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TERMINATION PAYMENTS FOR SERVICE CONTRACT HOLDERS

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NOTE TO THE EXECUTIVE BOARD

This document is submitted to the Executive Board for approval.

The Secretariat invites members of the Board who may have questions of a technical nature with regard to this document to contact the WFP staff focal points indicated below, preferably well in advance of the Board's meeting.

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EXECUTIVE SUMMARY

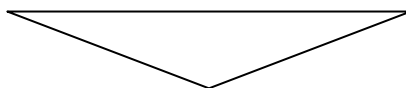
This document is presented in response to the [queries](#) raised in relation to the agenda for the Board's 2007 Annual Session, item 6: "Funding of Employee Termination Payments" (WFP/EB.A/2007/6-B/1), whereby the Board requested "[...] the Executive Director to report to the Second Regular Session of the Board in October 2007 on the implications to WFP of staff employed under Special Service Agreements, Service Contracts and Assignments of Limited Duration contracts".

This paper describes the evolution of the use of the contractual tools used by WFP to employ its locally recruited staff in the field and the ways in which the terms of termination indemnities¹ have to date been determined for the various contract types during separation programmes relating to local employees in the field.

¹ Termination indemnity in the context of this paper is limited to payment packages offered as a result of significant country office-wide workforce adjustment which require the involuntary separation of staff. It does not refer to contractual Termination Indemnities which are stipulated as compensation for a shortened employment period than the contract's "not to exceed" date; NTE. SC/SSA employees have not been included in any Voluntary Separation package scheme.



DRAFT DECISION*



The Board:

- i) takes note of the evolution of the use of contractual tools used by WFP for the recruitment and administration of field national staff;
- ii) takes note of the reasons for and conditions affecting termination payments paid to holders of Service Contracts and Special Service Agreements in the field through *ex gratia*² payments approved by the Executive Director;
- iii) takes note of the payments exceptionally approved by the Executive Director in recent years when emergency and relief operations have undergone major programme reductions under a three- to five-year phased approach; these should be completed by the end of 2007, with the largest operation to be completed by March 2009; the amounts paid to employees on Service Contracts will be reported to the Board on completion of downsizing or office closure;
- iv) takes note of the payments exceptionally approved in 2005 by the Executive Director in support of the 2006 staffing review whereby Service Contract and Special Service Agreement holders were either appointed on Fixed Term contracts, as per established criteria, or were terminated; a few countries are still finalizing approved action;
- v) takes note of the development of WFP Service Contracts and the *WFP Special Service Guidelines* in collaboration with United Nations funds and programmes for use by field offices to ensure that a harmonized contractual system is applied and staffing reviews continue to be undertaken.

* This is a draft decision. For the final decision adopted by the Board, please refer to the Decisions and Recommendations document (document WFP/EB.2/2007/15) issued at the end of the session.

² *Ex gratia*: a payment made without the giver recognizing any liability or legal obligation, regardless of funding source.



BACKGROUND

1. WFP administers its internationally recruited staff and locally recruited staff in Headquarters and liaison offices following the rules, regulations and administrative manual provisions of the Food and Agriculture Organization of the United Nations (FAO). WFP administers its locally recruited staff in the field under United Nations Rules and Regulations and the administrative manual of the United Nations Development Programme (UNDP). These are complemented by directives issued by WFP that provide the framework and clarifications to issues of specific interest to WFP while ensuring that they are in line with the applicable rules and regulations.
2. The above administrative and legal framework is in line with the [WFP General Regulations and Rules](#): as indicated in Article VII³ paragraph 6, the WFP Executive Director "...shall administer the staff of WFP in accordance with FAO Staff Regulations and Rules, and such special rules as may be established by the Executive Director in Agreement with the Secretary-General [SG] and the Director-General [DG]". Paragraph 7, states that "where appropriate, [the Executive Director may] draw upon the administrative, financial and other services of FAO [...] and other agencies of the United Nations system".
3. Consequently, WFP's locally recruited staff in country offices and regional bureaux have traditionally been administered by UNDP. As the United Nations Staff Rules and Regulations are those that govern UNDP, these are by default applicable to WFP locally recruited staff in the field.
4. The Staff Rules, Staff Regulations, manuals, policies and practices mentioned above have been amended on occasion following consultations and legal clearance to adapt to WFP's operational requirements.
5. In line with UNDP's contractual framework, WFP field offices use the following contracts: Fixed-Term (FT) 100 series, Assignments of Limited Duration (ALD) 300 series, Service Contracts (SCs) and Special Service Agreements (SSAs).⁴
6. It should be noted that while United Nations Staff Rules are applicable to staff recruited under "the Series", the rules governing SCs and SSAs are detailed in the contracts themselves. FT and ALD contract holders are determined to be United Nations staff members; but SCs and SSAs do not confer the status of United Nations staff member, nor do they give rise to any benefits or entitlements other than those stipulated in the contracts themselves.⁵

