Developing dispute resolution policy for conflicts settlement in public-private partnership (PPP) projects in educational institutions [version 1; peer review: awaiting peer review]

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Abstract

Background: United Nations Educational, Scientific and Cultural Organization (UNESCO) advocates a 15-20% allocation of the developing nations' annual budget to educational development, but the available resources are not adequate to support the sector in the global south. Thus, University Hostel Development and Management (UHDM) policy was selected to attract private investors for the provision of educational facilities in Nigerian public universities. The policy considered a public-private partnership (PPP) model to ameliorate the menace of dilapidated infrastructures. Initially, there was massive investors' participation until contractual disputes started to undermine the success recorded. Therefore, incessant disputes without resourceful resolutions motivate the need to examine this policy and spot the gaps for necessary improvement.

Policy: The National Universities Commission (NUC) augments the provision of infrastructure in Nigerian public universities through the UHDM initiative in 2004. Conflicts owing to the multiplicity of stakeholders' contrasting interests overwhelmed the initiative. Many value-added projects were terminated. The poor condition of facilities lingers to serve as a basic factor for half-baked graduates, low employee productivity and declined socio-economic values of the nation. This brief focuses on the role of formal dispute resolution mechanisms (DRMs) for conflict management in PPP arrangements. By observation, stakeholders rarely envisage potential conflicts, thus, no contemplation of specific DRMs adoption despite the inevitability of contractual disputes.

Recommendations: This brief recommends the inclusion of the dispute resolution policy in the PPP Memorandum of Understanding (MoU). Recommendations are hereby generated from the analysis of the stakeholders' opinions on the causes of the dispute, conflict prevention strategies, and the relevant dispute resolution mechanisms peculiar to the PPP contracts in educational institutions. Also, ambiguities in the policy that bordered on an inexplicit
institutional framework, lack of PPP experts' involvement, imperfect contract agreement, and deficiency of feasibility study, are resolved by the recommendations.

**Keywords**
Public-Private Partnership (PPP), Contractual Disputes, Dispute Resolution Policy, Educational Institutions, Conflict Settlement Mechanisms

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Introduction
The failure of many developing countries to meet up with the UNESCO pronouncement on financing education in the global south cannot be overemphasized. Figure 1 indicates how the Nigerian annual budgets for education between 2015 and 2022 negate the UNESCO pronouncement due to the paucity of public resources. To salvage this invaluable sector, the National Universities Commission (NUC) instigated the University Hostel Development and Management (UHDM) initiative as a policy for flexible procurement plan for the delivery of educational facilities in 2004. The adoption of public-private partnership (PPP) contracts for public universities occurs when the deterioration of the academic facilities was at the climax without a feasible remedy from the federal government. Not only that the existing facilities are insufficient but also not habitable. As of 2004, the aggregate of ‘on campus’ student hostels available in public universities can only accommodate less than 650,000 out of 1,780,667 students in school. So, the number of students residing off-campus outweighs those that are on campus.

Accordingly, NUC’s adoption of PPP as a developmental tool gives precedence to the provision of student housing facilities hence the tag ‘UHDM’ for the initiative. The initiative was to moderate the wide deficit of facilities by encouraging private investors’ participation. Some universities embraced this private finance initiative (PFI) through PPP at an initial worth of US$ 240 million. Build-operate-transfer (BOT) as a model of PPP was adopted because of its consistent attributes for project construction, financing capacity for infrastructure development, and transferring of facilities in operational conditions at no cost to the procuring authority at the end of the concession term. These characteristics of BOT among others indicate its suitability for the objective of this scheme.

However, educational infrastructure is known as a social good required to engender social benefits such as educational advancement that is meant to propel economic development in the long term. But private investors prefer investing in economically viable public goods that will produce a stream of income flows in no time. Given the divergence between the private investors’ short-term plan and the procuring authority’s long-term target, UHDM guidelines considered the flexibility of procurement terms and conditions as an important process to stimulate substantial participation of the private investors. This is also seen as a strategy for reducing the impact of risk factors and as well restricting the inherent conflicts in BOT operations among the stakeholders.

