

SITUATIONAL ANALYSIS

of the Development of Regulation for Private
Employment Agencies in the Federal Republic of Somalia



SITUATIONAL ANALYSIS

**of the Development of Regulation for Private
Employment Agencies in the Federal Republic of Somalia**

► FOREWORD

Labour migration and employment continue to play an immense role in Somalia's economic development as well as in regional and global cooperation. The Federal Government of Somalia has made notable progress in strengthening migration governance, including the ratification of key international labour standards, such as ILO Conventions C097 - Migration for Employment Convention (Revised), 1949 (No. 97) [ILO NORMLEX](#), C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) [ILO NORMLEX](#), C181 - Private Employment Agencies Convention, 1997 (No. 181) [ILO NORMLEX](#). These developments reflect the Government's growing commitment to promoting fair recruitment, protecting the rights of all workers, and establishing a transparent and accountable regulating framework for the operation of private employment agencies.

This Situational Analysis marks a critical step toward the development of a national regulatory framework for Private Employment Agencies (PrEAs) that is grounded in international best practices, and in line with the [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#). The report offers a comprehensive assessment of Somalia's current legal, policy, and institutional landscape concerning the operations of PrEAs and the broader context of labour migration. It highlights significant challenges, including the absence of a unified regulatory framework, the suspension of licenses in 2022, and high levels of irregular migration.

Developed through a participatory, inclusive, and evidence-based approach, this analysis reflects the views and inputs of a broad spectrum of stakeholders, including government ministries, employers' and workers' organizations, civil society representatives,

private employment agencies and development partners. It acknowledges the essential role that a well-regulated and rights-based PrEA sector can play in promoting decent work, expanding access to regular migration pathways, and advancing fair recruitment in Somalia and abroad.

The report further emphasises the urgency of restoring public trust in formal recruitment processes and strengthening institutional capacities, including the operationalisation of a Labour Market Information System (LMIS) and the establishment of effective monitoring and grievance mechanisms. These efforts are essential to ensuring that all recruitment actors adhere to standards that safeguard workers' rights and well-being throughout the migration cycle.

The Ministry of Labour and Social Affairs (MoLSA), with the support from the ILO through the Better Regional Migration Management (BRMM) Programme, funded by the UK Foreign Commonwealth and Development Office (FCDO), remains committed to building a transparent, coordinated, and gender-responsive regulatory framework. This includes supporting the development of a new legislative proposal for PrEAs that reflects Somalia's national development priorities while upholding international labour standards.

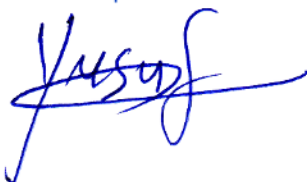
As Somalia moves forward in establishing a fair and well-governed recruitment environment, this Situational Analysis provides the foundation upon which regulatory reform can be built. It offers critical insights and practical recommendations that will guide the development of a more accountable, efficient, and inclusive recruitment practices – one that protects the rights of all workers and contributes meaningfully to national development.



Mr. Ndaba, Khumbula

Director, ILO Country Office for Ethiopia, Djibouti, Somalia, Sudan and South Sudan & Special Representative to the African Union and the United Nations Economic Commission for Africa

H.E. Yusuf Mohamed Aden
Minister of Labour and Social Affairs
Federal Republic of Somalia



First published 2025.

Attribution 4.0 International (CC BY 4.0)

This work is licensed under the Creative Commons Attribution 4.0 International. See: creativecommons.org/licenses/by/4.0. The user is allowed to reuse, share (copy and redistribute), adapt (remix, transform and build upon the original work) as detailed in the licence. The user must clearly credit the ILO as the source of the material and indicate if changes were made to the original content. Use of the emblem, name and logo of the ILO is not permitted in connection with translations, adaptations or other derivative works.

Attribution – The user must indicate if changes were made and must cite the work as follows: *Reporting on forced labour, fair recruitment and labour migration in the East and Horn of Africa regions*, Geneva: International Labour Office, 2025. © ILO.

Translations – In case of a translation of this work, the following disclaimer must be added along with the attribution: *This is a translation of a copyrighted work of the International Labour Organization (ILO). This translation has not been prepared, reviewed or endorsed by the ILO and should not be considered an official ILO translation. The ILO disclaims all responsibility for its content and accuracy. Responsibility rests solely with the author(s) of the translation.*

Adaptations – In case of an adaptation of this work, the following disclaimer must be added along with the attribution: *This is an adaptation of a copyrighted work of the International Labour Organization (ILO). This adaptation has not been prepared, reviewed or endorsed by the ILO and should not be considered an official ILO adaptation. The ILO disclaims all responsibility for its content and accuracy. Responsibility rests solely with the author(s) of the adaptation.*

Third-party materials – This Creative Commons licence does not apply to non-ILO copyright materials included in this publication. If the material is attributed to a third party, the user of such material is solely responsible for clearing the rights with the rights holder and for any claims of infringement.

Any dispute arising under this licence that cannot be settled amicably shall be referred to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of such a dispute.

For details on rights and licensing, contact: rights@ilo.org. For details on ILO publications and digital products, visit: www.ilo.org/publns.

ISBN

9789220421611 (print)

9789220421628 (web PDF)

DOI

<https://doi.org/10.54394/MXVR8188>

The designations employed in ILO publications and databases, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the ILO concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers or boundaries. See: www.ilo.org/disclaimer.

The opinions and views expressed in this publication are those of the author(s) and do not necessarily reflect the opinions, views or policies of the ILO.

Reference to names of firms and commercial products and processes does not imply their endorsement by the ILO, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Printed in [country] if only printed

► ACKNOWLEDGEMENTS

This report was prepared by Sten Toft Petersen, International Consultant. The Author would like to use this opportunity to convey his appreciation to the ILO Management in Addis and the Project Team, headed by Ms Aida Awel, Chief Technical Advisor, Better Regional Migration Management Programme. They provided support and guidance throughout the process, as well as valuable comments and inputs to the report.

The Author would also like to thank the ILO constituents and stakeholders in Somalia, especially the key officials from the Government of Somalia, who provided valuable and highly qualified input, which was very much appreciated. They demonstrated a commitment and vision that allowed the PrEA legislative framework to be developed further and implemented successfully, to the benefit of the recruited workers, the business and the PrEAs.

The drafting of this report was made possible through the Federal Government of Somalia's generous sharing of knowledge and information. The Author would like to express his special thanks to the Ministry of Labour and Social Affairs, the Ministry of Foreign Affairs and International Cooperation and the Ministry of Justice for their active participation in the discussions.

▶ Table of contents

▶ Abbreviations and acronyms	2
▶ Executive Summary	4
▶ 1. Introduction	6
▶ 2. Brief overview of the recruitment context	10
▶ 3. Analysis of policies	16
▶ 4. Brief Overview of Private Employment Agencies	20
▶ 5. Purpose of Analyses	22
5.1 Importance of Legal Frameworks for Regulation	23
▶ 6. Previous Legal Frameworks and their Impact	24
▶ 7. Global/Regional Perspectives on Regulation	26
▶ 8. Current National Legal Framework	28
8.1 Data protection	38
8.2 Employment and Labour Laws	39
8.3 Anti-Discrimination Laws	39
8.4 Licensing Requirements	40
▶ 9. International Conventions and Treaties	41
9.1 Ratification and Adherence	42
9.2 Impact on Domestic Regulations	42
9.3 Impact on Cross-Border Recruitment	42
▶ 10. Regulatory Authorities	43
10.1 Government Agencies Responsible for Oversight	44
10.2 Existing Coordination Mechanisms	45
10.3 Institutional Capacity	46
10.4. Worker Rights and Protections	46
▶ 11. Recommendations and Conclusion	47
11.1 Recommendations	48
11.2 Conclusion	52
▶ Annex I: List of documents reviewed during the inception phase	53
▶ Annex II: List of informants	54
▶ Annex III: Inputs for Future Development of Guidelines	55

► Abbreviations and acronyms

AMISOM	African Union Mission in Somalia
ASLA	Association of Somali Labour Agencies
BLA	Bilateral Labour Agreement
CIA	Central Intelligence Agency
CoC	Code of Conduct
COMESA	Common Market for Eastern and Southern Africa
DWCP	Decent Work Country Programme
EHOA	East and Horn of Africa
FEA	Foreign Employment Act
FES	Federal Employment Service
FGS	Federal Government of Somalia
FoA	Freedom of Association
FRS	Federal Republic of Somalia
GDP	Gross Domestic Product
GPOGFR	General Principles and Operational Guidelines for Fair Recruitment
ICT	Information and Communication Technology
IDP	Internally Displaced Persons
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
ILS	International Labour Standards
IOM	International Organization for Migration
KSA	Kingdom of Saudi Arabia
LA	Labour Attache
LC	Labour Code
LMIS	Labour Market Information System
MFA	Ministry of Foreign Affairs
MOLSA	Ministry of Labour and Social Affairs
MSME	Micro, Small and Medium Enterprises
NEP	National Employment Plan
NGO	Non-Governmental Organization
OEG	Overseas Employment Guideline
OHS	Occupational Health and Safety
PrEA	Private Employment Agency

SCCI	Somalia Chamber of Commerce and Industry
SDG	Sustainable Development Goal
SNDP	Somalia National Development Plan
TVET	Technical Vocational Education and Training
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugee

► EXECUTIVE SUMMARY

Somalia serves as a country of origin, transit, destination, and return for both inward and outward migration across the Horn of Africa and beyond, encompassing both voluntary and forced migration. Decades of crises, including civil unrest, the COVID-19 pandemic, and the impacts of climate change such as floods, have led to high levels of poverty and unemployment in Somalia. Consequently, many Somali people are seeking refuge and employment abroad. According to the 2020 United Nations Department of Economic and Social Affairs (UNDESA) international migrant stock,¹ 2,034,221 Somali migrants live outside the country, with the majority residing in the United Kingdom, the Netherlands, Norway, Sweden, the United States, Saudi Arabia, Canada, and Australia. Meanwhile, the 2021 IOM Displacement Tracking Matrix (DTM) Report for Somalia indicated that there were 121,671 movements into Somalia, with 66 per cent originating from Ethiopia, 13 per cent from Kenya, and 10 per cent from Djibouti.²

There is also a significant amount of irregular mobility out of Somalia. A majority of those who migrate often choose irregular channels, exposing themselves to risks of exploitation and maltreatment by employers in destination countries and sometimes putting them at a higher risk of being trafficked. Most migrants' journeys fall under three main routes: crossing by sea to Yemen (which has become less popular since 2015 due to the conflict in Yemen) and then moving on to the Gulf countries; travelling south through Kenya to South Africa; and travelling west through Sudan and Libya, hoping to cross the Mediterranean Sea and reach Europe. In several countries private employment agencies (PrEAs) often play a key role in facilitating a safe and smooth labour migration process.

In Somalia, the 2015 Foreign Employment Act,³ regulates labour migration to Somalia and outlines the procedures for obtaining work permits for migrant workers wishing to work there. However, the Act lacks any mechanisms to protect against violence, harassment, discrimination in the workplace, or to provide access to complaint mechanisms. Conversely, the 2018-2019 Overseas Employment Guideline for Somali migrant workers include procedures for registering and licensing Private Employment Agencies (PrEAs), complaint mechanisms, employment contracts for migrant workers, penalties for unlawfully sending migrant workers overseas, social security provisions, labour inspection, and support for the reception and return of migrant workers. However, the implementation of the guideline is stalled due to complaints from PrEAs regarding certain terms and conditions, particularly the registration fees, and not being included in the consultation process during the drafting of the guidelines. Consequently, in 2022, the government revoked all PrEA licenses for recruiting Somali migrant workers to work abroad, rendering all PrEAs officially inactive since then.

In 2021, the Federal Government of Somalia (FGS) ratified relevant ILO Conventions that protect migrant workers, specifically Convention Nos. 97 and 143 as well as Convention No. 181 concerning Private Employment Agencies. The ratification of Convention No. 181 is seen as a positive indicator of the role of Private Employment Agencies in developing the recruitment industry in Somalia.

With this understanding, the FGS with the support of the ILO, is in the process of developing a Regulatory Guideline and legislative proposal (regulation) for PrEAs that is in line with International Labour Standards (ILS), General Principles and Operational Guideline for Fair Recruitment (GPOG)⁴ and ILO Guides on PrEA.⁵ The proposed regulation aims to facilitate the fair recruitment of migrant workers in and from Somalia and ensure the protection of their workers.

1. https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf

2. IOM (2021) Displacement Tracking Matrix (DTM) Report for Somalia

3. <https://molgov.so/federal-government-of-somalia-foreign-employment-act/>

4. <https://www.ilo.org/resource/ilo-general-principles-fair-recruitment>

5. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/instructionalmaterial/wcms_083275.pdf

To ensure the comprehensiveness of the regulation and establish a solid foundation, a situational analysis of the current regulatory landscape and the context in which PrEAs are operating in Somalia is conducted as a initial step. The use of a participatory multi-stakeholder approach in developing this analysis fosters a sense of ownership for the proposed regulatory framework.

Key findings and recommendations of the analysis are developed based on extensive document reviews, interviews with key informants, and a consultative workshop with relevant stakeholders, including ILO constituents and inactive PrEAs.

The situational analysis provides an overview of the recruitment context in Somalia, including an examination of the legal frameworks governing labour migration and regulating Private Employment Agencies (PrEAs), the nature and conditions of work for terminated PrEAs, and the existing role of regulatory authorities. Furthermore, the analysis incorporates global and regional perspectives regarding labour migration and fair recruitment, including relevant international labour standards, conventions, and treaties, to which Somalia is a party or has expressed commitment through ratification or endorsement.

Finally, the report offers a set of recommendations to better guide the development of Regulatory Guidelines and legislative proposals (regulation) concerning PrEAs in Somalia. These recommendations address the three main areas of anticipated PrEAs activities:

. First and foremost, the report emphasizes the importance of revising existing legal frameworks or developing accompanying regulations to enhance the role of PrEAs in strengthening the national labour market in Somalia. However, regardless of the framework established for regulating the work of PrEAs, the major challenge will be to ensure smooth, fair, and transparent implementation. The implementation, particularly regarding regulation, monitoring, and evaluation, will require strong engagement from various ministries and their inter-ministerial coordination. The analysis suggests leveraging the expertise and insights of social partners, namely employers' organizations and workers' organizations, to strengthen the framework and its implementation.

The FGS is currently engaged in negotiating and signing Bilateral Labour Migration Agreements (BLMAs) with key destination countries for Somali migrant workers. The report recommends substantially strengthening this process by adopting a methodologies aligned with International Labour Standards and the ILO's instruments regarding Bilateral Labour Migration Agreements, particularly Recommendation No. 86 and the UN Guidance on Bilateral Labour Migration Agreements,⁶ and the AU and IGAD Guidelines on development bilateral labour agreements (BLAs).^{7,8} it also suggests reviewing restrictions affecting specific groups of migrant workers.

The report further recommended reviewing the procedures for issuing work permits to inward migrant workers to reduce administrative burdens improve the business environment, and enhance conditions for critical sectors facing labour shortages. Additionally it recommends the establishment of minimum requirements for licensing and renewing PrEAs, including enhancing their legal compliance professional capacity.

Overall, the analysis acknowledges and confirms that the governmental structures for handling and monitoring in- and outgoing labour migration lack capacity. The government also lacks the required resources to ensure safe and fair labour migration. If regulations and guidelines for PrEAs activities were put in place, they could play an important and positive role and contribute to turning PrEAs into mature partners for the Government in the future.

6. https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources_files/blma_guidance_final.pdf

7. [41106-wd-GUIDELINES ON DEVELOPING BILATERAL LABOUR AGREEMENTS BLAs-ENGLISH 0.pdf \(au.int\)](#)

8. [IGAD Regional Guidelines on Rights Based Bilateral Labour Agreements \(BLAs\) - IGAD](#)

1



INTRODUCTION

The objective of this Situational Analysis is to provide information about the regulatory context in which Private Employment Agencies (PrEAs) currently operate in Somalia concerning worker recruitment. This information is intended to serve as an evidence base for developing a legislative framework.

