

Appraising the Potentials of Alternative Dispute Resolution as a Strategy for resolving Conflicts on Construction Projects in Onitsha Metropolis, Anambra State, Nigeria

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ABSTRACT

The upsurge of construction activities in Onitsha Metropolis has led to difficult management of relationships among various contracting parties. Consequently, the study examined the use of ADR as a strategy for resolving conflicts on construction projects in Onitsha Metropolis Anambra State, Nigeria. A total of 56 questionnaires were administered to the respondents and they were all completed, returned and found useful, thus, giving a response rate of 100%. Data garnered were analysed and presented using mean score index, standard deviation, percentages and charts. The study observed that 77% of construction professionals prefer to resolve using ADR rather than going to court. Thus, ADR is significantly preferred in the study area for resolving construction dispute. This is because it is faster, cheaper and preserves relationships. Nevertheless, ADR lacks enforceability in the study area; hence, there is need for establishment of Dispute Review Board within the study area. In addition, construction practitioners within Onitsha metropolis should be trained on the use of ADR techniques through workshops, symposia or seminars. It should also be incorporated as a major section of the “Law of Contract” during academic trainings of intending construction professionals.

1.0 INTRODUCTION

The construction industry involves complex and competitive environment in which participants with different views, talents and levels of knowledge of the construction process work together (Cakmak & Cakmak, 2013). Hence, Odiri (2004) notes that in every industry where people have to work together there is a tendency/possibility for conflicts to arise. Nevertheless, there is still a misunderstanding among construction professionals about the difference between conflict and dispute, and these terms have been used interchangeably especially in the construction industry (Acharya, Lee, & Im, 2006). However, Fenn, Lowe and Speck (1997) assert that conflict and dispute are two distinct notations. Conflict exists wherever there is incompatibility of interest. Conflict can be managed, possibly to the extent of preventing a dispute resulting from the conflict. In view of this, Corby (2003) defined dispute as a difference between the parties after the internal resolution procedure has been exhausted.

According to Suretylearn (2014) conflict in the construction industry can be resolved using any of the four options: litigation, negotiation, meditation and arbitration. Litigation according to Suretylearn (2014) entails resolving dispute through the court system, while the remaining three are classified as Alternative Dispute Resolution (ADR). It has been proved that litigation is costly, lengthy and adversarial (Cheung, Wong & Kennedy, 2010). Thus, the use of ADR has been advocated to address these criticisms (Cheung, Wong & Kennedy, 2010).

According to Gould (1998), ADR is a structured process with third party intervention which does not lead to a legally binding outcome imposed on the parties. Although the concept of dispute resolution techniques as an alternative to the traditional court-based system is not new; yet the ADR movement brings with it a connotation of innovation (Gould, 1998). The more recent advent of the acronym is essentially taken to describe the use of a third party mediator who assists the parties to arrive at a voluntary, consensual, negotiated settlement.

Conversely, Suleman (2015) noted that a careful survey of the socio-political environment of the Nigerian building and construction sector reveal increasing incidents of disputes and disagreements of many shades among stakeholders. Also, the implementation of Nigeria's infrastructural development master plan and other agenda for rapid infrastructure transformation of Nigeria has led to major boom in economic activities in the building and construction sector. With the upsurge in construction activities, the management of relationships between various contracting parties to construction projects becomes increasingly problematic. Consequently, this study sought to examine the use of ADR as a strategy for resolving conflicts on construction projects in Onitsha Metropolis, Anambra State, Nigeria.

1.2 The Study Area

Onitsha metropolis in Anambra State, Nigeria comprises Onitsha North and Onitsha South Local Government Area (LGA) and some parts of Ogbaru, Idemili North and Oyi LGAs. It is a city located on the eastern bank of the Niger River; lies within Latitude 6° 10' 0" North and Longitude 6° 47' 0" East. It is the commercial hub of Anambra State with an estimated population 511, 000 based on the 2006 census (NPC, 2006). Being the commercial hub of the state, lots of building construction projects takes place in order to provide the housing needs of the growing populace. This is buttressed by the significant number of building construction companies within the area. Consequently, they are adequate and experienced respondents with respect to disputes resolution.

