

Analysis of Claims in the Uganda Construction Industry

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Abstract: The increasing cost of infrastructure development risks stifling national investment plans. Many projects in Uganda have suffered because of the frequency and magnitude of claims made by parties involved especially the contractors. As a result, the construction industry is plagued with claims which quite often lead to adversarial relationships. The major grounds for claims were identified through studying the contract documents where claims had been made. Increase in scope; change orders; errors in contract documents; inclement weather; inflation; delay in possessing the site; and change in the tax policy were the most prevalent grounds for making claims. Problems identified in claiming process include delays in getting approval; information on claims not reliable; hostility from the parties involved; pricing of claims; delays in effecting payment when approved; and overzealous contract interpretation leading to misunderstanding and delays. Using a survey on project managers for 64 contractors and their corresponding clients or their representatives, the major ways in which it can be reduced were identified as being thoroughness during the design phase; providing for inflation; proper planning of works; using prequalified contractors; and proper documentation of records. Clients have a big role to play in reducing claims.

Key words: Claims, construction, causes, disputes.

1. Introduction

The construction industry is one the most important sectors of every nation [1]. In many countries, the infrastructure created through construction forms more than 50 per cent of the gross fixed capital formation. As global recession takes its toll, the global construction industry continues in notable declines in profit margin. With the increase in the world's population, the poor performance of the construction industry poses a great threat to the global economy as a whole.

The increasing cost of infrastructure development risks stifling national investment plans [2]. The Uganda construction industry faces many problems of delay in completion of projects, cost overruns, poor quality projects, which often lead to claims by the parties involved [3]. Construction mismanagement results in multiple problems that can cascade throughout the work force chain, affecting the schedule and leading to financial loss to multiple parties [4]. One of the sources of mismanagement is claims which can lead to time and

cost increases and, in some cases, leads to frustration of the contract.

The word 'claim' has connotations of time and monies in particular, of which to be honored by the owner to the contractor as payment or compensation for the work done. Payment of claims is so important in meeting the basic obligations under the contract [5]. The construction industry is plagued with claims which emanate from different factors yet there is a dearth of information regarding claims in the construction industry.

Previous studies have mainly focused on how to handle claims [6-10]. The purpose of this paper was to analyze and identify the grounds for making claims in Uganda with a view to finding out how claims can be minimized and how the process of claiming can be improved upon.

2. Literature Review

A study by Abdul et al. [11] on claims in the construction industry from the nominated subcontractors

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perspective covered six major areas of claims: variations, damages, loss and/or expense, extension of time, payment and determination. Claims arise when a party to a construction contract believes that in some way, by act or omission, the other party has not fulfilled its part of the bargain. A claim arises when one party to the contract has suffered a detriment for which that one party should be compensated by the other party. Therefore, a construction claim is an assertion of and a demand for compensation by way of evidence produced and arguments advanced by a party in support of its case [12]. The major challenge with claims is that because they are not well presented early, they often lead to adversarial relationships between the parties involved on a project. The major disputes can be largely traced to errors in contract documents; failure to appreciate the real cost right from the beginning; changed conditions; and default by the stakeholders on the project. In investigating the role of clients in having an effective construction process, Alinaitwe [13] found out that claims are brought about partly by the many hartals, clients not getting approvals in time, poor valuation of works done, extension of bonds and guarantees, wrong instructions from the project managers.

According to Kartam [14], the key processes in claiming on construction projects include: identification; notification; examination; documentation; presentation; negotiation; and use of total quality management tools to prevent claims. However, very claims are taken through these processes. Due to the lack of clarity and agreement, many claims lead to adversarial relationship. Claim identification involves timely and accurate detection of a construction claim and is the first step in the claim process. Claim notification involves alerting the other party of a potential problem in a manner that is non adversarial. Claim examination involves establishing the legal and factual grounds on which the claim is to be based while claim documentation is the collection of the hard facts that give the history of a construction claim. Claim presentation should be

logically built up, well organized and factually convincing. A structured negotiation is required to ascertain that all the information is current and complete; to minimize the scope of negotiation beforehand so that insignificant points are not used to precipitate argument and disrupt progress; knowing each party's weaknesses and using them to concede to the other party; foreseeing problems; and anticipating the opposition's next move. The last process in the cycle involves prevention or minimization of construction claims by using Total Quality Management tools.

