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Assessment of Dispute Resolution in the Construction Industry in Lagos State, Nigeria

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Abstract
Construction industry is a fertile source of dispute because it involved many human and non-human factor and variables. Dispute management is an integral part of the overall projects management process in Nigeria. This study looked at various causes of disputes and ascertains the preferred alternative dispute resolution methods in the construction industry. Data was collected through questionnaire survey and analysed using percentile and mean score. The result shows that the main causes of disputes were non-payment of certified sums; financial claims; wrongful determination of contract, ambiguous contract documents; inadequate provisions in the contract conditions and misinterpretation of contract documents. The study also revealed that the preferred resolution methods in descending order were agent resolution, mediation, conciliation, adjudication and arbitration. The research recommended that contracting parties should adopt dispute prevention strategies rather than settlement and that when dispute arises, they should exercise teamwork, build trust among each other and select agent resolution or mediation in managing such dispute.
Keywords: Causes of Disputes, Resolution Techniques, Construction Team, Disputes Prevention, Nigeria.

1. Introduction

The construction industry has a peculiar method of operation, it is the only manufacturing industry where the "factory" goes to the consumer's site, and the product is unique (Kumaraswamy 1998). The study explained further that the traditional construction procurement systems that were developed to manage construction processes and handle these special features of the industry have been criticised for fostering adversity through fragmented functions, over-onerous checks and balances and concluded that this usually give rise to conflicts, claims and disputes.

Shapiro (2004) opined that the conflict-prone nature of the construction projects is primarily based upon the incapability of the 'parties' initial interests and objectives. The study emphasised it that incompatible project objectives are responsible for frequent disagreements on how to approach and complete a project. The study concluded that on most projects, disputes arise because the client wishes to obtain maximum quality, functionality, aesthetics and capacity at minimum cost while the contractor seeks to achieve financial goals that are advanced by expending the minimum resources required to meet a maximum scope of work.

Verster (2006) asserted that the establishment and consolidation of a claim does not mean that a dispute exists, but should the rejection of a claim occur or a different interpretation to a claim remain and parties are not able to settle or mitigate their differences, a dispute may then be the result.

Thompson, Vorster and Groton (2000) asserted that the U.K. and U.S. construction sectors share the same basic problem: adversarial attitudes and disputes arising primarily due to lack of communication, distrust, interpretations of contracts, uncertainties and an "us versus them" posture based on imbalance in risk allocations. Nigeria as a developing country is not an exception from these problems.

Therefore, the objectives of this study are to classify various types, assess major causes of disputes in Nigerian construction industry and the preferred dispute resolution methods.

2.0 Review of Literature

2.1 Meaning of Conflicts, Claims and Disputes

Kumaraswamy (1998) asserted that disagreement or differences of opinion leads to conflict and concluded that conflict could be beneficial in some instances, for example in generating better alternatives especially at the planning stage of design or construction while curtailing or less beneficial/destructive form of conflicts could involve personality clashes and/or assertions of a non-negotiable nature. Kumaraswamy (1997) described dispute in construction contracts as a situation where a claim or assertion made by one party is rejected by the other party and the rejection is not accepted in return.

Powell-Smith and Stephenson (1994) described a claim as an assertion of a right to money, property or a remedy which he said in construction includes 'extension' of time. The study concluded that claims can be classified as those arising from the contract itself, from a breach of the contract or a common law duty (as in tort) or from quasi-contractual assertion for quantum merit (deserved) compensation or an ex-gratia settlement.

Rubin, Fairwether, Guy and Maevis (1992) stated that the scenario for construction dispute is invariably written right into the contract long before men and machines reach the job site and conditions for dispute have been signed by both parties; for example procurement system, payment schedule, finance or the contract type

affects the frequency of the disputes as well as type of disputes that occur during the execution of the project.

Ellis and Baiden (2008) explained that disputes between project participants have been identified as the principal causes of poor performance in construction projects and that disputes very often leads to prolonged delays in implementation, interruptions and sometimes suspensions of work.

2.2 An Overview of Causes of Disputes in the Construction Industry

Mc lntyre (1991) observed that as the project increase in size and complexity, so then does the risks of cost and time overruns, which may invariably leads to disputes. This was collaborated by Haryati, Fadzil, Mohd and Othman (2009) by stating that the nature of the construction and the complexity of the project are the primary contributor to disputes.

