
Private Sector Development Hub

Construction Permit for the Private Sector in Ethiopia

Research Report

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Executive Summary

Comprehensiveness and clarity of legislative and administrative framework, addressing challenges and efficient processes and transparent outcomes in the issuance and renewal of construction permits are among the essential conditions for a suitable business environment. Efficient, effective and transparent processes and outcomes in the issuance and renewal of construction permit positively contribute to the development of the private sector. This means good normative and institutional frameworks for a construction permit enable to process construction permits speedily and affordably, a factor that attracts investment through reduction of time it takes to get a permit and related transaction costs. It helps minimize improper behavior of permit issuing officials by introducing transparency into the system and removing administrative bottlenecks. Moreover, quality building permit system has linkage with secure property rights over buildings. Where a building permit system encourages builders to go through the formal process, informalism in the sector is reduced.

To the contrary, impediments and challenges in the issuance and renewal of construction permits adversely affect private sector development. When there are legal and institutional deficiencies, a construction permit becomes complex, time consuming and costly and is a factor that discourages investment and forces businesses to resort to informal building. Informal construction becomes a lost opportunity for business people to raise capital by mortgaging their fixed assets. Besides, inappropriate construction permit regime creates a favorable condition for corruption.

The study has assessed Ethiopia's legal framework for construction permits based on comparative indicators in selected legal regimes relevant to the Ethiopian setting that pursue thresholds which can be considered as good practices. This has enabled to draw lessons from such good practices to tackle legislative gaps and administrative problems regarding construction permits in the country. This, *inter alia*, includes policy, regulatory and administrative challenges surrounding the issuance and renewal of construction permits; and opportunities and challenges in the issuance of construction permits specific to small and medium enterprises. Specifically, the study has looked into principal concerns of the private sector regarding efficiency and accessibility in the issuance and renewal of construction permits and reasonableness and openness (relating to construction permits) in light of concerns of the private sector. To this end, a socio-legal methodology has been deployed entailing examination of primary and secondary sources involving legal analysis, literature review and consultation of experienced professionals and relevant stakeholders through interviews, informal exchange of views and focus group discussion.

A survey of good practice jurisdictions for construction permit indicate clarity and comprehensiveness of building laws, provision of adequate human and material resources to strengthen institutions in charge of permit issuance, possibility of outsourcing, "streamlining the

procedures, reduced time for processing applications, introducing one stop shop, reducing fees, improving electronic platforms or online services, introducing risk-based approvals.” The survey, therefore, has revealed that the following are the hallmarks of effective construction permit regime in good practice countries: clarity of purposes, comprehensiveness and flexibility of building laws, integrated digitization of permit issuance procedures and process, reasonableness and simplicity of fee collection, legal liability of permit issuing authority and concerned professionals and an effective dispute settlement system.

Assessment of Ethiopia`s extant construction permit, renewal and repair regime in light of the above parameters derived from good practice countries has revealed the following. Ethiopia`s construction permit issuance and renewal legal framework is comprehensive, clear, flexible and up-to-date. However, such national legal framework exhibits some inflexibility, lack of uniform implementation, centralization, contradictions and lack of alignment with regional laws and suffers from lack of uniform and full implementation. Besides, there are institutional weaknesses attributable to human and material resource constraints and lack of digitization. The result is a complicated, time-consuming, costly and inefficient permit granting process that is susceptible to improper official behavior.

Particularly, institutional weaknesses are reflected in frequent organizational rearrangements, inadequacy in human and material resources, inaccessibility requirements including absence of automated services and unsatisfactory grievance handling methods. These deficiencies contribute to inefficiency in handling construction permit matters in the City. These weaknesses have bearing upon the actual number of days spent to obtain a construction permit, increase in the transaction cost in the process and ultimately impinge on the legal (and constitutional) requirement of transparency in the workings of public institutions. The World Bank has recently observed that there are “poor professional standards..., wide-ranging discretionary powers exercised by government, a lack of transparency...” in Ethiopia`s construction sector. This observation can validly be extended to the country`s construction permit regime.

The study forwards recommendations regarding the quality of legal and institutional frameworks for construction, reconstruction and repair of buildings to envision effective permit processing. In regard to the legal framework, law reform is called for to fill in legal gaps, eliminate inconsistent applications, revise unreasonable rules and regulations, remove legislative inconsistencies and permit room for local experimentation. The institutional side suggests a host of measures including attraction of adequate number of competent staff, their retention, minimization of organizational reshuffling, implementation of partial outsourcing of the construction permit process envisaged in the law, and establishment of a working group composed of relevant state authorities, members of the business community and citizens to periodically discuss and propose matters relating to construction permit.

Acronyms and Abbreviations

| | |
|-----------|---|
| Authority | Addis Ababa City Building Permit and Control Authority |
| FDRE | Federal Democratic Republic of Ethiopia |
| GDP | Gross Domestic Product |
| GIS | Geographic Information System |
| IMF | International Monetary Fund |
| MUDHC | Ministry of Urban Development, Housing and Construction |
| OECD | Organization for Economic Cooperation and Development |
| The City | Addis Ababa City Administration |
| TOR | Term of Reference |

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Introduction

Background: Completeness and clarity of legislative and administrative framework, addressing challenges and efficient processes and transparent outcomes in the issuance and renewal of construction permits are among the essential conditions for a suitable business environment. This study hypothesizes that efficient, effective and transparent processes and outcomes in the issuance and renewal of construction permit positively contribute to the development of the private sector. This means good normative and institutional frameworks for a construction permit enable to process construction permits efficiently (speedily and affordably). This scenario positively contributes to investment in the field, encourages formalism in the building sector and thereby enhances collateralization of immovable property.

To the contrary, impediments and challenges related with the issuance and renewal of construction permits adversely affect private sector development. When there are legal and institutional deficiencies, a construction permit becomes complex, time consuming and costly and is a factor that discourages investment and forces businesses to resort to informal building. Informal construction becomes a lost opportunity for business people to raise capital by mortgaging their fixed assets. Besides, inappropriate construction permit regime creates a favorable condition for corruption.

The present study, with the view to testing the above hypothesis, has assessed Ethiopia's legal framework for construction permits based on comparative indicators in selected legal regimes relevant to the Ethiopian setting that pursue thresholds which can be considered as good practices. This has enabled to draw lessons from such good practices to tackle legislative gaps and administrative problems regarding construction permits in the country.

Objectives and scope: The study focuses upon major policy, legal and administrative challenges encountered by Ethiopia's business community in the process of issuance of construction permit. This, *inter alia*, includes policy, regulatory and administrative challenges surrounding the issuance and renewal of construction permits; and opportunities and challenges in the issuance of construction permits specific to small and medium enterprises. In specific terms, the study looks into major concerns of the private sector regarding concerns such as efficiency and accessibility in the issuance and renewal of construction permits and reasonableness and openness (relating to construction permits) in light of concerns of the private sector.

A construction permit is named variously as a building permit¹ or a construction work permit or an approved plan.² The present study prefers to use the term 'construction permit' for it is the

¹ The Civil Code of Ethiopia Proclamation No. 165/1960, Articles 1540-1548.

² The Ethiopian Building Proclamation No. 624/2009 (Proclamation No. 624/2009), Article 9.

privileged expression in latest pertinent laws and in the TOR for this study.³ A construction permit relates to a green light secured from a public authority to construct a building anew or modify or renovate an existing building with the view to ensuring safety and health.⁴ “የግንባታ ፈቃድ ማለት አንድ የሕንፃ ግንባታ ለማካሄድ ለሚፈልግ አካል ሕንፃውን ለመገንባት የሚያስችሉትን ዝርዝር መስፈርቶች እንደተሟሉ በከተማው ሹም ተረጋግጦ ግንባታ እንዲያካሄድ ፈቃድ መስጠቱን የሚገልፅ ማስረጃ ማለት ነው።”⁵ It is a pre-condition to start constructing a building. A construction permit sees construction as a product of human manufacturing with a definite beginning and ending - with a tangible result at the end of the process and that this process must be regulated. This is done by seeing to it that buildings are constructed in a planned and orderly fashion and that safety and health concerns are duly catered for in order to avert losses of human lives and destruction of property. The study does not however extend to kindred issues – permits for occupancy, demolition, temporary construction and structures for outdoor advertisements.

Approach and methods: The study is socio-legal one. As such, it synthesizes doctrinal legal research with an inquiry into the law in action with regard to construction permits. The doctrinal aspect of the research draws on legislative and institutional frameworks (i.e., review of building and urban planning proclamations, regulations and directives), country case studies, journal articles and research reports. The empirical side of the study is informed through interviews and focus group discussions with pertinent government offices including Addis Ababa City Land Bank and Transfer Agency, Addis Ababa City Municipality, Ministry of Urban Development, Housing and Construction (the Ministry).

The research builds on interviews, a case study, informal conversations and focus group discussion involving key relevant experts, office holders and practitioners including consultation with members of the business community regarding their assessment of construction permits.

Interviews were conducted with key informants mainly drawn from selected sub-cities of Addis Ababa, which were selected on the basis of ease of access to information and existence of extensive construction and reconstruction activities encompassing both old and new built up areas. Interviews were carried out from February to June 2015. The fieldwork also has sought to

³ *Ibid.* See also the Addis Ababa City Government Building Permit Regulations No. 17/2004 (Regulations No. 17/2004)

⁴ A building means any temporary or permanent structure built below or under the ground including dwelling houses or shades or fences or notice boards, roads and infrastructure for dwelling or office or factory or any other purpose located be it in a rural or urban setting. For this see, Regulations No. 17/2004, Article 2 (4) See also <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/0C2B177A0259E8FFCA257B9500133E10?opendocument> Australian Bureau of Statistics (2006) (accessed February 21, 2015) for the following definition,

The Construction Division includes units mainly engaged in the construction of buildings and other structures, additions, alterations, reconstruction, installation, and maintenance and repairs of buildings and other structures. Units engaged in demolition or wrecking of buildings and other structures, and clearing of building sites are included in Division E Construction. It also includes units engaged in blasting, test drilling, landfill, levelling, earthmoving, excavating, land drainage and other land preparation.

⁵ The Building Directive No. 5/2011 (Directive No. 5/2011), Article 2 (36).

capture processing of a construction permit issuance including key procedures, time it takes and costs involved through a case study of a small enterprenuer who aspired to start business using an already existing fixed asset. The empirical work was bolstered by observation and collection of relevant documents. The individual and group interviews and the case study were peceded by peparation of an interview guide. The interview guide has focused on themes such as the concept and purpose of construction permit, legislative framework for construction permit, construction permit issuing process, accessibility of the requirements of and procedures for construction permit, institutional capacity of construction permit granting institutions and corruption (see Annex 1, and see Annex 2 for the summary of the interview sessions). The focus group discussion was held on May 23, 2015 with relevant informants using a guide (see Annex 3). A summary of the focus group discussion is annexed (see Annex 4).

Structure of the study: The study has four sections. The first section outlines benefits accrued from a well-designed and implemented contruction permit system. Such benefits are stated in terms of efficiency, encouragement of formalism in the building sector and thus incentivization of investment, safety, health as well as prudent implementation of urban and structural plans of a city. The discussions in the first section raise the question of searching for the features of a good constrction permit system. Answering this query is the task of the second section, which identifies and explains the fundamentals of a proper construction permit regime drawn from international experiences. The third section is about measuring the construction permit system of Ethiopia by particularly focusing on the capital of Ethiopia, Addis Ababa. The final section injects empirical component into the study.

The main conclusions are as follows. Generally, Ethiopia`s construction permit issuance and renewal legal framework is comprehensive, clear, flexible and up-to-date. However, such national legal framework exhibits some inflexibility, centralization, contradictions and lack of alignment with regional laws and suffers from lack of uniform and full implementation. There are also institutional weaknesses attributable to human and material resource constraints and lack of digitization. The result is a complicated, time-consuming, costly and inefficient permit granting process that is susceptible to improper official behavior.

The study forwards two types of recommendations in order to put in place effective permit processing regarding construction, reconstruction and repair of buildings. They relate to the quality of the legal and institutional framework. In respect of the legal framework, some law reform is called for to fill in legal gaps, eliminate inconsistent applications, revise unreasonable rules, regulations and remove legislative inconsistencies and permit room for local experimentation. The institutional side of the matter suggests a host of measures including attraction of adequate number of competent staff, their retention, minimization of organizational reshuffling, implementation of partial outsourcing of the construction permit process envisaged in the law, and establishment of a standing working group composed of relevant state authorities,

members of the business community and citizens to periodically discuss and propose matters relating to construction permit.

1. Significance of a good construction permit regime

An appropriately designed and implemented construction permit system has numerous benefits. One benefit of it is its positive contribution to investment attraction through reduction of the number of days it takes to grant a permit and other transaction costs associated with it.⁶ It also helps minimize improper behavior of permit issuing officials by introducing transparency into the system and removing administrative bottlenecks. It has been observed that a good permit system “not only bolsters a country’s ability to attract investment but also introduces transparency and creates a level playing field for small businesses with limited connections.”⁷ There is evidence for the fact that a poor construction permit system is exposed to corruption. For instance, surveys of private businesses in Algeria show that,

57 percent consider implementation of regulations to be always skewed in favor of the interests of elite, incumbent firms. This rate is 60 percent in Morocco and 66 percent in Lebanon. In India, 67% of applicants expect to pay gift money for a permit and in Cambodia, 96.1 percent expect to do the same.⁸

Another merit of a well-crafted construction permit system is that it allows a country to ensure that “dangerous manufacturing processes are kept from residential areas, environmental goals are considered and heritage sites are secured.”⁹ Still furthermore, a quality building permit system has linkage with secure property rights over buildings. Where a building permit system encourages builders to go through the formal process, informalism in the sector is reduced. Yet where the system is complex, costly and time taking, builders shy away from the formal system and are forced to go informal and thus the fruits of their building cannot enter mortgage market which recognizes buildings that have met legal requirements. The following has been said about costs associated with informalism produced by improper construction permit laws:

⁶ For example, the directive victim of a bad construction permit regime can be the construction industry which is an important sector worldwide in terms of its contribution to GDP and employment. For example, “the construction industry accounts on average for 6.5% of GDP in OECD economies.” (good practices-4) Reports show a similar contribution to GDP in sub-Shara Africa. The industry involves circulation of billions of USD in the Ethiopian economy. It is currently estimated to contribute at least 10 % of the nation’s GDP; such contribution is expected to rise to 20 % of the GDP. It is the third largest employers in the country. There are more to the industry than money and jobs. Safety and health concerns are involved. Involved is also formalization of property rights over buildings. For this see, the World Bank (2013), “Dealing with Construction Permits”, (Washington, DC.)

⁷ INSEAD (2014), “Reforming Construction Permit Approval in Muscat: Case Study” (hereafter Reforming Construction Permit), <http://centres.insead.edu/innovation-policy/events/documents/Muscat-Municipality.pdf> (accessed 24, April, 2015)

⁸ *Id.*, p. 1.

⁹ *Id.*, p. 2.

