Contracting out and the state

Guatemala's contracting scheme has fallen under the government's legal framework for over a decade, with implementation supported by the ministry's technical teams. Tangible results have been achieved in terms of reaching the most remote populations. The government accepted complete ownership of this model from the beginning, demonstrated by (i) its decision to support it financially; (ii) the ongoing legal framework which supports contracting third parties; and (iii) strong leadership and vision from the ministry to continue to implement and solidify this strategy.

Like Cambodia, the private provider community in Guatemala was sceptical about formalising relationships with the government. When the programme was initiated, NGOs mostly felt that they provided higher quality services to the community than did the public sector. They were initially opposed to being contracted by the government since they were uncomfortable with having to feel obligated to perform in accordance with government rules and regulations or to be in a subordinate role to the government. In addition, there was huge mistrust on the part of civil society and the NGOs which represented civil society. The NGOs' primary concern was that

contracts could not and would not be transparent and that the ministry would not be able to make timely payments to the organisations. To help ease their financial situation and mitigate the latter concern, the NGOs were able to negotiate payment in advance, including start-up costs (Abramson, W., 2000).

At the time, although there were not many indigenous health service delivery NGOs in Guatemala, there were many grassroots organisations in the indigenous communities. Part of the ministry's strategy was to use international NGOs to help build the capacity of local NGOs to provide health services. The idea was to create a multiplier effect whereby government agreements would be expanded to include local Guatemalan community groups. There was quite a bit of political concern at the community level and among the NGOs that "contracts" or formal agreements would be construed as "privatisation" of government services. Likewise, at the other end of the spectrum, it was also necessary to obtain internal stakeholder buy-in for this programme in light of misperceptions about agreements or contracts as a form of "privatisation", especially because certain sectors, particularly medical unions, opposed the change.

To really manage these perceptions and promote partnerships between the community and the government, the ministry decided to implement an intensive promotional campaign targeting communities. The campaign was designed to support NGO autonomy in this process. In addition, the ministry invited organisations with experience in health to attend meetings on the new model. Advertisements on regional radio stations and written and oral invitations were among the variety of communication modes chosen. Unfortunately, some local and smaller NGOs did not receive letters and therefore felt excluded from the process. The government did not advertise the new model in national newspapers in order to mitigate potential fallout from the labour unions, which were already wary of using NGOs under this new mechanism.

It was determined early on that a number of NGOs might not be willing to accept agreements that committed them to delivering measurable results. NGOs were particularly uncomfortable with being asked to deliver concrete results that even the public sector was not able to deliver, for example increasing immunisation coverage or prenatal visits. So, in the first round of negotiations, the ministry did not push performance indicators in the agreements; rather, the agreements stipulated that the NGOs would comply with processes and schedules and "deliver health services" (Nieves *et al.*, 2000). In addition, during the initial round of contracts in 1997, all seven of the proposals submitted were accepted. The ministry then worked diligently to distribute guidelines to all NGOs and gave them technical assistance for preparing future proposals. The following year a similar mechanism, an "open contract", was applied. This essentially allowed for any acceptable NGO proposal to result in an "agreement"; 117 "agreements" were signed that year.

Around the same time that the pilot project was scaled up, elections took place (1999) and a new government entered office. The new government saw that the extension programme was functioning well and opted to further solidify it by aligning the ministry "agreements" with the Guatemalan Public Contracting Law. There was no need to align these contracts with a particular health plan or policy since this public contracting law enabled the new government to allow the ministry to use national budget line items for contracts with NGOs. This would further institutionalise and legitimise the newly elected government and contracting as a tool to extend coverage via NGOs. Thus, the original "agreements" were transformed into specified and formalised "performance-based contracts" under the national legal framework. Table 1.3 illustrates the differences between the two.

It is widely recognised that the government does not have the capacity to accomplish what the NGOs are achieving in extending coverage in the short to medium term. Although contracting with NGOs

Table 1.3. A comparison of agreements and performance-based contracts (PBC) in Guatemala

Characteristics	Agreement	PBC
Competitive bidding	No	Yes
Specification clauses (for contractor)		
• Beneficiaries	Yes	Yes
• Services	Mainly by service type	Yes
• Personnel	Yes (in manual)	Yes
• Performance requirements	No	Yes
• Incentives	No	Yes
• Posting of performance bond/guarantee	No	Yes
• Reporting requirements	Yes (but not specific)	Yes
Responsibilities of MSPAS		
• Payment and payment procedures	Yes	Yes
• Performance review procedures	No	Yes
• Monitoring procedures	No	Yes
Provisions for contract change		
• Dispute resolution	Yes	Yes
• Unanticipated work or events	Yes	Yes
Provision for contract duration	Yes	Yes
Provisions for contract non-compliance	Yes	Yes
Provisions for contract termination	Yes	Yes
Authorised signatures	Yes	Yes

Source: Nieves I., G. La Forgia and J. Ribera (2000), "Large-scale Government Contracting of NGOs to Extend Basic Health Services to Poor Populations in Guatemala", in: Rosenmöller, M. (ed.) *Challenges of Health Reform: Reaching the Poor*, Estudios y Ediciones IESE, Barcelona

Box 1.3. The objectives of social auditing in Guatemala

Allow for supervisory audit of services provided by the health ministry through NGOs.

- ▶ Promote community participation.
- ▶ Use the results of social auditing committees to reach consensus on incentives for providing basic health services.
- ▶ Train the community in their rights to basic health services.
- ▶ Inform families about basic health services.
- ▶ Analyse challenges and develop solutions to the delivery of basic health services at the community level.

Source: Series de Noticias Técnicas Sobre Extensión de Cobertura—Artículo 2: *Un ejemplo exitoso de cooperación entre el sector público y la sociedad civil*. University Research Co., LLC. Proyecto USAID Calidad en Salud April 2008

has been underway for over a decade and has survived three different administrations, some actors in the health sector still refer to it as “privatisation” or in other negative terms. In order to ensure accountability to the community as well as transparency over the use of government funds, a new mechanism called *auditoría social* or “social audit” was devised. This social audit was partly put into place in order to ensure community participation in health care services, but mainly to provide a type of community oversight of the use of government funds in the health sector via contracted NGOs (Box 1.3).

Service delivery versus long-term capacity development

Government and provider capacity were prioritised by the Guatemalan government early in the pilot phase. Numerous procedures were developed for nearly every task related to contracting and training, and supervision was adequately budgeted for under the contracting model. This was particularly important given the high turnover of personnel. A management unit, the Integrated Health Care System (*Sistema Integral de Atención en Salud*, SIAS), was created within the ministry to oversee and monitor contract funds. The SIAS received technical and administrative support from both the IADB and the UNDP to support contract management and oversight systems.

The IADB loan included a line for capacity-building at all levels of the public health care system – central and regional ministry staff as well as NGOs. Other donor agencies, including UNICEF and USAID, also provided funding to support capacity-building for this model. In 2007/08 the IADB provided additional funding for monitoring by assigning personnel at the central and regional levels to be charged with contract negotiations, monitoring, and strengthening information systems. However, this funding ended in 2008, and there remains a gap in human resource capacity for this function, highlighting the importance of putting in place a sustainable exit strategy.

NGO capacity was an issue in Guatemala. The contracts stipulated that payments could be withheld if there were irregularities in the use of resources or poor productivity on the part of the NGO. Although contracts involved a lump sum payment up-front to reduce NGOs’ costs, any payment delay due to administrative or procedural bottlenecks within the ministry was a huge problem, particularly for indigenous NGOs, which were small and lacked a strong financial base. Any payment delay could impede their operations and ability to deliver health services (Abramson, 1999). When delays in payment occurred, many of the NGOs had to resort to other funding sources, such as bank credits, to continue operations. Fortunately, many of the NGOs had immediate access to overdraft protection credits on their bank accounts. However, the NGOs that did not have such access, lack of funds for medical supplies and general operations could have prevented them from providing services to the community.

Monitoring and evaluation of performance

During Phase I of the extension programme, teams from the ministry, together with regional appointees in the District Directorate offices, were deployed to monitor the agreements. Monitoring visits focused primarily on the use of funds, verifying that services were actually being delivered, and capacity-building efforts by the NGOs. In late 1999 the ministry hired external auditors to perform monthly audits of providers’ financial systems, make recommendations and issue warnings to contractors, and identify technical assistance needed to strengthen systems.

However, the quality of services delivered and the adherence to government treatment standards and protocols were not monitored. A 1999 evaluation by the IADB showed that although access to essential primary health care services rapidly expanded under this new model, service quality was sub-standard. In most instances, only one-third of the essential services contracted to be delivered

were actually delivered. This highlighted the need for further capacity-building of NGOs and more stringent monitoring of the agreements.

Since the ministry did not have the capacity to monitor contract performance, it hired two private companies to monitor programmatic and technical implementation of the agreements. After two years of implementation and data collection, the ministry developed an internal computerised system for monitoring performance, which included report preparation by contractors, surveillance data and service delivery data. This system enabled the collection, organisation and aggregation of key indicators, including immunisations by age group, prenatal controls by mobile physicians, delivery of iron sulphate packages to pregnant women, and treatment of new patients for selected illnesses. Data were then used in the renewal of agreements and the move to formalise “performance-based contracts” with NGO providers in 1999 (Nieves et al., 2000).

From 2005 a full-scale automated monitoring and evaluation system was created involving indicators to allow the ministry to evaluate performance quarterly. An automated system generated a quarterly report using information that came directly from the service delivery point (clinic) in their financial and programmatic reporting forms. District personnel from the ministry, together with the NGOs in each corresponding jurisdiction, verified the information. The report, which includes both technical (e.g. programmatic) and financial information, links payment to performance.

Presently, there is one contract per jurisdiction of 10 000 people, totalling 424 contracts.⁷ Each contract contains a set of indicators and targets, and performance is measured both by financial expenditure and results. Monitoring and supervising the performance of 424 jurisdictions have proved challenging, and the capacity of the ministry at the department and central levels remains somewhat weak. The contracting strategy/model had always been designed to be implemented and monitored at the departmental level, but it was not until 2007 – a full ten years after this process was initiated – that each department in Guatemala had authority over the provider selection process, contract management and supervision, monitoring and evaluation, and fund distribution. This process presents quite a few bottlenecks and difficulties but is clearly helping to fulfil the vision of the Guatemalan Health Ministry.

Liberia

Rationale and institutional arrangements

Since its democratic elections in 2005, Liberia has taken bold steps to evolve from an emergency relief model of health service delivery to a functioning, decentralised health system. Under this system, counties are responsible for the operational management of health services with support from the central Ministry of Health and Social Welfare (MoHSW) and a diverse set of partners. During Liberia’s 14-year war, approximately 80% of health services were provided by international and national NGOs. Thus, when the war ended in 2003, health care service delivery was fragmented, uneven and heavily dependent on donor-funded programmes and international NGOs, and the policy platform was eroded and virtually non-functional. During the initial recovery phase after the new government took office, the country was unfortunately left with the potential for a huge service delivery gap as the international community was slow to design, develop and commit funding.

The MoHSW announced its vision for a national health system in January 2007 through the National Health Policy and a five-year National Health Plan (2007-2011). The plan defines a framework for shifting from emergency humanitarian relief to development and from vertical programmes to an integrated health system. The health sector has decentralised authority to the county health teams

(CHTs) in Liberia's 15 counties. Guided by a clear vision of decentralising many functions of government, MoHSW is striving to develop strategies, plans and capacity-building models to achieve the sustainability of Liberia's health system. Once the national health policy was developed and approved, the cornerstone of Liberia's decentralised primary care approach became the delivery of a basic package of health services (BPHS) to be provided at each health facility level: hospital, health centre, clinic and community.

The ministry saw that in order to rapidly expand access to the BPHS throughout the country, it would need to continue to collaborate with the private/non-profit health providers who were still delivering the majority of services to the Liberian people. The National Health Plan articulates MoHSW's intention to contract out the delivery of BPHS services so that the national health system can gain in transparency, efficiency and effectiveness through mutually binding commitments (PBCs). Although it received strong support from the international donor community, impetus for the development of a PBC programme came from within the ministry itself. Contracting was done in order to:

- ▶ increase and sustain equitable access to the BPHS;
- ▶ improve the quality and efficiency of management and service provision; and
- ▶ use partner capacity to prepare the CHTs to resume management of health facilities and the work force.

The ministry involved a number of stakeholders in developing its contracting policy and plan, including donors, technical experts from health sector partner agencies, NGO partners and international consulting firms. A national task force on health financing has been working to develop a national health financing policy and strategic plan since 2007. The task force has commissioned numerous studies to inform health financing policy, including an assessment of community-based financing mechanisms, a benefit-incident analysis, a report on progress against the Millennium Development Goals, the establishment of national health accounts, and an assessment of the contracting environment. The latter was financed by a task force member, the

Box 1.4. The role of performance-based contracting in delivering basic primary health care in Liberia

The 2007 Revised National Health Policy and Plan states that it is MoHSW's policy to use contracts with partners. Liberia's poverty reduction strategy includes several key health targets taken from the National Health Plan. These targets, which will be achieved in the short to medium term (by 2011) by implementing PBC, include:

- ▶ ensuring 70% of health facilities are providing the BPHS;
- ▶ deploying midwives, physician assistants and lab technicians nationwide;
- ▶ training traditionally-trained midwives in home-based life saving skills;
- ▶ establishing emergency obstetrics care services in every district; and
- ▶ placing 6 000 health workers on "standardised incentives"⁸ (however, only a fraction of this will be achieved through contracting).

Source: MoHSW (2008b), *National Health Policy on Contracting 2008-2011*, September, Ministry of Health and Social Welfare, Monrovia, Liberia

United Nations Children's Fund (UNICEF), by providing funds to the MoHSW, who in turn directly contracted a United States consulting firm to conduct the assessment (MoHSW, 2008a). The assessment helped lay the groundwork for the ministry's performance-based contracting (PBC) policy (Box 1.4). All aforementioned studies reports that were commissioned by the MoHSW were approved by MoHSW and vetted both within MoHSW and amongst key external stakeholders before payment was made.

When MoHSW began its contracting process, it was clear that the full implications of PBC for Liberia's health system were not immediately understood by all the stakeholders. As a result, the process initially raised concerns among both internal and external stakeholders that the ministry would implement an approach to PBC that had not been thoroughly discussed or vetted. However, MoHSW quickly engaged with its stakeholder partners through information meetings and workshops as part of its assessment and planning processes. The situational assessment was posted on its website and shared widely with stakeholders. MoHSW's transparency reassured partners about the contracting process, although many NGOs and faith-based organisations (FBOs) still had reservations.

MoHSW is now reforming most of the essential systems within the Liberian health sector for successful NGO contracting for basic service delivery. These systems include finance and administration, human resources, supply chain management, regulation and quality assurance, and health information. In this post-conflict transitional health system, these key systems are being simultaneously developed while the country begins to implement PBC.

Donors quickly offered support to MoHSW's contracting plans, and several European donor agencies worked with MoHSW to establish a pool fund for managing most of MoHSW's future contracting. The fund has already begun contracting out BPHS services in areas of critical need. MoHSW's PBC policy, procedures and processes also guide the efforts of other donors, such as USAID, which is also beginning to support a large volume of PBC activities in Liberia. By working with key stakeholders throughout the process, MoHSW was able to ensure a relatively smooth transition from humanitarian relief to development. The fact that the impetus for contracting came from within MoHSW and is supported by its stakeholders is critical to the continued success, not only of contracting, but the delivery of health services.

Contracting out and the state

In 1972, under the *Act to Amend Chapter 30 of the Executive Law*, the government of Liberia approved the provision of subsidies to civil society and faith-based organisations (FBO). This sets a historical foundation for providing funding to NGO partners. This discrete subsidising of partners reflects the value that the government places on their services, such as those provided by the faith-based Phebe Hospital in Bong County and five similar hospitals in Lofa County.

Few other national governments have directly assessed their country's capacity to undertake PBC or designed service delivery contracts (with plans to manage, monitor, evaluate and pay NGOs for services). This demonstrates progressive, strong leadership and thoughtful planning. Fortunately, the international donor community has expressed its willingness to support and finance this effort. This helps ensure the political sustainability of contracting in Liberia in the short and medium term, as MoHSW and CHTs strengthen their capacity to manage long-term health service delivery.

Service delivery versus long-term capacity-building

MoHSW intends to use contracting to strike a balance between directly supporting health facilities and providing indirect financial support through partners or county health authorities in the form

of PBCs. The alternative to contracting would have been to increase the number of facilities that MoHSW is managing through traditional support. However, as in Cambodia and in Guatemala, this option was not chosen because MoHSW's capacity to scale up quickly was low. Ultimately, MoHSW's long-term goal is to return to the traditional government-managed approach – contracting is being used to achieve that goal. Along with its contracting policy, MoHSW is reforming its human resource policies to establish parity in the pay scales for both the public sector and NGOs. This rate varies by geographic location and living conditions.

Thus partner agencies, particularly local and international NGOs, are being temporarily contracted by the MoHSW to support the roll-out of the BPHS and the CHTs in resuming functional responsibility for health service provision in their counties. In other words, contracting is being used as a tool to increase service delivery and build MoHSW capacity at the county level. Service delivery contracts with NGOs also provide for discrete activities that will support the government's return to managing and fully staffing health facilities in the long term.

The contracting process

As previously stated, the initial exposure to the concepts and practicality of being contractors rather than grantees caused anxiety and concern among NGO partners. The first step for MoHSW was to tackle stakeholders' sensitivity and then to build stakeholder support for the use of PBC.

Shortly thereafter, MoHSW's Pool Fund Steering Committee approved the provision of bridging grants to NGOs to avoid a transition gap in service delivery and to allow the NGOs to continue supporting health facilities. When, in January 2009, MoHSW presented the contracting policy to the Health Sector Coordinating Committee (HSCC) for endorsement, it was already funding three NGOs to support over 50 health facilities to avoid gaps in service provision.

In February 2009, after HSCC endorsed the policy, MoHSW established a performance-based financing (PBF) working group which included a committee on performance-based contracting. The PBF working group then presented its contracting policy and implementation plan to CHT and NGO service delivery partners at the March 2009 quarterly review of BPHS implementation. Six members of MoHSW's PBC committee went to Rwanda for a two-week on-the-job training to study the Rwandan experience in PBC implementation.

Stakeholder anxiety began to abate at the annual National Health Plan review conference in July 2008; however, there was still a great deal of concern among civil society partners, NGOs and internal MoHSW stakeholders over what PBC meant for Liberia. In the spirit of collaboration and of ensuring that contracting implementation works well, MoHSW (with a small seed grant from the World Bank) planned a series of two-day workshops with partners, CHTs, local and central government, and private sector groups in late May 2009. This process was designed to build understanding about contracting and solicit their input into the design of MoHSW's request for proposals in July 2009.

The MoHSW also plans a rapid scaling up, beginning with the July 2009 request for proposals, along with an eventual exit strategy based on CHT capacity building. Liberia is using the performance-based contracting of NGOs as a tool to build capacity and support for ministry CHTs to eventually resume health facility management. For the pool funds, MoHSW carries out a capacity assessment of all fund recipients and provides for capacity enhancement as required. At the CHT level, the ministry is currently doing a thorough assessment of county capacity in various areas, giving special attention to counties expected to be potential test cases for "contracting in".

Why fragile or post-conflict countries choose to contract

A number of institutional issues on the part of the government need to be considered when deciding whether to contract out services or products. The decision to contract out depends on several factors, including political preferences and the efficiency of service production by non-government contractors compared to government (OECD, 2008). If a public agency's capacity to perform a function is weak, or a contractor can provide the service more efficiently or effectively than the public entity, then the decision to contract out may be taken.

All three of the examples examined in this paper initially chose contracting out for similar reasons, including:

- ▶ The desire to instil confidence and rebuild trust in the state after civil or political unrest.
- ▶ The need to rapidly extend coverage to underserved sectors of the population and provide priority services to targeted groups.
- ▶ The need to provide services for which the government lacks the infrastructure (human or technical capacity).
- ▶ The need to encourage competition among health care providers.
- ▶ The desire to improve government's ability to focus on health policy, planning, financing and oversight.

Why the non-government sector accepts contracts from the government

Not-for-profit NGOs and commercial providers generally enter into contracts for one or more of three reasons: to fulfil a social mission, to sustain themselves financially, or to gain recognition from the government. A contract may allow an NGO to realise one or more of these motivations. In the case of service delivery NGOs in Guatemala, Cambodia and Liberia, contracts were seen primarily as mechanisms to strengthen ties with the communities⁹ and fulfil the NGOs' social mission of providing services to underserved populations. Many of the NGOs in all three countries were accustomed to operating in emergency relief situations and were not prepared to become instruments in "development" work.¹⁰ The service delivery NGOs also wanted to obtain the formal government recognition that a contract would bestow upon their organisation.

Lessons learned

- ▶ High-level government leadership and stakeholder involvement are essential for successful contracting out to the non-government sector. Both Guatemala and Liberia were guided by a clear vision from both presidential and ministerial levels of government of how they wished to partner with community-based NGOs. For Liberia, the development of a health policy on PBC reflected MoHSW leadership and innovation in a post-conflict and resource-poor setting. This was done in a participatory manner with extensive involvement of key stakeholders in the community, including donors, providers (NGOs) and MoHSW staff. Liberia is the first and only country that has actually conducted a situational assessment of its capacity to carry out PBC before deciding whether and how to contract NGOs. This demonstrates progressive, strong leadership and thoughtful planning. Likewise, the Guatemala experience is an example of what can be mobilised quickly when there is a sense of political urgency. A lesson learned early on in the Liberian experience is that if stakeholders are not managed well and information is not shared in a transparent manner, contracting could be misconstrued and cause unrest amongst stakeholders, especially in the early stage of policy development.

- *Contracting out, especially performance-based contracting, is an iterative process.* As a country gains in experience, it starts to strengthen its contracting model. In Guatemala the model became institutionalised in peacetime and has expanded greatly to include more service providers and more service delivery functions. Initially, in an effort to rapidly scale up this model, agreements were signed with few criteria for basic service delivery infrastructure or staffing, there were no guarantees made to the provider, there was limited monitoring of performance, providers did not have to set to targets, etc. However, after the first two years of implementation, agreements were gradually formalised and contracts included performance measures. As experience was gained, mutual confidence was strengthened, making this model widely accepted throughout the country.
- *Contracting out, especially performance-based contracting of public health services, should be a true partnership between the state and non-state sector.* In other words, although clear performance measures and incentives are built into PBCs, it is important when delivering a public good that both parties work together to achieve contract objectives. For instance, in Cambodia and Guatemala, performance was measured through careful monitoring of key indicators, and sub-standard contract performance led to sanctions and the non-renewal of contracts. This strongly motivates the contractor to ensure it meets the contract's performance goals.¹¹ A word of caution, however: by linking payment to the performance of specific indicators, there is a risk that the provider's efforts may be diverted from overall performance to ensuring that output relates more directly to the specific indicators to be measured. Performance targets should be set that reflect the health system that is being measured; in other words, the overall functioning, organisation and management of the NGO's delivery system.¹² Indeed, if, in the case of either service delivery or facility management PBC, the purpose of the contract is to extend services to difficult-to-reach populations, it is important not to create negative incentives for provider performance by being too stringent or rigid in setting performance targets unless access to difficult-to-reach populations becomes an indicator of performance.
- *The supplier market and the capacity of private providers, particularly NGOs, to serve as government health service delivery contractors in post-conflict or fragile states are important to consider when designing contracting out models in which contractors are paid for performance.* As non-profit organisations with relatively informal organisational structures, particularly those accustomed to working in emergency relief or conflict situations, NGOs have to adapt their financial and administrative systems to meet the needs and requirements of their contracting clients, in this case the public sector. This research did not attempt an in-depth analysis of the capabilities that an NGO contractor should have, but the success of a contract certainly depends on the capabilities of both parties. This merits investigation before contracts are signed. For example, in post-war Guatemala at the time of the peace accords and initial agreements with NGOs, there were very few NGOs in operation. Existing NGOs had limited capacity to manage their cost structures and weak organisational and management capacity. Most of the NGOs and CBOs in post-conflict Guatemala were dubious about entering into any type of contractual relationship with the government. In order to give NGOs and CBOs time to develop their capacity to serve as contractors the government moved gradually from formal "agreements" to performance-based contracts with NGOs and CBOs. Although the initial agreements were not fully developed performance-based contracts, they served a similar purpose in that access to basic health care services was quickly increased and the NGO market changed substantially. Underperforming NGOs did not have their agreements renewed and new NGOs were created which, in turn, fostered a more competitive environment.

- *Contracting out to the non-government sector can instil greater confidence in the state in post-conflict environments.* By rapidly increasing access to priority services for the underserved in a transparent and participatory manner, people who have lived through years of conflict, turmoil and corruption can begin to regain trust in the state. Even though there may be concerns about the high transaction costs of contracting; government's capacity to draft, manage, and monitor the contracts; and its expense compared to the direct public provision of services, contracting can be an effective tool to expand access rapidly to basic health services in fragile states. A model that would bear further examination is the "social audit" in Guatemala, a country with a long history of corruption, particularly during the war period. This approach can give civil society oversight in the use of government funds for contracting out NGOs and can fortify transparency and ensure accountability to the community. This model could very well be adapted to other sectors beyond health.
- Management contracting generally works well where there is health infrastructure and a system already in place that functions at least minimally. Where strong managers can be recruited and hired on a contractual basis (either within or external to government) and can be held accountable for results, health facility performance can be improved. That said, when designing a management contract it is important to make sure that managers have enough authority and autonomy to make a number of management decisions. Key areas that managers should be given the authority over include how to use the allotted budget and how to provide incentives to health staff that would, for example, dissuade them from working in private practice on the side. For example, a manager with budgetary authority could have a large impact on civil service absenteeism by paying higher salaries to physicians to oversee specific facilities in exchange for an agreement of no outside employment and rigorously enforcing regular employment hours. Likewise, depending on the civil service regulations and laws, it would be ideal if the contracted manager could have the autonomy to hire and fire staff in accordance with performance.
- *With some initial assistance, governments can effectively and efficiently design, manage and monitor contracts.* Financial support and targeted technical assistance can support post-conflict fragile states to develop policy and design, implement and monitor contracts to non-government providers. This should be done carefully and methodically, paying special attention to the inclusion of key internal and external stakeholders throughout the process from contracting policy formation through contract design, implementation and monitoring. Once a decision has been made to use contracting out as a mechanism to strengthen health services, a new management model needs to be built into the service delivery system that encourages behaviour change and provides performance incentives. It is especially important to focus any new contracting scheme on strengthening the institutional capacity-building of the systems, processes and procedures necessary for a government to be an informed purchaser of outside services.
- Essential systems and support need to be in place to ensure success of performance-based contracting, especially in fragile states. Basic requirements include buy-in from key stakeholders from civil society, community-based NGOs and the government; government leadership and political will; strong contract management and oversight systems; and reliable health management information systems and reporting based on appropriate and flexible performance measures. Challenges include inadequate information systems; difficulty in reporting and record keeping; and contract oversight and evaluation (Box 1.5).

Box 1.5. Advantages and challenges to contracting out in fragile states**Advantages**

- ▶ May increase confidence in the state as a provider (purchaser) of essential public services.
- ▶ Can be an effective policy tool to increase access to priority services to targeted populations (*e.g.* improves quality and extends coverage).
- ▶ Allows for rapid expansion of health services.
- ▶ Draws on non-government sector expertise by providing services that the government does not have the infrastructure (human or technical capacity) to provide.
- ▶ Increases oversight of the non-government sector.
- ▶ Enlists non-government sector support for public priorities.
- ▶ Increases effectiveness and efficiency in the use of public resources through competition.
- ▶ Offers greater flexibility in personnel management to hire, fire, and relocate staff members and to offer them performance-based incentives.
- ▶ Encourages competition among health care providers.
- ▶ Allows a greater focus on measurable results.
- ▶ Introduces market tools and incentives such as links between results and costs, demand-based service provision, monitoring of customer satisfaction, service definition and calculations of unit costs, and accountability of personnel for performance.
- ▶ Allows governments to focus on other roles such as planning, standard setting, financing, oversight and regulation.
- ▶ Can be more efficient and equitable than traditional public provision of services.

Challenges

- ▶ Demands a high level of supervision and monitoring on the part of the purchaser.
- ▶ Management costs may wipe out efficiency gains. Incurs higher administrative and transaction costs, for example, the costs of negotiating, seeking legal advice, and creating adequate information and reporting systems.
- ▶ Requires cost containment strategies. Contracting can be more effective if it is implemented with other policy innovations, such as civil service reform, reforms in the fee structure and increased government financial support to purchase essential services, as well as reasonable incentive payments to contracted providers.
- ▶ Decreases direct control over the use of public funds while maintaining public sector accountability over the use of government funds.
- ▶ Leads to confusion over the roles and responsibilities of government and potential institutional dependency on non-state providers.
- ▶ Reduces incentives for the ministry of health to strengthen its own systems and processes for becoming a direct provider of health services (service delivery vs. capacity-building dilemma) unless built in, as in Liberia.
- ▶ May be affected by the fact that governments with weak capacity to deliver services may also be weak in a stewardship role.
- ▶ May fragment the health system.

Recommendations for contracting out in fragile states

Although there is no conclusive evidence as yet, it seems that when contracting out is implemented on a large scale with proper stakeholder participation, it may serve to quickly instil greater confidence in the governments of fragile states by rapidly increasing access to priority services for the underserved and decreasing out-of-pocket private expense. The implicit understanding is that by applying flexible solutions such as variations of contracting out schemes to health service delivery needs, a newly-constituted government may be able to effectively and seamlessly transition their focus from emergency and humanitarian relief to a longer-term, more permanent and sustainable service delivery model. The following recommendations can guide the process:

1. Ensure there is stakeholder involvement in all stages of the contracting process – policy and strategy development, contract design, knowledge-sharing and capacity-building, competitive bidding and selection process, contract implementation, and monitoring and evaluation – in order to foster partnerships, trust, transparency and co-operation.
2. Clearly consider contracting objectives in the design of contracts.
3. Consider transaction costs (the cost of doing business) when making contracting decisions.
4. View contracting as a strategy to improve or increase service delivery access and performance, not just as a way to reduce costs, which is not always the case.
5. Consider public sector capacity-building needs in the contracting process.
6. Ensure providers develop the capacity to serve as contractors.
7. Consider a competitive bidding process if more than one viable provider is available.
8. Ensure transparency in the contracting process, including ensuring that provider selection is apparent.
9. Specify performance targets and how performance will be measured.
10. Monitor and evaluate provider performance.
11. Link provider payments to performance results.
12. Ensure that the contract allows flexibility to tailor services to local needs.
13. Since contracting for health services is an iterative process, ensure it is adapted to country-specific conditions.
14. Ensure government can perform its new role as a regulatory and oversight body for all service providers and processes to provide strong supervision, monitoring and evaluation, and administrative and financial tracking.

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Endnotes

1. In the business world, Incentive Theory is essentially that company owners, in this case Ministry of Health purchasers, should structure employee compensation in such a way that the employees' goals are aligned with the owners' or Ministry's goals. Likewise, in psychology, Incentive Theory basis its beliefs on the theory that a person's actions always have social ramifications such as: If actions are positively received then people are more likely to act in that manner or if actions are negatively received people are less likely to act in that manner. Thus, if you build incentives for performance into formalised agreements then contractors will naturally perform.
2. Adapted from Eldridge and Palmer (2009).
3. *Ibid.*
4. Baseline 2002: 5ODs – Target 2005: 11ODs – Target 2008: continue in 11ODs, review and examine results for contracting strategy). First Health Sector Strategy Plan 2003-8.
5. 3,700 households were visited both for the baseline survey in 1997 and the evaluation survey in 2003. A separate health facility survey of 140 facilities was conducted in 2003.
6. Although Spanish is Guatemala's official language, 25 different languages are spoken throughout the country.
7. Further information can be found on the ministry website: www.mspas-sias.gob.gt
8. The "standardised incentives" are a package of incentives that the MoHSW's newly created office of Human Resources is putting together to ensure parity in compensation and pay.
9. In Guatemala the principal motivation was to strengthen ties with indigenous non-Latino communities.
10. Therefore, capacity-building to support NGOs is necessary under a PBC model as their role evolves from relief to development entities responsible to either international donors or national government.
11. The pilot contracting project did create incentives to focus on the targeted indicators and helped to curtail dual employment among the CO and CI staff.
12. Generally, performance measures that reflect the functioning of a health system would include immunisation rates, numbers of trained birth attendants, number of properly treated cases of malaria, etc.

Chapter 2.

*Justice and Security as Public and Private Goods and Services*¹³

Eric Scheye

Abstract

This chapter outlines the options for security and justice service delivery by non-state actors in the post-colonial state. The report is divided into four sections. The report outlines challenges and options and offers recommendations to the development community, by which it can support the post-colonial fragile state to strengthen the delivery of justice and security to all its citizens.

Executive summary

Justice and security are fundamental public goods, no different from access to potable water, basic healthcare and primary education. As with all public goods and services, their distribution and delivery ought to be accountable, affordable, accessible and appropriate for all citizens and residents of a country. Unfortunately, the post-colonial fragile state is often unable and/or unwilling to provide and adequately distribute or deliver justice and security to its people.

There are three basic means by which justice and security can be provided; these often occur in various hybrid combinations:

- i) the state delivers the public good and service through its institutions and agencies;
- ii) the state contracts out delivery to service providers; and
- ii) non-state networks provide services either in law or in practice.

Because of the weaknesses of the post-colonial fragile state, however, security and justice are frequently provided privately in three basic ways:

- i) via state institutions and agencies, where the organisation and/or individuals within the organisation charge fees for their services;

- ii) via private security companies which offer security as a product/commodity; and
- ii) via criminal groups, which deliver security as part of their criminal enterprise.

This paper discusses the multi-layered methods by which justice and security are distributed and delivered. The aim is to formulate pragmatic recommendations to help the donor development community strengthen its support for improved service delivery in the short to intermediate-term and further its efforts to fortify local capacity in building the state.

One of the crucial elements of the analysis is that in the provision of public goods and services, the post-colonial fragile state does not resemble the “Westphalian” concept of the state (with its separations of state and civil society, public and private goods). Yet much development assistance is based on such an assumption. The reality of the post-colonial fragile state is manifest by the relationship between the state and the non-state/local justice and security networks. It is also central to the way in which security provision has been privatised and to the state’s limitations to contracting out service delivery.

Based on this understanding of the post-colonial fragile state, this paper offers four specific programme areas suitable for direct donor support. Each recommendation aims to augment the state’s overall capacities, even if it does not explicitly strengthen the day-to-day delivery of justice and security by the institutions and agencies of the state. Instead, the suggestions mainly focus on the state’s ability to regulate, monitor, and audit the standards and principles – accountability, affordability, accessibility, and appropriateness – by which justice and security are provided, irrespective of how they are delivered. The recommendations also strengthen the state’s ability to regulate and audit the delivery of security by private security companies so that services may be contracted out in the future.

The four recommended programme areas are:

- i) Strengthening service delivery by state and non-state providers.
- ii) Enhancing legislative development to clarify the relationship between the state and the non-state/local justice and security networks.
- ii) Supporting mechanisms by which decisions made by the networks can be appealed against in the state system.
- iv) Building performance measurement systems within state institutions and agencies; these can evolve into policy and planning units upon which long-term state building in justice and security can be founded.

Introduction: setting the scene

Justice and security are fundamental public goods and services, no different from access to potable water, basic healthcare and primary education. Their distribution and delivery ought to be accountable, affordable, accessible and appropriate to and for all citizens and residents of a country. The post-colonial fragile state, unfortunately, is often unable and/or unwilling to provide an adequate level or equitable distribution of justice and security, or other public goods and services, to its populace. This situation does not arise only from conflict, the violence and injustice associated with conflict, or the inevitable increase in criminality that occurs after the conflict ends. For the state, the

challenge runs much deeper – on an annual basis, non-conflict violence and criminality far exceed those caused by civil strife (see OECD, 2009b). The issue is not who delivers the public goods and services, as there is a number of ways that justice and security can be provided. Instead, the obligation of any state is to ensure that its distribution and delivery meet certain standards and principles – accountability, affordability, accessibility and appropriateness.