Vorster (1993) also postulated that uncertainty that causes change beyond the expectations of the parties, process problems including imperfect contrasts and unrealistic performance expectation, people issues problems due to poor communication, poor interpersonal skills and opportunistic behaviour, as common causes of disputes. Mitropolous and Howell (2001) and Cheug and Yin (2006) associated disputes with contractual problems and opportunistic behaviour. Chan (2008) also believe that disputes are associated with combination of issues which includes time, cost and defects, contractor's cash flow and difficulty of private sector to negotiate for commercial settlement of transactions.

Habib and Abdul-Rashid (2006) and Ong (2005) have identified Clients and the Main Contractors and their Sub-Contractors or Suppliers or both as the common parties to dispute. Poh (2005); Ismail Torrence and Adnan (2006); Motsa (2006) and Ong (2005) summarised the causes of disputes as non-payment of certified sums, misunderstanding in payment procedures among main contractor and sub-contractors, delay, termination and variation.

2.3 Disputes Resolution in the Construction Industry

Dispute resolution is one of the important and complex processes that determine the performance of the projects and subsequently that of the construction industry in general. Chan and Suen (2005) concluded that the detrimental effects of construction disputes as project delays, undermining the team spirit, increase in project costs and damaging business relationship. Verster (2006) opined that the first step in the process of difference between parties, relating to any dispute should be to establish a process whereby parties would be able to mitigate disputes. The study concluded that the goals of claims and disputes resolution should firstly be to establish the right of a party to submit a claim and to enable the other party to consider the claim in terms of valid contractual terms and possible outcome.

Ong (2005) emphasised that the aim of resolving disputes is to undertake control measures, recognise the disputes early and mitigate them. The researcher suggested that measures can be taken to avoid disputes, but when they occur, an adequate mechanism should be taken to resolve them before they become chaotic. Cheung and Yin (2006) and Fenn (2002) explained that dispute prevention is better than cure. To achieve this, Ismail, Torrence and Adnan (2006) suggested that the parties should be aggressive in predicting the dispute by equipping themselves with knowledge of the contract and understand their rights and obligations. Van, Verster and Ramabodu (2010) considered agent resolution, adjudication, conciliation, mediation and arbitration as alternative dispute resolution methods.

Haryati *et al.* (2009) proposed the model in figure 1 as dispute prevention measures undertaken by the Quantity Surveyors at various stages of the construction project. The Royal Institute of British Architects schedule for scheme design was adopted in preparing the model. The model described the activities to be carried out by the construction team at the ten stages involved in the construction process. For example, at the inception stage, the model recommended that experienced consultants should be appointed by the client and adequate fund should be arranged by the client for the execution of the project. This is to avoid unnecessary delay in payment which could result in project abandonment. Furthermore, the model explained that potential risks should be identified and the mechanism for dealing with them should also be provided at the inception stage. The model explained other actions to be taken by the construction team from inception to the defects management stages as indicated on the figure.

