

Challenges in the Implementation of Performance Contracting Initiative Inkenya

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Abstract

The paper explores the challenges faced in the implementation of the concept of performance contracting (PC) in the public sector in Kenya; Design/Methodology/Approach – This article is informed by a literature review on performance contracting initiatives, and their implementation and applications across diverse settings in Kenya. Findings – Challenges faced in the PC approach are discussed. Sustaining performance gains derived from the PC is central to improving public sector service delivery in Kenya and concerted efforts must be made to inculcate sustainability, while continuously improving public offerings and at the same time addressing the challenges.

1.0 INTRODUCTION

1.1 WHAT IS A PERFORMANCE CONTRACT?

The definition of Performance Contracts itself has been a subject of considerable debate among the scholars and human resource practitioners. A few definitions however, will suffice in explaining what the concept means. Performance Contracting is a branch of management science referred to as Management Control Systems.

Lane (1987) defines a contract as,

‘a binding agreement between two or more parties for performing, or refraining from performing some specified act(s) in exchange for lawful consideration’.

On the other hand, The American Heritage Dictionary (2009) defines performance as,

‘...the results of activities of an organization or investment over a given period of time.’

With this in mind “Performance contracting” therefore, can be defined as,

‘a binding agreement between two or more parties for performing, or refrains from performing some specified act (s) over a specified period of time. It is a branch of management control systems which provide information that is intended for managers in performing their jobs and to assist organizations in developing and maintaining viable patterns of behaviour’ (CAPAM, 2005).

Suresh Kumar (1994), defines it as

“...performance contract as a Memorandum of Understanding (MOU). MOU is rooted in an evaluation system, which not only looks at performance comprehensively but also ensures forces improvement of performance managements and industries by making the autonomy and accountability aspect clearer and more transparent..”

OECD (1999), defines Performance Contract as,

“...a range of management instruments used to define responsibility and expectations between parties to achieve mutually agreeable results”.

In the Kenyan public service scene a Performance contract is thus defined as a,

“... freely negotiated performance agreement between Government, organization and individuals on one hand and the agency itself ...”

(Kenya, Sensitization Training Manual, 2004).

It is thus an agreement between two parties that clearly specify their mutual performance obligations, and the agency itself.

While Smith (1999), argues that a common definition of performance contracting can be found, there are a considerable variety of uses and forms for quasi-contractual arrangements. In this paper performance contracting is used as a management tool to help public sector executives and policy makers to define responsibilities and expectations between the contracting parties to achieve common mutually agreed goals.

As part of performance management, performance contracting is a central element of new public management, which is a global movement reflecting liberation management and market-driven management. Liberation management means that public sector managers are relieved from a plethora of cumbersome and unnecessary rules and regulations, which usually hinders quick decision making in the organization (Gianakis,

2002). The debate in the public sector has been more complex than just increasing the effectiveness of strategic management systems and narrowing the gap between ambitious strategies and annual planning.

The main concern has been to improve external accountability and increase internal efficiency and effectiveness at the same time. In particular, performance contracting is seen as a tool for improving public budgeting, promoting a better reporting system and modernizing public management while enhancing efficiency in resource use and effectiveness in service delivery (Greiling, 2006).

2.0 PERFORMANCE MEASUREMENT

Performance measurement is often taken to be crucial to the delivery of improved services as part of New Public Management. Emphasis on performance management for delivery of results is undoubtedly influenced by the basic assumption of performance management which lies in its professed ability to unite the attention of institution members on a common objective and galvanize them towards the attainment of this objective (Balogun, 2003).

It is this supposition of harmony of vision that underpins the New Public Management faith in leadership and its favorable inclination towards managerial empowerment, as seen in performance management principles.

The use of performance data to inform management is not a new concept. The belief that concrete data on organizational performance, or performance metrics, should guide managers' decision making has framed most discussions of management in public and

non-profit agencies in the developed and developing countries since the early 1990s. With the increased emphasis on quantitative measurement of outcomes, the term "performance measurement" has become a higher priority. Measuring and reporting on organizational performance focuses the attention of public managers and oversight agents, as well as the general public, on what, where and how much value programs provide to the public. (See, for example, Forsythe 2001; Hatry 2006; Newcomer, Jennings, Broom and Lomax 2002; and Poister 2003.). The strategic use of performance management is thus intended to help drive change efforts from process to results orientation in the public service.

Performance management aims at by and large to attaining operational effectiveness, which in a broader sense refers to a number of practices that allow an organization to better utilize its resources. The quest for productivity, quality and speed has spawned a remarkable number of management tools and techniques; total quality management, benchmarking, re-engineering and change management to mention just a few. All these, if pursued from strategy angle leads to emphasis being put on the wrong place.

Typically, public agencies either are not clear about their goals or are aiming at the wrong goals. This lack of clarity can be attributed to the fact that most public agencies have to deal with multiple principals who have multiple (and often conflicting) interests (Triveldi 2000). This leads to fuzziness in the agencies perception of what is expected of them.

Defining performance is therefore enlightening in many public sector organizations. They begin to ask the right questions and realize that they need to do whatever they have defined well and deliver that efficiently. Emphasis in reforming the public sector has therefore been slowly shifting in many developing countries more towards operational effectiveness, which entails doing what one, is doing better. With defined outcomes and appropriate benchmarks to measure the outcomes, the rampant lack of focus is brought into the open. Managers begin to ask the right questions, redefine the problem they are trying to solve and diagnose that problem anew. In organizations where performance measurement systems are already established, and resources are already devoted to providing credible performance data in a timely fashion, performance data can be used effectively to support these change efforts. Where performance measurement systems are not as institutionalized, efforts to develop useful performance measures can support change efforts in several ways. Performance data can be used to:

- Inform useful deliberations among key stakeholders about why and where change is needed—"to make the case for change";
 - Focus on aspects of programmatic performance likely to be affected by change;
- and,
- Track the effects of changes to reinforce and reward employees for achievement of desired outcomes of change efforts.

Performance measurement, therefore, for some very good reasons has been widely seen in many developing countries as a way of improving public service delivery.

