

Project Procurement and Contractual Practices: Local Contents, Ethics, Corruption and Dispute Bodies – Theoretical Case Studies of Samoa and the United Kingdom

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INTRODUCTION

This paper covers three main areas: (a) Local Content, (b) Ethics and Corruption, and (c) Dispute Bodies. The paper first discusses local content and how it refers to the production and distribution of goods, services, and information that are specific to a particular region or community. By using Samoa as a case study, the paper encompasses various aspects such as culture, language, traditions, and resources. It identifies how the importance of the local content lies in its ability to preserve and promote the unique identity of the host nation and beneficiary. One significant aspect of local content highlighted is its impact on the economy. By supporting local businesses and industries, the paper explains how it helps stimulate economic growth and create employment opportunities within the community. Moreover, it fosters self-sufficiency by reducing dependence on imported goods. The paper also elaborates on how local content also plays a crucial role in preserving cultural heritage. It allows communities to showcase their traditions, arts, crafts, music, and folklore. This not only helps in preserving cultural diversity but also attracts tourists who are interested in experiencing authentic local experiences. Local content although it has its cons such as the high risk of corruption, it is vital for maintaining the uniqueness of a place while contributing to its economic growth and sustainability.

This paper also elaborates on how ethics play a crucial role in every industry, but it is particularly significant in the construction sector. For this objective, the paper provides context by framing its argument through the lens of a company based in the United Kingdom (UK) looking to expand into Abu Dhabi, the Middle East, and Sub-Saharan Africa. This paper covers how corruption within this sector can lead to compromised safety standards, poor quality infrastructure, and financial losses. Ethics in construction involve upholding integrity, honesty, and fairness throughout all stages of a project. This includes ensuring transparent procurement processes, fair treatment of workers, and adherence to building codes and regulations. Ethical behaviour also extends to environmental sustainability and social responsibility. This paper highlights that to combat corruption in the construction industry, it is essential to establish strong ethical frameworks that promote transparency and accountability. This requires collaboration between governments, regulatory bodies, contractors, and other stakeholders. The establishment of appropriate decision bodies also includes dispute boards and councils.

This paper lastly covers how disputes are an inevitable part of the construction industry. With numerous stakeholders involved, ranging from contractors and subcontractors to owners and architects, conflicts can arise due to various reasons such as delays, cost overruns, design changes, or disagreements over contract terms. To address these disputes and ensure fair

resolutions, the concept of dispute bodies has emerged as a viable solution. This paper explains how these bodies and similar institutions are an independent body that provides a neutral platform for parties involved in a construction project to resolve their differences. It acts as a mediator or arbitrator, facilitating discussions between the disputing parties and helping them reach an amicable solution. This paper emphasizes that one of the key advantages of having a dispute body is its ability to expedite dispute resolution. By providing a structured process for resolving conflicts outside the courtroom, it saves both time and money for all parties involved. Additionally, the dispute body's expertise ensures that decisions are based on industry standards and legal principles. Moreover, the presence of dispute bodies promotes transparency and fairness in dispute resolution. As an impartial entity with no vested interest in favouring any party, it ensures that all arguments are heard objectively and evaluated based on merit alone.

LOCAL CONTEXT

In a fast-paced global society and the ever-changing landscape of the construction industry, developing nations and their companies can easily be left behind. In a world where the limitations are always being tested, and innovation, research, and creativity drive and bring forth new inventions and new ways to deliver; the less equipped nations and their companies are often caught in a struggle to keep up. This is where local content in contractual works ensures that there are some intrusive measures and methods to help upkeep the local industry if the contractual works are carried out by international agencies. Local content, as defined by the World Bank (Osmel, 2013), is 'the share of employment or sales to the sector locally supplied at each stage of this chain'. In other words, 'local content is the concept that a certain percentage of a project's inputs whether in materials or labour (or both) must come from the home country' (Tim, 2017). Local content in essence provides a platform by which professionals in the construction industry can close the gap between the metropolitan and developing countries and institutions. According to Engineers Against Poverty (2023), increasing local content in the procurement of infrastructure projects in low-income countries is a means to promote development and contribute to achieving the United Nations Development Goals.

This is achieved because local content ensures that a percentage of the project's budget and resources remain within the beneficiary country's economy, therefore incidentally and eventually contributing to the gross domestic product (GDP) and the general welfare of the people (Semykina, 2015). The use of local contractors and local resources ensures that local jobs are created or sustained. It also provides an opportunity to upskill the local workforce by providing experience or technical training and facilitation. The use of local resources allows local-based suppliers to accustom themselves to international standards and demands. The more regularly this occurs within the beneficiary country, the more the local industry capacity increases to accommodate international projects or even lead them by being able to meet the criteria, therefore taking it away from the international competitors. During the post-COVID-19 period, the increased utilization of local content can maximize economic recovery (O'Sullivan, 2022).