There are three basic means by which justice and security as a public good and service can be provided, none of which are mutually exclusive. Most often they exist in various complex combinations:¹⁴

- i) the state delivers justice and security through its institutions and agencies;
- ii) the state contracts out delivery to service providers (Box 2.1); and
- iii) non-state networks provide services, either “in law” or “in practice”. The difference between “in law” and “in practice” rests on whether the provision of service by non-state actors is juridically legitimate. The two categories are not mutually exclusive, as service provision that is in law is also in practice. The reverse, however, is not always true.

Because of the political sensitivity of justice and security, not to mention their often tenuous legitimacy, the post-colonial fragile state (Box 2.1) may be reluctant and/or averse to permit or recognise other actors’ participation in their distribution and delivery. One of the foci of this paper is the balance and relationships among these methods of distribution and delivery of justice and security in the post-colonial fragile state, and how donors can support their provision.

At the same time, however, because the fragile state is unable to provide an adequate level or equitable distribution of public goods and services, the delivery of security has often been privatised.¹⁵ There are three basic means by which security can be provided as a private good and service. None of these is mutually exclusive and most often they exist in various complex combinations:

- i) state institutions and agencies, as the organisation and/or the individuals within the organisation, charge fees for their services;
- ii) private security companies offer security as a product/commodity; and
- iii) criminal groups deliver security as part of their criminal enterprise.

Box 2.1 Definitions

Contracting out: The OECD defines contracting out as the “transfer of competences and/or authority for a given period of time based on a contractual arrangement between the delegating authority (the government) and a third party (the contractor)” (OECD, 2009a). As with any contract, there must be an exchange of obligations, liabilities, and value. The exchange of value may or may not be monetary, though, most often, it is. Public-private partnerships may be one method of contracting out the distribution and delivery of public goods and services, if there is a contractual arrangement. However, such a relationship may be better understood as “private sector participation”, (see World Economic Forum, 2005, p. 23).

Post-colonial fragile state: We use the term post-colonial fragile state to specify the unique characteristics of first, a post-colonial state and, second, a fragile one. As these characteristics do not necessarily overlap, the use of the term is descriptive to refer to both sets of attributes.

The distinction between justice and security as public *versus* private goods and services is a crucial one. In the former instance it is a good and service intended to be available to all, for the benefit of all, and from which no one is excluded. In the latter case, it is either a product/commodity sold for the benefit of the seller to be privately consumed by those who can afford it, or else it is a service provided after payment is demanded/extorted.

This difference between public and private goods and services is vital in the discussion of the multi-layered structure of the post-colonial fragile state, its institutions and agencies, and the relationships among the various types of justice and security service delivery. Without distinguishing between the two types of goods and services, it is difficult to comprehend:

- ▶ the role and function of non-state/local justice and security networks;
- ▶ the relationship between the state and private security providers;¹⁶ and
- ▶ the ability of the state to contract out justice and security services that it may not itself provide.

This paper is divided into four sections. First I briefly analyse the post-colonial state, its nature and structural arrangements, as background to the role of non-state/local justice and security networks, not only for the delivery of justice and safety as a public good and service in the short to medium-term, but as an integral component of state building. Coming to terms with the structure and nature of the fragile state is also vital for understanding how security has been privatised, which is the second section of this paper. In the third section I discuss how the post-colonial fragile state can and cannot effectively contract out justice and security provision in the short to medium-term. In the final section I present four recommendations by which the development community can support the post-colonial fragile state to strengthen the delivery of justice and security to all its citizens and residents.

The structure of the post-colonial state: the role and function of non-state/local justice and security networks

The post-colonial state as a non-Westphalian state

An OECD report on state building in fragile situations notes that “*state building policy in any given fragile state must be grounded first and foremost in a specific, historically informed assessment of the state of the state*” (OECD, 2008: 23, italics in the original). A careful assessment suggests that most fragile states do not resemble the Westphalian concept of the state, with its separations of state and civil society,¹⁷ public and private goods (Anderson, 2007; Lewis, 1992; Sandbrook, 1998). As one scholar notes, the Westphalian state “hardly exists in reality beyond the OECD world. Many of the countries in the ‘rest’ of the world are political entities that do not resemble the model western state” (Boege *et al.*, 2009). Another scholar claims that, in much of Africa, there:

...has hardly [been] ...any point in time [when the state] had a monopoly of legitimate force... [The] security sector has... typically manifested both formal and informal tracks. Even in states which are ostensibly stable, statutory institutions have been unable to provide security to all categories of its citizens at affordable levels, with supplementary roles being played by an array of traditional security actors.... The Westphalian assumption that monopoly over the means of legitimate coercion lies with the state and its institutions meets a veritable challenge in the face of the wide support and legitimacy enjoyed by non state security institutions (Ebo, 2007).¹⁸

A third argues that many post-colonial states never established “effective institutions... [but] have more often been instruments of predation and extraction... [and that] the evidence is overwhelming that most... collapsed states at no point in the postcolonial era remotely resembled the ideal type of the modern Western polity,” with a separation of power between the executive, legislative, and judicial authorities (Englebert and Tull, 2008). The reasons are many, but one interesting explanation focuses on the role of taxation and its consequences:

A major problem with many of the post-colonial states in Africa lies with how revenue is collected. The major part of all revenues is not in the form of direct taxation but indirect taxation, such as import duties, exports of natural resources and developmental aid. Often the direct taxation that does take place does not fall on the propertied and power-holding classes but on the marginalised rural populations. This development has contributed to the nature of some African states as decoupled, or even predatory, ‘regimes.’ This character does not hinge so much on the lack of material or organisational capacities or economic resources as it does on the structure of state-society relations” (Egnell and Haldén, 2009; see also Herbst, 2000; Buzan and Wæver, 2004).

In fact, the vast majority of the 40 fragile and conflict-affected environments can best be described factually as post-colonial states. Attempts to implement a state building agenda grounded in a western reading of the state are misguided and prone to ineffectiveness. Critics have alleged that the basic assumptions of the “state fragility discourse and state building policies are orientated towards the western-style Weberian/Westphalian state,” which does not resemble the post-colonial one (Boege *et al.*, 2009). The result is self-explanatory or, as an internal UN Rule of Law assessment acknowledged, while “the international community has invested massive resources in promoting democracy and the rule of law in post-conflict and post-authoritarian states... the appropriateness and effectiveness of past efforts to strengthen the rule of law are discouraging” (Benomar, 2007). Recent World Bank studies have come to the same conclusion, noting that “the numerous rule of law assistance programs in post-conflict or fragile countries have so far resulted in few lasting consequences. Some individual programs have had a modicum of success..., but even then most have not built institutions that might outlast the donor presence” (Samuels, 2006; see also, Decker, Sage, and Stefanova, 2005; Shaw, 2000).

For donor support to be effective,¹⁹ what is required is an accurate analysis of the nature and structure of the post-colonial fragile state as it is, rather than as one may wish it to be.²⁰

Authority and structure of the “second state”

The post-colonial state is defined by the “rule of the intermediaries”: a series of networks and polities that substitute and compensate for the lack of authority of the central, legally-constituted state and its inability to deliver essential public goods and services (von Trotha, 2000). In the post-colonial state, state agencies are not the primary vehicles for the distribution of public goods and services. Non-state systems and institutions effectively function as a “second state”, and assume the role of providing most public goods and services.

These networks and polities relieve “the state of part of the administrative burden of extending [its] authority and delivery benefits to a large and scattered population,” which may include health, education, electricity, economic opportunity, justice and safety, and which the state is largely unable to provide in the short to intermediate term (Bratton, 1989; see also Kassimir, 2001; Vaughan, 2000; Keulder, 1998; Ayoade and Agbaje, 1989; van Rouveroy van Nieuwall and Ray, 1996; van Rouveroy van Nieuwaal and van Dijk 1999). A governance system in which non-state structures are as important as the state and, perhaps, “much more culturally embedded ... is even further removed from the

‘Westphalian model’” (Egnell and Haldén, 2009; see also Jörgel and Utas, 2007). The distance is all the greater when the state, largely depending upon these networks for the distribution and delivery of public goods and services, has contributed “to a resurgence of customary rule, albeit in (partly) new forms and with new functions” (Boege *et al.*, 2009). This has been the case, for instance, in Mozambique and Malawi, among others (Buur and Kyed, 2006a and 2006b).

One of the keys to understanding the post-colonial state is that it derives its legitimacy, in part, from how it integrates the networks and systems of the “second state” into a multi-layered structure. These networks are imbued with authority and represent the interests of those to whom they provide public goods and services (Englebert, 2000; Sklar, 2003). In these states:

...customary law, traditional societal structures (extended families, clans, tribes, religious brotherhoods, village communities) and traditional authorities (such as village elders, headmen, clan chiefs, healers, *bigmen*, religious leaders, etc.) determine the everyday social reality of large parts of the population..., particularly in rural and remote peripheral areas. On many occasions, therefore, the only way to make state institutions work is through utilising kin-based and other traditional networks. Thus the state’s ‘outposts’ are mediated by ‘informal’ indigenous societal institutions which follow their own logic and rules within the (incomplete) state structures (Boege, *et al.*, 2009).²¹

A give-and-take relationship, one that is continually negotiated and revised, exists between the state and the networks that distribute and deliver much of the state’s public goods and services. These networks “encompass organisations and actors such as secret societies, businessmen, chiefs, the military, warlords etc.” (Egnell and Haldén, 2009). They may also include customary courts, village councils, market/trade associations and religious affiliations. Offering ways for individuals and groups to pursue their livelihoods and acquire authority, the networks’ “channels and vehicles of power are not bounded, permanent nor grounded in territory or other kinds of fixed membership. Indeed it has been pointed out how ‘fluctuating’, ‘changing’, ‘intangible’ and ‘fluid’ these highly important networks are” (Egnell and Haldén, 2009).

This give-and-take is not equivalent to contracting out the distribution and delivery of goods and services. The relationship between the state and non-state networks is between polities, and it ebbs and flows according to the circulation and dynamics of power balances. Furthermore, the relationships among the differing layers of authority are an integral part of the social contract that establishes the state. These flows of power define the concepts and terms of political authority, such as separation of powers and civil society; the structure of the state; the survival functions of the state; what expectations society has of the state; and the state’s degree of resilience.

Within the warp and weft of politics and power in the post-colonial state, these networks shape how public goods and services are distributed and delivered and, thus, they cannot be overlooked or slighted. Nor can they be equated to private security companies. The networks of the “second state” are polities, representing and advancing the broad range of interests of those who adhere to them, from politics to justice, healthcare, education and cultural coherence. The networks, therefore, provide public goods and services to all who belong to their communities, as well as to those who may travel through their geographic territories.

Non-state/local justice and security networks in the post-colonial state

A consensus has emerged within the development community that non-state/local justice and security networks are, often, more effective, accountable,²² efficient, legitimate, and accessible service providers of justice and safety than are the agencies and institutions of the post-colonial state (Box

2.2). These networks, therefore, are indispensable for the short and medium-term distribution and delivery of justice and safety.²³ It is important to underscore that these networks are also associational groups, part and parcel of civil society.

Box 2.2 Examples of the value of non-state networks

In **Tanzania**, non-state/local justice and security networks have helped reduce crime (Bisimba, 2002). In some areas of the **Philippines**, a state-sponsored “local justice system (for lower order disputes) has increased access to justice and ‘unclogged’ state court dockets” (Franco, 2008). In **Burundi**, “the informal system is... perceived in a positive light in that the services are, in principle, free of charge. The *bashingantahe* are [also] in general of use to the courts during the process of implementing judgments, particularly for land cases” as they know who possesses the rights to the land (Dexter, 2005; see also CARE, 2002). In **Indonesia**, “in most cases, access to the legal process is beyond reach. The public, the poor and marginalized people in particular, are frequently unable to access their right to justice within the formal legal structure” (Indonesian Legal Aid Foundation, 2007). In the case of **Sierra Leone**, there is only a “single legal aid organisation in the country, the Lawyers Center for Legal Assistance, [which] serves only Freetown and the city of Makeni. In **Ecuador**, as of 2002 there were only thirty-four public defenders for the whole country. The three and a half million population in Quito and Guayaquil was served only by four public defenders” (Decker, Sage and Stefanova, 2005).

The OECD has itself recognised the vitality of non-state/local justice and security networks, stating that “a growing interest in and willingness to work with local institutions of governance – such as *shuras* in Afghanistan – is also welcome. Traditional systems, which may not be recognisable in western states, may still perform the same functions and generate the same outputs as formal state institutions. Respect and willingness to accommodate such systems [...] can be helpful in restoring governance” (OECD-DAC 2008; see also OECD, 2006).²⁴

In many instances these networks are patronised not just because they are more affordable, efficient, and effective than their state counterparts, but because they are the legitimate foundation upon which the community is based:

It is the community that provides the nexus of order, security and basic social services. People have confidence in their community and its leaders, but they have no trust in the government and state performance. ‘The state’ is perceived as an alien external force, far away not only physically (in the capital city), but also psychologically. Individuals are loyal to “their” group (whatever that may be), not the state... Legitimacy rests with the leaders of that group, not with the state authorities – or only with state authorities insofar as they are at the same time leaders in a traditional societal context (Boege, *et al.*, 2009).

The networks also distribute and deliver justice and security in ways that coincide and are compatible with the norms, cultural legacies and written/spoken language(s) of the people who need and rely on their services (The World Bank, 2006). “Most citizens regard the official organisations as imposed, irrelevant, and different in forms and procedures from the citizens’ traditional outlooks, convictions, practices, and beliefs” (Okafo, 2007). For example, in the Great Lakes region of Africa, the “manner in which the laws and procedures are practiced in formal court systems as well as the languages used are incomprehensible to most poor communities and therefore, in many ways, irrelevant to their needs” (Nabudere, 2002). A similar inaccessibility exists in Indonesia, where “poor people often experience injustice because of an institutional reliance on formal dispute resolution procedures which are plagued by the use of an inaccessible language” (Indonesia, Legal Empowerment).

Furthermore, these networks are frequently the preferred method of service delivery. Non-state/local justice networks “often enjoy high levels of popularity in local communities they police informally” (Wisler and Onwudiw, 2007; and see Meagher, 2006; Okerafoezeke, 2006). In Afghanistan, for example, “in 85% of [the] cases, people prefer to take their problems to a village or tribal council, local notables, or a cleric, while only 15% would bring a dispute into the formal system” (USIP, 2006). Similarly, in southern Sudan, customary courts are more trusted than state ones, as well as being more transparent and accountable (UNDP, 2006).²⁵ It should be noted, however, that in post-conflict settings it seems that a minimal state police service is the population’s preferred method of service delivery in the immediate aftermath of conflict, even though it provides very little actual security. In Kosovo, for example, the Kosovo Police Service was initially viewed in a very positive light by the population. In the first years of its existence, 56% of people judged the police to be “excellent” or “good”; over time, however, this declined dramatically to 37% (SSDAT Kosovo Review, 2008).²⁶ Similar phenomena occurred in Sierra Leone (Mehler, 2009) and in Timor-Leste, where up to 85% of individuals surveyed claimed to be confident in the quality of their East Timorese police service (Asia Foundation, 2008). At the same time, however, only 12% of the public had had contact with the police over the previous year and 47% of those who had contact felt that their interaction was conducted with minimal respect and professionalism (Asia Foundation, 2008). Even more to the point, the sense of insecurity among the population has been increasing steadily; 75% of the population prefers to rely on their non-state/local justice and security networks; and 85% of the police have indicated that they are active participants in those networks. It seems to be the case, therefore, that the initial “positive attitude of the people towards state security providers has to be interpreted as ‘wishful thinking’” and ethnic/national pride rather than as satisfaction in the actual performance of the public good and service delivered (Boege, *et al.*, 2009; Scheye, 2008).

A trusted and legitimate non-state/local justice and security network is, by definition, a locally-owned justice and security provider as the repository of the users’ beliefs, norms and values. Because these networks are often the preferred provider, they answer the two central questions of local ownership

Box 2.3. When decisions are not locally-owned

The recent experience of UN involvement in **Timor-Leste** is an excellent example of (i) the divergence between government and national ownership; and (ii) the difference between a state being legally-constituted and its being perceived as legitimate by its citizenry. For example, the UN accepted the decision by a small élite to adopt Portuguese as the language to be used in the state system, even though only a tiny percentage of the population spoke the language. This adherence to “government ownership” was disastrous. The UN also accepted government ownership of how to structure and develop the justice and security sector. Consequently, a dysfunctional and collapsed state-centric system was adopted despite widespread popular adherence to non-state/local justice and security networks even among state employees. In both instances, though government ownership was legally constituted, the decision was neither nationally owned nor legitimate. The Timor-Leste example belies the oft-voiced claim that donor support to non-state/local justice and security networks undermines a government’s legitimacy. In the Timor-Leste instance, the reverse might have been true. Blending the non-state networks’ authority with that of the government might have given the government true legitimacy. Failing to do so helped propel further civil strife.

To complicate the ownership issue further, a network’s leadership may be held accountable and can be replaced by its own adherents, as occurs, for example, in **southern Sudan** and **Yemen**. This may take place when the leadership does not adequately represent its membership’s interests or does not distribute and delivery adequate levels of public goods and services. From this perspective, the adherents of a network represent an important local ownership constituency in a political sense, rather than merely as beneficiaries of the distribution and delivery of a public good and service.

on a day-to-day basis within the neighbourhoods, on the roads, and in the marketplaces – “for whom?” and “by whom?”.²⁷ Finally, since local ownership is about “national ... rather than government ownership” (Nathan, 2007), it cannot be reduced to the will and wishes of the political and/or national élite (Box 2.3). Therefore, the non-state/local justice and security networks are a vital reservoir of national ownership as well (Baker, 2005). None of these local ownership characteristics can be underestimated. In this sense, of the four categories of local owners – national government and élite; local government and élite; justice and security providers; and customers of those providers – “non-state/local justice networks are the predominant local owner in terms of concrete, practical service delivery on the ground; but ought to be one of the principal players in understanding what local ownership might imply for” donor-supported programming (Scheye, 2008).²⁸

There is one important caveat, however, in this discussion of the indispensability of non-state/local justice and security networks. As previously argued, these networks are part of the “second state”; legitimate polities representing the needs and interests of those to whom they provide public goods and services. Nevertheless, the distinction between state service providers and these networks is, frequently, tenuous and ambiguous (Kimathi, 2005; Roy, 2004). The weave of the post-colonial state’s multi-layered structure suggests that “commercial, religious, gerontocratic and other social realms... [have] merged private and community spheres with the exercise of state authority” (Reno, 2009). From Timor-Leste to southern Sudan, Jamaica to Nepal, non-state/local justice and security networks are associated, however obscurely, with state systems, often in “law” and, more often, “in practice”. It is as inaccurate, therefore, to characterise one set of justice and safety providers as “state” and the other as “non-state,” when they overlap.

Given these symbiotic relationships, and the blending of roles and functions, one should view justice and safety providers as located along a continuum. Most service delivery takes place in the middle of the range between the opposing ideal types of “state” and “non-state” service provision. Consequently, there may be little conflict between the long-term objective of strengthening state capacities and the short to medium-term challenge of improving the delivery of justice and safety to all residents and citizens. Furthermore, donor support to the networks of the “second state” does not necessarily undermine the legitimacy of the state. The state’s legitimacy depends on the existence of the networks; as integral elements of civil society and distributors of public goods and services, the networks define the state, establish the social contract and set the expectations of citizens and residents.

Political challenges to supporting non-state networks

However, the relationship between the state and the networks is not tension-free. Tensions do exist, but they are mainly political. They involve competition for power and authority and often have little or nothing to do with questions of legitimacy, even when the political élite may cast the power struggle in terms of legitimacy. This power struggle between deeply enmeshed partners is of paramount importance in the state’s drive to ensure that the networks’ distribution and delivery of justice and security is affordable, accountable, accessible, and appropriate.

The first set of tensions revolves around the political élite’s desire to centralise power in a national government in order to consolidate its power, domestically and internationally. The most significant part of this challenge lies in the relationship between the political and national élites and the diffuse leadership and adherents of the networks. This tension can be mitigated, but it requires ongoing negotiation and re-negotiation of the social contract between and among national élites, civil society (of which the networks of the second state are an integral component), and local élites (often represented by the leadership of the networks). Other than supporting such dialogues – an intricate, sensitive and risky political activity requiring constant recalibration of the dynamic political balances

of power (Ball, Scheye, and Van de Goor, 2008) – the development community has little direct role to play in pursuing and negotiating the state’s social contract.

Somaliland may be one example of an apparently successful social contract, which explicitly incorporates elements of the networks into the governance system (Seifert 2007; Trotha 2005; Hoehne 2006a, 2006b; Menkhaus 2006). “While the Somali state [has] collapsed, the segmentary order has endured through all the storms of history, in ever new variations, by ‘modernising’ itself again and again” (Trotha, 2009). Blending customary, Islamic and western legal norms and practices, state building and peace building have largely been successful in Somaliland “due to the involvement of traditional actors and customary institutions that are rooted in the traditional clan based Somali society” (Boege et al., 2009). It is an “experiment... in governance [which is]... a hybrid of Somali and Western democratic styles” (Bradbury 2003). The government “does not hold the monopoly of violence and [...] security in Somaliland is dealt with in a decentralised manner and is largely guaranteed by local politicians and elders” (Hagmann and Hoehne, 2007). While the nascent institutions of a “modern state” exist – an elected parliament and president – the fact that the leadership of the second state “endorsed [the] state institutions... and the meaningful inclusion of these authorities within state structures decisively contributes to the legitimacy of the state in the eyes of the people” (Boege et al., 2009). This hybrid form of Somaliland’s minimal state may be the “best hope for state revival... [and state building,] in which a central government with limited power and capacity relies on a diverse range of local authorities to execute core functions of government and mediate relations between local communities and the state” (Menkhaus, 2006).

A second political challenge is to determine which non-state actor or network in the post-colonial state is appropriate for donor support (Box 2.4). It ought to be recognised that, in many circumstances, groups that initially appear to lie outside the realm of the acceptable are in conflict with the governments of their countries. As these troubles persist, the governments of the affected states may enter into negotiations and dialogue with such individuals and groups in an attempt to resolve the strife, as has occurred or is still happening in Colombia, Pakistan, Uganda, Iraq, Burundi and Afghanistan. The integration of Hutu *génocidaires* in Rwanda through the *gacca* process, and political accommodations despite the genocide they committed, is an excellent case in point (Gourevitch, 2009). In this sense, there are “no satisfying answers to” and certainly no *a priori* solutions to the question of whether donors should engage with the networks established by armed non-state actors (Schneckenner, 2006). If donors are to more consistently adhere to the dictum of local ownership, the

Box 2.4. Donors and the second state

Various political challenges reside wholly within the donor community. Donors frequently view the non-state networks as unaccountable, readily “instrumentalised” by political élites, and in violation of human rights, particularly women’s rights. Each of these critiques rings true and has merit. In the post-colonial minimal state, however, the criticisms are equally applicable to state agencies, particularly as many state justice and security institutions function more like private corporations than agencies that deliver a public good and service. For example, in the **Philippines**, there is little doubt that the networks are élite-biased, but similar challenges confront state-provided justice, and years of judicial reform have been unable to ameliorate this issue (Franco, 2008). A second prominent challenge is the assumption that the operations of the networks are more difficult to develop and strengthen than those of their state counterparts. However, this is empirically unfounded. For example, consider the record of justice and security development in **Guatemala**, where after “eight years of reform..., the criminal justice system produced convictions in only 2 per cent of all homicide cases” (UN, 2007). It is more reasonable to believe that the two systems are comparably difficult to support and that a meticulous analysis of local politics, cultural values, and capacities is the only method to determine which is more resistant to change.

political judgement of the partner country ought to be accorded greater import than the donor's own human rights norms in such cases. Human rights criteria, then, would be only one amongst many indicators for the development community and, in situations as in Rwanda and Timor-Leste after the 2006 crisis, not necessarily the principal benchmark.

Nevertheless, for the development community there are at least two structured methods with which to evaluate the political risk of engaging with non-state actors. The first classifies the position of an armed non-state group within the structure of the multi-layered governance system based upon the group's dynamics and activities. The group can be plotted along three axes: greed vs. grievance; non-territorial vs. territorial aspirations; *status quo* vs. change (Schneckener, 2006). Groups located closer to the greed, non-territorial and *status quo* ends of the spectrum may be less susceptible to reform, in that their behaviour is less political and more tinged with criminal intent. These types of groups behave more like armed criminal enterprises and consequently may be inappropriate for donor support, even if they provide a modicum of justice and security to the populations under their *de facto* control.

The second methodology suggests that differences in an armed group's previous and existing political connections and relationships define whether it is a "protector" or "predator" organisation (Reno, 2007; Reno, 2008). "The behaviour of protector militias is contingent upon the presence of social space that is insulated from interference from capital-based patronage networks," but integrated into local institutions, their politicians, and community norms (Reno, 2007). Predatory groups, in contrast, have close links to capital-based patronage structures. The argument further claims that protector groups and their networks "are heirs of state builders everywhere" (Reno, 2007), intimating that such networks could and should receive assistance. In other words, in order to pursue and further their state building agenda, donors should, in the short to medium-term, support the performance of such protector networks. In this sense, the current and future legitimacy of the state depends upon donor support to non-state networks, assistance that would be explicitly undertaken for political reasons.

The ability of donors to support non-state networks is limited but achievable if conducted appropriately. For instance, developmental personnel, having gained technical expertise in justice and security development, may not be sufficiently versed or experienced in unravelling the webs of political relationships within the post-colonial state, particularly when confronted by an underlying notion of the state that does not resemble their Westphalian preconceptions. Furthermore, to disentangle the relationships may also require extensive knowledge of how power is distributed and circulates at the micro level within the second state. That may be beyond the capacity of outsiders who rotate in and out on two to three year development cycles. But understanding that circulation may be of prime importance given the role that social efficacy and capital play in the delivery of public goods, community-driven development, and social cohesion.²⁹ Finally, donors may need to modify their funding mechanisms to mirror those of community-driven development programmes and channel monies through local NGOs to the non-state/local justice and security networks who deliver the preponderance of justice and security in the post-colonial state.

Privatisation of security in the post-colonial fragile state

As already discussed, under fragile conditions, the post-colonial state lacks capacity, willingness, and/or legitimacy to deliver basic public goods and services like justice and security to its citizens and residents in an affordable, accessible, appropriate, and accountable manner (Box 2.5).³⁰ These states suffer under severe financial, human resource, administrative, capital and legal infrastructure deficits, which have, among other consequences, inhibited the separation of powers.³¹ Consequently, the

capacities and structures necessary for state institutions and agencies to distribute and deliver justice and security are often lacking. One of the results is a privatisation of service delivery by private security providers and state institutions and agencies.

Box 2.5. The security and justice challenges in fragile states

The inability of fragile states to provide affordable justice and security services is well-known. “For example, in **Brazil**, processing costs for labour disputes are reported to be ten times higher than the value of the case. The cost of litigation proceedings is often compounded by the requirement that parties be represented by lawyers. In **Ecuador**... *pro se* representation is not permitted regardless of whether parties can afford legal services. In **Honduras**, legal fees to obtain a monthly alimony of HNL 100 in a child support case could amount to as much as HNL 2 000 – the equivalent of almost two years of alimony” (Decker, Sage and Stefanova, 2005).

In **Indonesia**, the police “are overstretched, understaffed and under-resourced. Anecdotal evidence... confirms assertions... that up to 70% of police funds/resources come from extra-budgetary sources. Lack of operational and capital investment resources places severe constraints on the overall performance of the police” (Nordic Consulting Group, 2004).

In 2006 in **Sierra Leone** there was a total of 100 lawyers, only 10 of whom practised outside the capital Freetown (Maru, 2006). According to the Inter-American Development Bank, most Haitian judges and their assistants lacked the education required for their posts. Only 8% of judges and 5% of their assistants were licensed attorneys, while two thirds did not have any formal legal training, their only training being “on the job” (IADB, 2000).

Private security providers in the fragile state³²

The deficit in the distribution and delivery of justice and security stimulates the formation of private security companies to protect those able to pay, as if security were a product/commodity for sale like any other.³³ As the World Bank notes: “when government[s are] not strong enough to protect property rights... private organisations selling ‘protection services’ fill the void” (The World Bank, 2005). The extent of the market for private security has grown exponentially; estimates are that the “global private security market is valued at USD 165 billion” (Abrahamsen and Williams, 2008). In the Dominican Republic, for instance, almost 50% of the nearly 100 private security firms registered in 2000 had been founded since the mid-1990s (Diaz, 2001). The same has occurred in much of Africa (Abrahamsen and Williams, 2007).³⁴

It is important to recognise, however, that this buying and selling of security effectively relegates it to a business model between two distinct entities (a buyer and a seller), albeit of a dangerous product/commodity. This suggests that these providers do not deliver security as a public good and service; nor is it consumed as such. For both parties, security is a private good to be delivered and consumed, whether it is the protection of a bank, its employees and customers or a neighbourhood, its residents, and the guests of those residents. Security is made available to those who can afford to pay for its delivery. Those who cannot are excluded. Individuals and groups who do not pay for service may still benefit from its delivery, but as free-riders, such as the housekeeper of a wealthy protected couple, or the stores on either side of a bank whose guards patrol outside.

Noting that this delivery of security is a private good distinguishes these providers from non-state/local justice and security networks, even though they both deliver security. The private security provider sells a product/commodity. It advances the interests of its proprietors, most often by

increasing its delivery of security to ever larger numbers of customers and/or by raising the price of its service. Customers can hold their private provider accountable by demanding a certain level of service. If they do not receive what they deem to be an adequate service, they may purchase security from another private company or, alternatively, demand service from the post-colonial state, although it is unlikely to be able to provide it.

The relationship of the post-colonial fragile state to these two types of security providers is also very different, although its overall obligation is to ensure that justice and security are provided in a way that is affordable, accessible, appropriate and accountable. As suggested, the state's relationship with the non-state/local justice and security networks is, largely, a political tug-of-war over power, authority and control. The stance of the post-colonial fragile state in relation to private security companies, however, is comparable to its relationship with any other private corporation or enterprise. It is primarily limited to regulating, monitoring and auditing its adherence to the law. In the case of security, the product/community is inherently dangerous, which suggests that the law(s) and regulations governing its distribution and delivery by private providers ought to be tightly drafted and strictly enforced.³⁵ Unfortunately, this is precisely what the fragile state is largely unable to do.³⁶

The fragile state often lacks the capacity to regulate and audit the activities and performance of the private security companies. Its ability to measure and evaluate its own justice and security performance is exceedingly limited and its capability to do that for private providers is even less institutionalised. The legal frameworks for registering, licensing and monitoring the provision of security may, at best, be incomplete. Even if the legal regimes are robust, the institutions and agencies of the state frequently do not have the managerial systems in place to implement the framework. Furthermore, there are not sufficient numbers of trained personnel to undertake the necessary oversight.

The fragile state's lack of the requisite capabilities to regulate, monitor, and audit the performance of private corporations poses a profound challenge. The consequence is that private corporations supply security largely outside the purview of the state. Regimes of "soft regulation" may be a palliative, but their effectiveness depends upon moral persuasion and voluntary adherence. Transnational private security companies³⁷ may respect some of the strictures of soft regulation,³⁸ but such regulation is unlikely to alter the behaviour of the more localised privatised security providers that exist around the world.³⁹

The privatised post-colonial fragile state

The proliferation of private security companies, along with the vitality of the non-state networks, are only two salient features of the post-colonial fragile state. Another characteristic is that in many of these countries, state-delivered justice and security has, effectively, been privatised. The institutions and agencies of the state do not, primarily, provide public goods and services. Instead, they deliver a service for a fee. For instance, it would be naïve to qualify many of the actions and behaviours of large parts of the Zimbabwean and Guatemalan police services, or the Yemeni and Venezuelan judiciaries, as, first and foremost, those of public agencies. Often too, the principal service provided by state institutions is to preserve the political élite's political, economic and social prerogatives. More to the point, the primary activity of some of these state institutions is to deliver a product/commodity to those individuals, groups, organisations and neighbourhoods that are able to pay for it. Just as a private security company charges its customers on a pre-arranged schedule (weekly, monthly, bi-annually), a police officer, prosecutor, or court clerk will, in many cases, perform his/her official state duties only after receiving payment from the person or group requesting the service. For example, in Ecuador, police routinely demand payment from individuals, organisations and neighbourhoods for their regular policing services, while in Mexico's Federal District, 70% of the

service's workforce is allegedly assigned to provide security to private interests (Ungar, 2007). In Nigeria, some members of the paramilitary Mobile Police have been permanently assigned to work with private security companies, are paid supplemental salaries by the companies, and have been integrated into the day-to-day activities of those companies, even though they continue – legally – to remain under the authority and command of their own officers (Abrahamsen and Williams, 2006).⁴⁰ These situations do not constitute the distribution and delivery of a public good and service, but are more akin to private business arrangements. The product/commodity, however, is justice and security.

In many circumstances, therefore, state-delivered justice and security has been privatised. The issue is not about a fragile state being unable to distribute and deliver adequate levels of justice and security. It is about the privatisation of a public institution. When a state institution primarily acts as a purveyor of a private good and service, the agency itself can be said to have been privatised, along with its state personnel. The actions of the institution benefit those who manage and control the organisation and its activities are, then, comparable to those of a private security company, even though the agency legally remains an integral part of the state.

In such situations, even if the fragile state possesses the capacity to contract out justice and security service provision (which it does not), it is unlikely that the mandated state institutions will do so effectively and efficiently. Private security companies are their competitors. They compete over market share, the costs of doing business, and the benefits their proprietors accumulate. Privatised state agencies would be able to skew the regulations and procedures of contracting out, so as to benefit their presumptive managers and owners. More likely, the proprietors of largely privatised public institutions would seek to establish mutually productive business relationships with the owners of private security companies so as to create monopolies or oligopolies. Contracting out would not be a mechanism by which the state could further the affordable, accountable, appropriate, and accessible distribution and delivery of justice and security. It would be a means by which the private marketplace for justice and security could be captured and exploited for private gain.

The unholy alliance

When there is collusion between state institutions and private security companies, the borderline may have been crossed between the state acting as a legitimate, legally constituted entity, and elements of the post-colonial fragile state acting as a criminal enterprise. This is more than a question of the privatisation of state institutions and agencies. It is about an unholy alliance – explicitly or implicitly – among political and business élites, criminal enterprises, and the state's justice and security services. In such cases, it may be argued that the post-colonial fragile state functions more as a criminal enterprise than as a political entity distributing and delivering public goods and services. Evidence of such unholy alliances has appeared in Afghanistan, Bosnia and Herzegovina, Guatemala, Guinea-Bissau, Haiti, Iraq, Jamaica, Papua New Guinea, Zimbabwe and elsewhere (Cockayne and Lupel, 2009).

It needs to be admitted, however, that “in many conflict-affected situations, governmental entities and criminal organisations are also hard to distinguish [one from another] because they come to play similar functions, providing similar services” (Cockayne and Lupel, 2009).⁴¹ In some instances, the resulting coalition of actors has even acquired a modicum of legitimacy, as they satisfy “the needs and interests of extensive constituencies straddling the state-society boundary” (*ibid*). These relationships are not the same as the multi-layered relationship between the state and non-state networks, where in the latter public goods and services are more widely distributed. To distinguish between the two situations, a new typology needs to be developed. This should focus on the degree to which the activities and *de facto* functions of state justice and security institutions and agencies have been privatised to perpetuate the power of the existing partnership of élites.

Contracting out justice and security as public goods and services

Contracting out in the post-colonial fragile state

Throughout the world, there are numerous instances of discrete justice and security functions being contracted out. It should be noted, however, that only public goods and services can be contracted out. By definition, the state cannot contract out a private good and service.

