

EFFECTS OF PREMATURE TERMINATION: CASE STUDIES OF SRI LANKAN CONSTRUCTION PROJECTS

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ABSTRACT

Construction projects are inevitable. But they should be in proper way. However some of projects/contracts come to end before their actual completion. This is an adverse effect to the construction industry and it can be identified as a barrier for sustainable construction. Therefore there is a requirement of avoiding occurrence of adverse premature contract/project termination and mitigating their effects while promoting sustainable construction practices. Hence, the aim of the research is to investigate effects of premature contract/project termination before minimizing adverse effects.

In accordance with existing literature, mainly three types of Contract termination can be identified as, termination due to default of client, termination due to default of Contractor and termination for convenience of Employer. But, contract/project terminated prematurely due to whatever reasons, their issues affect on many ways to project stakeholders. Further, less attention is given to some issues relating to project/contract termination like impacts of termination, relationship among parties after termination and steps to prevent premature termination.

This research is conducted through three case studies of terminated construction projects in Sri Lanka. To gather data, semi structured interviews were carried out with professionals and unstructured interviews were held with technical employees. Further, three experts were interviewed to clarify compatibility with termination concept.

The findings were revealed that there are good impacts as well as bad impacts on stakeholders due to premature project/contract terminations. Most of the time, it results in breaking the relationship among parties, creating disputes, blacklisting the contractor...etc. Further, the research is explored good practices for prevent adverse termination effect which can be implemented in construction industry.

Keywords: *Mitigating Termination; Premature Contract Termination; Premature Project termination; Sri Lanka.*

1. INTRODUCTION

Due to the complex nature of the construction projects, the risk involvement of them is very high. According to the Employer's requirements and within restricted budget, it is very difficult task to achieve blameless out come by Contractor. The project is defined by Nicholas (2001) as, activities of limited duration and all projects come to an end.

Contracts are made to be performed by the responsible parties. When parties enter in to a contract, they have to perform it as expected by its' terms. Indeed, a contract consists of a number of terms which determine the scope of the performance obligations, which the parties have accepted. A failure to perform in accordance with these terms is a breach of contract, which will entitle the other party to have an appropriate remedy based on the contract (Mckendrick, 2007). Thereupon as a remedy, termination of the project can be raked by either party. According to the Smith and Sims (1985), termination of a contract occurs, where a valid and enforceable contract is brought to an end prematurely, either by it becomes impossible of performance by circumstances which were unforeseeable at the time the contract was formed or by the actions of one or both parties.

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Termination of construction projects often results in many problems like claims, disputes and issues to project stakeholders. Therefore, the decision to proceed with that option should not be taken lightly (Interface Construction Consultancy, 2009).

Termination of a project is inevitable, but the way of termination will incur long lasting impact on the project stakeholders which cannot be predicted. The success of future projects may depend on not only the success of past ones but also on how unsuccessful projects were treated by the organization and its stakeholders (Amir *et al.*, 2000).

Premature terminations of projects are very adverse incidents in construction industry. As per Yogeswaran (2004), termination of construction project directly affect to the economic growth of Sri Lanka. Also termination on construction projects often result in many problems and issues to project stakeholders as well as claims and disputes (Interface consulting International, 2009). Besides, researchers were able to identify the research gap about effects of premature termination of construction projects in Sri Lanka. Therefore as a developing country, it is essential to avoid premature terminations in Sri Lankan construction projects to drive towards more developed and sustainable construction industry. For the purpose it is useful to study what are the effects of premature terminations of construction projects in Sri Lanka and use them as lessons for future projects.

2. LITERATURE REVIEW

2.1. PROJECT TERMINATION

There are two general types of termination typically addressed in construction contracts namely, termination for convenience and termination for cause, which is sometimes referred to as termination for default.

In accordance with Interface Construction Consultancy (2009), in a termination for convenience, the owner may terminate the contract for whatever reason such as economic/business reasons, or as the most expeditious way of eliminating a non-performing Contractor with minimum risk of a legal dispute.

Cause for termination may occur when the owner believes the Contractor has not performed according to its contractual obligations and thus has materially breached the agreement. Some of the more commonly cited reasons for terminating a contract for cause include the following:

- Failure to pay labor, subcontractors, vendors, or material suppliers
- Failure to meet the project schedule or diligently perform the work
- Defective or deficient performance
- Failure to follow applicable laws or regulations
- Failure to consistently follow safety requirements

Premature project/contract termination is able to occur from both type of termination. When project is terminated prematurely, there are many issues which will have to face by many parties.

2.2. REASONS FOR PREMATURE PROJECT/CONTRACT TERMINATION

Factors affecting to termination can be discussed under following sub headings.