2.0 OVERVIEW OF CONSTRUCTION INDUSTRY DISPUTES: CAUSES AND RESOLUTION TECHNIQUES

Conflict generally is difference between two or more beliefs, ideas or interests (She, 2013). That is, dissatisfaction or disagreements over contract administrator's decisions, anger, hostility, and negative attitudinal propensities by parties (Aibinu *et al.* 2008). On the contrary, a disputes arises in a situation when a claim or assertion made by one party is rejected by another party and this rejection is not accepted (She, 2013). Furthermore, Onyia (2016) opines that disputes can occur as a result of the actions, or inactions of the client, the contractor or the various consultants to meet up with their contractual agreement or obligations. When such occurs, it will have serious contractual implications (Okuntade, 2014).

It been proven that disputes in the construction industry disputes are subject matters which are highly technical in nature, highly specialized and involve issues of law. Therefore, it may require evidence by the parties involved which sometimes are costly to come by (Kheng, 2003). However, Love, Davis, London and Jasper (2014); Tarar (2016) attest that the literature is saturated with studies that have examined the sources and causes of disputes. Love *et al.* (2014) summarised these causes as: poor management, adversarial culture, poor communications, inadequate design, economic environment, unrealistic tendering, influence of lawyers, unrealistic client expectations, inadequate contract drafting, and poor workmanship. Jasper (2014) summarised them into five groups as: contract conditions, design deficiency, construction process, consumer reaction, and delay.

Disputes arising from construction work needs to be resolved because it is critical to the health of a construction firm and can affect the performance of the firm and job (SuretyLearn, 2014). There are a number of methods of resolving disputes in construction. Tucker (2005); Royal Institute of Chartered Surveyors (2012); She (2013); Mante (2015) agree that the methods include: Litigation, Arbitration, Mediation, Conciliation, Adjudication/Security of Payment, Mini-Trials, Facilitated Negotiation, Expert Determination/Appraisal and Partnering in Alliance Contracting. Techniques for resolving disputes in construction are generally grouped into two:

- i. **Litigation:** Litigation involves a legal proceeding in a court or a judicial context to determine and enforce legal rights (She, 2013). She (2013) observes that it is the least preferred method in the construction industry as the courts acts on the adversary system and damages business relationships. Also, litigation is quite slow, expensive, time consuming, risky and involves stressful procedure. Furthermore, there is no real certainty of results other than a certainty of at least one loser. Consequently, hence, the need for ADR.
- ii. **Alternative Dispute Resolution (ADR):** Royal Institute of Chartered Surveyors (2012) asserts that ADR are processes which are alternatives to the traditional binding dispute resolution procedures of litigation. It is an alternative in the sense that it provides a faster

and more economic dispute resolution procedure. Cheung *et al.* (2010) agrees that during the last two decades, the quest for greater use of ADR in construction has prompted its statutory use in some jurisdictions. Cheung *et al.* (2010) states that the first piece of legislation in this regard is the Housing Grants, Construction and Regeneration Act (HGCRA) that was passed in 1996 in the United Kingdom (UK). The statutory use of adjudication for construction disputes was brought into force in 1998 through a piece of secondary legislation (Scheme for Construction Contracts) which sets out the minimum standards of payment terms (to protect the sub-contractors' cash flow) and the procedure to be followed in an adjudication. Since then, the use of adjudication has become available as a statutory right open to all parties in all construction contracts. Nevertheless, if the parties are not happy with the adjudicator's decision, they can refer the dispute to arbitration in accordance with their contract—usually upon practical completion of the project (Kennedy, 2008). Following this UK initiative, similar statutory use of ADR had been promulgated in Australia, New Zealand and Singapore (Gaitskell, 2007). Moreover, ADR movement in Hong Kong has been confined at the contractual level (Chau, 2007). According to Onyia (2016), ADR may be classified into two, mainly binding and non-binding ADR. Non-binding ADR includes Negotiation, Mediation, Conciliation and Neutral Evaluation. These methods of ADR are mainly consensual and reconciliatory. Binding ADR includes Arbitration, Mini-Trial, Expert Determination of Issues and Mediation-Arbitration which is also known as Med-Arb.

3.0 METHODOLOGY

This study is a survey research, which was conducted in Onitsha, Anambra State, Nigeria. The target population of the study comprises all building construction firms in Onitsha Metropolis of Anambra State. As at the time of conducting the study was carried out, there were 67 registered construction companies in the study area. The 67 Managing Directors of these firms was thus used as the population of the study. Taro Yamane's formula, as cited by Uzoagulu (2011) was used to determine the sample size. The formula is expressed as follows:

$$n = \frac{N}{1+N(e)^2} \quad (1)$$

Where: N = Population size

n = Sample size

e = level of significance

1 = Unity

The population is 67 and level of significance is set at 0.05 (95% confidence interval). The sample size was thus computed as follows:

$$n = \frac{67}{1+67(0.05)^2} = 57$$

Data was collected via structured questionnaire administered to the selected respondents. In addition, few interviews were conducted with some professionals to substantiate the validity of the result of this study. The questionnaires distributed were all returned and properly filled. Representing 100% returned rate.