[It] prevents a number of negative outcomes like the notion of "dead capital" a term Hernando de Soto defined as assets that cannot legally be used because they exist as a result of implicit, rather than legal infrastructure. He estimated that the existing stock of informal construction across the largest developing cities in the world is about \$6.7 trillion. These dead assets cannot be used to raise capital and entrepreneurial opportunities in the countries are radically diminished.¹⁰

Unfortunately, "By some estimates 60–80% of building projects in developing economies are undertaken without the proper permits and approvals."¹¹ The World Bank, in respect of the effect of an undesirable construction permit system, says,

The enforcement of construction permits continues to be complex the world over, creating opportunities for widespread discretion and corruption and ultimately leading to high numbers of informal buildings. In most developing countries, the percentage of buildings that do not go through any form of controls at the design, construction, or post-construction stages is generally estimated to be between 60 and 80 percent.¹²

Finally and above all, inappropriate building permit norms and institutions cost a country dearly - loss of human lives. The world has watched this tragedy unfold quite recently in Haiti. Thus,

there is the very real cost of human lives when strict building codes are either not in place or are ignored such as in the case of the 7.0 Haiti earthquake which killed 100,000 people and an estimated 250, 000 residential and 30,000 business buildings collapsed. It was calculated that 90 percent of this building stock was informal.

In another fortunate development, "province authorities in Ontario, Canada, in the years following its 2001 reforms, recorded a 40 percent reduction in accidents within the building industry and a decline of 15 percent in fires."¹³

In a nut shell, a good construction permit system encourages investment by helping secure construction permits speedily and cheaply, by minimizing informal constructions, by facilitating the entry of immovable property into a collateral market, by averting losses of human lives and property worth in billions and by enabling town authorities to prevent encroachments on heritage and environmental sites.

¹⁰ *Ibid.*

¹¹ The World Bank (2013), "Dealing with Construction Permits", (Washington, DC.) p. 1.

¹² World Bank (2013), "Good Practices for Construction Regulation and Enforcement Reform: Guidelines for Reformers" (Washington, DC) p. 20.

¹³ Reforming Construction Permit, p. 2.

2. International good practices

What are the marks of a good construction permit system? From where does one derive those for emulation if, as the preceding section makes clear, such kinds of construction permits offer benefits that countries earnestly long for? These are queries considered in the current section. The first sub-section looks for lessons from the World Bank's Doing Business Report, followed in the next section by an examination of a latest study devoted to construction permit and the third sub-section considers two country studies. The aim is to isolate certain parameters so that we can use them in the next section to measure the state of Ethiopia's construction permit system.

2.1 Doing Business Report

Doing Business is the World Bank's flagship report launched in 2002. It is an annual investigation of the extent to which it is easy or difficult to start or run small to medium-size businesses in economies around the world. To wit, the 2013 Doing Business Report,

provides an aggregate ranking on the ease of doing business based on indicator sets that measure and benchmark regulations applying to domestic small to medium-size businesses through their life cycle. Economies are ranked from 1 to 185 by the ease of doing business index. For each economy the index is calculated as the ranking on the simple average of its percentile rankings on each of the 10 topics included in the index in Doing Business 2013: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.¹⁴

As the quote shows, a construction permit is among the parameters used to compare countries. Where a construction permit regulatory regime is complex, time from application to grant is longer and fees are higher, where the system lacks transparency and is exposed to improper official behavior, it counts against the economy being measured. Depending on how the economy fares in the other criteria, it can be deemed a difficult place to enter into and do business. This is flagged up and foreign direct investment might be scared away as a result.

There are merits in the Doing Business series for it establishes a crucial linkage between entering into or running a business and a construction permit system. It introduces a competitive spirit by signaling how countries have progressed or slid back over time in relation to their construction permit regulation. It gives general criteria to judge reforms in the field. In this regard, the 2012

¹⁴ The World Bank (2013), "Doing Business Report" (Washington, DC), p.10

Doing Business report offers the following standards used by “Those who have made the construction permit system easier.”¹⁵

These are streamling the procedures, reduced time for processing applications, introducing one stop shop, reducing fees, improving electronic platforms or oneline services, introducing risk-based approvals.” [Risk-based approvals] means “Not all building projects are associated with the same economic or environmental risks. It therefore makes sense to differentiate construction permitting processes to treat buildings according to their risk level and location.¹⁶

A couple of central limitations of the Doing Business project are worth pointing out, though. It overprivileges economic efficiency: speed and affordability. An emphasis on the economic side of the matter neglects the safety and health side of it. It, moreover, oversimplifies the situation by focusing upon a case study of a simple general purpose warehouse located in one of the major business cities of a country. It measures,

the ease of dealing with construction permits [by recording] the procedures, time and cost required for a small to medium-size business to obtain all the necessary approvals to build a simple commercial warehouse and connect it to water, sewerage and a fixed telephone line. The case study includes all types of inspections and certificates needed before, during and after construction of the warehouse. ...the warehouse [studied] is located in the periurban area of the largest business city ... and used for general storage activities.¹⁷

Doing Business extrapolates construction permit procedures for the whole country out of a simple construction venture. For instance, in its latest edition, as Table 1 shows, Ethiopia is ranked second in Africa and its global place is 28th. This ranking is generalized from a study of a warehouse. In respect of which, it is reported that it takes 67 days to secure all permits needed form a construction of a common warehouse including a construction permit and occupancy permit, which involve seven steps.¹⁸ The same is done for Kenya. Yet, the situation is rather complex as the contruction permit regime and the practice of the Addis Ababa City Government Administration (the City) documented in Section 3 show.

Table 1: Ethiopia`s ranking in terms of construction permits, 2015

| Ethiopia [global rank] | Kenya [global rank] | Ethiopia [regional rank] | Kenya [regional rank] |
|------------------------|---------------------|--------------------------|-----------------------|
| 28 | 95 | 2 | 19 |

Source: Author`s adaption from Doing Business, 2015

¹⁵ The World Bank (2012) Doing Business Report” (Washnigton, DC.), p 40.

¹⁶ Reforming Construction Permit, p. 15.

¹⁷ World Bank, “Doing Business 2012: Doing Business in a More Transparent World”, (World Bank, Washington, DC., 2011).

¹⁸ World Bank (2015), “Doing Business 2015: Going Beyond Efficiency: Economic Profile 2015, Ethiopia”, (12th Edition, 2014 Washington, DC).

2.2 The World Bank Study

Good Practices for Construction Regulation and Enforcement Reform (2013) is a recent World Bank study specifically dedicated to construction permit regimes.¹⁹ It is the first of its kind by the bank. It bases itself on data from eight years of the Doing Business reports. Most importantly, the study draws lessons from ten countries which have successfully reformed their construction permit system. As Table 2 documents, the study has attempted to generate good practices from their experiences for emulation by aspiring reformers.

Table 2: International good practices for a construction permit

| Good practices | Features |
|---------------------------------|---|
| Building codes | <ul style="list-style-type: none"> • <i>Good-practice building codes</i> establish common points of reference between regulators and industry practitioners for public health and safety, energy efficiency, fire protection, structural efficiency, and conservation and environmental integrity. Good-practice codes are important for creating a transparent environment for investors and developers and for avoiding delays and disputes. Such codes have been developed to avoid inhibiting innovation and to contribute to faster, more efficient plan reviews and inspections. • <i>Good-practice building codes</i> typically include a comprehensive classification of risks that defines different groups of building categories by size, construction method, and final use. The classification determines the level and intensity of checks required for each group of buildings and hence creates a transparent framework for enforcement agencies and building practitioners. |
| Process and transparency | <ul style="list-style-type: none"> • <i>Publish on a dedicated website all procedural requirements, including guidelines, and provide advisory services targeted to the needs of end users:</i> Good practice usually combines an exhaustive publication of administrative requirements for construction-permit applications with the possibility of interacting with one building-permit official for a preliminary project screening. • <i>Streamline approval and permit processes:</i> This activity can be carried out with the goal of reengineering procedures. If carried out at the central level, a standardized target procedure can be defined to help local building authorities develop their own streamlined process for plan reviews and inspections. Streamlining achieves high results when tied to specific risk levels, time limits, and increased procedure automation. • <i>Automate processes and develop electronic tools common among all permitting agencies and industry practitioners:</i> The world's leading examples of successful automation of construction permit procedures, such as Singapore and Hong Kong, consistently point to the importance of preliminary efforts to simplify procedures. • <i>Lower the burden of controls on public agencies by involving private-sector engineers in plan reviews and inspections:</i> This approach can be adopted to address the bottlenecks experienced in traditional local public building authorities. Third-party plan reviews and inspections can be delegated to private-sector engineers (as in Austria), or private engineers can take prime responsibility for carrying out these tasks (as in the United Kingdom). Moving toward practitioner-focused enforcement of building controls requires developing robust professional qualification systems and professional supervision. • <i>Create a dispute resolution mechanism for compliance issues relating to building-code requirements:</i> Reforming countries have established specialized bodies with building code officials and private building practitioners to resolve the disputes that typically arise from rejection of construction permits or stop-orders issued by inspectors. This is important to |

¹⁹ World Bank (2013), "Good Practices for Construction Regulation and Enforcement Reform: Guideline for Reformer," (Washington, DC).

| | |
|---------------------------------|---|
| | preserve the rights of applicants, and it provides a tool for dealing with conflicts and ensuring that the backlog of requests pending at the municipality level remains as small as possible. |
| Payment of fees | <ul style="list-style-type: none"> • <i>Ensure that fees are collected once and by one entity only; publicize fee schedules; charge small, fixed fees for small projects presenting no risk for public health and safety.</i> • <i>Ensure that fees do not fulfill a tax purpose:</i> Low municipal tax resources create an incentive to turn building- permit fees into proxies for tax revenues. |
| Governance and liability | <ul style="list-style-type: none"> • <i>Extend liability to permitting agencies:</i> in good-practice jurisdictions, building-permit agencies are liable for acts of both omission and commission. • <i>Increase accountability of permitting agencies through innovative institutional arrangements:</i> Successful reforms of building-control procedures usually have a strong institutional element. Permitting agencies are accredited by a central building authority and are monitored using a set of standardized indicators focused on the quality and efficiency of the services delivered to project owners and the industry. • <i>Monitor reforms with a set of appropriate indicators within an established public-private working group:</i> Building-control reform should be made a permanent process and should involve a large panel of experts and end users from both the public and the private sectors. A key instrument for policy making and prioritization of reforms should involve use of specific performance indicators for reduced redtape and for effective building-control procedures. Indicators should also measure achievements in attaining key public goods, including safety, fire prevention, and energy efficiency. |

Source: Author`s adaptation from the World Bank, 2013, pp. 56-58

The bank`s study is to be appreciated since it draws on rich country case studies. It is focused on regulation of the construction industry with emphasis on construction permit issues. In terms of goal, however, it does not appear reductionist in the sense that economic efficiency is one of the considerations behind building permit regimes and it thus recognizes the existence of other goals such as health and safety. Yet economic considerations still predominate. What is more and lastly, unlike the Doing Business project, it does not oversimplify matters in the sense of making generalizations about construction permit condition of a country from a simple case study of warehouse construction.

2.3 Country experience

There is a need to refer to additional case studies to bolster our efforts to derive sound parameters. This sub-section provides a short account of the experiences of countries that have successfully reformed their respective construction permit system. The countries selected for these purpose are Oman and Singapore. In their reform effort, the former pursued a bottom-up approach whereas the latter has adopted a top-down approach. Both countries are considered as countries easiest to obtain a construction permit. The few pages that follow provide a brief context for each country, describe how they have re-engineered their system, the challenges they have encountered and possible lessons worth learning from them.

Oman: It has about 2.2 million people with estimated GDP of USD 80 billion.²⁰ It is one of the rapidly growing economies. It has a booming construction sector. Refroming Oman`s

²⁰ CIA World Factbook (2013) <<https://www.cia.gov/library/publications/the-world-factbook/geos/mu.html>> (accessed, 24April, 2015)

construction permit regime started in 2009. Pre-2009 Oman, especially the Muscat Municipality, had a complicated and extremely inefficient construction permit process. Construction permits were processed manually and entailed about 176 days with 45 steps from application to issue and involving a number of geographically dispersed government bodies. The filing system was in disarray and the office in charge suffered from acute shortage of professionals. Losses of files were not uncommon and there was widespread perception that building laws were not observed and that applications were granted based on personal connections. The service was inconsistent and “created a lengthy back and forth process which wasted time and resources for citizenry, consultants and municipality alike.”²¹

Oman launched the reform crusade with an appointment of a reform-minded and dedicated person in 2009.²² An exposure tour to a successful reformer – Singapore – followed. The number of professionals was increased. The procedures for issuing a permit were reduced, simplified and made transparent (See Table 3). Simplification and accessibility were done through digitization which introduced an effective online application process and follow up system.²³ The system has minimized contacts professionals in charge previously had with clients.

Table 3: Steps for Construction Permit Application in Oman in the year 2013

| No. | Steps |
|-----|--|
| 1. | Consultant issued with username and password to access the Building Permit website. |
| 2. | Consultant submits digital form, land details; approval scans from appropriate agencies, drawings (architectural and structural). |
| 3. | Registrars check data. If complete assigns it to an architect. |
| 4. | Architect checks drawings in Adobe Acrobat (PDF), returns to consultant if changes. If approved passes to structural engineer. |
| 5. | Structural engineer checks structural drawings and comments if necessary and returns to consultant. |
| 6. | Consultant corrects drawings as requested and re-submits to directorate staffer who sent request. |
| 7. | Same directorate staffer checks change for compliance. If staffer was the structural engineer, resubmits to architect for approval. |
| 8. | Director scans drawings once approved by both architect and structural engineer. |
| 9. | Consultant office pays applicable fees via website by credit card. When transaction confirmed, Registrar stamps electronic drawings. |
| 10. | Consultant office prints the electronic building permit with stamped drawings. |

Source: Reforming Construction Permit Approval in Muscat, 2014, p. 14

Oman has faced challenges in reforming its permit regime including resistance from consultants because they are no longer meeting in person with approving officials and because they are required to acquire new skills and purchase softwares and hardwares.²⁴ There were initial misgivings on the part of clients because they were unsure of its effectiveness.²⁵ Another

²¹ Reforming Construction Permit, p.7-8.

²² *Id.*

²³ *Id.*, p. 7.

²⁴ *Id.*, p. 6.

²⁵ *Id.*, p. 8

challenge up for this country is how to scale up its bottom up reform launched in Muscat Municipality to other parts of the country and how to integrate its digital system so that other related service providing agencies (i.e., bodies that grant water and electricity permits) are made part of it.²⁶

Singapore: It is another, in fact earlier, reformer. It is populated with 5 million people.²⁷ It commands an estimated USD 240 billion GDP.²⁸ It is known for a critical shortage of land and thus it takes the construction permit process and generally the construction industry seriously. In 1960s, Singapore experienced pretty much similar problems with Oman: permit issuance process was complex and lengthy involving 16 agencies having some mandate over the permit system.

Singaporese did not just start out by simplifying the rules and shortening the steps required to obtain a construction permit. They have digitized it in the sense described above for Oman. But they have even gone beyond making it online; integration of the construction permit system with other kindred license granting bodies such as sewer, and water and electricity agencies.²⁹ This integrated paperless approach has allowed Singapore to initiate a simultaneous parallel application processing system without eliminating the required checks. It has introduced coordination among the many agencies. As discussed earlier on, one of the challenges for Omanese is how to scale up the bright spot in the Muscat Municipality. The integration through government portal system in Singapore has accomplished integration. This is the source of its assumption of top position in the World Bank's Doing Business report. While the success story for Oman lies in the bottom-up approach to reform, for Singapore, the trick lies in the top-down approach.