The Situational Analysis aims to ensure the adequacy of the current legislative framework regarding existing recruitment practices in Somalia (including the Labour Code, which is currently in development) while also aligning it with the relevant regional agreements and international labour standards, guidelines, and commitments. Examples include the Global Compact for Safe, Orderly, and Regular Migration; the SDGs; and the ILO's standards, particularly C181, which Somalia has ratified, along with its general principles and operational guidelines for fair recruitment and the definition of recruitment fees and related costs.⁹

Private Employment Agencies could play a significant role in the labour market. Together with Public Employment Agencies, they could offer an alternative means of job matching, as their primary service, in the future. Registered Private Employment Agencies in Somalia would need to be strengthened and operate under a clear legal framework to effectively match job seekers with employment opportunities by recruiting Somali migrant workers for employment abroad, migrant workers for employment in Somalia, and Somali nationals for work within Somalia.

The current analysis of the framework regarding the activities of private employment agencies in Somalia examines the opportunities and challenges from various perspectives:

- Available data
- Political environment
- Legislation

The author hopes this analysis will aid in understanding the circumstances under which new regulations can align with regional and international frameworks, enhancing fair and effective labour migration governance for Somali workers seeking employment abroad and for the recruitment of migrant workers in Somalia. This is achieved by promoting fair recruitment principles that align with the ILO's General Principles and Operational Guidelines for Fair Recruitment (GPOGFR)

The analysis aimed to provide evidence supporting the enhancement of regular migration and the strength of data management. On the one hand, it included information on migrant workers in Somalia categorized by country of origin, sector of employment, and geographical scope. On the other hand, it presented data on Somali migrant workers based on their country of destination and occupation sector. However, all informants acknowledged that the available data was insufficiently reliable.

It is understood that stakeholders, particularly the PrEAs, felt excluded during the development of the previous regulations governing employment agency activities (Overseas Employment Guideline 2019 (OEG)). As a result, they have refused to comply with the OEG's rules and regulations. Therefore, it was crucial to adopt a participatory approach with the various stakeholders to foster a sense of ownership regarding the proposed regulations. The high number of outbound irregular labour migrants indicates that the current framework in place, where individuals operate independently, is not appealing to them.

This analysis is based on a desk review, interviews with key informants, and a workshop with representatives from the industry and ILO constituents. The goal was to determine which regulations and procedures would be manageable for the representatives while also ensuring protection for the rights and well-being of employees recruited through or by the PrEAs. Additionally, this analysis acknowledges a previous attempt to introduce regulations that did not adequately address the industry's needs. This participatory approach was chosen to foster a sense of ownership toward the proposed regulations and guidelines, as it was determined that

9. https://www.ilo.org/global/topics/fair-recruitment/WCMS_536755

the legislative framework would only be effective and implementable if potential migrant workers and PrEAs could see themselves reflected in it. Furthermore, considering the development of a proposal for new regulations and the available institutional capacity in Federal and State labour administration, it is clear that the authorities alone cannot ensure compliance. Monitoring and complaint mechanisms must be established, which will require industry self-regulation supported by tri-partite supervision to enhance implementability and optimize compliance.

Definition of Private Employment Agencies

This analysis uses the definition of private employment agencies given in ILO Convention C181, Article 1.1:

For the purposes of this convention, the term 'private employment agency' refers to any natural or legal person, independent of public authorities, that provides one or more of the following labour market services:

- (a) services for matching job offers and applications for employment without the private employment agency becoming a party to any employment relationships that may arise from it.
- (b) services that involve employing workers in order to make them available to a third party, which may be a natural or legal person (referred to below as a 'user enterprise') that assigns their tasks and supervises the execution of these tasks.
- (c) additional services related to job seeking, determined by the competent authority after consulting with the most representative employers' and workers' organizations, such as providing information which does not aim to match specific job offers and applications for employment.

In the proposed (but not adopted) new Somali Labour Code an 'employment agency' is defined as:

"Employment agency means any person, company, institution, agency or other organisation, whether public or private, who or which acts as a go-between for the purpose of procuring employment for an employee with a view to profit, including levying from either an employer or employee an entrance fee, a periodical contribution or any other charge".

Given the above, the PrEAs that are registered in Somalia should have the authority to recruit Somali workers for employment abroad, migrant workers for employment in Somalia, and/or Somali nationals for work in Somalia.

This analysis and the suggested guidelines address all three aspects (as listed above), aiming to establish a single legal framework for the activities and operations of the PrEAs, which includes recruiting Somali workers for employment abroad, migrant workers for employment in Somalia, and Somali nationals seeking work within Somalia. However, based on research into the current context, it is anticipated that the majority of the PrEAs' clients will be Somali workers going abroad.

Groups of migrant workers currently using, or potentially using, services for PrEAs to work in Somalia: There are currently two main groups of labour migrants coming to Somalia. One consists of skilled individuals (e.g., healthcare workers, engineers, and international experts). These individuals typically receive higher wages and have better access to information about their rights. Often, they are employed by foreign companies or organizations and are therefore not recruited by Somali PrEAs. This category of employees is generally well-protected and has the ability to defend their rights. The second group of incoming labour migrants occupying lower-paying jobs, some of whom are in transit. These workers are hired directly by employers, with PrEAs rarely involved in this segment of labour migration. A third group of potential clients recruited by PrEAs for work in Somalia consists of Somali citizens; however, this segment appears to be limited thus far. The focus here is primarily on individuals with higher education.

As this market is expected to expand over time, particularly as manufacturing industries develop in the country, it is suggested that these workers also be included in the PrEA regulations

This report analysed as much quantitative and qualitative data as possible to identify all the relevant results from each data set. These were compared and triangulated to recognize any areas of convergence as well as potential contradictions before drawing conclusions. The report utilized the data, information, and opinions of the stakeholders to triangulate, enhance, and clarify the quantitative data obtained from the documents

The gender dimension was considered a cross-cutting concern throughout the analysis. The needs of vulnerable groups, including people living with disabilities, were also taken into account when considering initiatives regarding the regulation of PrEAs. Social dialogue and international labour standards were deemed essential in the development of new initiatives and regulations.



2

BRIEF OVERVIEW OF THE RECRUITMENT CONTEXT

After three decades of state disintegration, conflict, and continuous displacement, Somalia now displays relatively promising signs of increased stabilization and recovery. Following the conclusion of the presidential elections on 15 May 2022, the country moved past a political stalemate and facilitated a peaceful transfer of government. Furthermore, government authority and services are gradually being established, although insurgency, poverty, inter-communal conflict, and natural disasters threaten the stability and developmental gains. A high vulnerability to livelihood shocks and limited economic diversification continue to contribute to food insecurity and push a large portion of the population toward migration, both internally and externally abroad. Over recent years, Somalia has faced the worst drought in decades, followed by consecutive heavy rain fails, which have destroyed crops and pushed food and fuel costs upwards. Seven million people – out of a population of 16 million – are estimated to be at risk of famine.¹⁰

Despite these challenges, economic growth in Somalia has reached new heights, driven by strong trading relationships with the global economic community supported by favourable liberal investment policies. While agricultural output has contributed to GDP growth, non-agricultural sectors—such as telecommunications, remittances, finance, ports, aviation, small-scale natural resource extraction, and an increasing number of Micro, Small, and Medium Enterprises (MSEMs)—have also enhanced their contribution to Somalia’s economy GDP.

Somalia became a member of the Common Market for Eastern and Southern Africa (COMESA) in July 2018. COMESA has made efforts to promote labour mobility and migration among its 21 member states as part of its regional integration goals. The COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements, established in 1984, is currently in effect, but not yet fully implemented. Somalia has not signed onto the Protocol.¹¹ Its Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment, and Residence was adopted in 2001 but has not been fully ratified.

Somalia is a Member State of the Intergovernmental Authority on Development (IGAD), which has been deeply involved in peace efforts in Somalia as well as in promoting the rights of Somali refugees in the region. The IGAD Heads of State and Government Special Summit on Durable Solutions for Somali Refugees, held on March 25, 2017, adopted the Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia (‘the Nairobi Declaration’), along with its accompanying Action Plan. The Action Plan, among other things, promotes investment in skill development for refugees, as well as self-reliance, resilience, and access to employment. In December 2017, a regional IGAD conference focused on improving education for refugees built on the pledges of the Action Plan and adopted the Djibouti Declaration on Refugee Education (‘the Djibouti Declaration’). Some of the commitments made in the Djibouti Declaration include ensuring that refugees, returnees, and host communities have access to quality education and that the qualifications of refugees and returnees at all levels of education are validated.

Outward Labour Migration

Somalia’s National Development Plan 2020–2024¹² recognizes that the lack of sustainable economic opportunities for youth is a major driver of labour migration. It highlights that two-thirds of Somali youth wish to migrate abroad in search of livelihood opportunities. Similarly, the national employment policy acknowledges the wide social and economic implications of labour migration, pointing clearly to the lack of decent employment opportunities that has contributed to high rates of irregular migration. It emphasizes the need to strengthen the capacities of public employment services, which are reportedly present in a formal capacity but are currently ineffective. According to informants, however, such a system is not yet in place. For regional and international standards, the ILO provides guidelines and aims to develop a Labour Market Information System (LMIS) to

10. <https://news.un.org/en/story/2022/06/1119412>

11. <https://www.comesa.int/programme-activities-immigration-and-free-movement-of-persons/>

12. <https://mop.gov.so/somali-national-development-plan-9-2020-2024/>

help Somalia effectively collect, analyse, and disseminate labour market data. The primary goals and objectives of the LMIS are to support evidence-based policymaking, enhance labour market efficiency, and promote decent work and inclusive growth.

A functioning LMIS should provide a foundation for designing, implementing, monitoring, and evaluating policies and regulations that are more focused and targeted. As a result, the National Development Plan would be able to promote regular labour migration and the use of private employment agencies to facilitate employment opportunities abroad for aspiring migrant workers. However, the national development plan does not include mechanisms for regulating and monitoring PrEAs; nonetheless, Article 6 of the new Labour Code (not adopted as of March 2024) assigns the Directorate of Public Employment of MOLSA the responsibility of regulating and supervising employment management, as well as monitoring or enforcing compliance of PrEAs

Inward Labour Migration

According to the ILO's labour market assessment country report on Somalia,¹³ there is insufficient data on migrant workers within the country. The formal migration process tends to hinder job creation opportunities since the work permit process can present obstacles for employers looking to set up businesses that employ others. Moreover, the assessment reveals that Somalia is among the African countries whose Constitution allows for dual nationality. As a result, it could benefit from the skills brought in through the labour market integration of migrants of Somali ethnicity. However, to date, Somalia has not maximized the benefits of returning migrants skills.

Among the employed migrant workers interviewed as part of the assessment, 77 per cent were employees, 14 per cent were employers, and 7 per cent were own-account workers. Employee status was the most common among both short-term (less than six months) migrant workers and long-term migrant workers with regular migration status. This aligns with the work permit process and its one-year renewal terms.

The data also suggests that the work permit process, which is linked to residency permits, may create a barrier for employers—that is, for establishing a business that hires others. This is shown by the scarcity of regular migrant worker respondents who were employers; indeed, 72 per cent of employers in the sample were long-term migrant workers with irregular migration status.

Recruitment of Somali Staff for Employment in Somalia.

The recruitment business in Somalia is still developing, particularly regarding the hiring of Somali nationals for jobs within the country. However, experiences from other countries indicate that in certain emerging manufacturing sectors, such as the garment industry, companies frequently rely on external service providers during the hiring, training, and employment processes. These providers can be closely connected to the company through the Head of HR establishing a PrEA and outsourcing the workforce to the factory where they work. This manoeuvre is used to minimize transparency and create a distance between the manufacturing factory and its direct obligations to employees. While this practice is not illegal, it is preferable, in accordance with good practices and ILO principles, for the de facto employer (user factory) to also be the de jure employer.

However, experience from many countries indicates that it may be challenging to enforce compliance with the Labour Code, especially when there is a disconnect between the actual employer and the employee, as employees will not know who employs them. Problems tend to be fewer when PrEAs are used to find managers and highly qualified experts (headhunting), as these employees are well-educated and in demand. Violations of the Labour Code and non-compliance with good employment standards also tend to be less frequent for this group of

13. https://www.ilo.org/global/docs/WCMS_859187/lang--en/index.htm

employees. Recruiting this segment of staff is very appealing to the PrEAs, as they earn high salaries, and consequently, the fees can be substantial. A few companies operate in this sector, and many are reported to have a good reputation for providing serious career guidance and connecting candidates with potential employers. Currently, these activities are not covered by any specific legislation.

Socio-Economic Context in Somalia

Conflict, insecurity, poverty, and famine have resulted in high emigration rates, particularly over the past 20 years. The United Nations Department of Economic and Social Affairs (UNDESA) reported that as of 2020, 2,034,221 Somali migrants are living outside the country. Ethnic Somalis make up a significant portion of the populations in Djibouti, Ethiopia, and Kenya, with kinship and clan ties that extend beyond nationality. Consequently, information regarding the scope and size of the diaspora is often imprecise. However, in recent decades, the composition of the diaspora has changed from 90 per cent of diasporic Somalis residing within East Africa and the Horn of Africa (EHOA) to just 65 per cent.

Outside the EHOA, a significant population of Somalis resides in the Arabian Peninsula, with 500,000 Somalis in Yemen alone and another 200,000 living in the Gulf Cooperation Council (GCC) states. The perceived economic opportunities in that region have contributed to irregular and economic migration in recent years. Additionally, other diaspora communities outside the EHOA are increasingly concentrated in Europe and the United States.

According to data from the United Nations High Commissioner for Refugees (UNHCR), as of April 2023, there were 685,198 registered Somali refugees. When these figures are combined with the 2.97 million internally displaced people, it illustrates a very complex situation regarding the promotion of regular labour migration.

It is widely recognized that a significant amount of irregular mobility originates from Somalia, even if the statistics may not be completely reliable. The primary exit routes from Somalia include three main migration paths: crossing by sea to Yemen (which has reportedly become less popular since 2015 due to the ongoing conflict in Yemen) and then continuing to the Gulf countries; travelling south through Kenya to South Africa; and heading west through Sudan and Libya with the hope of crossing the Mediterranean Sea to reach Europe, often depending on informal recruiters who operate both within and outside the country to facilitate their journeys.

Security, economic opportunities, and decent living conditions are considered the major pull factors for Somali migrants. This was confirmed by the migrants and other stakeholders interviewed for this analysis. The US Department of State's Trafficking in Persons Report states that questionable employment agencies facilitate human trafficking by targeting individuals who wish to migrate to the Gulf States or Europe for work. Similarly, a 2022 report from IOM's Migrant Response Plan for the Horn of Africa and Yemen,¹⁴ shows that 4,579 Somali migrants were registered as having arrived in Yemen after perilous boat journeys to Saudi Arabia.

According to MOLSA data, there are approximately 25,000 migrant workers in Mogadishu who originate from the IGAD region and the Middle East. Around 15,000 work permits have been issued over the past two years, primarily to nationals from Kenya, Uganda, India, the United Kingdom, Pakistan, and Bangladesh, for positions as doctors, teachers, and cleaners, as well as jobs in construction, hotels, NGOs, or with United Nations agencies. A significant number of highly skilled migrants have come from Syria to work in the health sector. Migrant workers also include IT professionals, cooks, and plumbers who arrived in Somalia with the African Union Transition Mission's regional peacekeeping mission (ATMIS).

14. <https://crisisresponse.iom.int/response/migrant-response-plan-horn-africa-and-yemen-2022>

The US Department of State's Trafficking in Persons Report 2023 ('TIP Report'),¹⁵ classifies Somalia as a source, transit and destination country for men, women, and children who are exploited into forced labour and sex trafficking. Statistics on Somalia's trafficking situation are quite limited, but some trends are highlighted in the TIP Report. Somali labour migrants often incur debts through 'go now, pay later' trafficking schemes or through economic exploitation. Traffickers also target and recruit children, using false promises that no payment will be asked until they reach their intended destinations. According to informants, traffickers extort payments from the families left behind and make threats if they refuse or are unable to pay.

Traffickers, smugglers, and dubious employment agencies reportedly take advantage of the vulnerability of internally displaced women and children, mostly from southern and central Somalia, at times using false promises of lucrative jobs in Europe and North America. Traffickers transport Somali women, sometimes via Djibouti, to the Middle East, where they frequently experience conditions of forced labour, particularly in domestic service or sex trafficking. Traffickers also exploit Somali men in farming and construction in the Gulf states. They transport Somali children to Djibouti, Saudi Arabia, and the United Arab Emirates and force them to beg on the streets. Al Shabab is also known to engage in trafficking through forced recruitment. A mixture of Somali, Djiboutian, Eritrean, and North African traffickers operates most trafficking networks.

