

The Contract System of Employment in Selected Pacific Nations

2.1 Introduction

The guideline objectives of the assignment contained in the ToR were followed closely in the interviews and group consultations (see Appendix B, C, D and E). The researchers sought to re-focus some objectives, however, and added these to the original objectives to ensure a more holistic evaluation of why initiatives, begun with good intentions, had not produced the expected outcomes. Following are the amended objectives used to solicit views and observations of interviewees:

- **Identify objectives** underpinning government's decision to place heads of departments, ministries and agencies on contract employment and whether the contract arrangement has achieved the planned objectives. Highlight outcomes.
- Define how contract employment **integrates with the government's** broad reform agenda and whether **returns on investments** in implementing this initiative has contributed to sustaining reforms – in particular, improved service delivery.
- **Identify and assess management approaches** used by officials operating under a contract system and recommend where improvements can be made.
- **Discuss the recruitment and selection system/process** in place concerning appointment of contracted heads of departments/ministries.
- Evaluate the operating performance management system and related incentive and reward mechanisms.
- **Discuss the discipline framework** that is in place for poor performance and the mechanism for grievance and unfair dismissal/treatment.
- **Highlight challenges** posed by contract employment on the independence and neutrality of the public service from political interference.
- **Identify areas** where positive/negative lessons can be drawn and shared, and those requiring improvements and why.

2.2 Objectives underpinning the introduction of a contract system of employment

Overwhelmingly, the Pacific island governments have adopted the idea of contract employment because leaders were convinced this would bring benefits to the public service in relation to improved service provision as well as overall commitment. Under the system of long tenure employment, the honourable tradition of serving the public with humility and respect was secondary in most work places and the public was perceived as a mere nuisance. With the elected officials being made accountable to the people through Parliament, the contractual appointment of permanent secretaries by the head of state or Cabinet based on the advice of the Public Service Commission would ensure their being made accountable for the implementation of government's policy decisions and programmes. Previously, permanent secretaries' performances were almost exclusively assessed for the in-house workings of the employer, in this case the Public Service Commission.

Island countries have had diverse reform agendas and pursued reform differently; they therefore adapted and developed systems and practices that best suited their local context. The most compelling finding was the fact that all Pacific island countries were struggling with the management and administration of contract employment.

An ADB evaluation of the effectiveness of ADB support for public sector reforms in the Pacific reported that, when managing complexity, *'Reforms introducing modern systems needed to better consider historical, social, and cultural traditions and context in design and implementation'*. This is reiterated through the experiences of those interviewed, in particular the permanent secretaries who advised that they had failed to thoroughly articulate the complexities surrounding contract management before deciding to institutionalise it. This view was also shared by some ministers when questioned about the lack of understanding and commitment on their part in relation to:

- Managing the contract agreement and its deliverables;
- Managing the performance assessment and accountability of CEOs/PSs; and
- Managing conflict resolution – to effect termination for underperformance or for breaching the code of conduct.

Although most of those consulted supported and agreed with the benefits of contract employment, they were cynical about certain aspects of the system, yet preferred to 'pass the buck' rather than taking responsibility in addressing issues. For instance:

- Too many players involved in the administration of contract, i.e. Cabinet, ministers, PSC, DPM (PNG) and Secretary to Prime Minister and Cabinet, thereby creating delays and confusion regarding demarcation of roles;
- The issue of accountability is clouded (who do CEOs report to? – Head of State, PM, Cabinet, minister responsible, chairman of PSC, Financial Secretary etc.);

- Views of contracted employees concerning certain aspects of the contract as noted above are not seriously taken into account before formalising the contract agreement;
- Difficulty in performing agreed tasks in the contract when the approved budget does not provide the necessary resources;
- The need to synchronise the whole planning cycle, contract agreement, and the budget;
- Absence of proper incentive systems to compensate for extra responsibilities and satisfactory achievements; and
- Inconsistency in interpretations of specific provisions of the contract document by the contractor and government legal adviser.

2.3 Integration of contract employment to broad reforms and return on investments in implementing contract system of employment

As discussed in section 2.2, the introduction of contract system of employment was part and parcel of NPM systems and practices adopted by governments to change the modus operandi of the public service to become more responsive, transparent and accountable in its daily conduct. Other new systems that were introduced to institute and reinforce changes in public service culture included strategic corporate management (formulation of corporate plans, annual management plans, output-based performance budget, service charters or standards) and the enforcement of performance management system. While the internal operations of public service were strengthened and reinvigorated, at the same time commercial oriented functions of governments were corporatised and privatised.

Again the experiences of countries visited are rather mixed. Samoa's experience has been positive. However, after the first decade, interested contenders had lost confidence in contesting CEO positions when the same people who were currently holding those positions were being re-appointed. The absence of robust performance assessment and evaluation meant that government continued to employ some CEOs – who were 'clearly underperforming', as claimed by some interviewees. Where CEOs have been continuously re-appointed on the basis of 'satisfactory performance', it is debatable whether government has benefited from such investments.