³ WFP General Regulations, Article VII – Secretariat: Organization and Functions.

⁴ This contractual framework is utilized by UNDP and organizations for which UNDP provides administrative processing and payroll support – WFP, the United Nations Population Fund (UNFPA) and the United Nations Office for Project Services (UNOPS).

⁵ Consultation with other funds and programmes that utilize SCs and SSAs confirm that only payments stipulated in the contracts are made.



PAST USE OF CONTRACTUAL TOOLS IN THE FIELD

7. When it was established, WFP used two contractual tools: the 100 series contract and the SSA. The 100 series contract type is also known as FT; until 1994, it included eligibility for consideration for a permanent contract appointment.⁶ The SSAs are used for initial recruitment for limited periods of 11 months or less.
8. In 1998, UNDP launched the ALD and the SC, which WFP added to its contractual tools framework. These two contract types were developed to enable rapid recruitment for activities considered to be of a medium-term nature and/or not intrinsic to WFP's mandate. Both had the added attraction of a streamlined recruitment and administrative process supporting a more flexible contractual mechanism; these characteristics were suited to WFP's needs in the field, particularly in view of the increasing number of emergency operations.
9. From 1998 to 2000, the SSA contract was used from the outset of projects until a medium-term project was planned. In most cases it was followed by conversion to either an SC, mainly for support functions, or an ALD, mainly for professional posts. FT appointments were limited to long-term activities regardless of category or function; this carried an expectation of a contract duration of several years and positive expectations of budget support.
10. However, in 2001 WFP management noted that the limitation of ALDs to a maximum contract period of four years would soon lead to a situation where a number of trained employees who had performed well would need to be separated as they reached the end of the four-year contractual period. The need for a break in service for SSA holders after the maximum contract duration of 11 months also required considerable administrative effort to handle the use of such short-term contracts. These limitations were leading to losses of trained personnel or the unavailability of employees at critical times during emergencies. In view of the growing number of emergencies, WFP could not afford such a staff drain.
11. In an environment of increasing focus on emergencies, including a growing number of special operations (SOs) and the desire to maintain its good reputation, WFP analysed its expected staffing requirements and resourcing projections with a view to remaining competitive with other organizations in the field. As a result, in 2001-2002 it converted most of its ALD staff reaching the four-year limitation to FT appointments and a considerable number of SSAs to SCs.
12. The use of ALDs has decreased considerably; currently there are only 76 national staff with such appointments. Nonetheless, the ALD is a streamlined and effective contractual tool that is also used by UNDP for contracting staff for medium-term assignments of two to three years.
13. As a reflection of the funding profile of WFP activities past and present, many operations in the field continue to function with SCs and SSAs as the main type of contracts used. As indicated in the table in Annex I, WFP employees on SSAs and SCs were the majority of the workforce: 79 percent in 2002, 81 percent in 2003, 78 percent in 2004 and 80 percent in 2005.
14. In 2003, senior management became concerned that the number of WFP employees contracted with "non-United Nations staff member" status had become increasingly disproportionate. Local employees frequently raised this issue, complaining that they were

⁶ A/RES/49/222, 49th session, agenda item 113 and ST/SGB/280.



not recognized as staff and did not receive the same social security and appointment and termination benefits granted to colleagues in the same office.