Key components of local content include local employment and skills development, local procurement of goods and services, and enhancing the capacity of local suppliers and contractors. In using Samoa as a case study, embracing local content in construction offers numerous benefits that cannot be overlooked. Firstly, promoting local content stimulates economic growth and development. By utilizing local resources and labour, money circulates within the country, leading to increased employment opportunities and income generation. This helps reduce poverty levels and enhances the overall standard of living for Samoan citizens. Secondly, incorporating local content in construction fosters skills development and capacity building. It provides a platform for locals to gain hands-on experience and knowledge in various aspects of the construction industry. This not only enhances their employability but also creates a pool of skilled workers who can contribute to future projects. Furthermore, relying on local resources reduces dependency on imports. Samoa can utilize its natural resources such as timber, stone, and sand for construction purposes instead of importing these materials from abroad. This not only saves foreign exchange but also promotes sustainability by reducing carbon emissions associated with transportation and importation from neighbouring countries. Moreover, embracing local content strengthens Samoa's national identity and cultural preservation. Traditional building techniques and architectural styles can be incorporated into modern constructions, preserving Samoan heritage while showcasing it to visitors. It is crucial for policymakers, donors, consultants, and contractors to prioritize this approach as it contributes significantly to sustainable development goals while empowering locals economically and socially (Engineers Against Poverty, 2023). While this approach may seem beneficial on the surface, it has several cons that cannot be overlooked. Implementing local content contracts and policies can lead to increased costs and delays in construction projects. Local labour and materials may not always meet the required quality standards or be readily available. This can result in project delays as contractors struggle to find suitable alternatives or wait for necessary resources to become available. Additionally, local suppliers may charge higher prices due to limited competition, leading to inflated project costs (Christopher, 2022).

Local content in construction can also hinder innovation and technological advancements in the construction industry. By limiting access to international expertise and cutting-edge technologies, countries risk falling behind in terms of modern construction practices (Johnson, 2013). This can have long-term negative consequences for infrastructure development and economic growth. Another drawback of local content is the increased potential for corruption and favouritism. When governments prioritize local companies or individuals without proper oversight or transparency, it opens the door for 'nepotism and bribery' (Christopher, 2022). This not only undermines fair competition but also compromises the quality of construction projects. While promoting local content in construction may appear appealing from a nationalistic and cultural perspective, it is important to consider its drawbacks. Increased costs, delays, limited innovation opportunities, and corruption risks are all significant cons that should be considered when formulating construction policies and contracts. A balanced approach that combines both local expertise with international best practices would likely yield better results in terms of cost-effectiveness and quality outcomes. This is best achieved by ensuring that local content only applies to clauses and deliverables that are within the local

industry's capabilities. Deliverables and clauses that require specialized roles or equipment that are not readily available locally will be best sourced externally.

INCREASING IMPORTANCE OF ETHICS AND CORRUPTION

Ethics and corruption have become increasingly important topics in the construction sector globally. With common sense, people generally know that the construction industry plays a vital role in shaping the country's infrastructure, economy, and society. However, the global increasing scandals and unethical practices have highlighted the need for stricter regulations and a stronger focus on ethical behaviour in the industry (Amoah & Steyn, 2022). Corruption within the construction sector not only undermines donor, investor, and public trust but also leads to poor quality workmanship, unsafe buildings, and inflated costs (Christopher, 2022). It is essential to address this issue to ensure that projects are completed efficiently, safely, and within budget. Ethical practices are crucial for maintaining a fair business environment, particularly from the context of a company based in the UK. Construction companies that engage in corrupt practices gain an unfair advantage over their competitors who follow ethical guidelines. This not only hampers healthy competition but also discourages new entrants and young entrepreneurs into the market (Pertiwi, 2018). Moreover, unethical behaviour can have severe consequences for workers' rights and safety. Exploitation of labourers through low wages or hazardous working conditions is unacceptable and must be eradicated from the industry (Azhar et al, 2010). These traits are commonly found in companies based in developing countries.