Kervasdoue (2007) asserts,

"No one would disagree that performance evaluation is necessary in public affairs. Governments and their bureaucrats must be accountable to their citizens about all use of taxes and public funds. Comparison of the use of these funds for the analysis of public service performance is the only way of justifying their use, other than simple arguments of authority."

In different settings, different paths are therefore being followed towards a similar set of goals—a management system that emphasizes the centrality of the citizen or customer, as well as accountability for results.

In New Zealand and Britain, systemic and radical reform measures have been adopted utilizing the new ‘*managerialism*’ inclination of the New Public Management to the full, to re-orient the public service and to decentralize its functions. In other settings such as Singapore and Malaysia, new approaches have been added to the existing administrative tool-kit available to government. New managerial tools have facilitated incremental reform, enhancing ‘*managerialism*’ without radically destabilizing the more traditional features of the public service (Commonwealth: 1995).

2.1 WHAT DOES PERFORMANCE CONTRACTING MEAN IN KENYA?

2.1.1 Background

The Government of Kenya introduced Performance Contracting in the Public Service as one of the tools to improve service delivery. Since its introduction in 2004, when only a few State Corporations were participating, Performance Contracting is now being implemented in a majority of the Ministries, Departments and Agencies (MDAs). The decision to extend its coverage to all MDAs was as a result of the benefits that were beginning to be manifest in participating institutions through improved administrative and financial performance as well as improved service delivery. Ministries were for the first time being required to work towards set targets, draw out service charters with their clients and compare their performance with the best in the world. The results of these efforts were so significant that they won international recognition with various African countries wishing to learn from Kenya’s experience (GoK, 2010²).

In Kenya, the concept of Performance Contracting is defined as a freely negotiated performance agreement between the Government and the respective Ministry, Department or Agency which clearly specifies the intentions, obligations and responsibilities of the two contracting parties. As such, it stipulates the results to be achieved by the contracted party and the commitments of Government as the contracting party (GoK, 2010²).

It is a freely negotiated performance agreement between the government, acting as the owner of public agency on one hand, and the management of the agency on the other hand. The performance contract specifies the mutual performance obligations, intentions and the responsibilities of the two parties. Similarly, it also addresses economic/social and other tasks to be discharged for economic or other gain. It organizes and defines tasks so that management could perform them systematically, purposefully and with reasonable probability of achievement. These also assist in developing points of view, concepts and approaches to determine what should be done and how to go about doing it. The expected outcome of the introduction of the performance contracts includes improved service delivery, improved efficiency in resource utilization, institutionalization of a performance-oriented culture in the public service, measurement and evaluation of performance, linking rewards and sanctions to measurable performance, retention or elimination of reliance of public agencies on exchequer funding, instilling accountability for results at all levels and enhancing performance (GoK, 2007).

The Kenyan government does acknowledge that over the years there has been poor performance in the public sector, especially in the management of public resources which has hindered the realization of sustainable economic growth (GoK, 2005). The government reiterates in the Economic Recovery Strategy (ERS) some of the factors that adversely affect the performance of the public sector. These include excessive regulations and controls, frequent political interference, poor management, outright mismanagement and bloated staff establishment. To improve performance, the government has continued to undertake a number of reform measures. However, these measures have not provided a framework for guiding behavior towards attainment of results or ensured accountability in the use of public resources and efficiency in service delivery. The initiatives for instance lack the performance information system, comprehensive performance evaluation system and performance incentive system (GoK, 2005).

In the Kenyan context a performance contract is a written agreement between

Government and a state agency (local authority, State Corporation or central government ministry) delivering services to the public, wherein quantifiable targets are explicitly specified for a period of one financial year (July to June) and performance measured against agreed targets.

The performance contracting practice as implemented in Kenya hence mirrors very closely the OECD definition:

‘...As a range of management instruments used to define responsibilities and expectations between parties to achieve mutually agreed results ...’.

The government of Kenya guidebooks on performance contracting defines it as,

‘...A management tool for measuring performance against negotiated performance targets. It further states that a performance contract is a freely negotiated performance agreement between the government, acting as the owner of the agency and, the management of the agency’

The Performance Contract specifies the mutual performance obligations, intentions and responsibilities between

the two parties. The relationship in the negotiation of the contract is therefore what Elmore (2007) terms an exchange involving reciprocity: capacity for performance, and vice versa.

The first Approximation of this principle would look something like: For every unit of performance I demand of you, I (Government) have an equal responsibility to provide you with a unit of capacity. If I provide the capacity, you are obliged to provide the performance. If I default on capacity, you may default on performance.

Reciprocity therefore operates as a political governor or control system on the relationship between the government and the agencies they seek to influence. The success of this policy principle requires acknowledgement of the reciprocal relationship between principal and agent. The ultimate objective is to improve the quality of the lives of our citizens.

To achieve this objective, countries the world over have expended considerable effort to create efficiencies in the exploitation and utilization of national resources, and to benchmark service delivery standards to the highest possible levels. The most successful countries are, in many cases neither the largest, nor highly endowed with physical resources. The backwardness of highly resourced countries in the third world, including countries in continental Asia, South America and Africa on the one hand, and the relative

advancement of otherwise resource -deficit countries on the other, is adequate evidence that comparative advantage in resource endowment is not a critical factor in economic development. Success stories in the world have leveraged largely on competitive advantage, by continuously building efficiencies in the management of their public services. This is because of the realization that performance of the public service defines and indeed forms the glass ceiling for the performance of the private and other sectors.

The introduction of Performance Contracts as the national management accountability framework in Kenya was premised on this need- to build the country's competitive advantage around the performance of the Public Service. The system redefined public sector 'performance' to mean focusing on outputs and outcomes, not on inputs, processes, or preoccupation with activities.

To succeed, the relatively new system has entailed:

- a) Inculcating ethics and new value systems of honesty, probity, patriotism and respect for the nation's diversity;
- b) Re-organizing the governance machinery to achieve higher levels of competence, transparency and accountability, and to minimize waste in government spending;
- c) Enlisting the support of stakeholders from the private and other sectors to participate in growing the national economy;
- d) Changing the role of the state from that of a sole provider of employment and services, to the new role of creating an enabling environment for wealth and employment creation;
- e) Creating a lean, efficient and working government, and- by curtailing wasteful public expenditure- freeing resources to fund development programs and people issues(GoK,2010).