15. In 2004, the management embarked on a strategic review of field staffing structures. The Executive Director approved the National Staff Project (NSP) to assess contractual issues and to bring all WFP staff under one set of rules and regulations, in this case those of FAO.
16. However, in mid-2005 WFP management decided that any decision regarding the movement of staff from one legal framework to another was premature in view of the International Civil Service Commission (ICSC) contractual review and the United Nations human resources reform initiatives such as the launch of the Cape Verde joint office pilot by the United Nations Development Group (UNDG). Nonetheless, the WFP management recognized that the concerns expressed by the majority of national staff in the field and the imbalance in the numbers of United Nations and non-United Nations staff needed to be addressed immediately.
17. In December 2005, field managers were instructed to undertake reviews of country office and regional bureau staffing requirements and to undertake a one-time SC/SSA review to identify SC/SSAs holders who had worked continuously for five years or more, and who were to be either appointed to established posts as FT appointments or terminated effective 1 July 2006. As a result of the review, 1,056 employees were appointed and 416 contracts were terminated. Four countries requested an extension of the deadline for operational or legal reasons such as the technical competencies of the employees to be terminated, tender requirements for outsourcing of services and resources to undertake a staffing review.
18. As reflected in the table in Annex I, at 31 May 2007 the ratio of staff to non-staff had increased by 10 percentage points to 31 percent United Nations staff and 69 percent non-United Nations staff. It should be noted that the total number of locally recruited employees decreased from 10,911 in December 2005 to 9,873 at the end of May 2007.

WFP PRACTICE IN PAYMENT OF TERMINATION INDEMNITIES FOR NATIONAL FIELD STAFF

19. Best practices show that when a major change in workforce structure is undertaken, a strategy that provides greater support and indemnity than the legal minimum has a positive return. This is especially true with regard to staff morale, WFP's image in its host environment and operational efficiency, should the organization need to staff up again in the future.
20. A scaling-down or hand-over strategy that includes extra support for employees who will be without a job, particularly in the case of office closure, keeps an image of an organization that considers itself part of the host community and sensitive to local concerns. The strategy should, if financially possible, include all or a combination of the following: (i) assistance with finding alternative employment; (ii) training in job-search techniques; and (iii) a notice period, termination indemnities for contract time not served and compensation dependent on length of employment. Issues such as the scale of downsizing and length of period worked should also be considered.



STAFF HOLDING CONTRACTS WITH UNITED NATIONS STAFF MEMBER STATUS (UNITED NATIONS RULES AND REGULATIONS)

21. United Nations Staff Regulation 9.1 (a), (b), under which WFP locally recruited staff are appointed, provides conditions in which confirmed staff appointments (100 – 300 series) may be terminated.⁷ United Nations Staff Regulation 9.3 gives the Executive Director the discretionary authority to approve “[...] a termination indemnity payment not more than 50 percent higher than that which would otherwise be payable under the Staff Regulations”.
22. With regard to WFP staff holding 100 series contracts, the termination indemnity schedule outlined in Annex II of United Nations Staff Rule 109 is given in Annex II.
23. This discretionary authority to approve a termination indemnity has been utilized particularly during:
 - i) budget or staff reductions;
 - ii) re-profiling of a workforce or re-structuring of a country office to achieve alignment with a new business model; and
 - iii) office closure.
24. In addition to terminations resulting from the three scenarios outlined above, termination indemnities paid under an agreed voluntary separation programme have also been considered under the discretionary authority of the Executive Director when developing separation programmes for particular cases.
25. Payments made for agreed separations are usually paid as follows:
 - i) on a targeted basis followed by a call for volunteers, who are reviewed for approval depending on programme needs;
 - ii) on the basis of a minimum continuous period of service of at least five years as a United Nations staff member.