Data collected from the questionnaire survey and interviews were subjected to descriptive analysis using tables and percentages, mean and standard deviation. Mean score index was used to rank all the options provided based on the five point Likert scale while Standard deviation was used to ascertain the variance of the responses on each question item.

Mean score index is expressed as:

$$MS = \frac{\sum fx_i}{N} \quad (2)$$

Where: MS = Mean score of each variable
F = Frequency of the response to each variable
 X_i = Score or ranking given to each variable
N = Total number of responses.

Results are accepted when calculated mean is 3.00 and above

Standard Deviation (S.D) is expressed as:

$$S.D = \sqrt{\frac{\sum (X - \bar{X})^2}{N}} \quad (3)$$

Where: S.D=Standard deviation of a sample,
 \sum connotes Summation or “sum of”
 \underline{X} = Individual value in the data set
 \bar{X} = Mean of all values in the data set
N = Number of values in the data set

4.0 RESULTS AND DISCUSSION

4.1 Prevalence of Construction Disputes

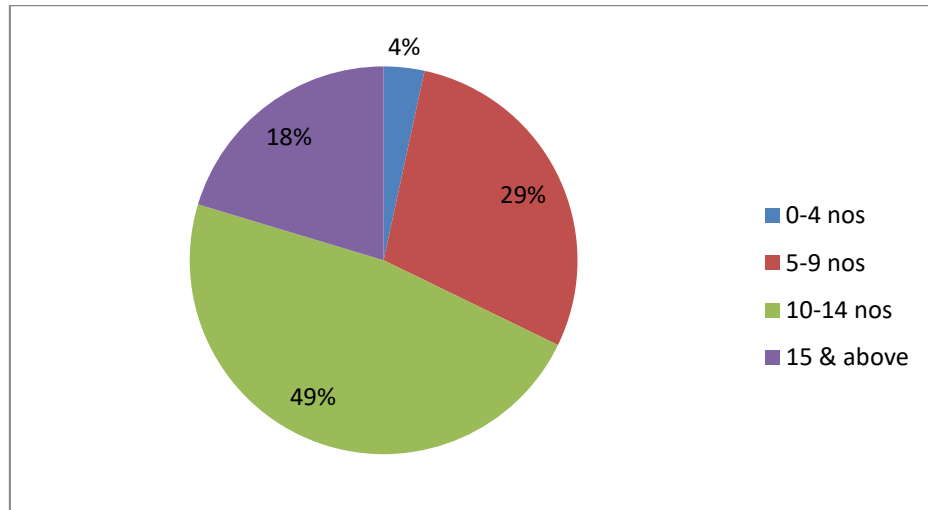


Figure 1. Number of Disputes Experienced by the Respondents
 Source: Researchers' field survey (2017)

Figure 1 show that 33% of the respondents have had less than 10 disputes while 67% of the respondents in the study area have experienced more than 10 disputes during their years in the construction. These findings agree with that of Suleman (2015) as regards dispute being prevalent in the Nigeria construction industry.

4.2 Causes of Disputes

Table 1. Causes of Disputes in Onitsha Metropolis

s/n	Causes of Disputes	5	4	3	2	1	N	\bar{X}	StD
1	Faulty Contract Conditions	1	1	22	24	9	57	2.31	0.82
2	Design deficiency	6	13	26	11	1	57	3.21	0.94
3	Variations in construction process	17	23	14	1	2	57	3.91	0.97
4	The owner's reaction	9	18	28	2	0	57	3.60	0.93
5	Project time	20	20	9	6	2	57	3.88	1.12

Source: Researchers' field survey (2017)

Results in Table 1 reveal that the major causal factor of disputes is variation in the construction process (Mean= 3.91). This is followed by the project delivery time (Mean= 3.88), the owner's reaction (Mean= 3.60) and design deficiencies (Mean= 3.21). Nevertheless, faulty conditions of contract is not a major cause of dispute in the study area. These results corroborate the study of Jasper (2014) who notes that disputes could be traced to different sources which are categorised into contract variations, project delivery time, client's reactions and design deficiencies. However, the result is contrary to the study of Potts (2008) that contract condition is a major

factor that causes disputes. Tucker (2005) emphasizes that contract conditions only contributes to disputes when there are not well spelt out and understood by all stakeholders.