Team work and the spirit of collegiality varied between countries and one tends to question the roles of the respective players who are responsible for monitoring CEO performance and conduct – for instance chairpersons of PSC, the responsible ministers and in some cases the department of human resources/personnel, PM and Cabinet. Though contract employment continued to be revised and amended, the

process in itself had been beneficial for respective players in terms of their capacity building in contract management.

Overall, responses from people interviewed stated that investment in contract employment has been positive in many cases because ministries have been able to achieve their expected outputs. Also in terms of sustainable development island countries have been able to attract and retain their most experienced and most qualified citizens from leaving in search of better conditions or 'greener pastures'.

There is a need to conduct a comprehensive analysis of this component in view of the contract inclusive package: salary, allowances, benefits of vehicle, accommodation, house maids, insurance and professional development to mention a few.

2.4 Management approaches used by public officials operating under a contract system

A template outlining the management approaches used in ministries and departments was sent out before field visits. The aggregate response indicates that in most island countries PSC and Ministry of Finance delegated and/or devolved some of their operational functions but the management of finance and human resources was largely centralised.

Samoa and the Cook Islands had fully devolved the PSC functions to line ministries in early 2000, but they differed in their individual approaches. In the case of Samoa, operational functions such as leave and allowances administration had been devolved outright. As for more technical functions such as recruitment and selection, and discipline and grievance management, these were initially trialled by ministries through delegation before full devolution became effective. Though the bulk of traditional PSC operational functions have been fully devolved, in the performance of these devolved functions ministries were required to comply with the PSC's strategic HRM framework. This arrangement was deliberate so that PSC could monitor and facilitate line ministries management of devolved functions.

In the case of the Cook Islands, PSC operational functions had been devolved to heads of ministry without trial and therefore public servants' benefits and working conditions were determined unilaterally by the responsible HoM. Although this devolution allowed the HoM to get on with the management of their personnel, it created anomalies because of different interpretations of the PSC Act by HoM. This management challenge had been compounded by the absence of regulations and guideline policies to assist the HoM.

The approach taken by these two countries varied because the management of finance is also different. Where financial management in the Cook Islands is fully devolved to HoM, in Samoa, Ministers and CEOs have delegated authorities of up to \$100,000 and \$50,000 respectively. In addition, goods and services valued at more than \$100,000 were tendered publicly.

In other jurisdictions, both the human resources and finance are either delegated or semi-delegated with limited authorities. The purpose for such cautious decisions according to interviewees was twofold:

- Ministries and departments do not have the necessary capacity to perform these functions; and/or
- The current system has not been fully developed to ensure fair, just and corrupt free management.

For outsourced functions, performance outcomes have been mixed with successes more noticeable in road construction, telecommunications and ports maintenance compared with utilities such as water and electricity.

In view of the above scenarios, one can conclude that Pacific island countries tend to be more comfortable with some delegation and semi-delegation rather than full devolution. In regards to contract employment, the Pacific scenario prevents permanent secretaries and CEOs from being effective and efficient managers because the essential resources, i.e. finance and HR, required for the discharge of ministries responsibilities are managed centrally.

2.5 Recruitment and selection process for contract employment

One of the challenges mentioned by interviewees was the delay in the whole process of recruitment and selection, and re-appointments because of the multitude of players who were responsible for specific stages of the process. In every country visited, the common player who handled the administrative functions was the Public Service Commission. The other ministries involved were the Office or Ministry of Prime Minister and Cabinet. The only exception was the Cook Islands where an appointment was the prerogative of the PSC Commissioner in consultation with the responsible minister, though the final decision required Cabinet's sanctioning. The other player was the Office of the Attorney General.

However, in the case of Papua New Guinea the PSC is a separate agency from the Department of Personnel Management and when a permanent secretary position becomes vacant the advertisement is a shared responsibility between the Department of Personnel Management and the Department of Prime Minister and National Executive Council. This arrangement, according to interviewees, often resulted in long delays in advertisements and appointments. Under previous arrangement of long tenure employment, the only active player concerning the permanent secretary appointments was the Public Service Commission.

2.6 Performance measurement and reward under the contract system of employment

Performance measurement, reward and compensation for work done varied extensively between island countries visited. Appendix C provides more detailed information with the exception of PNG who at the time this report was written were unable to submit the requested information.

The following were challenges identified with regard to performance measurement:

- The absence of linkage between the annual approved budget and any deliverables in the performance agreement between the minister and CEOs/DGs/PSs;
- The absence of corresponding performance assessment framework to enable the process; and
- A lack of commitment by ministers and chairpersons of PSC to conduct the assessment in most cases.

In reference to the first point, Samoa has ensured that since the introduction of output-based budgets there is a linkage. This connection was not present in the early years of contract employment. It has evolved over years and after many attempts to address evident teething problems. A corresponding performance assessment framework was developed and involved a lot of consultation between the Chairman of PSC, minister and CEO. Though it had been developed in 2003, the responsible players then were not really interested in performing this task. Vigorous assessment has now been conducted.