Some developing countries are also said to reap the fruits of the power of technology. For example, Ethiopia's neighbor, Kenya, is being reported as a success story. It is said: "A recent example of the adoption of a digital building permit system was Kenya who experienced a 300 percent increase in applications in 2010. By introducing a digital system they achieved a 37% reduction in manhours required to issue their permits."³⁰

In summary, good practice jurisdictions for construction permit indicate clarity and comprehensiveness of building laws, provision of adequate human and material resources to strengthen institutions in charge of permit issuance, possibility of outsourcing, "streamlining the procedures, reduced time for processing applications, introducing one stop shop, reducing fees, improving electronic platforms or online services, introducing risk-based approvals."³¹ These

²⁶*Id.*, p. 9

²⁷*Id.*, p. 11

²⁸ *Id.*, p. 12

²⁹ *Ibid.*

³⁰ Reforming Construction Permit, p. 5.

³¹ *Ibid.* See also Doing Business (2013) cited above.

efficiency oriented reforms are carried out without sacrificing the multiple purposes of permit construction regime: health and safety, efficiency, historical and environmental landmarks.

3. Measuring construction permit requirements and processes in Ethiopia

As Section 2 suggests, some of the main markers of a good construction permit regime are: clarity of purposes, comprehensiveness and flexibility of a country's building laws, integrated digitization of its permit issuance procedures and process, reasonableness and simplicity of fee collection, legal liability of permit issuing authority and concerned professionals and an effective dispute settlement system. The present section deploys these parameters to assess the condition of construction permit system in Ethiopia with specific reference to the case of the City. This is done by examining building legislation (3.1), identifying requirements (3.2), application processing (3.3) and consideration of institutional and related matters (3.4).

3.1 Ethiopia's Building laws

Ethiopia has recently adopted building laws that have nation-wide application. These are embodied primarily in the Ethiopian Building Proclamation No. 624/2009 (Proc. No. 624/2009), Building Regulations No. 243/2011 (Regulations No. 243/2011) and Building Directive No. 5/2011 (Directive No. 2011).³²

These three laws exhibit the following key common characteristics.

- a) They specify as their key purposes patently as safety and health and latently as reducing informal constructions and contributing to investment attraction by requiring a construction permit for any building, alteration and renovation thereof.³³ For example, while the stipulations that “ማንኛውም ህንጻ ...የተጠቃሚውንም ሆነ የሌሎች አካላትን ደህንነትን፣ ምቹትንና የተሟላ አገልግሎትን ሊያረጋግጥ የሚችል ሆኖ ዲዛይን መደረግ አለበት፣ የሌሎች ግንባታዎችንና ንብረቶችን ደህንነት በማያሰጋ መንገድ ዲዛይን መደረግና መገንባት አለበት”³⁴ are

³² One may cite Building Permit articles of the Civil Code of Ethiopia, 1960 and Urban Planning Proclamation No. 574, 2008.

³³ Proclamation No. 624/2009, Article 3(2), provides for this except that which is under exemption by virtue of a decision of the Council of Ministers for national security reason.

³⁴ Directive No. 5/2011, and Proclamation No. 624/2009 under Articles 33-35 provide that in terms of architecture, buildings shall have space or room that is fit for the purpose for which it is intended, provision of artificial lighting and an opening for natural light and for building above some height provision of lift; in terms of structure, a building must be designed to provide strength, stability, serviceability and durability in a way that does not impair the integrity of any other building or property; in terms of electrical installation, comply with the requirements of safety standards so that no danger associated with the electrical installations exists; in terms of sanitary, a building shall be provided with adequate water supply and sewerage installation.

driven by safety and health factors, there are other provisions in the statutes under consideration that underline efficiency.³⁵

- b) They classify buildings for the purpose of differential regulation on the basis of the degree of risks involved.³⁶
 - c) They provide for special dispute settlement mechanism involving relevant experts.³⁷
 - d) They provide for the possibility of holding construction permit issuing authorities and professionals in charge liable for professional fault.³⁸
 - e) They require compulsory insurance for professionals that prepare designs and construct certain categories of buildings.³⁹
 - f) They envisage the possibility of outsourcing processing of construction permits and inspections of buildings without completely ruling out the public regulation approach.⁴⁰
- Hence, the laws have adopted a mixed approach to the regulation of buildings, which means a hybrid of pure public regulation and pure private regulation (i.e., outsourcing and self-regulation by professionals) of construction permits. But the approach on the ground is the first one due to non-implementation of the envisaged outsourcing scheme.

These six features of Ethiopia`s building legal framework are compatible with building codes of best practice countries treated in Section 2. There are, however, issues with these building laws. These are federalization, non-alignment with pre-existing regional building permit regimes and non-implementation.

Firstly, some clarification of what is meant here by the federalization of the buildings laws is warranted. Scope-wise, the buildings laws are meant to apply to all urban centers with 10,000 or more dwellers and may be extended to urban centers with less than 10,000 inhabitants.⁴¹ Virtually, the buildings statutes apply to all towns and cities in Ethiopia. It means matters of regulation of buildings are federalized. Proclamation No. 624/2009 sets in its preamble out to “determine the minimum national standard for the construction or modification of buildings or alteration of their use in order to ensure health and safety.”⁴² From this, it appears that the intention of the proclamation was to set basic pillars of building regulation and leave the details to the diverse town and urban administrations. That would be consistent with the FDRE Constitution which bestows to the Federal Government the power to “establish and implement national standards and basic policy criteria for public health...”⁴³ Yet, when Regulations No.

³⁵ Proclamation No. 624/2009, provisions in this proclamation and the regulations and directive thereunder that specify number of days that takes to grant planning consent and issue and renew a construction permit.

³⁶ *Id.*, Article 2 (6-8).

³⁷ *Id.*, Article 13.

³⁸ *Id.*, Article 11.

³⁹ *Id.*, Article 26.

⁴⁰ *Id.*, Article 12.

⁴¹ Proclamation No. 624/2009, Articles 2 (20) and 3 (1).

⁴² *Id.*, the Preamble, Paragraph 1.

⁴³ The FDRE Constitution, Article 55 (1).

243/2011 and Directive No. 5/2011 came out, the minimum framework spirit of the proclamation is betrayed. Sought is micro-managing from the center of building activities in towns and cities throughout the country, regardless of their condition. This has bearing on the conditions of and legal flexibility for handling construction permit issuance and renewal matters in about 900 towns and cities throughout the country.

Secondly, as to the question of lack of alignment, it is discussed in Sub-section 3.4 using the case of the Addis Ababa City`s construction permit system. The discussion therein reveals that the detailed federal buildings laws are not aligned with construction permit laws issued by various municipalities. Thirdly and finally, some aspects of these federal building laws are not yet implemented (see Sub-section 3.3 below).

3.2 Identifying requirements for a construction permit

A construction permit application is an expression of intention to obtain a construction permit. It must be filed with the concerned authority by the person or an agent excepting a foreign investor on whose behalf the Ethiopian Investment Commission undertakes to deposit the application.⁴⁴ The application has to be accompanied by documents that are sufficiently complete and filed with the concerned authority.⁴⁵ The application is supposed to be presented in the form prepared and supplied by the relevant authority. The documents required are:

- 1) A valid planning consent: planning consent is a pre-condition for applying for a construction permit. Its end is to check compliance of the intended construction with an urban plan of a city. It is well captured as: “ለሕንጻ ግንባታ እንዲቀርብ ለሚዘጋጅ ፕላን ከከተማው ፕላን ጋር የተጣጣመ እንዲሆን የሚያስችለው መሆኑን በማረጋገጥ የሚሰጥ በአንድ ቦታ ሊገነቡ የሚችሉ ወይም ለቦታው ያልተፈቀዱ የአገልግሎት አይነቶችን፣ ለቦታው የተፈቀደ የሕንጻ ከፍታን፣ በቦታው አካባቢ የሚያልፉ የመሠረተ ልማት አውታሮችን፣ ነባራዊና የታቀዱ መጠኖችን ወይም ስፋቶችን የሚያሳይ የፕላን መረጃ ነው፤ ለህንፃ ግንባታ የቀረበ እቅድ ከከተማው ፕላን ጋር መጣጣሙን ለማረጋገጥ የሚሰጥ ስምምነት ማለት ነው።”⁴⁶ It should be secured before both building designs are prepared and submission of a construction permit application. The application for planning consent is deposited using a form prepared by the concerned body. The applicant is required to furnish information stating the service for which the building is put to use and its height accompanied by, a certificate of landholding, identification card, lease contract (if applicable), payment and evidence of debt and encumbrance. Planning consent oftent involves site visit by a professional. It is required to

⁴⁴ The Ethiopian Investment Commission (2014), “Factor Cost”, (Addis Ababa, Ethiopia).
⁴⁵ It is to be noted that under Proclamation No. 624/2009 an application for getting designs approved amounts to an application for a construction permit because under this proclamation a construction permit is equated with approved designs; Proclamation No. 624/2009, Article 9.
⁴⁶ Directive No. 5/2011, Article 2 (28 and 29).

be granted within three working days.⁴⁷ Planning consent is valid for 12 months as of the date of its receipt by the applicant.⁴⁸

- 2) Submission of building designs that relate to any drawings or models showing the extent, nature and size of a building, and the materials and methods of assembly to be used. The designs are structural, architectural, electrical, sanitary, mechanical and urban prepared by relevant and duly registered professionals.⁴⁹ These designs must be reviewed by a relevant professional and comments, if any, must be addressed before such designs are approved.⁵⁰
- 3) Licenses of the professionals who have prepared the designs;
- 4) Reference to the main roads and names of prominent places;⁵¹
- 5) An identification card or a valid passport of the applicant; where the applicant is an agent, in addition, a document indicating a valid power of agency and a copy thereof;⁵²
- 6) A bill of quantity of the project to serve as the basis for charging fees;⁵³
- 7) Lawful possession rights over the land on which the construction is intended to take place; an original certificate of land possession and a copy thereof evidencing long term or temporary landholding which is obtained through lease (lease contract and evidence of payment of the required lease price)⁵⁴ or old possession⁵⁵ or regularized squatter landholding⁵⁶ or transfer (e.g., sale or donation or inheritance or contribution) from one of these three landholders.⁵⁷ Where the land falls within urban redevelopment area, a letter stating the consent of the pertinent government body.
- 8) Payment of annual land use fee in relation to the land for the latest fiscal year.⁵⁸
- 9) Consent of adjacent property holders in the case where the intended building is two or less meters away from such landholders. Neighbors` consent shall be secured by seeing to it that an official application form is completed and signed by the concerned neighbors.⁵⁹ The law says “ቅጹን ለመሙላት ፈቃደኛ በማይሆን ወሰንተኛ የከተማ አስተዳደሩ ቅጹን የማስሞላት ኃላፊነት አለበት።”⁶⁰ The practice nevertheless shows that some adjoining owners are unwilling to sign the form or they take a long time to do so saying that they should consult

⁴⁷ Regulations 243/2011, Article 4.

⁴⁸ Directive No. 5/2011, Article 5 (6).

⁴⁹ Fieldwork data.

⁵⁰ *Ibid.*

⁵¹ Regulations No. 17/2004

⁵² Directive No. 5/2011, Article 4

⁵³ Proclamation No. 624/2009, Article 19.

⁵⁴ Urban Land Lease Holding Proclamation No. 721/2011.

⁵⁵ *Id.*

⁵⁶ Regulations to Prevent Illegal Expansion and Possession of Land in Addis Ababa City Government No. 14/2004, Article 7 (3).

⁵⁷ Urban Land Lease Holding Proclamation No. 721/2011.

⁵⁸ Author`s fieldwork data (February 2, 2015).

⁵⁹ Directive No. 5/2011, Article 11

⁶⁰ *Id.*, Article 11 (1.3)

family members or professionals or just turning down the request.⁶¹ When the matter is brought to the attention of the permit granting body, they say “ተሰማሙ.”⁶² This in effect offers them a veto power or suspends the application for a construction permit indefinitely. It seems that the concerned bodies do not have the coercive means to compel recalcitrant neighboring landholders from defeating or delaying the permit issuance.

- 10) Soil test for all category ‘B’ and category ‘C’ buildings (i.e., any building with two or more stories) and any building constructed by a real estate developer.⁶³ Informants said that this is a rigid rule in the sense that where the nature of the soil in an area is known and where the structures to be used are light and where the buildings are not high rise, it is safe to drop the soil test requirement and thus expedite the permit issuance process and reduce costs associated with it.⁶⁴ The practice is inconsistent with the law since some sub-cities require soil test for all buildings that are G+1 and above while others confine themselves to the requirement of the law –they require soil test result only for G+2 and above buildings.
- 11) A valid letter (within 12 months of its issuance) stating that the debt and encumbrance status of the land intended to be used for the desired construction. Where the property is encumbered with a bank loan, an agreement of the bank (within 12 months of its issuance) expressing its consent to the construction of the planned building.
- 12) Payment of the required service fees. According to a promotional material titled ‘Cost of Investment’ by the Ethiopian Investment Commission, a construction permit is issued for ‘free’.⁶⁵ Such claim does not take into account design approval fees paid to the concerned authority. The fees may amount to several thousands depending on building classification – from Birr 600.00 to Birr 20,000.00 per square floor area. In specific terms, (i) Birr 300 in the form of administrative fee, (ii) plan review fee (calculated on the basis of estimated project cost, which in turn is reckoned as the total area of the building times the cost of construction per square meter); (iii) for rejected and re-submitted designs plan review fee that is between 25 to 50 % of the first plan review payment and (iv) plan approval fee that is 10 % of the plan review fee.⁶⁶
- 13) For large manufacturing enterprises, a certificate from the relevant environmental protection institution.

In respect of the requirements for getting a construction permit just enumerated and explained, the following points deserve mentioning. An application for renewal of a construction permit should present the same above documents with the exception of additional requirements of adducing reason for expiry of duration of the permit and production of the expired construction

⁶¹ Author’s fieldwork, February 2, 2015; see Annex 2 of this research report.

⁶² *Ibid.*

⁶³ Directive No. 5/2011, Article 4.4.6.

⁶⁴ Author’s interview with Ato Hailu Haileselassie, Deputy Manager of Addis Ababa City Government Building Permit and Control Authority, February 4, 2015, Addis Ababa.

⁶⁵ Ethiopian Investment Commission (2014), “Factor Cost” (Addis Ababa, Ethiopia).

⁶⁶ Regulations No. 243/2011, Article 24.

permit. The above assumes that a construction permit is sought before the start of a construction; there is also a question of retroactive validation of a construction which is commenced or completed without securing a license to do so. In the case of leasehold, the application for a construction permit must be submitted within three months (for small constructions), six months (for medium constructions) and nine months (for large constructions) from the date of signing of the lease contract.⁶⁷ A contract concluded between an owner of the planned building and a contractor in the case of certain types of buildings as well as a certificate of registration of the professional is required to be presented during an application for construction commencement permit.⁶⁸

3.3 Processing application

Approval: The concerned professional examines the documents enumerated in Sub-section 3.1 for compliance with the legal requirements. However, the professional cannot turn down a request for a construction permit on a ground not provided for in the laws because apparently the requirements mentioned in the pertinent laws are exhaustive.⁶⁹ Where the professional finds that the documents deposited are complete and in compliance with the major requirements of the laws, he/she shall grant the permission affixing his/her signature and official seal onto the documents and indicating date of approval.⁷⁰ The application may also be granted with “comments provided the comments refer to minor non-compliance and if the required rectification work can easily be carried out during construction.”⁷¹ The officer shall supply a copy of approved application form and designs bearing date of approval, signature and official seal to the applicant.⁷² This constitutes a construction permit and the original application form and approved designs must be permanently displayed at the building site and kept in good condition and presented at any time upon the request of the concerned official under the pain of penalty.⁷³

Rejection: If the examining professional finds the documents not in compliance with major requirements of the applicable laws, he/she shall reject the application for a construction permit stating briefly the provision of the law not complied with and where necessary providing further detail explanations.⁷⁴ A rejected application shall be stamped “Rejected” and shall bear the date

⁶⁷ የከተማ መሬት ሊዝ ደንብ ቁጥር 49/2004 and The Urban Land Lease Holding Proclamation No. 721/2011

⁶⁸ Fieldwork data.