Implementation of reforms to improve our Public Service performance followed closely on the lines of what came to be adopted by the United Nations as "*The Vienna Declaration on Building Trust in Government*", at the Global Forum on Reinventing Government, held in Vienna, Austria, in 2007.

The Vienna Declaration identified the following initiatives to strengthen the confidence of citizens in their government.

1. Prioritizing **Service Delivery and Access**.
2. Increasing **Transparency and Accountability to Combat Corruption**.
3. Improving **Access to ICT**.
4. Supporting **Effective Civil Society Engagement**.
5. Enabling **Public-Private Partnerships**.
6. Promoting **Innovations in Public Sector Reforms**.

These, along with the need to link development programmes and the benefits of economic growth to the '*mwananchi*'¹ at the grassroots; have been the areas of concentration in institutionalizing performance management in Kenya.

2.1.2 RATIONALE FOR PERFORMANCE CONTRACTING IN KENYA

A *Performance Contract* is a management tool for measuring performance against negotiated performance targets. It is a freely negotiated performance agreement between the Government, acting as the owner of a public agency, and the management of the agency. The Performance Contract specifies the mutual performance obligations, intentions and responsibilities of the two parties

The expected outcomes of the introduction of Performance Contracts include:

¹=Kiswahili word for citizen

- Improved efficiency in service delivery to the public by ensuring that, holders of public office are held accountable for results;
- Improvement in performance and efficiency in resource utilization and ensuring that public resources are focused on attainment of the key national policy priorities;

- Institutionalization of a performance -oriented culture in the Public Service;
- Ability to measure and evaluate performance;
- Ability to link reward for work to measurable performance;
- Instilling accountability for results at all levels in the government;
- Ensuring that the culture of accountability pervades all levels of Government;
- Reduction or elimination of reliance on Exchequer funding by Public Agencies;
- Ability to strategize the management of public resources;
- Recreating a culture of results-oriented management in the Public Service (GoK, 2010).

The decision to implement the performance contracting took several steps before the eventual adoption. Some of the major policy decisions being:

- The policy decision to introduce Performance Contracts in the management of public resources was conveyed in the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007). Further, Kenya's Vision 2030 has recognized performance contracting among the key strategies to strengthen public administration and service delivery. The strategies will, in this regard, focus on deepening the use of citizen service delivery charters as accountability tools, and entrenching performance as a culture in the Public Service.
- On 15th January 2004, the Government, *vide* Cabinet Memo No.CAB (03) 115, directed that all Permanent Secretaries/Accounting Officers of Ministries/Departments and Chief Executive Officers of State Corporations be placed on *Performance Contracts* by June,2004.
- To roll out the strategy, the Government established the Performance Contracts Steering Committee (PCSC) in August 2003. The Committee was gazetted on 8th April 2005. The PCSC is responsible for the overall administration and co-ordination of Performance Contracts in the public service. In the process of implementing Performance contracts, the Committee is assisted by an Ad-Hoc Negotiation/Evaluation Task Force comprising experts drawn from outside the public service. The Ad-Hoc Task Forces are responsible for negotiating Performance Contracts, evaluating and moderating performance of Ministries/Departments on behalf of the Permanent Secretary, Secretary to the Cabinet and Head of Public Service. The Ad-Hoc Evaluation Task Force also evaluates and moderates the performance of State Corporations, Local Authorities and Tertiary Institutions.
- Performance Contracts were first introduced on 1st October 2004, in (sixteen) 16 largely commercial State Corporations. In 2005/2006, all the then 35 Government Ministries/Departments, 116 State Corporations and five pilot Local Authorities signed Performance Contracts and were evaluated in September 2006. In 2006/2007, all the 38 Government Ministries/Departments, 127 State Corporations and 175 Local Authorities signed Performance Contracts and were evaluated in October, 2007. During 2007/2008 all the 38 Government Ministries/Departments, 130 State Corporations and 175 Local Authorities signed Performance Contracts and were evaluated in October 2008. Evaluation of performance in respect of the Financial Year 2008/2009 involved 45 Ministries/Departments, 139 State Corporations, 175 Local Authorities and 68 Tertiary Institutions.
- In the performance evaluation reports, the Ad-Hoc Evaluation Task Force concluded that, performance contracting is, on the whole a valid and necessary strategy. It observed further, that the success of the strategy is highly dependent on political goodwill and focused leadership. The speedy entrenchment of the process is attributable to the consistent support and encouragement by the President and the Prime Minister. The enthusiasm, commitment, competence and focus provided by the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service, together with the Permanent Secretary, Performance Contracting Department (PCD) have significantly contributed to the success of the Strategy.

The efforts of these were capped in an address on 20th July 2007, on the occasion to receive the United Nations Public Service Award, which Kenya won in the first category on improving Transparency, Accountability and Responsiveness in the Public Service, His Excellency the President Hon. Mwai Kibaki, C.G.H., M.P., observed that:

“Performance Contracting is a local initiative which has benefited from best practices from countries world over which have successfully implemented the system. It has also been fully locally funded and is not donor driven. This is clear evidence that

our public servants have the requisite capacity and competence to help the country realize Vision 2030."

Traditionally, the shortcomings of the public sector were seen as organizational problems capable of solution by appropriate application of political will, powerful ideas and managerial will. The overriding concern with economic growth has led to a focusing. Over the years, poor performance of the public sector, especially in the management of public resources has hindered the realization of sustainable economic growth.

Some of the factors adversely affecting performance include:

Excessive regulations and controls, frequent political interference, poor management, outright mismanagement and bloated staff establishment. To improve performance, the Government has been undertaking a number of reform measures. The challenge of securing commitment for results is profound, particularly at this time when the rhetoric of public service performance improvement is as prevalent as the reality. This commitment takes a willingness to commit before hand, take responsibility for, to own and to accept praise and blame for delivery of services agreed upon in a performance contract (GoK, 2010).