Presently, conflicts have strained the relationship between private investors of PPP hostels and the procurement authorities in some universities. The lingering conflicts among the stakeholders have been putting several projects on hold or terminating them at the climax of the disputes. In 2014, Obafemi Awolowo University (OAU), Ile-Ife revoked the

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Figure 1. Budget allocation to education (2015 – 2022) by the Nigerian Government. This figure is reproduced with permission from Vanguard Newspaper Online - ASUU Strike: FG’s budgetary allocation to education lowest in 2022 - Report. https://www.vanguardngr.com/2022/08/asuu-strike-fgs-budgetary-allocation-to-education-lowest-in-2022-report/.
PPP agreements signed with 10 private investors due to conflicts bordering on the inability to complete the project within the regulated time, noncompliance with the agreed designs and specifications, and readjustment of the Memorandum of Understanding (MoU) in favour of the university management after many years of engagement, etc.

In a healthy business environment, the goal of every stakeholder is to ensure dispute resolution that will initiate decisions capable of ensuring project completion in a viable and sustainable manner while maintaining value for money. However, this objective had not been achievable based on the lack of adoption of a specific dispute resolution policy that will instil conflict settlement and forestall the awkward outcomes of failed contractual agreements.

Private investors will feel encouraged to participate in PPP projects only when there is confidence in resolving disputes fairly and efficiently. It has been observed that an unresolvable dispute was one of the barriers to the investors’ participation. In other words, severe conflict defeats any PPP arrangement’s objectives. This factor thus points to the decline in private investors’ involvement in the PPP hostel concession. The aftereffect of this is the recurrence of the dearth of “on-campus” student accommodation that the implementation of UHDM initially solved.

Policy outcomes and implications
This brief is motivated by the need to have an enhanced knowledge of dispute resolution practices for effective management of influencing conflicts on the delivery of PPP contracts in educational institutions. Thus, the causes of disputes, conflict prevention strategies, and dispute resolution mechanisms are put into perspective. Also, the inclusion of a dispute resolution policy as an integral part of the PPP contract MoU guiding the roles of private investors and the procurement authority (individual university management) is thereby advocated.

Globally, this policy brief targets private investors/developers and procurement authorities (government ministries, departments, and agencies). More importantly, the private investors participating in PPP (build-operate-transfer - BOT) student hostel concessions in public universities, the universities’ management (procurement authorities) adopting NUC policy on PPP models for the educational infrastructure development in Nigeria, and the NUC (the custodian of PPP policy) are the intended beneficiaries.

Foundational challenges
As laudable as the policy initiated by NUC on the adoption of the PPP model for the provision of educational infrastructure is, some unimaginable factors which curtailed the efficient delivery of concessional projects and the growth of the scheme. These factors constitute foundational challenges that evolve causes of PPP contractual disputes. Many researchers opined that conflict or disagreement is expectable in PPP contracts because of the multiplicity of stakeholders with diverse perceptions, long concession period, suspicion or distrust, and the prevalence of uncertainty and risk factors, among others. However, the rudimentary factors which are not considered at the formative stage of the policy subsequently placed the initiative on the difficult terrain that institute peculiar disputes among the stakeholders. Considering the five-point Likert scale responses of the sampled population of the PPP project participants as regards the efficacy of the policy on dispute resolutions, it observed that the shortcomings are connected to the following oversights occurred at the outset:

- **Lack of institutional framework**
  
  NUC fails to institute clear guidelines for project tendering, evaluation, and award subject to the uniqueness of educational institutions. The individual university was left to the discretion of the procurement process resulting in imprecise procedures and, unequal terms and conditions. The existing guidelines of the Infrastructure Concession Regulatory Commission (ICRC) for PPP procurement have their limitations and are unable to address issues in PPP contracts of educational institutions.

- **Lack of expertise involvement**

  At the inception of policy development for UHDM, NUC fails to seek expert opinions that will facilitate an all-inclusive operational template for the adoption of the PPP model upon the peculiarity of the educational institutions.