⁶⁹ Proclamation No. 624/2009, Article 6.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Id.*, Article 8.

⁷³ *Id.*, Article 6 (5).

⁷⁴ *Id.*, Article 8

and signature of the examining professional; one copy of duly signed and sealed application form and two copies of duly signed and sealed plans shall be returned to the applicant.⁷⁵

There is the question of distinguishing major and minor legal compliance matters. The former leads to rejection while the latter might not (in the discretion of the officer in charge) lead to rejection of an application. While inclusion of discretion to be exercised on case-by-case basis introduces flexibility in the process, it might be a cause of concern in the absence of directives or manuals indicating some of the most common instances of so called minor deviations in the designs or other requirements of the permit process. A judicious officer can make good use of this flexibility; a fearful or bureaucratic professional might make it a routine ground for rejecting an application while the one with questionable integrity can thrive on it. While Proclamation No. 624/2009 and Regulations No. 243/2011 are moot about this distinction Directive No. 5/2011 clarifies the distinction between major and minor non-compliance problems. It states: “የግንባታ ፈቃድ የማያስከለክሉና እርማት ተደርጎባቸው የሚታለፉ ግድፈቶች፣ በስትራቴጂክ ዲዛይን ላይ ለውጥ የማያመጡና የተዘነጉ ንድፎች፣ በግንባታ ሂደት ላይ ተጽዕኖ የማይፈጥሩ የተዘነጉ ልኬቶች ማስተካከያ የተደረገባቸው፣ የክፍሎችን ስፋትና አጠቃቀም ለማሳየት የሚቀመጡ የመጠቀሚያ ቁሳቁስ ንድፎች ናቸው፡፡”⁷⁶ This is a plus for the legal framework.

Validity period of a construction permit: An approved construction permit does not remain valid forever. There is a sun set provision for it even if it can be revived through renewal. Pursuant to Proclamation 624/2009, if construction is started, the duration of the permit shall expire six months after the date of its approval.⁷⁷ Where construction has commenced within six months from the date of approval, the permit shall expire five years after the date of its issuance even if the construction has not been completed.⁷⁸ Neither Proclamation No. 624/2009 nor Regulations No. 243/2011 defines the crucial terms ‘commencement’ and ‘completion’ of construction. Directive No. 5/2011 however defines the former as “የግንባታ እንቅስቃሴ ተጀምሯል የሚባለው የመሠረት ቁፋሮና ለመሠረት ግንባታ የሚያስፈልግ ብረት ዝግጅት ሲጀመር ነው፡፡”⁷⁹ The latter is described as “መሰረታዊ ግንባታ” ማለት የአንድ ግንባታ ሙሉ መዋቅር፣ የውስጥና የውጭ ግድግዳ ሥራ፣ የውጭ በርና መስኮት ሥራ እና የጣሪያ ልባስ ሥራ ሲጠናቀቅ ማለት ነው፡፡”⁸⁰ Note that the terms commencement and completion are conceived slightly but significantly differently for the purpose of the Urban Land Lease Holding Proclamation.⁸¹ Compare also this definition with the

⁷⁵ *Ibid.*

⁷⁶ Directive No. 5/2011, Article 7.

⁷⁷ Proclamation No. 624/2009, Article 10.

⁷⁸ *Ibid.*

⁷⁹ Directive No. 5/2011, Article 10.6.

⁸⁰ *Id.*, Article 2 (38).

⁸¹ The Urban Land Lease Holding Proclamation No. 721/2011 defines commencement of construction as completion of “at least the foundation and erection of re-enforcement bars to cast columns...” while completion of foundation means “the construction phase based on the plan whereby the building site is dug, reinforcement concrete is filled in and its floor is completed and erection of its first wall is started.” Completion of construction means “the full completion of a building and making it ready for use by installing basic utilities...”

definition provided by Regulations No. 17/2004 of the City, “ግንባታ ማጠናቀቅ ማለት የግንባታው ከምድር በታችና በላይ ያሉ መዋቅራዊ አካላት፣ የውጭ ግድግዳ፣ የውጭ በርና መስኮት ከተጓዳኝ የማጠናቀቂያ ሥራዎች ጋር ተሰርቶ ጣሪያ የለበሰ ሕንጻ...ነው።”⁸²

Extension: Where a construction permit expires, there is a possibility of extension. There are two situations. The first is the case where the permit period has expired before construction commences in the sense defined above. Here, the builder shall file a written application to the concerned body. The permit can get extended provided one of the following is invoked as a reason: the existence of a border conflict preventing construction to commence, failure on the part of the urban administration to provide the requisite infrastructure or clear existing infrastructure, dispute over the construction site, the existence of apparent lack of construction materials nationally and other cause of force majeure preventing construction to go ahead.⁸³ The other is where the period of construction permit has expired without completion of construction. Here, too, a written application must be submitted where one or more of the following must be indicated as a justification: an apparent lack of construction materials at national level; design revision was necessary in the course of construction and this arose out of error not foreseen during the design period; completion of construction takes more than five years and pending court case that has prevented construction from taking place.⁸⁴

Disparity: One issue is the linkage between construction permit, and commencement and completion of construction. Proclamation No. 624/2009 reckons the duration of commencement and completion of construction from the *date of approval* of a construction permit while the latest Urban Lands Lease Holding Proclamation is moot about this point but regulations issued under it calculates the duration for commencement and completion of construction from the *date of receipt* of (ከተሰጠበት ቀን አንስቶ) a construction permit.⁸⁵ If the two dates coincide, there is no issue. But there may be the case where an applicant receives a construction permit long after the date of approval.

Table 4: Relevant date for calculating Construction Commencement and Completion Duration

| Type of construction | Duration of commencement of construction | Date of completion of construction |
|-----------------------------|--|--|
| Small constructions | Up to six months from the date of the taking of a construction permit with a six month extension | Up to twenty four months from the date of the taking of a construction permit with a six month extension |
| Medium constructions | Up to nine months from the date of the taking of a construction permit with a nine month extension | Up to thirty six months from the date of the taking of a construction permit with a twelve month extension |
| Large constructions | Up to eighteen months from the date of the taking of a construction permit with a twelve | Up to forty eight months from the date of the taking of a construction |

⁸² Regulations No. 17/2004, Article 2 (15).

⁸³ Regulations No. 243/2011, Article 7.

⁸⁴ *Ibid.*

⁸⁵ Model Regulations and የከተማ መሬት ሊዝ ደንብ ቁጥር 49/2004

| | |
|-----------------|--------------------------------------|
| month extension | permit with a twelve month extension |
|-----------------|--------------------------------------|

Source: own analysis

One cannot brush aside this issue as something trivial because the disparity might take away significant time from the duration of commencement or completion of construction. There are high stakes involved. Failure to begin construction within the legal timeframe indicated in the above table results in a penalty fee amounting to seven percent of the total lease price, payment of a lease amount that covers the period from the date the builder took possession of the land and termination of the lease contract with a restitution of the land.⁸⁶ Likewise, failure to complete construction also results in termination of the lease contract, land restitution and order to remove the property on the land - failure to do so might bring about clearance of the property on the land or transfer of the property through open tender by the concerned body.⁸⁷

The resolution of the disparity in question between Proclamation No. 624/2009, on the one hand, and Directive No. 5/2011 and urban land lease regulations, on the other hand, is simple from the point of view of interpretation of law: the one stated in the former, being issued by a higher legislative authority, trumps over the one stated in the latter instruments (regulations). In regard to the conflict between Proclamation No. 624/2009 and the directive issued thereunder, the solution is straightforward: the former prevails. So the relevant date to calculate the beginning of the duration of commencement and completion of a construction is the date of approval of a construction permit. To the legal mind, the solution is as simple as that; but for those who are outside the legal profession this conflict can cause operational confusion. More practically, it seems that construction permit processing officers on the ground are more familiar to contents of directives than those of proclamations.

Flexibility: Another issue worth mentioning is whether the laws related to a construction permit are flexible. On top of those considered previously, one indicator of flexibility is recognition of the possibility of issuing a construction permit in relation to a stage-by-stage completion of a building. Use of a building between commencement and completion is a reality one observes in towns all over the country. Yet this being a phenomenon on the ground is one thing; being backed by the law is quite another. The Urban Lands Lease Holding Proclamation No. 721/2011 appears to adopt the commencement-full completion approach, nothing being envisaged in between. It is a rigid and linear conception of construction. One can appreciate the concerns of the current lease laws of the country in devising carrot-stick method to discourage land speculators and incentivize those who complete their construction projects within the legal time limit.

Proclamation No. 624/2009 is silent on the issue of phase-by-phase completion of a building. One may not criticize this law for not giving the details because, as hinted above, it sees itself as

⁸⁶ The Urban Land Lease Holding Proclamation No. 721/2011.

⁸⁷ *Ibid.*

a national framework. Directive No. 5/2011 gives a green light in stating, “ደረጃ በደረጃ በመገንባት አገልግሎት ላይ ለማዋል ለሚታቀድ ሕንጻ የሚቀርብ የግንባታ ፈቃድ ጥያቄ ደረጃ በደረጃ ለመገንባት የታቀደው በፕላናች ላይ በግልጽ በመመልከት መቅረብ ይኖርበታል።”⁸⁸ There is also a small room given by a decade old regulation passed by the City. It is the Addis Ababa City Government Building Permit Regulations No. 17/2004 (Regulations No.17/2004), which under Article 6 (1(c)), states that “ከስልታዊ የኢንቨስትመንት ቦታዎች እና የአካባቢ የልማት ፕላን ከተዘጋጀላቸው ውጪ ላሉ አካባቢዎች የግንባታ ፈቃዱ የሚጸናበት ጊዜ እንደተጠበቀ ሆኖ አንድን ግንባታ ደረጃ በደረጃ በመገንባት አገልግሎት ላይ ማዋል ይቻላል፤ ይህም ለክትትልና ለመጠቀሚያ ምስክር አሰጣጥ ያመች ዘንድ በግንባታ ፈቃድ ሰነዱ ላይ በግልጽ ተለይቶ መቀመጥ አለበት...”⁸⁹ This is a wise course of action.

There are, moreover, other flexibility spots in the national building legal frameworks. One such spot is the permissibility of modification of plans during construction, some with and some without the approval, of the permit granting agency. This means the law does not require the builder to approach the concerned authority for all kinds of plan amendments. There are minor amendments which the builder can make on his/her own with a notification to the concerned body but without seeking its blessing. Two other malability features in the law are: permission to carry out night constructions and allowing certain specified construction repair, maintenance and demolition works without obtaining a construction permit.

Number of days: One of the parameters to measure good construction permit regime is the number of days it takes to grant it. If it takes a longer duration, it adds to the assessment of the inefficiency of a construction permit regime and if it is granted within the fewest possible days, that contributes positively to the regime’s efficiency. The legislatively determined number of days for processing a construction permit application in Ethiopia is sensible by any measure as analyzed in Table 5 that documents the number of days required by Regulations No. 243/2011 and Regulations No. 17/2004 to process a construction permit.

Yet, there is a need to differentiate between legislative pledges and actual performances. Hence, the actual number of days it takes to grant a construction permit is nevertheless far beyond the legislatively fixed number of days (See Section 3.2). A factor that adds to the increment of the duration beyond the legislative promise is the so called appointment days. The City’s Building Permit and Control Authority (the Authority) suggests the following as appointment days: 5 days for architectural designs and 3 days for structural, sanitary and electrical designs from the date of filing.⁹⁰ The building laws are silent about the number of days it should take to obtain soil test results. So are the number of days the concerned authorities shall resort to action should neighbors seek to stall construction projects on an adjacent plot. And as the table that follows

⁸⁸ Directive No. 5/2011, Article 7.4.

⁸⁹ Regulations No.17/2004.

⁹⁰ Author’s fieldwork data, February 4, 2015, Addis Aaba.

indicates, the City's laws lack alignment with the federal legislation on the issue of the number of legislatively days.

Table 5: Number of legislative and actual days for issuance of a construction permit in the City

| Decision type | Legislatively fixed days | | Actual number of days In the City |
|-------------------------------------|--|--|--------------------------------------|
| | Regulations No. 243/2011 | Regulations 17/2004 | |
| Planning consent | 3 days | Not fixed | |
| Construction permit granting period | <ul style="list-style-type: none"> 5 days for Category 'A' buildings from the date of plan submission 7 days for Category 'B' buildings from the date of plan submission 21 days for Category 'C' buildings from the date of designs submission | 3 days for a single residential house and 30 days for others | 3 to 9 months |
| appointment days | 5 days for architectural designs and 3 days for structural, sanitary and electrical designs from the date of filing | | |
| Neighbours' consent | Unknown | Unknown | |
| Soil test | Unknown | Unknown | |

Source: own analysis and fieldwork

Inspection: A construction permit is a green light for state intervention. The intervention allows the relevant state officials to hold the builder to account. Accountability is ensured through inspection of buildings for the purpose of giving such orders to rectify and demolish works that are not in conformity with the construction permit already granted; imposition of non-compliance fines and issuance of stop orders should inspections reveal non-compliance.⁹¹ As indicated in Sub-section 3.4, institutional capacity is an impediment to enforce inspection rules.⁹²

3.3.1 The process of obtaining a construction permit in Addis Ababa: a case study

What follows is a short account of the experience of a woman (W/ro Y) who tried to secure a construction permit. W/ro Y owns a G+0 house in Addis Ababa, Kolfe-Keranyo Sub-city. It is built on a plot of land allocated to her by the authorities on lease basis. The house is contiguous to two other houses, in the left and right, but with separate walls - her house does not share walls with the adjacent houses. It all started a couple of years ago when this woman aspired to enter into business using a reconstructed form of the house as a business premise - by demolishing and constructing G+2 building on it. It took her about 12 months to obtain a construction permit and cost her about 15,000 Birr, not taking transportation and opportunity costs into account.

⁹¹ Proclamation No. 624/2009, Article 23 and Regulations No. 243/2011, Articles 12-14 and Directive No. 5/2011

⁹² W/rt Atsede Abay, Manager, Land Bank and Transfer Office, Addis Ababa City Administration, February 4, 2015.

Appointment days: W/ro Y arrived at 5:30am for she was told that she would face a long queue. She did not succeed during this first appearance because they said they could not handle more than the first 20 people on the line up. In the second attempt, she reached there earlier than the time indicated above. She was advised to come after two weeks to file for a planning consent application.

Planning consent: For the planning consent, she was asked to fill out a form, pay Birr 400.00 as a service fee, and attach a copy of the certificate of land possession and an identification card. She had to present evidence of payment of tax in relation to the house for that fiscal year. She was advised to check if the house was encumbered with mortgage and subject to a court order. The debt and court order clearances were carried out in one working day. She was given a one week appointment for a site visit and advised to arrange transport for the engineer.