Breach of contract

Treitl (2003 cited Mckendrick, 2007, p.389) defined the breach of contract in the following terms “a breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract, or performs defectively or incapacitates himself from performing”.

As instances for breach most common in practical,

- Irregular payments to Contractor
- Poor performance of Contractor or who is not worked following specifications
- Do not maintain performance bond according to contract or do not extend its validation at the time extension granted
- Unnecessary delay in construction
- Sub contract part or whole of work without intention of Engineer

Disputes affecting toward termination

In most recent research, Arulnesan (2010) has presented that how and what disputes are mostly affected toward the project termination. The most common classification of type of disputes that have been seen in contractual relationship is summarized as follows,

- Relationships and people's conflict in the industry
- Financial matters (claims & payments)
- Standard of the workmanship (design & manual works)
- Time related disputes

Legal restrictions and injunctions

As another factor affect to the project termination as legal restriction and injunction explained by Murugathasan (1993) as follows. A building must be designed and built according to the policies and regulations formulated by the following institutions.

- Law enacted by parliament
- Local authority's regulations
- Fire department's regulations and requirements

Impossibility of performance can be resulted from the intervention of the above mentioned laws and regulations it may help to terminate the project. A contract may terminated due to the negligence of the professionals when;

- In the pre design stage neglect survey of the land, levels, drains, soil conditions and neglect survey of the existing buildings
- In the design stage neglect the design of the architect or his staff
- Negligence in service such as failure to advice client on any consent necessary from superior or adjoining land lords, failure to obtain any statutory consent, for planning building regulation, land commissions, fire authority.

2.3. REASONS FOR PREMATURE PROJECT/CONTRACT TERMINATION

The impacts due to premature termination can be discussed as follows;

Impacts on organization

Hormozi, McMinn, and Okeleke (2000) stated that, organizing for a project's termination process is especially important when it has failed, because of the lasting impact on future projects as well as the organization's image. Including project team members to the termination process will increase their loyalty and commitment, not only to the organization but also to the success of future projects.

In addition, Bommerand Pease (1991) showed that although the reasons may vary, the impact is frequently the same. Project cancellation can affect employee productivity, the reputation of the firm,

and the value of the firm's stock. Although, there is little thing of employee productivity and project cancellation, project team's perception of the cancellation may influence their productivity for the next several years.

Impacts on professionals

How a project is viewed within the organization is also very important. Because corporate resources can be very limited, projects that are perceived to be draining scarce resources tend to undercut morale. Other project teams envy the resources "squandered" on unproductive or failing projects. This, in turn, leads employees to question the wisdom of senior management (Mandelland Murphy, 1989), and reduces their productivity and level of commitment to the organization (Hormozi, McMinn and Nzeogwu, 2000).

Impacts on economic growth

In Sri Lanka, Silva *et al.* (2005) states that the construction industry is a major contributor to the development of economy contributing around nine percent (9%) to the Gross Domestic Product of the country. Due to this fact construction industry plays one of major role as a key component of the economy. Improving construction capacity and capability is important to most developing countries (Yogeswaran, 2004). However, premature termination of construction projects/ contracts effects country's economic growth badly by reducing construction capacity and capability.

3. RESEARCH METHODOLOGY

This research was conducted using a qualitative approach which consists with literature survey, semi structured interviews and expert survey. At the beginning of the research, researcher broadly investigated the background of research referring journal articles, books, unpublished dissertations and e-resources to get comprehensive knowledge about reasons for project termination. A comprehensive literature review conducted exploring types of project termination, factors to project termination, process, and identified the issues from the premature project termination filling gap by emphasizing significance of research problem.

Collected data analyzed in accordance with code based content analysis using NVivo software. Content analysis involves coding and classifying data. Some authors refer to this as categorizing or indexing. The basic idea is to identify from the transcripts the extracts of data that are informative in some way and to sort out the important messages hidden in the mass of each interview (Hancock, 1998).

Then such issues are interpreted by cognitive map. Eden and Ackermann (2002) stated that, cognitive maps thus take the form of a set of connected options outcomes chains. Assertions about the world imply possible policy options which (taken in coherent bundles) in turn imply strategies for the organization. These are often linked to the overarching goals taken to be purposes of the organization or decision maker. In building a map, then, it is important to ask at each and every stage what the proper place of a concept is within the map.

Cognitive map interprets clear idea of large data set as briefly by form of model and form of relation among each factor depict by arrows. Then reader can get idea about data content just looking at cognitive map.