2. Methods

Generally, research can be categorized as qualitative or quantitative [15]. The researcher adopted a pragmatic approach and used both qualitative approaches and quantitative methods.

The target population was comprised on contractors who were registered with Uganda National Association of Building and Civil Engineering Contractors (UNABCEC). The study was confined to the local contractors registered with Uganda National Association of Building and Civil Engineering Contractors (UNABCEC), generally because their addresses were well known and these are among the serious contractors available in the country. A list of 194 contractors in their respective categories was used to generate a random sample of 64 contractors. To obtain this sample, particular projects were identified on a snowball approach. For the purposes of this survey, the 2012 mailing list of contractors was used. The study targeted project managers of construction projects on which claims have been registered and honored. This was because such categories of people were believed to be knowledgeable about the causes of financial losses incurred on construction projects.

The study on claims required the researchers to establish the grounds for the claims and the problems met in claiming as obtained from various contract management documents. This required the researcher

to review claims made, correspondences regarding claims and minutes of site meetings and other contract management documents that were available. From the above-mentioned documents, the researcher was able to identify the grounds for claims and the problems met by contractors in presenting and processing the claims. The frequencies of the grounds identified were used to categorize and rank the grounds for claims. Similarly, the frequencies of the problems met were used to rank the problems faced in claiming. Sixty-four contracts which had claims were investigated.

Causes of claims were compiled basing on a review of the literature and interviews with project managers on contracts. Qualitative methods were used to investigate the perceptions concerning ways of minimizing claims from the contractors and clients' perspectives. Surveys were used to quantify and rank the way claims can be minimized. Surveys have some advantages, namely they are effective means to gain a lot of data on attitudes; very few of the subjects are lost and they are inexpensive to administer (Collis and Hussey, 2003). A questionnaire was compiled basing on the compiled list of causes after a pilot study. A pilot study was used to improve the wording and increase the reliability of the questions. The closed ended questionnaires were rated on a 5-point Likert scale [15]. These provided respondents with values to choose; that is from 5 to 1 and determined the respondent's degree of agreement or disagreement respectively. This was administered to project managers as well as clients of the particular projects.

Both content and construct validity were ensured by use of expert judgement to scrutinise and critique the questionnaires [14]. External reliability was not a major issue as the factors that affect claims were likely to vary

with time. Internal reliability was ensured during the questionnaire design by using expert judgement. Draft questionnaires were given to experts including technical supervisors to scrutinise and critique the questions. The comments provided were incorporated into the final questionnaires.

3. Data Analysis, Results and Discussion

3.1 Analysis of the Responses

In all, data were acquired from 64 projects. 30 were private projects while 34 were public projects. This shows that there was a good split between private and public the projects chosen. 43 projects were of building nature while 21 projects were civil engineering projects. This also reflects on the general nature of projects. The majority of projects are of the building type.

Regarding grounds for appeal and problems in processing claims, a total of 64 responses from different project managers were collected. The majority of the respondents (72%) had spent between 10 and 15 years within the construction industry. Those that had spent 1 to 9 years and over 15 years in the industry comprised of 13% and 15% respectively. This indicates that the majority of the people who responded had reasonable length of experience within the industry and are therefore knowledgeable about claims. It can be reasonably assumed that the responses they presented reflect the experience firms have over claims.

The respondents were also required to indicate the size of jobs where claims were registered. The projects ranged from a maximum value of 80,000 million Uganda shillings to a minimum value of 9.72 million Uganda shillings as in Table 1.

Table 1 Descriptive statistics on claims made.

