A CONFERENCE CO-ORGANISED BY THE AFRICAN DEVELOPMENT BANK AND THE PARTNERSHIP FOR DEMOCRATIC GOVERNANCE

CONTRACTING OUT CORE GOVERNMENT FUNCTIONS AND SERVICES IN POST-CONFLICT AND FRAGILE SITUATIONS

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INTRODUCTION

There are increasing questions emerging from developing countries’ governments and the aid community regarding the most effective ways of supporting state building and capacity development, especially in more sensitive contexts such as fragile or post-conflict environments. The OECD publication (2006), The Challenge of Capacity Development: Working towards Good Practice, sets out the mixed record of the international community in supporting capacity development. The evidence also points to a series of failures on the part of donors and partner countries alike. These include a lack of persistent and patient support to local institutions and the frequency of supply-driven approaches, mainly in the use of international consultants.

These lessons are particularly important in developing countries with weak governance institutions and is all the more acute in fragile states, where deficits of political will, state capacity and legitimacy mean that the basic needs of ordinary people are not met. Recent work in the OECD’s Fragile States Group (FSG) suggests that there may be peace-building and state building dividends as a result of successfully delivered public services, particularly as countries return to peace after violent conflict. These dividends can accrue when accountability is strengthened between citizens and service providers.

Therefore, developing countries’ governments and supporting donors have placed great emphasis on identifying successful strategies to consolidate administrative capacity, develop and strengthen core government functions such as Public Finance Management, procurement, customs, taxation and security, as well as deliver essential services to the population. Effective service delivery—whether provided by state, non-state, or international actors—takes place when central governments have the basic capacity to set their own broad policy directions, to procure and manage contracts, and to regulate public services.

Yet while concerned with investing in long-run capacity strategies, developing countries’ governments and donors alike are faced with pressures to ‘get the job done’ and, in particular, to have one or two ‘functional’ key sectors and/or services to kick start state consolidation and development. As a consequence, in order to circumvent state paralysis, bilateral and multilateral donors as well as developing countries’ governments have sometimes favoured options where core government functions or service delivery are not performed by the state itself.

ABOUT CONTRACTING OUT

2.1 Origins and Rationale

A wide range of principal-agent arrangements exist which allow non-state actors to get involved in core government functions and service delivery, by performing a particular task, function or service. On one end of the spectrum, United Nations-mandated operations and international compacts are mechanisms by which the state shares part of its authority. On the other end, privatisation in government implies that the state relinquishes all form of authority on a given domain. In developing countries, this was introduced during the mid ‘80s principally for state enterprises, in the context of the implementation of structural adjustment policies.

Other frequent arrangements include the establishment of project implementation units (PIUs) in the framework of international technical assistance. When related to service delivery or core policy functions, PIUs may become parallel structures to the state.
formally under government tutelage but in practice managed by donors. Additional modalities are the use of non-state actors as advisors or secondment mechanisms, such as the recently created ‘secondment facility’ for fragile states of the AfDB, whereby a pool of senior African officials can be deployed to fragile states for short- or medium-term assignments.

While these mechanisms all refer to non-state actors fulfilling state functions, ‘contracting out’ is a distinct arrangement which strictly refers to 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).

Contracting out implies that a particular task, function or service is performed by personnel outside of the organisation. Contracting-out decisions come from either (i) the inability (e.g. lack of capacity) of organisations to perform certain functions in-house or from (ii) a cost efficiency motive, i.e. the decision to free up cash, personnel, time or facilities for activities where the organisation holds competitive advantage. Organisations having strengths in other areas may for instance contract-out data processing, legal services, manufacturing, marketing, payroll accounting or other aspects of their businesses to concentrate on what they do best and thus reduce average unit cost.

Contracting out is a widely used option in many settings, including in both industrialised and developing countries. The choice depends on several considerations: political preferences about the scope of state action; an analysis of efficiencies in service production by non-state contractors as compared to government, etc.

Contracting out always comes with the apparent tradeoffs of having to choose between efficiency in delivering short-term development outcomes versus longer-term capacity development and ownership. Despite the well-known caveats of contracting out (including the difficulty to successfully implement an exit strategy, lack of accountability towards citizens, the loss of sovereignty over statehood functions of government, lack of lasting capacity building, etc.), the outsourcing of government functions may still be favoured to balance weak state capacities or better and quickly respond to citizens’ needs.

2.2 Modalities

Contracting out arrangements can take several forms according to:

(i) **Implementation modalities**: transfer of competence and authority to perform core functions or services can be delegated in full (policy design and implementation) or partially (when policy making remains in the hands of the government);

(ii) **The nature of service providers**: contractual personnel who are neither civil servants nor permanent state employees and usually work independently or for non-profit organisations or private sector firms.