The operation of forensic laboratories; the protection of publicly-owned natural resources and other public facilities; police administration; legal aid; and the maintenance of court houses, police stations, and prisons⁴² have all been contracted out. In each of these situations, contracts outline mutually-agreed obligations and responsibilities for the respective parties – the state is legally and fiducially responsible for managing the contract and the corporation or NGO, who fulfils the contract's covenants. This relationship is based upon reciprocal obligation, mutual accountability, and shared responsibility and liability for the design and execution of the terms of the contract. Additionally, in order for a public good and service to be contracted out, considerations (value) must be exchanged between the state and the contractor.

Contracting out, however, is not limited to contractual arrangements with private corporations or NGOs. In many countries, bar associations license, regulate, and oversee the activities of the legal profession. Although bar associations are a private or semi-private organisation, they are not-for-profit corporations and do not necessarily operate under specific contractual obligations. Nevertheless, states have contracted them to distribute and deliver a specific public good and service. Private law faculties can also be considered in the same light.

International actors also provide contracted out justice and security distribution and delivery. As well as the executive functions exercised by UN transitional administrations in Kosovo and Timor-Leste or international war crimes courts, Cambodia's acceptance of UN participation on its national war crimes tribunal can be seen as an example of a judicial function that has been partially contracted out. The same applies, for example, to Sierra Leone's acquiescence to a Commonwealth police officer serving as the interim head of its police service; the International Commission Against Impunity in Guatemala, which supported Guatemalan prosecutions; and the process by which the United Nations has been vetting and certifying in Timor-Leste since 2006. However, such international participation in the distribution and delivery of justice and security may be the exception to the rule, as it effectively undermines the fundamental development principle of "local ownership", and raises political sensitivities over notions of sovereignty. At best, it is an interim and provisional method of delivering justice and security, one that minimal states accede to only when they cannot distribute and deliver justice and security themselves, and then only under specific expedient political circumstances. The decision of the Timorese Court of Appeals to declare the agreement between the United Nations and the Timorese government unconstitutional suggests the limits to contracting out to international actors.

Despite the numerous ways in which the state can theoretically "contract out" justice and security, the ability of the post-colonial fragile state to do so is extremely limited. Just as the state is, largely, unable to effectively and efficiently regulate, monitor and audit the performance of private security companies, it is incapable of contracting out justice and security. All the limitations and deficits that impede the post-colonial fragile state's ability to regulate private security providers exist for contracting out.

Two further capacity issues hamper the post-colonial state's ability to contract out. First, to be able to contract out effectively and efficiently, the post-colonial state must have an established justice

and security strategy. This is neither a wish list nor a checklist; rather it is a detailed plan with stated needs, achievable objectives, specific policies and concrete timelines. To construct such a strategy, the state must first know which services it provides well, which it does not deliver adequately, which it seeks to provide but does not currently do so, and which it can appropriately contract out. But the ability to undertake such analyses is beyond the capability of the post-colonial fragile state, let alone to amalgamate them into a detailed, implementable plan.

Second, contracting out depends upon the state's capacity to draft unambiguous, precise legal covenants that lay out what services are to be contracted out, how those services are to be provided by the contractor, and the mechanisms by which the state will manage the contract. These are highly technical legal and managerial skills and are difficult to master. Even if a post-colonial state could put out a contract, it will often lack the expertise to manage it. Contract management is absent in many development agencies (which routinely contract out services), thus it is highly unlikely that it exists within a post-colonial fragile state. If there are such skilled individuals, it is likely that will have been poached by the development community.

There are, however, exceptions. In Cape Town, South Africa, a private security company Securicor has been tasked with securing the public spaces of the Cape Town Central City Improvement District (CCID) (Abrahamsen and Williams, 2008). The CCID was created by the Cape Town Partnership, which is an NGO established and controlled by the city council and the business community. Securicor's personnel patrol the CCID, working with the police. Securicor's vehicular patrols are "are linked to the City Police control room by radio. [In addition], the supervision of Cape Town's 170 closed-circuit television cameras is undertaken by Securicor officers in cooperation with the City Police" (*ibid*). It should be noted, however, that the CCID and its parent, the Cape Town Partnership, are hybrid entities. They straddle the space between a local state entity and a public-private partnership. Still, the activities of Securicor within this hybrid entity can be viewed as a type of contracting out.

Public-private partnerships

As suggested by the Cape Town example, public-private partnerships may offer an alternative to contracting out, as defined in a strict legal sense. They are a hybrid method, but, nevertheless, these partnerships can contribute to long-term state building and improve the distribution and delivery of justice and security. One example is the Citizen-Police Liaison Committee in Karachi, Pakistan (Masur, 2002). The Karachi business community, having been given access to police stations, has supported the police by developing and managing databases and conducting crime analyses. It should be noted, however, that the services provided by the committee to the police "have not been explicitly delegated or contracted out to it by the state. This is not a case of conventional 'contracting out'" (Masur, 2002). Instead it is a partnership that began by the state attempting to establish a community policing programme, but which then evolved into a significantly different undertaking. For the committee to be successful, the police rules and regulations needed to be amended to allow private citizens to perform policing functions in a state agency without a contract or a detailed specification of the services they were to provide.

A similar case exists in Colombia, where the administration of a local court was enhanced (Said and Varela, 2002). As with the Karachi example, the original impetus came from the state. In this instance, the originators of the partnership were the court's judges. A local business association conducted research that highlighted the challenges faced by the court. With the municipal government and courts, the association helped design an initiative to improve performance by introducing more contemporary court administration processes and techniques. Once again, laws and regulations had to be modified. Unlike the Karachi example, however, private citizens did not perform public

functions in the *Itagüí* courts. Instead, they limited their involvement to supporting the court's staff in initiating and implementing the court modernisation project.

While public-private partnerships can productively and effectively augment the distribution and delivery of justice and security, these arrangements are not methods of contracting out. Furthermore, the ability of donors to pursue partnerships in the post-colonial fragile state is limited, for as the cases above suggest, effective partnerships may require the responsible government actors to sow the seeds in the receptive soil of civil society. In this sense, donors may be able to support the replication of effective partnerships, but not their initial conception.

Donor support for security and justice service delivery: practical programming recommendations

Donors want to know what concrete activities they can undertake to support the initial distribution and delivery of justice and security given the post-colonial fragile state's multi-layered structure and its minimal capacities, competencies and commitments. A minimally competent state is essential for the long-term success of state building, one that "at least [regulates] alternative sources of authority and service delivery" (Call, 2008). Helping to construct such a minimally competent state is a daunting task.

The underlying question is how to reconcile the immediate need for service delivery in the post-colonial state with the long-term objective of developing local capacity to build the state. This paper offers four specific programme areas suitable for direct donor support, each of which augments the state's overall capacities, even if they do not explicitly strengthen the day-to-day delivery of justice and security by the institutions and agencies of the state. Instead, the suggested programme areas primarily focus on and support the state's ability to regulate, monitor and audit the standards and principles – accountability, affordability, accessibility and appropriateness – by which the public goods and services of justice and security are provided by whomever delivers them. The recommended programme areas also strengthen the state's ability to regulate, monitor and audit the delivery of security as a product by private security companies so that services may be contracted out in the future.⁴³ The four specific programme areas are as follows:

- i) strengthen service delivery by state and non-state providers;
- ii) enhance legislative development that clarifies the relationship between the state and the second state;
- ii) support mechanisms by which decisions taken by the non-state networks can be appealed absorbed in the state system; and
- iv) help build performance measurement systems within state institutions and agencies, which can evolve into policy and planning units.

None of these recommended programme areas involves the contracting out of justice and security distribution and delivery. Instead, they are vehicles through which the post-colonial fragile states can strengthen their capacities so that they can contract out justice and security services in the future.

It should also be noted that one of the key areas of development that is imperative for donors to address lies outside the purview of this report: the ways in which state-provided justice and security

have been privatised. If the privatisation of significant elements of the state's justice and security institutions and agencies is not tackled, the post-colonial fragile state will not be able to provide adequate, affordable, accessible and accountable justice and security to its citizens and residents. It will also largely be unable to strengthen its relationships and associations with the non-state networks and its capacity to contract out public goods and services will certainly be reduced.

Strengthen service delivery

Despite their deficiencies, state institutions and agencies are essential in the distribution and delivery of justice and security. In addition to the justice and security programmes that donors customarily undertake in support of state providers, there is a range of initiatives that can and have been undertaken that bridge the services delivered by state agencies and non-state/local justice and security networks. Many of these programmes draw on the principles of community-driven development programmes supported by the World Bank and other regional banks (Asian Development Bank, 2007) as well as the legal empowerment movement. Others are geared towards strategic approaches to community policing. It should be noted, however, that these recommended programmes do not enhance the contracting out of public goods and services. Rather, they strengthen the abilities of state institutions and agencies to supervise the performance of non-state actors, expand access to justice and security, and more closely knit the state and the second state's service delivery.

Paralegals, justices-of-the-peace and legal empowerment

A classic example is the paralegal programme in Sierra Leone, which engages and seeks "to improve both formal and customary institutions" (Open Society Justice Initiative, 2006).⁴⁴ Supervised by lawyers and monitored by community boards, the paralegals work on a range of issues, from domestic violence to the right to education, from police abuse to employment rights. The participation and oversight by lawyers and community boards has been vital to the programme's success. On the other hand, in Nicaragua a paralegal/justices-of-the-peace programme with hundreds of rural justice mediators, approximately 30% of whom are women, is supervised by the national Supreme Court. As in Sierra Leone, these mediators work on "minor criminal cases, family conflicts and property-related disputes by providing alternative solutions. They advise community members on legal issues and inform them of their legal rights. The facilitators are leaders who are recognised in and elected by their communities. They hold no political posts; the only academic requirement is that they must read and write. Community leaders participate as facilitators on a voluntary basis" (Quintanilla, 2004). It is claimed that crime has fallen by 10% in the programme areas and that the community's trust in the justice system has increased (Quintanilla, 2004).

Strengthening the skills of the leaders of the second state, many of whom will also be in positions of authority within non-state/local justice networks, is a primary lesson learned from community-driven development (Krishna, 2006; Fox, 1997). In Timor-Leste, to improve service delivery and access to justice, local leaders have been "trained to be able to provide information and legal guidance, education and assistance to members of their communities" (Low, 2007), with emphasis on improving their "mediation of civil disputes between community members and conflict resolution within the community" (Ibid). One of the keys for network leaders and others, particularly paralegals, is:

...not merely to deliver a specific service, but to act as brokers between the community and the wider world. Being more in touch with state facilities as well as those of the outside world, they were expected to help their clients expand their access to resources and help them negotiate their way through unfamiliar procedures. This is very important to people deprived of information, and in the absence of adequate state outreach they are forced to depend for such services on exploitative patrons and middlemen (Gupta, 2000).

Another example of this approach is The Liaison Office (TLO) in Afghanistan, which “looks for linkages between customary and modern institutions that can ease a transition period – or possibly lead to an organic hybrid political order” (Schmeidl, 2009).⁴⁵ In Khost, one of Afghanistan’s provinces, the TLO funded a conflict mediation commission comprised of six tribal elders that provided “an alternative dispute resolution mechanism akin to western out-of-court arbitration, and effectively serves to include the authority of tribal elders into the formal conflict resolution architecture at the provincial level” (Schmeidl, 2009). The commission is supported by the provincial governor, who refers cases to the commission and approves its decisions. It is reported that the commission has “so far resolved 23 protracted land disputes, and proactively deescalated emerging conflicts (inter-tribal as well as conflicts involving district-level government bodies)” (Schmeidl, 2009).

What is important to recognise in all of these examples is that the initiatives encompass a wide playing field. Rather than focusing narrowly on strengthening criminal justice mechanisms, they undertake broader conflict resolution disputes, property issues and administrative justice questions. By expanding the issues they address (albeit ones of greater political sensitivity and risk), these support programmes are better able to bridge and blend the arena of state-provided justice and security with that of the non-state networks.⁴⁶ It should also be noted that none of the programmes outsources the distribution or delivery of justice and security. Rather each is an extension or strengthening of an already existing, if nascent, relationship between state and non-state/local providers.

Strategic approaches to community policing

In the field of narrower criminal justice and police development initiatives, the possibility of bolstering the relationship between the police and non-state/local justice and security networks is virtually unlimited. In southern Sudan, for example, many, if not all, marketplaces have local associations that are responsible for maintaining orderly conduct within the market. In one of the main Juba markets, there is not only a general market association, but one specifically geared to Ugandan traders. In Malakal there are also two associations, one for “African southern Sudanese” and one for “Arab southern Sudanese”. In the case of the Juba market Ugandan association, police officers are assigned as liaisons, whose sole responsibility is to assist the association and its membership on safety and security issues. If these liaison police officers were to be given on-the-job training – mentored by donor-funded, skilled community policing officers – an incipient community policing programme would be launched. If the donor-funded initiative were also to enhance the ability of the two Juba market associations to prioritise and meet their needs, a comprehensive community policing/problem-solving programme would be underway. This type of community policing/problem-solving police development would be tightly focused on marketplace safety and security, but after six to nine months, it could be replicated in a number of other towns throughout southern Sudan. Within 18 months, the number of trained southern Sudanese police officers and community leaders could be significant. They, in turn, could form the core of a community policing/problem-solving programme that could be expanded beyond marketplaces into building better relationships between the police and other non-state/local justice and security networks, such as taxi associations, neighbourhood watch groups and customary courts.

In Timor-Leste, a donor-supported initiative could be structured along similar lines with highly targeted assistance. The rationale for community policing in Timor-Leste would be the admission that approximately 85% of the police currently work with non-state/local justice and security networks and that 85% of the population looks to these networks for their justice and security delivery. Given this level of active legitimacy, by providing police and community organisation mentors, donors could assist the Timorese police and community leaders in better prioritising community/neighbourhood needs and interests and improving police support to meet those priorities. Each problem-solving pairing of trained police and community leader could then be used

to spread the community safety programme. This model of community policing, as in southern Sudan, is the best method by which donors can support state-provided service delivery in post-colonial fragile states.

Legislative development

There is significant need for legislative and regulation development to improve justice and security distribution and delivery. There are two areas in which donors can support development: (i) demarcating authority between state and non-state/local justice and security networks; and (ii) establishing regimes by which state authorities can license, regulate, monitor and audit the activities and operations of private security companies.

Demarcating state/non-state authorities

In many countries or regions – including Bolivia, Nicaragua, Guatemala, Malawi, South Africa, Mozambique, Bangladesh, Timor-Leste, Solomon Islands – the activities of non-state/local justice and security networks are incorporated into state law. In many places, these networks' activities extend past what is allowed in law, but are effectively accepted and authorised in practice. If these activities can be legally certified through legislation or rule-making – primary or subsidiary – the lines between state and non-state/local justice may become less blurred. Once again, this is not an issue of contracting out, but of solidifying the minimal state's existing relationships and associations.

In southern Sudan, for example, it is not uncommon for a state court to delegate cases to customary courts (Scheye and Baker, 2007). Simple traffic cases may be referred to customary tribunals because state courts are unable to handle cases quickly. In one case I observed in Southern Sudan, the police handed over to the state prosecutor a traffic case that involved a scuffle between one of its officers and the accused. The state prosecutor brought charges in the appropriate magistrate's court, which in turn gave jurisdiction to a customary court. Within 24 hours of being given authority over the case, the customary court heard testimony from all concerned parties and gave a verdict. The proceedings appeared to be fair, with all parties given an opportunity to rebut testimony. The chiefs sitting on the tribunal asked the defendant whether he believed that the decision of the customary court was equitable and he agreed it was. Punishment was handed down and the case closed.⁴⁷ From the perspective of accountability, accessibility, affordability and appropriateness, justice was served. Legally, however, the customary court had no jurisdiction over the case, despite it being delegated by the magistrate's court.

In another instance, the proceedings concerned a politically controversial case in which a mixed panel of customary chiefs adjudicated a case of fighting between an "Arab" and a "southern" Sudanese. As with the preceding example, this case had been referred by the magistrate's court to the customary one. In this example, the reason for the delegation was not expediency, but politics. "According to observers, since the case was politically delicate and could cause further public disturbances, the customary court was better suited than the magistrate's court to address the issues and resolve the conflict according to the values of the complainants and involved communities" (Scheye and Baker, 2007). The customary court was deemed more suitable and better equipped to resolve the case according to the values of the parties than the state court because the three chiefs who sat on the panel were Dinka, Shilluk and Arab judges. Once again, however, the customary court had no legal jurisdiction to hear the case and its verdict was technically illegal and a violation of the human rights of the parties involved.

In the short to medium-term, the choice these two cases present is between: (i) illegally rendered justice, which is deemed to be legitimate, fair, effective and politically sensitive; and (ii) legally

authorised justice, which is ineffective, costly and politically inept, can lead to increased tension and perhaps violent conflict and defendants being unfairly imprisoned for extended periods of time prior to their court appearance. Claimants may perceive delayed justice to be no justice at all. The answer for the development community is straightforward – donor-supported legislative assistance is needed to establish unambiguous and legally valid procedures by which cases can be delegated from state to non-state/local justice and security networks.

Licensing and regulating private security providers

There is a pressing need to establish the legislative and legal regimes through which the post-colonial fragile state can license, regulate, monitor and audit private security companies. Unfortunately, effective “attempts to regulate the industry... have been almost non-existent, with a few exceptions,” such as South Africa (Isima, 2007b). The ultimate objective is to ensure that the private bodies are accountable to the public for their corporate operations and the actions of their employees.⁴⁸ There are many issues that need to be legally clarified and donors can provide support to those efforts. One of these questions is who private security companies can hire as employees, particularly if they can employ police officers who have been dismissed from the police service for misconduct or conduct detrimental to the public interest. Similarly, it is crucial to determine if public officials are entitled to acquire ownership interests in private security companies and, if so, under what circumstances and with what restrictions.⁴⁹ Another question that requires clear and concise regulation is how and when police officers can seek employment with private security companies during their off hours.

Donors can also assist in designing and supporting the databases that states will require to license and register not only the private security companies themselves, but their employees, the compulsory training that those employees should undergo and the weapons that the employees are allowed to carry and use. Naturally, the post-colonial fragile state will require donor support in establishing and designing this training. Recording the incidents that occur while private security companies perform their activities ought to be supported as well; the exchange of information between private security companies and the police can help the police improve safety and security.

Appeals from non-state/local justice networks to state systems

Following and building upon legislative development, a further step in the long-term state building process is to improve the mechanisms by which decisions made by non-state/local justice and security networks can be appealed in the state court system. The objective is not to remove jurisdiction from the networks, but to strengthen the overall adherence of the multi-layered state system to rule of law. Once the appropriate legislation is ratified and the capacities of the state courts enhanced to cope with the expected increase in demand for their services, one of the keys to appeals is to record cases heard by the non-state/local justice and security network.

As with common law, the law and legal procedures used by the networks can best be understood as part of an evolving legal system that undergoes continuous modification and change. Even if unwritten, the networks have a body of law at their disposal for handing down decisions. Precedents exist, are built upon, and new cases are factually distinguished from previous ones, when appropriate. That evolution can be supported by helping the networks compile case books that over time will consolidate the law by making it more consistent, transparent and accountable.⁵⁰

Once again, in southern Sudan there had been a tradition of annual meetings of the leaders of the non-state/local justice and security networks. The purpose of the meetings, among others, was to share and exchange ideas on how they had been implementing their laws. These types of meetings should be supported wherever they exist – in southern Sudan, Papua New Guinea, Bolivia, etc. In

addition to bringing these leaders together, support could encourage them to focus their discussion on a selected number of salient legal issues for which they could begin to compile case books. The case books would be one of the source materials for the state courts when hearing appeals, given the presumption that state judges are not as familiar with network law as the leaders of the networks themselves. Case books will allow state judges to analyse precedent in their adjudication of appeals, though there will be other grounds upon which to base their decisions as well. In addition, supporting the compilation of case books may make the network's decisions more consistent and more readily transmittable to claimants who come before the networks, even if they are illiterate, as knowledge and awareness of precedents can filter down.

The compilation of case books may also bolster the work and abilities of the networks' clerks. Clerks "write" the decisions reached by the network leaders, assemble the case records and, sometimes, may even archive documents. In some ways, the clerks are the repository of network law on which the network leaders rely for their decisions and legal reasoning. They also often advise network leaders on precedents. As the clerks gain more experience in compiling the case books, they will be better able to give consistent advice, pass along their skills to their colleagues, and record cases more reliably and dependably. As an appeal depends on the case record, the work of the clerks is paramount for greater adherence to the rule of law in the post-colonial fragile state system.

From performance measurement to policy and planning units

For the state to be able to exercise its regulatory, monitoring and auditing prerogatives, it will need to measure the performance of all justice and security service providers, including the non-state/local justice and security networks. One of the principal areas of donor support, therefore, should be the development of more adequate and reliable state systems for evaluating the distribution and delivery of public goods and services. Improving these systems should be a priority for donor support; without them the post-colonial fragile state will not be able to develop strategic policies or conduct reliable justice and security reviews. These are the cornerstones of establishing policy and planning units and, therefore, the foundation of effective state building.⁵¹

In addition, once state institutions and agencies are more capable of measuring performance and formulating strategic policies and options, they may be better prepared to consider contracting out justice and security distribution and delivery. Without these abilities, state agencies cannot: (i) determine which services may be suitable for contracting out; or (ii) monitor and audit contracts. Both abilities are necessary, although insufficient, for the state to fulfil its legal and fiduciary responsibilities to design contracts and hold contractors accountable. Both are also essential for the state to be able to regulate and audit the activities of private security companies.

Admittedly, strengthening these evaluation and auditing systems is a long-term endeavour, but it may be among the most important initiatives underpinning productive state building. The donor chorus decrying the absence of performance baselines suggests how deep the need is. It is now customary for donors to conduct perception surveys of security and safety; such surveys have been undertaken in Albania, Bangladesh, Yemen, Timor-Leste, Sierra Leone and many other countries. Unfortunately, as a significant percentage of these surveys are done by donors themselves, they do not help to strengthen state institutions as the Asia Foundation surveys are intended to do. Furthermore, the overall lack of concrete and pragmatic discussion about strengthening partner state performance measurement systems in lessons learned reports indicates that this development subject is in its infancy.

The inspector general offices/units of the ministries of justice and of the interior, the supreme judicial councils and prosecutorial agencies can be the focus for improvements in auditing systems. This is

not to undervalue the role of other forms of performance recording, such as court user groups or neighbourhood audits of police stations. Nevertheless, efforts to support state capacity are of the utmost priority and ought to be directed towards recording and measuring the performance of state institutions and agencies that distribute and deliver justice and security. Donor programmes in Yemen and the Democratic Republic of the Congo may be productive models for replication. Only once the mechanisms have proven to be accurate and reliable would an expansion into the non-state/local justice and security networks be prudent. For policing purposes, support to the networks might focus on the activities of the liaison and community policing officers discussed above. For judicial activities, the role of the network clerks would be the best place for obtaining performance indicators. Notaries may also provide valuable data; for example in Yemen, they are not only registered by the ministry of justice, but are often the source of documentation and pleadings used in the state and non-state/local justice and security networks.

Donors could agree to dedicate a fixed percentage of total programme funds for justice and security development – i.e. supporting partner governments' capacities to regulate, monitor and audit the performance of service providers. This would have two consequences: (i) signalling to partner governments that evaluating performance is a crucial good governance function for improving the distribution and delivery of public goods and services; and (ii) determining which donor programmes are the most effective development initiatives. Programme effectiveness is not, primarily, measured by evaluating the actions of the donor. It is evidenced by the change of behaviour and activities of the institutions, agencies and organisations that receive donor support. If those institutions' behavioural changes produce better service distribution and delivery, donor programmes are likely to have been effective. If there is little improvement in service distribution and delivery, the effectiveness of the donor programmes is suspect. Consequently, their own national interests and fiduciary responsibility to their taxpayers should oblige donors to set aside a fixed percentage of total programme costs to supporting their partner governments' ability to regulate, monitor, and audit their own distribution and delivery of justice and security.

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Endnotes

13. This discussion paper has been commissioned jointly by the Partnership for Democratic Governance (PDG) and the OECD Development Assistance Committee's International Network on Conflict and Fragility (INCAF). INCAF is a unique decision-making forum which brings together governments and international organisations in order to support work on a range of policy questions relating to conflict and fragility.
14. One of the hybrida combinations is public-private partnerships, when the relationship is not contracted out, but established on a more voluntary and philanthropic basis.
15. For a discussion of private security, see "Securing the Imperium: Criminal Justice Privatization and Neoliberal Globalization, Social Justice", *Social Justice*, 34, 3-4 (2007); and Bryden and Caparini (2006).

16. It has been estimated that since the 1980s, private security service provision has increased approximately 8% annually in industrialised countries and up to 11% in parts of Latin America, Africa and Asia (Frigo, 2003; Ungar, 2007).
17. Civil society, as understood in western parlance, does not exist in the fragile, post-colonial state (Carothers, 2002; Bellina et al., 2009). An unpublished OECD/DAC draft (January 2009) argues that “states in fragile situations are often characterized... by a lack of clear distinction between the public and the private..., and a lack of constructive relations between the two realms. As a result the public sphere... is generally weak [which]... exacerbates state fragility” (p. 6).
18. See also Isima, 2007.
19. For a discussion of some of the difficulties of international actors engaging in state building, see *Development and Change* 33, 5, 2002.
20. Unfortunately accurate analyses are rare. Goldsmith and Dinnen (2007) observe that “while international police-building literature has increasingly made reference to the importance of local context and the political character of policing... detailed analyses of the specific settings in which the politics of policebuilding are revealed remain few in number”. See also, Morgan and Mcleod, 2006.
21. Academically, this form of governance is often characterised as a mixed/hybrid system, where there are “overlapping layers of formal and informal spheres of power... with clientelistic” and neo-patrimonial underpinnings (Chabal, 2006: 1; see also Jackson and Rosberg, 1982; Bratton and van de Walle, 1997).
22. Accountability refers to “the responsiveness of the policy maker and service provider to local needs. This entails answerability (providing information and/or a decision), enforcement (strengthening achievement of service norms) and organisational change (changing the way the service is delivered),” (Baker and Scheye, 2007). Accountability also pertains “primarily, about holding values concerning how the relationship is to be conducted between [service provider and customer]... Only in a secondary sense does accountability mean the institution of structures and processes to facilitate this” interaction (Baker and Scheye, 2007; see also Goetz and Jenkins, 2005).
23. In 2004 the UK Department for International Development noted the importance of non-state/local justice and security networks (DFID, 2004). OECD followed suit in 2007 with an analysis of justice and security service delivery in fragile states (OECD, 2006). Explicit donor-supported efforts to understand the centrality of non-state/local justice networks in southern Sudan, Timor-Leste, Afghanistan, Nicaragua and elsewhere have been initiated over the last couple of years.
24. See also, OECD/DAC (2006), *Enhancing the Delivery of Justice and Security in Fragile States*.
25. For comparable data for Nigeria, see Alemika and Chukwuma, 2004.
26. For a full discussion of the declining public satisfaction in the Kosovo Police Service, see Scheye, 2008.
27. As one recent critic points out, “this is a crucial question for local ownership,” one entirely bound up in politics and power (Reich, 2006); see also Scheye and Peake, 2005.
28. For alternative definitions of “local owners”, see Ball, Scheye and Van de Goor (2008). Hansen and Wiharta (2007) suggest that local owners “can be grouped into three categories: 1) the population in its various organised and unorganised forms, that is the citizen, civil society and the business community; 2) the authorities, that is the political leadership, the civil service and local government mechanisms; and 3) actors in the justice and security sector.”
29. For a fuller discussion of social efficacy and cohesion, see Scheye (forthcoming 2009).

30. Fragility stems from a “lack of financial, technical and human capacity and from lack of legitimacy, both preventing the making of the state as a robust institution” (Bellina *et al.*, 2009).
31. “As of winter 2007..., the [Southern Sudan] penal code and criminal procedure code were still in draft form. The fate of the lowest three levels of courts ... remained legally and operationally unsettled. There was no functioning university law faculty; no law library; no judicial training centre; no official government gazette through which legislation becomes law; no Bar Association; no legal aid; little court administration; and few competent defence counsels or a public defence service.” (Baker and Scheye, 2009).
32. For an academic and conceptual discussion of the issues surrounding private security companies and privatisation of the state, see Johnston and Shearing (2003).
33. It is important to recognise that to those who sell security (private security companies) and to those who buy it (individuals, groups, and organisations with the necessary funds), security has been privatised and is no longer a public good and service (Caparini, 2006).
34. Simelane (2008) argues that the growth of private security is due to the post-colonial fragile state and the privatisation of security services by the political elite to preserve their political and economic prerogatives.
35. For a discussion of public accountability of private security companies, see Vera Institute of Justice, 2000.
36. Sierra Leone yields an interesting acknowledgement of the incapacity of a post-colonial fragile state to regulate private security companies and the privatisation of policing. A contingent of police is assigned to protect the operations and assets of a mining company, Koidu Holdings. The company’s own security personnel exercise direct operational control over the contingent of Sierra Leonean police and accompany the police on their patrols of company property (Abrahamsen and Williams, 2006).
37. Affecting the behaviour of transnational private security companies, however, could have positive repercussions, given that these corporations have seized significant market share in many countries. For example, Group 4 Securicor, the largest private security company, operates in up to 100 countries; Wackenhut, another transnational, has captured approximately 10% of the Nicaraguan market (Ungar, 2007). It is reported that the second largest private security company, Prosegur, has 210 000 employees working in up to 30 countries (Abrahamsen and Williams, 2008)⁴.
38. The inability of the Iraqi government effectively to bring Blackwater employees before a court of law for alleged criminal behaviour is evidence of the challenges in applying domestic regulations to transnational security companies in the employ of foreign governments.
39. For an overall discussion of soft regulation, see Cockayne and Mears, 2009. The paper is informed by an attempt by the Ministry of Interior to license and regulate the flow of small arms used by private security companies in Honduras, but the project failed, in part, because of vehement opposition by rank and file police officers who were selling weapons they had collected and/or confiscated.
40. An even greater degree of privatisation has taken place in the Nigerian Delta, where Nigerian police and military have become subservient to the security needs of the oil companies, which have been defined as key national assets, even though they are privately-owned.
41. For Colombian and Liberian examples of this, see Hill *et al.*, 2007.
42. Other than the United States, various prison services have, over the years, been contracted out in the United Kingdom, Peru, Argentina, Chile, and some African countries.

43. It should be noted that detailed analysis is needed to verify the effectiveness of these recommendations.
44. Another successful paralegal programme is the Paralegal Advisory Service in Malawi.
45. Political tensions with the national government in Kabul resulted in an effort by Afghan government to close down the TLO. This had little to do with the organisation's activities undermining the legitimacy of the Afghan government. Rather, it was a more naked fight for political power and authority, with the national government seeking to further centralise and accumulate control. It is precisely in situations like this that the influence of donors and the development community is important to ensure that effective local initiatives that strengthen the networks of the second state are not undermined, and that a political dialogue and negotiation takes place that guarantees their survival and enhances their productivity.
46. An additional and important topic that can be integrated into these donor supported programmes is microfinance, which addresses comparable issues of the second state, particularly if it is used to help the poor "graduate from the informal money market into organized banking and begin generating sustainable livelihoods" (United Nations ESCAP, 2008).
47. In another example of the blurred boundaries between state and non-state networks, the convicted individual was immediately remanded to the state prison. More tellingly, however, the decisions of non-state/local justice and security networks are, often, more enforceable than those of state courts, which is one of the reasons why they are the preferred choice of many.
48. For a discussion of public accountability of private security companies, see Vera Institute of Justice, 2000.
49. For a discussion of this issue in Bolivia, see Quintana, 2003.
50. It is important to recognise that compiling case books is not equivalent to codifying network law. The difference between the two activities echoes the differences between common and civil law; the former is based on precedent and the latter on a written code.
51. As the Karachi example suggests, it is feasible to contract out performance measurement systems, even though it must be noted that in the Karachi case measurement activities were not contracted out.

Chapter 3.

Contracting out Core Government Functions and Services in Southern Sudan

Fiona Davies

Abstract

This chapter explores a number of examples of contracting out in Southern Sudan. The lessons elaborated in this report stem from a number of sectors, including public procurement and health. Several important recommendations are drawn, which can support other post-conflict and fragile states to strengthen the delivery of government services to their citizens.

Executive summary

In 2005, the Government of Sudan (GoS) and Sudan People's Liberation Movement (SPLM) signed a comprehensive peace agreement, ending 22 years of civil war. The challenge of establishing the Government of Southern Sudan (GoSS), and developing its capacity to manage its substantial oil revenues, was enormous. A joint assessment mission report by the World Bank, UN, GoS and SPLM noted that the entire public service had to be built up virtually from scratch. It recommended that core fiduciary services such as audit, accounting and procurement should be contracted out to international firms for at least the first two years of government until capacity was built. It also expected government to contract out basic health services delivery to NGOs.

This paper describes GoSS's experience in contracting out, which has been variable. A government accounting agent (GAA) was appointed through a bilateral sole-source contract. The Ministry of Finance did not have the capacity to define what services it required the GAA to provide, while the GAA appointed a team of private-sector accountants who had little or no understanding of the budget execution responsibilities of a public treasury. The GAA's approach to the task undermined the ministry's budget execution function, and failed to build ministry capacity for government accounting.

A project accounting agent (PAA) was jointly overseen by the Ministry of Finance and the World Bank, ensuring better definition of services and performance monitoring. It was decided to contract an interim PAA on a sole-source basis. This was fortuitous, since it ensured project accounting coverage

over the two years it took to procure the permanent PAA on a competitive basis using World Bank procedures. However, no capacity was built to enable the ministry to take on the project accounting function itself.

Appointing the procurement agent (PA) was beset with difficulties from the outset. Even though the need for the procurement agent was seen to be urgent, it took over a year to contract the PA on a competitive basis using World Bank procedures. This led to a temporary gap in service delivery, from which it can be argued that GoSS procurement has never fully recovered. In addition, there was a significant mismatch between the envisaged size of the team and the scope of the task. The task was to cover all aspects of procurement for a newly-forming government with no procurement capacity whatsoever, and over USD 1 billion in revenues every year. The procurement agent's ability to provide on-the-job training was limited by a lack of counterparts, as well by its small team.

The external audit agent (EAA) contract was well designed, with a strong capacity building component. However, the EAA's delivery was hindered by the absence of counterpart personnel for almost the entire first year of its assignment, following the suspension of the GoSS Auditor General.

The Basic Package of Health Services (BPHS) was designed to delivery immediate essential services to a significant proportion of the population in the ten states of Southern Sudan. Over three years later, the BPHS has only just started work, and only in four states. The delay has been caused by the lead times involved in procurement using World Bank procedures, the weak capacity in the Ministry of Health to follow them, over-ambitious initial programme design, and costs which exceeded available funds.

A number of lessons can be learned from the GoSS experience:

- i) The type of contracting (sole-source or competitive) does not necessarily determine the performance of the contract. Sole-source contracts, when well defined, may provide interim cover for urgent service delivery needs.
- ii) The government has supported the process of contracting out key services, but has had limited capacity to design and manage contracts without external support. Even with World Bank administered contracts, the government had limited capacity to ensure that the contract design and performance meet its own needs.
- iii) Lengthy World Bank procurement procedures, and limited government capacity to follow them, have led to significant delays. These delays prevent service delivery and also reduce incentives for government to build its own capacity and structures in the interim, because it expects that a contractor will soon be delivering the service.
- iv) Capacity development has generally been inadequately addressed. Capacity development was not put at the centre of the contracting-out design, and none of the contracts had a clearly identified exit strategy. Only limited GoSS capacity has been built.
- v) Inappropriate programme design can undermine the effectiveness of contracting out.
- vi) Contracting out is not cheap. The combined cost of the fiduciary agents contracted by GoSS was over USD 20m in the space of just four years.

The case study provides the following recommendations:

- ▶ Consider interim sole-source contracting to meet urgent service delivery needs, but only if the terms of the contract are properly designed.
- ▶ Offer government independent technical support for designing and managing contracts. This should include defining contract services that best meet the needs of government, and performance monitoring.