Site visit: W/ro Y arranged a transport service on the appointed date. But the assigned engineer could not be found as he was out for other site visits. They gave her his cellphone number to arrange the time that suited him. He appointed her on the next day and she transported him to the site and he confirmed that the desired building could be constructed provided she secured the consent of the owners of the adjacent houses. The relevant office offered her a form in triplicate copies wherein the neighbors would enter their names and put their signatures. She was advised that the process could not go ahead without obtaining the adjacent owners` consent. He also tipped her to have the designs prepared by those working in the office as doing so would minimize transaction inconveniences associated with ‘handling comments on the designs.’

Neighbouring consent: One of the neighbours signed the form quickly saying that he himself had a similar future plan – to demolish the house and upgrade it into a G+2 building. The other neighbor had refused to agree citing different reasons – the reconstruction would affect the solidity of the foundation of his house or damage the house in other ways during reconstruction or he had to consult a professional, etc. W/ro Y pleaded to him time and again. She was frustrated and asked the concerned professionals if they could do something about it. They said it would be better to continue to talk to him. They told her that he could virtually veto her project. Fortunately, the recalcitrant neighbor signed the form after seven months, offering her the opportunity to resume the process.

Construction permit grant: As advised by the professional who made the site visit, the architectural, structural, civil, electrical and sanitary designs were developed by insiders for 12,000 Birr. The preparation of the designs took two months even if they were developed by insiders. The approval process consumed another two months due to misplacing of her file and non-availability of the concerned officials as they had to attend trainings and meetings.

3.4 Examining institutional framework for a construction permit

International good practices documented in Section 2 show that there are certain elements that construction permit granting authorities are expected to exhibit if they are to handle the matter efficiently. First, organizational stability, i.e., avoiding or minimizing frequent changes in the mandate and structure of the concerned authority, is one good mark. An ancillary to this are clear identification of the construction permitting authority, chain of accountability within such authority and avoidance of overlapping powers.

Second, there is a need to staff such authority with adequate number of qualified and competent professionals. A matter related to lack of the relevant human resource is unavailability of the necessary material resources (i.e., vehicles and other gadgets). Third, apart from the desirability of making construction permit requirements complete and clear (as discussed above), the institution in charge must put in place mechanisms of making those requirements easily accessible to applicants including through publication, posting them on noticeboard and digitization of the whole process. Doing so introduces transparency into the system and enables customers to have the opportunity to follow up and even to some extent control the process. Finally, a speedy grievance handling mechanisms ought to be in place.

These good practices minimize undue administrative discretion and thus eliminate room for improper conducts on the part of the professionals processing construction permit application. More importantly, these good practices introduce efficiency by speedily processing and hence reducing transaction costs.

A short assessment of a construction permit issuing authority of Addis Ababa City (the City) is made as follows. The City is selected as a case study due to the magnitude of construction underway and the pace-setter role it is supposed to play for other towns and cities in the country.

Institutional restructuring: An indicator of institutional stability or lack thereof relates to whether the law establishing the institution is revised rather frequently. A brief legislative history is warranted to illustrate this point. By virtue of Regulations No. 17/2004, the authority in charge of handling a construction permit was “Government Infrastructure Development and Civil Works Authority” at the city level and “Infrastructure and Houses Affairs Office” at sub-city levels. This law did not make the mandate of woredas and kebeles regarding a construction permit clear though and thereby creating confusion.⁹³ Under Article 45 (9) of The Addis Ababa City Government Executive and Municipal Services Organs Re-establishment Proclamation No. 15/2009, the Land Administration and Construction Licensing Authority was set up in 2009 charging it, among others, to issue a construction permit. This authority was accountable to the City Center Land Development and Management Board” and a Sub-City Land Development and

⁹³ Article 2 (2-3)

Management Board.⁹⁴ At a sub-city level, there was “Land, Construction Licensing and Possession Administration Office.”⁹⁵ It introduced a significant restructuring of the City’s lower administrative units; namely, sub-cities, woredas and kebeles.⁹⁶ But the 2009 proclamation failed to clarify the mandate of woredas and kebeles on matters of construction permit.

The latest proclamation came out in 2012. It is still in force. The construction permitting authority is called Building Permit and Control Authority (the Authority). It is under Land Development and Management Bureau, which is headed by a manager with a status of a Deputy Mayor.⁹⁷ The Authority has the power to:

መሬት የተፈቀደላቸው አልሚዎች ወይም ህጋዊ የመሬት ባለይዞታዎች በከተማው መዋቅራዊና በአካባቢ የልማት ፕላኖች እንዲሁም የግንባታ ደረጃ መሰረት እንዲገነቡ የፕላን ስምምነት መረጃ ይሰጣል፤ የፕላን ስምምነት የተሰጣቸው አልሚዎች ወይም ህጋዊ የመሬት ባለይዞታዎች በከተማው መዋቅራዊና በአካባቢ የልማት ፕላኖች እንዲሁም የግንባታ ደረጃና ህግ የሚፈልገውን አሟልተው የሚቀርቡለትን የግንባታ ዲዛይኖች አግባብነት ባለው ህግ መሠረት መርምሮ ያዕድቃል፤ የግንባታ ፈቃድ ይሰጣል፤ በጸደቀው ዲዛይንና በተሰጠው የግንባታ ፈቃድ መሠረት መገንባታቸውን ይቆጣጠራል፤ ግንባታ ማሻሻያና የእድሳት ጥያቄዎችን በተመለከተ አግባብ ባለው ህግ መሠረት መርምሮ ፈቃድ ይሰጣል፤⁹⁸

Post-1991 institutional restructuring exercise in the City can date back to 1995. For our purpose, the table below begins with the one introduced for the last one decade, 2004-2012.

Table 6: Major legislation concerning a construction permit issuing authority in the City

| Title of Legislation | Year of Issuance | Relevant provision (s) |
|--|------------------|------------------------|
| Building Permit Regulations No. 17/2004 | 2004 | Art. 2 (2 &3) |
| Executive and Municipal Service Organs Establishment Proclamation No. 2/2003 Re-amendment Proclamation No. 20/2004 | 2004 | ... |
| Sub-cities and Kebeles Establishment Proclamation No. 18/2004 | 2004 | Art. 3 (b) |
| Business Process Re-engineering Implementation Proclamation No. 10/2008 | 2008 | Art. 5 (1) |
| Executive and Municipal Service Organs Establishment Proclamation No. 15/2009 | 2009 | Art. 45 |
| Executive and Municipal Service Organs Establishment Proclamation No. 15/2009 Re-amendment Proclamation No. 21/2010. | 2010 | Annex ⁹⁹ |
| Executive and Municipal Service Organs Establishment Proclamation No. 15/2009 Re-amendment Proclamation No. 28/2012. | 2012 | Art. 10 |
| Executive and Municipal Service Organs Re-establishment Proclamation No 35/2012 | 2012 | Art. 36 |
| Executive and Municipal Service Organs Re-establishment Proclamation No 35/2012 Amendment Proclamation No. 37/2013 | 2013 | Art. 15 |

Source: own analysis

⁹⁴ Article 78 (1) and 79 (2)

⁹⁵ Article 67(a).

⁹⁶ See the Annex of the Proclamation

⁹⁷ Articles 4 & 35

⁹⁸ Article 36

⁹⁹ It merged and dissolved 99 kebele administrations into 116 woredas.

The national government has superimposed its regulatory framework upon the above legislative exercise on the part of the City. This relates to Proclamation No. 624/2009 and with its regulations and directives issued a couple of years later that have come up with nomenclatures and line of accountability regarding the business of handling a construction permit. As mentioned previously, under Proclamation 624/2009, each urban administration in the country is required to appoint a building officer accountable to it. The building officer is mandated to exercise broad powers to review designs, process building permit applications and inspect buildings.¹⁰⁰ The proclamation also introduces an appeal mechanism; each urban administration is required to establish a board of appeal having members with relevant qualification to enable them to decide cases and whose decisions “on technical matters are final.”¹⁰¹

Analysis: Review of the relevant legislation setting out the power of organs which grant a construction permit for the last ten years shows, first, frequent amendments. This has legal effects because it entails a transfer of rights and obligations from an old to a new institution. As an illustration, one of such laws states that “The rights and obligations of Land Administration and Construction License Authority regarding building permit shall be transferred to the Building Permit and Control Authority.”¹⁰² This legal consequence brings with it a practical effect that hinders the efficiency of the organ. This is loss of human and material resources and thus disruption of its normal services. These changes have entailed a change in leadership in that particular institution, relocation of offices and records, bringing about critical interruptions in its operation time and again. It has also led to change in chain of upward and downward accountability.

Second, consideration of the legislative changes has revealed the tendency to lumping construction permit task together with land and/or infrastructure matters. The fusion is thought to prevent the institution from concentrating on its core business. The latest institutional rearrangement has partly resolved this problem because, as mentioned above, the Authority is set up. The term ‘partly’ is used here because the Authority is not liberated from being bothered by land matters because it is accountable to Land Development and Management Bureau of the City. As stated by an informant: “You cannot say “I do not know issues of land” in dealing with a construction permit while you are an employee of an institution that concerns land access. Our progress in handling a construction permit is hindered since we have to also consider land lease matters.”¹⁰³

The third observed effect is overlapping of power. The law defining the responsibility of the organ that issues a construction permit manifests power overlap. To wit, Article 67 (17) of Proclamation No. 35/2012 gives sub-cities the power to “approve plan” and ensure that

¹⁰⁰ Article 11.

¹⁰¹ Article 13.

¹⁰² Article 86 (2, e).

¹⁰³ Author’s interview with Ato Hailu Haileselassie cited above.

constructions are undertaken in accordance with approved construction permit while the same proclamation under Article 74 (2) empowers woredas to “supervise that local development activities are in accordance with the City plan, building laws and standards; control unauthorized constructions.”¹⁰⁴ What is more Proclamation No. 37/2013 mandates the Office of Code Enforcement to “Follow up the implementation of laws and regulations related to code violations; prevent illegal activities thereof” and prevent “unauthorized construction.” Power overlap is not without historical antecedent in the city.¹⁰⁵ Looking back, for example, Proclamation No. 15/2009 gave sweeping and vague powers perhaps incompatible with their expertise:

የአካባቢው የልማት ሥራዎች የከተማውን ፕላን፣ የግንባታ ሕጎችንና ደረጃዎችን ጠብቀው መሠራታቸውን ይቆጣጠራል፤ ሕገ ወጥ ግንባታንም ይቆጣጠራል፤ በቀበሌው ደንብ አስከባሪዎችን ያሰማራል፤ የሚያከናውኑትን ሥራ ይቆጣጠራል፤ በቀበሌው ክልል ውስጥ ሕገ ወጥ ድርጊቶች እንዳይካሄዱ ይከታተላል፤ ይቆጣጠራል፤....¹⁰⁶

The Chief Executive of Kebele was, *inter alia*, mandated to enforce law and order in the kebele couched in Amharic broadly as: “በቀበሌው ሕግና ሥርዓትን ያስከብራል”¹⁰⁷

Finally, in connection with the superimposed national building laws, it is sound to observe that to pass legislation is one thing and to implement it is quite another. The existing over nine hundred cities and towns in the country have not yet begun implementing the requirements of the federal building laws. As a source has it, “Some cities have started appointing building officers but they have not yet started their operations. The plan is to supply them with the required officers, carry out awareness campaign in the current fiscal year [2007 E.C.] and to make them functional as of the next budget year.”¹⁰⁸ Moreover, there is a need to align rules and regulations of cities and towns in the country with the key tenets of this federal legislative framework. An example of absence of alignment includes the number of days fixed for issuing a construction permit under the federal legal framework and the City’s law on the same (see Table 5).

Resource availability: fieldwork conducted in the City shows that the Authority lacks adequate number of professionals with requisite qualification and experience. New graduates join the authority only to leave after gaining some experience. They use the Authority as a transition to the world of practice or to lucrative salaries and benefits in the construction sector. An insider has well captured the human resource state of the Authority:

¹⁰⁴ Proclamation 35/2012

¹⁰⁵ Proclamation No. 37/2013, Article 15 (1 &2)

¹⁰⁶ Proclamation No. 15/2009, Article 68 (2 and 3)

¹⁰⁷ *Id.*, Article 72 (2, d).

¹⁰⁸ Author’s interview with Ato Lakew Abeje, Public Relations Expert, Ministry of Urban Development, Housing and Construction, February 4, 2015, Addis Ababa.

The engineers and urban planners build experience and knowledge of the working procedures, the relevant laws, directives, manuals and practices and above all good knowledge of the people inside. They then quit their job. They become contractors or consultants. It takes them no time to thrive on this insider knowledge.¹⁰⁹

The number of qualified professionals is also woefully inadequate. This obviously has implications for processing construction permits. Inadequacy in number of professionals also contributes to delay of a site visit which is often required by the very nature of its legal responsibilities.

Added to this is the available meagre material resources chiefly vehicles needed for site visit. This leads the Authority to engage in the practice of requesting applicants to provide transportation service for its professional for site visit. On top of shifting cost to the service seeker, this has its downside for it creates an opportune moment for improper dealing with such customer or it dilutes independent functioning of the professionals concerned. The material resource question has an information technology aspect which is poor (See below). In relation to material resource, there is a positive development worth mentioning in the City. Though shared with offices handling land matters, the Authority has recently acquired office building of its own in each sub-city and hence potentially avoiding the hitherto frequent relocation of office rooms.

Accessibility of construction permit requirements and procedures: As discussion in Section 3.1, the legal requirements for construction permit are generally clearly and comprehensively provided for in Proclamation No 624/2008, Regulations No. 243/2011, Directive No. 5/2011 as well as in the relevant proclamations and regulations of the City. Besides, the same section reveals some federal and regional proclamations and regulations are also available on line. This is a positive step forward. However, directives are neither available online nor published through other means. It was not easy for even this researcher to lay hands on the relevant directives. It is rightly observed that,

Directives are more important than proclamations and regulations for a customer; the day-to-day activities of a construction permit issuing offices depend more on the contents of directives than that of proclamations and regulations. The directives are yet not accessible to users. Some consultants have an amazing knowledge of the building laws, though. Most clients are not.¹¹⁰

True, directives give concrete expressions to proclamations and regulations; the trick lies in the mastery of them by the general users not just by few consultants with insider information. Unfortunately, in Ethiopia, unlike the case of proclamations and regulations, there is no law that requires government institutions to publish directives. With one latest exception, to publish or

¹⁰⁹ Author's interview with Ato Hailu Lemma, legal expert, Gulele Sub-City, Addis Ababa, February 2, 2015.

¹¹⁰ Interview with Ato Lakew Abeje cited above.

shelf a directive depends entirely upon the whim of the government unit that authors it.¹¹¹ That is a significant drawback.

In addition, fieldwork for this study done in various sub-cities in Addis Ababa shows that complete procedures for construction permit issuance are not effectively available onsite (i.e., in the premises of permit issuing offices) to clients. No doubt there is utility in abstracting the specific requirements of permit issuance from these general laws to make them consumable to customers so that they can understand the number of steps involved and the specific documents they must submit for the service. Such abstraction and operationalization activity have not yet taken place even if their failure to act accordingly is contrary to the prescription of Directive No. 5/2011 that stipulates that: “መሟላት ያለባቸው ማስረጃዎች የግንባታ ፈቃድ አገልግሎት በሚሰጥበት ቦታ የማስታወቂያ ሠሌዳ ላይ በግልጽ መዘርዘር አለባቸው።”¹¹² Relevant officials seem to appreciate the importance of making the procedures accessible: “we need to modernize the permit issuing process, i.e., making the steps and the required documents clear and accessible to users.”¹¹³

A germane matter is the power of technology for efficiency, transparency and minimization of improper official discretion. The discussions in Section 2 reveal that in good practice countries the process of a construction permit is automated and integrated. Applicants do not have to appear in person to fill out an application form. They have the chance to know the required supporting documents before they appear in person. After lodging their application, they can follow up the progress of applications online. They, as a result, are reaping the benefits of doing so. This nevertheless is a limitation of construction permit issuing offices in the City due to lack of an operating information technology. Things are done offline. Physical appearance is required to know the requirements and file an application as well as follow up the progress thereof.