(iii) **The accountability structure**: whether the contractor reports to the government and to end-users or to a donor funding its contract. The degree of ownership by the government, especially at the end of the contract will also depend on whether the contract was well-integrated into national development strategies and whether governments and citizens managed to stay engaged even in the presence of a third party.

(iv) **The extent of the contractor’s obligations**, who can be asked to both develop national capacities and ensure service delivery or simply to ‘get the job done’.

2.3 Contracting Out in Fragile States

As pointed in a recent OECD study, “When the state is not willing or is truly incapable, aid donors need alternatives. This means more limited involvement with government — or, if necessary, avoidance in favour of non-state providers. Delivery of services by private firms or NGOs is not necessarily inferior to delivery by the state and in some settings is preferable, but state fragility inevitably reduces the role of the public sector in favour of non-state actors. There are several alternatives [...]”. In fragile settings, the deci-

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6 In 1997, the OECD published a set of *Best Practice Guidelines for Contracting Out Government Services*, which highlighted key success factors to externalise core government functions. [See OECD, PUMA, Occasional Papers n° 20, Contracting Out Government Services, February 2007.]

7 OECD DAC Fragile States Group (2008) *Service Delivery in Fragile Situations: Key concepts, Findings and Lessons*

8 Ibid.
sion to contract out often comes from the assessment that government is insufficiently capable or trustworthy to produce services directly. In any case, the cost/benefit of contracting out needs to be kept in mind by governments and donors who are considering it as an option.

Interestingly, contracting out and the use of international interim personnel has also resurfaced in international policy circles. As discussed by Professor Paul Collier, early Technical Assistance (TA) in turnaround cases (countries emerging from conflict or crisis) can deliver change and TA is also effective in generating turnaround. Specifically, ‘Independent Service Authorities’ should be considered as alternative service delivery structure for weak-capacity states in which few alternatives can be found to perform these services and functions. The term refers back to existing ‘independent revenue authorities’ which were put in place to handle domestic resource mobilisation outside of traditional government channels. The same logic would be applied to the delivery of public services outside of the regular public service. As Collier explains it, “the idea is that in countries where basic public services such as primary education and health clinics are utterly failing, the government, civil society and donors combined could try to build an alternative system (…). The key feature would be a high degree of scrutiny by civil society as to how the money was being spent, competing channels of service delivery encompassing public, private and NGO and continuous evaluation to see which was working best.” The management of these externalised (contracted-out) services would be handled jointly by government, donors and civil society and co-funded by donors and government. The Authority would have the task of contracting and evaluating, not delivering; ministries retain policy control; and a variety of suppliers would deliver services.

Ultimately, as pointed by Collier and most other studies on the topic, contracting-out practices are not intrinsically good or bad. It does not matter much whether agents are from the public, private or non-profit sector. Rather, what seems central is whether these contracted-out services or functions can enable the state to strengthen its capacity and legitimacy over time. As stated in another OECD study, “(…) what matters is not so much the balance between public and private delivery mechanisms, but the impact of these mechanisms on establishing the state’s territorial reach, its legitimacy and its capability to meet and be seen to be meeting social expectations.”

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CONTRACTING OUT AND THE PDG MODEL

The PDG concept was originally premised on the need to explore new approaches and partnerships for capacity development in fragile, post-conflict and developing countries, in particular through the use of international personnel as providers of services and core policy functions.

An OECD expert-level meeting on “New approaches to capacity development and service delivery in emerging democracies” held in April 2007 highlighted the need to learn more about recent experiences in contracting out and the role of external players in policy management or service delivery and suggested that the international community might want to consider how to facilitate voluntary, time-limited and, wherever possible, co-financed and South-South contractual agreements between donors and recipients.

In its current version, the PDG has been given a broader mandate that extends beyond the facilitation (clearing house) of contracting-out arrangements in developing countries and fragile states. Nonetheless, through its field-related work, the PDG can still play an innovative role by identifying expertise for contracting-out purposes and advising developing countries’ governments and the donor community along these lines.

Yet there is insufficient international evidence of how such practices can be conducive to capacity development and state building. As pointed out in a recent study, “Despite their significance in the implementation process, there has been little empirical work to date examining the relationship between for-profit consultants, development agencies providing funding and developing countries

9 Paul Collier, The Bottom Billion (2007)
10 OECD DAC Fragile States Group (2008), State building in fragile situations: how can donors do no harm and maximise their positive impact
11 OECD summary record [SG/M (2007)1]: Expert level meeting on “New approaches to capacity development and service delivery in emerging democracies”, April 2007
in the area of public sector reform. This is surprising given that private sector consultants have played an increasingly visible role in defining the boundaries of the debate and the validity of specific mechanisms introduced to strengthen public sector governance systems.\(^{13}\)

The OECD expert-level meeting on “New approaches to capacity development and service delivery in emerging democracies” provided preliminary lessons, evidence and insights on how to improve capacity development through contracting out. Using these emerging conclusions as a starting point, the PDG decided to organise a conference to further explore the conditions and policy implications of contracting out, especially in fragile and post-conflict settings.

