

# Dispute resolution in Public Private Partnership (PPP) Infrastructure Projects in Nigeria: Literature Review

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**Abstract** — Over the past decade, Public Private Partnership (PPP) Policy has increasingly been adopted by governments over the World and the Nigerian Government is no exception. This can be attributed to the fact that the era of government singlehandedly providing infrastructural facilities are long gone. The governments all over the world in this new dispensation now cooperate with the private sectors in the provision and management of various infrastructural facilities in their respective countries. Nigeria has also embraced the Public Private Partnerships (PPP) initiative as a means of addressing the huge infrastructure deficits and challenges. But PPP contracts are long-term, projects tend to be complex in their scope with multiple stakeholders involved and contract documents are complex and subject to interpretation. Therefore, unlike the case under traditional procurement system, the proclivity for disputes arising in PPP projects is now very high. In light of this, this paper aims to review existing literature on dispute resolution methods in PPP infrastructure projects in Nigeria. This study adopts the systematic review process as a methodological approach. A total of 100 articles from 20 construction-related journals were identified and reviewed. Among these, only 25 articles focused on dispute resolution in PPP infrastructure projects in Nigeria which were then analysed, synthesised, and summarised. The study found from literature review that dispute resolution methods adopted in PPP contracts relate to binding and non-binding methods i.e. Mediation or conciliation, Negotiation, Dispute Resolution Board (DRB), Expert Determination, Arbitration and Litigation. On the other hand, from redacted PPP contract documents in Nigeria, the different dispute resolution methods identified were mutual consultation, mediation and arbitration, which are more of alternative dispute resolution (ADR). The study highlights the actual state of research into construction dispute resolution methods in PPP infrastructure projects in Nigeria.

**Keywords:** Dispute resolution, Public Private Partnership (PPP), Infrastructure Projects, Nigeria.

## I. INTRODUCTION

The provision of infrastructure is mostly undertaken by the public sector and often financed through budgets and appropriation acts. But in spite of this strong commitments of most Governments to provide the required infrastructure in most countries, [1] opine that a wide gap still exist in terms of meeting the quantity and quality of infrastructure required for sustainable socio-economic development principally due to shortage of public funds. Many countries have reverted to using PPP as a viable alternative to public funding for building and financing infrastructure projects [2]. The conduct of PPP differs from country to country depending on the prevalent political economic conditions and risks. In the case of Nigeria, [3], [4], [5] opined that PPP was adopted because there is urgent need for pragmatic strategies to salvage the worsening infrastructural shortfall and deterioration so as to meet her Millennium Development Goals (MDGs).

The prevalence of uncertainty, long maturity duration, changing legal and economic regimes often test the efficiency of the dispute-hedging clauses and methods specified in the PPPs agreements [6]. Disputes are, therefore, unavoidable in commercial relationships due to complicated contractual relationship among participants, benchmarking, cost of bids [1]; conflicts of interests, and its effective management contributes to the corporate performance of the PPP projects [7] and [8]. This article has not discussed disputes and their causes but focuses on dispute resolution in PPP infrastructure projects in Nigeria.

Many articles with a variety of topics on dispute resolution in PPP infrastructure projects have been published. Given the fact that the facet of this review focuses on dispute resolution in major infrastructure projects in Nigeria, the objectives of this paper are:

1. To conduct a thorough literature review for previous studies in dispute resolutions in PPP in major infrastructure projects in Nigeria. This review looked purposely at processes in Nigeria Construction Industry;

2. To discover the general trend of dispute resolution related studies through a systematic review. The analysis has not cover set years but instead the publications on dispute resolution in PPP infrastructure projects in Nigeria;

3. To produce a report to broaden the understanding of researchers and industry practitioners of the different dispute resolution methods adopted to resolve construction disputes in PPP infrastructure projects in Nigeria based on the results obtained from items 1 and 2 above. This review will also contribute to the body of knowledge about dispute resolution methods in PPP infrastructure projects available to both the stakeholders and the main contractors.

## II. RESEARCH METHODOLOGY

To achieve objectives 1 and 2, a systematic review of the literature is conducted of previous studies that relates to dispute resolution in PPP infrastructure projects in Nigeria. The review was restricted to relevant papers that have been published in academic (peer-reviewed) journals and contract documents on PPP infrastructure projects. The rationale for this is that peer-reviewed journal papers are considered the most valuable sources of information, because of the academic rigor involved in their publications while the contract documents are actual information relating to each project. The process, as identified in [9], [10], [11], [12], [13] and [14], involves a specific and reproducible approach for identifying, selecting and appraising all literature of a certain agreed level of quality that are relevant to the research question.