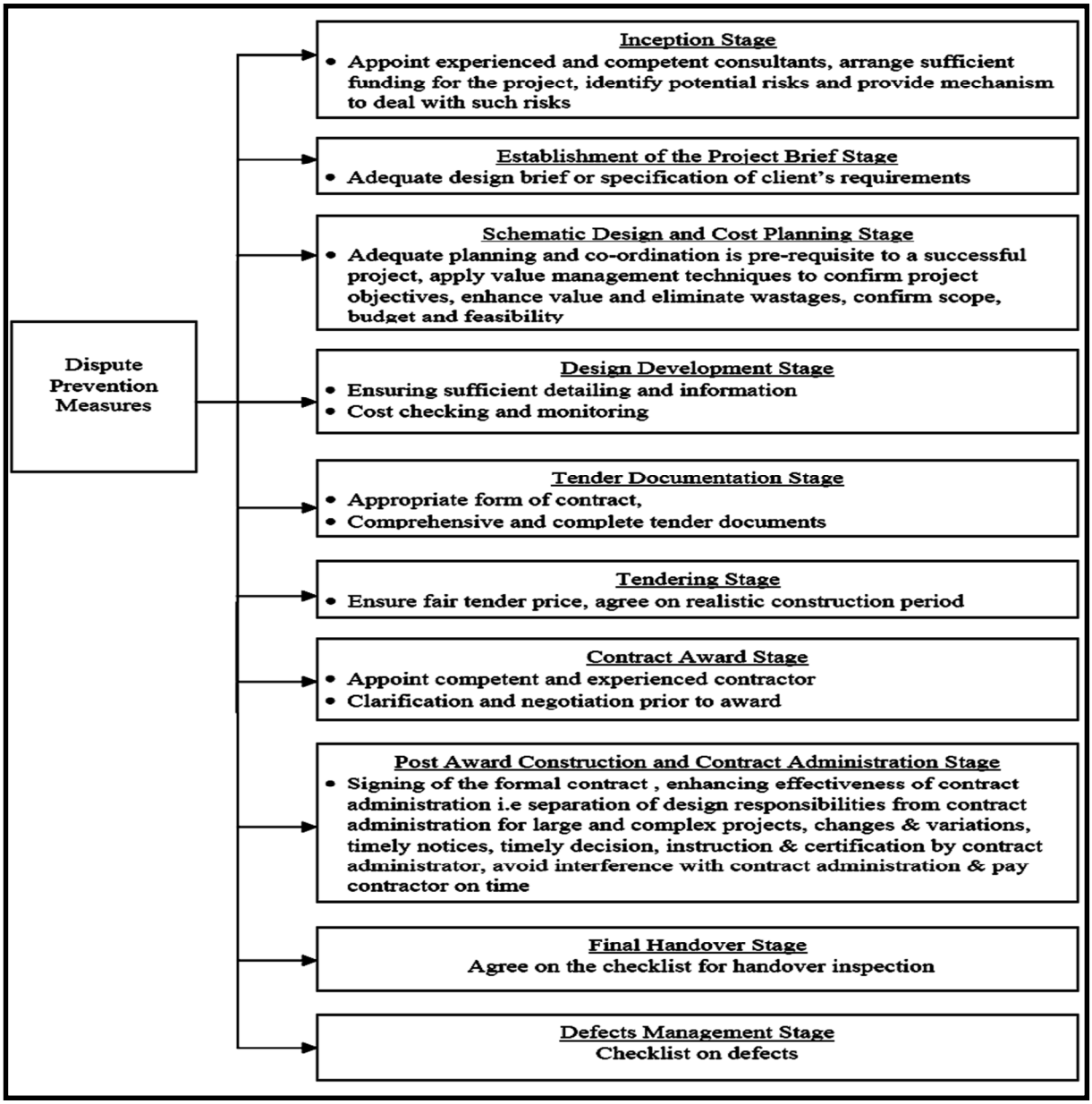

Figure 1. Dispute prevention measures undertaken by the Quantity Surveyors
Source: Haryati et al. (2009).

3.0 Research Methodology

The purpose of this study is to classify at various types of disputes, causes of dispute and to ascertain the preferred alternative dispute resolution methods in the Nigerian construction industry. Data were obtained from clients, construction executives, senior project managers, senior Architects and Quantity Surveyors. A quantitative approach was adopted which involves the administration of questionnaire surveys to randomly selected construction practitioners in the study area. The questionnaire consists of two sections, section one requested for general information about the respondents. Section two carried 20 causes of dispute, classification of the disputes and 12 dispute resolution methods. The respondents were asked to identify the types and causes of dispute, review and rate alternative dispute resolution methods using 5-points Likert scale. The questionnaires were distributed to 184 construction practitioners of which 94 responses were retrieved, but 3 of them were identified as invalid due to incomplete answers. This represents a valid response rate of 50% which is acceptable according to (Moser and Kalton's assertion 1971).

4.0 Data Analysis and Results

4.1 Background Information of the Respondents

The background information of the respondents involved in the study indicates that 41% of them have above 20 years working experience while 30% have between 15 to 20 years' experience in the construction industry. The next in population size are those respondents with between 10 and 15 years' experience which is 25%. In summary, the average year of experience of the respondent is 16 years. This implies that the respondents are matured enough to give reliable information for the study. The result also indicates that 23% of the respondents obtained Master's Degrees; whilst 39% and 38% obtained of Bachelor Degrees and Higher National Diploma in their various fields of study respectively.

Furthermore, 44% of the respondents were Corporate and Registered members of their respective professional bodies with 35% and 21% being Probationer and Fellow members of their respective professional bodies respectively. This suggests that they are well educated, professionally qualified and competent to answer the questions and their opinion could be said to be reliable.

4.2: Causes of Disputes and their Classification

Table 1. Causes of Construction Disputes and their Classification.