Grievance handling mechanisms: In anticipation of the occurrences of disputes in the course of processing an application for a building permit, the City has come up with a legal framework for grievance handling encapsulated in Directive No. 4/2010. It is a generic directive because it aims to handle grievances regarding any type of municipal services including construction permit issuance. It is both preventive and remedial. The preventive aspect operates through customer satisfaction survey, suggestion boxes and internal service quality audits.

The remedial aspect of it works as follows. Where a client feels aggrieved at a aoreda level, he/she shall fill out a compliant form, have it signed by the person who has served him/her and submit it to an immediate boss. The person who signs the application must state the reasons for the source of the compliant. If the immediate boss cannot solve the issue, then it should be filed

¹¹¹ The exception concerns the recent revised Customs Proclamation, which stipulates that directive relating to customs shall be published.

¹¹² Directive No. 5/2011, Article 4 (3).

¹¹³ Interview with Ato Hailu cited above.

with a Woreda Process Council that pertains to handling grievance and compliant and following up customer satisfaction. Where the Woreda Process Council cannot solve the problem, it is taken by way of appeal to a similar Sub-city Process Council. Again if the problem is not solved, there is a possibility of filing a second appeal to a City Process Council.

As sources have it, the problem here is that professionals who handle the initial application do hesitate to sign on the compliant form because it is believed that endorsing such types of applications again and again counts against such person.¹¹⁴ This becomes a ground for gruesome ‘gemgema’ which is a dreadful experience for the concerned professionals.¹¹⁵ The implication is that they are reluctant to give a green light to aggrieved customers and thus complaints linger on. Directive No. 4/2010 does not rule out the possibility of taking a case to municipal courts.

The City’s directive in question seems to be superseded by the federal legal framework analyzed previously, i.e., Proclamation No. 624/2009, Regulations No. 243/2011 and Directive No. 5/2011. These federal laws provide for compliant handling mechanism specifically tailored to construction permit and related issues. These laws envisage a dispute settlement scheme that looks like as follows: a building officer makes a decision or issues an order. Where an applicant is not satisfied with such decision or order, he/she can lodge an appeal to a Board of Appeal, which is accountable to the concerned city administration. The decision of the Board of Appeal on technical matters is final. It seems that resorting to the regular court on legal matters is not precluded.

There are two issues. The model put in place by the federal laws suffers from a one-size-fits-all syndrome because the laws are issued at the center. Yet they are supposed to apply to all cities through the country. As an illustration, while Proclamation No. 624/2009 paints a general picture in the spirit of framework legislation, Regulations No. 243/2011 and Directive No. 5/2011 go down to the specific details of determining the composition, term of office and working procedures of the anticipated Board of Appeal. The other issue is the dispute settlement method envisaged in the national legal frame (like other components of the national building laws) is not under implementation.

In summary, institutional weaknesses are reflected in frequent organizational rearrangements, inadequacy in human and material resources, inaccessibility requirements including absence of automated services and unsatisfactory grievance handling methods. These deficiencies contribute to inefficiency in handling construction permit matters in the City. Specifically, the weaknesses have bearing upon the actual number of days spent to obtain a construction permit, increase in the transaction cost in the process and ultimately impinge on the legal (and constitutional)

¹¹⁴ Interview with Ato Hailu Lemma cited above; and interview with Ato Anteneh Sisay, legal expert at Addis Ababa City Administration Justice Bureau, February 4, 2015, Addis Ababa.

¹¹⁵ *Ibid.*

requirement of transparency in the workings of public institutions. The World Bank has recently observed that there are “poor professional standards.., wide-ranging discretionary powers exercised by government, a lack of transparency...” in Ethiopia`s construction sector.¹¹⁶ The World Bank`s observation can validly be extended to Ethiopia`s construction permit regime.

4. Analysis of interviews and focus group discussion results

Analysis of the interviews and focus group discussion has focused on the following thematic areas: requirements, legal framework, institutional adequacy, dispute settlement mechanism and integrity of the process (corruption). The major findings are highlighted as follows.

Requirements: One issue is that soil test is required in relation to all buildings above G+0 floors. This requirement is not in line with the stage of technology in engineering which involves in use of light structures and materials that make soil test requirement unnecessary in relation to upto G+2 buildings. In addition to its partial incompatibility with advances in engineering, solidity of soil varies from place to place in the sense that in some areas the type of soil might support upto G+2 structure without soil test and this can be known on the basis of experience gained from pre-existing adjacent buildings. Further, the requirement of soil test is being applied inconsistently across the sub-cities. In some sub-cities, soil test in respect of all buildings above G+0 floors is required while others require soil test result in connection with buildings that have above G+2 floors. Yet the law seems to be in line with the former. The law and the practice in regard to soil test are dominated by an engineering concept that privileges heavy structure and deep foundation.

Another problematic requirement of a construction permit regime is that of neighbouring consent. The problems with it are a rather time consuming exercise; it is not supported by effective administrative enforcement in the event of a recalcitrant neighbor and ultimately the neighbours have either the power to delay a construction activity indefinitely or even veto such construction contiguous to their property. The problem here lies in both the law and the practice. The issue lies in the law because it does not clearly and specifically spell out what administrative or judicial measures might be taken against a recalcitrant adjacent owner. In relation to the practice, the construction permit issuing institutions tend to push the card to the applicant to obtain consent from the adjacent owner instead of using the law creatively in order to hasten the application process.

Legal framework: The legal framework aspect of the interview has been framed to find out if there are problems in connection with a construction permit legal regime including frequent change or incompleteness or ambiguity or lack of flexibility in the law. As discussed earlier, there is a more or less comprehensive legal framework for construction permit in Ethiopia. This

¹¹⁶ Janelle Plummer (ed.) (2012), “Diagnosing Corruption in Ethiopia” (The World Bank, Washington, DC.), p 9.

is something to commend for. The framework however contains problems including change of legal rules through circulars; gaps (e.g., in relation to soil test and neighbouring consent explained above), lack of flexibility (e.g., the law says a renovation permit shall not be issued to people whose house does not appear in the 1988EC GIS) and conflicts between the new Master Plan and existing practices. There are no mechanisms of improving rules and procedures that are bottlenecks on the basis of periodic and actual data. There are cases where the law does not apply for all; it is applied in favor of those with connections; lack of uniformity in procedures, for example, requests for construction permits that are clearly prohibited by the Master Plan might be granted to some claiming that they are ‘developmental investors’.

Institutional inadequacy: Accessibility to customers of the requirements and procedures for a construction permit is another thematic area. It has been found that written procedures including working manuals are in place. The procedures are not automated, though. Tasks are accomplished manually but the process and the requirements are accessible and transparent because things are done in writing. There are written forms for every action; there are brochures describing the requirements and the process and extracts from the brochures are posted on notice boards in the premises of the permit granting bodies. These tell customers the preconditions for issuing a construction permit. The procedures are put in writing but they are neither complete nor effectively accessible. According to an informant, “the working process of his institution is backward and not supported by technology, which generates customer dissatisfaction.”

Another area of investigation was to identify the different levels of units in the City that approve designs (i.e., level of city, sub-city and woreda) as well as pin down their respective jurisdiction. It is found that a design is approved by the relevant professional and verified by the Process Owner (Team Coordinator) at woreda, sub-city and city level. A construction permit is issued at City level for G+6 and above buildings (Category C); for those constructions on more than 5,000m² plot; buildings for hospitals, colleges and above colleges and embassies, and constructions that are located on a border between two sub-cities. At sub-city level, from G+1 up to G+5 buildings (Category B) including demolition and modification of an existing building and at woreda level, for G+0 (Category A) and construction permit for renovations carried out without substantive and formal alterations. The Code Enforcement Office is empowered to ensure that buildings have valid construction or renovation permit and to issue stop order should they do not have it. The working procedure is pretty much clear and the allocation of jurisdiction is clear and free from overlapping. This merits appreciation.

A further point of inquiry was institutional adequacy in attracting and retaining competent professionals, number of relevant professional staff, availability of needed material resources, (e.g., vehicles and equipment) and organizational stability. There is work congestion especially at woreda level due to the fact that the number of professionals is not proportionate to the volume of work. It was found that permit issuing units in the City are unable to attract competent

professionals; those in the system are inadequate in number and not well versed in the task. The quite few professionals with relevant experience do not desire to stay long; they want to quit their jobs to start their own business; in some areas there are vacant positions.

There is a failure to fully appreciate the legal rules by the professionals that process a construction permit. For instance, asked whether a construction permit is required for all types of construction with the exception of one informant, almost all of them said that a construction permit was needed for all types of buildings including building a fence and roof –change (e.g., change of a corrugated sheet) for an existing building.

However, as described earlier, the law has specified some construction activities that do not require a construction permit, i.e., light constructions such as painting a completed building and light partition. In relation to the objective of a construction permit regime of the City, informants said that implementation of an existing master plan of the City in order to help to bring the city to level of developed cities in the interest of safety, comfort and aesthetics.

The working environment is unattractive for professionals who face periodic unnecessary evaluations of (*gemgema*) and followed by suspensions. These are factors generating job insecurity and drive professionals to resign from their jobs. There is a perception of absence of merit based recognition and there is lack of incentives to retain employees. Those in higher offices are not professionals and this creates misunderstanding between them and the professionals.

Furthermore, there is acute shortage of materials including vehicles and such shortage is adversely impacting professionals. There are frequent office changes having adverse impact on both employees and customers and there is lack of organizational stability.

Finally, an issue which can be tied to institutional inadequacy is the number of days it takes to issue a construction permit. As considered previously, there is a huge disparity between standard time for issuing a construction permit and actual time it takes to grant it. The standard time indicated in official brochures is: 21 days for Category C buildings and above, 5 days for Category A and 7 days for Category B buildings. The disparity arises out of appointment days, file loss, frequent long meetings meetings/trainings (which informants said had absolutely no relevance for their core tasks and responsibilities), power interruptions, frequent office relocations, shortage of human resources and engagement of gainful private business by the professionals during office working hours. The last factor means that the engineers and urban planners who are currently on the payrolls of construction permit issuing institutions in the City engage in gainful professional business (i.e., design preparation and consulting activities) during office hours.

Dispute handling mechanism: Another line of investigation during interviews was the existence of an effective administrative grievance handling mechanism with regard to a construction permit. The interviewees invariably said that there is a system of compliant handling mechanism in the City and that it is adequate.

According to the informants, the system at the level of a sub-city actually works as follows. First, an aggrieved applicant should try to resolve the issue with the professional handling the job. Failing this, the applicant can lodge complaint with a committee and then to the Process Owner (Team Coordinator); there is an office called Land Management Compliant Handling Office to which grievance can be submitted. This can lead to submitting an appeal with a Sub-city Manager. Then administrative appeal can move to the Manager of Building Permit and Control Authority and finally to the Manager of Land Management and Development Bureau. The informants said that there are also comment registers and suggestion boxes. As described earlier, there is also a performance audit system in place. The informants said that to the extent to which this dispute handling mechanism is satisfactory to the customers is to be judged by them. This research could not carry out customer satisfaction survey. That agenda awaits another research. The legal problems raised in Sub-section 3.4 remain valid.

Corruption: Under this theme, questions concerning the existence and form of corruption in the course of granting or renewing a construction permit were raised. Informants were asked if there were situations that expose construction permit processing staff to corruption (i.e., lack of adequate number of vehicles for site visit, lack of adequate salary and allowances, and customer perception) as well. The informants said that they believed that there are factors that discourage corruption in respect of construction or renovation permit granting process citing high level of follow, control and check in their activities (e.g., a file is considered by more than five professionals including final validation by a boss).

The interviewees however conceded that in relation to considering construction and renovation permits, professionals create convenient situation for corruption by giving several appointments. Professional handling cases also show a tendency to take advantage of *denbegnochen magulalat* (ደንበኞችን ማጎላላት). Situations are conducive for the emergence of *gudaye asfetsamiwoch* (middle men), i.e., the existence of repeated appointments has contributed to the appearance of ‘middle men’ who present themselves as having special connections with those who process applications and thus being able to expedite the preparation and processing of designs by insider professionals – the very professionals who approve such designs. Such middle men hence create conducive environment for corruption. In addition, the informants all unanimously agreed that clients expect that each and every activity in the construction permit granting authority is carried out on the basis of corruption; “the clients manifest and express this in the day-to-day activities; customers tend to think that what has to be discharged by the professional as a matter of routine

duty is being routinely discharged after payment of some form of bribery. Customers think that they cannot have their request processed without paying bribe.”¹¹⁷

Conclusions and Recommendations

Conclusions

1. A good construction permit system encourages investment by helping secure construction permits speedily and at reasonable cost, by minimizing informal constructions and by facilitating the entry of immovable property into collateral market. A review of good practices around the world suggests that the hallmarks of quality construction permit system are: clarity and comprehensiveness of building laws, provision of sufficient and quality human and material resources, possibility of outsourcing, streamlining the procedures, reduced time for processing applications, putting in place one-stop shop, reducing fees, improving electronic platforms and introducing risk-based approvals. It has been observed that these efficiency driven reforms can be carried out without sacrificing other purposes of a construction permit regime – health and safety concerns, and historical and environmental landmarks.
2. Assessment of Ethiopia`s construction permit regime (with a focus upon the state of construction permit regime in the City) reveals that the country`s building legal framework is generally compatible with building codes of good practice countries. In specific terms, the following elements of the building laws of Ethiopia are worth mentioning:
 - a) Attempt to balance safety, health and efficiency considerations;
 - b) Classification of buildings for the purpose of differential regulation on the basis of the degree of risks involved;
 - c) Provision of special dispute settlement mechanism involving relevant experts;
 - d) Possibility of holding construction permit issuing authority and professionals in charge liable for professional fault;
 - e) Requirement of compulsory insurance for professionals that prepare designs and construct certain categories of buildings;
 - f) Possibility of outsourcing the processing of construction permits;
 - g) Setting the parameters for minor non-compliance with the legal standards that do not require design revision;
 - h) Opening a room for phase-by-phase completion of a building;
 - i) Possibility of modification of plans during construction, some without seeking approval; and

¹¹⁷ Ato Addisu Yesuf, Head of Building Permit and Control Office, Akaki Sub-city, Addis Ababa, February 23, 2015

- j) Allowing certain specified construction, repair, maintenance and demolition works without obtaining a construction permit.
- 3. However, in general terms, the legislative framework displays unnecessary requirements, rigidity and lack of alignment with regional construction permit laws. It is submitted that these shortcomings contribute to inefficiency in handling construction permit matters with bearing upon the actual number of days spent to obtain a construction permit, increase in the transaction cost in the process and ultimately impinging on the legal requirements for a transparent functioning of relevant public institutions. The study has identified the following specific problems.

