Opening Remarks

Opening the conference, Mr. Jerzy Pomianowski 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 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 Negatu 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 Ndikumana 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 Akwetey: “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 Batchelor: “Contracting Out in Fragile States: What have we learned?”**

Mr. 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 Haqjo**

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 Tujan**

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 Fukuda**

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 Abramson

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 Gwenigale

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 Hughes14 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 Larocque**

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 Paudyal**

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 Fennell**: “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 Borrey

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 élite 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 Mabior 18:** 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 Carnahan

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 Borsley

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 Fukuda**: “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 Hutchful

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’. 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 Scheye

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 Cesar

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 Akumu

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 Mears: “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 and an accompanying policy
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. Spears 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.

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 regulatory 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, expect 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 Ghani

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 Kumar**

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 untying 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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2. Director, Governance, Economic & Financial Management, African Development Bank
3. Director, Development Research Department, African Development Bank
4. Executive Director, Institute for Democratic Governance (IDEG)
5. Head of Bureau for Crisis Prevention and Recovery, UNDP
6. Chamber of Commerce, Afghanistan
7. Chairman, Reality of Aid
8. Senior Economist, Institute for International Monetary Affairs
10. Minister of Health, Liberia
11. Technical Advisor, Ministry of Health, Liberia
12. Head of Policy, Merlin
13. Education Specialist, Asian Development Bank (ADB)
14. Senior Divisional Engineer, Ministry for Peace and Reconstruction, Nepal
15. Practice Manager, CARDNO
16. Chief of Staff, Ministry of Planning, Democratic Republic of the Congo
17. Policy Analyst, OECD
18. Ministry of Finance & Economic Planning, Government of Southern Sudan (GoSS)
19. Researcher
20. Crown Agents
21. Institute for International Monetary Affairs
22. Chair, African Security Sector Network
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26. Office of Democracy and Governance, Rule of Law Division, USAID
27. Independent Researcher and Programmes Assistant with Medical Emergency Relief International (Merlin).
30. See http://www.eda.admin.ch/psc
31. Consultant
32. President, DEVEX