2.1.3 THE PROCESS OF PERFORMANCE CONTRACTING AND EVALUATION IN KENYA

In Kenya, performance contracting is a hybrid system that has borrowed from international best practices and the Balanced Score Card. The Performance Contracting and Evaluation system best practices were drawn from: South Korea, India, China, USA, United Kingdom, China, Malaysia and Morocco but domesticated to suit the local context. Balanced Score Card as an evaluation tool provides a logical connection between the *Vision, Mission and Strategic Objectives* with the desired results in terms of Customer and Stakeholder needs, financial/budget, internal processes and capacity building (learning and growth). It also links strategic objectives to long term targets and annual budgets (GoK, 2010²).

The decision to extend its coverage to all MDAs was as a result of the benefits that were beginning to be manifest in participating institutions through improved administrative and financial performance as well as improved service delivery. Ministries were for the first time being required to work towards set targets, draw out service charters with their clients and compare their performance with the best in the world. The results of these efforts were so significant that they won international recognition with various African countries wishing to learn from Kenya's experience (GoK, 2010).

Performance Contracting is a key component of the performance-based practices adopted by the Government of Kenya. Performance Contracting was first introduced in Kenya through the Parastatals Reform Strategy Paper, which was approved in 1991. This strategy paper saw the introduction of performance contracting on a pilot basis to two agencies: Kenya Railways Corporation and the National Cereals and Produce Board (GoK, 2010). The decision to extend its coverage to all MDAs was as a result of the benefits that were beginning to be manifest in participating institutions through improved administrative and financial performance as well as improved service delivery. Ministries were for the first time being required to work towards set targets, draw out service charters with their clients and compare their performance with the best in the world. The results of these efforts were so significant that they won international recognition with various African countries wishing to learn from Kenya's experience (GoK, 2010²).

Currently it is now being implemented in a total of four hundred and sixty two (462) public institutions. Performance contracting was re-introduced into the Kenyan Public Service in 2004 as part of the Civil Service Reform instituted under the Economic Recovery Strategy for Wealth and Employment Creation. The re-introduction of Performance Contracting in Kenya was contextualized through an administrative circular issued by the Permanent Secretary and Secretary to the Cabinet and Head of the Public Service and later anchored through subsidiary legislation for State corporations and Local Authorities. Implementation of performance contracting is overseen by an institutional framework anchored in the executive arm of Government (GoK, 2010²).

In the evaluation of the performance contracts, the parameters for Performance Evaluation are founded on performance criteria categories. For each cluster of public institution, the performance criteria categories and total sub-weights are preset. Under each criteria category, sets of indicators are defined. In computing the performance score, the evaluator is expected to determine the level to which the performance an institution is affected by exogenous factors. The evaluation of the performance of public agencies entails the rating of actual achievements against performance targets negotiated and agreed upon at the beginning of the year (GoK, 2010²).

The Performance Contracting Department has continued to develop tools and instruments for implementing Performance Contracts and evaluating performance which include: subsidiary legislations for State Corporations and Local Authorities; Model Performance Contracts; Performance Contracts Matrices; Training Manuals and Information Booklets; Guidelines for Drafting and Implementing Performance Contracts and Evaluation of Performance. Of particular significance, has been the inclusion in the Performance Contracts, of Citizens' Service Delivery Charters, Customer Satisfaction and Employee Satisfaction surveys as strong instruments for enhancing and measuring the quality of service delivery and eradicating corruption (GoK, 2010).

Considerable importance is attached to the process of negotiating Performance Contracts and evaluating performance. An Ad-Hoc Task Force appointed by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service to negotiate Performance Contracts with Permanent Secretaries/Accounting Officers is already in place. The Ad-Hoc Task Force members comprise eminent persons drawn from various bodies such as: Professional associations, academia, business community and retired senior public servants.

The Ad-Hoc Negotiations Task Force doubles up as the Ad-Hoc Evaluation Team to evaluate performance of Ministries/Departments, State Corporations, Local Authorities and Tertiary Institutions. The Task Force members have been adequately trained on the process of negotiations and evaluation of Performance Contracts.

For the purpose of continuous monitoring and reporting on performance, Public Agencies are required to file quarterly and annual performance reports in prescribed formats. Performance evaluation for each public agency is based on the signed Performance Contract and the Annual Performance Report (GoK, 2010).

The Ad-Hoc Evaluation Task Force in September/October 2009 carried out evaluation of the performance of Ministries/Departments, State Corporations, Local Authorities and Tertiary Institutions.

A team of Moderators drawn from the Ad-Hoc Task Force was appointed to:

- Ensure the evaluated Performance Contract is the same as the signed/vetted contract;
- Ensure uniformity in the interpretation and the application of the guidelines in the primary evaluation;
- Ensure accuracy in the computation and the arithmetic;
- Ensure correct application of the formulae;
- Ensure that all indicators in respective matrices have been included in the evaluated Performance Contract;
- Ensure that units of measure have been applied uniformly;
- Give due consideration to exogenous factors and ensure that these are not brought to bear (positively or negatively) on the performance of the Public Agencies;
- Engage Primary Evaluators in cases of material/significant differences with primary evaluation results to create a consensus;
- Identify and document critical experiences and lessons learnt in the processes of negotiation, evaluation and moderation;
- Make recommendations on the way forward in the implementation of Performance Contracts; and
- Compile a performance evaluation report.

2.1.4 KENYA GOVERNMENT'S OBJECTIVES OF THE PERFORMANCE CONTRACTING INITIATIVE

The government's motivation in embarking on the performance contracting was so as to achieve the following very specific objectives:

- Improving service delivery to the public by ensuring that top-level managers are accountable for results
- Reversing the decline in efficiency and ensuring that resources are focused on attainment of Key national policy priorities of the government
- (Parachuted projects)
- Institutionalizing performance oriented culture in the public Service through introduction of an objective performance appraisal system
- Measuring and Evaluating Performance
- Linking reward to measurable performance
- Facilitating the attainment of desired results
- Instilling accountability for results at the highest level in the government
- Ensuring that the culture of accountability pervades all levels of the government machinery.
- Strengthening and clarifying the obligation required of the government and its employees in order to achieve agreed target.