To combat these issues effectively, it is imperative that both government bodies and construction companies take proactive measures. Stricter regulations should be implemented to ensure transparency in procurement processes and financial transactions. Training and education programmes should be established to educate workers about their rights and promote ethical behaviour (Adnan et al, 2011). Ensuring the highest ethical standards in the UK is crucial for maintaining a properly administered corporation when expanding to Abu Dhabi, the Middle East, and Sub-Saharan Africa. Ethical standards are the moral principles that guide individuals and organizations in their decision-making processes. However, there are several issues involved in ensuring these standards are upheld. One of the main challenges is the lack of enforcement mechanisms, particularly in developing countries (Adnan, 2011). While there are often laws and regulations in place to promote ethical behaviour, they frequently lack teeth when it comes to holding individuals or organizations accountable for their actions. This leads to a culture of impunity, where unethical practices go unpunished. Another issue is the influence of money, foreign or local politics, and power on ethical decision-making (Amoah & Steyn, 2022). In many cases, individuals or organizations with significant financial resources can manipulate the system to their advantage, compromising ethical standards in the process. This creates an uneven playing field and undermines donor, investor, and public trust in institutions. Many unethical practices thrive due to a lack of transparency, making it difficult for stakeholders to identify wrongdoing or hold those responsible accountable (Pertiwi, 2018).

Opening a regional construction office in Abu Dhabi to operate in the Middle East and Sub-Saharan Africa presents a significant opportunity for expansion and growth for a company from UK. Abu Dhabi, as the capital of the United Arab Emirates, serves as a strategic hub for business activities in the region. Its central location and well-developed infrastructure make it an ideal base for reaching markets across the Middle East and Sub-Saharan Africa (Business Setup, 2023). To successfully establish a construction office in Abu Dhabi, several key factors need to be considered. Firstly, understanding the local culture and business practices is crucial. Building relationships with local partners and stakeholders will facilitate smoother operations and help navigate any cultural differences or bureaucratic challenges. Secondly, conducting thorough market research is essential to identify potential clients, competitors, and emerging trends in both regions. This will enable effective targeting of projects that align with the company's expertise and capabilities. Also, hiring a diverse team with knowledge of local/regional languages, customs, regulations, and industry practices is vital. This will not only enhance communication but also ensure compliance with local laws and regulations (Gabriel, 2013). In terms of logistics, establishing strong supply chain networks is crucial for sourcing materials efficiently while maintaining UK-accredited quality standards. Collaborating with local suppliers through local content can help reduce costs and improve project timelines if applied properly.

Probably the largest undertaking for a UK-based construction company is the challenge of maintaining ethical construction standards in Abu Dhabi, the Middle East, and Sub-Saharan Africa. Construction projects in these regions and developing countries often face numerous ethical dilemmas due to various factors such as corruption, lack of transparency, and disregard for workers' rights (Johnson, 2013). Construction projects are often marred by bribery and kickbacks, leading to substandard materials being used or shortcuts being taken during construction. Many projects in developing countries often lack proper documentation and accountability, making it difficult to monitor compliance with ethical standards. Employment and workers' rights are frequently violated in these regions. Exploitative labour practices such as low wages, long working hours, and unsafe working conditions are common occurrences (Amoah & Steyn, 2022). This not only harms workers but also tarnishes the reputation of the UK company and the construction industry if they are caught up in the wrong practices, although it may be unintended. To address this challenge, the company's governing body needs to enforce stricter regulations and penalties for unethical behaviour within its ranks. The company's mandate and objectives should promote transparency by implementing systems that ensure proper documentation and accountability throughout all stages of a project. Additionally, the company should play a guiding role by providing support to local authorities on how to improve ethical standards in construction. This can be easily through the strategic and formal adoption of social responsibility models for the company (Zahidy et al, 2019). Collaboration between governments, industry stakeholders, and civil society organizations can help create a culture of ethics when expanding abroad to the Middle East and Africa (Pasricha et al, 2018). By considering factors such as cultural understanding, market research, talent acquisition, supply chain management, and technology integration; the company can position itself for success in these regions' booming construction industries

(Adnan et al, 2011). Maintaining ethical construction standards in Abu Dhabi, the Middle East, and Sub-Saharan Africa requires concerted efforts from all stakeholders involved.