a) Requirements for a construction permit

- 1. Legally, it is unclear whether a construction permit can be issued in relation to a regularized land, i.e., land held by individuals informally but later formalized by the state. The practice shows that those whose house did not appear in the GIS cannot obtain a construction permit. The construction permit regime in the City tends to limit itself to old possession or those who obtain land on lease basis or those who have obtained derivative land rights from the latter two.
- 2. Neighbors` consent is required to be secured by seeing to it that an official application form is completed and signed by the concerned neighbors. The law says “ቅጹን ለመሙላት ፈቃደኛ በማይሆን ወሰንተኛ የከተማ አስተዳደሩ ቅጹን የማስሞላት ኃላፊነት አለበት።” It fails to provide further details. The practice shows that some adjoining owners are unwilling to sign the form or they take a long time to do so saying that they should consult with family members or professionals or just turning down the request. When the matter is brought to the attention of the permit granting body, they say “ተሰማሙ.” This in effect offers them a veto power or suspends the application for a construction permit indefinitely. It seems that the concerned bodies do not have the coercive means to compel recalcitrant neighboring landholders from defeating or delaying the permit issuance
- 3. The practice is inconsistent with the law since some sub-cities require soil test for all buildings that are G+1 and above while others confine themselves to the requirement of the law –they require soil test result only for G+2 and above buildings. The building laws are silent about the number of days it should take to obtain soil test results. So are the number of days the concerned authorities shall resort to action should neighbors seek to stall construction projects on an adjacent plot.
- 4. Construction permit and associated fees/costs (i.e., fees for planning consent, permit approval and renewal, construction commencement and soil test) are high and ‘look like disguised tax’.

b) Construction permit issuance and renewal duration

The practice does not conform to the legally fixed number of days; construction permit issuance and renewal take much longer than those days. The disparity arises out of appointment days, file loss, frequent meetings meetings/trainings, power interruptions,

office relocation, and shortage of human resources and engagement of gainful private business by the professionals during office working hours. The last factor means that the engineers and urban planners who are currently on the payrolls of construction permit issuing institutions in the City engage in gainful professional business (i.e., design preparation and consulting activities) during office hours.

c) The legal framework

1. Instead of providing for a framework legislation for the many cities and towns of the country as envisaged both in the FDRE Constitution and Proclamation No. 624/2009, Regulations No. 243/2011 and Building Directive No 5/2011 come up with federalization of buildings laws. Sought is micro-managing from the center of building activities in towns and cities throughout the country, regardless of their condition including but not limited to one-size-fits all approach of the dispute settlement mechanism.
2. Examination of the City`s relevant legislation setting out the power of organs which grant a construction permit for the last ten years shows, first, frequent amendments as well as frequent change of the law that defines the powers and the responsibilities of regarding construction permit. This legal consequence brings with it a practical effect that hinders the efficiency of the organ. This is loss of human and material resources and thus disruption of its normal services. These changes have entailed a change in leadership in that particular institution, relocation of offices and records, bringing about critical interruptions in its operation time and again. It has also led to change in chain of upward and downward accountability.
3. Consideration of the legislative changes has revealed the tendency to lumping construction permit task together with land and/or infrastructure matters. The fusion is thought to prevent the institution from concentrating on its core business. Power overlapping is also observed. This means the law defining the responsibility of the organ that issues a construction permit manifests power overlap.
4. Non-implementation of aspects of the building laws. For instance, building officers are not appointed, outsourcing of construction permit issuance is not translated into action and dispute settlement mechanisms as envisaged in Proc. 624/2009 are not constituted.
5. There is a legal disparity in respect of date of construction commencement or completion. This is so because Proclamation No. 624/2009 reckons the duration of commencement and completion of construction from the *date of approval* of a construction permit while the latest Urban Lands Lease Holding Proclamation is moot about this point but regulations issued under it calculates the duration for commencement and completion of construction from the *date of receipt* of (ከተሰጠበት ቀን አንስቶ) a construction permit.

d) Institutional

Institutional weaknesses are witnessed in frequent organizational rearrangements, inadequacy of human and material resources, inaccessibility of the building permit

requirements and procedures, lack of streamlining of the process and absence of automated services. Interviews shows that permit issuing units in the City are unable to attract competent professionals; those in the system are inadequate in number and not well versed in the task. The limited number of professionals with relevant experience does not desire to stay long; they want to quit their jobs to start their own business after gaining experience.

e) **Dispute settlement mechanisms**

The dispute settlement model put in place by the federal building laws suffers from a one-size-fits-all syndrome because the laws are issued at the center and yet they are supposed to apply to all cities through the country. As an illustration, while Proclamation No. 624/2009 paints a general picture in the spirit of framework legislation, Regulations No. 243/2011 and Directive No. 5/2011 go down to the specific details of determining the composition, term of office and working procedures of the anticipated Board of Appeal.

f) **Corruption**

1. Professionals create convenient situation for corruption by giving several appointments. Professional handling cases also show a tendency to take advantage of *denbegnochen magulalat* (ደንበኞችን ማጎላላት). Situations are conducive for the emergence of *gudaye asfetsamiwoch* (middle men), i.e., repeated appointments have contributed to the appearance of ‘middle men’ who present themselves as having special connections with those who process applications and thus being able to expedite the preparation and processing of designs by insider professionals – the very professionals who approve such designs. Such middle men hence create conducive environment for corruption.
2. There is expectation on the part of clients that each and every activity in the construction permit granting authority is carried out on the basis of corruption; “the clients manifest and express this in the day-to-day activities; customers tend to think that what has to be discharged by the professional as a matter of routine duty is being routinely discharged after payment of some form of bribery. Customers think that they cannot have their request processed without paying bribe.”

Recommendations

The present study shows that effective permit processing regarding construction, reconstruction and repair of buildings hinges upon the quality of the legal and institutional framework. Hence, improvements on both dimensions are called for. In respect of the legal framework, some law reform is called for to fill in legal gaps, eliminate inconsistent applications, revise unreasonable rules, regulations and remove legislative inconsistencies and permit room for local experimentation. The institutional side of the matter implies a host of measures including attraction of adequate number of competent staff, their retention, minimization of organizational

reshuffling, implementation of partial outsourcing of the construction permit process envisaged in the law, and establishment of a standing working group composed of relevant state authorities, members of the business community and citizens to periodically discuss and propose matters relating to construction permit.

A. Legal

1. The rule regarding neighbor`s consent should be revised to clearly empower the administrative authorities to take measures to set aside the power of an arbitrary neighbor from vetoing a construction or reconstruction or repair of buildings. There should be a time limit for the neighbor to give his/her consent and the expiry of that duration should lead to administrative intervention. This means, there is a need to legislatively fix the number of days the concerned authorities shall resort to action should a neighbor seek to stall construction projects on an adjacent plot.
2. Construction permit and related fees (i.e., fees for planning consent, permit approval and renewal and construction commencement) should be revised as they are regarded as high and ‘disguised tax’.
3. Building height rules and regulations should be revisited to reflect the needs and aspirations of existing house owners and landholders specially in the inner parts of the City to undertake building in a manner that matches their financial ability without seriously undermining the needs of the City.
4. The law should be clarified to allow issuance of construction permit to those with regularized landholdings. Further, a clear government policy stance should be adopted and the law be subsequently amended to take a clear stance on those lands on which there are constructions that did not appear in 1988 E.C. GIS.
5. Instances where the law is applied inconsistently should be reconsidered for this is a manifestation of a weakness in the rule of law. One example is the practice on the part of some sub-cities in the City requiring soil test for all buildings that are G+1 and above while others requiring soil test only for G+2 and above buildings should be abolished. Another instance is a need to enforce building repair rules and regulations uniformly.
6. In relation to soil test, for up to and including G+2 buildings, the requirements of soil test should depend on the nature of the soil based on the general building prior experience of the locality. The building laws should specify the number of days it should take to obtain soil test results as well and soil test fees should be regulated as well.

7. Regulations No. 243/2011 and Building Directive No 5/2011 should not be permitted to undermine the framework intention of Proclamation 624/2009. They should be revised to allow room for regions to experiment with their own buildings laws within the ambit of the framework national building legislation. As an illustration, the dispute settlement model put in place by the federal building laws suffers from a one-size-fits-all syndrome because the laws are issued at the center and yet they are supposed to apply to all cities through the country. To wit, while Proclamation No. 624/2009 paints a general picture in the spirit of framework legislation, Regulations No. 243/2011 and Directive No. 5/2011 go down to the specific details of determining the composition, term of office and working procedures of the anticipated Board of Appeal. This means change should be made to the current building laws which seek to micro-manage from the center building activities in towns and cities throughout the country, regardless of their condition including. This is a suggestion to move away from a one-size-fits-all approach.
8. The prescriptions of the building legal regime as embodied in Proc. No. 624/2009 should be implemented. For instance, building officers should be appointed and outsourcing of construction permit issuance should be translated into action..
9. There is a call for harmonization of some inconsistencies within the law. For example, the existing legal disparity in respect of date of construction commencement or completion should be removed. In this regard, there is a need to choose between Proclamation No. 624/2009 that reckons the duration of commencement and completion of construction from the *date of approval* of a construction permit and the regulations under the latest Urban Lands Lease Holding Proclamation that calculates the duration for commencement and completion of construction from the *date of receipt* of a construction permit. Another instance is making some aspects of Proclamation No. 624/2009 compatible with pre-existing construction permit practices and laws of the City.

B. Institutional

1. For an effective permit regime regarding construction, renewal and repair of buildings, certain institutional deficiencies should be remedied. The manifest inadequacy of human and material resources should be addressed, building permit requirements and procedures should be made accessible to clients both online and offline, construction permit granting services should be automated, and streamlined. The automation and streamlining should be followed by integration of construction permit processing service with other relevant services (e.g., investment license, water, telephone and electricity and sewer lines) in the City. Incentive schemes should be revised for the permit issuing units in the City to be able to attract and retain adequate number of competent professionals. Once attracted they should be given periodic training on the legal,

technical, practical and institutional aspects construction permit system. The training on building laws and codes should be given to consultants and contractors as well. Meetings and trainings should be made relevant, shortened and announced in advance to customers.

2. Higher authorities should refrain from frequently rearranging construction permit issuing units in the City. Examination of the City`s relevant legislation setting out the power of organs which grant a construction permit for the last ten years has shown frequent amendments as well as frequent change of the law that defines the powers and the responsibilities of regarding construction permit. This legal consequence brings with it a practical effect that hinders the efficiency of the organ. This leads to loss of human and material resources and thus disruption of its normal services. These changes have entailed a change in leadership in that particular institution, relocation of offices and records, bringing about critical interruptions in its operation time and again. It has also led to change in chain of upward and downward accountability. A halt on such exercise can bring about stability. Institutional restructuring should be planned and reasonably paced.
3. The mandate of construction permitting authority should be clearly separated from those institutions dealing with land matters and in a manner that avoids overlapping. Consideration of the legislative changes has revealed the tendency to lumping construction permit task together with land and/or infrastructure matters. The fusion is thought to prevent the institution from concentrating on its core business. The law defining the responsibility of organs (e.g., building permit issuing authority and code enforcement authority) that have some connection with construction permit should be clarified to avoid power overlap.
4. There should be established a standing working group composed of relevant state authorities, members of the business community and citizens to discuss and propose matters relating to construction permit on regular basis.
5. Corruption in the course of granting construction, renewal and repair permits should be resolved as part of the national effort to tackle corruption through the empowerment and strengthening of national and regional ethics and anti-corruption institutions, strengthening of regular courts, the media and civil societies. But at level of permit issuing units care should be taken in the recruitment process; adequate package of incentives and clear career development path should be put in place. Reform of the legal and institutional setting should be introduced to remove working procedures that create suitable conditions for corrupt practices. Where a professional is found to have engaged in corrupt practice, he/she should be exposed and disciplinary measures taken against him/her in addition to initiation of criminal proceedings.

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Annexes

Annex 1: Interview guide

A. Conceptual

1. How do you describe a construction permit? Why is it required?
2. Is a construction permit required for all types of construction? Would you please enumerate some of the most common kind of constructions in relation to which a permit must be obtained?
3. How is a building conceived? Is the changing engineering concept in relation to a building (e.g., use of light materials) reflected in the requirement for a construction permit?

B. Legal and practical requirements for issuing a construction permit

4. What are the legal requirements that must be fulfilled (or documents that must be submitted) to obtain a construction permit? Please list them down.
5. Can you list down the process of obtaining a construction permit in your institution (from application to receipt of a permit)? Please describe the process of approving plan.
6. How much time does it normally take to secure a construction permit assuming that an applicant has submitted a complete application? (Please specify this in terms of number of days.)
7. Is site visit by a relevant professional mandatory before issuance of a construction permit? If so, are there practical problems involved in such task? If so, what are they?
8. Is soil test required? For what types of buildings? Who undertakes the soil test? How much time it normally takes to complete the soil test? What is the required fee?
9. Is submission of a contract between a consulting engineer and the owner required? In relation to which kind of building?
10. What is the amount of fee an applicant should pay to the concerned institution to get a construction permit? If the amount of fee depends on the type of building involved, please specify.
11. What is a construction commencement permit (የግንባታ ማስጀመሪያ ፈቃድ)? What is the required fee? How long it takes? What are the required documents?

C. Legal problems

12. Do you think that there is a legal problem in connection with a construction permit (e.g., frequent change or incompleteness or ambiguity or lack of flexibility in the law governing construction permit)? If so, can you please specify it?

D. Institutional

13. Is the construction permit granting process automated? What do you think are the advantages of automating the process? Are the requirements accessible to and transparent for the customers?
14. Who approve buildings plans (designs): in connection with which type of buildings a sub-city is responsible for granting a construction permit? What about at the city level? What are the responsibilities of woreda in relation to a construction permit? Code Enforcement Office?
15. Do you think that there are inadequacies in your institution (in terms of attracting and retaining competent professionals, number of relevant professional staff, availability of needed material resources, e.g., vehicles and equipment, and organizational stability)?
16. Is there an administrative grievance handling mechanism in relation to a construction permit in your institution? Do you think that it is satisfactory? What are the problems associated with it?

E. Corruption

17. Do you think that in your institution some form of corruption is involved in the course of granting or renewing a construction permit? What are the situations that expose the staff to corruption (lack of adequate number of vehicles for site visit? lack of adequate salary and allowances?) To what extent does the behavior of the customer contribute to corruption?

F.Others

18. Any detailed directives or manuals currently in use? Can a copy of it be supplied?
19. Any other comments or suggestions?