2.1.5 DISTINGUISHING FEATURES OF KENYAN PERFORMANCE CONTRACTS POLICY

While the use of Performance Contracts in public sector is not a new phenomenon, the Kenyan experience stands out in several respects. First and foremost, in no other country PCs have had the kind of political support that they enjoy in Kenya.

The declaration and adoption of such a policy, in and of itself, requires a great deal of political will and determination. That explains the limited number of developing countries that have adopted this policy wholeheartedly, without any external pressure to do so. The size of this group shrinks dramatically when we look for countries that have used PCs in all areas of public sector. Kenyan PCs cover government departments, state-owned enterprises and municipalities. In fact, Malaysia is the only other developing country that has a PC policy of comparable scope.

In most developing countries, PCs have been introduced only for the state-owned enterprises (SOE). The asymmetric treatment of two parties to the performance contract—government and SOEs—has been a long-

standing complaint of the SOE chief executives. The system can work as expected only if both parties take their commitments seriously. If, however, as is the case in India, and other countries that have PCs only for their public enterprises, only one party to the contract (SOE chief executive) is accountable for results, the system is susceptible to risk of perverse and unintended consequences. By holding both parties equally accountable for results, the Kenyan system has an infinitely more superior design.

To be able to hold bureaucrats accountable is a much tougher political task than holding the SOEs accountable for results.

The clearest evidence of strong political support for the PCs in Kenya came when the results were announced on December 8, 2006. While PCs were introduced in the US government as part of the GPRA (1993), the results of Performance Agreements (the name for PCs in America) were never announced by President Clinton. According to Osborne and Plastrik (1997), this was due to warning by President Clinton's political advisors about the negative fallout from announcing the results publicly. The brief experiment with PCs in the Canadian government seems to have met with a similar fate. Yet, in Kenya, President Kibaki not only recognized the top performers in a public function organized for the occasion, but also identified the worst performers in the government. The fact that some of his closest colleagues in the government were at the bottom of the list did not deter him from announcing the list. By doing so, President of Kenya has significantly raised the governance bar for other leaders.

Kenyan effort also distinguishes itself in the area of theoretical design of the system. After an extensive survey of all existing systems, Kenyans adopted a methodology for their system that is clearly far ahead of the other countries that have used PCs for their government departments. Unlike the Performance Agreements in New Zealand, Malaysia and USA, the Kenyan system allows the government to prepare a list of government departments arranged in a descending (or ascending) order of their overall performance. This is possible because unlike other countries, Kenya uses a methodology that allows it to convert the performance of a government department into a composite score with a range of 1(one) to 5(five), where "1" stands for excellent performance and "5" for poor performance.

While this methodology (known as the Signaling system) has been used by Korea, India, Pakistan, Philippines and Thailand for their SOEs, only Costa Rica used it for evaluating performance of government departments.

This is not an obscure academic point. In fact, given the design of Performance Agreements in the US government, even if President Clinton wanted to announce the top performers, it would have been impossible to do so without being hugely subjective. The design of Performance Agreements in the US did not lend itself to an objective evaluation of performance at the end of the fiscal year. The weaknesses of the US Performance Agreements have been discussed at length elsewhere (Trivedi 2003), suffice to say that there were two fatal flaws in the US system of Performance Agreements that made inter-departmental comparisons impossible.

First, the performance criteria included in the Performance Agreement documents were not prioritized. Hence, at the end of the fiscal year it would be difficult to say whether meeting 8 out of 10 targets was good performance or poor performance. If the two targets that were not met were the key ones for the government department, then the performance ought to be considered unsatisfactory. *Secondly*, there was no *ex-ante* agreement on how to judge deviations from the targets. For example, it was not clear how to judge, say, a 10 % shortfall in a particular target.

As of now, in some cases, a variation of 30% can be considered normal, whereas in other cases a variation of 5% could be considered unacceptable. International experience on the other hand suggests that an *ex-ante* agreement is absolutely essential to avoid subjectivity.

The independence, objectivity and neutrality of those evaluating the performance of the public agencies is the *third* distinguishing feature of the Kenyan PCs. The PCs in Kenya are vetted and evaluated by a non-government body consisting of ex-permanent secretaries, academicians, ex-CEO of state enterprises, and other private sector experts. Thus, this is not a self-evaluation by the government.

Finally, Kenya PC system also differs from other similar systems in terms of the degree of ownership of this reform. Unlike many other difficult reforms that have been tried in developing countries (including Kenya), this initiative is not only home grown but has also been implemented without any external help. Thus, it is seen by Kenyans as a completely indigenous product fully suited to the needs of Kenya. This may partly explain why there has been hardly any serious resistance to its adoption.

2.2. CHALLENGES OF THE PERFORMANCE CONCEPT IN KENYA

There have been several Government initiatives since 2002 meant at improving delivery of services. The enactment of the Public Procurement and Disposal Act,

2005 was meant to streamline procurement efforts within the Government and avoid wastage of resources. However the successes/and failures of this particular Act are beyond the scope of this paper. The anti-corruption efforts being implemented through the enactment of the Anti-corruption and Economic Crimes Act,

2003 are among several other initiatives that have generally contributed to overall government performance and service delivery. The current performance management system popularly known as performance contracting in government was introduced in 2004. Since then, the system has gone through its own measure of successes and challenges.

On the positive side, the performance contract (PC) system is transforming the management of public affairs in a significant way. A culture of professionalism, competitiveness, innovation and target setting is being inculcated into the public sector.

Government officers are being publicly challenged to account for public resources entrusted to them on a day-to-day basis as the bar of achievement is raised each year. The Kenyan public sector is for the first time being challenged to compare with the best of the world while various Governments within and outside Africa are expressing interest on how the PC system can be adopted and customized to suit their own individual cases.

On the negative side, the culture of non-performance and lack of accountability is fighting back to resist this change.

Several questions are being raised as to 'whether the system is good enough for us' as any loophole within the system are being investigated with a view of discrediting it.