	N	Minimum	Maximum	Mean	Std. Deviation
Contract Sum (M UGX)	64	9.72	80,000	6370.9	13478.1
Amount Claimed (M UGX)	64	1.80	5,000	495.7	1087.5
Number of Claims (No.)	64	1	45	4.09	7.32
Claims honored (No.)	64	1	45	3.00	6.42
Valid N (listwise)	64				

The value of the maximum claim was UGX 5,000 million and the minimum amount claimed was UGX 1.8 million. There was one project that had a total of 45 claims as the maximum number and another project had only one claim made and honored. Where a project had many claims on it, only one claim which was honored was investigated further. Of the 64 claims analyzed, 38 (64.1%) were in the range of 0 to 10% of the contract sum, 17 (23.4%) were between 11 and 20% and the balance of 9 (12.5 %) were above 20% of the contract sum.

3.2 Grounds for Making Claims

The frequencies of the grounds for claims were determined from the contract management documents. The results are provided in Table 2 below. The six most common grounds for making claims are increase in scope, change orders, errors in contract documents, inclement weather and inflation. Apolot *et al.* [3] investigated the causes of cost and time overrun and found out these factors often lead to claims. Semyalo *et al.* [16] investigated the causes of financial loss to contractors in the construction industry and found out that the major ones included inflation and high cost of capital. Inflation contributes a lot as far as claiming is concerned.

The grounds for contractors' claims were grouped

into those that caused by clients, those that are caused by design and supervision consultants and those that are external to the project. Figure 1 shows the groupings using a fishbone diagram.

The grounds that are client related include: increase in scope; change orders, delay in possession of site, extension of bonds and guarantees, and delays because the clients did not get the necessary approvals. However, some very minor changes orders were also initiated by the consultants.

Consultants are generally responsible for errors in contract documents, delays in providing contract documents, poor valuation of works done, and wrong instructions from the project manager. There were claims related to factors external to the project. These include inclement weather, inflation, changes in tax policy, and hartals and industrial disruptions.

3.3 Problems Met in Claiming

The frequencies of the problems met in claiming were also determined from the contract management documents. The major problems identified in making claims included delays in getting approval; information on claims not reliable; hostility from the parties involved; pricing of claims; delays in effecting payment when approved; overzealous contract interpretation leading to misunderstanding and delays.

Table 2 Grounds for claims made by contractors.

Grounds for making claims	Claims in which ground appeared
Increase in scope	28
Change orders	23
Errors in contract documents	20
Inclement weather	16
Inflation	16
Delay in possessing the site	15
Change in the tax policy	15
Changes in ground conditions	10
Delay in providing documents	8
Hartals	7
Delay because client did not get approvals	6
Poor valuation of works done	6
Extension of bonds and guarantees	5
Wrong instructions from the project manager	5

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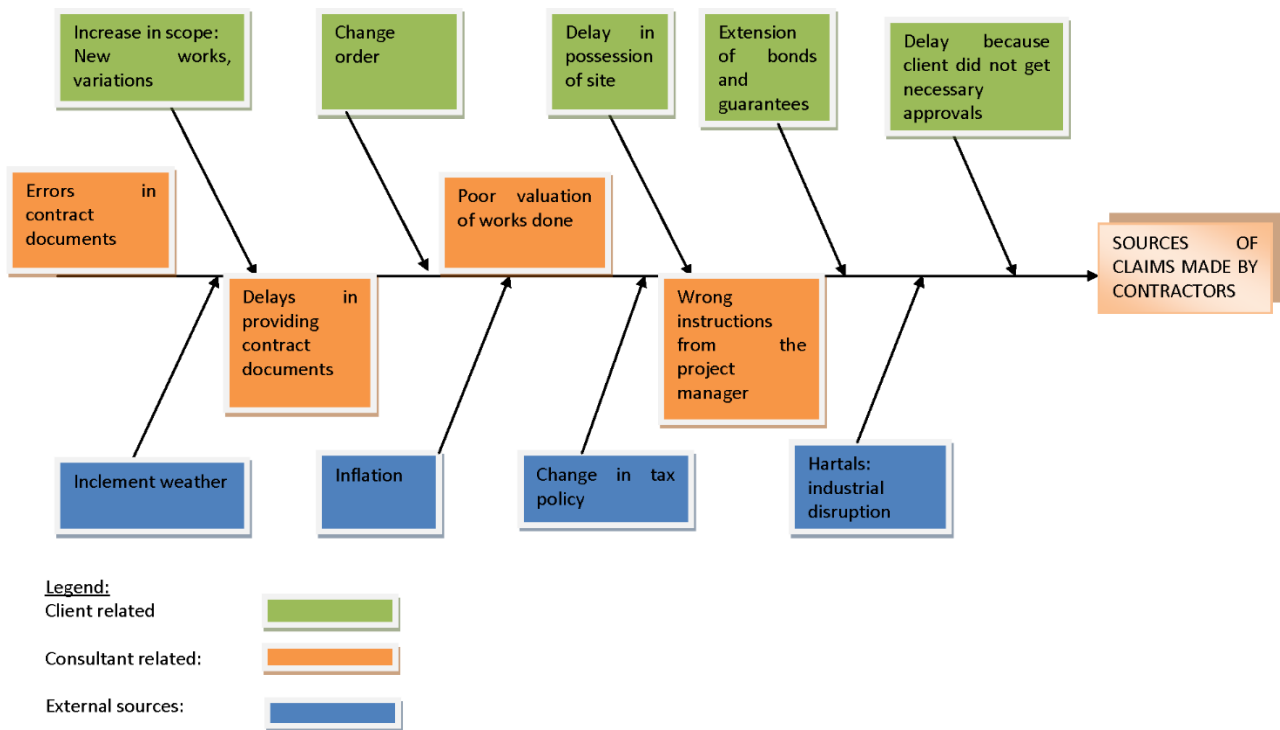