- **Inexperience of the stakeholders**

  It was observed that many of the private investors as well as the procurement authorities (university management) lack cognate experience in the operational procedures of the PPP model. This condition fragmented the focus of the stakeholders.
• **Poor documentation**

Documentation of PPP procurement processes and other proceedings are not considered. The importance of proper documentation is to serve as a reference and to allay controversies that may result from a misconception of ideas and conflicting interests of the stakeholders.

• **Over expectation**

The NUC initiative and policy for adopting PPP raised the expectations of both the private investors and the procurement authorities (university management) beyond the attainable level. The expectations of the stakeholders on the socio-economic benefits continue to skew downwards due to unrealistic targets instigated by the policy.

• **Lack of modality for risk allocation**

NUC policy on PPP adoption is silent on the modality and the strength of equitable risk allocation. Comprehensive risk assessment of PPP contracts there is essential to unbiased risk sharing among the stakeholders without a template. Thus, inequitable risk allotment provokes disputes in PPP contracts.\(^{17}\)

• **Indirection of MoU on conflict settlement**

The content of the PPP contractual agreement or MoU must be all-inclusive. No aspect of the operational theme must be left out. Contrary to this opinion, the NUC policy on PPP failed to capture procedures for conflict settlements that can hinge on specific DRMs among other lacunae. In other words, the adopted MoU is clumsily devised by excluding strategies for dispute resolution. The unavailability of conflict resolution procedures is an alarming factor generating debriefing/termination of contract briefs, thereby clogging private investors’ participation and successful delivery of PPP projects in public universities.

**Actionable recommendations**

Understanding measures for PPP contract dispute settlements

Various researchers of PPP projects asserted that conflicts are inevitable among the stakeholders. Some disputes are characteristically functional while others are dysfunctional.\(^ {18}\) Those that are dysfunctional engender impaired relationships and eventual contract termination. The following findings suggest three areas where intervention can be achieved.

• **Identification of causes of dispute**

In anticipation of operational intervention, understanding the root cause of the contractual dispute is crucial.\(^ {19},^{20}\) Based on the Pareto principle,\(^ {1}\) the author discovered that 20% of the factors instigating disputes in PPP contracts in public universities are significant while 80% of the causes are negligible. The result in Table 1 was elucidated based on the responses of the participants to five-point Likert scale questions, and the analysis done to determine the mean values of the variables.\(^ {22}\) The table reveals the fundamental causes of dispute that necessitate earnest responsiveness of the NUC policy to developing a framework for preventing or settling PPP contractual conflicts.

| Code | Causes of dispute (CD)                                                                 | Mean | Std. Deviation |
|------|--------------------------------------------------------------------------------------|------|---------------|
| CD1  | Public opposition/unacceptability by the end users                                   | 4.43 | 1.112         |
| CD2  | Private sector failure/lack of skills and experience, and inexplicit roles of the stakeholders | 4.35 | 1.095         |
| CD3  | Lacuna in the contract agreements due to omissions and ambiguities                   | 4.60 | 1.183         |
| CD4  | Unfair risk allocation                                                                | 4.33 | 1.419         |
| CD5  | Delay in decision-making                                                              | 4.17 | 0.948         |
| CD6  | Unreliable feasibility studies                                                        | 4.26 | 1.489         |
| CD7  | Insufficient financing capacity                                                       | 4.10 | 1.497         |
The following causes of dispute are coded as CD19, CD3, CD22, CD14, CD1, CD11, CD2, CD4, CD27, CD23, CD8, CD6, CD26, CD10, CD12, CD25, CD5, CD24, and CD7 are more differentiated among the 27 bases of conflict as indicated in Figure 2. The NUC policy ought to develop an underlying set of ideas to draw inferences from these chronological causes of dispute. This process will inform the utilization of workable dispute prevention strategies as well as the adoption of DRMs that are perceptive of the peculiarity of PPP contractual disputes.

**Conflict prevention strategies**

The advantages of preventing PPP contractual disputes are numerous. The cost of unprevented dysfunctional conflicts over the project delivery will leave stakeholders with immeasurable losses. It is rational to avert conflict than to pursue a resolution mechanism given that might not be cost-effective. The dispute resolution process will involve the consumption of resources (time, money, and energy) while the dispute prevention strategy will neutralize potential causes without snowballing.