Causes of Disputes	Classification	Mean Score	Rank
Non-payment of certified sum	Contractual	4.12	1
Financial claims	Contractual	3.44	2
Wrongful Determination of contract	Contractual	3.41	3
Ambiguous contract documents or provisions	Technical	3.21	4
Misinterpretation of contract documents	Contractual	3.11	5
Variation in design and specifications	Technical	2.51	6
Design errors and inadequacies	Technical	2.45	7
Inadequate management	Organizational	2.41	8
Failure to deal with changes and unexpected conditions	Organizational	2.39	9
Unrealistic contract figures	Contractual	2.36	10
Defects in executed works	Technical	2.34	11
Delay in payment of certified amount	Contractual	2.11	12
Delay in execution of works	Contractual	2.01	13
Misunderstanding of payment procedures by the main contractor and sub-contractor	Contractual	1.98	14
Opportunistic behavior or lack of team spirit	Organizational	1.97	15
Set off	Contractual	1.95	16
Imperfect contrasts	Organizational	1.91	17
Unrealistic performance expectation	Organizational	1.86	18
People issues problems due to communication	Organizational	1.61	19
Poor interpersonal skills among the construction team	Organizational	1.51	20

Table 1 shows that the two topmost causes of disputes are non-payment of certified sums and financial claims with mean scores of 4.12 and 3.44 respectively. The result also indicates that third and fourth ranked causes of dispute are determination of contract and ambiguous contract documents or provisions with mean scores of 3.41 and 3.21 respectively. In addition, the result indicates that there are six major causes of disputes with mean scores above half whilst poor interpersonal skills among the construction team is the least cause of dispute with a mean score of 1.51. Furthermore, the first six causes of disputes were classified as contractual dispute by the respondents while the seventh and eighth were technical and organisational disputes respectively. Finally, nine disputes were classified as contractual dispute by the respondents while four and five disputes were classified as technical and organisational disputes respectively. This implies that the most frequent type of dispute in the studied area is contractual dispute.

Table 2. Preferred Dispute Resolution Methods

Methods of Dispute Resolution	Mean Score	Rank
Agent Resolution	3.84	1
Mediation	3.72	2
Conciliation	3.63	3
Adjudication	3.02	4
Arbitration	2.83	5
Negotiation	2.71	6
Partnering	2.70	7
Dispute Review Board	2.61	8
Dispute Resolution	2.45	9
Advisor System	2.31	10
Informal Discussion	2.01	11
The Mini trial	1.19	12
Engineering expert assessment	1.03	13

Table 2 indicates that agent resolution is the most preferred method of dispute resolution followed by mediation with mean scores of 3.84 and 3.72 respectively. Agent resolution is not a common practice in Nigeria but the respondents still preferred it most. This may be an attempt to embrace a new dimension in resolving disputes. The next preferred method is conciliation, while the fourth method is adjudication with mean scores of 3.63 and 3.02 respectively. The second and third methods are being encouraged by the present government in Nigeria as means of settling disputes. The least preferred method of resolving dispute is engineering expert assessment with mean a score of 1.03.

4.3 Discussion of Results

The two major causes of disputes are non-payment of certified sums and financial claims. This finding agreed with most previous findings on dispute management such as Poh (2005); Motsa (2006) and Ong (2005) that ranked non-payment of certified sum and financial claims as first and second main causes on disputes respectively. The result is closely in line with Shin (2000) and Chan and Suen (2005) in a similar research conducted in China. The study also shows that the five topmost preferred dispute resolution techniques were agent resolution, mediation, conciliation, adjudication and arbitration. This as well agreed with Van et al (2010) similar study carried out in South Africa. The result also shows that the most common type of dispute in Nigeria is Contractual dispute. This implies adversarial relationship between the client and the contractor may be responsible for the contractual dispute.

5 Conclusion

It can be concluded that the Nigerian construction industry is not devoid of disputes and most especially contractual disputes caused as a result of non-payment of certified sums to the contractors, financial claims and wrongful determination of contract by either of the parties. Hence, the need for alternative dispute resolution methods such as agent resolution, mediation, conciliation, adjudication and arbitration among others. A thorough examination of the topmost causes of dispute indicates that they are due to financial issues; there is need for the client to make adequate budgetary provision for the construction works within the predetermined period.

In addition, all issues that could lead to financial claims should be identified and resolved at the early stage of the project by the stakeholders. Finally, the study recommended that contracting parties should adopt dispute prevention strategies rather than settlement and that when dispute arises, they should exercise teamwork, build trust among each other and select agent resolution or mediation in managing such dispute.

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