Although the mass exodus caused by the civil war has tapered off, high unemployment and limited economic opportunities for youth to participate in the formal economy continue to drive contemporary migration.¹⁶ The UN Department of Economic and Social Affairs Population Division estimates that, before the COVID-19 pandemic, approximately 45,000 Somalis migrated annually over the past decade, with just half of those being refugees in recent years.¹⁷

Somalia has a population of 12,693,796 people (CIA, 2023) with a population growth rate of 2.49 per cent (2023 est.). More than half of the population lives in poverty, and the World Bank classifies Somalia as a low-income country. Agriculture is the backbone of the economy, with livestock accounting for approximately 40 per cent of the country's gross domestic product (GDP) and over 50 per cent of its export earnings. A significant portion of the population consists of pastoralists. Remittances and telecommunications are also important contributors to the economy (CIA, 2018). Remittances serve as a lifeline for many families in Somalia and, in recent years, have been enabled by the widespread use of the internet and mobile money transfers. The diaspora maintains strong ties with Somalia, and their remittances support education, health care, infrastructure, and private enterprise within the country. Remittances were recorded at US\$1.75 billion in 2022, benefiting up to 20 per cent of the population and accounting for a substantial part of their estimated household expenditures. In recent years, remittances have represented around 18 per cent of the GDP.

Conflict has played a significant role in driving internal migration in Somalia, with worsening security conditions leading to considerable rural-to-urban migration. While business has expanded in Mogadishu, Somalia's capital, security concerns continue to hinder economic development.

In recent years, the return migration of Somalis has increased. More stable and secure conditions in the country, along with the Tripartite Agreement Governing the Voluntary Repatriation of Somali Refugees Living in Kenya between Kenya, Somalia, and the UNHCR, have led to a surge in refugee returns to Somalia.

15. <https://www.state.gov/reports/2023-trafficking-in-persons-report/somalia>

16. Somalia's National Development Plan (2017)

17. Department of Economic and Social Affairs. (2019). United Nations Population Division. Retrieved from <https://www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp>

Little reliable information exists on Somali labour migration or on labour migration to Somalia. Somalis are recognized for their entrepreneurial skills and for establishing businesses and small shops in Ethiopia, Kenya, South Africa, and Uganda. They also work as labourers and domestic workers in the IGAD region, the Gulf countries, and the Middle East. Furthermore, pastoralists traverse borders within the region according to the seasons to trade and find pasture and water for their livestock.¹⁸

Emerging Challenges in the Recruitment Industry

The recruitment industry, in its current form, will face challenges when new regulations are introduced. It may encounter issues regarding a company's financial ability to provide the required (financial) guarantees for workers sent abroad. The staff's capabilities, particularly legal capacity, will need to be enhanced to meet the new requirements. The structures that have been in place until now, with hundreds of informal recruiters ('brokers'), will have to be altered so that these individuals operate under the oversight of licensed companies. This will require all stakeholders to make a significant effort to shift away from the traditional (irregular) methods of handling labour migration. Similarly, it will be a challenge for the agencies to make regular migration more appealing for labour migrants than irregular pathways. The PrEAs will need support from the government, the CSOs and the international community, to increase awareness among potential migrants. This means that an awareness-raising campaign will need to be implemented - once an agreed system for regular labour migration is in place - for regulations, institutional capacity and political will to secure monitoring and enforcement.

18. GSDRC - Rapid fragility and migration assessment for Somalia, Avis & Herbert, 2016

3

▶ ANALYSIS OF POLICIES

The ninth Somali National Development Plan (SNDP-9) 2020-2024 creates the political basis for an initiative towards a better-regulated labour migration hereunder the development of an overseas labour recruitment industry.

According to the SNDP 4.6, it will: “4) **Develop bilateral agreements** that are geared at improving the protection of the rights of Somali migrant workers abroad and enhancing regular migration pathways. This will thereby contribute to reducing irregular migration, preventing human trafficking, and labour exploitation of Somalis.”

The government’s goal is to enhance **the business environment** through effective reforms that positively impact the policy, institutional, regulatory, infrastructure, and cultural conditions governing both formal and informal business activities.

The resilience of the private sector has been a hallmark of Somali development across turbulent decades. The entrepreneurial spirit has persisted even in the midst of conflict and institutional collapse. The private sector has filled the vacuum and is now a dominant provider of education, health, utilities (such as telecommunications and energy) and transport. However, the private sector is largely unregulated. Service provision and entrepreneurial opportunities remain uneven, with those who cannot afford to pay facing the risk of being left behind.

Political Environment

Embedding Human Rights—Somalia recognizes the value and power of operating within a human rights framework. It plans to integrate human rights into the ongoing Constitution Review Process and review existing legislation to ensure their inclusion. Citizens will be empowered to understand and demand their rights, and security agencies will be encouraged to understand and operationalize these rights. This concept will also cover migrant workers.¹⁹

Strengthening Anti-Corruption—This is a government imperative, indeed a national imperative. The intention is to strengthen national legislation and improve Somalia’s international standing. However, the imperative will also be operationalized within the government’s standards of transparency and probity. Important components of this are strengthening public finance management and oversight by the Office of the Prime Minister, the Central Bank, and the Ministry of Finance.

The **National Employment Policy (NEP) was approved by the Federal Council of Ministers in 2019**. Its focus on the development of selected industries is intended to provide early advantages. The NEP could create large-scale employment opportunities, especially for the more vulnerable groups (rural, youths, women, and IDPs), who need education and new skills. This policy hopes to stem and potentially reverse the flow of displacement and labour migration to foreign countries.

Unemployment rates among young adults and women are, as indicated, above very high, with a mismatch between jobs and skills. Poor educational outcomes impact these groups’ level of employable skills. The NEP will invest in TVET and other vocational training and apprenticeships, particularly for the disadvantaged, including youth and women. **The Somali Women’s Charter**²⁰ outlines their expectations regarding economic opportunities, and both Somali women and youth have recently approved national strategies that directly impact this area.

Particular industries There are opportunities that favour female employment, such as fish processing and small retail businesses (especially in the informal sector). However, keeping women in low-paid informal jobs, which carry a high risk of unlawful exploitation, can be seen as problematic rather than providing them with stable formal employment. It may also be more challenging for PrEAs to offer women with low qualifications and little to no labour market experience decent jobs, as foreign employers will have lower demand for this type of work.

19. <https://www.amnesty.org/en/wp-content/uploads/2023/06/AFR5233152020ENGLISH.pdf>

20. <https://www.mwhrd.gov.so/en/wp-content/uploads/2019/11/Somali-Womens-Charter-MoWHRD-April-8-2019-1.pdf>

Targeting a large cohort of **youth** through vocational training programmes—developed in consultation with employers, trade unions, and private sector organizations—with a specific emphasis on TVET, will provide the technical and vocational skills necessary for the labour market in Somalia and beyond. In addition to TVET skills and apprenticeships, entrepreneurship and service development will also be promoted. However, the absence of a labour market information system (LMIS) hampers the creation of a demand-based TVET system within the country.

Somalia's lack of educational and job opportunities is a major source of tension for the country's large youth population, making them vulnerable to recruitment by extremist and pirate groups. Somalia has one of the lowest primary school enrolment rates in the world—just over 40 per cent of children are in school—and one of the highest youth unemployment rates. Life expectancy is low due to high infant and maternal mortality rates, the spread of preventable diseases, poor sanitation, chronic malnutrition, and inadequate health services.

National Diaspora Policy

The Federal Republic of Somalia is enhancing the contribution of the Somali diaspora to its socio-economic development initiatives. Therefore, the National Diaspora Policy aims to leverage the human, social, and cultural capital, as well as the diverse skills, knowledge, and expertise of the Somali diaspora, to promote their integration into the national development agenda. The Government is executing this policy through the Ministry of Foreign Affairs and International Cooperation, including its overseas missions, fulfilling its mandate by coordinating Somali diaspora affairs and boosting the diaspora's role in Somalia's socio-economic development agenda.

The 2022 agenda is anchored on five interlinked policy areas: upholding the sovereignty and territorial integrity of the Federal Republic of Somalia, security, economic and development cooperation, advancing Somalia's role in global strategic forums, and the national diaspora policy. The national diaspora policy aims to recognize the importance of channelling the diverse skills, knowledge, and expertise of the Somali diaspora and facilitating their integration into the national development agenda.

The Ministry of Foreign Affairs and International Cooperation has established a Diaspora Office to facilitate engagement with the diaspora, which is a crucial priority policy. This Office is tasked with providing information to the Somali diaspora and enhancing their involvement in national development.

The Federal Republic of Somalia recognizes the Somali diaspora's significance and largely untapped potential to contribute to the country's development. Accordingly, the national diaspora policy seeks to harness the Somali people's diverse skills, knowledge, expertise, and resources abroad and facilitate their integration into the national development agenda.

Traditionally, the Somali diaspora's socio-economic importance has been tied to the role of **remittances** in safeguarding the well-being of the Somali people. However, in addition to remittances, the social and human capital of the Somali diaspora is vital as economic capital to safeguard Somalia's development in the short-to-medium-term.

The key objectives of the national diaspora policy are to:

- ▶ Enhance diplomatic missions' ability to provide effective consular services, including establishing an Ombudsman's Office at the Ministry of Foreign Affairs and International Cooperation.
- ▶ Engage the Somali diaspora effectively.
- ▶ Strengthen the Brain Gain programs (knowledge development initiatives).
- ▶ Consolidate the sense of belonging within the Somali diaspora.

The national diaspora policy aims to ensure a holistic approach and create an enabling environment to achieve the key objectives and central areas of engagement with the Somali diaspora. Furthermore, it seeks to strengthen ties and trust between the Federal Republic of Somalia and its diaspora communities.

The objectives of the National Diaspora Policy state that it aims to: “3) Develop and implement policies that strengthen diaspora outreach and engagement in national development.”

The guidelines for diaspora policy include:

- a) Engagement – Somalis in the diaspora are an integral partners and must be included in the implementation, monitoring, and evaluation of programmes to provide feedback and facilitate timely policy interventions.
- b) Coordination – This policy will create a mechanism through which all activities concerning Somalis in the diaspora will be coordinated via a central entity, the Department of Diaspora Affairs, to eliminate overlap and duplication.

This effort builds upon the concept of “leveraging migration for sustainable development,” as migration—and thus the diaspora—can be a powerful driver of sustainable development for migrants and their communities in their countries of origin, transit, and destination. The policy aims to pave the way for and establish a communication strategy that will enable an effective diaspora engagement mechanism, which will, in turn, lead to greater cooperation and coordination between Somalia and its diaspora communities.

The traditionally strong links with the diaspora and the political wish to involve them in protecting labour migrants could contribute positively to monitoring the situation of labour migrants in countries with a strong diaspora. The diaspora’s involvement cannot be rights-based, but it can make a contribution nonetheless, given the lack of available resources within the governmental structures.

4



BRIEF OVERVIEW OF PRIVATE EMPLOYMENT AGENCIES

In 2022, MoLSA terminated all licenses issued for recruiting Somali workers to work abroad. This termination was justified by reports of abuse involving domestic workers sent by the PrEAs to Saudi Arabia. Furthermore, PrEAs expressed complaints about the Overseas Employment Guideline, which was adopted in 2019 and includes provisions for the PrEAs. Their main complaint concerned the requirement for a US\$25,000 deposit as a condition for obtaining a license. The PrEAs refused to comply with this regulation. Currently, there is no specific legislation that permits companies to register and operate as PrEAs.

The **Overseas Employment Guideline (OEG)** seeks to establish a framework for agencies involved in recruiting workers for jobs abroad. However, as discussed elsewhere, it has yet to gain acceptance among the agencies offering services in this area. From the government's perspective, **the OEG is the only document regulating the activities of Private Recruitment Employment Agencies (PrEAs), but it only pertains to recruitment for overseas work. Currently, there is no legislation governing recruitment for jobs within Somalia.**

Today, companies involved in labour migration—either directly or indirectly—are registered as travel agencies or private limited companies. Many of these operated as recruitment agencies before the termination of licenses in 2022, offering comprehensive services to individuals seeking employment abroad. Currently, the options for legally assisting people in finding work overseas are limited. Consequently, and for valid reasons, there is **no list of these established companies, as their operations may be deemed unlawful.** Furthermore, these companies do not offer recruitment services for Somalia.

A coalition of labour agencies, the **Association of Somali Labour Agencies ('ASLA')**, exists with twelve members. However, **it is not legally registered and lacks recognition from the government.** The travel agencies have their own association, which is affiliated with the **Somalia Chamber of Commerce and Industry (SCCI)**, but this association cannot legally deal with recruitment matters. Nevertheless, the report's informants noted that some of these affiliated travel agencies and individuals are involved in sending people abroad for work through irregular schemes, violating the law.

Representatives from companies that were previously active as PrEAs reported that they provided a comprehensive package of services (visa, tickets, insurance, medical examination, pre-departure training, and more) for sending individuals to the KSA to work as domestic workers, potentially generating an overhead of about 10 per cent. Data gathered through key informant interviews indicates that often, in addition to this, the PrEA executives or owners may also own the travel agency that issues the tickets, thus gaining an overhead from the travel costs as well. The KSA client bears all expenses related to recruitment. However, if a domestic worker leaves (often referred to as 'running away') their workplace before the end of the two-year contract, the PrEA is obligated to reimburse the client.

According to representatives of former PrEAs, earnings from each individual contract may not be substantial, but the large number of migrants guarantees a solid profit. It has been reported that many politicians and government office employees are heavily involved in the PrEAs.

All the PrEAs' legal activities have been on hold since the 2022 termination of all licenses. However, reports indicate that some travel agencies continue to provide services in a grey area, offering solutions for a wide range of travel-related issues; however, no recruitment for foreign employment is currently taking place. Many people going abroad for work are invited by relatives for visits or use tourist visas, placing them in vulnerable situations when applying for jobs in destination countries. De jure, travel agencies are not involved in recruitment; thus, it is not possible to discuss the PrEAs' practices for the time being. New regulations may help resolve this bottleneck by proposing ways for authorities and private recruitment agencies to establish fair and safe practices that also support the development of a sound and profitable business.

5

PURPOSE OF ANALYSES

The objective of this Situational Analysis is to examine the current regulatory environment and context of recruitment, in which the PrEAs are expected to operate in Somalia, to establish a foundation for developing a legislative framework. This Situational Analysis will provide information that ensures the legislative framework responds to the existing recruitment practices in Somalia while aligning with relevant regional and international labour standards, guidelines, and commitments, such as the Global Compact for Safe, Orderly, and Regular Migration, the Sustainable Development Goals (SDGs), General Principles, and the operational guidelines for fair recruitment, including definitions of recruitment fees and related costs

Private employment agencies can play a significant role in the labour market. They offer an alternative approach to job matching, serving as a core service in conjunction with public employment services. The PrEAs registered in Somalia should effectively connect job seekers with opportunities by recruiting Somali workers for employment abroad, migrant workers for employment in Somalia, and Somali nationals for work within the country. It is intended that this analysis will help to understand the circumstances under which the new regulations can be aligned to regional and international frameworks. It can also enhance fair and effective labour migration governance through the promotion of fair recruitment principles, in line with the GPOGFR, for Somali workers moving abroad, as well as in the recruitment of migrant workers in Somalia.

