



## ORIGINAL RESEARCH PAPER

### **The Construction Industry and Engineering Laws in Somalia is in dire need of High Standard of Improvement**

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#### **ABSTRACT**

*The construction sector in Somalia is affected by issues that affect the quality of construction and often depend on the quality of the materials and workmanship, which can be controlled through proper application of the relevant laws. However, the specification standards and the construction regulations, which are the drivers of good quality construction, face many challenges. This paper was guided by the following objective; to examine the level of construction standard in Somalia. The study findings revealed that there are significant relationships between construction standard and instituted regulations in Somalia, construction standard helps improved the instituted regulations in Somalia This paper suggests that the government should actively work to safeguard and foster the expansion of the Somali construction industry as a purposeful and workable economic strategy meant to realize the industry's enormous potential, as has been the case in many other nations. The paper also recommends that; the federal government of Somalia should see to the effective adherence to the regulations as to improve relevant laws of the construction industry.*

**Keywords:** *Construction, Law, Building, Industry, Sector*

## **DEFINITION OF OPERATIONAL TERMS**

**Construction Industry:** An industry concerning Construction Works; this involves the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level; any road, harbor works, railway, cableway, canal or aerodrome; any drainage, irrigation or river control works; any electrical, mechanical, water, gas, petrochemical or telecommunication works; or any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works, and includes any works' which form an integral part of, including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping.

**Environment:** A combination of the various physical, geographic, biological, cultural and political elements that affect the life of an individual or organism.

**Industry:** Means the construction industry.

**Stakeholder:** Any person or institution with interest in the industry.

## 1. INTRODUCTION

Global construction work done will grow over US\$4.2 trillion over the next 15 years from US\$9.7 trillion in 2022 to US\$13.9 trillion by 2037.<sup>1</sup> The construction sector is widely acknowledged as among the top accelerators of prosperity owing to its role in the economic uplift through employment generation. The industry, in the same way, plays a vital role by being a leading source of income within the formal and informal sectors.<sup>2</sup>

The construction industry in Somalia comprises both the construction and the civil engineering activities. The construction industry plays an important role to the Somali economy by providing the physical infrastructure of the country. It also plays a vital role in the economic development of the country by creating business opportunities for suppliers of construction materials, manufacturers of construction machinery, private contractors, material laboratories and by providing employment opportunities for project managers, consultants, skilled workers (architect, surveyor and engineer), among others.

Building structures often collapse due to a lack of regulations and laws as well as a lack of knowledge about building materials. In Mogadishu, the dilapidated buildings collapses as a result of building owners' negligence or improper maintenance or repairs by the owner of the building. This is often done to save money; maintaining buildings can be expensive, and the larger the building, the higher the costs and to make matters worse the new construction building collapsed because of the low quality of construction. According to Mr. Abdalla Diblawe, a business developer (Buruuj Construction Com.), the building which still under construction, allegedly collapsed due to ill-supervision by unqualified engineers and ignoring of the construction conditions. There may not have been the proper procedures followed in the construction of many buildings in the city, but neither the Banadir Region Administration (BRA) nor the Ministry of Public Works and Reconstruction have established any laws or regulations that one must take into account before beginning a commercial or residential building.

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<sup>1</sup> Andy Brown et al; 'How much will the global construction industry be worth by 2037?' (2023) <https://www.international-construction.com/news/how-much-will-the-global-construction-industry-be-worth-by-2037-/8031247.article>. Accessed 20/11/2023

<sup>2</sup> W. O. Omollo, 'Barriers to the Effective Regulation of the Building Construction Industry: An Empirical Analysis' (2019), *Journal of Construction Business and Management* JCBM' 3(2). 49-58 available at [file:///C:/Users/hp/Downloads/moghayedi,+Journal+manager,+745+Final%20\(1\).pdf](file:///C:/Users/hp/Downloads/moghayedi,+Journal+manager,+745+Final%20(1).pdf). Accessed 24/10/2023

On 31<sup>st</sup> August, 2023, an eight-story building collapsed onto other houses below, causing death and injury to the building's neighbors, the police are still conducting investigations on what caused the mess but the local reports say that this floor was originally intended to be a four-story building, but four more floors were added that were not included in the previous plan. The city of Mogadishu witnessed two more incidents of buildings collapsing, taking the total number of such incidents to two in just two months. The building in question was a new one, which probably calls for tighter inspection and safety audit of the structures not only in Mogadishu central business district, but in major towns and urban centers across the country.