- ▶ Remember that using World Bank procedures for competitive procurement will take more than a year. Ensure adequate support for low-capacity governments to manage World Bank procedures.
- ▶ Include capacity building in contracting out packages, and map a clear exit strategy from the outset. The exit strategy should include steps to raise the capacity of government officials to assume responsibility, and should feed into the capacity building design.
- ▶ Consider alternative options, such as temporarily contracting in capacity from the emigrant diaspora, before deciding to contract out essential services. Key issues to compare include the relative cost, lead times and capacity-building potential of alternative options.

Introduction

On January 9 2005 the Government of Sudan (GoS) and Sudan People's Liberation Movement (SPLM) signed a comprehensive peace agreement (CPA), bringing to an end 22 years of civil war in Southern Sudan. Under the terms of the CPA, a six-year interim period up to 2011 was agreed, at the end of which the people of Southern Sudan would have the right to self-determination through a referendum to determine their future status.

The CPA established a Government of National Unity (GoNU) for the duration of the interim period, responsible for the functioning and administration of the state, and the formulation and implementation of national policies. It also established the Government of Southern Sudan (GoSS), to which it devolved authority to manage and administer almost all issues relevant to the south, in conjunction with the ten states of Southern Sudan. Under the terms of the wealth-sharing chapter of the CPA, the south was granted a 50% share of revenues from oil production in the south, as well as a 50% share in all national non-oil revenues collected in the south. Even at the time of the CPA, the oil revenues expected to flow to GoSS were significant, estimated at up to USD1 billion a year (JAM, 2005).

The challenge of establishing the Government of Southern Sudan and developing its capacity to manage its substantial oil revenues was acknowledged to be enormous. During the war, there had been almost no formal government in the south. The GoS had control of several "garrison" towns and some other areas, whilst much of the south was under the control of the SPLM. The SPLM had a skeletal civilian administration, mainly devoted to the war effort. Services were limited; where they existed, they were provided by non-governmental organisations (NGOs), the church and other non-governmental agencies, together with the communities.

During 2004/05, the UN, the World Bank, the Government of Sudan and the SPLM fielded a joint assessment mission (JAM) to identify Sudan's post-conflict development needs. The JAM noted that Southern Sudan was starting from a situation of extreme poverty and underdevelopment, with weak skills and virtually non-existent normal government institutions. In order to be able to manage, deliver and account for the range of critical programmes needed to accelerate development in Southern Sudan, the entire public service, including personnel and systems, would have to be built up virtually from scratch.

Against this background, the JAM recommended that core fiduciary services, such as audit, accounting and procurement, be contracted out to international firms for at least the first two years of the interim period, with their role being phased out as capacity in GoSS increased (JAM, 2005). It also recognised that NGOs, the private sector and UN agencies would be the main vehicles of health service delivery, bound by formal contractual relationships with the Southern Sudan health authorities.

The CPA also established two Multi-Donor Trust Funds (MDTFs), one for national development, and one for the south, to be administered by the World Bank. Their objective was to ensure co-ordinated, flexible and swift donor responses for financing JAM priority expenditures, in the context of a unified budget and coherent public expenditure process (JAM, 2005). Significant government co-financing to these MDTFs was envisaged,⁵² and in the south it was anticipated that the MDTF would play a leading role in contracting third parties to deliver government services, in line with the priorities identified in the JAM.

As envisaged in the JAM, since 2006 the Government of Southern Sudan has contracted out a number of key fiduciary functions to non-state actors, including government accounting, MDTF project accounting, procurement and external audit. In most cases, these arrangements still continue. The majority of them, with the exception of government accounting, have been undertaken through MDTF projects, and are therefore co-financed by government and donor partners through a pooled funding mechanism (Table 3.1).

Table 3.1. Summary of fiduciary contracts

Function	Contracting Process	Scope of Activity	Funding Source	Time Period	Cost
Government Accounting Agent (GAA)	Sole source	Preparation of government accounts	GoSS	2006 - 2008	USD 3.8M (est)
Interim Project Accounting Agent (iPAA)	Sole source	Preparation of MDTF project accounts	MDTF (GoSS & donor co-financing)	2006 - 2007	USD 2.3M
Project Accounting Agent (PAA)	Competitive	Preparation of MDTF project accounts	MDTF (GoSS & donor co-financing)	2008	USD 0.9M
Project Financial anagement Unit (PFMU)	Competitive	Preparation of MDTF project accounts	MDTF (GoSS & donor co-financing)	2009 - 2010	USD 1.5M (est)
Procurement Agent (PA)	Competitive	Government & MDTF procurement	MDTF (GoSS & donor co-financing)	2007 - 2009	USD 4.0M
External Audit Agent (EAA)	Competitive	Audit of MDTF, GoSS & states' accounts	MDTF (GoSS & donor co-financing)	2008 - 2011	USD 8.0M
TOTAL					USD 20.5M

Service delivery in Southern Sudan continues to be dominated by non-state actors, predominantly NGOs, and particularly in the health sector. The most recent donor mapping exercise conducted by the GoSS Ministry of Finance & Economic Planning (MoFEP) revealed that there are currently 97 donor-funded projects in the health sector, and 70 in the education sector (Ministry of Finance & Economic Planning, 2009a). These projects, with the exception of three MDTF projects,⁵³ are implemented directly by third parties (UN agencies and NGOs) in parallel with government interventions and therefore do not involve formal contractual relationships between government and non-state actors for service delivery.

In the education sector, the majority of teachers in Southern Sudan are paid through the government payroll, with GoSS providing funding for 33 000 primary and secondary teachers at GoSS and state level (Ministry of Finance & Economic Planning, 2009b). Core education service delivery therefore remains the responsibility of the government. The GoSS co-funded MDTF project for education, which

accounts for the majority of GoSS development funding to the sector, has contracted third parties for interventions such as teacher training, classroom construction and text book production and distribution. However, these activities supplement rather than supplant core government service delivery in the sector. Likewise, bilaterally-funded donor projects, which are implemented directly by third parties (UN agencies, NGOs and faith-based organisations), supplement the areas of alternative education, classroom construction, and, in some cases, funding of church schools.

In the health sector, as anticipated in the JAM, service delivery is still primarily undertaken by NGOs. Health is the only sector in which donor funding exceeds government funding (Ministry of Finance & Economic Planning, 2009b), and the majority of the donor-funded projects are implemented directly by third parties (UN agencies, NGOs).

In 2006, the GoSS Ministry of Health, following on from the JAM, decided to contract NGOs to deliver essential services to a significant proportion of the population. It intended to achieve this by contracting out basic health service packages in the ten states of Southern Sudan through its co-financed MDTF health project. These packages, which delegate the overall management of health care delivery within the specified state to the contracted NGO, constitute a full contracting-out of health service delivery. To date, the Ministry of Health has entered into contracts for four states (Table 3.2), while contracts for the remaining six states are still being procured (see below for more).

Table 3.2. Basic package of health services (BHPS) contracts

Function	Contracting Process	Scope of Activity	Funding Source	Time Period	Cost
Delivery of basic health package	Competitive	Upper Nile State	MDTF (GoSS & donor co-financing)	2008 – 2009 (1 yr)	USD 3.4M
Delivery of basic health package	Competitive	Jonglei State	MDTF (GoSS & donor co-financing)	2008 – 2009 (1 yr)	USD 4.2M
Delivery of basic health package	Competitive	Central Equatoria State	MDTF (GoSS & donor co-financing)	2009	USD 5.5M
Delivery of basic health package	Competitive	Eastern Equatoria State	MDTF (GoSS & donor co-financing)	2009	USD 4.1M
TOTAL					USD 17.2M

Analysis of individual contracting out experiences

Appointing a government accounting agent

In 2005, the JAM envisaged that a financial management agent would be recruited competitively through the Capacity Building Trust Fund⁵⁴ (CBTF) to support and/or manage the GoSS treasury function and implementation of the Integrated Financial Management System (IFMS) for the first two years of the interim period (JAM, 2005).

In late 2005 discussions were held between the newly-formed Ministry of Finance & Economic Planning (MoFEP) and the World Bank, as administrator to the MDTF, about providing accounting services for the GoSS. The key issue was whether the MDTF-contracted accounting agent should

deliver accounting services for all GoSS expenditure, or whether it should only provide services for co-financed MDTF projects.

To protect its autonomy, MoFEP decided that GoSS accounting and MDTF project accounting should be handled separately, leaving the MDTF to contract a Project Accounting Agent (PAA) to cover MDTF projects only.

The roles of the Financial Management Agent as envisaged in the JAM were therefore effectively split into three separate roles:

- i) A Fund Management Agent (FMA) to support the operations of the CBTF.
- ii) A Government Accounting Agent to prepare the GoSS annual financial statements.
- iii) A Project Accounting Agent, to manage the full range of accounting services relating to spending, accounting and reporting on MDTF projects.

In early 2006, MoFEP engaged a Government Accounting Agent (GAA) on a sole-source basis, paid for entirely through the GoSS budget. The firm chosen was the same firm that was already acting as the CBTF's Fund Management Agent.

The GAA contract listed three main outputs:

- i) Transaction recording and cash book and bank reconciliation, to be completed by the end of the third week following the end of each month.
- ii) Monthly draft financial statements, at the end of each following month.
- iii) Draft annual accounts, five months after the end of the financial year.

The contract also specified that the GAA would record and process all payments in the Integrated Financial Management System. It did not contain any formal capacity-building element, although it expected MoFEP to assign four government accountants to work with the GAA. They would be given tasks suitable to their experience, along with on-the-job coaching.

The cost of the contract was uncapped, as the GAA was entitled to expand its team as necessary and to charge MoFEP for unlimited reimbursements. The contract had strict confidentiality definitions, and only required the GAA to discuss the draft accounts directly with the Minister of Finance & Economic Planning.

The GAA contract, both in its conception and its execution, was not advantageous to MoFEP in many respects:

- **It did not provide MoFEP with a reconciled daily cash position.** As the GAA was only to provide updated cash records and bank reconciliations within three weeks of the end of the month, MoFEP frequently issued payments for which it had no financial coverage, since it had no idea of its daily (reconciled) cash position. Cheques bounced.
- **It limited MoFEP's timely access to budget execution data.** The GAA took sole responsibility for processing all payments in the IFMS, but only undertook to provide MoFEP with draft financial statements one month after the end of the month.⁵⁵ As a result,

MoFEP never had an up-to-date picture of how much each government agency had spent against its approved budget. New payments were therefore approved “blind”, with MoFEP having little idea whether the payments it was authorising exceeded the approved budget, either at a line-item or agency level. Budget execution suffered, particularly towards the end of the financial year. In some instances, due to delays in the GAA producing monthly draft accounts, MoFEP only discovered that a spending agency had overspent its approved budget allocation several months after the event. Spending agencies did not receive monthly budget execution reports until after the reconciled accounts were produced, as all data were treated as confidential by the GAA.

- **The IFMS was severely under-used.** The GAA used staff were not fully familiar with the IFMS system which had been installed, nor with the IFMS’s role in helping government track expenditure and manage budget execution. As a result, the GAA only used the IFMS as an accounts recording system, not as a financial management tool. All expenditure data were maintained manually outside of the IFMS, and payments were only entered into the system once they had been reconciled against the bank statements.
- **Capacity was not built, leaving MoFEP continually dependent on the GAA’s services for preparing the annual accounts.** Although MoFEP initially assigned accountants to work with the GAA, they soon drifted back to routine MoFEP duties.

Effectively, the GAA contract was woefully misaligned. It gave a data-processing monopoly to GAA, without requiring it to provide the Ministry of Finance with the timely information it needed to undertake its core budget management functions. At the heart of the problem was the fact that the GAA had been selected sole-source, and had written its own contract.⁵⁶ The Ministry of Finance did not have the capacity to define the services it required from the GAA, while the GAA used a team of private-sector accountants who had little or no understanding of the budget execution responsibilities of a public treasury. This was far from the standard of fiduciary management envisaged in the JAM, and left MoFEP severely vulnerable to accusations of incompetence, as it failed to produce timely budget execution reports or to manage its payments according to its cash position. Nonetheless, the GAA received an automatic contract roll-over for 2007.

In 2007, as MoFEP appointed officials to senior positions and enhanced advisory capacity was provided from other sources, greater steps were taken to hold the GAA to account. By late 2007, the GAA had agreed to provide Excel-based budget execution reports within a week of the end of the month, although it made clear that this was a “favour” which it was providing outside the terms of its (self-written) contract. At the same time, MoFEP started training its treasury staff in managing the IFMS.⁵⁷ The Treasury Adviser⁵⁸ also started helping MoFEP to produce a daily cash position.

By 2008, the GAA functions had been scaled-back considerably. All payment data were entered into the IFMS directly by GoSS Treasury officials as soon as they was received, enabling production of real time information on budget execution. Budget execution reports were sent monthly to spending agencies. MoFEP established a daily cash management system, and Treasury staff participated in the preparation of a daily cash position. The GAA role was limited to revenue reporting and the production of quarterly and annual accounts.

The GAA requested a further sole-source contract for 2009, and said that it would build a strong capacity-building component into the contract. However, MoFEP decided to discontinue its services. The ministry is in the process of recruiting three international accounts specialists through the World Bank Low Income Countries Under Stress (LICUS) programme, to assist with the preparation of its accounts for a two-year period. At the same time, using the same funding, 40 graduates will be

recruited and trained up to a professional accounting standard through a sandwich programme that will involve them spending 50% of their time in the classroom, and 50% in MoFEP. It is envisaged that under the guidance of the international accounts specialists, these graduates will gradually assume responsibility for the preparation of government accounts.

Appointing a Project Accounting Agent

In late 2005, the Oversight Committee⁵⁹ (OC) of the MDTF-South approved its first project – the Rapid Impact Emergency Project (RIEP). The project provided for the immediate sole-source hiring of an interim Project Accounting Agent (iPAA) to direct, manage and co-ordinate the total financial management activities of MDTF-funded expenditures, irrespective of whether they were financed by GoSS or the MDTF donors.⁶⁰ The iPAA was required to take responsibility for the release of funds. No capacity-building component was included in the terms of reference. It was envisaged that the iPAA would be in place for a period of 6-12 months, until the long-term project accounting agent (PAA) was hired through a competitive process. The same firm that operated as the CBTF fund management agent and as the GAA was awarded the iPAA contract on a sole-source basis in February 2006.

In March 2006, the competitive process for engaging a permanent two-year PAA was launched in line with World Bank procedures, which govern the operations of all MDTF-funded projects. However, instead of taking 6-12 months as initially envisaged, the process dragged on for two years. While the length of time taken to complete the procurement process was in part due to challenges encountered by MoFEP during contract negotiation,⁶¹ it was also in part due to the number of steps (estimated at 62) required to complete a World Bank procurement process under the MDTF.⁶² No fewer than three separate “no objection letters” are required from the World Bank at different stages of the process, and since the World Bank office in Juba did not have any accredited procurement staff at that time,⁶³ these letters frequently had to be obtained from Washington.

In the end, the PAA contract was awarded for one year in December 2007, with a similar terms of reference to that of the iPAA. As with the iPAA contract, the PAA contract did not require the PAA to build MoFEP’s capacity for project accounting. The same firm that had undertaken the iPAA contract was awarded the PAA contract.

Meanwhile, the World Bank developed a proposal to set up a Project Financial Management Unit (PFMU) to replace the PAA at the end of its one-year term. While the PFMU would have the same terms of reference as the PAA, it would be staffed with individually-hired consultants, instead of being contracted to a firm. The rationale was that it would be cheaper, and that the iPAA/PAA had shown no evidence of any attempt to build capacity for project accounting in MoFEP (although in fact their terms of reference did not require them to do so).

This proposal was accepted by the Oversight Committee (OC) of the MDTF, and in January 2009 the PAA was replaced by PFMU, staffed by two international accountants and several locally-recruited assistant project accountants. The ToRs of the head of the PFMU require him/her to provide the required training to MoFEP staff to enable them to perform their functions effectively. However, no formal plan is currently in place to second MoFEP staff to the PFMU, although this may be possible once the 40 graduate accountants have been recruited to MoFEP under the LICUS programme (see above).

In general, the contracting out of project accounting for GoSS and donor funded MDTF-expenditures has not been beset with the same difficulties as the GAA contract, even though the same firm delivered the services between 2006 and 2008. The iPAA/PAA contracts were jointly overseen by MoFEP and the World Bank, in its role as administrator to the MDTF, ensuring better definition of services

and performance monitoring than if left to MoFEP alone. In addition, the functions involved far smaller transaction volumes than for the GAA contract, and did not require an understanding of public sector treasury management. The decision to contract an interim PAA on a sole-source basis proved to be fortuitous, since it ensured that there was project accounting coverage during the two years it took to procure the substantive PAA on a competitive basis.

The main concern over the contracting out of MoFEP's project accounting for co-financed MDTF projects is the exit strategy. Even if MoFEP makes a concerted effort to second staff to the PFMU, and even if PFMU personnel make a concerted effort to provide them with appropriate on-the-job training, it is unlikely that MoFEP will be able to assume project-accounting functions for MDTF projects to the fiduciary standard required by the World Bank for the rest of the interim period.

Appointing a Procurement Agent

The same MDTF project which provided for the recruitment of the iPAA also provided for the recruitment of a Procurement Agent (PA) to carry out GoSS and the MDTF's day-to-day procurement for two years. However, although the project said that GoSS's need for a procurement agent was urgent, it did not provide for immediate sole-source provision of a firm as it had with the iPAA. Instead, the procurement agent was to be contracted through a competitive process.

The competitive process was launched in December 2005 and it took over a year to complete in line with World Bank procedures. The procurement agent started work in February 2007, with a wide-ranging terms of reference, including:

- ▶ Providing support to the Procurement Unit in MoFEP to ensure that it functions effectively.
- ▶ On-the-job training to the Procurement Unit and procurement staff in other GoSS agencies.
- ▶ Procurement planning.
- ▶ Contract cash-flow projections.
- ▶ Procurement processing for all MDTF and GoSS procurements,⁶⁴ with the exception of defence hardware.
- ▶ Supervising contract performance.
- ▶ Assisting government with procurement-related queries.

It was envisaged that all procurements would be centralised following the GoSS's procurement policy, but that within three to four years, GoSS agencies would have the capacity to carry out all procurement on a mainly decentralised basis, without external assistance. However, the terms of reference did not provide for capacity building beyond on-the-job training. They stated that a procurement capacity-building strategy would be developed separately, through World Bank assistance to the MoFEP Procurement Unit.

It quickly became evident that the Procurement Agent faced a number of significant challenges in executing its terms of reference. Procurement had been ongoing for almost a year without a Procurement Agent. In the case of MDTF procurements, spending agencies had attempted to follow World Bank procedures,⁶⁵ but since their knowledge of them was limited, their progress was slow and standards were low. As a result, there was a large backlog of work. In the case of GoSS procurements, individual spending agencies had embarked on their own haphazard procurement processes, with little or no reference to the GoSS procurement regulations. It was not uncommon for contracts to exceed the budget available for expenditure (Procurement Agent's Inception Report, 2007).

The Procurement Agent had a team of three procurement specialists, in line with the contract. However, it immediately commented that this number of personnel was inadequate to deal with the volume of work. It also highlighted the need for Transitional Procurement Units to be established in spending agencies, for the capacity of the MoFEP Procurement Unit to be strengthened, and for MoFEP to make a concerted effort to regain centralised control of GoSS's procurement functions.

By the end of 2007 there was little sign of improvement. The MoFEP Director General of Procurement informed the MDTF Oversight Committee of:

- ▶ A lack of trained procurement staff in GoSS, including in the MoFEP Procurement Unit.
- ▶ Significant deficiencies in the GoSS procurement regulations, which were hindering the efficiency of procurement in GoSS and the ability of the MoFEP Procurement Unit to carry out its function.

In January 2008, an addition to the Procurement Agent's contract enabled it to double its staff and introduce performance monitoring criteria. At the same time, an independent review of the Procurement Agent's performance in MDTF procurement stated that the PA had only partially met the conditions of its contract (Price Waterhouse Coopers, 2008a). According to the review, it had too few staff to provide on-the-job training, for which there were too few counterparts anyway, and it had mainly provided support and advice on MDTF procurements, rather than hands-on implementation. Procurement plans were incomplete, the PA had not produced cashflow projections, and was not supervising contracts. In addition, MoFEP suspected that the consultants employed by the PA were not familiar enough with World Bank procedures.

An Independent Procurement Audit Report written for the World Bank raised similar concerns (Price Waterhouse Coopers, 2008d), as did an issues paper presented to the Oversight Committee in February 2009.⁶⁶ By this point, the Procurement Agent's contract was due to come to an end, but there was no exit strategy in place. MoFEP requested an extension to the PA's contract to avoid a gap in service delivery. The Oversight Committee agreed to this, subject to appropriate transition arrangements being in place before the extension expired.

The PA's contract appears to have been beset with problems from the outset. Even though the need for a PA was deemed urgent, the PA was expected to be contracted on a competitive basis and there was no interim sole-source cover, unlike for the Project Accounting Agent. Competitive procurement using World Bank procedures is unable to deliver swift results, however urgent the need; GoSS was therefore effectively left without procurement capacity for its critical first year of operation. The one-year gap meant a slow and unsure start for procurements under the MDTF, swiftly creating a perception that the MDTF was failing to deliver on its JAM objective of providing a co-ordinated, flexible and swift donor response to Southern Sudan's needs. In addition, for the GoSS, the gap meant that spending agencies started undertaking decentralised procurement by default. MoFEP then proved unable to re-assert centralised control once the Procurement Agent came on board. For GoSS procurements, therefore, the PA was swimming against the tide from the start.

The capacity-building component of the Procurement Agent's terms of reference restricted it to on-the-job training, on the understanding that a separate procurement capacity-building strategy would be prepared and implemented with the support of the World Bank.⁶⁷ This never materialised, or if it did, it was never implemented. As a result, the capacity of MoFEP's Procurement Unit did not increase, and procurement awareness and capacity in spending agencies remained limited. The PA's ability to provide on-the-job training was thus limited by the lack of counterparts, as well by the size of its own team.

The inadequate size and capacity of the PA's team has been a recurring theme throughout the contract, even though the number of personnel was eventually doubled from three to six. It seems probable that there was a significant mismatch from the outset between the envisaged size of the team and the sheer scale of the task involved in conducting all aspects of all procurements, both MDTF and GoSS, for a newly-forming government with no procurement capacity whatsoever, and over USD 1 billion in revenues every year. The Procurement Agent is on record as saying that it has only been able to devote 30% of its time to MDTF procurements, given the demands of the GoSS work (Price Waterhouse Coopers, 2008a).

The World Bank is currently preparing a proposal to MoFEP for managing GoSS and MDTF procurement after the end of the Procurement Agent's current extension. It proposes hiring a new PA for one year through a competitive process,⁶⁸ as well as placing additional technical assistance in the MoFEP Procurement Unit. It has not developed a strategy for phasing-out from these arrangements.

It is unlikely that a new PA and additional central technical assistance will be able to address the current challenges in GoSS procurement, or that GoSS will have the capacity to manage procurements appropriately on its own after a year. The original vision – of centralised procurement followed by orderly decentralisation – has not materialised. In effect, decentralised procurement is continuing across GoSS, despite inadequate capacity and standards, particularly for GoSS procurements. It is critical that a comprehensive capacity-building plan is put in place and implemented, however late, to enable procurement units across GoSS to be properly established, staffed and trained, including in MoFEP. It is also critical that a commitment control system is designed and implemented,⁶⁹ to ensure that procurements fit budgetary availability. This is currently not the case, weakening GoSS's fiscal management.

As a first step, MoFEP has requested support from the African Development Bank to draft a procurement law, and intends to use funds under the World Bank LICUS programme to establish a commitment control and contract information system and to train 10 graduate recruits in procurement to help the MoFEP Procurement Unit.

Appointing an External Audit Agent

The competitive process for recruiting an External Audit Agent (EAA) was launched in March 2006, at the same time as the Project Accounting Agent process. As with the PAA, it took almost two years to complete, with a contract being signed in December 2007. The EAA began work in Juba in January 2008, with an extensive terms of reference, including:

- ▶ Support for drafting the audit law and audit regulations.
- ▶ Responsibility for conducting MDTF, GoSS and states' audits, with the participation of staff from the Southern Sudan Audit Chamber.
- ▶ Providing on-the-job training for staff of the Southern Sudan Audit Chamber during audits of accounts.
- ▶ Undertaking a training needs assessment and developing a human resource development strategy for the Southern Sudan Audit Chamber.
- ▶ Supporting the Audit Chamber to recruit and induct staff, monitoring their capacity building, and helping them use other sources of capacity building.

The terms of reference did not require the EAA to conduct formal training; it was envisaged that this would be delivered through a separate consultancy. However, in requiring it to support staff recruitment and induction, and monitoring capacity building, it would be much more involved in capacity building any of the other GoSS agents.

The EAA contract is expected to run for three years, from 2008-2010, after which it is envisaged that the Southern Sudan Audit Chamber will be able to perform most audits of grants and loans to government to appropriate international standards.

By its own account,⁷⁰ the External Audit Agent's assignment started well. The EAA and the Audit Chamber agreed a joint approach to auditing the GoSS financial statements, focusing on five themes. Joint teams were nominated and established for each theme. However, in February 2008, one month after the EAA's assignment began, the Auditor General and Southern Sudan Audit Chamber's senior management team was suspended by Presidential Order, while the remainder of the Audit Chamber's personnel were confined to office, pending the appointment of a new Auditor General. This situation continued for the rest of 2008, leaving the EAA to work – without the involvement of counterpart staff – on standalone audits of MDTF projects for 2006-2008, and to progress the audit of the 2005 GoSS accounts to draft opinion stage. The EAA was therefore unable to deliver the capacity building components of its terms of reference.

At the end of 2008, a new Deputy Auditor General was appointed and assigned temporary functions as Acting Auditor General. Since then, the EAA has once again started to take forward the capacity-building components of its contract, and to work with the Audit Chamber on the 2005 GoSS accounts. It now intends to develop a plan with the Audit Chamber to jointly tackle the backlog of GoSS audits for 2006-2008.

It is too early to assess the effectiveness of the EAA. Its main challenge to date has been the lack of counterpart personnel for almost the first whole year of its assignment. However, the enhanced capacity-building elements of the contract design, including training needs assessments and support to the recruitment and induction of Audit Chamber personnel, make the contract appear more comprehensive than for the other agents. Nonetheless, it has once again been assumed that formal audit training will be delivered through a separate initiative, but no such initiative is yet in place.

The EAA has appointed a far larger team (24 people) to meet its contractual obligations than any of the other agents. This is reflected in the increased cost of the EAA (more than double that of the other agents), which required an amendment to the relevant MDTF grant agreement.⁷¹ However, it seems likely that this structuring of the team is more appropriate to the scale of the task than in the case of the Procurement Agent.

The length of time taken to recruit the EAA – almost two years – is also of note. The World Bank procedures under which MDTF procurements are conducted are not designed for rapid delivery, and procurement is often slowed further by lack of GoSS capacity to manage MDTF procurements. In the case of the EAA, the delay was less critical than for the Procurement Agent, although there has been a backlog in audits.

Basic package of health services (BPHS)

In early 2006, the MDTF Oversight Committee approved USD 60 million to the Umbrella Health Project (UHP), of which USD 40m was to be contributed by GoSS, and USD 20m by the MDTF donors. The UHP was based on the recommendations of the JAM, and aimed to support the Ministry of Health (MoH) in pursuing a two-track strategy: balancing the development of core capacities of the health system (Track 1), with the immediate delivery of essential services to a significant proportion of the population (Track 2). One of the key vehicles for the delivery of Track 2 was the proposed basic package of health services (BPHS), whereby a lead NGO would be contracted to deliver basic health care to up to 50% of the population in each of the ten states of Southern Sudan, whilst also developing core

institutional capacity for public health administration at state level. The amount allocated to the BHPS under the Umbrella Health Programme was USD 24.8m, i.e. USD 2.48 million per state.

The procurement process for delivering the BHPS in the ten states was launched in April 2006. Expressions of interest (EoIs) were sought from NGOs wanting to act as a state lead agent, responsible for:

- Implementing the basic health service package and health services development plan agreed on jointly with the state Ministry of Health.
- Overall management of health care delivery within its geographic area.

The work would also include health staff training, rehabilitating selected health infrastructure, and drug procurement and distribution. It was to last for three years. In the event, GoSS only received adequate EoIs for four states. It therefore moved to the request for proposal (RFP) stage with these states in November 2006, while reissuing the EoI for the remaining six states in 2007.

Once the proposals were received for the first four states, it became clear there was a significant problem. The proposals were significantly higher than the funds available for each state, often by a multiple of ten or more. The GoSS Ministry of Health therefore embarked on an extended contract negotiation process with the four NGOs, which wasn't concluded until 2008.

Eventually, the Ministry of Health agreed the scale of service delivery and contract modality with the four providers (Table 3.3). It was agreed that contracts would be signed for just the first year of each package, with the subsequent two years expected to be catered for once a second phase of the UHP became available.

Table 3.3. BHPS cost in four states

State	1 Year Cost	Implied 3 Year Cost
Upper Nile State	USD 3.4M	USD 10.2M
Jonglei State	USD 4.2M	USD 12.6M
Central Equatoria State	USD 5.5M	USD 16.5M
Eastern Equatoria State	USD 4.1M	USD 12.3M
TOTAL	USD 17.2M	USD 51.6M

BPHS delivery began in Upper Nile and Jonglei in the second half of 2008, and in 2009 in Central and Eastern Equatoria. Meanwhile, the Ministry of Health issued RFPs for the remaining six states in late 2008, once again with the expectation that funding would be provided under the second phase of the UHP.

It is clear that the approach of contracting out the BPHS has encountered significant problems. Firstly, at an average cost of over USD 4m per state per year, it is unlikely to be sustainable. This implies USD 40m for all ten states each year, and USD 120m each over the intended three years. It is not clear that such a large amount of funding will be available. It appears that the contracted-out BPHS concept, as envisaged in the JAM and the UHP, is too ambitious given funding realities.

Secondly, contracting out the BPHS has failed to meet the UHP objective of immediate delivery of essential services. More than three years after the approval of the UHP, only four states have started to receive BPHS services through the UHP. This delay is a result of a combination of factors, including:

- ▶ The lead times involved in MDTF procurement using World Bank procedures, exacerbated by limited procurement capacity in the MoH, the need to process World Bank “no objections” through Washington, and obstacles such as the requirement for NGOs to provide bank guarantees for 20% advance payments before mobilising.
- ▶ Ambitious initial programme design, which subsequently required protracted contract negotiations to scale the BPHS back to the limits of affordability.
- ▶ Escalating costs which exceed available funds.

It is not possible to assess the performance of the first four BPHS providers, since they have only recently started work. However, given the lack of government capacity, a case can still be made for contracting out health care delivery in Southern Sudan. But the procurement procedures used should be quicker, and programme design should match funding availability. Otherwise less expensive, though possibly less wide-ranging, in-house alternatives may need to be considered.

Lessons learned and recommendations

Following the comprehensive peace agreement, Southern Sudan was faced with extreme poverty and underdevelopment and a public service, including personnel and systems, which had to be built up virtually from scratch. In this context, the Joint Assessment Mission’s recommendation that core government financial services such as audit, accounting and procurement initially be contracted out to international firms, was appropriate.

GoSS’s experience in contracting out these functions has been varied. In some instances, the service has (so far) been delivered to the required standard, but the government does not yet have the capacity to take over the function itself (*e.g.* project accounting, external audit). In other instances the service appears to have fallen short of requirements (*e.g.* government accounting, procurement), despite being contracted out to internationally-renowned firms.

A number of lessons can be learned from the GoSS experience. Firstly, **the type of contracting (sole-source or competitive) does not necessarily determine the performance of the contract.** In one instance (project accounting), an interim sole-source contract provided essential temporary coverage to a satisfactory standard. In another (the procurement agent), interim sole-sourcing would actually have been desirable; instead, a time-consuming competitive process created a temporary service delivery gap from which it can be argued that GoSS has never fully recovered. In a third (government accounting), sole-sourcing undermined service delivery because the selected contractor was allowed to define the terms of its own contract, yet lacked both the incentive and the capacity to understand the requirements of the function.

Secondly, government has supported the process of contracting out key services, but has had limited capacity to design and manage contracts without external support. This has arguably been most evident in the case of the government accounting contract. The Ministry of Finance entered into the contract bilaterally, on a sole-source basis, within the first six months of its establishment. But the ministry did not have the capacity to define the services it required from the contractor. As a result the contract was poorly designed and performance was weak, even though the same contractor was performing adequately on another sole-source contract for project accounting. Once the ministry received enhanced technical assistance it was able to require better performance from the contractor and to develop an exit strategy. Even with the Multi-Donor Trust Fund contracts, government had limited capacity to ensure that the contract design and performance met its needs.

Thirdly, lengthy World Bank procurement procedures and limited government capacity to follow them have led to significant delays in mobilising contract agents. All the competitively-procured contracts have followed World Bank procurement procedures because they have been financed through the MDTF. Each of these processes has taken between one and three years to complete. However, at first the government had no idea that World Bank procedures were so lengthy, or that they required such a substantial government engagement. Instead it expected MDTF delivery to be flexible and swift, as promised in the JAM. The impact of these delays has been most critical in the health sector, where the procurement of lead agents to deliver a basic package of health services has taken almost three years. This makes a nonsense of the objective of immediate delivery of essential services. In the case of the Procurement Agent, the absence of interim sole-source cover during the competitive process led to a critical service delivery gap. Such procurement delays not only result in lost service delivery, they also diminish incentives for government to build its own capacity and structures in the interim, because it expects a contractor to be mobilised shortly to deliver the function.

Fourth, inappropriate programme design can undermine the effectiveness of contracting-out. The Procurement Agent's team composition was wholly inadequate to achieve the terms of reference. In the health sector, over-ambitious programme design relative to the available financing significantly complicated the contracting process. For government accounting, the appropriateness of the programme design was undermined by the contractor defining its own terms of engagement.

Fifth, capacity development has generally been inadequately addressed. The JAM assumed that GoSS would have the capacity to take responsibility for fiduciary functions within three to four years of its establishment. This now looks woefully optimistic, as capacity development was not put at the centre of the contracting-out design, and none of the contracts had a clearly identified exit strategy. One contract (project accounting) required no capacity development at all, while two only required on-the-job training (government accounting and procurement), in spite of the fact that counterparts were known to be limited, and lacking capacity. The external audit contract was the best designed, requiring the EAA, amongst its other functions, to support the Auditor General to recruit and induct staff, train them on the job, and monitor their capacity building. At a minimum, these functions should be included in a contracting out package, and if a decision is taken to deliver formal training through a separate intervention, this intervention must then be implemented simultaneously. The execution of the procurement function, for example, was in part weakened because the World Bank was supposed to implement a separate procurement capacity development strategy which never materialised.

Finally, contracting out is not cheap. The combined cost of the fiduciary agents contracted by GoSS was over USD 20m over just four years. There is little evidence that alternative approaches were considered, such as the temporary recruitment of experienced professionals from Sudanese émigrés living overseas (the diaspora). Yet, if properly designed, a diaspora programme might prove a cheaper and more sustainable alternative to recruiting international firms to carry out fiduciary and service delivery functions.

These lessons give rise to the following recommendations:

- ▶ Sole-source contracting should be considered on an interim basis to meet urgent service delivery gaps, but only if the terms of the contract are properly designed.
- ▶ Government should be offered independent technical support for designing and managing contracts. This should include defining contract services that best meet the needs of government, and performance monitoring.

- ▶ If World Bank procedures are to be used to procure contract services on a competitive basis, it should be realised that they can take more than a year. These procedures should only be used when the service delivery is not urgent, or when appropriate sole-source cover can be provided in the interim. In addition, support is needed to help government to manage World Bank procedures. A government that is contracting out services because it lacks internal capacity will also lack the capacity to manage World Bank procedures for contracting out.
- ▶ Capacity building should be included in contracting out packages, and an exit strategy clearly mapped from the outset. At a minimum, the capacity building should include assisting government to recruit and induct counterparts, and providing on-the-job training. When formal training is planned through a separate intervention, it must be implemented simultaneously. The exit strategy should detail the steps needed to raise the capacity of government officials to assume responsibility for the function, and should feed into the capacity-building design.
- ▶ Alternative options, such as contracting in temporary capacity from the diaspora, should be considered before deciding to contract out essential services. Key issues to consider include the relative cost, lead times and capacity-building potential of the alternative options.