► 5.1 Importance of Legal Frameworks for Regulation

Legal frameworks for regulation hold significant importance for several reasons:

- **Protection of Rights:** Legal frameworks create rules and standards that protect the rights and interests of individuals, businesses, and society as a whole. They define acceptable behaviour, establish boundaries, and offer recourse mechanisms in the event of violations.
- **Promotion of Fairness and Equality:** Regulations ensure fairness and equality by preventing discrimination, exploitation, and abuse. They promote equal opportunities, access to resources, and treatment under the law, regardless of factors such as race, gender, religion, or socioeconomic status.
- **Maintaining Order and Stability:** Legal frameworks establish clear guidelines and procedures for behaviour and interactions within society. By enforcing rules and sanctions, regulations help maintain order, stability, and predictability across various sectors, including business and employment.
- **Fostering Trust and Confidence:** Regulations foster trust and confidence among stakeholders, including employers, workers, and the general public. By providing transparency, accountability, and assurance of compliance, legal frameworks enhance trust in authorities and institutions while promoting confidence in market functioning systems.
- **Ensuring Health and Safety at Work:** Regulatory frameworks play a crucial role in protecting workers' health, safety, and well-being. They set standards for product quality, environmental protection, and workplace safety measures, thereby reducing risks and preventing harm to individuals communities.
- **Facilitating Economic Development:** Effective regulation fosters an environment that promotes economic growth, innovation, and investment. By establishing clear rules, encouraging competition, and addressing market failures, legal frameworks support entrepreneurship, innovation, and sustainability development.
- **Addressing Market Failures:** Regulations help mitigate market failures, such as unreported financial activities and information asymmetries, which can lead to inefficiencies and inequities. Through interventions like labour laws, the protection of migrants, and financial regulations, legal frameworks aim to correct distortions and promote fairness and decent work.
- **Compliance and Enforcement:** Legal frameworks establish mechanisms for monitoring compliance and enforcement. By imposing penalties, sanctions, and remedies for non-compliance, regulations deter misconduct and encourage adherence to rules, thus ensuring the effectiveness of regulatory regimes.

6



PREVIOUS LEGAL FRAMEWORKS AND THEIR IMPACT

Historically, no specific legal framework existed to regulate the business activities of PrEAs. As noted elsewhere, the 1972 Labour Code rendered the activities of employment agents ‘unlawful.’

It is understood that many companies operating in the recruitment sector are registered as travel agencies, which are licensed to provide only transportation, travel documents, and accommodation services both abroad and within Somalia.

Other companies, **registered as private limited companies**, are also not foreseen to be active in this field of economic activities if they do not have a specific license to do so. All licenses were terminated in 2021, and no new licenses have been issued since that time.

The lack of regulation surrounding commercial recruitment-related activities, combined with the high demand to leave Somalia for better opportunities, has resulted in a situation where hundreds of informal recruiters (‘brokers’) facilitate **irregular migration** through various schemes. These unlawful activities thrive due to the limited capacity within government institutions that are supposed to oversee outbound labour migration. Reports indicate that widespread corruption also has a negative impact.

The current analysis indicates that migrant workers coming into Somalia do not utilize the services of PrEAs. Consequently, companies do not offer services in this area. Incoming workers are protected by the Labour Code, which *covers ‘all workers’ (Labour Code 1972 Article 2) and ‘all employees’ (proposed Labour Code Article 3.1)*. They obtain their work permits based on an invitation from a Somali-based company or institution. However, there are limitations on the types of professions that companies can invite, as determined by Presidential Decree. Additionally, the rights and obligations of migrant workers are defined under migration regulations.

The recruitment of Somali workers for jobs in Somalia is an underdeveloped business sector, but it has the potential to expand as the economy and industries grow. Such workers would be protected by the Labour Code that is in effect at all times. The proposed Labour Code allows for verbally concluded Labour Contracts. As discussed elsewhere in this analysis, this can pose challenges when the PrEA is outsourcing labour. Furthermore, the migration regulations mandate a written contract, creating a need for synchronizing the legislation and regulations.

7



GLOBAL/REGIONAL PERSPECTIVES ON REGULATION

As a member of the ILO, Somalia is expected to comply with international labour standards and the ratified conventions regarding migration and PrEAs, including the protection of migrant workers' rights. Although Somalia lacks specific domestic legislation, it is anticipated to align itself with international labour standards, particularly with the Conventions the country has ratified. Among these, the most significant migration-related Conventions are C97 and C143 as well as the PrEA Convention C181.

The GCM is also a key global framework the GoS must adhere to in its Objective (6), which says that the signatures are obliged to: “facilitate fair and ethical recruitment and safeguard conditions that ensure decent work.”

Somalia is a signatory to regional agreements and initiatives concerning labour migration within the East African region and the wider African continent. These agreements tackle various aspects of labour migration, such as mobility, employment rights, and protection mechanisms. For instance, Somalia endorsed the Protocol on Free Movement of Persons in the IGAD Region, which establishes frameworks for protecting migrant workers from unfair recruitment practices, including those involving intermediary bodies, private recruitment agencies, and public employment services.

Based on the above ratifications and endorsements, MOLSA aims to enhance labour migration governance within the country. A major market for the PrEAs is anticipated to be the recruitment of Somali workers seeking employment abroad; therefore, special attention must be given to the challenges in this area, although the demand for recruitment of workers in Somalia is expected to be lower in the short to mid-term. Furthermore, a new Labour Code is expected to be adopted. In its current (not yet approved) form, it will protect “all employees” and ensure that workers—including foreign nationals working in Somalia—experience the same employment and working conditions as Somali nationals.

8



CURRENT NATIONAL LEGAL FRAMEWORK

Somalia lacks a comprehensive national legal framework specifically addressing incoming and outgoing labour migration, as well as the activities of the PrEAs. The country continues to face political instability, conflict, and governance challenges, all of which have impeded the development and implementation of thorough laws and regulations across various sectors, including labour migration.

Somalia has been a source of refugees and internally displaced persons (IDPs) due to conflict and instability. Although not specifically focused on labour migration, humanitarian and refugee policies may indirectly influence migration patterns and the rights of displaced populations, including their access to employment opportunities.

As Somalia continues its state-building and reconstruction efforts, opportunities emerge from developing and establishing mechanisms for implementing legal frameworks for labour migration, including a framework for PrEAs.

Given the dynamic nature of the situation in Somalia, regulating labour migration remains a complex and evolving issue. Monitoring developments at the national and international levels and engaging with relevant authorities and stakeholders will be crucial for the government's understanding of future trends in labour migration regulation Somalia.

Due to the lack of formal regulatory frameworks, entrepreneurs in the field of labour migration often work in a grey area within the informal sector without any oversight or enforcement of regulations by government authorities. In the absence of formal structures, **traditional and informal mechanisms play an important role in facilitating employment and labour relations**. Clan-based networks, community associations, and informal job placement services act as alternative means of employment facilitation. It is also essential to consider the regional disparities within Somalia, where different areas may have varied legal and regulatory frameworks and enforcement mechanisms, if any.

Currently, there is no legislation in Somalia to protect personal data (collection, storage, and use) in general. This poses a challenge to safeguarding workers' rights when collaborating with the PrEAs, as personal data may not be automatically protected against misuse by the PrEAs. Such legislation would need a more comprehensive approach and should address issues beyond the operations of PrEAs; thus, it must be subject to specific legal frameworks. In the meantime, until such legislation is established, personal data must be secured through a recruitment contract stating that agencies cannot store personal data beyond the engagement period without the written consent of individual migrant workers. Additionally, the PrEAs should be accountable for storing data in a manner that prevents access by third parties or sharing data with them persons.

Currently, there is no legislation or regulation in place that directly governs the work and status of the PrEAs. The Overseas Employment of Somali Employees/Workers Procedures and General Services ('OEG') was intended to create a legal framework for the activities of PrEAs with outgoing migrant workers. However, it ultimately resulted in conditions that were unacceptable to the PrEAs. As a consequence, MOLSA terminated all licenses and ceased issuing new licenses to PrEAs in 2022.

The OEG is the only legal framework in place that concerns outbound labour migrants.

It should be noted that, **according to the Labour Code of 1972, it is 'unlawful' to work as an employment agent, whether paid or otherwise (Article 124)**. It is understood that the authorities pay little attention to this paragraph of the Code. **The Labour Code also states that an employer is not allowed to take any payment for admitting a worker to employment (Article 49.7)**. As mentioned above, a new Labour Code has been suggested and is expected to be adopted in the near future. However, **the new Labour Code makes no reference to PrEAs**.

Several laws and regulations exist that indirectly create a framework applicable to the development of regulations for the PrEAs' work. Additionally, Somalia is required by its ratification of conventions and protocols to apply these requirements to any legislation and policies therein.

The aforementioned OEG document outlines procedures for the registration and provisioning of licenses for the PrEAs, complaint mechanisms, registration and employment contracts for migrant workers, penalties for unlawfully sending migrant workers overseas, social security, labour inspection, and the reception and return of migrant workers. It establishes a framework in accordance with international standards

The OEG could serve as the foundation for developing a regulation for the PrEAs.

Under the OEG's paragraph 4.7, 'Gender Mainstreaming,' reference can be made to the PrEAs' special responsibility toward female migrant workers. In section 4.8, 'Youth,' the PrEAs' special responsibility toward youth and other first-time migrant workers can be emphasized.

The absence of agencies or service providers, whether private or public, to address the requests of labour migrants forces them to choose irregular migration as their only option.

Foreign Employment Act (FEA)

Regarding procedures for governing labour migration, the 2015 Foreign Employment Act regulates labour migration to Somalia and outlines the processes for obtaining work permits for migrant workers recruited to work in Somalia. However, it lacks mechanisms to provide protection against violence, harassment, and discrimination in the workplace or access to complaint processes.

According to the FEA, MOLSA reviews all contracts for migrant workers in Somalia before approving work permits. It is also expected to conduct inspections at the workplaces of migrant workers to assess their working conditions.

The FEA outlines the rules for recruiting migrant workers for employment in Somalia. However, the roles of PrEAs are not clearly defined within the FEA. The Act mentions the term 'recruit' in Article 23, but it only refers to it in the context of 'employ.' Thus, this term is relevant to PrEAs only in instances where they act as direct employers of migrant workers.

In many countries, migrant workers are recruited through Private Employment Agencies (PrEAs), and the regulations governing these agencies encompass both labour migrants going abroad and foreign nationals entering the country for work. The regulations may also include nationals being recruited to work in their home country. The ILO Convention on PrEAs (C181) stipulates that agencies must facilitate all the aforementioned types of engagement. However, as previously indicated, the number of workers recruited through PrEAs for vacancies in Somalia remains quite limited. The vast majority of potential clients for PrEAs consist of foreign companies hiring Somali workers for employment abroad.

The FEA also outlines the procedures for and limitations on hiring migrant workers. On one hand, these provisions seem to allow for flexibility, but on the other hand, they come with significant restrictions. The relatively open timeframes for applying for work permits (30 days) and renewing them (14 days) make it challenging for authorities to accurately count how many migrant workers are legally employed in the country at any given time. Additionally, there is a high estimated number of irregular migrant workers. Managing the influx of workers into the country is a complicated and resource-intensive task for MOLSA. At the same time, the existing restrictions in the FEA create obstacles and delays for companies seeking to obtain work permits for non-national employees.

MOLSA issues work permits for non-nationals travelling to Somalia for work purposes. Upon their arrival in the country, they will first receive a single-entry visa. After that, the company or organization where they intend to work applies for a work permit. There are three types of work permits: a 3-month permit costing US\$320, a six-month permit costing US\$490, and a one-year permit for US\$780. Only the employing company or organization can apply for a work permit on behalf of the individual.

A country may, under the provisions of the C181, choose to exclude migrant workers from employment in certain professions and sectors of the economy. However, the Convention indicates in Article 2.4 that the categories of jobs excluded from the scope of work for PrEAs

should be determined in consultation with social partners. After consulting with the most representative organizations of employers and workers, a Member may:

- a) prohibit, under certain conditions, private employment agencies from operating concerning specific categories of workers or sectors of economic activity in providing one or more of the services mentioned in Article 1, paragraph 1.
- b) exclude, under certain circumstances, workers in specific branches of economic activity, or parts of those branches, from the scope of the Convention or from certain provisions, as long as adequate protection is otherwise ensured for the workers involved.

Currently, the list of professions for which inviting migrant workers is permitted is determined by a decree from the President of the FRS. (FEA, Article 3, a).

According to current practices, a migrant worker must obtain a **work permit** from the Department of Legal and Labour Relations in MOLSA within 30 days of their arrival. This creates a significant amount of work for the authorities, whose workload is already high compared to their capacity, while placing the incoming worker in a difficult situation if a work permit is denied or the 30-day deadline is not met. Depending on the type of work permit, the maximum duration is one year with the possibility of renewal.

A relatively simple yet effective **way to protect the national labour market against a significant unregulated influx of cheap foreign labour** (social dumping) could be through a procedure where employers (eventually via PrEAs) are granted the right to recruit migrant workers if no Somali worker has applied for the position within a specified timeframe, such as four weeks. Simultaneously, this would allow businesses the flexibility to invite migrant workers in a prompt and streamlined manner. The specific job vacancy should be advertised by the Federal Employment Service (FES) and by the PrEAs, through mass and social media, in accordance with the established regulations. This would present an interesting market for PrEAs to explore, as the incoming workers would often be specialists and highly skilled professionals earning competitive salaries. See Recommendation 1.

The **Foreign Workers Employment Assessment Committee**, which has the formal authority to oversee the issuance of work permits, should be strengthened by a tri-partite sub-committee that serves an advisory role concerning the regulation and coordination of implementing the FEA. However, this analysis found no evidence that this committee is operational. Key informants reported they were unaware of such a committee's existence. Even the statistics are unreliable, as it is evident from available data that significantly more migrant workers are employed in Somalia than the number of work permits issued. It is also important to note that since all registration is done manually, the issuance of some work permits may not reach the federal level and, therefore, may not be included in the statistics. See Recommendation 2.

A system in which the PrEA or inviting company could obtain a work permit before the migrant worker's arrival would streamline the process. This permit would last for the duration of the contract signed between the employer and employee, with a maximum of three years (the length of the work permit can be negotiated by the parties finalizing the Regulation) and an option for extension. Extending the permit by one to three years would alleviate some of the administrative burden for all parties involved and provide better employment prospects for the migrant worker. If the employment relationship ends earlier than outlined in the work contract, the migrant worker would need to leave the country within 30 working days from the termination date of the employment relationship. However, during this period, the employee may sign a new contract with another employer and subsequently apply for a new work permit based on that new agreement.

In all cases, it is the recruiter's responsibility, regardless of whether they are a PrEA or another legal entity, to apply for permission to hire a foreign workforce. This should be included in the service package offered by the recruiter.

The PrEAs could play a vital role in helping Somali companies recruit much-needed specialists and highly skilled workers. Stricter regulation of work permits will enable better labour administration and labour market forecasts, providing more accurate data on the number of migrant workers, their professions, and origins. This will also enhance the protection of both national and migrant workers.

National workers will not be undercut by cheaper migrant workers filling vacancies (social dumping) that could be filled by national workers, and migrant workers will have the assurance that a job is available and that the conditions have been clarified before they begin their journey to Somalia.

These measures will also lighten the workload for the various departments within MOLSA. Monitoring can take place through PrEA reporting and random sampling. Refer to Recommendation 3.

Freedom of Association (FoA)

Article 2.3 of Convention 181 states: *“One purpose of this Convention is to permit the operation of private employment agencies and to protect the workers who use their services, in accordance with its provisions.”*

Additionally, the Convention states (in Article 4) that: *“Measures shall be taken to ensure that workers recruited by private employment agencies providing the services mentioned in Article 1 are not denied the right to freedom of association and the right to bargain collectively.”*

However, there is no tradition of migrant workers joining Somali trade unions. According to FESTU, migrant workers can, in principle, join a Somali union, but reaching out to these potential members has not been a priority to date.

The **proposed Labour Code in Article 3.1 expands its coverage to include all employees:** *“The provisions of this Code or regulations made under it apply to all employers and employees, including those employed in public service or public institutions, insofar as any of their terms and conditions of service are not governed by other law.”*

This means that migrant workers would no longer be excluded from coverage under the Labour Code. If the PrEAs comply with this principle, it would provide migrant workers with certain protections and guarantee them basic rights and working conditions. All signed employment contracts should reference the Labour Code, including FoA, to ensure that all parties understand they must comply with the Labour Code. The PrEAs will play an important role in ensuring this compliance, whether they are acting solely as recruiters or providing a workforce to a specific establishment.

Minimum wage

No minimum wage exists in Somalia. This complicates establishing minimum wages for migrant workers, but the principles of equality and non-discrimination should serve as the primary guideline. This means that migrant workers should, at a minimum, have the same employment and working conditions (including wages and wage protections) as national workers. The PrEAs must ensure that any contract signed with a migrant worker, regardless of whether the employer is the PrEA or an inviting company, provides detailed information about employment and working conditions in accordance with the new Labour Code (if adopted). Somalia has not ratified the C131 Minimum Wage Fixing Convention. It is best practice to develop a standard contract in a language easily understood by both parties, ensuring that they are all aware of the agreed employment and working conditions, rights, and obligations in a uniform manner. If a standard contract is created, it should be mandatory for use when establishing employment relationships. Contracts signed in other formats should be considered invalid. See Recommendation 4.