The interest for doing so was confirmed by PDG members at the 2\(^{nd}\) and 3\(^{rd}\) Steering Group meetings in May and October 2008.

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OVERVIEW OF CONTRACTING OUT MODALITIES

As highlighted above, donors can use a wide range of modalities to support the contracting out of core government functions and services. There are various implementation modalities (full or partial authority transfers; capacity development and/or executing mandates), different types of service providers, a variety of contractual arrangements (including the nature of the accountability structure or the degree of ownership by the government.)

In terms of choice of personnel, contractors have come from private sector companies as well as NGOs, but can also be experts from neighbouring countries (South-South collaboration), experts supported by triangular co-operation or twinning arrangements. Countries in the south often have a comparative advantage in terms of the relevance and newness of their own reforms and their presence is often perceived to be more acceptable and legitimate in some partner countries.\(^{14}\)

In recent years, many developing country governments (often supported by donors) have provided funding to NGOs to deliver essential public services. Contracts, rather than direct grants, have become increasingly popular as a means by which NGO services are engaged in the delivery of key public services in sectors such as health and education.

With regard to contracting out core government functions to private sector companies, there are several recent examples from developing countries, including some in fragile or post conflict settings. In Liberia, a private sector contractor was awarded a contract in 1997 by the Government to be a ‘Pre-Shipment Inspection’ (PSI) agent. The PSI provided the physical verification and documentary checks of products at the time of export. In 2004, the Liberian Ministry of Commerce and Industry suspended these operations, because it was said that the contractor was not performing according to expectation. In South Sudan, the government assigned a service provider to carry out all of its procurement functions including works, goods and services.\(^{15}\)

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EMERGING LESSONS

Some of the lessons that emerged from the existing literature on contracting out core government functions in developing countries include the following:

- **Donors may be more inclined to choose contracting out modalities in transitional, low-capacity settings** where the pressure to ‘get things done’ and show results is even higher.

- **Politics are central and there is no fixed model for successfully contracting out.** Cases show that it is impossible to generalise and what matters most is that the local political opportunities and constraints are well understood in each case. In all cases we must be alert to the risks of waves of international donor staff and consultants, many of whom are largely unaware of local political dynamics, proposing reforms, which are unworkable and, in the worst case, damaging to the underlying institutional capital.

- **Contracting out comes with well-known caveats** such as arrangements that bypass governmental systems, or distort local incentives through high salaries for donor-funded personnel. **Contracting out can be compatible with state and capacity development objectives** under certain conditions. There is a need to balance the focus on short-term results with plans for building sustainable local capacity. **Clear exit strategies are also needed.**

- **Ownership should remain a central focus for all stakeholders.** The effects of contracting out on contributing or delaying national ownership should be a main concern for partners and donors.

- **Accountability is essential.** Making contracting out work requires public accountability systems and government responsibility. In this sense, it need not (and should not) remove political accountability for allocation decisions from government, even though it brings in outside agencies as producers with the support and oversight of international donors.

- Often, inadequate attention is paid to the costs of (or the capacity needed to) managing the contracting out process and monitor the contractor’s compliance.

- **There are promising lessons showing how contracting out can be successfully implemented:**
  
  (i) Executive authority, once granted, must be real—both in terms of technical inputs but also in terms of management development. Executive contractors must have the space and authority to deliver their terms of reference without interference;

  (ii) A clear delineation of responsibilities between contractors and partner governments must be made and partner governments must have the capacity to manage and oversee contractors;

  (iii) Contractors must be primarily accountable to partner governments whether funded by donors or not;

- **Some sectors are more conducive to contracting out arrangements** and the specificity of the service or policy function matters greatly. The cases show that results may be achievable in high-specificity functions (such as core revenue and expenditure functions). Sectors featuring high specificity, low transaction volumes, a degree of organisational autonomy and where the relevant personnel are linked through an internationally agreed set of professional standards are likely to be susceptible to technocratic reform from outside. Audit, customs or tax administration may be examples.

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16 Some of these lessons have also been drawn from cases and discussions of the 2007 OECD expert-level meeting on “New approaches to capacity development and service delivery in emerging democracies”.

17 OECD DAC Fragile States Group (2008), *Service Delivery in Fragile Situations: Key concepts, Findings and Lessons*


Ultimately, contracting out is never the only option: there are alternative and mixed models. There are cases where donors can support nascent institutions and local ownership by working through, and not around, existing government structures.