Conflict prevention strategies are not contemplated as essential tools for avoiding disputes among the participants of PPP contracts by the NUC policy. However, the perspectives of 96 respondents on 13 dispute prevention strategies listed in Table 2, and the description of Figure 3 were rated on a five-point Likert scale. The relative importance index (RII) was used to rank the variables. The result suggests a sequential movement of engaging the prevention methods. This serves as a pointer for NUC policy amendment.

**Dispute resolution mechanisms (DRMs)**

The dispute resolution mechanisms materialize where dispute prevention strategies are unproductive. The choice of DRMs in settling dysfunctional disputes pivots on the analysis and the determination of three elements namely: familiarity (in terms of stakeholders’ awareness), frequency (in terms of DRMs constancy), and effectiveness (in terms of DRMs’ problem-solving capability). Figure 4 encapsulates stakeholders’ perceptions of seven DRMs accessible for dispute resolution in PPP contracts. In this regard, the NUC policy will be proactive by giving priority to mediation/reconciliation while deploying DRMs for PPP contractual dispute

### Table 1. Continued

| Code | Causes of dispute (CD)                                                                 | Mean | Std. Deviation |
|------|---------------------------------------------------------------------------------------|------|----------------|
| CD8  | Lack of environmental impact assessment (EIA) causing improper operations             | 4.28 | 1.359          |
| CD9  | Unexpected changes in tariffs and taxes                                               | 3.89 | 1.085          |
| CD10 | Absence of proper communication and adequate interactions                              | 4.22 | 1.233          |
| CD11 | Poor financial affordability                                                          | 4.43 | 1.238          |
| CD12 | Payment default due to high service charge to end-users                                | 4.19 | 1.284          |
| CD13 | Inadequate investigation and disordered preparation                                   | 4.50 | 1.086          |
| CD14 | Repudiation of contract                                                               | 4.49 | 1.142          |
| CD15 | Inaccurate demand forecast                                                            | 3.68 | 0.979          |
| CD16 | Unjustified changes to the scope of works                                             | 3.83 | 1.121          |
| CD17 | Contradictory terms in job specifications                                              | 3.66 | 1.113          |
| CD18 | Political interference                                                                | 2.99 | 1.294          |
| CD19 | Excessive contract sums variation                                                     | 4.71 | 0.845          |
| CD20 | Ambiguous goals/objectives and unattainable anticipations on returns                 | 4.51 | 1.142          |
| CD21 | Inadequate transfer of risks                                                          | 3.69 | 1.127          |
| CD22 | Trust variation and personality clashes                                                | 4.52 | 0.995          |
| CD23 | Unrealistic time targets for project delivery and concession periods                   | 4.31 | 1.009          |
| CD24 | Delay in rectifying defects during service delivery                                   | 4.17 | 1.053          |
| CD25 | Reluctance to seek clarification on ambiguous instructions                             | 4.18 | 1.056          |
| CD26 | Inadequate compensation for displaced persons                                         | 4.25 | 0.918          |
| CD27 | Absence of a well-established legal framework                                         | 4.33 | 0.902          |
settlement. However, the policymaker must be conscious of the peculiarities associated with PPP concessions in educational institutions.

**Working through DRMS for PPP dispute resolution policy**

DRMs have interrelated procedures that can be deployed separately or jointly utilized in settling conflicts.24 The functionality of DRM centres on specific paradigms that NUC policy ought to establish and understand by the participants. These models are as follows:

**Table 2. Dispute prevention strategies (DPS) preferred in public-private partnership (PPP) contracts.**

| Code  | Dispute prevention strategy (DPS)                                                                 |
|-------|-------------------------------------------------------------------------------------------------|
| DPS1  | Training and education in communication                                                          |
| DPS2  | Allow for experts’ opinions and cognate experience in specific operations                       |
| DPS3  | Transparent procedure to instil parties' confidence in resolution decisions or dispute resolution mechanisms (DRMs) outcomes |
| DPS4  | Appropriate risk sharing                                                                      |
| DPS5  | Realistic dispute assessment                                                                   |
| DPS6  | Well-defined and accessible communication system                                                |
| DPS7  | Quick response to claims                                                                       |
| DPS8  | Clear goals and mutual benefits objectives                                                      |
| DPS9  | Reliable and sustainable service delivery                                                       |
| DPS10 | Transparent and all-inclusive participation in tariff review                                    |
| DPS11 | Clarity of roles and responsibilities of stakeholders                                           |
| DPS12 | Extensive stakeholders' consultation in decision-making                                         |
| DPS13 | Regular site meetings to minimize the accumulation of construction defects                     |
Values and beliefs