LOCALLY RECRUITED STAFF WITH NON-UNITED NATIONS STAFF MEMBER STATUS – SSAs AND SCs

26. Employees contracted under SCs and SSAs do not have United Nations staff member status. Conditions of service, including terms of severance, are not covered by United Nations Staff Rules and Regulations or agreements with staff associations, nor are they regulated by the ICSC, which determines and recommends conditions of service for United Nations staff employed in the Common System.
27. SC and SSA contract holders constitute a large number of WFP’s local workforce because of the nature of WFP’s mandate and its requirement to increase staff rapidly and effectively. The voluntary nature of WFP’s funding means that a large number of staff, regardless of contractual status, are assigned to carry out similar functions in various types

⁷ These are (i) abolition of the post or reduction of the staff, (ii) unsatisfactory performance of duties, including unsatisfactory performance of duties for reasons of health that render staff incapacitated for further service, (iii) misconduct and (iv) if such action would be in the interest of the good administration of the Organization...provided that the action is not contested by the staff member concerned. Also known as “mutually agreed-to separation”.



of activities. As a result, staff ranging from the lowest entry-level support function such as messenger to the mid-level technical professional in, for example, finance, aviation or telecommunications work side by side. Some are under a United Nations staff series contract; others, the majority, work under SCs and SSAs.

28. United Nations employment is not regulated by local labour conditions as determined by the Convention on the Privileges and Immunities of the United Nations,⁸ but by the appropriate Rules and Regulations and the contractual conditions stipulated in SCs and SSAs. Nonetheless, WFP has made every effort to provide for separation conditions when managing significant staffing changes or reductions, in line with legal obligations for employees who have been working for WFP without any breaks in employment for a period of time considered to be long-term. This decision was made bearing in mind the importance of best practice and of making every effort to avoid any legal proceedings in the host country. Although WFP is immune under the convention noted above, resolution of such a situation would require considerable legal and diplomatic resources.
29. The decision also took into consideration the fact that it is common practice worldwide for local labour legislation to establish severance frameworks.⁹ Requests were always reviewed on their merit, but the variety of practices related to issues such as termination indemnities, severance payments and liquidation funds resulted in a need to identify an approach that would ensure equity and consistency. It should be noted that a number of long serving employees who had been employed in the field for ten years or more, particularly during long-term emergency operations, was identified. Consequently, management considered that whatever the framework used, equity among payments to staff in different country offices was essential to ensure transparency in the treatment of employees, regardless of nationality and local established practices.
30. As a result, since 1998, WFP has consistently paid severance payments only in cases of compulsory redundancy or involuntary separation because of office closure, or restructuring, re-profiling or downsizing. WFP also determined that if such exceptional payments were to be approved by the Executive Director under *ex gratia* authority, its monetary parameters would mirror the United Nations Termination Indemnity (see Annex II) to ensure equity of payments.
31. The Angola country office downsized from 2,200 employees in mid-2004 to 1,000 at the beginning of 2006. US\$3.075 million had been paid by mid-2006; an additional US\$1.3 million will be required for payments up to 31 March 2009, in line with the plan approved by the Executive Director on 16 February 2006. The total of US\$4.375 million was approved by the Executive Director as an *ex gratia* payment; it will be reported to the Board when all termination payments have been made.
32. Since May 2002, US\$3.4 million has been paid to 1,100 employees – 12 percent on staff contracts and 88 percent on non-staff contracts. The payments utilized country offices' resources if available, followed by regional bureau allocations and general funds as required.

⁸ Article II: Property, Funds and Assets, Section 2: The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

⁹ In most developing countries, loss of employment results in lack of means to earn a decent living due to under-developed social security services. See the International Labour Organization (ILO) publication [Termination of Employment Digest](#).