Employment Contract

The proposed Labour Code should allow employment contracts to be concluded orally. Article 46.1 states, *“A contract of employment may be oral or in writing.”*

When it comes to PrEAs acting as direct employers, it is preferable for the employment contracts to be in writing. This is due to the fact that when they act as employers, outsourcing staff introduces an additional layer (the inviting company) between the employees and their employer.

Therefore, it can be difficult to manage the contract and to address the clearly defined mutual rights and obligations.

The ILO defines an employment contract as follows: *“An employment contract is an agreement between a worker and an employer regarding compensated work, wages, working conditions, and the rights and obligations of each party in the labour relations.”*

The administrative procedures for granting a work permit require that an employment contract is established. However, managing such a contract can be challenging if it is oral, according to the Labour Code (Article 46.1). It is preferable, and aligns with the ILO’s general recommendations, for any contract lasting more than one month to be formalized in writing and signed in two copies by the parties in a language both understand. Furthermore, the FEA procedures mandate that contracts be documented in writing. It is important to consider amending the proposal for a new Labour Code while taking these factors into account.

The Foreign Employment Guidelines – Procedures and General Services

The ideas and principles outlined in the **Foreign Employment Guidelines – Procedures and General Services**, henceforth referred to as the guidelines, constitute a foundational document and a starting point for discussing the development of the employment agency industry. The following sections will provide comments on the existing document. Recommendations are made based on interviews with stakeholders to find common ground and address areas of potential disagreement. Achieving consensus on as many of the ILO constituents’ concerns as possible would be a significant accomplishment.

The guidelines suggest: *“To appoint a monitoring committee consisting of the cabinet in particular Ministries directly/indirectly concerned with outsourcing”* (1.1.f). The term ‘outsourcing’ only applies to some of the clients. The PrEAs could supply factories with workers. In certain instances, the PrEAs employ workers intending to outsource them to ‘user companies.’ This type of recruitment is typically employed within the country and can only be regarded as transborder in very specific cases; however, it is improbable that this will occur in a Somali context in the short or mid-term. If ‘outsourcing’ refers to sending workers to foreign countries, it would encompass the main anticipated activity of the PrEAs. In addition to creating an interministerial committee, it is advisable to establish a tripartite sub-committee, where the most representative employer and worker organizations can monitor the implementation of the guidelines and offer input for the ongoing development of the labour export industry. See Recommendation 7.

The guidelines provide definitions for a list of terms used in the document (1.2). However, it is also advisable to define the term ‘Contract.’ The agreement between the employer and the PrEA, as well as between the worker and the PrEA, does not constitute a contract in the sense intended here; rather, it is a commercial service agreement. It is recommended that the services provided by the PrEA and the mutual obligations involved be outlined.

According to the guidelines, all recruitment of workers going abroad must be approved by the ministry. This process delays recruitment and opens opportunities for corruption within the bureaucracy. There appears to be no justification for this practice. If a system of strong and well-functioning licensed private employment agencies (PrEAs) were promoted, and stakeholders could successfully direct the main flow of migrants into regular migration, the industry itself could monitor the process and maintain internal discipline regarding compliance with the guidelines. The responsible Ministry could conduct random samples to verify adherence to the regulations.

The ministry defines a list of professions for which it is permitted to invite migrant workers. This list is issued as a Presidential Decree. It is advisable to revise the current approach and adopt a more flexible stance, thus becoming more open to PrEA business opportunities. Instead of maintaining a list of professions that accept foreign labour, the PrEA could be granted the authority to invite migrant workers. This is under the condition that no Somali national with the required skills, knowledge, and experience applies for the vacancy within 30 working days of its publication by the Federal Employment Service and advertisement by the PrEA (specific requirements for physical and digital publication will be developed in consultation with the relevant parties).

The PrEA will have the right to invite migrant workers for locally unfilled vacancies without additional procedures. The employment and working conditions offered to migrant workers in Somalia must comply with the Somali Labour Act, and the remuneration must be at least equal to that of a Somali employee for the same position. This rule should, as stated above, be implemented to prevent social dumping.

The guidelines suggest that the PrEAs provide the following services: *“selection, medical screening, approving employment contracts, orientation and awareness raising pre-departure for workers, and after their departure, facilitating travel”* (2.4). It is recommended to expand the list of services provided by the PrEA to include, for instance, regular monitoring of working and living conditions. A condition of obtaining a license would be the agency's ability to monitor and ensure compliance. The services should also encompass the recruitment of workers for vacancies within Somalia. In this context, the PrEAs would provide the same services as they do for Somali labour migrants going abroad. Furthermore, they could offer housing and other practical assistance. The Somali PrEA would be responsible for ensuring that migrant workers receive all their benefits as outlined in the Contract. In cases where a Somali company is non-compliant or fails to meet its obligations, the PrEA shall provide the employee with mitigation and/or assistance in filing a case with the civil court, and/or refer the employee to the relevant trade union for follow-up and support.

When the PrEA sources workers to a user establishment, in addition to its obligations regarding the recruitment arrangements, it will hold the rights and responsibilities of an employer according to the Labour Code. Nevertheless, it will also bear a special responsibility for ensuring that the working conditions, including OHS standards, in the user establishment comply with Somali legislation and practices.

According to the guidelines, Somali workers cannot be hired directly by foreign employers or by Private Employment Agencies (PrEAs) for work abroad without the ministry's consent (2.5). In general, it is the obligation of the PrEA to inform the ministry (FES) about the recruitment, including the name and ID of the migrant worker, full details, the name of the company or inviting individual, as well as their address and registration/ID information, along with a copy of the employment contract. The ministry will notify the Somali representation in the destination country about the person's arrival and provide the employer's contact details. However, not all countries have Somali representation, and Labour Attaches are present in only a limited number of countries. They are tasked with overseeing working conditions and accommodations; however, they lack the capacity to monitor all migrant workers.

One of the requirements for going abroad for employment, as outlined in the guidelines, is that the job seeker must: *“Possess at least a certificate showing his/her professional/technical competence issued by one among the training centres recognized by the Ministry”* (2.8.b). This requirement could help skilled and semi-skilled workers secure better jobs, but it also excludes a large number of potential labour migrants, who may then choose irregular migration. It risks pushing vulnerable groups of labour migrants – namely, low-skilled workers, many of whom would be women – into irregular migration. The debate over which solution is better continues, as various countries have different experiences based on the effectiveness of their VET systems. Ultimately, however, it remains a political decision as to which groups of workers will be prioritized.

This analysis did not delve deeper into the capacity of the VET system. However, once a demand-driven VET system is established and a steady flow of skilled workers emerges from it, a political decision can be made to introduce criteria for the skills that a migrant worker should possess before their departure. For now, it is advisable to actively promote pre-departure vocational training, though it should not be made mandatory. Paragraph 2.8.b could be suspended temporarily. See Recommendation 8.

The guideline outlines the fees that must be paid by the employer or agency. These fees align closely with the Convention, which states that all costs should be borne by the employer, and no fees should be levied on the migrant worker. However, there may be certain expenses that the employee needs to cover, such as the passport issuance fee, birth certificate, criminal record check, and other essential documents.

Under Section 4, Article 15, the guidelines suggest that Labour Attaches be appointed and allocated in destination countries. It is understood that this will be limited to the countries where a Bilateral Labour Agreement (BLA) is signed. Other countries have experience in this area, highlighting the importance of having clear tasks to fulfil and legal capacity—particularly regarding labour-market-related issues—and of having the necessary support for monitoring and assisting migrant workers facing challenges. Therefore, it may be beneficial to recruit Labour Attaches from the Ministry of Labour and Social Affairs (MOLSA), as this would ensure they possess labour market insight rather than merely a diplomatic background. It should also be noted that Labour Attaches cannot directly intervene in labour disputes in foreign countries. However, valuable experiences have been observed in mobilizing the diaspora to collaborate with labour attaches in supporting labour migrants. This approach aligns with the Somali National Diaspora Policy. Such support would not be rights-based and could not serve as a substitute for a complaint and mitigation mechanism. This distinction should be clearly outlined in the BLAs.

The overall political responsibility for a well-functioning labour recruitment industry is expected to be placed with a Ministerial Oversight Committee (16.1). The Committee will be chaired by MOLSA and will consist of officials from the relevant ministries and authorities. However, it is found that the Committee would benefit from including social partners as well as representatives from the industry itself. Alternatively, a subcommittee with advisory status could be established, composed of social partners and relevant stakeholders. The involvement of social partners and representatives from the PrEAs (preferably their association) would help create ownership of the guidelines within the industry and further develop the institutions as implementation progresses. In an earlier attempt to introduce guidelines, the reported lack of involvement and ownership was a major stumbling block. See Recommendation 9.

Chapter three of the guidelines concerns 'Working Conditions.' Under Part One, 'Regulating and Determining Working Conditions,' Article 17 states: *"The Ministry will issue an Official Directive on Working Conditions related to the Labour Market and Social issues based on the Somali Labour Code."* Here, it should be emphasized that the employment and working conditions must be at least as favourable as those established by the national labour legislation of the destination country. The FGS cannot dictate employment and working conditions in a foreign country. The Guideline can outline the issues to be addressed in the Contract, but the specific content will depend on the national legislation of the receiving country and any applicable BLAs signed therein. It is important to note that in some destination countries, labour legislation and practices do not comply with the ILS, for example, regarding C87 and C98.

Part Two of the Guideline addresses the relationship and interaction between the Ministry and the PrEAs. It states that the Ministry will appoint a Labour Inspector who will collaborate with the PrEAs. The fact that only one Inspector is planned suggests that the Ministry will largely rely on the industry itself, as well as the Labour Attaches and the diaspora in destination countries, for monitoring. The current Guideline outlines that the Ministry will verify the legality of workers going abroad and will approve all Employment Contracts. Considering the tens of thousands of migrant workers traveling abroad, this will necessitate enormous resources that are not currently available and will not be in the short- to mid-term for the Ministry. This may result in lengthy processing times, potentially pushing migrant workers toward irregular migration. If the industry develops and the Ministry wishes to maintain a certain level of control, it should consider establishing efficient and flexible procedures while still retaining the oversight that the FGS wants to have on the flow of migrant workers leaving the country.

It is advisable to collaborate with the Association of Somali Labour Agencies (ASLA) or other similar organizations to promote the formation of a broader association of PrEAs that could eventually be linked with the SCCI. They could play a key role in implementing the guidelines and monitoring the practices of the PrEAs in close cooperation with the Labour Inspector, FES, and other relevant authorities.

Regarding migrant workers coming from abroad for employment in Somalia, the Guideline suggests (in 2.19.1) that the Ministry is *"to confirm and check the legality of the workers"* and states that they *"will be given a special identification letter" to verify that their "employment contract is approved."*

The guidelines have no wording concerning the employment and working conditions of incoming migrant workers. It is recommended that the PrEA guidelines ensure that the content mirrors that for Somalis going abroad and states that the employment and working conditions must comply with Somali labour legislation. It should also specify that remuneration and other employment conditions cannot be inferior to those that a Somali national would earn for the same work.

In Paragraph 2.20.2, it states that the Ministry has the power to make a *“refund of money (Kharaj) illegally taken from Somali workers.”* It is recommended that this paragraph clarify that, in addition to returning the money, the concerned PrEA’s license will be immediately revoked. Under the cited regulation, if only the money is returned and no further action is taken, the PrEA that illegally withdrew the money from the worker is not sanctioned for non-compliance. A ‘zero’ tolerance policy should be applied to fraud and unlawful exploitation. See Recommendation 11.

The ministry is expected to be the authority that issues licenses to PrEAs, as indicated in section 2.20.3: *“This is represented by a certificate of participation in the name of the company or institution written on it,”* and section 2.20.4: *“The Ministry strives to ensure that the requirements for obtaining a license are met according to the General Procedure for Employment Abroad.”* Depending on the number of PrEAs to be established, this process may necessitate an increase in the capacity of the mandated department within the ministry. Outsourcing the practical aspect of licensing to the proposed association of PrEAs might be considered. The ministry would then oversee the association and the work of the PrEAs, retaining the right to intervene if irregularities occur and/or if there is a need to optimize operations. It is understood that this would necessitate a complete re-evaluation of the government’s approach to managing PrEAs; however, realistically, it appears there are no other options in the short to mid-term, given the limited resources available in the Ministry for implementing and monitoring the OEG, the FEA, and new guidelines for PrEAs.

One ambitious article (2.21) describes the role of the Ministry in defending workers’ rights: *“The Ministry and the Ministry of Foreign Affairs are responsible for ensuring and protecting rights, safety, and dignity of workers/employees who have received foreign employment, and that they are treated with respect.”* This is a compassionate ambition, but it will be difficult to realize. Firstly, the Ministry will not have any legal authority or jurisdiction to act inside a foreign country. It can appeal to the relevant authorities but cannot be *“responsible for ensuring.”* Secondly, experience shows that it is unrealistic to expect the appointed Labour Attaches to have the necessary resources to handle all possible complaints. As mentioned elsewhere in this document, to some extent, the diaspora can be helpful in mitigating disputes, assisting victims of THB, sexual exploitation, and forced labour, and handling complaints, but this would not be rights-based and would depend on the diaspora’s available resources at any given moment. Thirdly, it should be the responsibility of PrEA to monitor whether the working conditions and accommodations provided by their clients are acceptable and that the employer is meeting the obligations they undertook when signing the employment contract.

Due to the lack of a solid labour dispute resolution system in many receiving countries applicable for both migrant workers and their own nationals, it is essential to incorporate a complaint-handling mechanism in the BLAs. This mechanism should prioritize maximum pre-court dispute settlement, largely because neither Somalia nor many destination countries have a functioning labour court system. Therefore, disputes and complaints must be resolved in civil court, which typically requires more time and costs significantly more for the worker. See Recommendation 12.

Industry representatives found that one major obstacle to their activities—and a reason why the Guideline could not be implemented during discussions five years ago—was the demand to maintain a balance of US\$60,000 in their bank account. Chapter 4.22.1.f states: *“Have capital of Somali shillings equivalent to US\$ 60,000 (Sixty Thousand Dollars) from last month’s bank statement.”* It does not seem entirely clear how this amount is justified; the guaranteed amount is not linked to the company’s business volume or the number of clients. Consideration should also be given to whether different amounts should be required depending on the PrEA’s sphere of business (e.g., foreign employment, employment of foreigners in Somalia, or recruitment of Somali nationals for work in Somalia). This is because the risks associated with Somali nationals working in Somalia would be fewer compared to the other two groups. It could be argued that the required account balance should reflect a certain level of business readiness; however, since this amount can be withdrawn at any time, it does not seem to be a reliable indicator of business readiness.

Notwithstanding, paragraph 45.1 states: *“Every foreign employment company or organization must make a deposit of Somali shillings equivalent to US\$25,000 (Twenty-Five Thousand US Dollars) in a recognised Somali Bank, that money is protected for the rights and safety of the workers/employees life and health.”* It is unclear whether the US\$25,000 should be included in the aforementioned US\$60,000 or if it is an additional amount. In paragraph 46.1, it states: *“Every company or organization is obliged to obtain health, life, and disability insurance for employees or workers engaged in foreign employment.”* This means that the PrEA’s direct responsibility would be limited, as major risks would be covered by insurance. One could consider whether the amount to be deposited should reflect the volume of the business.

In an association of PrEAs, it should be considered whether a collective bank guarantee should be established, as this would alleviate some of the financial burdens on individual companies and foster internal discipline regarding compliance. Requesting emerging entrepreneurs to provide a significant amount of money could adversely affect their business development. Negotiations could be initiated with commercial banks to explore whether a Letter of Bank Guarantee could replace the current cash requirements in the company’s account in accordance with the Guideline. There should be a discussion about whether a company must demonstrate a certain minimum number of clients per year to maintain its license and remain a member of the association. This could ensure that a company possesses the necessary capacity and professionalism to facilitate safe and fair recruitment. Business representatives determined that a bank guarantee of US\$5,000 per agency would be acceptable to them and their emerging businesses.

In Article 25, the Guideline establishes that the license duration is set for one year. It may consider including an option for a duration of three years if the company has adhered to the guidelines and no violations have occurred for three consecutive years. If a company intentionally violates the regulations, their licenses would be immediately revoked. MOLSA would assume responsibility for the workers employed under contracts established by the company whose license has been revoked, with the option to transfer them to another licensed company if they wish. The legal and private individuals (owners) accountable for the violations would be charged by MOLSA for any costs that may be associated with the company’s clients.