DISPUTE REVIEW BOARDS: DEFINITION AND FUNCTION

Dispute Review Boards (DRBs) and bodies play a significant role in the field of conflict resolution in the construction industry. With the increasing complexity of modern society, conflicts arise frequently, both within and outside of legal frameworks. DRBs and dispute bodies provide a valuable avenue for settling disputes and ensuring fair and equitable outcomes. Dispute bodies have a rich history, originating from ancient civilizations where the need for fair decision-making in disputes was recognized. Over time, these boards have evolved and established themselves as impartial entities responsible for settling disagreements not just in the construction sector but also in other disciplines (Green, 2018). The main purpose of dispute bodies is to provide a mutually agreeable resolution by considering the arguments and evidence presented by all parties involved. By offering an alternative to costly litigation, DRBs aim to foster productive dialogue, maintain relationships, and promote cooperative problem-solving (Seppälä, 2015). DRBs and Dispute Adjudication Boards (DAB) typically follow a structured and transparent process to ensure a fair assessment of the dispute. Firstly, the parties involved present their cases, providing evidence and arguments to support their claims. The body members then analyze the information presented, applying their expertise, knowledge of applicable laws, and ethical standards (Green, 2018). It is crucial to note that these bodies often consist of professionals with relevant subject matter expertise who possess an unbiased viewpoint. These include lawyers who specialise in construction law, engineers, architects, and project managers (Aguiluz, 2005).

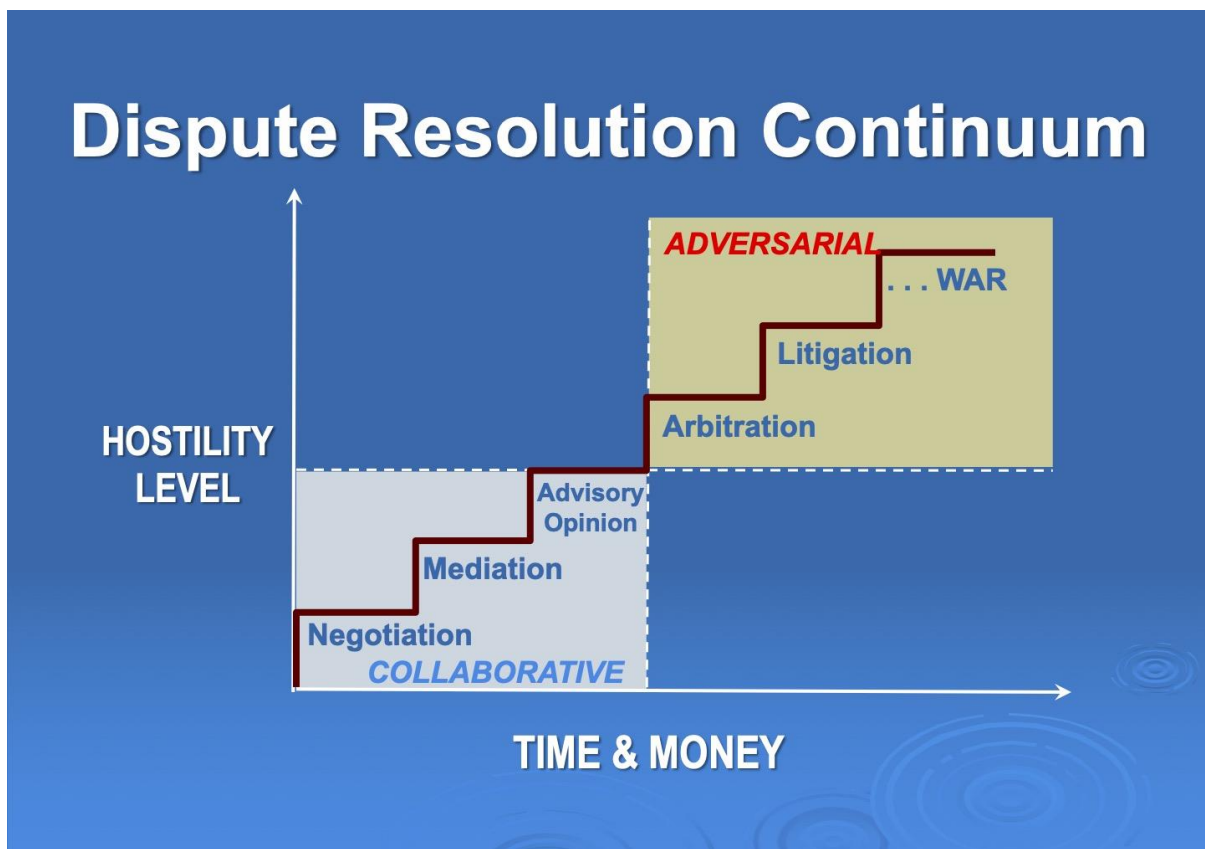
During the process, disputes encourage open communication between the parties involved, facilitating dialogue and negotiation. Depending on the nature of the dispute, these bodies may resort to various techniques such as mediation, arbitration, or fact-finding. These methodologies allow for substantive discussions, resulting in the identification of common ground and the exploration of potential solutions that meet the interests of all parties (World Bank, 2001). Dispute bodies have had a substantial impact on conflict resolution across different sectors including construction, labor relations, and commercial disputes. By providing an alternative to traditional legal systems, these bodies aim to reduce the adversarial nature of conflicts and foster cooperation (Cheung, 2002). The use of dispute bodies has proven to save time and costs, maintain working relationships, and prevent prolonged legal battles (Green, 2018). Dispute bodies are now an essential component of modern dispute-resolution mechanisms in the construction industry.