33. In addition to the payments mentioned above, a termination payment was approved by the Executive Director in 2005 for a 2006 SC/SSA review because of the significant number of terminations expected. At the outset of the project, it was calculated that 1,800 to 2,000 SC holders who had worked for more than five years continuously carrying out regular staff functions would meet the eligibility criteria for appointment to FT contracts. But after examination on a case-by-case basis, it was reported to Headquarters that only 1,400 employees met the eligibility criteria. A large number of terminations occurred as a result of abolition of functions, outsourcing of services, re-sizing of functions or re-alignment of competencies. The 416 terminations finally arrived at was less than the initial estimate, and not all of them met the eligibility criteria; consequently US\$2.2 million was spent on separation payments for 250 employees on non-staff contracts where the established minimum five years of continuous service with WFP had been met and where the decision was not a consequence of unsatisfactory performance or conduct; in such cases no payments were made.

LESSONS LEARNED FROM WFP FIELD STAFFING EXPERIENCE

34. WFP's uniform approach to severance packages, especially involuntary terminations, using established termination indemnity terms has ensured smooth implementation of "mass" termination programmes in a transparent and equitable process.
35. The experience gained over the last ten years demonstrates that the administrative effectiveness and value of the contractual tools depends on continuous monitoring of WFP's strategic requirements; it also requires regular staffing reviews to ensure that the staffing strategy remains fine-tuned.
36. Using SCs and SSAs for scaling up in emergency and relief operations is an effective strategy. However, negative effects such as disproportionate numbers of employees considered "non-staff" compared with other contractual arrangements must be monitored, particularly if staffing requirements result in contractual tools being utilized for periods longer than an initial short-term period for SSAs and medium-term service when SCs are utilized.
37. The last SC/SSA contractual review in 2006 confirmed that:
- i) WFP country offices need to administer employees recruited on SCs and SSAs more carefully, especially when service is for more than five years on an SC and more than two years on an SSA, to avoid expectations of continued employment.
 - ii) The prescribed contractual periods described in the ICSC contractual framework detailing contracts as temporary, fixed-term and continuing must be upheld.
 - iii) The financial impact on efficiency of exclusively using 100 series contracts as a recruitment method should not be under-estimated. Appointing national staff on FT (100 series) contracts attracts higher staff cost than costs related to SCs and SSAs. As noted in WFP's Annual Performance Report for 2006,¹⁰ total local staff expenditure increased by US\$16.3 million following the appointment of 1,056 long-serving SCs/SSAs to FT appointments. The increase in employer contributions for pension payments alone was estimated to add US\$4,300 per FT staff member.

¹⁰ [WFP/EB.A/2007/4](#), approved by the Board at its 2007 Annual Session.



THE WAY FORWARD

38. The [UNDP Service Contract Guidelines](#) provide that “The service contract is intended primarily for hiring: a) local personnel on projects (professional and support functions); and b) personnel for activities that are not integral to the work of the office and normally would be outsourced, but for which outsourcing is not feasible or desirable.” These two scenarios remain relevant to WFP in that its field operations are mainly project-funded and in that outsourcing opportunities are limited in certain functional areas in most country offices. The SC contract modality continues to be relevant and operationally useful – if not critical – to the management and administration of WFP short-term and medium-term projects in the field.
39. It is foreseen that with WFP’s increasing focus on emergencies and relief operations, the continued use of SCs and SSAs will facilitate operational scaling-up and response.
40. It is also recognized that given the significant number of workers employed under SCs/SSAs for extended periods, the downsizing or closure of a WFP office in a country can potentially have a significant impact on the local labour market and on relations with the host government.
41. Consequently, WFP managers periodically check that the contractual framework used to obtain the right combination of employees is monitored and that the appropriate contractual guidelines are applied.
42. In view of the importance of temporary and mid-term contracts to staff WFP operations, the Human Resources Division (ADH) is developing WFP contractual guidelines to ensure (i) that WFP’s approach is harmonized with other United Nations funds and programmes, (ii) that WFP’s requirements in the field are met and (iii) that the details described in the ICSC contractual framework are maintained. These guidelines are planned for completion in 2007.