The articles under Paragraph 32 outline the various activities that PrEAs can undertake. In a PrEA guideline, it may be suggested to categorize the description of services by client type: Somali nationals seeking employment abroad, non-Somali workers recruited for jobs in Somalia, Somali workers employed in Somalia, as well as the employment status of each group, either employed by the user company (in-sourcing) or hired by the PrEA and outsourced.

Paragraph 33: *“Procedures for Recruitment of Workers/Foreign Workers”* suggests establishing a *“recruitment committee”* and testing migrant workers upon their arrival. This does not appear to be a realistic procedure for all migrant workers. Furthermore, there seems to be no justification for this, as alternative procedures have been suggested in this analysis to prioritize Somali workers and ensure that their employment and working conditions are at least as favourable as those outlined in the Somali Labour Code and the generally accepted employment standards in Somalia. Further testing is certainly not essential for low-skilled workers. However, critical staff, such as healthcare professionals and educators, would require testing. If larger groups of migrant workers are invited, it may be advisable to conduct testing in their countries of departure.

The reasons for withdrawing a license are outlined in Paragraph 37 of the guidelines. Generally, these appear to address the most common failures to comply with rules and regulations. However, it should be considered that a certain volume of clients per year is required, as having a sufficient number is essential to operate a professional organization and to establish a financial foundation for providing quality services to clients.

The administrative measures against companies that violate the rules and regulations are outlined in Paragraph 39 of the guidelines. However, these measures lack a specified timeframe for counting non-compliance, which could be set at three years. Additionally, four violations within that three-year period could result in a ban, preventing management and owners from engaging in labour recruitment for five years.

Domestic Workers

The guidelines cover “all Somali job seekers except those under 18 years of age, Domestic and Private Office Servants” (Chapter 1, Article 1, a). However, it is widely acknowledged that domestic workers are in vulnerable situations and are often subjected to exploitation and sexual abuse. Somalia has not ratified the ILO’s Domestic Workers Convention C189. Somalia has faced negative experiences regarding domestic workers being sent back; for example, from the Kingdom of Saudi Arabia (KSA). At one point, 50,000 domestic workers were recruited for KSA, and the outcome was reported to involve widespread exploitation and harassment. It is important to analyse this experience in detail, collaboratively between KSA and Somali stakeholders, to learn lessons and avoid repeating this negative experience. See Recommendation 5.

Discrimination

The guidelines outline important principles regarding non-discrimination: “Do not discriminate on the basis of gender, race, religion or ethnicity, and only on the basis of merit ability, knowledge, experience and efficiency” (1.1.b). This is fully aligned with International Labour Standards (ILS). These principles should also be included in any potential new guideline for the PrEAs.

Bilateral Labour Agreements

In the Guideline, it is suggested that labour migration be accepted only to those countries with which Somalia has a Bilateral Labour Agreement: “Appointment of workers to the countries with which we (Somali, STP) have bilateral agreements on foreign employment.” (Guideline 1.1.d). This is in line with international recommendations, but - in the case of Somalia - will create a strong limitation on the work of the PrEAs, as only one agreement - with Qatar - is in place. This agreement was signed in 1983 and is already seen as outdated. As can be seen in the figures above, large numbers of labour migrants are going to countries that are not covered by any BLA, e.g., to other African countries. Negotiations are ongoing with Kuwait and the KSA, but this might be lengthy, and realistically, signing BLAs with all major receiving countries may only happen in the long term. In the meantime, alternative methods should be explored for regular migration. It could be proposed that the FGS endorse any agreements signed between recognized associations of licensed agencies in the sending and destination countries. This workaround does not imply that the work on BLAs should receive less attention; rather, it should be viewed as a temporary arrangement until a comprehensive BLA can be finalized. See Recommendation 6.

► 8.1 Data protection

Data Protection

Convention C181 Article 6 requests that member states establish norms for the protection of personal data collected and stored by the PrEAs.

Article 6 states:

The processing of workers’ personal data by private employment agencies shall be:

- a) conducted in a way that safeguards this data and respects workers’ privacy according to national law and practice.
- b) restricted to issues pertaining to the qualifications and professional experience of the workers involved, along with any other directly relevant information.

No data protection legislation exists in Somalia. Therefore, it is essential that the PrEAs use best practices until such legislation is enacted and make every effort to ensure confidentiality in their handling, use, and storage of personal data. The staff of PrEAs must be aware of the principles for handling personal data, and key personnel must be trained in data protection before a license is issued. The PrEAs must have clearly defined SOPs for handling personal data that meet good ethical standards.

► 8.2 Employment and Labour Laws

A 1972 Labour Code is still legally in effect, but it is rarely utilized by any party, as it is viewed as outdated. A new Labour Code is awaiting approval in Parliament. Once adopted, it will facilitate securing decent employment and working conditions for both Somali and migrant workers in Somalia. The proposed Labour Code applies to all workers in the country.

A future regulation and guideline for PrEAs will build upon the Somali LC, addressing concerns regarding work to be done in Somalia. Outgoing labour migrants will be subject to the labour legislation of the destination country.

► 8.3 Anti-Discrimination Laws

Somalia lacks comprehensive anti-discrimination laws specifically addressing discrimination in employment. The 1972 Labour Code includes a provision in Article 15 regarding non-discrimination in relation to the Freedom of Association. However, the newly proposed Labour Code features a clear provision for *"Equality and non-discrimination"* in Article 6. Here, section 6.5.a mandates that employers take an active stance: *"(An employer) must strive to eliminate discrimination in any policy or practice."* Moreover, since migrant workers will be covered by the Labour Code, this provides strong protection for them and gives Private Employment Agencies a solid legal foundation for ensuring good employment and working conditions for recruited workers.

While Somalia may not have specific anti-discrimination laws, certain provisions within the country's legal framework might indirectly address discrimination or promote equality before the law. For instance, the Provisional Constitution of Somalia, adopted in 2012, encompasses principles of equality, justice, and non-discrimination. Article 11 of the Constitution prohibits discrimination based on gender, clan, social status, religion, disability, or occupation.

As mentioned above, Somalia has a pending labour code that will govern employment relations, including issues related to wages, working conditions, and workers' rights. Although these laws may not explicitly address workplace discrimination, they do contain provisions related to equal treatment and fair employment practices.

Somalia is a party to several international treaties and conventions that address discrimination and human rights. These include the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which prohibit discrimination based on race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status. The PrEAs should pay special attention to these commitments, both in Somalia and when operating in destination countries.

Customary practices and community norms may influence social relations and interactions in Somalia. Efforts to promote gender equality, address clan-based discrimination, and combat other forms of discrimination may involve challenging or reforming the traditional practices that perpetuate inequality. The PrEAs should prioritize introducing practices that always ensure the highest possible level of gender equality.

It is important to note that Somalia's legal framework is evolving and that efforts to strengthen human rights protections, promote equality, and combat discrimination are ongoing. As the country continues its state-building process and legal reforms, there may be opportunities to develop and enforce more comprehensive anti-discrimination laws in the future. Additionally, civil society organizations and international actors could play a significant role in advocating for human rights and combating discrimination in Somalia. PREAs could positively influence these developments through their recruitment practices.

► 8.4 Licensing Requirements

Licensing requirements for private employment agencies differ across jurisdictions. These practices help ensure compliance with legal regulations, promote ethical conduct, and enhance the professionalism of an agency.

Individuals seeking to obtain a license must fulfil the requirements outlined in the forthcoming PrEA guidelines, which include the capacities detailed below.

The agency should provide legal consultation to help potential migrant workers, recruited staff, and returnees seek advice from qualified professionals with expertise in labour law and employment regulations. These services are currently unavailable in Somalia. A staff member with a legal background or a legal consultant could assist a company in understanding its obligations, navigating the licensing process, and ensuring compliance with relevant laws and regulations.

Since there is currently no legislation or regulation in effect for licensing PrEAs in Somalia, they are generally registered as travel agencies or limited liability companies. Without a license, they cannot provide full-service packages to their clients, which include potential migrants and their employers. Following the revocation of all licenses, foreign employers do not seek staff from their Somali partners. Workers who go abroad for employment often have no certainty of securing a job in the destination country.

When developing new regulations for licensing PrEAs, there should be a clear list of required documents for applying for a license. It would be preferable if the same list of documents and requirements were utilized across the country and maintained the same quality. While companies may have business registration documents, there remains a need for proof of financial stability, professional qualifications of key personnel, and any other documents specified by the licensing authority within MOLSA.

A background check or vetting process for the owners, directors, and/or key personnel of private employment agencies should be part of the licensing practice to ensure their suitability for operating in the recruitment industry. Additionally, it should be considered whether government officials, MOLSA staff, or political leaders can own or manage a private employment agency, in order to promote fair and transparent practices.

9



INTERNATIONAL CONVENTIONS AND TREATIES

► 9.1 Ratification and Adherence

In June 2023, the ILO and its constituents in Somalia signed the 1st **Decent Work Country Programme**. Additionally, the Ministry has shown interest in developing regulatory frameworks to enhance labour migration governance, which includes creating regulatory guidelines and a legislative proposal (regulation) for Private Employment Agencies.

Since the country has ratified Convention No. 181, MoLSA is planning to develop a regulatory guideline and legislative proposal (regulation) for PrEAs with the support of the ILO and through the Better Regional Migration Management (BRMM) Project. The proposal aims to facilitate the fair recruitment of migrant workers in and from Somalia and will contribute to ensuring the protection of Somali workers abroad. This aligns with the recommendations from the Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Somalia and the commitments of MoLSA to improve labour migration governance. Additionally, Somalia is a signatory to the IGAD Protocol on Free Movement of Persons in the IGAD Region.

Somalia is currently **negotiating bilateral labour agreements (BLAs)** with Qatar and Kuwait, concerning formal cooperation on the protection of migrant workers. The drafted proposals of the two BLAs are general in their content and focus mainly on facilitating fair and ethical recruitment, as well as safeguarding the conditions that ensure decent work, investing in skills development, and facilitating the mutual recognition of skills, qualifications and competences for migrant workers. Furthermore, there is another drafted BLA between Somalia and the Kingdom of Saudi Arabia (KSA) wherein the KSA wants to open itself up to the inclusion of domestic workers into the BLA; something to which the government of Somalia has not yet agreed. This refusal stems from previous significant negative experiences with Somali domestic workers facing mistreatment and abuse in the KSA.

► 9.2 Impact on Domestic Regulations

So far, Somalia's ratification of and commitment to international conventions and protocols has not resulted in any significant changes to national legislation or regulations. The proposed new Labour Code could be a crucial first step toward establishing a labour market that complies with ILS. However, it seems clear that, thus far, the instability and security situation, along with the still-developing governmental institutions related to the labour market, will complicate efforts to transform good intentions into a solid legislative framework and achieve effective implementation.

However, it is recognized that there is a definite commitment from the FGS to align the relevant legislation with the ratified conventions, international agreements, and protocols.

► 9.3 Impact on Cross-Border Recruitment

The political foundation for Somali labour migration policy is in *The Foreign Policy Agenda of Somalia 2022*.

Somalia continues to show a strong commitment to creating an international environment focused on developing political and economic cooperation and integration, grounded in mutual benefit and comparative advantage. The Somali government recognizes the necessity of accelerating strong economic partnerships, which are essential for fostering economic growth and prosperity.

Considering the broad and relatively open borders between Somalia and its neighbouring countries, along with pastoral traditions and cross-border clan ties, governing cross-border recruitment is nearly impossible.

Moreover, local authorities are experiencing a substantial influx of migrants in transit, many of whom find informal employment in Somalia to earn money for their onward journey. These workers are directly hired by local employers and remain outside the jurisdiction of the PrEAs.

10

REGULATORY AUTHORITIES

The capacity of regulatory authorities is limited. MOLSA lacks both the quantitative and qualitative ability to develop and further implement legislative acts regarding labour migration. This situation is further worsened by the fact that, without armed guards, labour inspectors cannot move freely throughout the country, which restricts their ability to monitor compliance. In principle, decentralization could address this issue to some extent, but since the state and local offices of MOLSA possess even less capacity than those at the federal level, this does not appear to be a viable solution.

It is important to note that the financial administration for issuing work permits has been transferred from MOLSA to the Ministry of Finance, resulting in even fewer resources for MOLSA.

► 10.1 Government Agencies Responsible for Oversight

Historically, collaboration between the MOLSA/PES and the PrEAs has been limited, specifically regarding the issuance and approval of departure documents.

In the OEG, it is anticipated that the PES and the labour inspection will supervise the work of the PrEAs. However, this raises questions, as it remains unclear whether the PES and Labour Inspection will have the necessary resources to carry out such monitoring activities.

It is anticipated that the Department for Legal and Labour Relations within MoLSA will be responsible for overseeing both incoming and outgoing migration, and thus must also supervise the activities of the PrEAs since the majority of their work is related to recruiting for jobs in foreign countries. However, there is currently no centralized government agency explicitly assigned to oversee private employment agencies.

The responsibility for overseeing private employment agencies and enforcing the relevant regulations could, in principle, fall under various government bodies, including:

- **Ministry of Labour and Social Affairs:** The Ministry of Labour and Social Affairs is responsible for labour-related policies, regulations, and enforcement. Although Somalia's old labour code does not specifically address private employment agencies, the new proposed Labour Code suggests in Article 91 that the ministry will continue to play a role in monitoring employment practices and ensuring compliance with labour standards and Somali legislation. The PES will be a significant stakeholder in implementing the new regulations.
- **Ministry of Commerce and Industry:** The Ministry of Commerce and Industry likely has jurisdiction over the registration and licensing requirements for private employment agencies. Additionally, it may also regulate commercial activities associated with employment services.
- **Ministry of Finance, the Ministry of Foreign Affairs, and the Ministry of Justice:** All these ministries will be crucial stakeholders, both directly and indirectly, and should be involved in the government's inter-ministerial coordination on PrEA/labour migration activities.
- **Immigration Authorities:** Immigration authorities may oversee various aspects of recruiting and employing migrant workers, including issuing visas and work permits. They may collaborate indirectly with other government agencies to monitor the activities of private employment agencies that facilitate international recruitment.
- **Regional and Local Authorities:** In Somalia's decentralized governance structure, regional and local authorities have jurisdiction over specific aspects of labour regulation and oversight. They can enforce local regulations, issue permits, and monitor compliance with employment laws at the regional or municipal level.
- **Task Forces or Committees:** In some instances, governments may establish task forces or committees specifically focused on labour migration or employment-related issues. These bodies may include representatives from various government agencies, social partners, civil society organizations, and other stakeholders, coordinating efforts to address the challenges related to private employment agencies.

- **International Organizations and Donor Agencies:** Agencies, such as the ILO, may provide technical assistance and support to the Somali government in developing policies and regulations related to labour migration and private employment agencies. They might also assist with capacity-building initiatives and training programs for relevant stakeholders.

The MFA ensures that Somali nationals working abroad have fair employment and working conditions. This is achieved by deploying labour attaches to various destination countries. So far, this practice has not been fully implemented. In addition to assisting victims of unlawful exploitation and harassment, the LAs will monitor the actions of the PrEAs. While the LAs do not have official jurisdiction in the destination countries, they can report back to the MFA and/or MOLSA, enabling them to address issues with the sending PrEAs and with authorities in the destination countries.