Fig. 1 Fishbone diagram showing the grounds for claims made by construction contractors

Table 3 Problems in claiming.

Problems in claiming	Number in which problem was an issue in the 64 projects
Delays in getting approval	31
Information on claims not reliable	22
Hostility from the parties involved	18
Pricing of claims	16
Delays in effecting payment when approved	16
Overzealous contract interpretation leading to misunderstanding and delays	10

Delays are common because clients usually do not want to incur extra costs on the project even when the change orders or other grounds for the claim have been initiated by them. Claims go through a number of processes and clients are often hesitant to clear the claims. This is especially so since most of the contracts are fixed price contracts. This is in line with what Alinaitwe [12] found out in the assessment of clients' performance in having an efficient building process in Uganda.

The other problem was that information on claims was reported to be scanty and not reliable. This is occasioned by the fact that a good number of contractors do not keep proper records of what has changed from the original plans and hence cannot

easily delineate the claim events. It would be advisable for clients to have clerks of works or resident supervisors on projects to monitor the progress and to keep records of any issues emanating from execution of the project. It was also reported that many client's representatives are hostile to the contractors when they initiate claims. Many believe that the claims are fictitious and undeserving which quite often results into a hostile relationship. Pricing of claims is not always easy as there are no standard rates. Some of the prices keep on changing and this presents a challenge to the contractors. This is in agreement with what Sebugwawo [17] found out in his research on variations in paved road construction unit rates in Uganda.

Table 4 Proposed ways of reducing claims as perceived by contractors and client representatives.

	Contractors				Clients			
	Mean	Std. Deviation	CoV	Rank	Mean	Std. Deviation	CoV	Rank
Being thorough during the design phase	4.429	.646	.146	1	4.214	.699	.166	1
Provide for inflation	3.429	.852	.248	4	3.286	.994	.303	3
Proper planning of works	4.143	.770	.186	2	4.071	.730	.179	2
Use prequalified contractors	3.643	1.008	.277	6	3.500	1.092	.312	4
Provide for inclement weather	3.857	.949	.246	3	3.286	1.204	.367	8
Carrying out feasibility studies	3.214	1.188	.370	10	3.143	1.231	.392	10
Clients to handle matters without delays	3.214	1.188	.370	10	3.071	1.141	.372	9
Use flexible forms of procurement	3.143	1.099	.350	8	2.929	1.207	.412	12
Involve clients early	3.000	.961	.320	7	2.786	.975	.350	6
To inspect the works before tendering	2.357	1.008	.428	12	2.357	.929	.394	11
Proper documentation of records	3.714	1.069	.288	5	3.357	1.151	.343	5
Develop industry price handbook	2.929	1.072	.366	9	2.786	.975	.350	6