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Endnotes

52 Eventually agreed at a ratio of 2:1 in the south, with GoSS contributing USD 2 to every USD 1 provided by the donors to finance MDTF-south programmes.

53 For health, HIV/Aids and education.

54 The Capacity Building Trust Fund (CBTF) was established in 2005 under the management of UNICEF to provide capacity-building and operational funding to the SPLM as it evolved into the GoSS.

55 In actual fact, preparation of the draft financial statements usually lagged well behind this timetable.

56 Called a "letter of engagement".

57 Through its United States Agency for International Development (USAID) Treasury support.

58 USAID-funded.

59 The Oversight Committee is chaired by the Minister of Finance & Economic Planning. Other members include the World Bank, MDTF donors, and the UN.

60 Project funds from both sources were pooled in a single project account.

- 61 Initially, GoSS failed to reach agreement with the first-ranked firm for the PAA, after which it was given go-ahead by the World Bank to negotiate with the second-ranked firm. Since the second-ranked firm was the existing iPAA, it was expected that negotiations would be concluded quickly. However, the second-ranked firm raised a number of issues, including its preference for a one-year contract.
- 62 Source: GoSS Procurement Agent – MDTF Procurement Flow Chart.
- 63 The first senior postholder was appointed to the Bank's Juba office in late 2006.
- 64 MDTF procurements were to be conducted in line with World Bank procedures, while GoSS procurements were to be conducted in line with the GoSS Interim Public Procurement & Disposal Regulations, 2006.
- 65 In some cases with the assistance of individual procurement advisers, funded either through MDTF projects or other donor sources.
- 66 Issues Paper: Performance of the GoSS Procurement Agent, presented to the MDTF Oversight Committee, February 2009.
- 67 Source: procurement agent's terms of reference.
- 68 The World Bank estimates the procurement process for the new agent will take five months.
- 69 Commitment control was nonetheless recently described as a "minor issue" by the World Bank procurement lead for Southern Sudan.
- 70 Briefing by the External Audit Agent to the MDTF Oversight Committee, October 2008.
- 71 The MDTF Core Fiduciary Systems Project.

Chapter 4.

Contracting out Core Government Functions and Services in Afghanistan

Seema Ghani and Nematullah Bizhan

Abstract

This chapter explores a number of examples of contracting out in Afghanistan. The lessons elaborated in this report stem from a number of sectors, including finance, aid effectiveness and justice. Several important recommendations are drawn, which can support other post-conflict and fragile states to strengthen the delivery of government services to their citizens.

Executive summary

After 30 years of war and conflict in Afghanistan, we are noticing some progress in the public sector. In 2002 the interim government inherited a broken system with bare-bones infrastructure: offices were without chairs and tables, and there were certainly no electronic devices such as computers. With such a low starting point, the international community and expatriate Afghans had high expectations. There was an unrealistic hope that the interim government would fix everything in a matter of months.

With the weak civil service, administration and management and a non-existing information technology (IT) infrastructure, the government had to either fully or partially contract out certain functions. Many of the contracts did produce a return on investment, for example in finance, banking, trade, police and the military. Yet many government institutions have continued to struggle to put together a workable mechanism and process. These include the judiciary, education, public transport, agriculture, energy and water, and infrastructure building.

After seven years, the government of Afghanistan is still struggling with its daily functions and operations. Corruption is more prevalent than ever in such a fragile situation. But on the other hand, the building blocks of some of state functions have been put in place, such as the financial management system.

Overall, we found that there are some success stories in contracting out government functions, as well as some less successful experiences. We draw on our analysis to make the following general recommendations:

- ▶ Assessing the need for contracting out experience is key before deciding to contract out a function. Some functions can work through internal consultants or by hiring temporary consultants that can perform the function in-house.
- ▶ Ownership and capacity building should work together in any contracts. While the function may be contracted out, the government should not forget to plan an exit strategy for the contractor so that the government can take over the function at some point and be able to rely on its own capacity.
- ▶ There are certain functions that the government can and should contract out over the long-term; one example in Afghanistan is the health sector. The success rate of NGOs and private hospitals is high in delivering good services; policy makers should consider keeping this function under the purview of outsiders.
- ▶ In the process of contracting out, one should use local capacity as well as international capacity. Using locals builds their capacities so that in the future these services can be provided at a lower price.
- ▶ Consider contracting expertise from within the region. A region with a similar cultural connection and background to Afghanistan can bring added benefit. India is a good example of a source of similar experiences in many sectors, if not all.
- ▶ Co-ordination is needed amongst stakeholders. The government, the donor community and the contractor should all be reading from the same page. A third party, such as the people's representative or the parliament, could get involved in countries where the government has low capacity or is not accountable. In Afghanistan corruption can be high where large contracts are in operation.

Introduction

This study lists a number of government functions that have been either partially or fully contracted out in Afghanistan. Most of these functions are core to the everyday running of public services. An example is financial management through the Ministry of Finance. When the new government took over in November 2001, the ministry was not functioning well. The budget was so small that it couldn't meet even the most basic needs. Building a state costs money and handling money requires clear accountabilities and efficient processes. The donor community was prepared to pay for setting-up the processes, but the system lacked experienced staff. In some areas where there were human resources, creative management was lacking.

Some of these core functions of the government, therefore, had to rely on help and advice from international organisations. This became a theme throughout government, and continues to be so in Afghanistan. Afghanistan became the "land of opportunities" for adventurous international workers. It became useful to have an "Afghanistan experience" on one's CV in order to get better jobs elsewhere. Contractors such as Louis Berger, BearingPoint and Adam Smith International (ASI) have been major players in delivering government services.

This study aims to give examples of both success stories and failures in contracting out, and to analyse the underlying reasons. We also list some lessons learned and make recommendations for future success. It is hoped that these recommendations will be adopted in Afghanistan in the near future.

The paper is based on the authors' personal experience, as well as on some documented material. Seema Ghani is the former Director General of Budget and Nemat Bizhan has budget management experience, as well as experience with the Afghanistan National Development Strategy. We also interviewed some of the parties involved to fill gaps in our knowledge base. Exact quotes have not been used, but the names of the interviewees are listed in Annex I.

An overview of contracted out projects in Afghanistan

In the past few years, the donor community has invested money in Afghanistan to set up a legitimate and functioning government accountable to its people. This support included help with handling/managing money, building or renovating offices, running the administration and many other areas where previous governments had failed to manage. Most existing functions needed to be reformed; other basic functions needed to be created after decades of war. Some donors' assistance involved contracting their own consultants and seconding them to the government. Other donors took responsibility for setting up the entire function until it was ready to hand over to the government. This section introduces some of the core functions of the government that were either fully or partially contracted out to external actors, such as the World Bank (WB) consultants, United Nations Development Program (UNDP), other UN agencies, NGOs and private companies.

Afghanistan Reconstruction Trust Fund (ARTF)

The World Bank took administrative and financial responsibility for this fund in 2002, initially sharing management responsibility with UNDP, the Islamic Development Bank and the Asian Development Bank. This fund created a suitable mechanism for donors to resource the operating budget and major projects under the development budget. Pledges totalling USD 59 million were received for 2002/03 from eight donors, the largest of which were from the Netherlands, Germany, Italy, UK and Denmark. The donor community needed a system to facilitate accountability and transparency. ARTF happens to be one of the most successful mechanisms so far, despite its bureaucratic processes. Although there are still some problems with the way the fund is managed and operated, the WB has been able to manage it successfully. Lack of experience meant that the government of Afghanistan was unable to manage it. Had the level of corruption been lower and had adequate staff been trained, this fund would have been handed over to the government by now. One of the biggest failures of the international community and the political leaders of Afghanistan has been the lack of effective capacity-building programmes. Eight years later, the country is still buying in capacity at a very high cost without much focus on programmatic capacity development. As a result, ARTF remains a fully outsourced project in Afghanistan.

Ministry of Finance and Ministry of Commerce legislative drafting

Financial and commercial functions, such as income tax policies and related laws, budget law, procurement law, revenue related regulations, trade policies and many others would not have been possible to draft without contracting in experts from companies such as BearingPoint, Adam Smith International (ASI) and UNDP. This contracting started in 2003 and in some areas still continues. ASI and BearingPoint were two of the first companies that were contracted to take responsibility in various areas of the ministries of finance and commerce, mainly to write legislation. Experts were needed to bring their experience of other countries to write or amend the Afghan legislation. This was best managed and run by the international companies whom the donors could trust. Most of the contracts that BearingPoint won were funded by USAID; ASI, being a British company, was appointed by the UK Department for International Development (DFID).

Treasury reform

This included setting up an automated national payroll system/decentralised payroll system, the Afghanistan Financial Management Information System (AFMIS), and accounting. These functions were assisted through a BearingPoint contract with USAID funding. The accounting system contract was funded by the WB, although this also was contracted to BearingPoint. They started in September 2002 and continued into planning and design phases in 2003. The decentralised payroll system has

been one of the most successful projects: corruption has been reduced by automating the payroll and an automated system has also improved banks' performance since their services were also required. Most banks had not been functioning properly previously. There were numerous ghost employees in Kabul and in the provinces; the automated system reduced their numbers. Six years on, fewer people are able to misuse the payroll system. Additionally, government employees in most parts of the country now receive their salaries on time. The system, however, has not completely solved all the problems. Poor security means that some people in the provinces still do not always receive payments on time. On the whole, however, the achievement of a functioning system of payment gets closer every day.

At the same time as the payroll system was installed, an automated system for issuing electronic cheques was also contracted to BearingPoint. This contract was operated by a team of international and national consultants. These facilities in the Ministry of Finance and the central bank would not have existed without being contracted out to an experienced international company. BearingPoint has managed to win many contracts in financial management in Afghanistan since 2002. One reason is that they were already present and able to convince the two main donors, WB and USAID, that costs would be lower if they were granted other contracts.⁷²

If such projects had been fully managed by the ministry while recruiting international consultants then progress would have been much slower as senior managers were overloaded. Outsourcing and the assistance of companies in managing some of the projects has made progress possible. The quality of the companies involved is another matter, however, but this falls outside the scope of this study. As stated before it is mainly the donors who are responsible for selecting the companies. Afghan senior managers can only advise; with organisations like USAID, the final decision is solely theirs to make, not the Afghan government.

Setting-up the Aid Co-ordination Unit

This unit is mainly run by consultants hired through ASI and UNDP administrative support. The Ministry of Finance, which houses this unit, is still unable to fully take over this function. Over 70% of the unit's staff is still contracted to ASI and UNDP. Although the manager reports to the Director General of Budget, he is paid by donor funds through UNDP. Other international staff are recruited and managed by ASI. As with other outsourced projects, although the management reports to Afghan supervisors, the supervisors themselves report to the company which hired them. This means that the manager's loyalty is with the company that pays his salary. Most staff contracts state that staff must report first to the company that hired them, rather than to their line manager in the host government. There have been cases of conflict of interest when a member of staff's loyalty has been questioned when he/she has tried to obey the orders of the Afghan institution's manager (for political reasons, the actual example cannot be printed here).

The reform of the Customs and Revenue Departments

This Ministry of Finance reform began in 2002 through international contractors, including a team of Afghan consultants hired by international companies. The WB also agreed to pay for the customs and revenue reform project as part of its contribution to Afghanistan's reconstruction. The old system of customs clearance – which required 25 different forms and the signatures of over 25 officials – was simplified into a single administrative document. Under the previous system, each signature was an opportunity to collect a bribe. Re-engineering and simplifying administrative processes have therefore helped increase efficiency and reduce corruption; a tribute to the contracting agencies.

Revenue policies were also formulated with the help of advisors and partly through a project of reform contracted to private companies such as ASI and BearingPoint. Another important step was the creation of the Large Taxpayers' Office to increase internal revenue. A centralised revenue system was also established in the same manner. Customs offices around the country were obligated to transfer all revenue collected to the central bank account. This controlled corruption stemming from revenue collection in the provinces.

Afghanistan National Development Strategy (ANDS)

This project began as the Interim Afghanistan National Development Strategy (I-ANDS) in 2005. Afghanistan was not included in planning the UN Millennium Development Goals (MDG) in 2000 because of the Taliban regime. It was therefore hoped that in 2005 – through I-ANDS – Afghanistan could develop a proper poverty reduction strategy to meet the MDG goals. The WB became the lead donor and recruited the first national and international consultants. The government did not have the capacity to run such a unit and so the project was contracted to a group of individual consultants managed by UNDP and funded by the WB, DFID, the Canadian International Development Agency (CIDA), Norway and the Netherlands. This unit was run out of a non-government office and reported to the Senior Economic Advisor to the President. The manager was an Afghan recently returned from studying in the United States. He started negotiating with the WB to recruit international consultants whose appointments both the WB and the administering body (UNDP) agreed. The positions were advertised internationally and the recruitment process began under this manager's guidance. As is common in Afghanistan, however, some consultants did not perform well in the poor security situation; cultural issues, the competitive environment and tight deadlines were also very difficult for some consultants to deal with. Inevitably some contracts had to be terminated as a result.

Staff were employed under various international and local contracts; while some were paid through UNDP, other donors seconded their own staff to the mission. This project had several layers of management, including a manager, a director, and a senior advisor to the president who was in charge of this project. There were also an external advisory committee and a government observer committee. After having completed the initial phases and writing the document, ANDS has now split into two departments under the Ministry of Economy and the Ministry of Finance. The co-ordination function sits within the budget department of the Ministry of Finance, while the monitoring and evaluation department has now moved to the Ministry of Economy. These units, however, are still paid externally through the UNDP office and all financial matters are handled by the UNDP. The directors of the two units are paid through a government budget for high-level jobs and their salaries are very competitive, while the rest of the unit (mainly national consultants and a small number of expatriates) are all paid through UNDP and the donor community fund. Although the work will now belong to the government, it is still partially contracted out – if not fully outsourced. This is because the manager is Afghani and staff report to him rather than reporting only to UNDP and the relevant donors. Just as with the budget team, there may be a transition planned at some point, but for now UNDP will be administering the project with the co-operation of the two Afghan directors. Currently a team of UNDP experts is working on setting up an exit strategy, but this may take a few years to achieve.

While ANDS was written with donor funds and developed under UNDP administration, some of the Afghan consultants involved still believe that it was not fully outsourced. They feel that they managed the project themselves, while the donors feel that they also played a part in managing this project with the help of the international agencies. The project sat outside the government structure until the document was completed. It is only recently that ANDS has formally become part of the government, within the ministries of finance and economy.

ANDS is seen as the roadmap for the country's development and its success is key for the future of this country. However, whether it will be a success is yet to be seen. UNDP will only hand it over fully to the government if all donors are happy and confident that there is capacity within the Afghan team to manage it without any external intervention.

Chief Financial Officer capacity building

This project, to build the capacity of the newly-established Chief Financial Officer (CFO) positions in a number of ministries, took place in 2004. The project was funded by the WB and contracted to Maxwell Stamp. Eight ministries were identified as pilot projects and eight consultants were hired, one for each CFO. When the contracts were being prepared in early 2003, leadership was fairly weak in the Ministry of Finance's budget department (the co-signer of the project). Although an open bidding process was used, it turned out that the company ultimately chosen was not suitable for delivering the required services. The company did not even manage to get the team leader to start work on time. It took 10 months before the appointed team leader finished his assignment in another country and came to Afghanistan. Without the team leader, the other consultants could not start working. By the time the team leader joined, all the consultants who had applied were no longer available. The ministry brought in new consultants, but most of these had less experience than the original applicants. When the project began, the performance of the international staff was not good and they had insufficient experience of working in a fragile state like Afghanistan. In 2005 it was decided to terminate this failed project completely. Even though the government had to pay penalties for early termination, this decision was regarded as sound.

Justice sector reform

This project is being managed by ASI, and is currently funded by the European Commission (EC). Other donors also have projects in this sector. While the lead donor is Italy, the EC contracted ASI to carry out various reform and legislative activities in the Ministry of Justice, the Supreme Court and the Attorney General's Office. In 2005 the government asked USAID to train the staff in this sector because the relevant ministries and directorates lacked the capacity to do so. USAID took on this contract as part of a bigger programme of judiciary system support which it had started in 2004. The contract was given to Checchi and Company Consulting Inc., who have trained the judicial system staff. USAID is happy that the project has been completed successfully. However, if you ask the Afghani people, they still complain about corrupt and incapable judges across the country (all judges were trained through this programme).

Private sector development

The reform of the Ministry of Commerce and Industries (MoCI) was contracted to ASI to formulate the relevant policies. The three main work streams are investment policy, market business development and outreach. Since 2003, the MoCI has also contracted out a complete business registration service called the Afghanistan Investment Support Agency (AISA). This is a one-stop shop where investors can get information and register their companies. The result has been good: a process that used to take weeks now takes only days. Furthermore, AISA is now self-sufficient.

BearingPoint is also involved in MoCI and has taken responsibility for drafting nine laws since 2002. Some have already been passed, while some are still in parliament.

The Export Promotion Agency is another unit contracted out completely and run by a semi-independent unit. Its management reports to the ministry, while GTZ (the German official development agency) provides the funding. The agency is expected to be self-sustaining by 2011.

The Export Promotion Agency plans to work on revenue-generating programmes, but their full implementation is not possible at this stage. They hope that in the next couple of years they will manage to encourage more businessmen and women to pay for their services. Although GTZ is intending to stop funding this agency in the next two years, they are not certain the revenue generation plan will work in time for them to withdraw and fully handover the agency to the management team. GTZ has given the Afghan managers almost full autonomy, but under the watchful eyes of the German consultants working with them. Capacity building is an ongoing process in this agency.

Under new leadership, the ministry has worked closely with consultants to write a complete business plan, currently supported through DFID funds. The plan will help the ministry develop its five-year strategy, including the transition to self-sufficiency and a greater reliance on revenue-generating services. This project, begun in early 2009, has been contracted out to ASI to manage. ASI has recruited a team of international and national staff to complete the business plan and start on the next phase of ministry reform. The ministry has to remain a policy-making entity; it is not its job to implement projects for the private sector. Its responsibility is to facilitate the national and international private sector through sound laws and regulations and policies to help investment and growth of the country's private sector. However, the other offices that have been contracted out should start becoming self-sufficient.

National Solidarity Programme

The NSP, designed in 2002, is one of the most successful government programmes. It quickly caught the attention of the donor community, which has committed hundreds of millions of dollars every year to it. The programme makes money available for village clusters (a group of community councils) to prioritise and pursue their needs. A maximum of USD 60 000 per year can be transferred to each village to implement projects. Implementation is done by the community with the help of a facilitating partner, such as an NGO.

The NSP is the main government programme that shows the people that their government is doing something for them. The programme idea emerged under the direction of Dr Ashraf Ghani – then advisor to the UN Special Representative of the Secretary General. He called on his former colleague Scott Guggenheim, who was in Indonesia implementing the successful Kecamatan Development Programme. Guggenheim came to Afghanistan in January 2002, consulted with various national and international bodies, and established the concept of the NSP. Together they managed to convince the WB to pay for the initial costs and signed an agreement in May 2002. When the new Minister of Rural Rehabilitation and Development (MRRD) started working together with his team, they were given the NSP concept to design.

Initially, between 2003 to 2006, GTZ was given the management contract. After that, management reverted to the Ministry of Rural Rehabilitation and Development (MRRD), but the financial management has been outsourced to Maxwell Stamp. However, the ministry is apparently unhappy with how the company is handling financial management. The main problem involves slow procedures, which lead to unnecessary project delays. Another shortfall is that the evaluation and monitoring of the programme is done by ministry employees and donors. A third party has yet to critically monitor and evaluate this programme. The ministry plans to take over the financial management of NSP gradually in the next couple of years. This means that great national and in-house capacity will be required at MRRD to handle financial management.

At the design phase, a number of international consultants were contracted under the guidance of the deputy minister who still leads this programme (now as minister). As the ministry is

predominantly about making policies, it decided to contract international organisations to run this programme. The management of such a large programme was not easy, with projects operating in numerous provinces and with several facilitating partners.

The donor community has committed to contribute to this programme through the Afghanistan Reconstruction Trust Fund, but the financial management of a programme involving hundreds of millions of dollars every year needs financial management and accountability of a very high standard. Therefore, although the contracted company is not very successful, the donor community receives good and timely financial analysis and reports, as do the Afghan leaders such as the minister, deputy minister and the CEO of NSP within MRRD.

The Counter Narcotics Trust Fund: a case study of failure

This case study examines the failure of the Counter Narcotics Trust Fund (CNTF). The programme was to help financial manage a process to address the overwhelming challenges of narcotics in Afghanistan and pave the way for better programming and investment in counter-narcotic efforts. Narcotics still remain a great threat to the future of Afghanistan. They fuel terrorism and insurgencies that have dramatically affected the governance and state building processes. The failure to manage the fund allocated to such an important programme could be one of the main causes of the drugs problem around the world. We therefore feel that this case is a good example of a government and its international partners failing due to the bad management of an outsourced project.

As narcotics were a threat for the country and the region, the government of Afghanistan and the donor community sought ways to best implement counter-narcotics efforts and to use financial resources more efficiently. In October 2005, some donors proposed establishing a trust fund to be managed by the United Nations Development Program (UNDP). Another mechanism was discussed at the same time, which involved funding the counter-narcotics efforts via the government treasury. However, because of donor concerns over the lack of capacity and the incidence of corruption in the public sector, and taking into account the magnitude of the narcotics problem in Afghanistan and its potential “black” income, CNTF was set up to provide efficient and demand-driven financial management in a more transparent and accountable manner. It was to enable the government to address the lack of support for programmes and projects designed to replace poppy cultivation in the country.

The main objectives of the fund were the strategic priorities of the National Drugs Control Strategy (NDCS). In 2004 the Ministry of Counter Narcotics released a new strategy which set precise benchmarks for tackling narcotics through a programmatic approach. The fund was contracted out to the UNDP as a sole-source contract. A management board was established, including the government, UNDP and some donors such as the UK and the US. UNDP was tasked to administer the fund, but full responsibility for the nationally managed programmes remained with the Ministry of Counter Narcotics and Ministry of Finance.

In June 2007, UNDP reported that of the planned budget of USD 900 million, only USD 3.4 million had been spent (approximately 2.6%). This indicated a serious failure in counter-narcotics efforts and financial management. Most of the projects implemented and funded by CNTF are fragmented and operate in isolation from each other. The projects are small-scale (*e.g.* mushroom cultivation, greenhouse projects, honeybees, small-scale drought-related projects etc.) and the process lacks a strategic and programmatic approach. As the fund was poorly delivered and supported by donors, there has been little or no incentive for the line ministries to come up with new projects because their experience does not allow them to further invest in these projects. Instead, there have been other mechanisms in which they could invest for faster results. Lack of financial management capacity,

limited capacity in the lead ministry, limited support from the international community, and the lack of precise policy guidance for fund management are the key factors that undermined the overall performance of CNTF. A lack of consensus on counter-narcotics approach among key donors and the government of Afghanistan in 2006-2007 also dramatically undermined the performance of the fund and the country's counter-narcotics efforts. It also seems that the fund has not taken into account the institutional structure of the counter-narcotics entities in the country. The Ministry of Counter Narcotics (MoCN) did not exist in Afghanistan previously. In fact, there was no need for such a ministry. Instead there should have been a high-level directorate under the President. The main role of the MoCN is to formulate policies and co-ordinate the counter-narcotics efforts. Unfortunately, this has not been done efficiently. Too many players have been selected to implement the projects, and this has resulted in fragmented efforts. The fund mechanism failed to establish a programme framework to enable the implementing partners to work within a structure.

The fund required ministries to submit their project proposals to the CNTF management board, which reviewed and approved projects. The management board involves not only the government and UNDP, but also key donors. This could have been an advantage in managing the fund; more ideas around the table should have led to a more effective project. However, the presence of certain donors on the CNTF management board has challenged government ownership. Each donor has their own priorities and favourite projects, making decision taking difficult and overlooking the priorities of the Afghan people in the process. The CNTF management board differs from that of the Afghanistan Reconstruction Trust Fund (ARTF), which administers a total of USD 1 billion annually and whose executive boards members consist of the World Bank and the government – not donors. Furthermore, the CNTF has operated in isolation from the enabling environment, and has not addressed the capacity building of the Ministry of Counter Narcotics and other implementing ministries.

The key step in the procurement process (translating the approved projects into action) is still time-consuming. These quick-impact projects seem of low quality and are unrelated to each other. The capacity of the implementing ministries such as Agriculture, Rural Development and Public Works have been reportedly low because less attention was given to their CNTF-funded projects. The main reason has been that these projects were not priorities for those ministries. In the three years that the CNTF was implemented it underperformed and lost credibility. CNTF was bypassed; more direct approaches were sought to support the programmes and projects – especially in the agriculture sector. The mechanism didn't help to build the capacity of government institutions to run the fund. And this also resulted in the failure of proposed exit strategy. Its final failure was not building the trust of the donors to use the CNTF as a core mechanism for more co-ordinated interventions.

In the long run it is predicted that the fund should flow through the government's core budget; in other words the government of Afghanistan should take the lead in financial management of the counter narcotics efforts.

Health sector contracting-out

This has been one of the most successful sectors, operating since 2003. This sector is mainly assisted by NGOs; the private sector has not shown much interest in government contracts due to their low profitability. The only way for the private sector to make money in the health sector is through private hospitals. Private businesses are licensed to do the job autonomously, rather than partnering with the government. The NGO sector partners with the government across the country. The donor community has been assisting the Ministry of Health with these contracts. The main donors are the WB, USAID and the EC. However, the EC has always been interested in running the show themselves. They have their own rules and regulations and do not work directly with the government. Their so-

called “external budget” is not part of the government budget, because they grant and monitor the contracts independently. Their package of health, however, is the same package that is designed by the ministry. The EC will start putting their funding into the core national budget sometime from 2010/11.

Of Afghanistan’s 34 provinces, the government has decided not to outsource clinics in three (Parwan, Kapisa and Panjsher). In these three provinces, the government has managed to provide all the basic health services through ministry-run hospitals and clinics. According to the Policy and Plan Director, there is not much difference in terms of service delivery and cost between outsourced and government-provided services. The government is able to provide almost all the services that an NGO would provide at the same cost and quality. Contracting-out as a whole, however, is cost-effective. Most of the city hospitals belong to the government and are run by the ministry. But in seven provinces, even the city hospitals are outsourced to NGOs with funding from the US, International Committee of the Red Cross (ICRC) and, in one case, by the EC. Evaluation reports by the Johns Hopkins University and IIHMR for 2006, 2007 and 2008 (The Afghanistan Health Sector Balanced Scorecard) show remarkable improvement in the services provided through NGOs. An advisor to the Minister of Health stated in an interview that the services provided by NGOs have improved in quality because of competition. He was, however, concerned about the low capacity of the ministry for monitoring and evaluation (M&E). Furthermore, he felt that the ministry should focus on building strong M&E so as to improve the quality of service still more.

The Making Budgets and Aid Work project

The Making Budgets and Aid Work project initially started as the Aid Co-ordination Project in 2003 with the support of UNDP and various donors. It is an ongoing project within the Ministry of Finance (MoF), and has over 75 staff. The then Minister of Finance was the visionary behind the reform. He saw financial management in a fragile situation as the key for any development or donor contribution. He later pointed to sound financial management as one of the 10 key functions of a legitimate state (Ghani and Lockhart, 2008). At the time, some processes in the MoF (such as budget) resembled a wish list. After the Bonn process in 2001, which established the first Afghan government following the fall of the Taliban regime, one of the main priorities for Afghanistan was to manage an accountable, reasonable and efficient financial system. This vision was later re-emphasised in 2004, when the Berlin donor conference was planned and presented to donors as part of Securing Afghanistan’s Future (multi stakeholder paper, March 2004). The vision for the budget process was defined as multi-year, comprehensive, results-based and supported by a strategic planning process.

In order to prepare such a sound operating and development budget, suitable capacity was needed. The existing staff of the ministry had no experience in designing the kind of budget the new leadership envisaged. The donor community was also concerned that without a systematic approach and a mechanism that could be monitored and evaluated, taxpayers’ contributions would be wasted.

The new leadership of the ministry wanted to lay the foundations of a system that could not be influenced by corruption; one that would facilitate accountability or force the managers to be accountable to the people and to the donor community; and one in which the donor community could invest. The General Director of Budget agreed with the UNDP that the ministry would raise the funds from the donor community and the UNDP office would administer a team to set up and start work on the development budget. While civil servants had the capacity to run the ministry’s operating budget (covering day-to-day expenses of the government entities), with new pledges coming in for reconstructing the country, a new mechanism was needed to manage the funds and allocate the development projects.

At the time, an independent team responsible for aid co-ordination and seconded by UNDP had just finished its first phase of activities, but the government had not decided where to reassign them. The Director of Budget asked UNDP to second this team to the Ministry of Finance in order to set up and run the development budget department until the capacity of the civil servants was built and the ministry itself could take over the function. UNDP agreed and a contract was signed between UNDP and MoF with funding that was, at the time, available through UNDP under the name of the Aid Co-ordination Unit.

This team consisted of one international consultant and eight national consultants with knowledge and experience in aid co-ordination and data analysis. Later, when the initial funds were running out, other donors became interested and contributed to this project through UNDP. For example, in 2003, the US Embassy and USAID showed an interest when the Ministry of Finance needed further funding for the development budget team. The unit then expanded to three international and several national consultants, who designed the first national budget in 2003. The main long-term donors have been CIDA, the US, UNDP, Italy, the Netherlands, and GTZ.

The 2001 Bonn Agreement increased the number of ministries; new staff inherited from other ministries had no experience of budget preparation. A group of advisors to the MoF and the WB commented that the job of the budget team in the Ministry of Finance was especially critical for preparing the ministries' budgets and carrying out some capacity-building workshops and courses (Carnahan *et al.*, 2004). The budget preparation in the early years was a challenge that the government could not have performed well without the support of contracted out projects. The commitment of donors was crucial in this period, as was the administration that UNDP provided, despite some problems. With such low capacity in the treasury system and the increasing corruption in the country, the donors would only trust an external and independent entity such as UNDP to administer the money they had provided to support the country.

Donors and the UNDP understood the need for the government to own the project and worked alongside the leadership of the Ministry of Finance. However, the capacity and capability of the UNDP international staff themselves were questionable, as they had little experience or understanding of a post-conflict country and a fragile government. The bureaucracy of the UN system was another challenge with which the MoF leadership had to deal. The alternative however, would have been the United Nations Office for Project Services (UNOPS), which was famous at the time for its low capacity, inflated charges and high corruption. The leadership did consider contracting out to the private sector, but costs would have been higher than with UNDP. UNDP started with 3% charges (later increased to 6%) to run and manage the project; a private company would have charged many times more.

Following the success of the budget preparation phase, the execution phase also needed to be reformed. BearingPoint was contracted by the government using USAID funding to oversee the reform of the Treasury Department. A computerised system of cheque issuance started operating in Kabul so it could report immediately on expenditures. Other provinces also increasingly started to computerise their systems. Accounting system reform in Treasury, however, was funded by the WB and implemented by BearingPoint, while other areas in Treasury were funded by USAID. The entire contracting out process lasted from 2002 to 2008. Some of the projects have now been completed and handed over to the ministry to manage. However, some international consultants do remain to assist the ministry staff and work on further capacity building. Also some functions are still managed by the international organisations, but on a smaller scale.

A 2007 UNDP evaluation of the Making Budgets Work project stated that it had made significant improvements and had achieved much in terms of its goals (UNDP, 2007). This evaluation recommended that further funds be raised for the project to continue and to expand to play a key role

in the improved development of the Afghan government and, therefore, of the country. By hiring a small number of international consultants, but a larger number of Afghan consultants working in the MoF, the project has managed not only to improve the performance in the Ministry of Finance, but also to assist other ministries in building their capacity. Most of the Afghan managers have been through many training programmes and capacity development projects and are ready to manage without much help from international consultants. MoF staff have constantly been in touch with the budget teams in the ministries and held training programmes. In most of the ministries there are also international advisors assisting in capacity development. Their own initial instructions however, mainly come from the MoF budget team.

This project has also minimised corruption by creating a transparent budget. Some initial steps have also been taken to begin provincial planning and programming. Provincial planning may be only a first step in this direction, but it is certainly a significant start in Afghanistan.

The aid co-ordination part of the Making Budgets Work project has also played a significant role and has been fairly successful. Donors have been co-operative in providing relevant information. As a result, they have benefited from information analysis to help them make crucial decisions, to avoid duplicating efforts, to be aware of each other's activities, to feel accountable and to ensure that all information is transparent. The increased contribution by donors to the government budget, such as the use of the Afghanistan Reconstruction Trust Fund (ARTF) rather than donors funding projects externally, is one of the most positive results. Yet, a portion of donor budgets still goes directly to their implementing partners; such funding may need to continue because it is particularly useful for emergency and quick-impact projects. Furthermore, the ARTF process is time-consuming and cannot cover for all projects.

The ministry also contracted out the costing of the Afghanistan National Development Strategy (ANDS) to Maxwell Stamp with funding from DFID towards the end of 2007. However, this was later handed over to ASI. This function will now move to UNDP as part of the overall Budget Department support. Two national and one international consultant completed the first phase of the ANDS costing. The second phase with ASI is about to finish as the final report is being prepared and will then be handed over to UNDP. The Ministry of Finance, despite improved capacity, still relies on these international and national consultants rather than on its own civil servants. Only these highly paid consultants can perform procedures that are very new in Afghanistan. And since most of the projects are designed to deliver results quickly, it becomes difficult to add a capacity-building component to them. Some capacity building is always included in the memoranda of understanding (MoUs) and in the contracts, but in reality the Ministry of Finance does not have the resources to effectively train a good civil servant workforce. As stated in the evaluation of the Making Budgets Work project (UNDP, 2007), the ministry may need the help of consultants for a longer period of time. It is therefore suggested that a group of national consultants be trained to take over the functions to reduce reliance on international consultants with their high hardship and security costs.

Lessons learned in Afghanistan

Various lessons have been learned through the many years of contracting out experiences in this country. Putting these lessons into practice, however, remains vague and largely ignored by the national and international community involved. The following overall lessons should be learned:

1. The government needs to assess needs more comprehensively before contracting out a function. The impacts should also be evaluated and possible side-effects explored at the beginning of the process. Decisions have been made hastily while trying to meet the

expectations of the local public as well as the international community, all of whom want quick results. These quick decisions were made by a fragile state which was expected to start functioning quickly.

2. A systematic approach and the long-term identification of expected results are important in contracting out. Piecemeal approaches have been offered at times to address problems, and small-scale capacity building projects have been designed to address immediate needs, rather than trying to build long-term institutional capacity.
3. Ownership and capacity building are correlated: while there has been emphasis on government ownership, there should have been parallel capacity development of government institutions. The government still lacks capacity in many sectors and a large capacity development programme is yet to be designed.
4. Government ownership of a project is essential, but mutual accountability based on a transparent system is also a must. This is useful when civil society is weak and the international community is a source of funds. The level of corruption is very high in Afghanistan because donors do not follow up on the funds they provide and do not ask for the punishment of corrupt entities.
5. Government leadership is essential in the decision-making process when an outside organisation is running the function. If the government leader is asking for assistance in the decision-making process, the international or outside partner can give advice. But the priority should be given to the original stakeholders of the project. In most cases consultants have made decisions without confirming with the government manager or counterpart. In weak states, consultants should ensure the government partner knows the implications of the decisions being made.
6. A balance between service delivery and long-term capacity building is necessary. Sometimes it is easier to deliver the service on an *ad hoc* basis rather than to invest time in capacity-building. Capacity development projects should at times be separate to the one that is providing a service. In some projects this has been planned, but others had no capacity building component or any type of planned exit strategy.
7. Experiences in Afghanistan show that the more functions are contracted out, the longer it takes to build the capacity of civil servants. This is probably a sacrifice the Afghan people should have been made aware of. There were no such studies when the new government took over and decided to start reforming processes with the help of international capacity. The international consultants and technical advisors that came into the country focused more on doing the job and had no time to worry about building the capacity of their local counterparts.
9. One of the key components of any contracting-out project should be to consider macro policy which guides the project and programme formulation.
9. The donor community should consider the country's policies and priorities, rather than its own political agendas. One example is "tied aid", where the donor must recruit a company from their home country to deliver the service, even though this company may not have the relevant experience, know-how or knowledge of the cultural background of Afghanistan. But "one size doesn't fit all"; in the case of consultancy companies, a successful consultant in one country doesn't guarantee success in another. While a

company may have been successful in a European country like Kosovo, the context is quite different to Afghanistan.