4.3 Preference for ADR

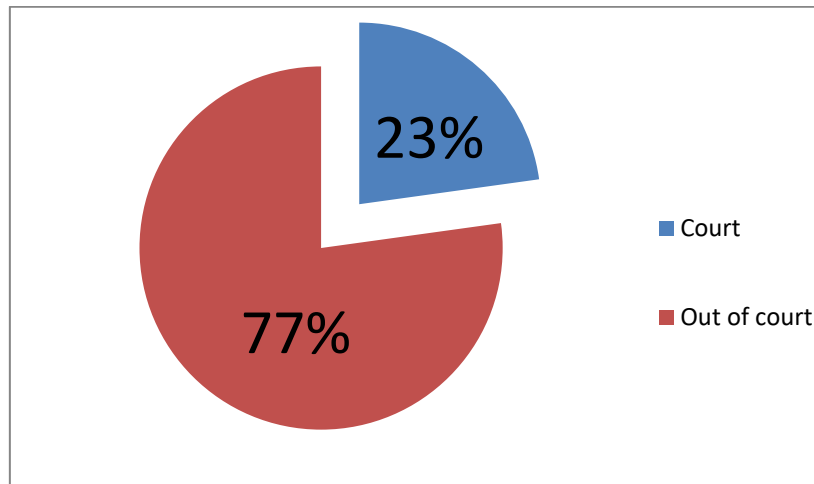


Figure 2. Respondents' Preference for ADR in Onitsha Metropolis
 Source: Researchers' field survey (2017)

Figure 2 indicates that 23% of the respondents admit that their disputes were resolved in the court rooms while 77% of the respondents noted that they resolved their disputes outside the court rooms. This illustrates that ADR is significantly preferred in the study area.

4.4 Reasons for Adopting of ADR

Table 2. Reasons for choice of ADR in Onitsha Metropolis

s/n	Choice of dispute resolution	5	4	3	2	1	N	\bar{X}	StD	Rank
1	Preservation of Relationship	28	11	1	3	1	44	4.41	0.98	1 st
2	Privacy and Confidentiality	16	13	6	5	4	44	3.73	1.30	4 th
3	High Enforceability	5	7	11	10	11	44	2.66	1.32	5 th
4	Faster Resolution Speed	19	13	7	4	1	44	4.02	1.13	3 rd
5	Less expensive	22	14	4	2	2	44	4.18	1.05	2 nd

Source: Researchers' field survey (2017)

Table 2 depicts that the accepted benefits associated with the respondents' choice of resolving their disputes, through ADR, is preservation of relationship (Mean= 4.41). This was closely followed by less expenses (Mean= 4.18), faster speed (Mean= 4.08) and privacy/confidentiality (Mean=3.72). Nonetheless, the respondents rejected the choice of highly enforceability (Mean= 2.66). This may be the main reason why 23% of the respondents settled their disputes in court. However, the above benefits relate to the use of ADR. In the literature review, She (2013) outlines the benefits of ADR to include preservation of relationships, less or no sunk cost, faster resolution speed and promotion of confidentiality.

4.5 Choice of ADR Techniques

Table 3. Respondents' Choice of ADR Techniques in Onitsha Metropolis

s/n	ADR Strategies	5	4	3	2	1	N	\bar{X}	StD	Rank
1	Negotiation (Involves only you and your opponent)	25	12	5	1	1	44	4.34	0.93	1 st
2	Mediation (involves only you, your opponent and a third party)	4	24	15	1	0	44	3.70	0.69	3 rd
3	Arbitration (you and your opponent reporting to a panel)	1	3	2	30	8	44	2.07	0.82	5 th
4	Mini-Trial (your team and opponent team before a panel)	0	1	7	26	10	44	1.98	0.68	6 th
5	Expert Appraisal	18	16	8	1	1	44	4.11	0.91	2 nd
6	Dispute Review Board (On-site judges)	9	6	19	8	2	44	3.27	1.13	4 th

Source: Researchers' field survey (2017)

Results in Table 4 indicate that Negotiation (Mean= 4.34) is the most accepted ADR strategy employed in the study area. Its standard deviation of 0.93 suggests that the acceptance is unanimous. Other accepted ADR strategies include Expert Appraisal (Mean= 4.11), Mediation (Mean= 3.70) and Dispute Review Board (Mean= 3.27). The use of Arbitration/panel (Mean= 2.07), and Mini-trial (Mean= 1.98) were generally rejected.