RECOMMENDATION

43. In the light of the foregoing and on an exceptional basis, WFP should proceed with the termination payments approved in 2004, 2005 and 2006 by the Executive Director to non-staff employees whose employment is terminated by WFP during the planned downsizing/phased approach planned for 2007 and 2008.
44. Funding for such termination indemnities should be charged to project budgets.
45. Termination of employment for non-staff employees for any other reason and outside those mentioned in this document shall continue to be paid in line with terms of the employment contract only and as detailed in the applicable contractual guideline.
46. ADH should continue its review of United Nations contractual options in close collaboration with other United Nations agencies, in particular the funds and programmes, to continue to refine contractual modalities with a view to bringing them into line with WFP’s operational and staffing requirements, while ensuring harmonized compensation and benefits.



NUMBER OF WFP LOCALLY RECRUITED EMPLOYEES IN FIELD OFFICES WORLDWIDE

	As at 31 December 2002		As at 31 December 2003		As at 31 December 2004		As at 31 December 2005		As at 31 December 2006		As at 31 May 2007	
STAFF												
100 series - National Officers	189	2.3%	208	2.2%	275	3.0%	360	3.3%	396	3.9%	411	4.2%
100 series - General Service	1 383	17.0%	1 405	15.1%	1 579	17.3%	1 682	15.4%	2 561	25.5%	2 619	26.5%
300 series - ALD- professional	25	0.3%	23	0.2%	24	0.3%	16	0.1%	7	0.1%	7	0.1%
300 series - ALD - support	98	1.2%	97	1.0%	101	1.1%	86	0.8%	75	0.7%	69	0.7%
Sub-Total	1 695	20.8%	1 733	18.6%	1 979	21.6%	2 144	19.6%	3 039	30.2%	3 106	31.5%
NON STAFF												
SC - professional	71	0.9%	101	1.1%	82	0.9%	137	1.3%	102	1.0%	110	1.1%
SC - support	4 748	58.4%	5 805	62.2%	5 458	59.7%	6 866	62.9%	6 002	59.7%	5 655	57.3%
SSA - professional	55	0.7%	77	0.8%	95	1.0%	77	0.7%	59	0.6%	55	0.6%
SSA - support	1 568	19.3%	1 611	17.3%	1 535	16.8%	1 687	15.5%	853	8.5%	947	9.6%
Sub-Total	6 442	79.2%	7 594	81.4%	7 170	78.4%	8 767	80.4%	7 016	69.8%	6 767	68.5%
GRAND TOTAL:	8 137		9 327		9 149		10 911		10 055		9 873	



TERMINATION INDEMNITY SCHEDULE			
	Months of gross salary, less staff assessment, where applicable		
Completed years of service	Permanent appointments	Temporary appointments which are not for a fixed term	Temporary appointments for a fixed term exceeding six months
Less than 1	Not applicable	Nil)	One week for each month of uncompleted service subject to a minimum of six weeks and a maximum of three months indemnity pay
1	Not applicable	1)	
2	3	2)	
3	3	3)	
4	4	4)	
5	5	5	3
6	6	6	5
7	7	7	7
8	8	8	8
9	9	9	9
10	9.5	9.5	9.5
11	10	10	10
12	10.5	10.5	10.5
13	11	11	11
14	11.5	11.5	11.5
15 or more	12	12	12

ACRONYMS USED IN THE DOCUMENT

AD	Administration Department
ADH	Human Resources Division
ALD	Assignment of Limited Duration
DG	Director-General
DSC	direct support costs
FAO	Food and Agriculture Organization of the United Nations
FT	Fixed Term
ICSC	International Civil Service Commission
ILO	International Labour Organization
NSP	National Staff Project
NTE	not to exceed
SC	Service Contract
SG	Secretary General
SO	special operation
SSA	Special Service Agreement
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNOPS	United Nations Office for Project Services