Some of the challenges in being faced in the implementation of the performance management system are discussed here below:

1. Culture Change

The government of Kenya's performance management efforts is one of the unique approaches in the world aimed at improving service delivery in the public sector. Such efforts have been tried elsewhere including Malaysia, Singapore, USA, among others with generally mixed results.

Culture change among the public officers is crucial for any meaningful gains to be realized from the management system-thus they need to embrace the culture of hard work, a competitive culture, attributes such as integrity and thriftiness in the use of resources.

A competitive culture for instance is necessary for PC to be effective. Public officials therefore need to adopt a culture of competition and benchmark their performance with global standards set out by various institutions. Though, institutionalizing a performance oriented culture in the public Service through the introduction of an objective performance appraisal system is one of the hallmarks of a successful PC-this has been a rather tall order to realize. Results are being realized albeit at a rather slow pace (GoK, 2010).

Performance contracting in Kenya is still in its formative stages. However, within its few years of existence, the system has registered mixed results. Whereas, in some sectors, the system has contributed significantly to the improved administrative and financial performance, in others, results are yet to be realized. Most ministries have shown an upward trend in their budgetary absorption with regard to development expenditures since 2005 while some state corporations are slowly beginning to realize their potential (GoK, 2010). On innovation, performance contracting has played an important role in ensuring institutions become innovative. Public Universities, for example, have moved from being dependent on Government funding to identifying ways of generating internal revenues to finance some of their operations. Other institutions like the Kenya Agricultural Research Institute are increasingly developing new products through increased research within their respective areas.

2. Acceptability

As with the introduction of any new system, the introduction of performance contracting has met some resistance within certain Government institutions. The lack of universal acceptability was one of the reasons various institutions began participation in the system at different times with the bulk of the institutions however registering their first participation in 2005/06 (GoK, 2010).

Still, it is important to note that PC is currently only being implemented in the executive arm of the Government. Performance contracting is currently being implemented in the executive arm of Government, as both Judiciary and Legislature are yet to sign the PC. The Legislature for instance in spite of its key role in Government has adamantly refused to adopt PC though the general public strongly feels that it should in order to make it more accountable to the electorate. The National Assembly, pursuant to section 31 of the Constitution, consists of elected and nominated members; who are currently 210 and 12 respectively. In the exercise of the legislative power of the Executive headed by the President, implements resolutions adopted by the National Assembly (Kenya laws, 2010).

The parliament is guided by the traditions, standing orders and privileges, which were heavily inherited from the English House of Commons. These set up of rules are clearly respected and observed by the members of parliament.

Republic of Kenya, bills are passed by the National Assembly and become law upon the President giving his assent to them, thus becoming styled, *Acts of Parliament*. There is a general concern that the MPs do pocket a lump sum hefty package and allowances, which are seconded by grants and loans, at the expense of the

Kenyan people. But, in comparison with the amount of time they spare for debating sessions in the chambers, which is frequently hit by lack of quorum, and the amount they are been paid, is a total contrast. They have also refused to remit taxes on their allowances, after they rejected to amend a section of law, which would have guaranteed taxation of their allowances. The legislature should ultimately entrench the PC process, which will help them to be held accountable for results through performance contracting (GoK, 2010).

The Judiciary on the other hand is yet to adopt the PC. There has been mixed reactions with some of its members holding to the belief that there is a need to develop some objective standards for determining performance of Judiciary. These should be at the level of individual judges, magistrates and paralegal officers.

This is inspite of the Judiciary having previously indicated that the institution is ready to participate in PC. The PC process would however need to be internalized and institutionalized to ensure its effectiveness (GoK, 2010).

The challenge therefore, is to devise a way of expanding the system's acceptability across all the arms of Government.

This is necessary for the following reasons:

- a. The Government operates as a unit and performance (or lack of it) in one arm of Government certainly affects the other arms
- b. Both the judicial and legislative arms of government are not opposed to the principles of performance contracting
- c. The citizenry require that all arms of government be held accountable to the public through some objectively identified parameters.

3. Public views

Even though the public are the consumers of Government services, their conscious involvement in the overall performance appraisal of the public sector has been minimal, if not lacking. There is consensus among members of the public that they need to be involved in the evaluation process. However, the public seemed to approve of the Government's performance in service delivery with over 47% of the respondents (*in an evaluative survey carried out by the Prime Minister Office in the year 2010*) indicating that service delivery in public sector has improved compared to six years ago.

The customer satisfaction survey indicator it was noted provided some interaction between the PC and the general public (GoK, 2010). Public sensitization is however, necessary so as to inform/educate them of the relevance/and importance of their participation in the customer satisfaction surveys conducted by various public institutions. This will enable them to air their concerns regarding how they being governed and served.

4. Leadership

Human resource is an important vehicle through which the Public Service delivers on its objectives. It is, therefore, important to ensure that enabling mechanisms are put in place through which officials can be systematically supported and held accountable in the fulfillment of their responsibilities. This needs to be looked at in three dimensions.

First, managers must have an appreciation of the purpose of developing PAs, the requirements, which the PA's should meet, and the proper way of using them as a management tool (RSA, 2009). After all, PAs are just a management tool and the manner in which managers use them will, to a large extent, determine their usefulness.

Therefore, managers must have the knowledge, skills and right attitude to ensure the effective utilization of PA's. Without such capacity, the risk exist that PAs may not be completed on time, or be completed simply for compliance purposes without careful attention being paid to the contents thereof, or be put away and not used once they have been entered into. Indeed, without the necessary appreciation of the purpose of PAs, managers may be tempted to use them as instruments of punishing their subordinates

Second, appropriate leadership is required to champion the use of PA's .The assumption here is that once this has been achieved, HoD's will, as the highest echelon of administrative leadership in turn champion the conclusion and use of PA's at lower levels.

Third, the successful implementation of PA's also depends on the effective utilization of other complementary mechanisms of accountability (RSA, 2009). Almost without exception, researchers and human resource practitioners do not place emphasis on performance contracting or performance agreements as a stand-alone mechanism or tool.