The dispute systems experts have argued that effective conflict management systems should be expansive, but priority should be placed on collaborative problem-solving, with ‘rights-based’ processes only brought into play as a last resort.\textsuperscript{25–27} Therefore, for any conflict management system to be productive, the respective rights and interests of all parties must be given priority. In other words, the stakeholders should be engaged in consensus-based processes that are responsive to various concerns as it affects individual values and beliefs.
• **Structure and roles**

Establishing pertinent administrative and decision-making principles will strengthen DRMs in achieving the desired result. Among the guidelines or roles necessary to make DRMs workable are; swift responses to settling conflicts as they occur, adoption of multi-layered series of measures to resolve disputes appropriately, promoting the continuity of the stakeholders’ cordial relationship to ensure the steady running of the project, transparency, and accessibility must not be lagging in the implementation of DRMs for dispute settlements, and all the required resources such as manpower, time and money should be readily available to make DRMs function effectively. However, by institutionalizing these principles, the distinctive nature of the PPP project should be taken into cognizance as it affects educational institutions.

• **Procedures**

The resourcefulness of DRMs lies in the range of approaches and procedures designed as the strategic inputs to ensure resolving the issues bother on the stakeholders’ differences. It is important to ascertain that justice, fairness, predetermination, preannouncement, consistency, and transparency take precedence in setting up DRMs procedures to arrive at all-inclusive decisions or resolutions acceptable to the conflicting parties.

• **Skills and behaviours**

The problem-solving skills of the DRM facilitator and attitudinal dispositions of the conflicting parties to the choice of DRM in settling the dispute will determine the success of the mechanism adopted. Understanding the contents of the dispute by the problem solver will pinpoint the suitable DRM and help obtain a satisfactory settlement for all the participants. Problem-solving techniques also required a dispute settler to possess strong behavioural and social skills that encompass good communication and persuasion skills. The possession of these skills will add an informal dimension that allows prompt resolution of disputes with little or no dependence on formal procedures.

Developing DRMs that serve the interests of private developers and the university authorities engaging in PPP contracts is more demanding but imparting the foregoing paradigms into the DRMs structures will ensure the successful delivery of the educational infrastructure in the institutions of learning.

**Can PPP contract disputes be contained through NUC policy?**

Various studies assert that disputes are inevitable in PPP contracts due to the dichotomy of the stakeholders’ interests among other factors. The present policy which ushered in PPP arrangements in public universities has no apparent aspect of conflict resolution that can guide the participating parties. However, if NUC policy will curtail dysfunctional PPP disputes, it must be capacitated via a far-reaching review as herein recommended:

• **Explicit institutional framework**

The practicability of PPP concessions depends on a robust institutional framework. As it has been observed that the NUC policy lacks operational structure, it is, therefore, necessary to expedite clear guidelines for tendering processes, prequalification exercises, and standardized contract awards. A PPP administrative unit (PPP-AU) that will be specifically saddled with the PPP contract procurements should be established at each public university engaging PPP concessions. The unit will have adequate representation of all parties. The responsibility of the unit shall include the monitoring of every activity connected to service delivery and stakeholders’ contract relationships. In this regard, all potential dysfunctional disputes can be put in the spotlight, and the appropriate prevention measure can be taken, or where seems to be a possible escalation, a proactive DRM will be implemented to deter the degeneration of contract performance.

• **Involvement of PPP expertise**

In every undertaking, expert opinions are essential where novices are challenged by the grey areas. Regardless of the far dated start-up period of the NUC policy on PPP concessions adopted by public universities, it is certain that the initiative (UHDM) is yet in its formative years given the absence of definite DRMs. This scenario is also responsible for the inability to surmount challenges accrued to contract disputes. Therefore, the policy must amplify the constitution of a think-tank at the centre. The think tank will serve as a central advisory board with its membership drawn from all categories of professionals in the construction industry and legal practice.
This board will liaise with the PPP-AU of each institution from time to time as oversight functions. Any contract dispute rebutting PPP-AU interventions will be successfully managed by the central advisory board.