4. RESEARCH FINDINGS

Data collection was done selecting three cases and details of those cases are given briefly as bellow;

Table 1: Details of Selected Projects

Project	Project A	Project B	Project C
Initial Type	Apartment Building project	Building project	Building project
Project cost (Rs.)	1.6 billion	11.5 million	7.5 million
Duration	4 years	6 months	6 months
Procurement Method	Measure and pay	Measure and pay	Measure and pay
Client	Private	Public	Public
Contractor	Private	Private	Private
Remarks	Project is converted to City Hotel	Scope is not change	Scope is not change

4.1. FACTORS AFFECTING TO TERMINATION

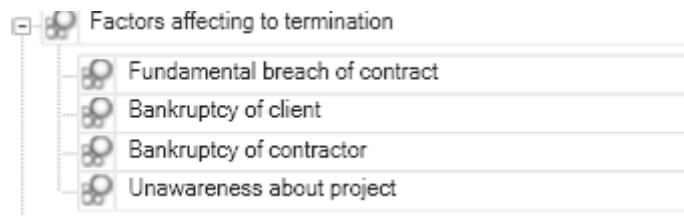


Figure 1: Coding Structure for Factors Affecting to the Termination

Four factors affecting to termination were identified as, fundamental breach of contract, bankruptcy of Client, bankruptcy of Contractor and unawareness about project through research findings. According to the findings bankruptcy of the Client of project A was due to decreased market demand for the project. On the other hand, bankruptcy of Contractor in project B and C where the Contractor got both the projects by using fake process, was due to unawareness of his financial capability and poor cost management among projects. Unawareness of Conditions of Contract and carelessness on contract was lead Contractor of Project B and C to terminate the contracts under fundamental breach of contract.

4.2. IMPACTS DUE TO TERMINATION

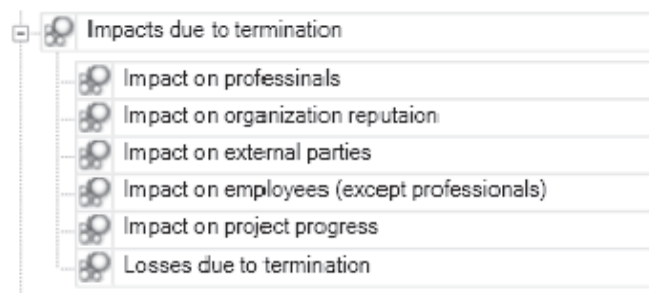


Figure 2: Coding Structure for Impacts due to Termination

Mainly six impacts were identified via research findings as, impacts on professionals, impact on organization reputation, impact on external parties, impact on employees (except professionals), impacts on project progress and losses due to termination. Impacts for professionals could be identified as accusing by administrators and increasing additional workload, while delaying completion of project and money flowing for dispute resolution methods were directed to impact on project. Further, blacklisting contractor's company toward to reputation of firm and employees lost their jobs due to bankrupting of firm.

4.3. REASONABLENESS OF TERMINATION

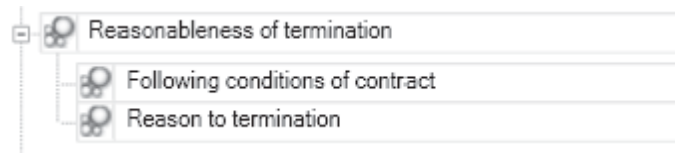


Figure 3: Coding Structure for Reasonableness of Termination

Reasonableness of termination mainly depended on the reasons of termination and following Conditions of Contract when proceeding termination process. In accordance with the selected cases, bankruptcy of client/contractor and careless cost handling cause to emerge termination. Additionally, adopting experts' ideas also helped to enhance the validity of the termination process. In accordance with circumstances, each party has responsibilities and obligations to terminate particular project. It may vary Contract to Contract in accordance with their complexity, size and risk. Several Standard Conditions of Contract such as Standard Bidding Documents in Sri Lanka and FIDIC Conditions give standard path to follow at termination procedures with respect to nature of projects.

4.4. RELATIONSHIPS AFTER TERMINATION

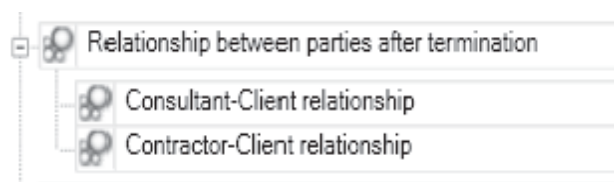
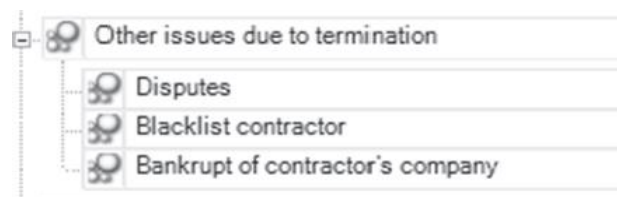


Figure 4: Coding Structure for Relationship between Parties after Termination

General concept is that termination makes bad to parties. It results in breaking the relationship among parties as well. Further, Clients are unwilling to award projects to Contractors who have connected with termination circumstances. By research findings researcher was able to identify that there was a good relationship between the parties after the termination of project A whereas there were bad relationships after termination of Project B and C. This various circumstances depend on mutual understanding of each party about the termination situation.