The above results contradict the assertion of Suretylearn (2014), that arbitration and mini-trial are generally utilized ADR strategies. However, the findings reinforce the conclusion of She (2013) that negotiation, mediation, and expert appraisals are the most prevalent ADR strategies.

4.6 Factors affecting the use of ADR Techniques

Table 4. Factors affecting the use of ADR on Construction Projects in Onitsha Metropolis

s/n	Factors affecting the use of Alternative Dispute Resolution	5	4	3	2	1	N	\bar{X}	StD	Rank
1	Temporal effect	5	7	5	18	9	44	2.57	1.32	5 th
2	Loss of autonomy	9	8	8	15	4	44	3.07	1.34	4 th
3	Unfairness/Inequality	9	18	4	7	6	44	3.39	1.36	3 rd
4	Insufficient Personnel	25	13	2	2	2	44	4.30	1.11	1 st
5	Lack of Awareness	22	14	3	5	0	44	4.20	0.99	2 nd
6	Poor suitability	3	5	1	10	25	44	1.89	1.28	7 th
7	Presence of sunk cost	5	7	2	17	13	44	2.41	1.35	6 th

Source: Researchers' field survey (2017)

The results in Table 5 show that insufficient personnel (Mean= 4.30) ranked highest with a Standard Deviation of 1.11. This was followed by lack of awareness (Mean= 4.20), unfairness/inequality in results (Mean= 3.39) and loss of autonomy (Mean= 3.07). The standard deviation

of these factors which is within 0.99 to 1.36 indicates that there are no much discrepancies among the assertion of the respondents. However, lack of awareness (StD = 0.99) is the most unanimously accepted. Furthermore, the use of ADR is not affected by its temporal effect (Mean= 2.57), presence of sunk cost (Mean= 2.41) and poor suitability (Mean= 1.89).

4.7 Strategies for improving the use of ADR

Table 5: Strategies for improving the use of ADR on Construction Projects in Onitsha Metropolis

s/n	Ways of improving the use of Alternative Dispute Resolution	5	4	3	2	1	N	\bar{X}	StD	Rank
1	Public enlightenment on existing ADR processes	20	15	1	4	4	44	3.98	1.29	3 rd
2	Establish a separate legal framework for construction industry	5	7	4	11	17	44	2.36	1.14	4 th
3	Establishing Dispute Review Board.	19	19	2	3	1	44	4.18	1.04	2 nd
4	Promptly addressing disputes	28	12	1	2	1	44	4.45	0.96	1 st

Source: Researchers' field survey (2017)

Results from Table 6 show that the best way of improving the use of ADR is by promptly addressing disputes (Mean= 4.45). This was unanimously accepted (StD= 0.96). Also, it was accepted that a Dispute Review Board should be established (Mean= 4.18). Moreover, there should be a public enlightenment on the existing ADR processes (Mean= 3.98). The establishment of a separate legal framework for construction industry (Mean= 2.36) was rejected.

Based on the reviewed literature, the above findings corroborates the study of Raji *et al.* (2015) who submitted that for the use of ADR to be improved, disputes must be nipped at its bud, through the establishment of a dispute review board on site. Raji *et al.* (2015) also asserts that the public should be well sensitized that misunderstandings could be satisfactorily settled outside the court rooms. The recommendation of Raji *et al.* (2015) for the establishment of a separate legal framework for the construction industry was rejected by the respondents.

5.0 Conclusion and Recommendations

Based on the research findings, the following conclusions were drawn:

- i. Dispute is prevalent in Onitsha metropolis. The disputes are a product of variation in construction process, project delivery time, client's reaction, and/or design deficiencies.
- ii. ADR is predominant in Onitsha metropolis. This is because it is faster and cheaper, preserves relationships. Nevertheless, ADR lack enforceability in the Onitsha. Common

ADR strategies recognised in Onitsha metropolis include negotiation, expert appraisal, mediation and dispute review board. Arbitration and mini-trial are not commonly used in the study area.

- iii. Challenges facing the use of ADR in the study area are: insufficient personnel, poor awareness, biased results, and loss of autonomy. Prompt resolution of disputes will increase the use of ADR techniques in Onitsha metropolis.

From the foregoing, there is need for establishment of a Dispute Review Board within the study area. In addition to this, construction practitioners within Onitsha metropolis should be trained on the use of ADR techniques through workshops, symposia or seminars. It should also be incorporated as a major section of the “Law of Contract” offered during academic trainings of intending construction professionals.

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