10. Co-ordination among donors and service providers in an office is important if the work is contracted out to different organisations serving the same department/ministry. However, not many managers have the time or capacity to prioritise this task. Bureaucracy takes up much of the managers' time, leaving little left to ensure the smooth co-ordination of the various donors. As a result there has been some unhealthy competition amongst the various international bodies involved.
11. Some donors can be overambitious and want to be seen in many different government offices and sectors showing assistance and help. This has sometimes meant they failed to manage even one project well. Donors should choose only one or two sectors and concentrate on supporting them either through private sector contractors or NGOs, rather than picking a lot of functions and sectors and then not being able to find good companies and consultants to perform and deliver good results.
12. It would be preferable to have no more than two service providers involved in one project. In the justice sector there are currently six (The United Nations Assistance Mission in Afghanistan projects and advisors, UNDP, DFID, US, Italy, the WB, etc.). There is not enough internal co-ordination, and their priorities also differ from those of the Afghan government. This sector therefore does not have much capacity.
13. With a national development strategy only becoming ready in 2008, many areas have lacked sound policy guidance, which has affected implementation and undermined the process credibility. ANDS will hopefully fill that gap, but it first has to be translated into practical policies.
14. The UN ought to play a more influential and co-ordinating role, and should bring all donors around one table to avoid duplication of effort since most of the contracting-out decisions are made directly by the donors. The government alone does not make such decisions and the international community is always involved in the process. The government does not usually have the ability to co-ordinate donors. Even if the government wants to co-ordinate them, the donors do not co-operate; in this case UNAMA would be a better choice.

Key recommendations

The following recommendations could apply to many different regions in the world and many different contexts. Nevertheless, each country will have its own priority needs; identifying those needs is a first step to any contracting out decision:

- ▶ A programmatic approach is recommended rather than a small project-based approach, to ensure that the government's main priorities and programmes are met.
- ▶ An exit strategy is necessary when a function is being contracted out. This must be prepared early enough to plan for the future capacity building of the local workforce.
- ▶ Including a capacity development plan in the contracting-out process is very important; it should focus on local civil servants.
- ▶ Ownership is paramount to ensure that the government understands and adopts the process.

- ▶ There should be a mutual accountability mechanism in place to assure that the government, donors and implementing partners respond to the challenges.
- ▶ Sound monitoring and evaluation are necessary, both by donors and the government, to ensure that the service provider has delivered good results and laid a concrete foundation for the function.
- ▶ When selecting consultants, priority should be given to regional experience or individuals who have already worked in other fragile states or on similar successful projects/contexts. South-South co-operation and contracting should be considered.
- ▶ Sole sourcing should be avoided as much as possible in favour of a more competitive approach.

Box 4.1: Questions to ask when assessing contracts

An official checklist for assessing contracts should be defined and implemented along the following lines:

- ▶ What is the need?
- ▶ What are the government's current capabilities? How much work can it do on its own?
- ▶ Will the need be fulfilled by contracting out this function?
- ▶ How do the current political and economic conditions affect the circumstances?
- ▶ What is the objective of the contract? What is the expected outcome?
- ▶ What are the candidate partner's credentials?
- ▶ How much experience does the candidate contractor have in this work?
- ▶ Who are its referees?
- ▶ What is the educational background of its staff?
- ▶ Does the candidate have any political motives? Is it influenced by another government?
- ▶ Does the candidate speak our language? What is the cultural fit?
- ▶ What are the concrete deliverables? By when?
- ▶ What are the risks of contracting out to them? What is the worst-case scenario? Can we accept this risk?
- ▶ Does the contractor have any conformity obligations (technical, cultural, practical)?
- ▶ What does the partner guarantee? Who are the guarantors/backers?
- ▶ How much local (Afghan) content should we demand?
- ▶ What does the local staff-development programme look like?
- ▶ What criteria should we use as performance indicators?
- ▶ Who finances the project? Who controls the budget?
- ▶ Who has authority to say "No" after the work starts?
- ▶ Are there penalty clauses in case the partner does not perform?
- ▶ How long does the contract last?
- ▶ What are the contract termination conditions?
- ▶ Whose law applies?

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Endnotes

72 Also, USAID's tied aid policy doesn't allow projects to be given to non-US companies; this policy is often criticised.

Annex 4.A1. Interviews

Dr Mustafa Mastoor, Deputy Minister of Finance

Ian Holland, Deputy Director of UNDP

Dr Abdula Fahim, Senior Advisor to the Minister of Public Health

Dr Ahmad Jan, Director of Policy and Planning of Ministry of Public Health

Halim Wahedi, Director of Counter-Narcotics Trust Fund

Richard Bontjer, Former Advisor to the Ministry of Counter Narcotics

Shafic Gawhari, Country Director (IS), GTZ, Kabul

Wahid Waissi, Director of ANDS Coordination, Ministry of Finance

Wais Barmak, Deputy Minister of Rural & Rehabilitation and Development (former NSP director)

Zlatco Hurtic, Advisor to Aid Coordination Unit, Budget Team, Ministry of Finance

Chapter 5.

Rethinking the Provision of Public Services in Post-Conflict States

Paul Collier

Abstract

This chapter presents one alternative to traditional public service provision: the Independent Service Authority. After an exploration of the ‘inherited’ model that continues to be used in Africa, an argument is made for an innovative approach to improve the delivery of services. By outlining the advantages of this model and describing how it could be put into practice, this report aims to provide post-conflict and fragile states with a new method for service delivery.

Introduction

The provision of basic social services is inherently difficult. Considerations of equity demand that a minimum provision be available to all citizens regardless of ability to pay. But if provision is through non-market mechanisms how are resources to be allocated and what are the incentives for effort? There is no universally ideal organisational solution to these problems and approaches differ considerably between countries.

African governments inherited a common model of public service provision from colonial times. That model was rooted in how British and French governments were themselves providing public services during the 1950s. For the following half-century African governments struggled to make this model work. In many of them, and most particularly in those with the social stresses associated with being post-conflict, that model has proved to be inappropriate. It is high time to try delivery systems which are better suited to the local context.

The inherited model

The 1950s European model was for a government ministry to take responsibility for an entire service, such as health or education. Such ministries combined the potentially distinct functions of planning, resource allocation, on-the-ground service delivery, and evaluation. Further, they held a national monopoly over the provision of the service.

African governments tended to assume that this was the appropriate way for a developed society to deliver public services, so that it was the system to which they should aspire. In fact, in many respects this organisational approach was not an encompassing model for a developed society, but was rooted in its highly unusual time, namely the aftermath of the Second World War. One legacy of the war was a belief in planning. In wartime Britain, national planning had been successful and it was now applied to the problem of service delivery. Delivering social services through centralised planning requires information: the war had taught the civil service how to gather and marshal it for military objectives and initially this worked well for service provision. Another legacy of the war was a strong sense of nationhood and public-spiritedness. This spirit resolved the problem of motivating public sector workers: they had internalised the norms of serving the society and so did not need either close monitoring or large financial incentives. The combination of information-guided central planning and a motivated workforce was highly cost-effective.

In ideal conditions, the European model of the 1950s is by far the most cost-effective system. Both post-war Britain and modern Scandinavia met these conditions. Scandinavia combines a self-motivated public sector workforce with a comprehensive system of centralised social information. But these advantages are underpinned by an unusually homogenous population with a strong sense of national identity and a belief in social equity. In Britain, neither aspect of the system proved to be sustainable. Gradually, the helpful norms of public sector workers eroded. For example, after three decades British nurses abandoned their policy of not threatening to strike. As service delivery became more complex, it became more information-intensive and much more demanding for the command-and-control approach that had worked well for military objectives. As conditions became less suited to the 1950s model it became unwieldy. Ministries grew far beyond the size originally envisaged: for example, the National Health Service became the largest employer in Europe. In response, reliance upon self-motivation through internalised norms has gradually been replaced through ad-hoc reforms by increasingly detailed targets combined with high levels of pay. The system of central planning has been partially replaced by resource allocation that is guided by simulated 'internal' markets.

Why the inherited model is often unsuited to Africa

The post-conflict states of Africa are far removed from the conditions under which the 1950s European model works well. Public sector employees have long ceased to internalise the norms of public-spiritedness. Further, social information is neither detailed nor up-to-date. Unfortunately, in the absence of these conditions the model works extremely badly. Most workers are not self-motivated to serve the public interest but the system lacks the means either to rebuild the norms of public service, or to motivate workers with financial incentives.

Prevailing norms of public service

In the African post-conflict states the prevailing norms of public sector workers are radically different from those in Scandinavia. People are more heterogeneous and conflicted and so have a weaker sense of the national public interest. Shirking, as instanced by high rates of absenteeism, is common, as is minor corruption. Often the collapse in the norm of public service was due to the erosion in salaries. If public sector workers are not paid enough to live then they have no choice but to abuse their positions for personal gain. However, once the new norms of self-interest become established they become very difficult to change: the new pattern of behaviour is an equilibrium in which the conduct of each worker is rational given the expected conduct of other workers. Prevailing dysfunctional norms are thereby collectively self-reinforcing. For example,

many public service jobs depend upon teams so that the return to individual effort depends upon that of others. Individually each worker is locked into prevailing norms unless there is a credible reason to believe that the norms of other workers have changed. Large and coordinated changes in norms of work among staff are very difficult for management to achieve. Simply reversing the salary decline is unlikely to restore the norms of public service. The more likely outcome is that what was a badly performing but low-cost delivery system is replaced by a badly performing but more expensive one.

Dysfunctional norms are passed on between generations of public sector workers. By its nature public service tends to attract young people with a degree of idealism. For example, survey evidence from Ethiopia shows that newly trained nurses enter the profession with a strong sense of public spiritedness. However, once placed into clinics where the prevailing norm is self-interest over the next three years their initial public-spiritedness is replaced by the dysfunctional norms of their older co-workers. Hence, the current model of service delivery is repeatedly destroying the asset of self-motivation in the young workforce.

Limited alternatives to self-motivation

Even if workers have not internalised the norms of the organisation, it may nevertheless be possible to motivate them to good performance by means of financial incentives. However, the 1950s European model is ill-suited to this approach. Being within the civil service, the range of financial rewards and penalties that can be deployed is extremely limited. Virtually everywhere civil servants have very strong job security so that the threat of dismissal is not credible. Demotion is very rare and constrained by cumbersome systems of appeal. Hence, the only scope for incentives is through rewards. Even here the civil service is heavily constrained by the need for perceived equity among staff and pay scales that are tied to seniority, age, and rank. In post-conflict conditions these generic problems of discretionary rewards and penalties for civil servants are further complicated by the history of conflict. In the contest for control of the state, public sector employment comes to be regarded not merely as an input into service delivery, but as a valued prize in itself. This leaves a legacy of pervasive suspicions that discretionary rewards reflect patronage rather than performance. The post-conflict imperative of achieving perceived equity in public employment between rival political factions may make performance-related incentives infeasible.

Even where incentives are politically feasible, they can only be effective to the extent that they can be linked to observable aspects of performance. Yet in post-conflict conditions the information needed to assess performance on public service delivery is simply not being generated. This is partly due to the larger problems endemic to post-conflict situations such as broken local administrations. But it is also itself an instance of the incentive problem: if prevailing performance is generally poor, civil servants have an incentive not to collect timely evidence by which it could be measured. Yet the same information that would be needed to measure performance would also be needed for overall resource allocation through central planning to be effective. Starved of information, central planning is blind and an easy prey to crude political pressures.

The consequence for service delivery

The result is that the same system which in Scandinavia produces the best and most cost-effective social services on earth, in African post-conflict conditions produces the worst. Workers are motivated neither by internalised norms of public service, nor by financial incentives. Central planning without information inevitably grossly misallocates resources. As a result services are inevitably very bad.

Faced with a delivery system that is manifestly dysfunctional, donors starve it of finance. This produces the very bad, but very inexpensive systems that prevail in the public sector in African post-conflict situations. Without question, adequate social provision will require substantially more international funding than has been provided to date. However, the root of the problem is not the lack of funding, but the lack of a delivery system that could productively use enhanced funding.

Donor bypass of the state

Faced with the overwhelming case for responding to social needs, donors have usually resorted to bypassing the state, channelling finance through NGOs and the UN agencies. This has advantages and disadvantages.

Advantages of non-government provision

Unlike government provision, non-government provision is not a uniform model and there is considerable variation. Two different approaches can both achieve good organisational performance. One approach, typified by mission-run hospitals and schools, achieves good performance by maintaining a high level of organisational commitment on the part of its workers. Given the high intrinsic satisfaction from activities such as healing the sick and teaching children, and the highly visible needs in post-conflict societies, it is possible to create islands of self-motivation even where in the public sector norms of service have collapsed. The other approach, typified by some for-profit organisations, achieves good performance by solving the difficult problem of linking financial incentives to observable performance. In many aspects of service delivery individual performance is not readily observable and so effective monitoring is difficult. The two approaches are not easily combined and so tend to be alternatives. Norms of self-motivation, or working for the common good, thrive on trust and equity among staff. In contrast, the essence of addressing motivation by means of financial incentives is that trust is replaced by monitoring, and equity is replaced by income differences based on differential performance. Field evidence suggests that norms of service and worker cohesion are undermined where strong financial incentives are introduced into service delivery organisations.

According to the type of service, the local context, and the personal characteristics of managers, either approach can be more effective. However, while some non-government organisations solve the service delivery problem by one of the above approaches, others fail. Some rely upon trust but have unmotivated staff; others rely on financial incentives but monitor aspects of behaviour which are not sufficiently related to performance. Hence, donors cannot tell simply by observing the type of organisation whether it is efficient. The implication is that by bypassing the state donors will sometimes be financing organisations that are considerably more efficient, but that there will be considerable variation.

Disadvantages of bypassing the state

The most obvious drawback of donors bypassing the state is that, while unsustainable, it does not lead to an exit strategy. The bypass of the state does not build state capacity and may further undermine it. Yet it is acknowledged that the complete bypass cannot itself be the long-term solution to service delivery. If the state is not involved in providing basic services to citizens it will be very difficult for it to establish a claim to legitimacy in the eyes of its citizens.

The total bypass has a further serious drawback which donors are less willing to recognise: the lack

of coordination and continuity. The services funded by donors are usually localised and often specific to a particular aspect of service delivery. Given this approach there is no systematic scope for a nation-wide and sector-wide approach to resource allocation. Donor financing of any particular service provider is likely to be temporary. Field staff are typically rotated every three years and the priorities of individual donors change as ministers change. Given the natural human inclination to make a difference, this is a recipe for continuous turmoil.

However, the most serious drawback is the lack of accountability to the ordinary people who are the users of services. Generically, there are two mechanisms for such accountability: political and commercial. By definition, as a result of the donor bypass of the state, political accountability to users is not possible. The alternative of commercial accountability is dependent upon donor financing of service providing agencies being conditional upon their observed performance. However, other than for the most rudimentary aspects of performance, donors lack the monitoring capacity with which to hold agencies to account.

Independent Service Authorities

An alternative to the 1950s model of the monopoly government ministry and the total bypass of the state is to unbundle the functions that in the 1950s model are all performed by a single ministry. Some of these functions are intrinsic to the responsibilities that a state should undertake. For other functions the state can achieve its objectives better by purchasing the function from other providers. Even in the most centralised and efficient of European states this approach is now standard: for example, in France both blood-testing and ambulance services are financed publicly but provided privately.

An Independent Service Authority (ISA) is a design of public service delivery which may be particularly appropriate for post-conflict conditions. It need not be merely a temporary measure: it may evolve into a permanent organisation much as Independent Revenue Authorities have become permanent in much of Africa. Although all ISAs have some core features in common, they can take many different forms. For example, at one extreme a single ISA could have a national mandate for many different types of services, while at the other, each district might have several ISAs, one for each type of service. Such choices should vary country-by-country, according to local capacity. Here I focus on the core principles of an ISA rather than on such choices.

An ISA is a public agency: it is an implementing agency of government but is independent of the civil service, analogous to central banks and revenue authorities. While it is an agency of government, its board of directors can include a minority of non-government appointees. In post-conflict conditions these should include the main donor agencies and key components of civil society. The primary purpose of such representation is to provide equal and unrestricted access to information on the decisions and performance of the ISA for government, donors and civil society. As a result, an ISA is *structurally transparent*.

The government ministries responsible for service provision have representation on the board of the ISA and set policy guidelines by which the ISA must operate. For example, they may set minimum standards of provision, and require the ISA to allocate resources so as to ensure geographic equity. Ministries will also continue to provide state services directly. Since in post-conflict conditions service provision is invariably inadequate, the ISA should constitute an expansion in provision — not a change in the management of existing services. Over time, if the ISA-provided services proved to be a better value than those directly provided by the ministries then it would be a matter for the government to decide whether to reorganise the directly provided services.

An ISA receives funds from donors and government for the purchase of services from primary providers. Since the ISA is an implementing agency of government, the money allocated to the ISA, including that from donors, appears in the government budget as an expenditure. Hence, donor funding of services through the ISA is somewhat analogous to ring-fenced budget support.

The ISA enters into contracts with primary service providing agencies but does not provide services directly. This avoids a conflict of interest and focuses the ISA exclusively on negotiating and monitoring the performance of the primary providers. These providers can be NGOs, local communities, local governments, or private for-profit organisations. Ideally, the ISA will experiment with multiple channels of provision for the same service to maximise the scope for variation in performance.

The ISA devotes most of its resources to monitoring and comparing performance. The evidence on comparative performance is provided to the board of the ISA on a regular basis. The board uses this information to reallocate resources from less-efficient providers to more-efficient providers.

The ISA can also experiment with distributing vouchers to households rather than money to service providers. This reduces the need for monitoring of performance but introduces other problems. To take a trivial example, in health care the prescription of glucose will produce a short-term improvement in the patient without addressing the causes of the illness. Users can easily misinterpret this effect as indicating that they need repeated treatment rather than different treatment. Hence, in the absence of good ethical standards among practitioners in this instance vouchers could be dysfunctional. More generally, the balance of whether service providers are more effectively monitored by professionals or by users will vary according to type of service and local context and is best determined by experiment.

Why an ISA should improve service delivery

An ISA is a design that is based on modern economic principles and the evidence from fieldwork (see Bold, Collier and Zeitlin (2009) for a discussion of how an ISA fits with theory and evidence). This does not guarantee that it is appropriate, but there are clear reasons to expect it to work considerably better than either the 1950s model or the donor bypass.

Variation, competition and selection

An ISA builds in variation in approaches to service delivery: different providers will be attempting to solve the problem worker motivation in different ways. Since the core function of the ISA is to evaluate these different approaches it enables gradual improvement in overall efficiency. The increase in efficiency comes about through two different mechanisms:

- ▶ The most obvious is through the awareness of competition acting as a disciplining device on providers. Through this mechanism, the performance of the typical service provider might be expected to improve. However, this is probably not the most important.
- ▶ The more important mechanism is that resources can gradually be reallocated from inefficient providers to efficient providers. Since the variation in efficiency between different providers is likely to be considerable, simply by reallocating money between them the ISA can raise the efficiency of the average dollar spent on service provision. Note that this does not depend upon any improvement in efficiency in each organisation.

Branding

Unlike the donor bypass of the state, with an ISA donor money is routed through a state organisation. A condition for a non-government service provider receiving money from the ISA should be that the services delivered are co-branded by government. While the visibility of donor operations is reduced, that of government is increased. Ordinary citizens are able to see that the government is doing something that is beneficial.

Scaling up because of donor confidence

By design, the ISA generates information on the performance of the organisations that it funds, and hence on its own performance. Since donors are represented on the management board of the ISA, they have full access to this information. Transparency of information for donors is crucial in post-conflict conditions to enable donors to scale up financing beyond the immediate post-conflict period. During the first few years donors, give governments the benefit of the doubt, but this rapidly erodes. In its place governments need rapidly to build donor confidence. This cannot be done either by declarations or by comprehensive improvements in governance. Declarations of good practice can be made equally well by those governments that have no intention of adhering to them and so, despite a deceptively courteous reception, cut no ice with donors. Comprehensive improvements in governance simply take too long to achieve to stave off reductions in donor funding. An ISA provides a quick institutional solution to the problem of building credibility with donors: transparency and design substitute for the lack of trust. As quantitative evidence of performance builds up, the local offices of donor agencies are in a much stronger position to press their headquarters for a larger share of the budget.

Centralised resource allocation

The ISA retains the key benefit of central planning: resource allocation can be coordinated rather than being simply the aggregation of individual donor decisions. Further, since the ISA is designed to generate information, the precondition for central planning to be effective is met. However, while overall resource allocation is centrally determined, the incentive problem is not micro-managed. The ISA does not attempt to motivate or monitor the workers who deliver services. That task is decentralised to individual service providers to solve as best they can. The ISA faces the less daunting task of monitoring the overall performance of each delivery organisation.

Motivating the ISA

The Board of the ISA faces the task of motivating the staff of the ISA. Why might this be any easier than the task of motivating civil servants in the service delivery ministries? In part it is easier because, being a new organisation outside the civil service, the ISA can start with higher pay structures that are credibly linked to rewards and penalties. Recruits have some reason to expect that the behaviour of their colleagues will not be the same as civil service behaviour. Perhaps more importantly, the remit of the ISA is more narrowly defined than the remit of a ministry. It is not trying to do everything from policy design to on-the-ground delivery of services. It is allocating money between providers and evaluating their performance. Finally, it is subject to day-to-day scrutiny by donors and civil society who as members of the management board receive a continuous flow of information about the performance of managers.

How can an ISA be established?

An ISA does not need to start with a 'big bang'. It can start small, with one or two donors cooperating with a particular government ministry to finance an expansion in the delivery of a particular service. It should be viewed as an experiment in the architecture of public service delivery. As an experiment, it should be evaluated, but, by design, such evaluation is automatic. If it succeeds it can be scaled up virtually without limit. Ultimately, the government might decide that the ISA, or a series of ISAs, is the most cost-effective and politically effective way of delivering services for the society. If it fails then it can readily be closed: donors are used to running projects which terminate. Nor is failure likely to have high costs. Unfortunately, in there is currently no successful model of large scale service delivery in post-conflict conditions, so that the opportunity cost of failure is likely to be modest.

Conclusion

Post-conflict societies have been attempting to deliver basic services using an inherited colonial model that has little prospect of success in the context of their own societies. Given the acute needs of their citizens, it is high time for governments to experiment with other designs. The key desiderata are that a new system should be capable of being rapidly scaled up, while leading to something that is politically sustainable. An ISA is not as good as the 1950s model when that model is deployed in ideal conditions. However, based on theory and evidence, it is likely to be more successful than the centralised ministerial approach in the conditions that actually prevail in post-conflict societies. Given the enormous attention that post-conflict societies and other fragile states are now rightly receiving, there is a strong case for experimenting with the ISA design on a pilot basis.

Reference:

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Chapter 6.

Contracting out Core State Functions and Services in Fragile and Post-Conflict Situations: A Transitional Arrangement or an Option for Long-Term Delivery?

Greg Ellis

Introduction

Given current international debates about state building and adherence to “do no harm” principles, an exploration of the potential and pitfalls of contracting out state functions is timely. Often contracting out is presented as an interim or transitional strategy – urgent functions are performed by external agencies while state capacity is developed to take on these functions over time.

As these conference papers highlight, however, the risk of such strategies is that they can erode already limited capacity and result in parallel systems of government that can undermine the legitimacy of the state. As citizens see vital services being performed by non-state actors, this can weaken the compact between the citizen and the state and create an environment conducive to continued fragility and possibly conflict. Similarly, there is a concern that there can be insufficient pressure or incentive to build public sector capacity to provide an essential service when other agencies are already providing them.

However, another view suggests that some permanent contracting out of function and service delivery can be viable, rather than as a transitional arrangement. There may be a good case for the state to “share” sovereignty in a way that does not undermine state legitimacy.

The minimal state and core state functions

There is an emerging debate in the context of state building about what constitutes the minimal state: i.e. what functions must a state be able to provide in order to meet the basic needs of its citizens? In fragile situations where both technical and financial resources are constrained, clarity

and agreement about these basic functions is important. Too often, governments in these situations (often with the encouragement of the international community) have aspired to perform functions that are beyond their capacity and that may not be essential. The result can be that many functions are delivered badly, rather than the basics being performed well.

There is clearly then a need for rigorous, evidence-based priority setting by government. Coherent, co-ordinated and sensible advice and assistance from the international donor community could be very beneficial as governments work to determine, in consultation with their citizens, what functions/services are essential.

How should core state functions/services be delivered?

Once there is some agreement on what core and basic functions/services are needed to ensure state effectiveness, the question then arises of how best to deliver these.

There is a tendency in development circles to believe that direct government delivery (whether central or sub-national) fits the democratic ideal and is thus the desirable goal. However, government is not always best placed to fulfil that role. This is not just true of fragile situations; difficulties balancing state responsibility and effective delivery are common in industrialised states as well (though the options in fragile situations may be more limited).

Situations where outsourcing might be appropriate can include:

- ▶ Where a service/function is dynamic and/or technical in nature. It may not be feasible for government to sustain the technical competency in-house to maintain the quality of service provision. An example could be the provision of agricultural extension – rapidly evolving technical solutions and a wide range of agricultural problems can make it difficult for government extension officers to deliver comprehensive and technically up-to-date services to farmers.
- ▶ Where client populations are geographically remote, making it difficult for government to maintain the field presence necessary to deliver the services. Examples may include the delivery of health, education and water and sanitation services to remote rural populations. It may be that the administrative structures and distributional networks of non-state actors are better suited to delivery in these circumstances.
- ▶ Where the community prefers certain services to be provided by non-government organisations. This could include health or education services by churches, or minor criminal prosecution and dispute mediation services through traditional justice systems.
- ▶ Where a function is required infrequently, making it cost-ineffective for the government to maintain a permanent in-house capacity. Examples might include conducting a national census every 5 to 10 years or a requirement for technically complex forensic capacity in some criminal investigations.
- ▶ Where a function needs to remain at arms length from government due to severe weaknesses in accountability or a lack of impartial decision making. Examples of this include the Indonesian Government's decision in the 1990s to contract out customs management to a Swiss company; or the appointment of expatriates to fill critical positions such as police commissioners, accountants-general etc.

In such situations, a decision to outsource a function or service, possibly for the long term, may make good sense. We then need to ask, how do you ensure that outsourcing does not undermine the legitimacy of the state, and that the state remains critical to the provision of the function/service so

that its essential and value-adding role is recognised by citizens? The key is to select an approach that reinforces state ownership by developing robust management capacities in government and by fostering recognition, in both the public sector and the community, of the government's value as regulator, networker, enabler and quality controller.

Challenges to contracting out

Such an approach will be challenging as many (particularly the political élites) may need convincing that having government at one remove from the delivery of a function/service does not necessarily reduce its power or influence. Arguably, well-managed outsourcing could result in stronger and more stable governments by increasing citizen satisfaction with the service/function delivery.

We must be aware of the political economy of contracting out. It could reduce the potential for collecting rents to fuel patrimonial systems and other opportunities for political patronage. The ability to ration access to scarce public services and allocate them to client groups would also become less viable. However, while we may criticise the efficiency and equity aspects of patrimonial systems, we need to recognise their durability. They are attractive to politicians and the clients who receive the services, and thus resistance to contracting out – despite evidence of effectiveness – could be substantial.

Thus by distancing the politician or civil servants from the delivery of a valued service, outsourcing decisions may reduce opportunities for rent seeking or élite favouritism. On the other hand, if outsourcing arrangements are not structured, contracted, implemented or monitored properly, opportunities for corruption may increase.

In considering contracting out, we must also recognise the associated transaction costs and regulatory complexity. But these should be balanced against the costs of direct provision. The costs of contracting out can be offset, at least in part, by third party monitoring, *e.g.* use of parent committees to monitor school performance or the contracting out of some regulatory functions.

Implications for capacity development

What does contracting out mean for capacity requirements? Outsourcing requires a shift in capacity development priorities away from those needed to deliver services towards those that allow government to engage effectively with service delivery intermediaries. They must be able to engage in a manner that maximises citizen benefits and minimises the risks of delivery inequity and corruption.

Capacities associated with contracting, regulation and monitoring become more important in the public sector, while the need to establish and maintain the technical expertise associated with particular forms of service delivery diminish. Similarly the size and profile of the public sector may change with a reduced need for in-house technical skills. However, this does not necessarily imply a smaller workforce involved in delivering the function or service, but simply a transfer of tasks to non-state actors. This may result in greater employment overall as the capacity to deliver the service deepens through effective intermediary arrangements.

These approaches should not be presented as second best solutions, but rather as pragmatic, effective appropriate solutions for service delivery, which maximise the use of available resources.

The case for output-based approaches to service delivery

The World Bank and others have been testing output-based approaches (OBA) to contracting. In some sectors, these appear to be a useful alternative model for delivering public services. OBA links payments to the delivery of specific services or outputs. Under an OBA scheme, service delivery is contracted to a third party, usually a private firm or NGO, which receives a subsidy to complement or replace the user charges that would normally be levied. The service provider is usually responsible for financing the project until output delivery. The subsidy is performance-based, meaning that most of it is paid only after the services or outputs have been delivered and verified by an independent agent. The subsidy is explicitly targeted to the poor.

Drawing upon experience with performance contracting in the private sector, there has been a move by some governments and, in developing country contexts, donors, to look at output-based contracting to increase the efficiency of service delivery where market-driven provision is not viable.

The Global Partnership on Output-Based Aid (GPOBA) was established in January 2003 by DFID and the World Bank as a multi-donor trust fund administered by the bank. GPOBA's purpose is to fund, demonstrate, and document output-based aid approaches to facilitate increased access to reliable infrastructure and social services by the poor in developing countries. The programme's focus sectors are water, sanitation, electricity, telecommunications, transportation, health and education.

Most OBA activity funded by the partnership has occurred in lower income countries, especially in the energy, water and sanitation, telecommunication and health sectors. However, an analysis of the GPOBA Trust Fund programme shows some use in fragile situations.⁷³

The potential of OBA in fragile situations

The GPOBA review indicates that, in general, OBA should not be considered a silver bullet. Using OBA as the contracting mechanism for a total service can be risky where capacity is weak. Greatest success is apparent where OBA has been used as a poverty-targeted supplement to an existing service.

The potential for OBA to provide incentives for improving service delivery to targeted communities makes it an attractive financing option. A limited examination of the approach highlights a number of advantages of particular relevance to fragile situations:

- ▶ It can leverage greater levels of private sector financing and expertise than more traditional approaches.
- ▶ It allows for highly precise beneficiary targeting.
- ▶ With payments linked to independently-verified performance, it is potentially less corruptible than other more traditional forms of delivery.
- ▶ It may be useful where governments are exploring the decentralisation of service delivery as it allows for relatively standardised management/regulation of multiple service providers across different geographic areas.
- ▶ It can provide incentives to shift the role of the public sector from service deliverer to enabler and regulator.

On the other hand, OBA's success depends on some fundamental requirements that may be difficult to ensure in fragile contexts:

- ▶ It is most successful where there is reasonable private or non-government sector capacity to deliver basic services, such as water and sanitation and health, in a cost-effective and efficient manner, with user charges covering at least operational and maintenance costs.
- ▶ The operator should be able to pay upfront expenses, given the output nature of the subsidy disbursements. This finance can either be from the operator's own cash flow or through commercial bank lending. However, such finance markets may not be well developed in some states.
- ▶ Limited diversity in the private or non-government sector in some states can make it difficult to generate positive competition.
- ▶ OBA design and implementation need to be based on a sound appreciation of the parameters of the service provision and a good understanding of beneficiary and private/non-government sector behaviour. This is essential so that tendering, contracting and management arrangements anticipate and counter any behavioural bias and maximise both cost effectiveness and quality.
- ▶ The output-based focus of these contracts requires fiduciary and regulatory competence at different points in the management process, just as for standard public financial management. For example, good practice requires the verification of outputs by an independent agent, and subsidy payment after output delivery must be quick, dependable and accurate. Ensuring that capacity exists (or is developed) in the right areas is critical to successful implementation.
- ▶ Potential service providers need to be confident that the agencies (generally public) managing and overseeing the OBA project can perform their functions efficiently and impartially and make timely performance payments.

One interesting recent development is OBA's potential during the reform of a social service obligation (often a subsidised service), and where there is a move from public to private service provision. For example, the Australian development agency AusAID is exploring with its partners the potential of OBA to address the perennial problem of essential but uneconomic inter-island shipping in the Pacific. It is hoped that OBA could be a more sensible and transparent subsidisation approach for shipping provision by the private sector.

Initial conclusions from OBA implementation

While still in its infancy, early evidence is clear that OBA can deliver effective and targeted service delivery. However, we do not yet have enough experience of OBA in fragile situations to know how useful it could be as a financing mechanism in these environments.

Fragile situations are high-risk environments for development assistance; the risk for OBA is likely to be similar for other forms of financing. However, its potential to mobilise private sector resources, minimise fraud and corruption, and target beneficiaries means that it merits greater consideration.

It is clear though that much of OBA's success rests on the quality of design and contracting and the ability to mobilise a relatively capable private/non-government sector. Thus we need to understand the implementation conditions that are conducive to OBA and ensure that these conditions are put

in place. This also means that OBA should not be considered where fast implementation is a priority. Where OBA has been successful, a comprehensive understanding of the delivery environment informed the specific approach taken. Additionally, if weaknesses in critical capacity are identified, other preparatory activities may be needed. Both these requirements can significantly extend timeframes. With these caveats, an outputs-based approach to service delivery remains an option worth considering for states exploring the outsourcing of service delivery.

Endnotes

77 Also, USAID's tied aid policy doesn't allow projects to be given to non-US companies; this policy is often criticised.

Conference Materials

Conference Background

Executive Summary

From 8-9 June in Tunis, the Partnership for Democratic Governance (PDG) and the African Development Bank (AfDB) co-hosted a conference on “Contracting Out Core Government Services and Functions in Fragile and Post-Conflict Situations”.

The conference gathered around 80 participants from a wide range of development aid stakeholders: OECD members (Canada, the European Commission, Japan, Poland, Turkey, the United Kingdom and the United States), non-DAC donors (Brazil and Chile), international organisations (ADB, UNDP, UNECA and UNICEF), NGOs and the private sector. Fifteen partner countries from Africa and Asia were represented at senior level

The objective of the conference was to examine how the “contracting out” of government functions and services in fragile states can be compatible with the long-term goals of capacity development and state building.

Main themes

- ▶ The issue of **conceptual clarity** was addressed, as the term “contracting out” needs a precise and agreed definition in order to distinguish with other related concepts such as public-private partnership, outsourcing, output-based aid, and even technical assistance. For the purpose of the meeting, the organisers defined the term as *the transfer of competences or authority for a given period of time based on a contractual arrangement between the delegating authority (the government) and a third party (a contractor)*.
- ▶ Likewise, the concept of “core government functions” was highlighted as problematic by evoking precisely the public sectors that should not be contracted out. Participants discussed how different government sectors and functions had specificities with regard to being contracted out, and how some of these functions could not be contracted out without threatening state sovereignty—in particular policy and decision making.
- ▶ Participants emphasised **the possible risks of contracting out undermining the long-term objective of state building and capacity development**. However, it was argued that contracting out government services is not necessarily the sign of a weak state, but can on the contrary be a legitimate public policy choice made by a resilient state. Similarly, the impact of contracting out on state building may not be negative and could actually help strengthen state legitimacy under a number of conditions, notably if the decision to contract be made by the government under the spirit of the Paris Declaration; the government has the capacity to negotiate, manage and monitor the contract; and if the contracted services are branded as government services.