In the case of Tonga, performance measurement was hindered by the lack of connectivity between the contract agreement and the annual budget. According to the CEOs the problem arises from the Expenditure Review Committee changing their Ministries' budget and other resources required for service provision. The performance assessment system is based on an elaborate customised balanced score card. During the field visit the question was raised whether the balanced score card was used in the case of CEOs who were disengaged or terminated by government. Inconclusive responses indicated an uncertainty about the process. Some commented that CEOs had been terminated based on the PM's assessment of his/her performance.

Such scenarios are not unique to Tonga. It has happened in PNG and Vanuatu quite frequently over the years. It was understood that PSs and DGs tend to be too preoccupied with nurturing their relationships with their ministers rather than managing and leading their ministries. Those employees assisting PSs/DGs and CEOs readily expressed their dislike and anger about the conduct of most PSs. However, in spite of these grievances, they still believed contract employment was the way forward - as long as those responsible for assessing CEOs' performance were competent and performed their responsibilities adequately.

It was apparent that most island countries provided decent basic salaries as well as the other usual perks of vehicles, telephone, accommodation at non-commercial rates, uncapped travel, etc. The need for improvements was in relation to compensation for excellent performers through payment of a bonus of some sort. Again, given the fact that Samoa introduced the contract system of employment much earlier, Samoa is perhaps much more advanced in many aspects in comparison with the other island countries.

2.7 Scope of and potential of leadership demonstrated by CEOs under a contract system of employment

In all jurisdictions, contract employment has provided CEOs with the opportunity to demonstrate their leadership qualities – however, this has not always been the case. There are some very strong, visionary leaders in every country but, in the case of Samoa, women have demonstrated that they are more committed and are better strategic thinkers and planners compared with their male counterparts. This viewpoint is reiterated by political leaders themselves, who have endorsed the fact that women tend to work long hours, are always better prepared for meetings and do not shy away from making hard decisions.

This fact that women CEOs/PSs/HoM are more capable and competent leaders is obvious in other countries as well, for example in Tonga, Cook Islands and, of late, the Solomon Islands. In these countries the selection process is merit based and together with socio-cultural values, the scope for women becoming leaders is relatively very positive.

Factors that have contributed to few women holding CEO positions in the Melanesian countries are largely based on cultural values. These same values contribute to the low number of women having completed tertiary education compared with men. This is a priority area where affirmative intervention by the Commonwealth Secretariat is required.

2.8 Impact of the contract system of employment on the independence and influence of the CEO

Broadly, there is a misconception that contractual employment has eroded the independence of the public service and influence of CEOs in managing and leading their ministries.

This assumption could be quite accurate when a CEO displays a certain degree of laxity to avoid a clash with the Minister or when traditional values deeply embedded in the public service are the values respected by the PSs or CEOs and/or when CEOs or PSs compromise their independence because of wanting to remain in the minister's good books.

The intent of contract employment was based on honourable principles and aimed at encouraging ministers and CEOs to work together as a team. Therefore both parties need to respect the independence of the public service and act accordingly. Interestingly, this has been quite difficult to maintain in a small island environment where everyone knows and is related to each other. There are many examples where the independence of the public service has been compromised and continues to be – with the presence or absence of a contract system of employment. Again, in search of explanations countries must look towards traditional values, behaviours and governance institutions and the impact on reform – an issue raised in the report on the ‘Review of the Progress of the Public Sector Reform Programmes in the Pacific’.

Most of the appointments to contract positions in all Pacific countries are based on who the ministers are comfortable with. This is not a bad thing especially if a minister has little knowledge of the allocated portfolio as he/she can depend on the appointed person. But the negative aspect to this type of appointment is the failure to ensure COEs/DGs/HoD are advisers ‘at arms-length’ to elected officials so as to ensure that the integrity and neutrality of the public service is maintained.

2.9 Arrangement for conflict mediation and resolution

Of all the challenges of managing contract employment, conflict mediation and resolution have by far been the most controversial and sensitive component with disgruntled employees actively pursuing their grievances in courts of law. Contract employment has existed in Samoa for close to 20 years, during which two personal grievance cases have been pursued against presiding governments. One case resulted in an out-of-court settlement whereby the former CEO was re-employed for the remaining months of his contract at a different ministry and received no other costs. The second case involved another CEO who sued government and a local newspaper for defamation. Although the court ruled against the former CEO at the time, government contributed WS\$20,000 or about £5,000 sterling to assist with his enormous legal fees.

In the case of Tonga, three HoD have been terminated, which led to lawsuits being taken against the government. Two cases have already been settled out of court with hefty settlements, while the ruling on third one is yet to be determined.

The Cook Islands and PNG have had recent problems with their Financial Secretary and Permanent Secretary for Finance because of poor management of the countries’ financial investments. Both these senior public servants’ contracts have been terminated, and both have gone to the courts for settlement and to clear their names.

In all the above cases, the contracted person questioned the management of the process or the validity of the contract in relation to the legislation, or disputed the involvement of ministers in the decisions which were being challenged. What we can

conclude from these situations is the fact that the termination clause in employment contracts is not clearly spelt out, thereby allowing both parties to re-negotiate settlement out of court when faced with issues of conflict or dispute. Whether this aspect of contract employment practice is preferred to an express employment contract is a matter that requires further research and adjustments to ensure its compatibility with the local context.