4.5. OTHER ISSUES DUE TO TERMINATION



be raised due to

Figure 5: Coding Structure for Other Issues due to Termination

Disputes are the main issue at the project/contract termination. Disputes can unfulfilled entitlement of either party. Then each party has to find solution through ADR methods. At Project B and C, when going through disputes resolution method, Contractor was blacklisted after informing by Client to the ICTAD (institute for Construction Training and Development). Even though, the Contractor was removed from the blacklist after settling the dispute amicably, it was serious damage to the reputation of Contractor. The whole construction company of Contractor of Project B and C was bankrupted due to his careless cost control and fraudulent behavior.

4.6. ADVERSE TERMINATION MITIGATION



Figure 6: Coding Structure for Adverse Termination Management

Each issues regarding termination can be categorized as bellow in accordance with selected projects.

Table 2: Summary of Termination Factors According to Each Project

Issues	Project A	Project B	Project C
Type of termination			
Default of Contractor		√	√
Default of Client	√		
Factors affecting to termination			
Bankruptcy of Client	√		
Bankruptcy of Contractor		√	√
Not maintain progress of project		√	√
Withhold payment		√	√
impacts due to termination			
Blacklisted Contractor's company		√	√
Loss of employment		√	√
Accused by Client		√	√
Wasting money for dispute resolution		√	√
Changing scope of project	√		
Delaying project progress		√	√
External impacts and effect			
Political impacts		√	√
External party is unable to recover loss		√	√
External party is able to recover loss	√		
Reasonableness of termination			
Use of Conditions of Contract		√	√
Using alternative process at termination situation	√		
Relationship after termination			
Fair and good relationship among parties	√		
Bad relationship among parties		√	√
Lesson learnt from termination			
Disputes resolved in house caused to good effect	√		
Weak maintaining of documentation through each project phases caused bad effects		√	√
Continuing same parties to future work of project caused good effects	√		

5. CONCLUSIONS

Project/contract termination is mainly done in three ways as default of Contractor, default of Client and for the convenience of Client. The factors which were identified by research can be presented in common way as, fundamental breach of contract, bankruptcy of Client, bankrupt of Contractor and unawareness of project. The legal injunction and restriction and disputes which were discussed in literature review are not toward termination of selected cases. But in some cases disputes were raised after and during termination process. Fundamental breach of contract can be interpreted as not submitting updated project programme and withhold Contractor's payments which cause disputes.

Termination impacts of the above cases and their attitude to termination are given commonly. The issues of project/contract termination can be indicated as impact on professional's work and their position, impact on Contractor and Client, impact on Contractor's employees, impact on reputation of Contractor's and Client's organization, impact on external parties who are expecting services, impact on project progress and losses due to termination. In some circumstances, administrators are unwilling to adopt Conditions of Contract related to termination, as their concept of termination is only for negative side.

Reasonableness of project/contract termination depends on process which followed by each party to enter into termination process. Conditions of Contract establishes standard rules and obligations of each party to proceed with contract termination situation. While, regarding relationship among parties, general comprehension is that there are bad relationships among parties after the termination situation.

Finally these termination situations should not be limited to past ruins. Their attitude and impaction should be taken as example to all members of construction industry to mitigate these adverse premature project/contract terminations.

6. RECOMMENDATIONS

This research disclosed a way towards the mitigation of the premature project/contract terminations in construction industry which were mainly affect to lay Contractors and Clients in to critical financial situation. Further, this study helps to gain good practices and attitudes for key members of contracts.

Followings can be recommended as implications for the construction industry as sustainable construction practices and this study is expanded further by identifying mechanisms to improve and enhance professional experience on project/contract termination.

- Maintaining project's records regularly
- Disputes are tried to be solved by amicably or mediation
- Follow the contract and prevent fundamental breaches
- Get best effort to minimize effect to external parties
- Establish clear contract documentation
- Contractor's awareness of his financial capability
- Carry out preliminary market survey before investing to the project
- Impartiality of Engineer and resistance to political impacts

7. FURTHER RESEARCHES

- The applicability of Conditions of Contract for conversion of project
- External factors affecting to termination of Contracts in government projects
- Impact of Sub Contract termination

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