People in the neighborhood said the death toll would have been higher if the incident happened on a day because there are hundreds who set up their business near the fence of the building at the Bakara Market, the biggest of its kind in Somalia (*See*, appendix 1).

## **2. In the event of a building collapse, who bears responsibility?**

Cases involving building collapses are complex. Multiple parties might be liable, and the records can stretch back decades. Some of the potentially liable parties might include among others Contractors, Builders, Engineers, Inspectors and even the owners as well as Architects. *Under Article 591 of the Somali Civil Code 1973*, states that an architect is only held liable for deficiencies in his plans if he consents to the preparation of the plans without being given the authority to execute them.

The collapse of buildings is also the responsibility of the Government of Somalia, as they have failed to put in place a legal framework to ensure the safety of the inhabitants of the city, it has a significant impact on the construction and demolition of houses. The current laws which governing the construction is either outdated nor does not existed.

According to the UN National Policies Review Report, 2011, the ineffectiveness of the regulators is a reflection of the shortcomings of the laws that established the institutions and defined their mandates. A combination of laws that do not empower institutions to act and a narrow scope of mandate have rendered them even weaker.

### 3. Legal Framework for the Construction Sector in Somalia

Construction of building in Somalia is an aspect that is generally regulated by numerous laws, while there are no specific laws governing building construction in the country, for example the Physical Planning Act and Building Control Act among others. The following laws will be discussed in the section below:

#### *A) The Constitution of Somalia 2012*

According to *Article 43 of the 2012 constitution* states that the land shall be held, used and managed in an equitable, efficient, productive and sustainable manner. The *Environmental Protection and Management Act Bill*, under article 5 provides that every person has a right to clean and healthy environment in accordance with the constitution and the principle of sustainable development. The Federal Government shall give priority to the protection, conservation, and preservation of the environment against anything that may cause harm to natural biodiversity and the ecosystem as per article 45 of the constitution. It is a duty to every person to safeguard and enhance the environment and participate in the development, execution, management, conservation and protection of the natural resources and environment.

*Under article 43 (5) of the constitution of Somalia* concludes that the Federal Government, in consultation with the Federal Member States and other stakeholders, shall regulate land policy, and land control and use measures.

#### *B) Banadir Region's Land Building Law No. 41 of September 13, 1973*

The power of land distribution was given to the Banadir region. It is important to note that, the majority of land construction were centered in Mogadishu city and there were little concerns to build in rural areas or other township since the population density was very low. The main responsibility of Banadir Region is to plan, design and managing City physical infrastructure including the zoning and demarcating areas for development. The local government of Mogadishu shall determine the land for residential, industrial areas, commercial centers, public interest and security-wise as per article 3 of the said law.

#### *C) The Urban Land Distribution law of 1973*

Land in urban areas can be given out Permanently or Temporarily. Permanent use of urban land is to be authorized by the Office of Administration, Ministry of Public Works, or its representatives in the regions and districts. Land for permanent development, referred to as *daminyaale* land. The term *daminyaale* is presumably derived from the Italian reference to 'domanial lands. *Daminyaale* land included all land adjacent to the city's primary tarmac thoroughfares at the time.

Land for temporary use, referred to as *munishibaale* land. The term *munishibaale* derived from the Italian 'municipale' referring to local municipal government. and on which permanent structures could not be built without upgrading the status of the land to *daminyaale*. The temporary use of land can be issued by local government authorities according to Article 21.

Under *Article 27 of the Urban Land Distribution Law* also provides that all land shall be registered with the Land Administration Department and all settlements were required to follow strict zoning rules issued by the Ministry of Public Works according to Article 24.