If these are used as a stand-alone mechanism that is not supported by other organizational process of promoting accountability, they are unlikely to be effective. For example, if an organization does not have a sound planning process, there will not be any sound organizational goals and priorities, which can be, translated into meaningful key result areas and performance objectives for staff. Equally, it is important to have in place an

organization-wide system, which ensures that once PA's have been entered into, they are followed by regular performance reviews and the provision of appropriate personal training and development interventions.

Finally and in addition to the above, the use of PA's should be supported by an inculcation of critical organizational values such as trust, professionalism and loyalty. Such values are important to ensure that managers do not adopt a tunnel vision whereby only what has been specified in the PA counts.

5. Management Practices

Despite clear stipulations aimed at securing transparency and competitiveness, appointment to public offices remains a thorny issue. On paper, the Government vouches for open and competitive recruitment of top officials like chief executives of parastatals, directors of departments, University vice-chancellors and others. This same culture of sycophancy and incompetence is perpetuated in the various departments/agencies where the CEO's will then appoint their cronies not on basis of competence but tribal or regional inclinations or as a "rewards".

In pursuit of this, the Public Service Commission or respective parastatal boards routinely advertise for vacant positions and interview qualified candidates. For a good measure, some parastatals out-source the recruitment to professional agencies. Whereas the effects of these activities are still to be realized, certain state corporations are yet to adopt best practices in appointments to senior management positions. It is important to note that for the country to compete at the global arena, the public sector needs to adopt best management practices at all levels. Performance contracting offers an opportunity for adoption of these practices.

6. Systems and Processes

Negotiators, evaluators and moderators have in the past been headhunted by the Performance Contracting Department (PCD). Whereas this seems the most time saving and cost-effective method, there exist no screening mechanism for the evaluators to confirm their full participation, competencies and willingness to participate. The adequacy of the training conducted by PCD, especially the negotiators who are the most critical team in the entire exercise has also been brought into question. The PC has to be carried out in stages and at each level the competence of the staff concerned/involved is critical-this is true also of the systems, tools and /apparatus they may have to develop and use for the entire PC process. Some of these are discussed here below.

a) Negotiation Stage

Negotiators need to be adequately trained to ensure standardization of outputs across the various institutions. They need to be able to distinguish between the outputs to be used in the evaluation from activities or processes. Proper training of negotiators, including members of the ad-hoc negotiation committee, is expected to reduce cases of what some institutions have considered 'unethical practices' by other institutions participating in performance contracting.

b) Evaluation Stage

Whereas the general competence of persons involved has not been found to be in doubt, the process of recruitment has not been transparent especially to the participating institutions (GoK, 2010). It is recommended that the process be improved through the introduction of some screening process (es) involving the participating institutions. A system where each sector, for example, sends one representative during the screening process should be developed.

The authors opine that this again should be cascaded to the specific institutions participating in the PC process- with representation from the various departments/sections. It would help to avoid the setting targets that are non attainable or even unnecessary. At this level the Chief executives tend to appoint their cronies who in most cases will not question any of the projects/goals suggested. It also worth pointing out that a majority of the staff working in various government departments/institutions does not have any idea as regards the current performance targets agreed upon regarding their organizations.

c) Moderation

Moderators must be adequately empowered to objectively verify and, where necessary, take corrective measures to ensure the PC tool is properly applied in line with set criteria.

d) Tools

Several indicators are listed in the tools available for PC. It may be considered the consolidation of the two indicators 'Repair' and 'Maintenance' into one indicator for 'Repair and Maintenance' to avoid repetition and ambiguity. Also, there is need to include an additional indicator on 'Public Perception' to be weighted appropriately.

Similarly, on 'Projects' the challenge remains on how to deal with 'impacts' as some of the projects have greater impacts to institutions than others.

f) PC Review

There should be an annual forum for reviewing the PC process and achievements. The diversity of Government agencies demands flexibility in indicator categories and weights. The latter process should be as participatory and as representative as possible. In many cases this is not the case-it is a preserve of the top management who

yet they are not the implementers. The authors feel that the review forum should incorporate the various departments in the specific institution. At the institutional level such reviews should be held regularly at least quarterly but with the intention of helping and not “whipping” the laggards. This would assist the entire institution to move “together”. An enabling policy, legislative and institutional framework should make this possible.

7. Rewards and Sanctions

There remains concerns on the impact such a scheme would have especially in light of institutions lowering their targets to achieve public recognition on their ‘performance’ (Trivedi, 2000).

To counter this several proposals have been put forth such as that the Government to introduce a reward/sanctions scheme to boost the impact of Performance contracting in the public service. These proposals have been informed by the fact that public officials would feel more enthusiastic participating in an exercise that promises some reward (GoK, 2010). Rewards will also ensure that employees are motivated. Continuous capacity building amongst accounting officers in the public service would be required to achieve this.

8. Dealing with Low-target setters

From extensive discussions with key stakeholders, it has been found that since 2007 (about two years after PC came into effect), some institutions have developed methods where they deliberately set low targets for themselves which are at times also not in the very core areas of their business. Such institutions therefore, are able to score highly without ‘stretching’ so high (GoK, 2010). This has been one of the biggest challenges to the performance contracting system as currently being implemented. However, it should be noted that, when implemented properly, the PC system should in the long run be self-correcting and therefore weed out such behaviour. It would be prudent for the various institutions to be accessed on the basis how well they are attaining their core business areas.

9. Institutional Arrangements

Kenya has adopted a theoretically sound institutional arrangement. The vetting of Performance Contracts at the beginning of the year and the evaluation of agency performance at the end of the year is done by a group of independent professionals. This is in keeping with international best practice.

However, it appears that the members of this Ad-hoc Task Force who do the evaluations at the beginning of the year are not the same as those who do the evaluation at the end of the year. This needs to be corrected, as the persons who do the evaluation must fully understand the rationale for the target setting. Also, target setting involves a lot of investment of time in understanding the agency. Thus, there are economies of scale in doing both tasks. There is also a query regarding the conflict of interest of the members of PCSC. Some of the members also sign PCs and, hence, can be seen to have the dual role of a judge and defendant in the same case. This needs to be rectified soon to remove any appearance of conflict of interest (Trivedi, 2000).