► 10.2 Existing Coordination Mechanisms

Somalia encounters substantial challenges in managing both inward and outward migration due to factors like conflict, insecurity, and economic instability. While the country lacks a centralized coordination mechanism specifically dedicated to labour migration, various stakeholders are engaged in addressing migration-related issues. These include:

- **Government Ministries and Agencies:** Various government ministries and agencies are involved in addressing migration issues in Somalia. These include the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Labour and Social Affairs, and the Ministry of Humanitarian Affairs and Disaster Management. These entities work together on matters such as immigration, labour migration, refugee affairs, and border management.
- **Regional and local authorities:** Somalia has a decentralized governance structure in which regional and local authorities manage migration-related issues at the sub-national level. Regional administrations and local authorities provide services to labour migrants.
- **International Organizations:** International organizations, such as the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the United Nations Development Programme (UNDP), and the ILO, are actively involved in supporting Somalia in addressing migration challenges. These organizations provide technical assistance, capacity-building support, and humanitarian aid to migrants, refugees, and internally displaced persons (IDPs). It is also important for these agencies to support the development of the PrEAs' capacity and to integrate the PrEAs into their work. It is understood that the IOM is in the process of developing initiatives regarding PrEAs in Somalia.
- **Diaspora Communities:** Somalia's diaspora communities play a crucial role in labour migration dynamics, particularly regarding remittances and their involvement in humanitarian initiatives (as demonstrated during the COVID-19 pandemic). Diaspora organizations and networks may participate in projects related to migrant assistance and economic development.
- **Donor Agencies and Development Partners:** Donor agencies and development partners provide financial and technical support to Somalia to address migration-related challenges, particularly labour migration. These entities fund programs and projects designed to enhance migration governance, strengthen institutional capacity, and improve livelihood opportunities for migrants. It is crucial for the donor community and UN agencies to coordinate their support for the strategic development of PrEAs in Somalia.
- **Community and Traditional Leaders:** Community and traditional leaders play a crucial role in addressing issues related to labour migration at the local level. They can participate in awareness-raising activities, and their authority may help potential migrants and their families reconsider their migration decisions. Local leaders can also significantly monitor the work of the PrEAs and their brokers.

► 10.3 Institutional Capacity

As previously mentioned, institutional capacity within the federal governmental structures in Somalia is low, both in terms of staff numbers and their qualitative capabilities. It is unrealistic to expect that adequate capacity will be established in either the short or mid-term. Moreover, the possibility of utilizing existing capacity is hindered by security concerns, which means that, for instance, labour inspectors cannot move freely throughout the country without significant security measures in place. In reality, there is no capacity for physical monitoring in workplaces, even though such monitoring is essential for ensuring compliance with rules and regulations.

This issue could eventually be solved through decentralization of the inspection, but capacity at the state level is reported to be even lower than at the federal level. Therefore, it seems that decentralization would not solve the problem. The lack of capacity can be illustrated by the fact that, even though no regulations exist for PrEAs, several companies registered as travel agents or consulting firms are, in reality, functioning as PrEAs without any action being taken against them. This is true even though their activities would be considered outside the scope of what those businesses are registered to handle. Furthermore, hundreds of individuals are also acting as PrEAs, organizing recruitment abroad with no reported sanctions against them.

Experience indicates that when LAs are appointed, it is crucial for them to possess expertise in workers' rights and the competence to address any complaints regarding foreign employers. Thus, it is a positive development that the Somali LAs will be recruited from MOLSA.

► 10.4. Worker Rights and Protections

In the current situation, if the new Labour Code is not adopted, workers in Somalia will only be protected under the old and outdated Labour Code. The new Labour Code, when adopted, offers protection to "all employees" as described in Article 3.1. It is viewed as compliant with international labour standards (ILS) and will also, if capacity exists within trade unions and Labour Inspection, provide adequate protection for workers recruited or employed by private employment agencies (PrEAs), regardless of whether they are Somali nationals or labour migrants. One limitation of that protection could be the lack of a Labour Court, which would complicate the complaints mechanism since cases must be filed in civil courts. Civil courts often have less insight into labour-related legislation, and their decisions can be less informed compared to those of a specialized labour court. Somali nationals working abroad will be subject to the labour legislation of the destination countries. This can pose a challenge, as the labour laws in these countries might not comply with ILS. Therefore, PrEAs must ensure that the labour contracts signed between the worker and the employer meet minimum standards, even if these standards exceed what is required by legislation and collective bargaining agreements (CBAs), not to mention those in the destination country.

An ambitious Article (2.21) outlines the Ministry's role in defending workers' rights: "The Ministry and the Ministry of Foreign Affairs are responsible for ensuring and protecting the rights, safety, and dignity of workers/employees who have received foreign employment and that they are treated with respect." This ambition is compassionate but difficult to realize. Firstly, the Ministry lacks legal authority to act within a foreign country. It can appeal to the relevant authorities but cannot be "responsible for ensuring." Secondly, experience indicates that it is unrealistic for the appointed Labour Attaches to have the necessary resources to handle all possible complaints. As noted elsewhere in this document, the diaspora can aid in mitigating disputes; assisting victims of human trafficking, sexual exploitation, and forced labour, and managing complaints, but this approach would not be rights-based, relying instead on the diaspora's available resources at any given time. Thirdly, it should be the responsibility of PrEA to monitor whether the working conditions and accommodations provided by their clients are acceptable, and to ensure that the employer is meeting the obligations they assumed when signing the employment contract.

11



RECOMMENDATIONS AND CONCLUSION

► 11.1 Recommendations

Recommendation 1:

It is advisable to consider amendments to the **FEA and its regulations**, which could enhance control and simultaneously expand companies' ability to fill vacancies. Amendments would also make workforce administration less bureaucratic and provide better data regarding the number of workers, their origins, and types of employment. The FES will oversee advertising procedures and will grant permission to recruit outside of Somalia. The SOPs implemented could be based on an online platform.

Any country can, while complying with C181, choose to exclude migrant workers from employment in certain professions and sectors of the economy. However, Article 2.4 of the Convention recommends categories of jobs that should be excluded from the work sphere for PrEAs, which should be discussed with social partners. According to current practices, a foreign employee must obtain a work permit from the Department of Legal and Labour Relations in MOLSA within 30 days of their arrival. This creates a significant workload for the authorities while placing the incoming worker in a challenging situation if a work permit is denied or the 30-day deadline is not met. A work permit lasts for one year, with the possibility of renewal.

It is recommended to change the current approach to make it more flexible, thereby opening it up for PrEA business opportunities. Instead of having a list of professions for which foreign labour is accepted, the PrEA could be authorized to invite workers if no Somali national with the required skills, knowledge, and experience has applied for the vacancy within 30 working days after its publication by the Federal Employment Service and advertisement by the PrEA. (Specific requirements for physical and digital publication will be developed through dialogue between the concerned parties.) The PrEA is granted the right to invite migrant workers to fill locally unfilled vacancies without any further procedures. The employment and working conditions offered to migrant workers in Somalia must comply with the Somali Labour Act, and remuneration must be at least equal to what a Somali employee would receive for the same job. This rule should be implemented to prevent social dumping.

Recommendation 2:

MOLSA is recommended to reactivate the **Assessment Committee** and establish a tri-partite subcommittee to provide advice on the issuing of work permits to migrant workers. The tri-partite subcommittee, comprising representatives from the government, employers, and workers' organizations, will provide advisory support to the Assessment Committee and offer insights and recommendations to improve the work permit issuance process.

The Assessment Committee and its subcommittee should also implement a complaint mechanism for both workers and businesses. Regarding compliance, both the Assessment Committee and the tripartite subcommittee should develop a robust complaint system through tripartite dialogue. This system will enable workers and businesses to report issues or grievances related to work permits and ensure a timely and fair resolution.

The Foreign Workers Employment Assessment Committee, which has the formal authority to oversee the issuance of work permits, should be strengthened by a tripartite subcommittee with an advisory role regarding the regulation and coordination of the FEA's implementation. However, this analysis found no evidence that the FWEA committee is operational. Key informants reported they were not even aware of the committee's existence.

Recommendation 3:

The International Labour Organization (ILO) establishes standards and guidelines to ensure fair and transparent labour practices worldwide. One critical area these standards address is the issuance of work permits for migrant workers. In this regard, we recommend that MOLSA develop a new set of standard operating procedures (SOPs) for issuing **work permits** to migrant workers. The development of these new SOPs should include social partners and representatives from the labour recruitment industry. These SOPs should guarantee migrant workers a work permit before their departure from their homeland, based on a contract that meets the requirements of the Somali labour code and all relevant migration regulations. At the same time, these changes should enhance oversight of labour market demands for specific professions and establish a foundation for Private Employment Agencies (PrEAs) to enter this emerging market.

Recommendation 4:

The government of Somalia and social partners, including representatives of the PrEAs, with technical support from the ILO, should develop a **standard contract** for inward migrant workers in compliance with the Labour Code. They must ensure that these contracts meet both the national Labour Code and international labour standards (ILS). These guidelines aim to protect the rights of migrant workers, promote fair treatment, and prevent exploitation.

This standard contract should be translated into a language that both parties can understand and should address all relevant issues related to employment and working conditions, such as the duration of the contract, working hours, working days, wages, overtime payments, leave days, social protection, etc.

Recommendation 5:

The guidelines for foreign employment should encompass **domestic workers and private office staff**. These groups are among the most vulnerable and consequently require the greatest protection. There appears to be no justification for excluding them from the guidelines' coverage.

Recommendation 6:

The FGS is advised to expedite the signing of **Bilateral Labour Agreements** that comply with International Labour Standards, particularly Recommendation 86 of the ILO and the UN Network on Migration Guidance on Bilateral Labour Migration Agreements (2022), which offer clear guidelines regarding minimum standards to be maintained and actions to be taken. Technical assistance can be requested for support.

Recommendation 7:

Bilateral agreements between recognized associations of licensed agencies should also be encouraged in both the sending and destination countries, and they could be endorsed by the government, provided their objectives and practices are enhanced to ensure compliance with ILS and labour code requirements.

Recommendation 8:

The overall political responsibility for a well-functioning labour recruitment industry is expected to rest with a **Ministerial Oversight Committee** (16.1). This Committee will be chaired by MOLSA and will consist of officials from the relevant ministries and authorities. However, it has been noted that the Committee would benefit from including social partners, as well as representatives from the industry itself. Alternatively, a sub-committee with advisory status could be formed, comprising social partners and relevant stakeholders. Involvement from social partners and representatives from the PrEAs (preferably their association) would help foster ownership of the guidelines in the industry and further develop the institutions as implementation progresses. In a previous attempt to introduce guidelines, the absence of involvement and ownership was reported to be a significant obstacle.

Recommendation 9:

It is recommended to temporarily suspend Paragraph 2.8.b in the Guideline until high-quality **pre-departure training** can be offered. At the same time, it is advised that pre-departure training is strongly promoted.

Recommendation 10:

The guideline suggests: “To appoint a **monitoring committee** consisting of the cabinet in particular Ministries directly/indirectly concerned with outsourcing” (1.1.f). The term ‘outsourcing’ only encompasses a portion of the clients. The PrEAs could be supplying factories with workers in Somalia, and in some cases, they would employ workers with the intention of outsourcing them to Somali ‘user companies.’ This type of recruitment would typically only be used within the country, and it can only be regarded as transborder in very specific instances. However, it is unlikely that this will occur in the Somali context in the short or mid-term. If ‘outsourcing’ refers to being sent to foreign countries, it would encompass the PrEAs’ primary anticipated activity. It is advised to empower the monitoring committee with the mandate to address all aspects of PrEA activities, not just ‘outsourcing.’

Recommendation 11:

It is recommended to establish a **zero-tolerance policy towards fraud, bribery, and unlawful refunds of money**. There should be stricter penalties, such as license revocation in the most severe cases. This should be grounded in the general principles of fair recruitment and ILO Convention 181.

In Paragraph 2.20.2, it is stated that the Ministry has the power to issue a “*refund of money (Kharaj) illegally taken from Somali workers.*” It is recommended that this paragraph should clarify that, in addition to the return of funds, the concerned PrEA’s license will be immediately revoked. Under the cited regulation, if only the money is returned and no further action is taken, the PrEA that illegally withdrew the funds from the worker does not face sanctions for non-compliance. It is advisable to implement a zero-tolerance policy towards fraud and unlawful exploitation.

Recommendation 12:

It is recommended that the government include **dispute settlement and complaint mechanisms** in the agreements when negotiating new BLAs.

Because many receiving countries lack a solid labour-dispute-handling system for both migrant workers and their own nationals, it is important to include a complaints-handling mechanism in the BLAs. This mechanism should prioritize maximum pre-court resolution of disputes, largely because neither Somalia nor many destination countries possess a functioning Labour Court system. Therefore, disputes and complaints must be resolved through civil courts, which typically take longer and are much more costly for the worker.

Recommendation 13:

It is advisable to establish a **minimum required volume of recruited workers** to renew or maintain a license. The reasons for license withdrawal are outlined in Paragraph 37 of the Guideline. Generally, these seem to address the most common failures to comply with rules and regulations. However, it should be considered to require a certain number of clients each year, as a specific volume is necessary to operate a professional organization and to ensure the financial foundation for providing quality services to clients.

Recommendation 14:

The new Guideline for PrEAs should mandate a minimum level of **training for the professional staff involved in foreign recruitment**. Currently, there are no requirements for the professional qualifications of the staff. Additionally, there is no assurance that key personnel operating the agency have the necessary professional qualifications and expertise. It is advisable that the staff includes recruitment specialists, HR professionals, legal advisors, and administrative personnel.

Some agencies have a Code of Conduct that they strive to follow. They outline several ethical standards that guide the agency's operations. These include principles of fairness, transparency, non-discrimination, and ethical behaviour in recruitment practices. However, this practice remains voluntary, lacking monitoring or complaint mechanisms.

Recommendation 15:

It is advisable to establish a clear guideline for managing **personal data** until specific legislation is enacted.

In the meantime, until such legislation is in place, personal data must be secured through a recruitment contract that specifies agencies cannot store personal data beyond the duration of the engagement without the written consent of individual migrant workers. Additionally, the PrEAs should be held responsible for storing the data in a manner that prevents access or sharing with third parties.

Recommendation 16:

It is advisable to incorporate provisions for **agencies' efforts to recruit Somali workers for employment in Somalia** while developing new regulations for PrEAs.

This business is not yet developed, but it could be in the short- to mid-term. Therefore, it is recommended to take proactive measures to prepare legislation to address this situation. This approach would be fair to PrEAs, as they would then understand the possibilities and limitations upfront. Potential employees would receive the necessary protection from day one, and negative practices would be discouraged from emerging.

► 11.2 Conclusion

The labour recruitment industry in Somalia faces significant challenges. All stakeholders need to reach a consensus regarding the rules and regulations under which Private Employment Agencies will operate, if the country's strategic goal is to regulate and expand opportunities for international recruitment as a substantial component of its economic and employment policies.

It is widely recognized that the government structures for managing and overseeing in- and out-going labour migration are inadequate. Additionally, the government lacks the necessary resources to guarantee safe and fair labour migration. If regulations and guidelines for PrEA activities were established, they could play a significant and constructive role.

The ratification of ILO Convention No. 181 is viewed as a positive sign that the government is committed to effectively regulating private employment agencies (PrEAs) and encouraging them to contribute to the growth of the recruitment industry. Existing legislation and guidelines set some rules for their activities, primarily concerning outgoing labour migration.

Earlier attempts to develop a license-based system for PrEAs failed and, furthermore, fostered tension among some of the stakeholders. The previously active and licensed PrEAs felt excluded from the development of the Guideline. Conversely, government officials were unhappy that some companies sent labour migrants to foreign countries without adhering to the existing regulations. The stalemate that resulted from this tension has thus far prevented the government from addressing the issue of the increasing number of people making irregular departures in search of employment, whose plans cannot be fulfilled in the absence of a reasonably functional legal pathway.

Considering the current capacities in place, MOLSA is poorly equipped to manage and oversee contracts and ensure proper working and employment conditions for the thousands of concerned migrant workers. While the extent to which MoLSA should collaborate with PrEAs is yet to be determined by the Government, strengthened PrEAs that comply with international labour standards and national legislation can play significant roles.

A zero-tolerance approach is required when licensed agencies violate rules and regulations. A complaint mechanism should be established under MOLSA to ensure that the administration of licenses is both transparent and fair. The government and MOLSA will need to consider investing appropriate budgetary, human, and expert resources into the responsible department to ensure effective capacity in delivering acceptable service standards related to the recruitment of workers across international borders, aligned with international labour standards.

