

Institution: University of Wolverhampton
Unit of Assessment: 16 Architecture, Built Environment & Planning
Title of case study: Improved practice in contract management and dispute resolution in the construction industry
1. Summary of the impact (indicative maximum 100 words)

The research portfolio of the Construction Management Group included construction law and management of legal relationships for performing construction contracts. Outputs in this area of research have included peer-reviewed papers, textbooks and online newsletters. Through this research construction industry organisations have improved the effectiveness of their workplace practices with respect to contract management and dispute resolution. The work has also stimulated and informed practitioner debates on contentious matters concerning contract provisions and new legislation. Such debates have resulted in some changes to legal frameworks or decisions to consult on such changes.

2. Underpinning research (indicative maximum 500 words)
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The research issues covered by this Case Study fall into three categories: (i) provisions in construction contracts; (ii) legislation affecting the performance of construction contracts; (iii) contract management practice. Research in categories (i) and (ii) was carried out using legal research methods whilst the third category involved the collection and analysis of data from the construction industry. Ndekugri’s work has been agenda-setting in these categories of research (Ndekugri and Russell 2005, Ndekugri and Russell 2006, Ndekugri *et al* 2008, Morris and Ndekugri 2013, Ndekugri *et al* 2013).

UK standard forms of contract researched included the family of contracts published by the Joint Contracts Tribunal and the New Engineering Contract suite of contracts promoted by the Institution of Civil Engineers. Research on legislation has been limited to the Arbitration Act 1996, the Housing Grants, Construction and Regeneration Act 1996 (HGCRA) and the Local Democracy, Economic Development and Construction 2009 (which amends aspects of the HGCRA). The aims of such research have been: identification of the underlying policy issues; critical examination of the wording of the legislation aimed at presenting it in a way more understandable to the construction industry; and evaluation of the extent of achievement of the underlying policy objectives. Law reports on relevant court cases provided qualitative data for critical analysis.

Research in the third category investigated contract management practice from multiple perspectives, including effect on relationships and costs, sources and causes of disputes and identification of best practice in contract administration and dispute resolution. For example, the timetable within which adjudications of construction disputes have to be completed has been the subject of the greatest controversy in respect of not only the uncertainty in the wording of the legislation but also the opaqueness and contradictions in judicial pronouncements on the subject (Morris and Ndekugri 2013). Survey and interview research strategies were used in this prong of the research, which contributed significantly to the publication of a practice-based book co-authored by Ndekugri and a director of a multinational contracts and dispute resolution consulting firm (Ndekugri and Rycroft 2009).

At the international level, use of the family of contracts (or their derivatives) promoted by FIDIC, the international federation of national associations of consulting engineers, is the norm. Using focus groups comprising leading practitioners, Ndekugri (jointly with Professor Nigel Smith of Leeds and Professor Will Hughes of Reading) has developed guidance on best practice in the use of Dispute Boards, which are mandatory for projects funded in part or wholly by the World Bank and other Multilateral Development Banks in developing countries (Ndekugri *et al* 2013). Many developing countries are also legislating to provide business-friendly legal environments for the procurement of their infrastructure. A new strand of this area of research is aimed at supporting such initiatives with appropriate policy analysis. This research is already beginning to bear fruit as a policy analysis of Ghana’s Alternative Disputes Act 2010 has already come to the attention of the Parliament of Ghana which is contemplating remedial legislation (Reference 1 on corroboration).

3. References to the research (indicative maximum of six references)

Morris, N. and Ndekugri, I. (2013). The Timetable Challenges of Adjudicators under the Housing Grants, Construction and Regeneration Act 1996, *Construction Law Journal*, 29(5), 343-366.

Ndekugri, I., Daeche, H. and Zhou, D. (2013). The Project Insurance Option in Infrastructure Procurement, *Journal of Engineering, Construction and Architectural Management*, 20(3), 267-289.

Ndekugri, I., Braimah, N. and Gameson, R. (2008). Delay Analysis within Construction Contracting Organisations, *Journal of Construction Engineering and Management*, American Society of Civil Engineers, 134(9), 692-700.

Ndekugri, I, Smith, N. J. and Hughes, W. P. (2007). The engineer under FIDIC's conditions of contract for construction, *Construction Management and Economics*, 25(7), 791-799.

Ndekugri, I, and Russell, V. (2006) Disputing the existence of a dispute as a strategy for avoiding construction adjudication, *Journal of Engineering, Construction and Architectural Management*, 13(4), 380-395.

Ndekugri, I. and Russell, V. (2005) Insolvency and resolution of construction contract disputes by adjudication in the UK Construction Industry, *Construction Management and Economics*, 23(4), 399-408.

All the above research publications are in some of the most rigorously peer-reviewed international journals for the discipline. They are therefore of, at least, 2* quality.

4. Details of the impact (indicative maximum 750 words)
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Ndekugri's research has resulted in the publication of a highly regarded textbook on building contracts the first edition of which won the Gold Award of the CIOB's Literary Awards Scheme (Reference 4 on corroboration). This was an international competition with judges drawn from the ranks of expert practitioners under the chairmanship of an academic. It is now established as a practitioner's handbook on building contracts. It has been observed by our many informants that it is not uncommon for a disputant, on arrival at the hearing of a dispute with a copy of the book, to notice that the other side as well as the tribunal also have copies on their tables. The use of the book as a key reference on hotly contested issues has now been corroborated. In a review of the book, Roger ter Haar QC (ter Haar 2010), a leading London Silk, compared it favourably with *Keating on Construction Contracts*, which has been revered for over half a century as the practitioner's "bible" on construction contracts.