- **All-inclusive Memorandum of Understanding (MoU)**

  The importance of contract agreement or MoU in PPP concessions cannot be overemphasized. The articles or clauses guiding the rights and responsibilities of each participant are asserted in the MoU. Similarly, the scopes and or limitations of the concessions are equally affirmed. Since the NUC policy is silent on having a holistic template of MoU, each university resorted to a unilateral PPP agreement which is myopia about dispute resolution among others. Therefore, solving this shortcoming is long overdue. It is an urgent responsibility of the NUC to develop a unified dispute-resolution policy that will be integral to the MoU intended for the regulation of PPP contracts in educational institutions.

- **Mandatory PPP project feasibility study**

  The policy should emphasize project evaluation as a prerequisite to PPP contract award. The over-expectation of private investors is influenced by the quest for profit maximization. On the other hand, the procurement authorities will want to forestall any cutthroat profitability that can negatively affect the interests of the end-users of the PPP infrastructure. To prevent disputes related to the stakeholders over expectations, the execution of feasibility studies must be compelled on the parties through the policy. Thus, the feasibility study report will set the limit for the expectations of individual participants, and the potential disputes in this regard will be avoided.

**Lessons to developing economies**

Where common resources are insufficient and there is a need for public accountability on the provision of social infrastructures, PPP becomes a means of delivering governance dividends to the public the world over. This report about developing a dispute resolution policy is an idea that could be generalized and assist the global south countries engaging in various PPP models for infrastructure development. Many moribund PPP projects in developing countries are due to disputes caused by political interference, unrealistic concession periods, and volatile economy among others. PPP contractual disputes will continue to emerge if the interests of the stakeholders remain varied. Thus, developing relevant policies that will prevent or mediate disputes should be given attention in the PPP agreements.

Considering the uniqueness of the DRMs, individual PPP procurement authorities and private investors can contrive and domesticate dispute resolution frameworks to conform to the extant regulations of the subject domain. Where resolution mechanisms are available, it is not outrageous to revamp the existing structure in line with the peculiarity of any given PPP project that is more of social values than economic values. PPP adopted for the educational sector requires workable interventions on dispute settlements because of its social characteristics that may not attract private investors who would be predisposed to economic returns rather than social services.

**Conclusion**

In the instance of the paucity of public resources to finance the education sector in Nigeria, it is commendable that NUC devised an initiative known as UHDM, to mitigate the shortage of facilities restricting the good quality of academic performance in public universities. However, the imperfection of the policy on which the adoption of PPP was founded undermined the gains of the initiative over the years. The emergence of peculiar contract disputes among the stakeholders without a clean and clear line of getting solutions via viable dispute resolution policy has instigated a decline in project delivery and private investors’ participation. To proffer lasting remedies, this policy brief has examined the causes of disputes and possible dispute prevention strategies. Likewise, the perception of the stakeholders on the utilization of DRMs has pinpointed how dispute resolution policy can be developed.

Consequently, NUC is admonished to hastily embark on the overhauling of its PPP policy in line with the recommendations of this policy brief. It is also imperative to sensitize the universities management (procurement authorities) and other stakeholders on the policy implementation. However, the success of the PPP concessions adopted by the NUC for educational institutions is a function of an in-depth policy, and this must be attained to achieve the objectives of the UHDM initiative.
Data availability

Underlying data

Figshare: PPP Dispute Resolution Mechanism.sav. https://doi.org/10.6084/m9.figshare.21517284.v2.13

This project contains the following underlying data:

- PPP Dispute Resolution Mechanism.sav (the file includes data on i.) causes of dispute in PPP; ii.) dispute prevention strategies; and dispute resolution mechanisms in PPP).

Data are available under the terms of the Creative Commons Zero "No rights reserved" data waiver (CC0 1.0 Public domain dedication).

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