- ▶ A general agreement emerged on **the key importance of the leadership and regulation roles of the government in any contracting-out process**. In fragile situations, however, the state capacity to own, monitor and decide on the contracting process is usually very weak. This lack of capacity – combined with the urgent need for quick service delivery – was agreed to be the core dilemma of contracting out government services in fragile states.
- ▶ Specifically, the **dilemma between service delivery and capacity development** raises a series of operational issues. First, in terms of timing and sequencing, participants discussed when a capacity development activity should start and how to plan an exit strategy for the contractors to ultimately hand over the service to national actors. Second, who should be in charge of capacity development, and whether it should be the same contractor who delivers the service or a separate contractor. Third, participants discussed what specific capacities need to be built, which range from contract preparation and management of the tendering process to monitoring and evaluation capacities and general oversight. While discussions did not lead to a consensus, it was agreed that policy guidance on such topics were lacking.

Key conclusions and recommendations

- ▶ Beyond identifying gaps and dilemmas, the joint AfDB-PDG conference also allowed a consensus to emerge on a series of key conclusions and recommendations. The first agreed lesson is that there is no one-size-fits-all approach. No blueprints can be imposed from the outside, and any contracting-out process should be specifically tailored to the context.
- ▶ Emphasis was rightly placed on the need for a **preliminary national capacity assessment** prior to the decision to contract out, and that preference should be given to local and national service providers over international contractors. The specific advantages of the regional and South-South dimensions of relations between government and contractors were also highlighted.
- ▶ It was also agreed that any contracting-out mechanism should first and foremost draw on a **clear contractual arrangement** stipulating the duration, services to be delivered and including clear accountability mechanisms.
- ▶ Participants noted that not all government functions can be contracted out. While intersectoral learning is useful, a **sector-specific approach** should be kept in mind, as the health, public sector governance and security and justice sectors all have specific features that need to be respected.
- ▶ Strengthening state capacities and institutions should remain the end goal, with a strong commitment to national ownership and capacity development. Regarding contracting-out arrangements, it was agreed that the government should be able to hold contractors accountable for whatever service or function they perform. Therefore, regulatory capacities should be constantly supported by donors.

Next steps

- ▶ Participants suggested that as the PDG brings these conclusions forward, it should use the full range of contracting literature and the lessons learned in OECD countries. Because the debate on contracting out of public services has a long history, such background can prove useful if accurately adapted to fragile contexts.
- ▶ The PDG Advisory Unit informed participants of its plans to launch a policy dialogue that would ultimately lead to the production of a Handbook on contracting out government services and functions in fragile and post-conflict situations.

Summary Record of Joint AfDB-PDG Conference (8-9 June 2009)

Opening Remarks

Opening the conference, **Mr. Jerzy Pomianowski**¹ stressed the challenge posed by fragile and conflict-affected situations and cited the PDG's mandate to help strengthen institutions and support service delivery by acting as a hub for knowledge and a clearing house for good practice.

He highlighted the need for innovative methodologies to address capacity gaps in fragile states. To date, these gaps have been bridged through a variety of arrangements ranging from standard technical assistance to the 'contracting out' of government functions and services. For the purpose of the meeting, he defined the latter as *the transfer of competences or authority for a given period of time based on a contractual arrangement between the delegating authority (the government) and a third party (a contractor)*.

In light of the agreed principles on aid effectiveness, Mr. Pomianowski pointed out how contracting out risks undermining the final objective of state building and framed the meeting with the following question: When, how and under what conditions can government functions be contracted out to non-state actors?

Mr. Pomianowski also clarified that the PDG does not intend to promote contracting out as the best response to the challenges of fragile situations, but that it seeks to investigate such practices, which has never been done in a systematic and comprehensive way. He concluded by expressing the hope that the conference would be a first step toward the development of a set of policy guidelines for contracting out core government services and functions in fragile and post-conflict situations.

Mr. Gabriel Negatu² highlighted the importance that the African Development Bank (AfDB) accords to countries in fragile situations, as shown by the establishment of a Fragile States Unit in July 2008. The AfDB's strategy for engagement in fragile states is based on three pillars: (i) providing additional resources to regular African Development Fund (ADF) allocations, (ii) arrear clearances for selected cases; and (iii) technical assistance and capacity building.

In setting the scene for the debates, Mr. Negatu described the high expectations placed on governments and donors alike in fragile and post-conflict situations to quickly deliver results within a wide range of priorities and a limited set of capacities, while always respecting basic principles such as government ownership and the sustainability of outputs. The failure to respect promises, he said, should bring donors and partners to consider alternative ways to achieve these results, including contracting out.

He reminded participants that the intended focus of the meeting was on contracting-out experiences in fragile and post-conflict situations, and specifically on two types of arrangements: (i) when non-state actors are placed in executive positions to carry out functions that are usually performed by the state; and (ii) when non-state providers entirely supplant the state in delivering one service. Mr. Negatu emphasised that bringing donors and partners from fragile states around the table to discuss this critical issue was the main objective of this conference. In conclusion, Mr. Negatu expressed his hope that the recommendations from these debates would shed new light on the opportunities and challenges of contracting out in fragile situations.

Opening Plenary: “Can external contractors be in charge of sovereign government functions? Dilemmas and issues related to contracting out core government functions and services in fragile and post-conflict situations”

Mr. Leonce Ndikumana³ introduced the session and asserted that, when addressing the concept of contracting out, the end goal should always be a strong state that leads and works with the private sector. Furthermore, he emphasised that existing local capacity should always be used before considering the use of external technical assistance. Against this background, he posed the following questions to speakers and participants:

- ▶ Does contracting out undermine state legitimacy and credibility? Does it delay state building?
- ▶ What transition mechanisms are in place to go from emergency situations (where the state is weak and service provision needs to be ensured by private operators) to a situation where a mature state is able to strike a balance between private and public provision?
- ▶ In contracting out, what is the balance between international service providers and local ones, whose capacity is likely to be weak?

Presentation by Dr. Emmanuel Akwetey⁴: “Contracting Core Sovereign Government Functions to Non-state Actors: What does this mean for legitimacy, state building and capacity development in fragile post-conflict states?”

Starting with the definition of state fragility on the basis of the Liberian example, **Dr. Emmanuel Akwetey** asserted that fragility involves a heavy dependence on external assistance in the spheres of political, economic and social governance. In non-fragile situations, the government ought to act independently in these spheres, thereby demonstrating its sovereign will and power.

Considering the issues of sovereignty and legitimacy that may be posed by external actors, Dr. Akwetey noted how both for-profit and not-for-profit contractors are being increasingly engaged to provide technical services within government institutions that lack capacity. This category of contractors is often confined to providing analysis, advice and facilitation, while non-state actors also participate in social service delivery (*e.g.* health, education, water).

Responding to the possible effects of contracting out on state sovereignty, legitimacy and effectiveness, Dr. Akwetey noted that they are more prevalent in decision-making procedures and the extent to which such arrangements prescribe or assure the selection of a particular external contractor over others who are equally, if not more, qualified to do the job. Similarly, with respect to legitimacy, contracting out core government functions or services to external actors is likely to raise issues if it is perceived that the nationally determined administrative procedures are either sidelined or not respected by a service provider. In another sense, the external contracting of a core government function – even if technical and desired – will raise questions about the legitimacy of the action if

country systems are bypassed either in the procurement of the external contractors' services or in the reporting and accountability of the external contractor to donors, rather than to the government. However, the challenge is that many African country systems were not designed to facilitate the involvement of non-state actors in civil society and the private sector in the delivery of public services.

Dr. Akwetey then considered three issues regarding the impact of contracting out on the government's ability to exercise its mandate by performing core functions and delivering services itself, thereby holding itself accountable to the people. Firstly, while capacity building will be viewed positively, the question remains whether those skills effectively equip the fragile state to progress toward resilience in the medium-to-long term. The second issue is that external contractors may be viewed as undermining the effectiveness and legitimacy of the government when their projects are not aligned to the priorities of central and local governments, or when they are publicised as projects that were undertaken by NGOs and for-profit contractors with support from donors. The third issue is that functions and services performed by external contractors are often too narrowly defined to have a meaningful impact on the goal of national cohesion.

In conclusion, Dr. Akwetey reflected on what else can be done to progress from fragility to resilience and suggested to use the level of states' dependence on external contractors as an important indicator of progress. External contractors should redesign their services to focus more on knowledge-transfer projects coupled with timely exit strategies to return the responsibility for these tasks to national personnel. More support should be given to the use of country systems as a further indicator of progress in strengthening the effectiveness of fragile states. Another important indicator of progress is to build the capacity of governments to manage, facilitate and work effectively with non-state actors.

Finally, he suggested that a broader view of the core purposes of development in post-conflict societies is needed as the focus thus far has been too narrow. Dr. Akwetey called for more thinking on how state- and nation-building could be consciously steered and how capacity could be built within the state and the broader society to support this process.

Presentation by Mr. Peter Batchelor⁵: “Contracting Out in Fragile States: What have we learned?”

Mr. Peter Batchelor began by noting the lack of clarity on the concept of ‘contracting out’. According to Mr. Batchelor, other terms are also in use, such as: *contracting in*, *outsourcing*, *public-private partnerships*, *output-based approaches to service delivery* (used by the World Bank), *third party service delivery* and *alternative service delivery mechanisms*.

He stressed that contracting out implies a number of roles – not only service provision but also regulation, monitoring and capacity development – which raises the question of the distribution of tasks between the government and other actors, within a wide range of possible arrangements.

Mr. Batchelor then suggested a series of key issues to be addressed in the discussions on contracting out, including the questions of national ownership and sovereignty; the impacts on the long-term project of state building in terms of accountability, transparency, legitimacy and credibility of the state; the dilemma between obtaining quick results and supporting long-term capacity development; the concerns of equity and targeting in the distribution of services; the quality of service provision; risk management and incentives for the private sector; the capacity of the state to tender, vet, contract and manage non-state service providers; the issue of timing and sequencing of the contracting-out arrangement with respect to capacity development assistance; and the role of international assistance.

Mr. Batchelor then presented UNDP's experience, mainly coming from its programming on Public-Private Partnerships (PPP) for pro-poor basic service delivery at the local level. Through this approach, UNDP seeks to contribute to participatory processes, which involve all citizens in public decision-making at the local level with regard to the choice of service, its planning and financing and its adequate delivery. To ensure an equitable distribution of such services by non-state or private contractors, UNDP provides parallel support to governments to install strong policy and regulatory systems and frameworks for the provision of these services, which requires the inclusion of poverty issues (as well as relevant targets and benchmarks) as an integral part of all PPP initiatives. Examples of public-private partnerships in several post-conflict environments include cases in **Mozambique**, **Namibia** and **Nepal**.

Past experience with PPPs or outsourcing has been positive in a number of fragile situations, where benefits were focused on the poor. The communities were provided with enhanced capacities as well as economic opportunities by being allowed to bid for some of these service provision contracts.

Regarding the role of the state, PPPs can improve the state's territorial reach, its legitimacy and its capability to meet (and to be seen as having met) social expectations, even if done through alternative service delivery mechanisms. Under PPP arrangements, the roles of the state/government/public sectors change from direct provider to an enabler and regulator of the private provision of selected public services. This implies, first and foremost, a number of institutional transformations and an emphasis on capacity development within the public sector (supported by relevant laws and regulations), in order to effectively perform the new roles of regulation, monitoring and evaluation.

However, Mr. Batchelor recognised a number of serious challenges in fragile environments, as the government's capacity may be too weak to manage these PPPs, to develop and implement regulatory policies, to translate these policies into contracts, to ensure oversight and to monitor performance. At the same time, non-state providers may not have the will, incentive or capacity to employ ethical business practices while fulfilling their contractual obligations – which may lead these providers to exploit the monopoly accorded to them through long-term public contracts. Furthermore, the providers may fail to deliver quality services in a timely manner to the *entire* population, thus undermining the universal nature of public service provision. As for civil society organisations, they may not have the capacity to play a proactive role in monitoring, awareness raising and accountability to ensure that the service delivery targets and poverty reduction efforts of non-state providers are fully taken into account.

As a conclusion, Mr. Batchelor stressed the need to agree on some guiding principles for contracting out and proposed some initial thoughts in this direction:

- ▶ There is no *one-size-fits-all* solution. Context matters and no blueprints can be imposed from the outside;
- ▶ It is important to remain flexible and pragmatic on how to approach this issue, as well as to be creative and adapt solutions to sector specificities and possible combinations between roles and actors;
- ▶ The long-term development of the state should remain the end goal, with a strong commitment to national ownership and capacity development;
- ▶ Regulation matters, as the recent financial crisis has shown.

Presentation by Mr. Kabir Haqjo⁶

After reminding participants of the state's responsibility to provide services to its citizens, **Mr. Kabir Haqjo** noted how the government's role has increasingly become one of regulation and facilitation

of private actors. Based on the example of Afghanistan, he then listed a series of specific challenges faced by fragile states with regard to basic service delivery, including the question of government legitimacy (notably as a result of ethnic tensions); the lack of infrastructure, institutions, legal frameworks and capacities; and the insufficient focus on the rule of law and economic development.

In Afghanistan, this has resulted in the outsourcing of some functions to NGOs and the private sector under four types of arrangements which Mr. Haqjo described as follows:

- ▶ *Outsourcing to private companies in order to deliver a specific reform process (e.g. reform of customs and revenue in the Ministry of Finance).* This increased the speed of service delivery, simplified the processes and raised performance, transparency and accountability. On the other hand, this was also a costly process, which ignored local capacity building and sometimes resulted in a transfer of other countries' models with consideration neither to the specific Afghan context nor to long-term planning.
- ▶ *Permanently outsourcing some of the core functions of the government to a newly created organisation (e.g. the Afghanistan Investment Support Agency which is a one-stop-shop to issue licenses to the business community).* This is done by the Ministry of Commerce, where the capacity of the staff is low and the senior management felt that this service could be performed outside the government with more efficiency than by the civil servants.
- ▶ *Creating new private institutions from the beginning (e.g. schools, universities, hospitals, telecom and security companies).* This is being done in Afghanistan, although it presents challenges such as the government's insufficient capacity to monitor the service and to set performance standards, which often results in a poor level of quality for the services.
- ▶ *Temporarily outsourcing a function to a company until the government's capacity is built (e.g. the Afghanistan National Norms and Standards Administration, which is responsible for the quality control of goods and services that are imported and exported, a function temporarily outsourced to a Swiss company, SGS).*

As a conclusion, Mr. Haqjo suggested the following recommendations for contracting out in fragile settings, with a view to improving service delivery to the people:

- ▶ The overarching reason for contracting out should be to meet citizens' demands and deliver better services. People's expectations should be managed by sharing information and raising awareness.
- ▶ The government should lead the contracting-out process, prioritise the tasks and have in-place a set of clear policies. Civil society should also be consulted and involved in the decision-making process.
- ▶ Local NGOs and companies should be able to bid on the projects in order to enhance local capacity.
- ▶ Donors should not tie aid and allow foreign companies to bid for projects.
- ▶ When applicable, contracts should include the capacity development of civil servants during the outsourcing period.
- ▶ Finally, governments should not necessarily concentrate on delivering all services that can also be provided by non-governmental entities. They should focus on the policymaking and evaluation roles.

Presentation by Mr. Antonio Tujan⁷

Mr. Antonio Tujan started by noting how contracting out core government functions and basic services can be assumed to run counter to the objective of strengthening governance capacity and

institution-building. Without becoming a general policy prescription for privatisation, it may however be considered as a stop-gap measure and be subject to particular conditions when it is deemed desirable.

In the context of countries in fragile situations, the contracting out of core governance functions and basic services could actually be necessary and desirable – especially when the contractor is able to fulfil certain prerequisites such as:

- ▶ Overcoming obstacles to governance institution-building in situations of conflict and thus paving the way for better services and functions to serve all citizens;
- ▶ Being a paragon of accountability to citizens and the public at large and conscientious in fulfilling international human rights standards; and
- ▶ Contributing to capacity building through the coaching of local counterparts in contracted functions.

Besides the question of aid effectiveness, there are a number of key prerequisites which must also be carefully considered in the context of contracting out core government functions and services. These include, of course, the *DAC Principles for Good International Engagement in Fragile States and Situations*, as well as the three pillars of the *Responsibility to Protect* enunciated by the International Commission on Intervention and State Sovereignty. As regards the third responsibility to rebuild, we should also remind ourselves of the specific provisions in the *Accra Agenda for Action* to a) address the root causes of conflict and fragility which, as civil society organisations understand, should also include the economic policies that have been imposed by international financial institutions; and b) to ensure the protection and participation of women.

Mr. Tujan cited the 2006 *Reality of Aid Report on Security, Conflict and Human Rights in Development Co-operation*, and highlighted some of its recommendations, such as giving priority to human rights, poverty eradication and the role of local actors.

There are also several aspects in the application of aid effectiveness principles that are important to consider when contracting out, notably the questions of ownership, alignment and sovereignty. Considerations include: the basic recognition of sovereignty; the necessity for broad consultation with the people and democratic stakeholders wherever possible; investing in CSOs and other democratic institutions while not burdening local CSO potential with subcontracted services; establishing clear selection criteria with priority given to local over international, regional (South-South) over global/Western, and non-profit over for-profit organisations; and implementing technology transfer and phasing-out strategies with due consideration to avoiding salary distortions.

A second area is accountability and managing for development results. This would have important significance in contracting rules and terms, ensuring inspections and consultation with local constituencies and with national stakeholders, reporting and audit, and the role of women and marginalised populations. Finally, Mr. Tujan highlighted the area of harmonisation among donors in the contracting procedures and mechanisms, including through pooled funding and donor common action as well as through the specific leading role of UN agencies.

Presentation by Mr. Yukimasa Fukuda⁸

Mr. Yukimasa Fukuda presented the experience gained by Japan when it brought in hundreds of foreign experts in the 19th and early 20th centuries. During the same period, Japanese students were sent overseas to study. Because both the incoming experts and the Japanese students abroad were being financed directly by the national budget, Japan had a strong incentive to quickly learn from the

experts and then to replace them with their own citizens. Thirty years later, in 1899, the Japanese government discontinued the practice of hiring foreign experts. From this example, Mr. Fukuda suggested that states should be very careful when contracting out functions that are deemed 'too essential', and should consider paying for the contractors themselves (rather than depending on foreign assistance).

Break-Out Session on Health and Education

Introduction by Ms. Wendy Abramson⁹

Ms. Wendy Abramson proposed the following definitions of relevant terms:

- ▶ *Contracting* is the purchasing mechanism used to acquire a specified service, of a defined quantity and quality, at an agreed upon price, from a specific provider for a specified period of time.
- ▶ *Contracting out* is a documented agreement whereby the government (purchaser) provides compensation to another party outside the government in exchange for a definite set of services for a specific target population.
- ▶ *Contracting in* is generally used for contracting within the government, whereby the central level contracts with the local level in an administratively decentralised setting.
- ▶ *Performance-based contracting* is an arrangement where compensation is directly linked to an output or a performance.

She then presented the objectives of the session as being to: (i) Understand the rationale and institutional arrangements for contracting out; (ii) Discuss how contracting out may influence state building; and (iii) Discuss different approaches in weighing rapid service delivery expansion versus long-term public sector capacity development.

Presentation by Hon. Walter Gwenigale¹⁰

Minister Walter Gwenigale presented the experience of Liberia in contracting out health services. After the war ended in 2003, basic services in Liberia were devastated and the social contract between Liberians and government was broken. To tackle the particularly high challenges of the health sector, Liberia developed a five-year National Health Plan, with four main components: (i) infrastructure, (ii) human resources, (iii) support systems and (iv) the Basic Package of Health Services (BPHS).

Liberia decided to use contracting as one approach to achieve three major objectives: (i) To increase and sustain access to the Basic Package; (ii) To provide support for improving the quality of service provision; (iii) To leverage partner capacity until the County Healthy Teams can resume management of health facilities and the workforce.

Of the 422 existing health facilities in Liberia, donor partners are funding NGOs to manage over half of these facilities. The government is directly managing 96 health facilities, but has contracted partners to manage over 50 additional facilities in order to increase and sustain access to the Basic Package. By transitioning donor financing to the health sector pool fund, the Liberian government expects that the number of health facilities contracted by the government will exceed 100 by next year. This will ensure that access does not decline as emergency partners leave Liberia, and it will help put the Government in the driver's seat in the health sector. To reinforce this, the Ministry of Health (MOH) has worked with partners to standardise the contracting model. Donor partners who are directly funding NGOs are using the same package of services, the same M&E framework and

performance indicators as MOH, helping to achieve cohesive implementation of the National Health Plan.

Minister Gwenigale then detailed the health sector pool fund, which donors use to finance the National Health Plan and which helps to minimise the efforts required for reporting and compliance to donors. It uses national capacity and is managed from within the government. Through the pool fund, MOH is able to contract NGOs and faith-based organisations to provide the Basic Package in government health facilities.

The government is aware of the necessary balance between directly supporting health facilities and contracting partners to provide services and will, therefore, also pilot 'contracting in' with county health teams. According to Minister Gwenigale, it is important for the people to know that the government is committed to meeting its responsibility to provide healthcare, and that MOH intends to do so through information-sharing and by raising awareness. Minister Gwenigale concluded by highlighting the two parallel priorities of improving health indicators now and rebuilding national institutions for the government to meet its responsibilities tomorrow.

To complement Minister Gwenigale's presentation, **Mr. Jacob Hughes**¹¹ stressed the need to link contracting out with aid effectiveness discussions from the beginning, as well as the impact of different aid mechanisms on the country and its ability to deliver services. Addressing the issue of Public Financial Management (PFM), he highlighted Liberia's unique example, where MOH is able to manage its own pool fund because of capacities previously enhanced by a private contractor.

Presentation by Ms. Fiona Campbell¹²: "The experience of Merlin in Afghanistan"

Ms. Fiona Campbell presented Merlin's experience in the implementation of the Basic Package of Health (BPHS) services in Afghanistan. Merlin's approach is to combine the initial response with long-term support to healthcare, working with the Ministry of Public Health (MoPH) wherever possible. The organisation's involvement in Afghanistan has centred on three provinces (Kunduz, Takhar and Badakhshan) in the northeast part of the country. In 2002, MoPH and donors agreed to roll out a Basic Package of Health Services (BPHS) through a contracting-out arrangement. In 2003, Merlin was contracted to deliver the BPHS in six districts of Takhar province.

Merlin has been working in partnership with a local NGO partner, Care of Afghan Families (CAF). Overall, this experience has yielded beneficial outcomes, as it provided new opportunities on both sides, including access to funding (when partnerships between NGOs was a requirement) as well as access to key stakeholders such as community links through CAF and international links through Merlin.

A key aspect of the implementation of the BPHS has been the development of capacity within the system on a number of levels. In Afghanistan, three distinct forms of capacity development can be identified: (i) on-the-job capacity development activities such as technical knowledge and skills training and re-training for health staff; (ii) training in supervision skills especially for those health staff supervising the community-based health workers (CHWs); and (iii) facility management training for those staff responsible for the management of facilities.

In addition, low levels of expatriate involvement in programme delivery have meant that capacity development is also achieved through the implementation of the programme itself (i.e. capacity by doing). The contracts for the implementation of BPHS also include a specific element for support to the development of capacity within the national partner organisation.

As part of the contracting process, the area of accountability has been taken very seriously by MoPH. Accountability at the implementation level is to a great extent ensured through the various monitoring systems in place. These include the regular submission of Health Management Information System (HMIS) data from the facilities to the MoPH; the random inspection of facilities by MoPH staff; the use of the balanced scorecard and community-based surveys. MoPH also has the option to select and cancel the contracts of implementing partners and there is evidence that they have on occasion cancelled the contract of an organisation which has not performed to the required standard.

The accountability function is linked with MoPH's ownership of the contracting process. Oversight for this process sits with the Grants and Contracts Management Unit, a unit set up and funded by donors (from January 2009 renamed 'Health Economics & Financing Directorate'). This has raised some questions regarding the autonomy and ownership of the process by MoPH. However despite this there still appears to be a widely acknowledged view that the process is state-owned and that MoPH has shown clear leadership in the process. The view at the programme level cannot be substantiated, as specific research has not been undertaken, but again there is a perception at this level that ownership lies with the state and that communities see the services as being provided by the implementing partner *on behalf of* the government. Merlin's own research suggests that the communities are unaware of the behind-the-scenes interactions between different agencies in different clusters or of the distinction between international and Afghan agencies.

The involvement of an NGO in the contracting process, however, also raises an additional question regarding the perception within the communities of the relationship between the implementing organisations and the government. While Merlin has been operating in relatively stable provinces to date, the increasing security threat in the northern area has necessitated an increased focus on security. What has been critical for Merlin has been the need to maintain its reputation as a neutral health organisation and key to this – and to the security of its staff – is the perception of the organisation within the community. Merlin is thus investing considerable efforts in delivering messages within the communities on its exact role in the delivery of services.

In line with Merlin's organisational policy to provide support to the long-term development of health systems, it is committed to supporting the delivery of health services in fragile states in the longer term. Over the last six years, Merlin has handed over the implementation of the BPHS in a number of provinces to its national partner CAF, which has ensured that these services continue to be delivered without the input of an international agency. However, assuming the availability of continued funding, Merlin is committed to continuing direct support to the health service in Afghanistan and will do so through the continued receipt of contracts from MoPH to deliver the BPHS in the country.

Presentation by Mr. Norman Larocque¹³

Mr. Norman Larocque presented the main features of the relationship between fragility and education, stressing that so-called 'long-route' accountability (through which users express their desires to policymakers, who in turn link with service providers) is no longer effective in fragile situations, where service providers and communities work directly together.

Shifting the focus on the education sector, he presented five different forms of contracting:

1. *Contracting for the delivery of education services*: This model is often used where there is insufficient public sector capacity. The government signs formal contracts with private schools to enrol students at public expense. The school is paid a fixed amount per student

enrolled, private infrastructure is used, schools are accountable for performance and can be for-profit or not-for-profit. (e.g. Philippines, Côte d'Ivoire)

2. *Private management of public schools*: In this modality, the government contracts private providers to operate a public school, with the following key features: no tuition fees, the school is paid a fixed amount per student they enrol, public infrastructure is used, operators are responsible for the whole school operation. This model is often used in low-income and disadvantaged areas (Colombia, Pakistan).
3. *Contracting for the delivery of professional services*: Mr. Larocque gave the example of a British NGO that undertakes a number of functions in the Gulf States, including the development of teaching and learning strategies, undertaking human resource functions (personnel selection, professional development, performance evaluation), and carrying out inspections in private and public schools.
4. *Facility availability and education infrastructure partnerships*: In these cases, governments contract with the private sector to design, finance, build and operate school infrastructure. The private sector builds schools and operates them for a set period then returns them to the government at the end of the contract, (usually 15-30 years). The government employs teachers while the private sector employs non-teaching staff. Payment is performance-based, with agreed performance standards.
5. A final trend concerns education support services (school transport, food services, security, building maintenance) which are found worldwide and were not addressed in detail.

Although there is still limited evidence in this relatively new field, Mr. Larocque presented a series of emerging lessons. First, there is a range of contracting models that have been adapted to a variety of country and developmental contexts, with a wide range of non-government providers (e.g. NGOs, community, for-profit providers). Second, context is important and is determined by country governance, financial management/administrative capacity, the size and nature of the non-government sector, its fiscal situation and the nature of the service to be contracted. Third, potential benefits to contracting include the efficiency and effectiveness of delivery, rapid scale-up of services in low capacity environments, targeting services to particular groups, performance accountability, and overcoming operating restrictions (policy, ethnic bias, etc). On the other hand, challenges include overheads/contract management costs, administrative capacity requirements and ability to specify and monitor outputs, and lack of information.

He concluded by highlighting that contracting in the education sector is not a panacea, but offers an innovative service delivery model to policymakers; it is consistent with the equally legitimate role of funder/regulator rather than provider. Mr. Larocque emphasised that contracting is not necessarily the sign of a 'weak' government. However, he noted that conditions may not be in place in fragile situations (weak state infrastructure, weak accountability mechanisms, poor information for policymakers/client groups, lack of policy/regulatory framework, etc.), and posed the issue of the sustainability of contracting over time.

Discussion and conclusions

In the discussions which followed, participants agreed on a series of requirements for a successful contracting-out arrangement: a vision and leadership at senior level within the government; a transparent process involving the community at all levels (policy, contract design, monitoring and evaluation); a preliminary assessment of the environment for contracting out, especially the private

market. It was also agreed that the government must be able to hold the contractor accountable for whatever service or function it performs. The question of sequencing was also addressed: the government should choose where to concentrate its efforts, as it cannot both deliver services *and* build capacity at the same time.

Break-Out Session on Infrastructure and Utilities

Presentation by Mr. Dhruba Prasad Paudyal¹⁴

Mr. Paudyal introduced Nepal's experience in contracting out infrastructure and utilities by first presenting the consequences of the conflict which brought enormous physical, economic and social damages to Nepal. He then outlined some initiatives under Nepal's reconstruction agenda, as well as some of their main elements (*e.g.* stakeholders, approaches, priorities and funds). These initiatives included the Nepal Peace Trust Fund (NPTF), the objectives of maintaining of social cleavages and networks, and developing economic opportunities and employment with a specific focus on capacity building and a citizen-centric approach.

He then outlined the characteristics of the Public Private Partnership (PPP) Model in Nepal and a typology of existing sub-models.

Mr. Paudyal situated the implementation of such models in the Nepalese context, with a distinction between regulatory contracts (in the telecommunications sector and, partially, in education); management contracts (in the construction industry, and in knowledge production and capacity-building activities); and performance contracts (in social services, health, education and population management).

Focusing on the activities conducted by the Ministry of Peace and Reconstruction, these contracts in the areas of rehabilitation of IDPs, reconciliation, reintegration and revitalisation can be compared to performance contracts; and those in the area of reconstruction with management contracts. Mr. Paudyal then outlined a series of lessons learnt regarding those management contracts, arguing that they introduced more commercial principles and competition; allowed to engage more stakeholders and led to an equitable and agreed sharing of benefits and burdens among them; developed regional and global integration and improved the investment climate; favoured a rights-based approach and improved public resource management.

Mr. Paudyal concluded by stressing challenges faced by fragile and post-conflict states with respect to contracting out. With limited capacities, they need to manage unforeseen complexity, carefully design financing strategies, be aware of balance of payment constraints and the limited tradability of infrastructure services, and adapt models to context specificities.

Presentation by Mr. James Fennell¹⁵: "Contracting Out Infrastructure: A Contractor's Perspective"

Mr. James Fennell started by reminding participants how infrastructure had become much more important in recent years as a site of development assistance, and how in the North, governments traditionally contract out the construction and management of infrastructure and utilities, or create for-profit parastatals. This model has also been followed extensively in fragile states.

Mr. Fennell based his presentation on one example drawn from Cardno's experience in Afghanistan with the Amu Dariya River Basin Project. This took place in the context of ineffective government

service provision beyond Kabul and the significant degradation of agricultural water supplies. The project, funded by the European Commission through the National Authorising Office and the Ministry of Agriculture, was to build 60 dams and culverts to revitalise agricultural water supply. Cardno managed a large number of local contractors, and the hand-over to the government was envisaged as a pre-requisite.

On the basis of this example, Mr. Fennell highlighted how this model provides real capacity, enhances transparency and accountability and ensures effectiveness and oversight. However, he said, it can also be perceived as part of sovereign northern governance, and may therefore force people to 'choose sides' if they work for contractors – ultimately putting them at risk.

Using the case of Afghanistan, he highlighted the growing resistance to the intervention and how contractors are seen as part of a western 'occupation'. He noted how the distinction we find so clear between NGOs, private sector and the state, may be irrelevant to Afghan people. On the contrary, the Taliban are regaining in popularity although they are not interested in basic needs but, rather, act as the sovereign by dispensing a degree of consistent justice.

Looking forward, Mr. Fennell noted that building a contractor platform locally faces the same problems as building a government, and cannot be a short-term response. He suggested that regional/non-aligned contractors' alliances may provide an option in contested spaces such as Afghanistan, and that contractor alliances under the auspices of regional economic co-operation may provide a solution in Africa, for example.

Lastly, he wondered whether 'basic needs' in fragile states should, at least for the short term, be placed at a lower priority than the construction and reinforcement of the political structures that can provide sovereign responses in the future.

Presentation by Mr. Armand Borrey¹⁶

Mr. Armand Kasumbu Borrey started his presentation by detailing the three transition phases that the Democratic Republic of the Congo (DRC) has been facing: (i) a transition from a conflict to post-conflict period; (ii) the re-establishment of the state's authority; and (iii) a period of development assistance.

DRC now has priorities which are defined by the government. However, before the current government (i.e. in the 32 years of the Mobutu regime and the ensuing conflict), nothing was built in terms of infrastructure. The international community has suggested projects during the transitional period and before the elections, and had determined the priorities without input from the government. Subsequently, given the deficits in government and administration, parallel units were created under the auspices of implementing agencies.

When discussing contracting out in DRC, he noted, this is mostly relative to those executing agencies, which are in charge of implementing projects funded by the World Bank along priorities defined by the international community. Implementing agencies have been put in place, especially with the World Bank. These agencies implement projects identified by the international community. The government, he noted, is almost completely absent in this infrastructure rehabilitation strategy, which causes a lot of frustration, especially because most Congolese engineers and experts have now left the government to join those agencies.

The implementing agencies have some autonomy when it comes to management. There is a steering committee at the national level, in which the government takes part but has little say given that it

does not have the funding in-hand and that the international community has a series of conditionalities for its funding.

Listing pros and cons, Mr. Borrey noted that the government accepts those agencies because it is not in the position to refuse as it has little other means to fund this development. For the donors, this is a useful tool for oversight and monitoring, which allows them to be accountable to their hierarchy. However these implementing units have extensive internal structures, and since DRC does not have a procurement procedure, the government created another agency in charge of procurement in order to respect certain conditionalities (e.g. bidding, procurement), which are necessary to obtain World Bank funds.

There is also an issue of time: implementing agencies try to prolong their work and stay alive as their staffs do not want to go back to the national administration where salaries and motivation are lower. Furthermore, there is the issue of dependency, as many priorities were defined before the election (by the international community), which brings up the general problem of phasing out.

Mr. Borrey insisted on the need for innovation and cited the decentralisation process in his country as one opportunity for the contracting out of infrastructure and basic social services. He emphasised that contracting-out should depend on national choices: as it impacts the sovereignty of the state, it needs to be based on a national consensus and stem from a political decision of the state, so as to leave the ownership of the process within the government.

Discussion

In the discussion, participants cited experience from their own countries on contracting out infrastructure, as in Côte d'Ivoire for the maintenance and rehabilitation of roads; or differently in Sierra Leone where separate entities were set up outside the ministries but under their supervision, a system which is proving to be successful for the management and monitoring of donor funds by the state.

Break-Out Session on Public Sector Governance

Presentation by Ms. Sara Fyson¹⁷: “Contracting out the Public Financial Management function: Keeping to the Paris Declaration Principles”

Ms. Sara Fyson started by reminding participants about the commitments on Aid Effectiveness made in the 2005 Paris Declaration, in which donors notably committed to:

- ▶ Use country Public Financial Management (PFM) systems;
- ▶ Avoid creating dedicated and parallel structures;
- ▶ Make progress on untying aid; and
- ▶ Harmonise activities, especially in fragile states.

In turn, partner countries committed to:

- ▶ Exercise leadership in developing and implementing development strategies;
- ▶ Ensure that national systems are effective, accountable, and transparent;
- ▶ Take leadership of the public financial management reform process; and
- ▶ Make progress towards effective governance, especially in fragile states.