Annex 2: Summary of interviews

| Theme | Summary |
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| <p>1. Conceptual</p> <ul style="list-style-type: none"> • Meaning of a construction permit and reason for requiring it; is it required for all types of construction? • Some of the most common kind of constructions for which a permit must be obtained | <ul style="list-style-type: none"> • Used to implement an existing master plan of a city in order to help to bring the city to level of developed cities; in the interest of safety, comfort and aesthetics. Construction permit refers to a request to build new or improve an existing building or change of the purpose of a building. • A construction permit is needed for almost all types of buildings including building a fence and roof –change (e.g., change of a corrugated sheet) for an existing building. But the law has specified some construction activities that do not require a construction permit, i.e., light constructions such as painting a completed building and light partition. |
| <p>2. Legal and practical requirements for a construction permit</p> <ul style="list-style-type: none"> • Legal requirements that must be fulfilled to obtain a construction permit • The process of obtaining a construction permit • Time it normally takes to secure a construction permit assuming | <ul style="list-style-type: none"> • Evidence of planning consent (within 12 months of issuance) first which is issued by the Process Owner after checking if the intended construction is in line with the City’s Master Plan and construction laws [requirements are certificate of land possession, lease contract, evidence of lease payment and information on debt and attachment); evidence of non-encumbrance with debt and attachment order which must be less than 12 months or where the creditor is a bank, soil test result for G+1 and above buildings, evidence of the bank’s agreement with the construction; evidence of lawful possession of land (either through lease or old possession) on which the building is planned to be constructed; designs and their corresponding reports, the licenses of the professionals who have prepared the designs, for large scale manufacturing environmental safety certificate, neighboring consent form, soil test result for G+2 and above buildings, where the land falls under the urban upgrading an agreement with the relevant authority to go undertake the construction and filling out appropriate forms and payment. (These documents must be presented by the owner or an agent or the professional who has prepared the designs; but when the permit is issued it can only be taken by the owner or an agent) • Submit a complete file; fill out a construction permit request form;; present the documents to the record section; the file is referred to the professional in charge of Architectural Design who takes about 2 days to provide comments, when he/she is done, then he/she refers it to other professionals (Structural, Electrical, Sanitary and Mechanical, if any, designs) and soil test result. After each design is reviewed and approved by the relevant professional, then it is verified by the person in charge of Process Owner (Team Coordinator) and is issued. • Where the applicant presents all the required documents, a construction |

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| <p>that an applicant has submitted a complete application</p> <ul style="list-style-type: none"> • Need for site visit by a relevant professional mandatory before issuance of a construction permit and associated problems • Soil test, types of buildings, who undertakes the soil test? How much time it normally takes to complete the soil test? What is the required fee? • Is submission of a contract between a consulting engineer and the owner required? In relation to which kind of building? • Amount of fee an applicant should pay to the concerned institution to get a construction permit • A construction commencement permit; required fee; time and required documents | <p>permit at the City level (above G+6 buildings) can be issued in 21 working days; for Category A and B buildings, the sub-city is supposed to grant it within 5 or 7 working days. But in most cases this does not happen, because each design may invite comments and addressing such comments might entail at least 30 working days.</p> <ul style="list-style-type: none"> • A site visit is not often required in the course of handling a construction permit. It is however required before a construction commencement permit is granted. For construction permit, it is about paper work. However, site visit is necessary where a pre-existing construction is sought to be modified because such building may have been built without the required permit; Some think that site visit is necessary even in connection with a construction permit because some applicants request for a construction permit after they have already undertaken some construction activity on the relevant plot; so it should be ensured that there are no constructions on the plot (Yeka Sub-City tends to follow this approach). • Soil test is required for all constructions above G+0. Soil test is carried out by the builder himself/herself; we receive only the result but check it is carried by a professional licensed to carry it out as well as has paid tax for the current fiscal year. We do not know how long it takes and how much it costs. It costs from 6,000 to 20,000 Birr. • Such contract is not required to be presented during a construction permit issuance; it is required before issuing a construction start permit. • Reckoned based on cost of project and per floor area (Brochure) • A permit issued to a person who has already obtained a construction permit to ensure that he/she has complied with the construction permit itself; it is a follow up method. The requirements include: site visit, building contract with a licensed consultant, a copy of the professional license of consultant, business license of the professional and business registration, insurance, VAT registration certificate of the professional, Tax TIN number of the consultant, employment contract, ID and Tax TIN number of the consultant's site supervisor, certificate of land possession and a valid construction permit, bill of quantity, lease contract, payment for building inspection and control • At City level, the payment is Birr 800.00 for each phase, at sub-city level Birr 400.00 and the total amount depends on the number of floors. • According to the standard, it takes from 2 to 3 days. (e.g., for G+1 and G+2 building, respectively 1,600.00 and 2,400.00, respectively, in addition to 400.00 per floor. |
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3. Legal Problems

- Legal problems in connection with a construction permit (e.g., frequent change or incompleteness or ambiguity or lack of flexibility in the law governing construction permit)
- There are legal problems in respect of a construction permit including frequent change of the legal rules and issuance of circulars, lack of knowledge of the customers about the City's Master Plan; lack of clarity in the law, gaps, lack of flexibility (e.g., the law says those who request for renovation permit shall not get if their house does not appear in the 1988EC GIS) no awareness creation mechanism in this regard; the prescription that the City's Master Plan is above construction permit rules; there are overlapping laws; the new Master Plan has created big gaps and conflicts with existing practices; conflicting rules (e.g., the law says neighbor consent is required and at the same time it says it is possible to undertake contiguous building); the law does not specify the level of professionals while that is necessary.

4. Institutional

- Automation of construction permit granting process automated; advantages of automating the process; accessibility to and transparency of the requirements for the customers
- Not automated; tasks are accomplished manually but the process and the requirements are accessible and transparent because things are done in writing; there are written forms for every action; there are brochures describing the requirements and the process and posted on notice board. These tell customers the preconditions for issuing a construction permit.
- Who approve buildings plans (designs): in connection with which type of buildings a sub-city is responsible for granting a construction permit? What about at the City level? What are the responsibilities of woreda? Code Enforcement Office?
- Each design is approved by the relevant professional and then finally verified by the Process Owner, in all three levels – woreda, sub-city and city. A construction permit is issued at City level for G+6 and above buildings (Category C); those constructed on above 5,000m² land; buildings for hospitals, colleges and above colleges and embassies, and constructions that are located on a border between two sub-cities. At sub-city level, for G+1 up to G+5 buildings (Category B) including demolition and modification of an existing building and at woreda level, for G+0 (Category A) and construction permit for renovations carried out without substantive and formal alterations. Code Enforcement Office is there to ensure that buildings undertaken within their area have valid construction or renovation permit and if they do not have it, issue stop order.
- Inadequacies in institution (in attracting and retaining competent professionals, number of relevant professional staff, availability of needed material resources, e.g., vehicles and equipment, and organizational stability)
- Inability to attract and employ competent professionals; those in the system are not adequate in a number and well versed in the task; professionals with relevant experience do not desire to stay long; they want to quit to start their own business; in some areas there are vacant positions, there are acute shortage of materials including vehicles and such shortage is adversely impacting professionals; there are frequent office changes having adverse impact on both employees and customers. Salary for the competent professionals is better relative to other government institutions; lack of job satisfaction; there is lack of organizational stability.
- Is there an administrative grievance handling mechanism in relation to a construction
- There is a system of compliant handling mechanism. It is adequate. First, the applicant should try to resolve the issue with the professional handling the job; failing this, the applicant can lodge compliant with a committee set up

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| <p>permit in your institution? Do you think that it is satisfactory? What are the problems associated with it?</p> | <p>to handle complaints and then to the Process Owner (Team Coordinator); there is an office called Land Management Compliant Handling Office to which grievance can be submitted; Sub-city Manager; then to the Manager of Construction Permit and Control Authority and then to Land Management and Development Bureau; but to the extent to which this is satisfactory is to be judged by clients. There are also suggestion forms and boxes.</p> |
| <p style="text-align: center;">5. Corruption</p> <ul style="list-style-type: none"> • Form of corruption involved in the course of granting or renewing a construction permit; situations that expose the staff to corruption (lack of adequate number of vehicles for site visit lack of adequate salary and allowances); behavior of the customer contribute to corruption | <ul style="list-style-type: none"> • Do not believe that there are factors that invite corruption in our institutions in respect of construction or renovation permit process. There are high level of follow, control and check in our activities; one file is considered by more than five professionals. Clients think that each and every activity in our institution is carried out on the basis of corruption; they manifest this in our day-to-day activities; customers tend to think that what has to be discharged by the professional as a matter of routine duty is discharged upon some form of bribery. Customers think that they cannot have their request processed without paying bribe. In relation to construction and renovation permits, professionals may create convenient situation for corruption by giving several appointments; but ‘ደንበኞችን ማጎላላትና በዚህ ለመጠቀም መሞከር ሊኖር ይችላል |
| <p>6. Other comments or suggestions</p> | <ul style="list-style-type: none"> • The working environment is unattractive for professionals who face periodic unnecessary evaluations of (gemgema) and suspension; then subsequent orders are issued abandoning attaching real effect to the evaluations and suspensions. These are threats and factors for professionals wanting to quit their jobs; there are cases where the law does not apply for all; it is applied in favor of those with relatives; there is no merit based recognition; lack of incentives to retain employees; lack of uniformity procedures, for example, requests for construction permits that are clearly prohibited by the Master Plan granted to some claiming that they are developmental investors; there is congestion at woreda level; the number of professionals is not proportionate to the volume of work • Trainings absolutely not relevant to the actual responsibilities of the professional are given from time to time; such trainings should be based on the actual tasks and assignments of the professional. • There are no mechanisms of improving rules and procedures that are bottlenecks on the basis of periodic and actual data. • In the age of technology, the institution is backward; since the working process is backward, it generates customer dissatisfaction. • Those in higher offices are not professionals and this creates misunderstanding between them and the professionals. • Situations are conducive for the emergence of <i>gudaye asfetsamiwoch</i> (middle men), i.e., the existence of repeated appointments has contributed to the appearance of ‘middle men’ who present themselves as facilitating the preparation of designs by insider professionals – the very professionals who approve such designs. |

Annex 3: Focus Group Discussion Guide

A. Requirements for issuing a construction permit

1. Requirements that must be fulfilled to obtain a construction permit
2. Specific requirements
 - a. Planning consent
 - b. Site visit
 - c. Soil test
 - d. Submission of a contract between a consulting engineer and a building owner
3. Process of obtaining a construction permit (from application to receipt of a permit)
4. Accessibility of construction permit requirements
5. Number of days taken to secure a construction permit
6. Amount of fee to get a construction permit

B. Legal and Policy problems

1. Legal problems in connection with a construction permit and planning consent
2. Issues related to Addis Ababa City's Master and structural plans

C. Institutional

1. Automation of a construction permit granting process
2. Division of power at center, sub-city and woreda levels in granting a construction permit
3. Putting it under Land Development and Management Bureau
4. Institutional inadequacies in attracting and retaining competent professionals, number of relevant professional staff, availability of needed materials and organizational stability
5. Administrative grievance handling mechanisms, their satisfactoriness and problems associated with them

D. Corruption

1. Corruption involved in the course of granting or renewing a construction permit
2. Situations that expose the staff to corruption including lack of adequate number of vehicles for site visit, salary and allowances
3. Contribution of customer behavior to corruption

Annex 4: Summary of Focus Group Discussion

Soil test is required for all constructions above G+0. Soil test is carried out by the builder himself/herself; we receive only the result but check it is carried by a professional licensed to carry it out as well as has paid tax for the current fiscal year. We do not know how long it takes and how much it costs. It costs from 6,000 to 20,000 Birr. Such contract is not required to be presented during a construction permit issuance; it is required before issuing a construction start permit. Reckoned based on cost of project and per floor area (Brochure)

There are legal problems in respect of a construction permit including frequent change of the legal rules and issuance of circulars, lack of knowledge of the customers about the City's Master Plan; lack of clarity in the law, gaps, lack of flexibility (e.g., the law says those who request for renovation permit shall not get if their house does not appear in the 1988EC GIS) no awareness creation mechanism in this regard; the prescription that the City's Master Plan is above construction permit rules; there are overlapping laws; the new Master Plan has created big gaps and conflicts with existing practices; conflicting rules (e.g., the law says neighbor consent is required and at the same time it says it is possible to undertake contiguous building); the law does not specify the level of professionals while that is necessary.

Not automated; tasks are accomplished manually but the process and the requirements are accessible and transparent because things are done in writing; there are written forms for every action; there are brochures describing the requirements and the process and posted on notice board. These tell customers the preconditions for issuing a construction permit. Each design is approved by the relevant professional and then finally verified by the Process Owner, in all three levels – woreda, sub-city and city.

Inability to attract and employ competent professionals; those in the system are not adequate in a number and well versed in the task; professionals with relevant experience do not desire to stay long; they want to quit to start their own business; in some areas there are vacant positions, there are acute shortage of materials including vehicles and such shortage is adversely impacting professionals; there are frequent office changes having adverse impact on both employees and customers. Salary for the competent professionals is better relative to other government institutions; lack of job satisfaction; there is lack of organizational stability.

There is a system of compliant handling mechanism. It is adequate. First, the applicant should try to resolve the issue with the professional handling the job; failing this, the applicant can lodge compliant with a committee set up to handle complaints and then to the Process Owner (Team Coordinator); there is an office called Land Management Compliant Handling Office to which grievance can be submitted; Sub-city Manager; then to the Manager of Construction Permit and Control Authority and then to Land Management and Development Bureau; but to the extent to which this is satisfactory is to be judged by clients. There are also suggestion forms and boxes.

Do not believe that there are factors that invite corruption in our institutions in respect of construction or renovation permit process. There are high level of follow, control and check in our activities; one file is considered by more than five professionals. Clients think that each and every activity in our institution is carried out on the basis of corruption; they manifest this in our day-to-day activities; customers tend to think that what has to be discharged by the professional as a matter of routine duty is discharged upon some form of bribery. Customers think that they cannot have their request processed without paying bribe. In relation to construction and renovation permits, professionals may create convenient situation for corruption by giving several appointments.

The working environment is unattractive for professionals who face periodic unnecessary evaluations of and suspension; then subsequent orders are issued abandoning attaching real effect to the evaluations and suspensions. These are threats and factors for professionals wanting to quit their jobs; there are cases where the law does not apply for all; it is applied in favor of those with relatives; there is no merit based recognition; lack of incentives to retain employees; lack of uniformity procedures, for example, requests for construction permits that are clearly prohibited by the Master Plan granted to some claiming that they are developmental investors; there is congestion at woreda level; the number of professionals is not proportionate to the volume of work . Trainings absolutely not

relevant to the actual responsibilities of the professional are given from time to time; such trainings should be based on the actual tasks and assignments of the professional.

Annex 5: List of interviewees

- 1) Ato Abdissa Mulugeta, Ministry of Urban Development, Housing and Construction, Construction Industry Development and Regulatory Bureau, Addis Ababa, March 2, 2015
- 2) Ato Addisu Yesuf, Head of Building Permit and Control Office, Akaki Sub-city, Addis Ababa, February 23, 2015
- 3) Ato Anteneh Sisay, legal expert, Addis Ababa City Administration Justice Bureau, February 4, 2015, Addis Ababa
- 4) Ato Fekadu Nega, Construction Permit Team Leader, Lafto Sub-city, Addis Ababa, February 15, 2015
- 5) Ato Habtamu Lemessa, Building Permit Team Leader, Kolfecheranyo Sub-city, Addis Ababa, February 16, 2015
- 6) Ato Hailu Haileselassie, Deputy Manager of Addis Ababa City Government Building Permit and Control Authority, February 4, 2015, Addis Ababa
- 7) Ato Hailu Lemma, legal expert, Gulele Sub-City, Addis Ababa, February 2, 2015.
- 8) Ato Lakew Abeje, Public Relations Expert, Ministry of Urban Development, Housing and Construction, February 4, 2015, Addis Ababa
- 9) Ato Nebiyu Getachew, Construction Permit Officer, Addis Ababa City Administration, Building Permit and Control Authority, February 10, 2015
- 10) Ato Tefera Zegeye, Consultant, Addis Ababa, February 2, 2015.
- 11) Ato Tegene Addis, Urban Engineer, Addis Ababa City Administration, Building Permit and Control Authority, February 10, 2015
- 12) Ato Wondwossen Worku, Building Permit Officer, Yeka Sub-city, Addis Ababa, March 1, 2015.
- 13) W/rt Atsede Abay, Manager, Land Bank and Transfer Office, Addis Ababa City Administration, February 4, 2015.

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