### A. Data collection

1) *Literature search*: In this step, research questions was addressed unambiguously and in specified order. The research question, therefore, was: ‘What is dispute resolution in PPP infrastructure projects in Nigeria?’ With this, the search protocol was then solely based on the following designated search keywords as identified below, to assure the criteria are maintained at a well-defined range:

“Dispute resolution in Public Private Partnership projects”, “Dispute resolution in PPP infrastructure projects”, “Dispute resolution in PPP projects in Nigeria”, “Dispute resolution methods in PPP projects”, “Construction dispute resolution in PPP in Nigeria construction industry”.

2) *Literature selection*: A comprehensive and extensive search from relevant databases was carried out to capture as many relevant citations and journals in the appropriate domain of study identified and selected, as opined by [11]. The journals selected were listed in some of the well-known database providers, multidisciplinary and global coverage and focused on construction disputes and their resolution. The databases include Taylor & Francis Group, Emerald Insight, Science Direct, Elsevier, International Institute for Science, Technology and Education (IISTE) and American Society of Civil Engineers (ASCE). The databases involve the main peer-referred journals in the topic of disputes and dispute resolution in construction industry. Open Access journals were also reviewed because articles are freely available for everyone and articles from developing countries are published in journals more on open access. A total of 20

journals were selected from the ten databases with 100 papers identified.

3) *Assess the quality of studies*: This step is to ensure academic rigor and implies that acquired articles for analysis and synthesise are subjected to assessed qualities. This meant the initial 100 papers retrieved were subjected to a screening process which that involved reviewing of the abstracts and contents of the 100 papers, and those identified as relevant to the review were selected and reviewed in full. The numbers of papers that relate to dispute resolutions in PPP infrastructure projects in Nigeria were reduced to 25 papers.

### B. Data analysis of the screened articles

The data analysis was conducted to analyse and synthesise the remaining 25 screened articles, focusing on articles which are only related to the topic of interest and aligned with the research scope. The analysis covered year of publication (to identify increase of interest in dispute resolution in PPP infrastructure projects). In the selected 25 papers, the earliest one concerning dispute resolution in PPP infrastructure projects in Nigeria was published in Journal of Research in National Development (JORIND) in 2003. As earlier stated in this report, there were few publications, especially in the area of dispute resolution in PPP infrastructure projects in Nigeria. The number of papers increased between 2010 and 2020.

## III. DISCUSSION OF RESULTS

This section discusses the findings of the literature search. Many countries have reverted to using PPP as a viable alternative to public funding for building and financing infrastructure projects [2]. The conduct of PPP differs from country to country depending on the prevalent political economic conditions and risks. Nigeria adopted PPP because there is urgent need for pragmatic strategies to salvage the worsening infrastructural shortfall and deterioration so as to meet her Millennium Development Goals (MDGs).

Under PPP contracts, disputes are unavoidable in commercial relationships due to complicated contractual relationship among participants, conflicts of interests, prevalence of uncertainty, long maturity duration, changing legal and economic regimes, benchmarking, cost of bids [1]. In [15], the legal context and arguments for something to be called dispute in construction was analysed. This articles, therefore, focuses on dispute resolution in PPP infrastructure projects in Nigeria.

It is identified that not many articles dealt with dispute resolution in PPP infrastructure projects across the globe. And the few articles that dealt with dispute resolution in PPP projects identified the use of negotiation, mediation [1], arbitration, fast track resolution process, mediation/conciliation, expert determination, dispute resolution board (DRB), and litigation [8].

### A. Construction dispute resolution methods in PPP projects

This review established that there are articles on PPP but very few on dispute resolution in PPP infrastructure projects, especially in Nigeria, being the focus of this article. This review, therefore, viewed dispute resolution in PPP infrastructure projects in Nigeria from two perspectives: a systematic review of literature of published peer-reviewed

journals that relates to dispute resolution in PPP infrastructure projects in Nigeria and information from redacted PPP contract documents. Though this study did not see much differences between these two perspectives regarding methods adopted to resolve PPP disputes, the dispute resolution methods in redacted documents were consistent in more of the PPP infrastructure contracts. From literature review, Arbitration and Litigation, and non-binding (Alternative Dispute Resolution (ADR)) methods i.e. Negotiation, Mediation/Conciliation, Dispute Review Boards (DRBs), Expert Determination were identified. But from redacted PPP contract documents in Nigeria, the different dispute resolution methods identified were more inclined to mutual consultation, mediation and arbitration.

Tables 1 and 2 showed lists of studies on dispute resolution methods in PPP infrastructure projects from the review of the literature and from information on redacted PPP contract documents. The list of dispute resolution methods in Table 2 aligns with the guidelines in the World Bank publication [16].