***D) Banadir Region's Land Building Law No. 10 of November 17, 1980***

According to *article 1 of the Banadir Region's land Building* states that the local governments/Districts of the Democratic Republic of Somalia shall be in charge of managing and providing land for construction in any area of the Republic following the enactment of this law. The same law emphasis that the Banadir Administration shall have the sole power of land for construction in any part of the Republic after the effective date of this law as *per article 2*. While Each piece of land offered shall be based on a standard that has been approved in accordance with Article 3. The standards of each district shall be approved by the Minister of Public Works. See *article 3 (3) of the same law*.

***E) Banadir Region's Land Building Law No. 48/bis, 1<sup>st</sup> September of 1981, Procedures and Land division of Banadir Region***

The aforementioned law was established by presidential decree, which is one of the decrees that judges, lawyers and other members of the judiciary use the most. Considering that, it outlines the procedures and methods for obtaining a building permit on the land you are planning to construct on. *Under article 9 of this presidential decree law. No. 48/bis* states that '... the applicant is given two copies of the land to make the design of the building'. While *article 10 of the same law* mandates that when the applicant submits the building plan for the land, three copies of that building plan must also be submitted to the authority, as well as technical information and a request for approval of the construction plan.

Article 18 stipulates that when the construction is finished and ensure that the building is in accordance with the previous approved designed, the owner shall obtain a certificate of occupancy of the premises (*Cartificato di Apitabilit o Servibilita*).

### ***F) The Somali Civil Code 1973***

Although there was no Occupier's Liability Act which was specifically enacted in Somalia but some of the principles underlying the occupier's liability doctrine are evident in the *Somali Civil Code of 1973*. The Occupier's Liability is concerned with the duty of occupier's to take care of ensuring the safety of persons within the premises. The occupier is sometimes the land owner but can also be a tenant, an employee or agent. Although it suggests physical occupation, 'occupier' really means someone who controls the land. Occupiers' liability is a specific type of negligence involving damage caused by the breach of a duty of care.<sup>3</sup>

Under *Article 160 of the Somali Civil Code 1973* provides that: "Every wrongful act or omission which results in the infliction of injury on another person shall be the sole responsibility of the person(s) to whom it is attributed." The same code under article 162 states that '...a person is not liable to make reparation if he proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, *force majeure* among other...'

#### ➤ **Other related provisions: -**

*Article 166 of the civil code* provides that when multiple people are held liable for an injury, they are jointly and severally liable to pay compensation for that injury. The responsibility is shared by all of them unless the Judge determines otherwise.

*Article 174(1)* provides that a building owner is liable for losses resulting from the collapse, even if the collapse is only a partial one, unless the owner can demonstrate that the accident did not occur as a result of negligent maintenance, or the age of, or a defect in the building. While *paragraph 2* states that a person who is in danger of being harmed by a building has the right to request that the owner take the necessary precautions to eliminate the risk. If the owner refuses to do so, the person should seek a court order allowing him to take the necessary precautions himself at the owner's expense.

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<sup>3</sup> James, Fleming. "Tort Liability of Occupiers of Land: Duties Owed to Licensees and Invitees." (1954) *The Yale Law Journal*, vol. 63, no. 5, 1954, pp. 605–38. *JSTOR*, <https://doi.org/10.2307/793613>. Accessed 20 Nov. 2023.

#### 4. Institutional Framework for the Construction Sector

Somalia has established some institutions in the construction sector to regulate, oversee and develop the sectors. However, there is a lack of coordination in terms of institutional alignment, and ease of doing business. The regulatory environment within which the industry operates is extensive as it cuts across various sectors and jurisdictions. Again, the level of awareness among industry stakeholders is low. The Somalis construction industry lacks the capacity to implement the construction objectives of the country.