Historically, dispute body decisions are usually binding on the parties involved unless challenged within a specified timeframe. This ensures compliance with the board's rulings and prevents further escalation of disputes (Seppälä, 1997). Combined Dispute Boards (CDBs) have also emerged as an effective mechanism for resolving disputes in construction projects. Unlike traditional dispute resolution methods, such as litigation or arbitration, CDBs offer a

collaborative approach that promotes communication and cooperation among all parties involved (Chapman, 1999). One of the key advantages of CDBs is their ability to address disputes in real time. By having representatives from all stakeholders present during the project's lifespan, potential conflicts can be identified and resolved promptly. Bodies such as CDBs, DABs, and DRBs foster a culture of collaboration rather than confrontation. Critics argue that CDBs may favor one party over another or compromise impartiality (Chapman, 1999). However, this concern can be mitigated by ensuring that board members are selected based on their expertise and neutrality. Dispute bodies and the FIDIC International Standard Form Contracts and Case Law are two important aspects of the construction industry abroad that play a crucial role in resolving disputes. While both aim to provide a fair resolution, they differ in their approach and application. Dispute bodies are typically established by parties involved in a construction project to resolve disputes that may arise during the project (Green, 2018). FIDIC International Standard Form Contracts are widely used contractual agreements that provide a framework for construction projects. They include provisions for dispute resolution mechanisms such as mediation, adjudication, or arbitration (World Bank, 2001).

The below model of a 'Dispute Resolution Continuum' developed by P3 Collaborative, LLC (2021) attempts to explain the function and relationship of dispute resolution within the industry:

Figure 1: Dispute Resolution Continuum



Dispute bodies rely heavily on case law to guide their decision-making process. Case law refers to previous court decisions that have set legal precedents. This ensures consistency and fairness in resolving disputes (Aguiluz, 2005). In contrast, FIDIC contracts provide guidelines for dispute resolution but do not explicitly rely on case law (Seppälä, 1997). FIDIC contracts often involve third-party mediators or arbitrators who facilitate discussions between disputing parties. Dispute bodies, committees, boards, and systems such as CBD, DAB, DRC, and FIDIC have become indispensable tools in the field of conflict resolution in the construction sector. Their structured procedures focus on fairness, and emphasis on active communication has proven to be successful in resolving conflicts across various sectors. As society continues to evolve, the role of dispute bodies will remain crucial in ensuring equitable resolutions, maintaining relationships, and promoting collaboration in addressing disputes. In my home country of Samoa, dispute bodies have yet to be widely adopted, but I believe in the next decade their impact will reach the local industry as projects increase in-country.

CONCLUSION

The connection between local content, ethics, and dispute review in construction is a crucial aspect that is covered thoroughly in this paper. Local content refers to the involvement of local suppliers, contractors, and labour in construction projects. It promotes economic development by creating job opportunities and supporting local businesses. However, the implementation of local content policies must be done ethically to ensure fairness and transparency. Ethics play a significant role in construction projects as they guide decision-making processes and actions. When it comes to local content, ethical considerations are essential to prevent favouritism or discrimination towards certain individuals or companies. Fair competition should be encouraged to ensure that the best quality work is delivered at reasonable prices.

In connection, dispute review bodies and mechanisms are necessary to resolve conflicts that may arise during construction projects. These mechanisms should be impartial and independent to provide fair resolutions for all parties involved. Incorporating local content into these mechanisms can enhance their effectiveness by ensuring that the interests of the local community are considered. In conclusion, the connection between local content, ethics, and dispute review bodies in construction is vital for sustainable development. Ethical practices must guide the implementation of local content policies to avoid any unfair advantages or biases. Additionally, effective dispute review bodies should consider the interests of both locals and non-locals involved in construction projects. By promoting transparency and fairness throughout all stages of a project's lifecycle, I believe the balance incorporation of the three elements (local content, proper ethics, and dispute review bodies) can create an environment conducive to economic growth while upholding cultural and ethical standards benefiting both the local population and the international company.

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