Most of the research has been carried out with outreach activities heavily subscribed to by practitioners and policy makers. For example, the passing of the HGCRA was greeted in the construction industry with alarm because of Parliament's unprecedented intervention into private contracts and the imposition of what was perceived as an impossibly tight timetable for the resolution of complex construction disputes. This legislation sparked off such a furore in the construction industry that when our research team was invited by the Society of Construction Law to present the first ever survey into adjudication practice under the new legislation, more than 200 practitioners attended. The presentation provoked extensive debate from the floor. This event was followed by a national conference in Wolverhampton on 20 November 2001 at which more than 100 practitioners also attended. Leading practitioners were invited and made presentations on identified areas of controversy. This conference was so successful that it attracted the attention of the national Construction Press (e.g., *Construction News* of 13th Dec 2001). Wolverhampton has continued to be a centre of excellence for CPD on dispute resolution based on internationally leading research.

Impact case study (REF3b) 1

With funding from the EPSRC and collaboration from the universities of Leeds and Reading, Ndekugri's research has resulted in the establishment of FIDIC-NET, an international network of experts on, and users of, the FIDIC family of construction contracts. The Network Steering Committee included a former judge, representatives of FIDIC and international contractors, the academics and a Partner of Fenwick Elliott (a construction law firm adjudged No. 1 in the UK for many years). Four international workshops were run with participation from engineers and lawyers from many countries. The website developed as part of the project was gradually populated with articles, workshop reports and PowerPoint presentations prepared as part of the activities of the Network. On account of their determination that Ndekugri's research offered solutions to some of the problems often encountered in the procurement of infrastructure in developing countries, the Rome-based International Development Law Organisation (IDLO) invited Ndekugri to develop and deliver a training workshop on international contracts to engineers and lawyers from developing countries on 12-13 November 2012. The event received a score of 4.38 out of 5 by delegates (Evidence: Reference 9 - A Workshop Evaluation Report prepared by Valérie Robert of IDLO).

The research into international contracts was also designed to achieve impact simultaneously with the research in three main ways. Firstly, representatives of organisations with a say on the content of international contracts were involved as part of the research steering committee or workshop presenters to highlight their positions on certain matters. For example, membership of the original research steering committee included international lawyers and representatives of FIDIC and the European International Contractors group. To get the position of the World Bank and the other Multilateral Development Banks the three most senior managers in the Procurement Department of the European Bank for Reconstruction and Development made presentations. Secondly, workshops were deliberately designed to stimulate debate. Thirdly, the general membership of the Network were sent newsletters highlighting the discussions at the workshops and encouraged to continue the debates using the Network's online discussion forum. The debates stimulated by FIDIC-NET informed subsequent amendments to the contract (Reference 8). Edward Corbett of Corbett & Co, a leading firm of specialist international construction lawyers provides testimony on the continuing impact of FIDIC-NET whilst Peter Chapman may be contacted to corroborate the contribution of FIDIC-NET to best practice in the use of Dispute Boards.

5. Sources to corroborate the impact (indicative maximum of 10 references)

- 1 Mante J. and Ndekugri, I. (2012). Arbitrability in the context of Ghana's new Arbitration Law, *International Arbitration Law Review*, 15(2) – paper on Ghana's Alternative Dispute Resolution Act 2010. The Honourable Cletus Avoka, a Minister State for Construction and a former Majority Leader in the Ghana Parliament may be contacted about the influence of the research from which the paper was prepared.
- 2 *Construction News* 13/12/2001: National Adjudication Conference in Wolverhampton.
- 3 Ndekugri, I. (2004) Network of Experts on FIDIC Contracts, *International Construction Law Review*, 21(4), 482-484.
- 4 Ndekugri, I. and Rycroft, M. (2009). *The JCT2005 Building Contract: Law and Administration*, Butterworth-Heinemann, Oxford.
- 5 For newsletters, presentations and evidence of multinational participation by users of international construction contracts in the workshops see www.fidic-net.org.
- 6 ter Haar, R. (2009) The JCT Standard Building Contract – Publication Review, *Construction Law Journal*, 25(7), 565-566.
- 7 Peter Chapman, (FICE, FCIarb, C.Eng, Past President of the Dispute Resolution Board Foundation, Chairman of the FIDIC Adjudication Advisory Panel, and Chairman of the Disputes Panel for the Olympic Delivery projects) may be contacted for corroboration of the contribution of the international contracts research to the development and dissemination of

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- best practice in the use of Dispute Boards, probably the most innovatory dispute resolution technique in recent years. The work is reported in: Ndekugri, I., Chapman, P., Smith, N. J., and Hughes, W. P. (2013). Best Practice in the Training, Appointment and Remuneration of Members of Dispute Boards for Large Infrastructure Projects, *Journal of Management in Engineering*, Preview Manuscript, (doi: [http://dx.doi.org/10.1061/\(ASCE\)ME.1943-5479.0000195](http://dx.doi.org/10.1061/(ASCE)ME.1943-5479.0000195)), American Society of Civil Engineers.
- 8 A critique of Clause 3.5 in the original FIDIC Conditions of Contract for Construction (the Red Book ISBN 2-88432-022.9) by Ndekugri *et al* (2007) contributed to its revision in the June 2010 edition of the contract document adopted by the World Bank and the other Multilateral Development Banks (ISBN 2-88432-044-X).
 - 9 Workshop Evaluation Report provided by Valérie Robert of IDLO provides evidence of impact on training and CPD.
 - 10 Testimonial from Edward Corbett, Head of Corbett & CO, International Construction Lawyers.