Given the importance of the construction industry and its complexity in the contemporary society, no government can afford to ignore the operations of her construction industry, not just because of her importance in realizing government objectives but also because of her export potentials.<sup>4</sup>

##### A. The Ministry of Public Works, Reconstruction and Housing

The Ministry of Public Works, Reconstruction and Housing is a cabinet-level government Ministry of Somalia. The Federal Ministry of Public Works, Reconstruction and Housing is responsible for managing, building and rehabilitating federal government buildings and the infrastructure of the country. The Ministry has always been the custodian authority of all infrastructures, buildings, bridges, highways and roads, land plots, land tenure, national infrastructure policy and urban planning in Somalia.

##### ➤ Organizational Structure

From an administrative point of view, the Ministry is divided into a Ministry, a Deputy Minister, a State Minister and the General Director as well as a group of ten (10) departmental directors. Such as departmental directors of urban Planning and development, Surveys and Mapping, Human resource, Admin and finance, Quality Control, Housing, Registration, Reconstruction, Projects and departmental director of environment. These departments can be dissolved at the discretion of the Ministry at any time.

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<sup>4</sup> A.N. Aniekwu, 'Government Role in Developing the Construction Industry in Nigeria' (2003), Published in Research-Gate, available at

[https://www.researchgate.net/publication/267026082\\_GOVERNMENT\\_ROLE\\_IN\\_DEVELOPING\\_THE\\_CONSTRUCTION\\_INDUSTRY\\_IN\\_NIGERIA](https://www.researchgate.net/publication/267026082_GOVERNMENT_ROLE_IN_DEVELOPING_THE_CONSTRUCTION_INDUSTRY_IN_NIGERIA). Accessed 24/10/2023



## **I. Company Registration Permit Fees**

The Ministry sets fees for building constructors companies without any written laws and regulations. According to this un-gazzated “rules” concerns about building constructors company fees paid by the developer or companies for the construction and inspection of the building. According to this study confirms such existence of payments from inside sources at the Ministry of Public Works, Reconstruction and Housing of the Federal Republic of Somalia.

According to our insiders, the fees shall be used to scrutinize drawings, plans, and documentation including verification of applications for the building permits. There are three classes for the building permit fee structure, each with different rates. The categories are classes A which pays at amount of \$2000 dollars for registration, Class B, will be charged with \$1500 dollars and the last Category C will have a rate of \$500 dollars. This price is based on the projects that can be implemented. For instance, the business that registered for \$2,000 is able to carry out large-scale, unlimited projects of real estates.

## **II. Banadir Region Administration (BRA)**

The Authority of the Banadir Region, where the country's capital Mogadishu is located, permits are issued to owner-builders to pay a rate per square meter prior to the commencement of a construction project takes off, the owner is required to get permits giving it a greenlight. For instance, if your plot size is 20m × 20m that equivalent to 400sqm shall pay each meter square 2.2 dollars, totaling to 880 dollars (400x2.2 dollars = \$ 880). To put things into perspective, high-rise apartment buildings from the ground floor to the third floor will pay the same amount as previously mentioned; however, the cost will differ on the fourth and subsequent floors, where it will be only 1.5 dollars per square meter as opposed to 2.2 dollars.

## **B. Somali Construction Agency**

The Somali Construction Agency was established in 1974 as a government organization which is an independent authority. It may be sued or be sued as *per article 1 (2) of the Somali Construction Agency Law no.11 of 1974*. The mandate of this agency is to build road, houses, ports, airports, bridges or any other building which owns the government.

## **CONCLUSION**

It was important to conclude that quality control, resource planning, contractor's competency and construction policies were the major issues that must be looked in to for the successful regulating building construction work and that Somali construction agency has a lot on regulation of building construction in Somalia. It is unfortunate that you cannot get any information about the government unless you go to the relevant offices and institutions. The constitution of Somalia mandates that any information held by the government shall be shared to the general public but all in vein. While I was looking for this information about construction buildings, it took me a lot of time which I did not expect but the challenge came from the information held by the government and the Banadir administration.

*Appendix*



*Before*

*this very new building Collapsed on August 2023, Mogadishu- Somalia*



*After a building collapse*

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