6 CONFERENCE FOCUS AND KEY QUESTIONS

The conference will focus on contracting out experiences in fragile and post conflict situations. It will mainly concentrate on two types of arrangements: (i) when non-state actors are placed in executive positions to carry out state functions, and (ii) when non-state providers entirely supplant a service sector.

The conference will identify policy recommendations for developing countries’ governments and the international community to help strike a balance between the need for urgent service delivery and, on the other hand, the longer-term concerns about ownership, building sustainable institutions and in some cases sovereignty.

Case studies from Africa, Asia and Latin America will provide evidence and lessons from contracting-out practices across selected core sectors and services such as Public Finance Management, procurement, customs, taxation, security, audit, water, health and education.

In the course of the conference, the following key questions will specifically be looked into:

**POLITICAL DIMENSION OF CONTRACTING OUT AND TECHNICAL ASSISTANCE**

- How to assess the desirability of contracting out in a given country/sector? (vis-à-vis effects on sovereignty, ownership, ability to manage, monitor and evaluate the contractors, and possible alternatives…)

**MAINTAINING STATE BUILDING AND CAPACITY DEVELOPMENT AS CENTRAL OBJECTIVES**

- How to address trade-offs between the achievement of short-term development outcomes with capacity building and sustainable knowledge transfers?
- How to implement effective exit strategies?
- In what sectors is contracting out most likely to be conducive to state building?

**ADDRESSING THE NEEDS OF CITIZENS**

- How to ensure that contracting out arrangements better fulfil the needs of target groups in an effective and equitable way?
- How to include the mobilization of local resources and local knowledge in contracting out modalities?

**CONCERNS FOR AID EFFECTIVENESS**

- How to ensure that contracting out arrangements are well integrated into government–led national strategies?
- How to ensure optimised coordination with various donors while some are supporting contracted out functions?

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20 OECD background note [SG (2007)1]: Expert-level meeting on “New approaches to capacity development and service delivery in emerging democracies”, April 2007
CHOOSING MODALITIES AND SOURCES OF ASSISTANCE

- How to assess the degree (partial or full) of contracting out a service or function of government?
- How to select the right contractor with the right capacities (NGO, private sector, diaspora…)?
- Can a balance be struck between immediate service delivery by contractors and government-led efforts (mix of instruments)?
- How to combine capacity development support with a ‘doing’ mandate? (Should the same contractors be tasked to do both?)

ADAPTING MODELS TO COUNTRY SITUATIONS

- How to minimise opposition to external interventions amongst government teams? (managing salary, cultural and working style differences)
- How to build in accountability mechanisms especially in fragile environments where civil society’s capacity might be weak?

DRAWING POLICY RECOMMENDATIONS FOR STAKEHOLDERS

- For governments, civil society, donors and contractors

OBJECTIVES AND EXPECTED OUTCOMES OF THE CONFERENCE

The central objective of the conference will be to discuss whether (and under which conditions) contracting out services and core policy functions can be conducive to state building and capacity development in developing, fragile and post-conflict countries, and complies with the principles of the Paris Declaration on Aid Effectiveness (2005).

To that effect, the conference will aim at developing policy recommendations for developing countries’ governments and the aid community to strike a balance between the pragmatic urgency of service delivery and the imperative to get the job done on the one hand and, on the other hand, longer-term concerns about ownership, building sustainable institutions and, in some cases, sovereignty\(^1\).

In particular, the conference will examine:

- Evidence of past experience in contracting out core functions and services in fragile and post conflict countries to the private sector, NGOs or other donor coordinated initiatives;
- What sectors (if any) have better lent themselves to contracting out arrangements and which ones have been pivotal in supporting state building?
- Whether common features can be identified between successful contracting out arrangements;
- Alternatives to contracting out, especially in weak capacity environments.

Prior to the conference, the following products will be developed:

21 OECD background note [SG (2007/1): Expert-level meeting on “New approaches to capacity development and service delivery in emerging democracies”, April 2007}
a **scoping paper** will map past experiences of contracting out core government functions and services in developing, fragile and post-conflict countries.

3-4 **case studies** (countries still to be determined) will be commissioned to discuss the evidence and the emerging lessons of experiences in contracting out in fragile and developing countries. Case studies will provide geographical balance as well as experiences from fragile, post-conflict and ‘well-performing’ developing countries.

The proceedings of the conference will be published. The publication will reflect the comprehensive discussions, debates and conclusions of the conference. The publication will benefit to policy-makers, donors, contractors and civil society organisations who wish to learn from the experiences in contracting out essential public services and core government functions in fragile and developing countries.
GENERAL SOURCES

Contracting Out in Developing Countries


Contracting Out in OECD Countries


CONTRACTING OUT SPECIFIC FUNCTIONS AND SERVICES

Customs


Health


**Utilities**