Looking at the related targets, Ms. Fyson showed how the target that concerns the use of PFM systems was beyond reach, despite the improved quality of country systems. As a result, at the High Level Forum on Aid Effectiveness held in Accra in 2008, donors and partners strengthened commitments in a number of areas: donors will (i) Use country systems as a first option; (ii) Be transparent on their reasons for not using country systems; (iii) Provide at least 50% of government-to-government assistance through country fiduciary systems (i.e. PFM and procurement systems). Partners will: (i) Strengthen their budget-planning processes; (ii) Take the lead in defining reform programmes; (iii) Facilitate parliamentary oversight including through more transparency in PFM.

Moving to the precise topic of contracting out in the PFM sector, Ms. Fyson showed that this trend had become more popular for three main reasons: 1) because of an increase in good governance and PFM-related lending; 2) because OECD countries have increased outsourcing of their public sector functions as part of New Public Management reforms; and 3) because of donor agency reforms through which their personnel has become more 'manager' than 'doer'.

Ms. Fyson highlighted the challenges faced in this sector: first, contracting may impose OECD best practices in relation to PFM. PFM also brings elite bargaining and political manoeuvring and is, therefore, a sensitive area that can encounter serious resistance. Donors sometimes support the contracting out of different aspects of the PFM system, which may not be co-ordinated. On the side of contractors, they might sometimes respond to donors rather than governments thereby weakening state authority; similarly, they risk responding to contractual obligations rather than government needs. Lastly, as the Ministry of Finance is the recipient of the contracting out, tensions may arise with other ministry departments and agencies if they are not included in the related decision-making process.

Concluding with a series of recommendations, Ms. Fyson suggested: (i) to focus on the entry point of the contract in order to align it with national development strategies or with a sector-wide approach; (ii) to understand and consider the pre-conditions of ownership; (iii) to develop the local contractor capacity, including by addressing the issue of untying aid; (iv) to use country systems to the maximum extent possible and co-ordinate donor support; (v) to develop the capacity to manage, monitor and evaluate contractors; (vi) to take care not to undermine local accountability systems, both formal and informal; and (viii) to design clear exit strategies, which should be included in the entry point of the contract.

Presentation by Mr. Moses Mabior¹⁸: Southern Sudan's Experience in Contracting out Core Fiduciary Functions

Mr. Moses Mabior started by providing a brief background on Southern Sudan to explain the rationale for contracting out core government services. In 2005, the UN, the World Bank, the Government of Sudan and the Sudan People's Liberation Movement (SPLM) prepared a Joint Assessment Mission (JAM) report identifying the post-conflict development needs of Sudan, which noted that Southern Sudan was starting from a situation of extreme poverty and underdevelopment, with weak skills and a virtual non-existence of normal government institutions. The entire public service, including the personnel and systems necessary to be able to manage USD 1 billion in revenue per year, had to be built from scratch.

The JAM therefore proposed that the Government of Southern Sudan (GoSS) contract out its fiduciary functions to international firms for at least the first two years of the interim period. It envisaged that their role would be phased out as GoSS' capacity increased. It also established a Multi-Donor Trust Fund (MDTF), to be administered by the World Bank, which was expected to play a leading role in contracting third parties to deliver Government services.

It was agreed that three fiduciary functions would be contracted through the MDTF, using World Bank procurement procedures:

- ▶ Project Accounting Agent (PAA) (accounting for both GoSS and donor contributions to the MDTF);
- ▶ Procurement Agent (PA) (covering both GoSS and MDTF procurements); and
- ▶ External Audit Agent (EAA) (conducting both GoSS and MDTF audits).

Separately, GoSS contracted a Government Accounting Agent (GAA) to cover its own expenditures. The GAA was appointed by GoSS on a sole-source basis in early 2006.

Two common threads of those experiences were, on the one hand, the long delay in the recruitment of the contractor which had long-term impacts and, on the other hand, the omission of capacity development activities in contract.

Developing further on lessons learned, Mr. Mabior noted that, from GoSS's experience, a government which is contracting out services because it lacks internal capacity is unlikely to have the capacity to manage complex processes for contracting-out. GoSS had limited capacity to manage lengthy and complex World Bank procurement processes under the MDTF, contributing to critical delays in contracting-out essential fiduciary services. GoSS was not able to identify an appropriate contract design, which subsequently undermined the effectiveness of contracting out in some cases. Furthermore, GoSS had limited capacity to ensure that the contract design and performance meet the needs of the government.

As a conclusion, Mr. Mabior proposed the following set of recommendations: (i) Sole-source contracting, when well defined, can be an appropriate modality to meet urgent delivery gaps while longer-term services are being procured on a competitive basis; (ii) Complex procurement procedures should only be applied in a post-conflict environment when the need for the service is not urgent; (iii) Post-conflict governments may need independent technical support for the design and management of contracts, to ensure they meet their needs; (iv) When thinking about sustainability, contracting out is not cheap (GoSS has spent over USD 20 million on fiduciary services since 2006), so alternative options, such as contracting in temporary capacity from the Diaspora, should be considered; (v) Capacity building should be explicitly considered when designing contracting-out packages and an exit strategy must be clearly mapped from the outset; and (vi) When partners pledge to implement a capacity building strategy in parallel to contracting out, they must deliver on it.

Presentation by Mr. Michael Carnahan¹⁹

Mr. Michael Carnahan presented a few lessons learned from his experience as advisor to the Finance Ministers in Timor-Leste and Afghanistan.

First, successfully contracting out requires that the correct accountabilities be established from the start. If the government does not have the capacity to hold the contracted agent accountable, it needs to be careful before it contracts out. In addition, the exit strategy needs to be planned from the beginning.

Second, funding arrangements determine the lines of accountability regardless of what the contract is for. For instance, a technical assistant might be accountable first to his/her company, then to the donor that pays for his/her contract, and only in third place to the local government. On the contrary, if you seek accountability from the contracted agent, salaries must be paid by the government.

Moreover, although donors have the capacity to manage the contractor, they do not have the same incentives to hold them accountable as the government. Indeed, if the contract does not work, donors do not have to answer to the failure in the streets or in elections. It is easier to increase the government's capacity to manage contracts than to increase donors' incentives to effectively manage contractors.

Mr. Carnahan then identified the following key success factors:

- ▶ The government has to trust its contract managers;
- ▶ Funding needs to be at arm's length, ideally a foundation or an MDB/donor with limited strategic interest in the country;
- ▶ Staff need to have the capacity to stand up to other international staff and hold them to account, including international financial institution (IFI) staff;
- ▶ Staff need to be at least as competent if not more so than the contractors they are managing;
- ▶ Because the industry is small, conflicts of interest between contractors and managers need to be avoided;
- ▶ The contractor needs to report to either the President or the Finance Minister, with unfettered access;
- ▶ The contract management function requires generic contract management skills, rather than country-specific knowledge.

He insisted that an exit plan from the beginning makes a success more likely and noted that ultimately and fundamentally, a successful exit relies on a successfully undertaken civil service reform. Overall, a successful exit requires good initial settings, ongoing revision and complementary civil service reforms. However, if the initial wage rate is set too high due to wage pressures from the broader international community, a successful exit will be difficult.

He concluded that a contracting out arrangement, when done well, may do two things at once: deliver services and have capacities and systems built. If the contract is well-written, contracting out provides extra time and space to undertake a civil service reform.

Presentation by Mr. Jonathan Borsley²⁰

Mr. Jonathan Borsley presented the challenges and lessons learnt of contracting out on the basis of Crown Agents experiences, particularly in procurement and revenue generation. He first distinguished between two types of activities: when Crown Agents is contracted out to deliver a government function; and when Crown Agents is simply providing technical assistance. Although there can be a continuum between the two, these are two different activities.

Mr. Borsley began by identifying four key challenges: (i) managing high (often unrealistic) expectations; (ii) providing a cohesive response in fragmented environments; (iii) delivering services where security concerns limit access and movement; and (iv) dependencies and connections between different government functions.

He then exposed four major lessons learned: The first lesson is about the importance of combining urgent service delivery with longer-term capacity development. Crown Agents' experience as procurement agents has shown that there is often a pressure toward urgent service delivery at the expense of capacity development. This is not simply a matter of contractors lacking the incentive to build capacity. Rather, this pressure is often deliberately built into contract terms of reference or results from resource constraints. Sometimes it inadvertently results from the contract performance

criteria being skewed toward demonstrating rapid procurement and disbursement of funds rather than long-term capacity development. He stressed that in the majority of cases, the contracting out of core government functions in fragile states should be accompanied by capacity development, with adequate resources to undertake both.

A second lesson is to refrain from any 'one-size-fits-all' approach. Each fragile situation varies according to multiple factors such as the causes and degree of fragility; the capacity and willingness of the government; or the strength of civil society. These factors determine the nature of the most effective responses. In some situations, he noted, there needs to be a realistic prioritisation that recognises that sustainable capacity development can only occur in a broader context of a nationally owned state-building process. While that broader process is at an early stage, a government's priority may legitimately be to reinforce and strengthen it rather than building capacity in functions such as procurement. In such circumstances, it is reasonable for international support to prioritise urgent service delivery by contracting out core functions without necessarily building capacity. This does not remove the need for a medium-term plan, which details how and when government capacity will be built, but it recognises that the pressures on government in those early stages may mean that their priority is on consolidating the state-building process.

The third lesson is to get the timing right, and in particular to avoid gaps in service delivery. In the period of bidding for instance, it is wise to fill the gap through interim financing, as happened in Afghanistan, where DFID provided interim financing for procurement from March to August 2002.

The final point is that, when properly used, contracting out can be used to support the state-building process. It is widely assumed that contracting out necessarily undermines state legitimacy and thus hinders process of state building. However, some of the most successful examples of contracting out in which Crown Agents have been involved have clearly supported the process of state building, as in the customs operations in Mozambique and Angola.

Presentation by Mr. Yukimasa Fukuda²¹: "Japan's Non-Project Grant Aid (JNPGA): A scheme of contracting out procurement function of government and its built-in mechanism supporting state-building efforts"

Mr. Yukimasa Fukuda presented the JNPGA (Japan's Non-Project Grant Aid), a form of commodity aid designed to fund necessary imports to meet the national development strategies of developing countries faced with acute balance of payments difficulties. JNPGA, since its inception in 1987, has been extended to developing countries throughout the world with an annual commitment of approximately USD 200 million on average. To date, Africa has received 30-40%, followed by the Middle East and Asia.

JNPGA is unique in the following three aspects.

1. It is an untied grant so all countries are eligible as sources for the procurement of goods.
2. A capable independent procurement agent (Crown Agents, UNOPS or JICS) is employed to ensure both proper use of funds and rapid procurement processing and delivery.
3. The imports are to be distributed in the domestic market, and that amount (counterpart funds) is to be collected and utilised in line with the national development strategies.

In addition to these, a built-in mechanism of close consultation between donor (Japan) and recipient governments as partners (i.e. not bypassing them) is key to help ensure simultaneous

alignment with national development strategies, accountability for the proper use of the funds, urgent delivery of goods and capacity development. Through the implementation of JNPGA, healthy relationships between the state and its citizens, state legitimacy, and state building can also be steadily enhanced.

Mr. Fukuda applied the three main questions of the conference to the JNPGA scheme. First, regarding the balance between urgent service delivery and longer-term concerns of national capacity development, he noted how the built-in consultation mechanism ensures the capacity development of recipients: practically getting to learn not only the necessary procedures but also the decision-making processes within their systems.

Regarding the risk that contracting out undermines government-led efforts, Mr. Fukuda highlighted that if donors respect and align with the strategies of recipient governments, donors should also be prudent and careful in avoiding the negative impacts of their operations, including the contracting out modality. In addition, contracting out arrangements should incorporate a mechanism of close consultation between the recipient and the donor to ensure that donors align with the national strategies of the recipient government.

Last, on the issue of the state-society relationship and state legitimacy, Mr. Fukuda noted that JNPGA incorporates both recipient governments and donors as partners, not bypassing the recipient government, and therefore helps to strengthen state building capabilities. He also highlighted the transparency of the procurement process which helps enhance citizens' trust and confidence in their government.

Mr. Fukuda concluded that a mechanism to materialise policies matters no less than the contents of the policies themselves; and that the attitude of donors makes all the difference in enhancing the state-building process.

Discussion

During the discussion, a consensus emerged on the need for greater conceptual clarity on what constitutes 'core' government functions, and a distinction was suggested between policy/decision-making (i.e. 'what to spend') and implementation (i.e. the actual 'spending').

Participants also agreed on four lessons related to public sector governance:

1. The capacity to design and manage contracts is a key precondition to the successful use of contracting out. Going forward, consideration needs to be given to ways of ensuring that national governments have the capacity to design, negotiate and monitor contracts, and to hold the contractors accountable for delivery.
2. Capacity building has been either excluded or performed ineffectively when key PFM functions have been contracted out in post-conflict situations. Examples of successful exits involved a long contract period (i.e. ten years). Lessons include the importance of managing expectations, and designing capacity building and exit strategies against this more realistic timeframe.
3. Designing and negotiating complex contracts for PFM functions is a time-consuming exercise – particularly if MDB procurement policies are used. Greater consideration needs to be given to designing modalities to allow for rapid contracting while ensuring that appropriate good governance practices (e.g. probity) are followed. The use of interim

contracts signed under emergency procedures to fill the gap while a fuller process is undertaken should be considered.

4. A specific assessment of the merits or otherwise of a contracting-out approach in PFM needs to be considered in the context of post-conflict or fragile situations – not some idealised state of the world.

Break-Out Session on Security and Justice

Introduction by Mr. Eboe Hutchful²²

Mr. Eboe Hutchful stressed the peculiar sensitivities of contracting out in the area of security and justice, a core area of sovereignty. However, he noted the paradox that the delivery of security and justice in post-colonial countries has, in reality, been widely dispersed or ‘multi-layered’.²³ Indeed, private and informal security and justice provision has been common and widespread, whereas in the formal state structure, security and justice provision has been very much differentiated according to gender, class, ethnicity and other socio-demographic parameters.

Yet, most states are particularly resistant to formally contract out in this area, partly because of its implications for the already tenuous control over the instrumental force and legitimacy. Citing Scheye’s background paper for this session, Mr. Hutchful noted that state and non-state networks intertwine to such a degree that one must consider them as a continuum and that the resulting challenge would be to recognise and create a statutory foundation for these. Such arrangements have, however, been deeply contested because they exist at the very core of the definition of citizenship.

Presentation by Mr. Eric Scheye²⁴

Mr. Eric Scheye started by defining the concept of the ‘minimal state’, which he employed in his background paper, which has the characteristics of a post-conflict, fragile and post-colonial state. He argued that the minimal state cannot effectively contract out justice and security provision. Indeed, in order to contract out such services, the state would have to know what is out there, to define its needs and then to define a policy, write a contract and manage this contract – functions which the minimal state is precisely unable to perform. Therefore, on every level of the contracting-out process, the minimal state would likely be unable to do it.

Taking one step back, Mr. Scheye proposed a definition and a typology of justice and security services. Justice and security, he said, are public goods with their own peculiarities, and which are meant to be delivered along four principles that he defined as: affordability, accountability, accessibility and appropriateness.

To contract out something, it has to be a public good: a public good and service is available to all, while a private good and service is a product, commodity or service which is privately consumed after a price is paid. When looking at modes of delivery of public and private goods, Mr. Scheye proposed the typology below:

Public goods and services can:

- *be delivered by the state* (state courts, police);

- ▶ *be contracted out* (for instance through Public Private Partnerships, although there are still few examples of this);
- ▶ *be delivered by non-state local justice and security networks*.

On the other hand, the private goods and services of security and justice are provided by:

- ▶ *state agencies*, when they have effectively privatised an element of themselves, for instance when they charge for a service;
- ▶ *private security companies* when they provide security in a bank, a mall or a neighbourhood;
- ▶ *armed groups*, which provide security and justice in a privatised way.

He then mentioned the difficulty of distinguishing between non-state local networks on the one hand, and armed groups on the other. Both actually provide security and justice as a public or private good. This would require a redefinition of the relationship between these actors and the state, the nature, level and timeframe of this association, and to determine whether the group has a specific grievance or if the network has been providing the service for a long time.

Mr. Scheye asserted that non-state networks are often more efficient, legitimate and accountable than the state. He referred to recent studies on Nigeria and Timor-Leste, which show how the population tends to choose non-state providers of security and justice over state providers, because the latter do not exist or do not offer good services.

As described in detail in his paper, Mr. Scheye recommended that donors focus on the improvement of the interface between state and non-state actors which may ultimately permit a contracting-out arrangement. More specifically, donors should:

- ▶ support legislative reform, to allow for the delegation of legal mandates to local actors;
- ▶ support paralegal actors and train leaders of local networks to increase their ability to supply justice and security;
- ▶ support capacities in performance measurement, which is the activity most likely to be contracted out.

Presentation by Mr. Rubem Cesar²⁵

Mr. Rubem Cesar, head of the NGO Viva Rio, presented the activities of his organisation. Viva Rio was created in 1993 in reaction to a period of extreme violence in the city of Rio de Janeiro. The vision of Viva Rio, and its biggest challenge, is to integrate security and development goals and to act at the local level. It is active in four main areas: youth, small arms control, security sector reform and drugs, and it targets poor and violent neighbourhoods known as *favelas*. It works in partnership with both government and the private sector. Since 2001, it has become increasingly involved outside Brazil, notably in Haiti and more recently in Africa, specifically in Angola.

Mr. Cesar described three types of activities as being linked to the contracting-out approach:

- ▶ Viva Rio provides *technical assistance for capacity building* in the security sector. He stressed the importance of ownership of such programmes by the state and by security forces. These activities include the development of pedagogical material for training personnel, which is then endorsed by the state (or by the UN Department for Peacekeeping Operations in the case of training for peacekeeping personnel); projects for the instruction of trainers (as in the case of the Rio municipal police); and the establishment of a database on small arms and ammunition and the training for its use.

- ▶ Viva Rio contributes to *enhance the participation of the local community in the safety of their neighbourhoods*, based on the idea that no improvement is possible without the involvement of the community. It therefore aims to develop the community capacity to interact with the government. Examples include the creation of a call centre for serious criminal cases which people can call anonymously to provide information that is then transmitted to the police. Another example is, in the area of Bel-Air in Port-au-Prince (Haiti), where the facilitation of agreements between the armed gangs (*'bases'*) by which the absence of homicides is rewarded with advantages to the members of the *bases* or their communities, for instance in the form of scholarships.
- ▶ A third set of activities is about *institutional innovation*: in Brazil, Viva Rio supported the creation of a mediation table at the community level, which was formally connected to, and recognised by, the state legal system. This mediation table addresses cases of family, labour, property or neighbourhood disputes. Once the disputes are settled with the signature from the two parties, the state justice officially recognises the agreement.

Presentation by Ms. Achieng Akumu²⁶

Ms. Achieng Akumu presented USAID's approach in supporting local non-state actors of security and justice. This type of engagement is relatively new and is the consequence of more than 20 years of experience in the formal sector, which gave limited results at the level of communities. As a consequence – and notably on the basis of examples coming from Afghanistan, Iraq, Pakistan, Somalia and Sudan – USAID and the US government at large have adopted a major paradigm shift and concluded that informal systems could no longer be ignored.

One main lesson in this regard was that the gap between formal and informal systems is the frontline between instability and adherence to the rule of law. Indeed, while understanding the possible cons of such an approach, in fragile situations, traditional mechanisms are what has been resolving disputes for years.

USAID is currently developing guidance on this approach, based on mapping exercises, notably conducted in Afghanistan and Liberia, in partnership with the US Institute of Peace (USIP) and USGAA.

The focus of this new approach is to work on creating a space for all actors to work together, including those active in traditional, religious and customary systems. This leads to working on the development of legal frameworks, with a multi-layered approach that addresses both informal and state systems, and includes the intended beneficiaries who also need to be educated on their rights and responsibilities.

The pursued objective of this approach is, therefore, to address informal justice and security from within, from the ground up, and to bridge processes and procedures, to ultimately affect behavioural change. Mapping exercises and an identification of needs are key first steps in this direction, which should lead donors to provide a forum to promote dialogue while encouraging national procedures in order to avoid parallel operating systems.

Presentation by Ms. Emily Speers Mears²⁷: “Regulating the Private Military and Security Industry in Fragile States”

Ms. Speers Mears presented current initiatives to regulate the private military and security industry in fragile states, on the basis of the research conducted by a team led by James Cockayne at the International Peace Institute. This led to the book *Beyond Market Forces*²⁸ and an accompanying policy

report, *Private Military and Security Companies: A Framework for Regulation*.²⁹ They identified five blueprints for a standards implementation and enforcement framework for the global security industry.

Ms. Speers Mears first provided an overview of the private military and security industry. Private Military and Security Companies (PMSCs) fit loosely into two main categories: international PMSCs and local PSCs. The services they provide are guarding and protection, including policing. They also provide consultancies including risk management and security sector reform (SSR), security training for both the police and the military, as well as training for journalists, aid workers and others travelling to risky security environments. And finally, PMSCs provide some military services.

The regulatory problem stems from the considerably high risk of human rights violations and other illegal behaviour by PMSCs, especially in fragile states, which by definition do not have the regulatory and enforcement capacity to address this risk on their own. Ms. Speers Mears noted that current efforts – national regulation, intergovernmental efforts, company codes and civil society initiatives – have not done enough to address this risk.

However, Ms. Speers Mears informed participants that, at the initiative of the Swiss government, there is now a robust agreement to initiate a structured process over the next 6-18 months to develop an international code of conduct addressing operational standards, human rights and international humanitarian law (IHL); and to develop arrangements for this code of conduct's implementation and enforcements. She emphasised how this initiative offers an opportunity to develop comprehensive standards for the industry and effective international arrangements for their implementation and enforcement.³⁰

Ms. Speers Mears and her fellow researchers proposed five detailed blueprints, not mutually exclusive, for how such a standards implementation and enforcement framework could look:

- ▶ **A Global Security Industry Watchdog:** This would be a guardian of existing standards and fill the transparency gaps. It could be state-backed or run exclusively by civil society. There is a prototype in the Geneva Call, which works with non-state armed groups to encourage them to sign up to the Anti-Landmine Treaty and monitors their subsequent compliance with the treaty.
- ▶ **An Accreditation Regime:** This would operate as a market signalling device, to turn demand into an incentive for compliance and accreditation. It would have three linked functions: certification, auditing and ratings. It could resemble the nascent Humanitarian Accountability Partnership (HAP), an accreditation framework for the humanitarian sector.
- ▶ **Arbitral Tribunal:** An arbitral tribunal would not address violations of human rights. It would serve as a forum in which contractual parties (either companies and clients, or companies and employees) could enforce the terms of their contracts. State regulators could also seek advisory opinions or decisions in specific cases. Precedents include the Court of Arbitration for Sport.
- ▶ **Harmonisation Scheme:** This scheme would encourage harmonisation of national regulatory arrangements around an international code of conduct. Member states would report to a Secretariat and through it to other scheme participants, on their regulation activities. The Secretariat would identify and provide technical assistance for newcomers to the scheme, and where necessary financial aid as well.
- ▶ **Club:** A Club would provide a framework for states, PMSCs and clients to develop and implement a shared professional culture or ethic, through collectively wielded peer pressure. Precedents include the Voluntary Principles on Security and Human Rights (VPSHR).

Ms. Speers Mears then stressed the importance of involving fragile states in this process, which will require building their regulation and enforcement capacity, as well as the need to be context-sensitive, perhaps considering the option of working groups with specific regional focus.

Discussion

In the discussions, participants agreed on the specificities of the sector, which implies political sensitivity as a core sovereign function and includes a high potential of human rights abuse. Another specificity is that service structures in the sector are multi-layered, including a broad range of players, from state to non-state actors. As a consequence, contracting out cannot be the first option and the focus should be on assisting and developing the capacity of local networks that deliver the bulk of justice and security services, but also in a way that connects them to the state.

There was a strong consensus from all participants on the need to regulate the profusion of PMSCs at the local, national and international levels. PMSCs play a variety of roles and include a high incidence of Human Rights abuses, which makes a strong case for their regulation at the national and international levels. Regulation is indeed desirable for both the state and the companies themselves.

Closing Plenary: The Way Forward

Presentation by Mr. Michael Carnahan

Mr. Carnahan started by emphasising the need for greater conceptual clarity, noting the confusion surrounding ‘core functions’ and ‘essential services’. He suggested dividing activities into two categories: ‘policy’ (i.e. what to do) and ‘implementation’ (i.e. the doing of it).

He noted that truly ‘core services’ like executive decision making or budget allocations are not contracted out by sovereign governments, except in the situations of shared sovereignty situations, like in pre-independence Timor-Leste. On the other hand, ‘essential services’ like healthcare delivery are often contracted out by governments at all levels of development.

The issues are mostly the same:

- ▶ Is there the capacity to design, negotiate, implement and monitor the contract?
- ▶ Is there an ability to ensure that the service is branded as a government service?

Regarding the link with state building, he noted that contracting out need not impact sovereignty or national ownership as long as the national government has the capacity to negotiate and manage the contract; and the decision to contract is made by the government with partner governments acting under the spirit of the Paris Declaration. Exiting from contracting out will take time – and may only be possible when the general capacity of the public sector labour force has increased.

As a way forward, he suggested that a greater focus be given to the lessons from the broader contracting literature, rather than taking a sectoral or development approach.

Presentation by Ms. Seema Ghani³¹

Ms. Seema Ghani provided her thoughts on the first day of debates and on the way forward, noting firstly the risk of dependency on contracting out, as in the example of Liberia, and the challenge for governments to manage different players. She also stressed the fundamental importance of context

and the need to better define and formulate different types of contracting out. On terminology, she expressed the hope that the organisers could develop a common framework or set of guidelines.

Recognising that contracting out might be needed in some situations, she insisted on the importance of capacity building, without which a contracting out project cannot succeed. She also emphasised that, for the sake of the long-term objective of state building, the government should always be the lead and decision maker.

In the decision to contract out, she recommended undertaking an initial assessment of the context, to adopt a programmatic rather than a project approach, and to give priority to local companies if they exist, to regional companies as a second choice and only as a last option to international firms.

Lastly, she addressed the distinction between different government functions and services and asserted that the government does not necessarily have the responsibility to deliver all services but should focus firstly on policy making. While service delivery can be outsourced, she said, core government functions such as security and justice should not.

Presentation by Mr. Raj Kumar³²

Mr. Raj Kumar started by presenting DEVEX, an online marketplace for international development, providing recruiting services and development business news to nearly all international development organisations, and bringing together buyers and sellers in international development to make this market more efficient. Looking at the aid industry in general, he noted its major market failures in terms of high transaction costs (e.g. information, bidding, payment, risks), insufficient competition, lack of capacity, and opaque measurements for success since recipients' power in the market is weak.

Regarding the contracting-out marketplace, he stressed that, contrary to the general assumption that it is sufficient to build the contracting-out model and contractors will come, it is actually necessary to proactively create interest among contractors and build contractor capacity. What contractors need, he said, is: a consultative process to issue the tender; clear selection criteria; a long-term time horizon to justify the benefit of the contractor investing time in a bid; to make biases transparent and turn them into positives; to include targets for local, Diaspora, and South-based contractors; and to provide payment guarantees and payment dispute mechanisms.

Focusing on managing contractor procurement, he recommended to not just issue a tender but to proactively seek out the best companies and NGOs and include them in a consultative process. Mr. Kumar also suggested to set aside funds to develop local companies and NGOs; to consider managing the contract size for desired results, as big contracts tend to exclude small firms and NGOs; to offer performance-based bonuses and make result measurements clear from the start; and to consider the problems of pay parity and brain-drain and integrate them in the process.

Mr. Kumar then outlined a series of thoughts on the way forward. Considering that speed matters in post-conflict situations, he suggested developing a global mechanism for quick response service contracts, as well as a list of pre-approved international fiscal and procurement agents. He stressed that capacity building is the key long-term success factor and therefore suggested to create good practice guidelines around capacity building for contracting out; to develop a contracting-out toolkit for fragile governments; and to ensure that the private sector and civil society are part of the capacity building construct. He also recommended studying the idea of donor guarantees to encourage firms who may be worried about being paid by fragile governments.

Concluding on DEVEX, he noted that its role in this respect may be to help identify individual consultants with contracting-out experience, help attract contractors to bid and help raise awareness among NGOs and companies about contracting out.

Presentation by Mr. Armand Borrey

Mr. Borrey suggested some thoughts on the way forward, based on the idea that a capable and responsible state is essential to obtain sustainable development. He reminded participants how the central objective of a state in a fragile situation is to reduce poverty and to improve the living conditions of its population by delivering accessible basic services. As service delivery by the state or by other players has an impact on state-society relations, related political choices must stem from an open dialogue with the population.

Mr. Borrey's recommendations included:

- ▶ *The government must play a fundamental role.* As state leadership is key, the state has to determine its options after a national consultation on the opportunities of contracting out. Regarding *what* can be contracted out, Mr. Borrey suggested not to talk about core government functions and to let the government decide what to contract out. He also agreed on the fact that contracting out is not a sign of state failure but should be presented as an innovation and a response to the needs of the population.
- ▶ *If the contracting-out option is selected, it is fundamental to have a plan of phasing-in and phasing-out.* The monitoring and evaluation process is also key and capacities in that sense must be reinforced if a contracting-out arrangement is defined.
- ▶ *The question of the balance between urgent needs and long-term capacity development is also crucial* as contracting-out is indeed a long-term process.
- ▶ The question of contracting out temporarily, progressively or permanently is also key and should be defined by the government according to its own priorities.

As a conclusion, Mr. Borrey suggested that, within the upcoming decentralisation process in DRC, the AfDB and the OECD proceed with an in-depth study of a province to explore opportunities for contracting out.

Discussion

In the concluding discussions, participants agreed on the importance of a cost-benefit analysis of contracting out, not only in economic but in political terms. They also noted the confusion between 'core functions' and 'government services,' which had erroneously been used interchangeably during the conference, and called for greater clarity in forthcoming debates. They discussed risks of contracting out in areas which have a direct impact on contracting out, and emphasised the need for government ownership over the contracting-out process.

Last, participants concluded by agreeing on the connections between contracting-out discussions and the aid effectiveness principles, considering that services in fragile states are funded by donors, therefore making the Paris Declaration principles directly applicable to contracting out. On this matter, it was suggested to include such debates in the broader issue of budget support and the discussions on untied aid.

Closing Remarks

In her closing remarks, **Ms. Margaret Kilo** expressed satisfaction for the important opportunity to have the partner country perspective on the topic of contracting out and to exchange on this matter. She reminded participants of the donor community's objective to manage scarce resources in an efficient manner in order to maximise development results, and ultimately to assist fragile states in meeting the Millennium Development Goals.

She emphasised the AfDB's strong focus on infrastructure and utilities, a sector in which African countries are lagging behind, and stressed the issue of trust between partners and donors, and how the PFM systems are of critical importance to build trust in the country system. She noted that some sectors lend themselves more easily to contracting out, and defined those by being the 'hardware' (i.e. things you can build) and highlighted the importance and complexities of capacity building.

In conclusion, **Mr. Jerzy Pomianowski** highlighted that the conference had allowed an open debate on a topic that had never been addressed in a comprehensive way before. Thanking all participants for the fruitful exchanges, he noted that these were but a first step and that further work was needed on the complex matter of contracting out core government functions and services in fragile and post-conflict situations. He therefore informed the audience on the PDG's plans to carry forward this thinking and its intention to ultimately produce a handbook on good practice for contracting out government services in fragile situations.

Endnotes

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21. Institute for International Monetary Affairs
22. Chair, African Security Sector Network
23. See OECD (2009), *Contracting Out Government Functions and Services: Emerging Lessons from Post-Conflict and Fragile Situations*.

24. Consultant
25. Head, Viva Rio
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28. Available for download at http://www.ipacademy.org/media/pdf/publications/beyond_market_forces_final.pdf
29. Available for download at http://www.ipacademy.org/images/pdfs/pmsc_epub.pdf
30. See <http://www.eda.admin.ch/psc>
31. Consultant
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Keynote Speech by Professor Paul Collier

Note from the Secretariat

Professor Paul Collier of Oxford University addressed participants at the PDG/AfDB's *Conference on Contracting Out Core Government Functions and Services in Post-Conflict and Fragile Situations* on the need for new and innovative thinking on service delivery. He called for the developing countries, civil society and donors to re-visit the typical western European model of full service delivery through state ministries, exploring a range of options, including independent service authorities for managing, assessing and regulating diverse actors.

Professor Collier said he was not in favour of the use of the term “contracting out” *per se* as it implied reducing the role of the state. Instead, he said the debate should concentrate on how to modernise the state through innovation. Using the analogy of how mobile phone technology enabled many developing countries to bypass analogue technology, he said fragile states needed to look past the 1950s European model for ministry-based service delivery. Britain's public service model in the aftermath of the Second World War was of extremely high quality, with workers who were self-motivated and fully aligned with the interests of ordinary citizens. But the quality of these services did not endure (i.e. when pay scales reduced, motivation decreased). Once self-motivation was lost, it was almost impossible to reverse the newly established behaviour patterns, even when the root causes of dissatisfaction were addressed. And while Scandinavian countries possessed the most envied models of recent history, these worked because they delivered services to communities that were very small and ethnically homogenous – a model which was not appropriate in fragile states contexts.

As an alternative to traditional “contracting out” in fragile states, Professor Collier proposed a model of independent service authorities (ISAs), which is described in detailed in his attached paper. The ISAs are an echo of the independent revenue authority model. However, instead of raising revenue, they are first and foremost a public regulator agency for the state to deliver services to its citizens using a variety of different mechanisms (e.g. NGOs, churches, donors) and providing benchmarks and quality standards, evaluation and monitoring. An ISA could improve on a traditional ministry by:

1. Not having to motivate workers itself (that would be the job of the smaller and more connected providers).
2. Encouraging competition between providers as a way of measuring quality.
3. Fostering more direct incentives to deliver quality services. Providing high financial incentives does not work in service delivery where individual and group performance is not easily monitored and where efforts are diverted to what is measured and the highest remuneration, rather than concentrating on motivation to meet citizens' needs.

4. Providing not just carrots but also sticks. As an independent organism for service delivery, sticks often have more power.
5. Labelling all services as government services (thus contributing to state building) no matter who is providing them.
6. Making performance monitoring central, rather than being lost in a range of priorities. The evaluative data collected would give good service providers and donors the evidence they need to argue in favour of scaling up where appropriate.
7. Having an ISA board composed mainly, but not entirely, of government appointees (it should also include donors and civil society in a minority as a way to prevent secrecy).

Professor Collier said that a major advantage of ISAs in fragile states was that they could be started incrementally with very small start-up costs and could even exist within an existing government structure. Good service providers would be attracted to the idea of improving standards and competition (for example, Oxfam has already indicated its enthusiasm to participate in a pilot of an ISA).

Regarding the ISA's impact on the role of ministries, Professor Collier said ministries would be freed up to concentrate on their core planning functions. Nevertheless, the ISA should be seen as a longer-term initiative – rather than a temporary fix – to get countries over a development/capacity hump.

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Partnership for Democratic Governance

Contracting Out Government Functions and Services

EMERGING LESSONS FROM POST-CONFLICT AND FRAGILE SITUATIONS

The ability to deliver essential public services and government functions is a prerequisite for well-functioning, legitimate states. It is also a necessity if states are to meet the most basic needs of their citizens while maintaining security and stability, bringing in foreign direct investment, pursuing poverty reduction objectives and strengthening governance. Established in 2007, the Partnership for Democratic Governance (PDG) aims to reinforce the capacity of states in fragile and post-conflict situations to build democratically accountable institutions and improve access to key services for their citizens. The Partnership for Democratic Governance Series brings together emerging lessons and policy recommendations that relate specifically to the challenge of service delivery in post-conflict and fragile situations.

The second volume of the Partnership for Democratic Governance Series investigates whether “contracting out” core government functions and services has been conducive to capacity development. Each case study discusses the evidence and emerging lessons of contracting out in fragile and post-conflict situations.

The chapters contained in this publication first appeared as contributions to the Partnership for Democratic Governance’s collaborative online platform, PDG Online. Through this platform, users are able to post comments on discussion papers, send messages to the authors and easily find information relevant to the topics covered in this publication. To join the PDG Online Community, please visit www.pdg-online.org

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