3.4 Proposed ways of Reducing Claims

The ways in which claims can be reduced were analyzed both from the contractors' point of view and the client or client representatives point of view. Coefficient of variation (CoV) was used as a basis for ranking from the contractor and from the clients' point of view. The success factors were ranked using the respective CoV for each category of respondents. The use of CoV in ranking has been done before and is considered more reliable than the mean because it considers both $E(x)$ and $V(x)$ (Al-Shumaimeri, 2001). Table 4 shows the ranking of the factors as viewed by contractors and clients.

The top ranked way in which claims can be reduced is by being thorough during the design phase of the project. A number of designs are not complete and that leads to claims from the contractors. Incomplete designs are due to hurrying up through the design phase, incompetent designers and clients' inability to articulate the designs.

The other top ranked ways are: proper planning of works; providing for inflation; use of prequalified contractors and proper documentation of records. Inadequate planning led to claims. Inflation which stood at around 6% led to contractor losses. This often led to claims if it was not catered for in the original contract. Use of prequalified contractors was noted as a

way of reducing claims. Some clients believe that many contractors undercut and then make claims later during the project in order to get more money from the client.

The Spearman's coefficient of rank correlation was determined for the ranks from the contractors' ratings and those from the clients ratings. The Spearman's correlation coefficient, was calculated using equation

$$\rho = 1 - \frac{6 \sum d^2}{n(n^2 - 1)}$$

where n is the number of pairs in this case 13, and d is the difference between the ranks. The correlation coefficient was equal to 0.84. Since the coefficient is greater than 0.7, the factors have a very strong positive correlation between the rating by the contractors and the rating by the clients.

4. Conclusion

The objectives of this research were to identify the grounds upon which claims are made; to identify problems associated with claiming; and to find ways in which claims can be reduced. The six most common grounds for making claims are increase in scope, change orders, errors in contract documents, inclement weather and inflation. The major problems identified in making claims included delays in getting approval; information on claims not reliable; hostility from the parties involved; pricing of claims; delays in effecting

payment when approved; overzealous contract interpretation leading to misunderstanding and delays. It is concluded that reducing claims will require being thorough during the design phase of the project; proper planning of works; providing for inflation; use of prequalified contractors and proper documentation of records.

To enhance positive perceptions of fairness, a contract administrator needs to demonstrate professional expertise when diagnosing and assessing claims. When a contractor perceives a lack of professional expertise and/or experience, trust in the decision-making process could diminish. Hence, project owners' management teams need to build their competence for managing claims, conflict and dispute. Required competencies may include: diagnostic skills, behavioral skills (to prevent escalation of conflict or avoid deadlock in reaching agreement), and a capacity to provide support and assurance to the relevant parties. A contract administrator should have adequate knowledge in construction, understand the contract terms and their implications, and be able to evaluate a contractor's claims. They may also need to justify their decisions in ways that are understandable to the contractor and the project owner. Project owners may wish to consider these qualities when appointing the project management team.

Contractors need to build competency for claims, conflict and dispute management. A contractor sometimes finds it difficult to substantiate genuine claims as a result of lack of relevant documentation. Rejection of such claims by the contract administrator may lead to loss, perceived lack of fairness and, hence, dissatisfaction and resentment. These sentiments, in turn, provide fertile ground for opportunistic behavior and adversarial relationships with the project owner, when further claims arise on the project or on future projects.

Although the results provide vital information for construction projects in Uganda, these can also be applicable in other developing countries. The findings may have some limitations because the antecedents of

perceptions about fairness, and how they influence claims could vary across project settings, forms of contract, and different types of procurement methods. This study did not consider the changes in the relationship between fairness, conflict and dispute that may be accounted for by procurement method and contract form. Finally, the sample size is based on perceptions of 64 project managers in Uganda. Future research could be conducted with a larger sample and analysis of claims on building and civil engineering projects compared. Further research should be carried out in other countries to facilitate international comparison.

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