10. Incentive System

Trivedi, (2000) observes that it is true that without incentives, people start ignoring the evaluation system. However, incentive need not be pecuniary in nature. In this context, the awarding of the trophies by President Kibaki to the top three performers is to be appreciated. International experience suggests that it is better to proceed cautiously on this front for the following two reasons:

First, any new system is bound to have hidden glitches. It is better to debug the system before committing public funds. Second, in the initial stages, performance tends to improve even in the absence of any monetary rewards. This is because of the so called “audit effect.” The latter implies that people shape up when they are confronted with a new system, irrespective of its intrinsic merits.

The Kenyan system needs to think carefully to ensure that benefits of giving incentives exceed the costs. Like other developing countries, Kenya has scarce budgetary resources. Thus, any incentive scheme must ensure that it is not only revenue neutral but also sends desirable signals for cost reductions.

Ideally, incentives should be a proportion of the cost savings. One possible way to do so would be to devise an incentive scheme on the following pattern:

Where:

B0 = Previous Year’s Cost

B1 = Actual Cost this year

This scheme has the following advantages:

a. The maximum incentive payment can be only 15% of the cost savings over previous year. This will be given to the public agency only if they achieve a composite score of 1 (Excellent). Thus, to receive the maximum bonus, they must not only reduce costs compared to previous year but also remain excellent in the delivery of services and other commitments.

b. No incentive would be paid if the composite score were more than 3. Thus cutting costs that affects quality and effectiveness of delivery of services would not be a viable strategy for public agencies. Many variations on this basic scheme are possible. For example, previous year's cost could be this year's budgeted cost; threshold for incentive could be raised from 3 to 2.5; and the amount of incentive paid could be different from the illustrative 15%.

11. Legal Foundations

The PC system in Kenya is operating under a Presidential Decree. According to Trivedi (2000) this has served a very useful purpose in launching the system expeditiously and establishing its viability. Yet for the system to survive in the long run, it needs to be given a more solid legal foundation. Kobia and Mohammed (2003) emphasize that a solid legal framework, which sets out the basic premises and the status of the contract, may avoid ad hoc and fragmented solutions. The current arrangements lack enforcement legal capacities. They further illustrate that sanctions can be questioned as in the case of the seven (7) senior officers from Kenya Revenue Authority who are sought legal redress after their jobs were terminated as a result of not meeting their performance targets. In their arguments they argued they never signed for any targets.

This is a fundamental prerequisite for Performance Contracts. Many of the associated legal and regulatory reforms must be in place before Performance Contracts can take place. The understanding of the legal and regulatory framework governing the operationalization of performance contracting is crucial. In most countries, passing a special legislation to this effect does it.

12. Internal Institutional challenges

Some of the problems experienced during the implementation of the performance contract were mainly of an internal nature. But looked at on a broader perspective these however point out on the internal inefficiencies that plague many of the public agencies. According to Kobia and Mohammed (2006) some of these include: the lack of adequate resources, resources not being released on time; some performance targets were highly ambitious and unplanned transfer of staff. Stability of resources enhances the motivating effect of the contract. When resources are not available or availed late, the staff involved gets frustrated. The majority of the public service officers have expressed this view.

CONCLUSION

In conclusion the authors observe that the above challenges notwithstanding, the implementation of Performance Contracting in Kenya has yielded significant benefits to the country. However, in spite of these successes they caution that there is a lot more to be done for the full realization of the new governance system to be judged as a success. Some of the positive impacts of Performance Contracting noted including in prior reviews and documents include:

- Performance Contract has refocused Ministries, Departments and Agencies (MDAs) on realizing their core mandates;
- Improved MDA performance e.g. improved profitability levels particularly in the Commercial State Corporations; improvements in the performance of the public service particularly through the introduction of citizen service delivery charters which refocused MDAs on identifying and delivering against service standards;
- Improvements in levels of transparency and accountability where obligations of all public agencies are included in the publicly signed performance contracts and in most cases uploaded on the agencies' website for stakeholder reference.

In the area of improvements in the Performance Contracting considerable progress has been realized including:

- Evolution of the Performance Contract and Evaluation System to adapt to emerging issues e.g. expansion of indicators to reflect some of the overarching national concerns such as corruption;
- Implementation of one of the most extensive system of performance contracts expanding from a pilot of sixteen state corporations to 460 Ministries, Departments, State Corporations, Local Authorities and Tertiary Institutions;
- Obtaining political support for the system and involvement of His Excellency the President, the Rt. Hon Prime Minister and the Cabinet Ministers.

The authors do note that Parliament and the Judiciary are not currently on performance contracts and recommend that all the three arms of the government should be put on Performance Contract. However although for purposes of synergy and efficiency they can be managed separately, but the Performance Contracting Department provide necessary technical support and share best practices.

Further it should be noted that the country has ushered in a new Constitutional dispensation; this has redefined the policy approach- with regards to the devolution policy being implemented besides redefining the institutional structures and relationships across the three arms of Government. Additionally, given the platform

against which the citizens adopted the constitution i.e. the push for improved governance, accountability and service, it is imperative that the Government bring on board or strengthen the existing mechanisms in order to allow for realization of the citizen's aspirations. This will remain a major challenge for the government to fulfill. The authors argue that inasmuch as all the other government organs are put on the Performance Contracting concept the new devolved governments too should be put on Performance Contracting as well. Similarly this should be the case even at the constituency level –in this case therefore the citizenry would be able to bring to account both the public servants and the political class heading the County governments and further do recommend that the local members of parliament at the constituency level should sign a Performance Contract with the citizenry (who in this case are the employers).The latter would be particularly important since the Kenyan political class has been operating in a “*free state*” accountable to nobody. The citizenry having nowhere to complain and yet cannot have their local representatives (both parliamentary and civic) account for their stay in office.

As noted that there exists some ambiguities in the whole concept of Performance Contracting. The authors are of the view that the concerned government agency needs to invest in area of training and capacity development. This would be the only way to have the system work.

On the whole the new system of governance is bound to bring in some improvement in the overall service delivery however the challenges faced will need to be given due attention.

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