**Table 1 List of studies on dispute resolution methods in PPP infrastructure projects (Literature review).**

1.	1. Discussion between parties 2. Arbitration 3. Fast track resolution process 4. Mediation or conciliation 5. Dispute Resolution Board (DRB) 6. Expert Determination 7. Legal court system
2.	1. Mediation or conciliation 2. Negotiation 3. Dispute Resolution Board (DRB) 4. Expert Determination 5. Arbitration 6. Litigation

**Table 2 List of studies on dispute resolution methods in PPP infrastructure projects (Redacted documents review)**

1.	1. Amicable Settlement by the Minister 2. Mediation (by Panel of Mediators) 3. Arbitration (by Panel of Arbitrators)
2.	1. Appoint Dispute Adjudication Board (DAB) 2. Amicable Settlement - Project Executive Committee - ICRC 3. Arbitration*
3.	1. Dispute Notice 2. Resolution by Authorized Representatives 3. Arbitration (UNCITRAL Rules)
4.	1. Mediation 2. Arbitration*
5.	1. Mutual Consultation (Senior Management) 2. Arbitration*
6.	1. Mutual Consultation (Senior Management) 2. Expert determination 3. Arbitration*
7.	1. Mutual Consultation (Senior Management) 2. Mediation 3. Arbitration*

8. 1. Negotiation
2. Arbitration\*
3. Arbitration Referral: - Internal - Project Managers  
- Project Directors  
- External - 1 x Arbitrator to be appointed by each party to agreement

\* All arbitration proceedings shall take place in Nigeria, conducted in English and administered by the Centre for International Commercial Arbitration, Lagos

But because PPP contract is a collaboration between the public private consortiums to provide public infrastructure, pre-agreed dispute resolution methods are always included in PPP contracts. In PPP contracts in Nigeria, these pre-agreed methods are always found under Section H (redacted documents) (see Table 2). Also within PPP concession agreement, agreed dispute clauses were a matter of practice, and not a policy to achieve a specific dispute resolution objective. According to [17], the most common types of Alternative Dispute Resolution (ADR) are mediation, settlement conferences, neutral evaluation, negotiation, fact finding, and arbitration. But typical dispute resolution methods identified in the redacted agreements included formal meetings of senior executives, mediation, panel of senior representatives and finally arbitration or court proceedings. The dispute resolution methods also include time limit (i.e. time period for which dispute resolution method must run before being escalated to the next level), to incentivise the parties to progress disputes and reduce risk of wasting time and cost.

From the review of the literature, [18] opine that dispute is not a common experience in the construction phase of PPP projects because of the pressure faced by works contractor and the SPV from the bank and investors. And in his report, [1] agree that in most PPP projects, the works contractor may also be a shareholder in the SPV, as such, has an obligation to work diligently to protect his organisation's interest by delivering the project within time, cost and quality. But the problem with dispute resolution in PPP contracts in Nigeria was the unavailable information or records that identified the dispute resolution method(s) adopted in resolving dispute when they occurred. This problem, therefore, makes it difficult to examine the outputs of these dispute resolution methods.

#### IV. CONCLUSIONS

The main purpose of this study is to carry out a literature review of dispute resolution in PPP infrastructure projects in Nigeria. To achieve this, this study has conducted systematic review of articles published in 20 selected academic (peer-reviewed) construction project-related journals. A systematic screening process has been performed on all dispute resolution in PPP infrastructure construction related articles based on review of the abstracts and contents, with the aim to synthesise the dispute resolution methods in PPP projects in Nigeria. The analysis covered publications between 2003 and 2020 (years inclusive). Though PPP has been gaining global popularity since 1980's as a viable alternative to public funding for building and financing infrastructure projects [2], from the review of the literature, the first publication on

dispute resolution in PPP infrastructure projects in Nigeria was not until 2013 [1].

The review of publication on dispute resolution in PPP infrastructure projects in Nigeria showed that there are pre-agreed dispute resolution mechanisms for the resolution of any dispute that may arise out of PPP contract. These mechanisms are aimed at encouraging a less formal resolution of disputes at a relatively early stage. This is advantageous to the stakeholders because such mechanisms are aimed to encouraging a less formal resolution of dispute before relationships deteriorate and a significant amount of time and cost is spent in formal court proceedings or arbitration.

From the literature review, disputes in PPP infrastructure projects in Nigeria, causes and the methods adopted for the procurement have not been considered in arriving at the different dispute resolution methods in this report. But considering the extensive exposure of PPP to contractual conflicts and poor investment climate in Nigeria within which the projects are procured, there is a need to have an enhanced knowledge of disputes resolution practices for effective management of occurrence and impact of disputes. This study, therefore, examined the dispute resolution methods in PPP infrastructure projects in Nigeria to broaden the understanding of researchers, industry practitioners and stakeholders in infrastructure projects.

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