▶ ANNEX I: LIST OF DOCUMENTS REVIEWED DURING THE INCEPTION PHASE

1. Document - Somalia Situation: Population Dashboard - 30 April 2023 (unhcr.org)
2. Somalia - United States Department of State
3. Somalia National Development Plan 2020 to 2024 'The Path to a Just, Stable and Prosperous Somalia' The Ministry of Planning, Investment and Economic Development 2020
4. Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility
5. An assessment of labour migration and mobility governance in the IGAD region Country report for Somalia (ILO 2020)
6. Somalia National Diaspora Policy (2022)
7. Somalia Foreign Policy Agenda 2022
8. Somalia National Employment Policy (2019)
9. Somalia Foreign Employment Act (2015)
10. Somalia Overseas Employment Guideline
11. Protocol on Free Movement of Persons in the IGAD Region (2020)
12. ILO Conventions 97, 143 and 181
13. Fair recruitment initiative: General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs (ilo.org)
14. Promising practices for fair recruitment (ilo.org)
15. https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/documents/publication/wcms_806628.pdf
16. Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement (ilo.org),
17. Africa Regional Fair Recruitment Report: The recruitment of Migrant Workers To, Within and From Africa (ilo.org)
18. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/instructionalmaterial/wcms_682746.pdf

▶ ANNEX II: LIST OF INFORMANTS

No	Name	Gender	Title	Institution
1	Yusuf Mohamed Adan	M	Ministry of Labour	State Minister
2	Mr. Mahdi Mohamoud Ali	M	Ministry of Labour	Senior Advisor- TVET and Labour Migration
3	Mr. Salad Hussein Abdule	M	Ministry of Labour	Director of Planning
4	Suad Abdulahi Moallim	F	Ministry of Labour	Director of legal and labour relations
5	Mustafa Ismail Mohamed	M	Ministry of Labour	Acting Director of Communication
6	Mr. Salahudin Dahir	M	Head of Diaspora Engagement	Ministry of Foreign Affairs
7	Abdiaziz Ali Hasan	M	Ministry of Labour	Head of Labour Migration
8	Mr. Abdirahman Mohamed Nur	M	Ministry of Justices	Head of Training
9	Fardowsa Haji Jama	F	Ministry of Internal Security FGS	Senior. Displacement & migration advisor
10	Ali Ahmed Abtidoon	M	Ministry of Foreign Affairs	Head of Diaspora Engagement
11	Mr. Abdinasir Jimale Mohamed	M	Somali Chamber of Commerce & Industry	Deputy Managing Director
12	Mr. Abdirahman Sheikh	M	Federation of Somali Trade Unions (FESTU)	Research and Development
13	Mohamed Abdisamad	M	Anwar Travel & Tourism	Manager
14	Yusuf	M	and Recruitment Agency	Manager
15	Abdulkadir Ali Hasan	M	Banadir Gate Recruitment Company	Senior Advisor
16	Mohamed Ali Hirsi	F	Ministry of Women and Human rights Development	Manger
17	Dirshe	M	Al-HANA Travel & Recruitment Agency	Manger
18	Amal Tawane Sabriye	M	Balidogle travel and Recruitment agency	Manager
19	Ismail Yusuf Ahmed	M	Boroow travel and Recruitment agency	Legal Advisor
20	Aurelia Segatti	F	ILO	Labour Migration & Mobility Specialist
21	Mban Kabu	M	ILO ACTRAV	Workers Specialist
22	Farid Hegazy	M	ILO ACTEMP	Senior Employers Specialist
23	Omar Faruk Osman	M	FESTU	General secretary
24	Abdinasir Jim'ale	M	SCCI	Deputy Managing Director
25	Abdishakur Abib Hayir	M	Office of the President	Senior Advisor on Migration and Returnees

▶ ANNEX 3: INPUTS FOR FUTURE DEVELOPMENT OF GUIDELINES

The following provides lists of issues to be addressed by a potential new regulation for the work of Somali PrEAs. The significance of the various lists will depend on the pathway selected by the partners in Somalia, influenced by the discussions that will take place, which may lead to issues being added or removed.

▶ Compliance standards

Compliance standards are essential for PrEAs to ensure fair and ethical practices in the recruitment and placement of workers. While specific requirements may vary by jurisdiction, industry, and the nature of the agency's operations, several general compliance standards commonly applicable to PrEAs are outlined below.

- ▶ **Legal Compliance:** Private employment agencies must adhere to all relevant local, national, and international laws, regulations, and ordinances that govern their operations. This includes labour laws, anti-discrimination laws, data protection regulations, and licensing requirements.
- ▶ **Non-Discrimination:** Agencies must follow the principles of non-discrimination in all areas of their operations, including the recruitment, selection, and placement of workers. Discrimination based on race, ethnicity, gender, religion, age, disability, or other protected characteristics is not allowed.
- ▶ **Transparency and Fairness:** Agencies must uphold transparency in their interactions with both job seekers and employers. This involves delivering accurate information regarding job opportunities, terms of employment, fees, and contractual obligations. Recruitment processes should be carried out fairly, free from favouritism or bias.
- ▶ **Confidentiality and Data Protection:** Agencies must manage personal and sensitive information with the highest level of confidentiality and in accordance with data protection laws. They should obtain explicit consent from individuals prior to collecting, using, or sharing their personal data and should implement measures to ensure data security.
- ▶ **Ethical Recruitment Practices:** Agencies should avoid deceptive, fraudulent, or exploitative practices in recruitment. This includes steering clear of misleading job advertisements, charging fees to job seekers, and facilitating human trafficking or forced labour.
- ▶ **Compliance with Industry Standards:** Agencies should follow industry best practices and standards for ethical recruitment, as set forth by relevant professional associations, the ILO, and applicable industry codes of conduct. This may encompass guidelines on the fair treatment of workers, dispute resolution mechanisms, and ethical business practices.
- ▶ **Employee Rights:** Agencies must respect the rights and dignity of their employees, including recruiters, administrative staff, and other personnel. This also includes providing fair compensation, ensuring safe working conditions, and fostering opportunities for professional development and advancement.

- **Client Relationships:** Agencies must uphold professional and ethical relationships with their clients, including employers who hire their services for recruitment. This entails meeting contractual obligations, delivering quality services, and addressing client concerns promptly and effectively.
- **Compliance Monitoring and Reporting:** Agencies should establish mechanisms for monitoring compliance with internal policies and external regulations, including the Labour Code and Guidelines for obtaining licenses. This may involve conducting regular audits, implementing quality assurance processes, and maintaining accurate records of transactions and communications.
- **Continuous Improvement:** Agencies should commit to continuous improvement and learning to enhance their compliance efforts and adapt to evolving legal and ethical standards. This might involve investing in staff training, engaging in industry research, and participating in professional development activities.

By adhering to these compliance standards, PrEAs can foster trust with stakeholders, reduce legal and reputational risks, and support the advancement of fair and ethical labour practices in the recruitment industry.

As a follow-up to the above requirements, regulations for the PrEAs in Somalia should comply with the standards listed below. These principles should guide the development of potential new regulations for the PrEAs:

- Private employment agencies must adhere to the applicable labour laws and regulations governing employment practices, including those related to wages, working conditions, and employee rights. This also encompasses provisions regarding wages, working hours, leave entitlements, and occupational health and safety.
- Agencies must ensure that their recruitment and placement practices are free from discrimination based on factors such as race, ethnicity, gender, religion, disability, or other protected characteristics. Discriminatory practices in employment are prohibited by international human rights standards and may lead to legal consequences.
- Agencies must manage personal data and confidential information carefully, adhering to best practices for data protection. This requires obtaining consent from job seekers before collecting or sharing their personal information and putting measures in place to ensure data security and privacy.
- Agencies should offer clear and accurate information to job seekers regarding job opportunities, terms of employment, and recruitment processes. Transparency in advertising, job descriptions, and contractual agreements builds trust and ensures that candidates can make informed decisions.
- Agencies must adhere to ethical standards in recruitment and placement by avoiding deceptive or exploitative practices such as charging fees, withholding wages, or engaging in human trafficking and forced labour. Recruitment processes should be carried out fairly, transparently, and respectfully.
- Agencies must secure any required licenses or permits to operate legally in Somalia. This may include business registration, obtaining licenses from relevant government authorities, and complying with specific industry regulations.
- Agencies should invest in training and capacity-building programmes for their staff to ensure they are well-versed in the relevant laws, regulations, and ethical standards. Training can empower staff to maintain compliance standards and navigate complex employment issues effectively.

Although compliance standards for private employment agencies in Somalia may not yet be defined, adherence to legal requirements, ethical principles, and international best practices is essential for fostering fair and transparent recruitment practices and protecting the rights of both job seekers and employers. Agencies should seek guidance from legal experts and industry stakeholders to ensure their compliance with the applicable laws and regulations.

► Enforcement Mechanisms

While Somalia may encounter challenges in enforcing regulations due to factors like instability and institutional weakness, several potential mechanisms could be utilized:

- **Licensing and Registration:** Require private employment agencies to obtain licenses or register with relevant government authorities. Agencies operating without proper authorization may face penalties, fines, or closure orders. However, as mentioned above, the capacity to ensure enforcement is low, and even though the guideline anticipates sanctions, it is difficult to envision how they would be enforced given the current capacity.
- **Inspections and Audits:** Carry out regular inspections and audits of private employment agencies to ensure they comply with regulations. Inspectors may evaluate adherence to licensing requirements, employment standards, and record-keeping obligations. This necessitates a capacity that is currently lacking in Somalia.
- **Complaint Mechanisms:** Create processes for individuals or their organizations to submit complaints against private employment agencies for regulatory violations. Such complaints could initiate investigations by regulatory authorities and might lead to enforcement actions if wrongdoing is established.
- **Penalties and Sanctions:** Impose fines or sanctions on private employment agencies that violate regulations. These penalties may include monetary fines, suspension, revocation of licenses, or legal action against the offending agencies, as outlined in the Somali Guideline.
- **Awareness and Education:** Educate PrEAs about their legal obligations and the consequences of non-compliance. Training programs, workshops, and informational materials can help raise awareness and promote compliance with regulations. In Somalia, ASLA or other associations of PrEAs could carry this out if they have access to international resources and have obtained legal status.
- **Collaboration with Stakeholders:** Engage with relevant stakeholders, including industry associations, labour unions, the diaspora, and civil society organizations, to monitor and enforce regulations. Stakeholder engagement facilitates information sharing, advocacy efforts, and joint initiatives to address regulatory compliance issues.
- **Data Monitoring and Reporting:** Establish systems for monitoring and reporting data on PrEAs activities, such as licensing status, complaints received, and enforcement actions taken. Analysing data could help identify trends, prioritize enforcement efforts, and allocate resources effectively. Currently, no reliable labour market assessment data are available.
- **Cross-border Cooperation:** Enhance cooperation and coordination with neighbouring countries and international organizations to tackle transnational issues associated with private employment agencies, including human trafficking, illegal recruitment, and the unlawful exploitation of migrant workers.
- **Capacity Building:** Enhance the capacity of the regulatory authorities overseeing PrEAs. Training programs, technical assistance, and resource allocation can improve regulatory capacity and effectiveness in enforcing regulations using the current workforce; however, the international community should be encouraged to support this capacity-building effort.
- **Public Awareness Campaigns:** Initiate public awareness campaigns to educate job seekers about their rights and protections when dealing with PrEAs. Equipping individuals with knowledge can help prevent exploitation and abuse during the recruitment process. A key challenge in Somalia will be reaching out to many potential labour migrants who are illiterate or semi-literate.

While enforcement mechanisms for regulations governing PrEAs in Somalia may encounter challenges, concerted efforts by government authorities, stakeholders, and the international community can enhance regulatory oversight and promote compliance with legal standards in the recruitment sector.

► Access to Complaint/Grievance Mechanisms

Access to complaint and grievance mechanisms for individuals recruited by the PrEAs is essential for addressing any issues or concerns that may arise during the recruitment process or subsequent employment. Some key considerations for establishing effective complaint and grievance mechanisms include:

- **Clear Information:** Ensure that job seekers receive clear information regarding the complaint and grievance mechanisms available to them during the recruitment process. This includes detailing how to file a complaint, whom to contact, and what to expect from the resolution process.
- **Accessible Channels:** Provide various options for submitting complaints and grievances, including in-person meetings, telephone hotlines, email, online forms, or written submissions. Ensure that these channels are accessible to individuals with disabilities and those facing language barriers.
- **Confidentiality:** Ensure confidentiality for individuals who file complaints or grievances as much as possible, to promote open communication and prevent retaliation. Safeguarding the privacy of complainants is vital for their safety and for preventing further harm.
- **Timely Response:** Develop procedures for quickly acknowledging the receipt of complaints and delivering prompt responses. Set reasonable timeframes for investigating complaints and informing the involved parties of the outcomes.
- **Impartial Investigation:** Ensure that complaints and grievances are investigated impartially and thoroughly by trained personnel. Consider appointing a tripartite committee responsible for handling complaints to maintain objectivity and fairness. The local authorities could play an important role here, especially when complaints concern incidents in foreign countries. The complaint mechanism should be outlined in BLAs to give them more weight. By establishing accessible, transparent, and effective complaint and grievance mechanisms, PrEAs can uphold the rights of job seekers, address grievances promptly, and promote trust and accountability within the recruitment process.
- **Mediation and Resolution:** Provide mediation or conciliation services, potentially through the LAS and consular services, to resolve disputes amicably between parties. Facilitate negotiations and agreements that address the concerns raised in the complaint while promoting fairness and equity.
- **Appeals Process:** Create an appeals process for individuals who are unhappy with the result of their complaint or grievance. Set clear procedures for escalating complaints to higher levels of authority or involving external stakeholders, such as trade unions, if necessary.

The PrEAs must maintain detailed records of all complaints, grievances, investigations, and resolutions to promote accountability and transparency. They should ensure confidentiality while making information accessible to authorized personnel for monitoring and evaluation.

The PrEAs should raise awareness among job seekers regarding their rights and the availability of complaint and grievance mechanisms through outreach, education, and training initiatives. They must ensure that the staff responsible for handling complaints are trained in conflict resolution, communication skills, and relevant legal obligations. In this regard, it is advisable for the agencies to have staff who can communicate professionally in the language spoken in the destination country.

► Responsibilities of Private Employment Agencies

The responsibilities of PrEAs can vary. Nevertheless, common responsibilities usually include:

- **Recruitment and Placement:** Private employment agencies are responsible for sourcing and matching candidates to job opportunities based on clients' requirements. This includes advertising job vacancies, screening applicants, conducting interviews, and recommending suitable candidates for placement.
- **Compliance with Laws and Regulations:** Agencies must comply with the relevant laws and regulations that govern employment, recruitment, and labour practices. This includes adhering to anti-discrimination laws, labour standards, immigration regulations, and data protection laws.
- **Protection of Workers' Rights:** Agencies have a responsibility to ensure that workers' rights are upheld throughout the recruitment and employment process. This includes providing accurate information about job opportunities, employment terms, wages, and working conditions. Agencies should also advocate for fair treatment and ensure that workers are not subjected to unlawful exploitation or abuse. Private employment agencies manage sensitive personal information about job seekers and clients. It is their duty to maintain confidentiality and comply with data protection laws when collecting, storing, and sharing personal data.
- **Quality Assurance:** Agencies should aim to uphold high standards of service quality and professionalism. This includes conducting comprehensive candidate assessments, verifying qualifications and references, and offering continuous support to both candidates and clients throughout the recruitment process.
- **Ethical Conduct:** Agencies are expected to operate with integrity, honesty, and transparency in all their dealings. This includes avoiding conflicts of interest, disclosing pertinent information to clients and candidates, and maintaining professional standards of conduct.
- **Risk Management:** Agencies should identify and mitigate the risks associated with their operations, including legal, reputational, and financial risks. This may involve implementing robust compliance procedures, conducting due diligence on clients and candidates, and maintaining appropriate insurance coverage.

Overall, private employment agencies have a complex range of responsibilities designed to ensure fair, ethical, and professional recruitment practices while addressing the needs of both job seekers and employers.

In Somalia, PrEAs (up until 2022) played a significant role in facilitating job placement and contributing to the functioning of the labour market. Although there is no specific legal framework governing PrEAs in Somalia, their responsibilities, when developed, should generally align with the following international standards and ethical considerations:

- **Protection of Workers' Rights:** PrEAs are responsible for upholding workers' rights throughout the recruitment and employment processes. This includes providing accurate information about job opportunities, terms of employment, and working conditions. Agencies should also advocate for decent jobs, including fair wages, safe working environments, and protection from exploitation and abuse.
- **Client Relationships:** Building and maintaining positive relationships with clients is crucial for PrEAs' success. This involves understanding clients' needs, providing tailored recruitment solutions, and delivering results in a timely and professional manner.

Once the license system is reactivated, PrEAs in Somalia will have various responsibilities designed to facilitate fair, ethical, and professional recruitment practices while meeting the needs of both job seekers and employers within a challenging operating environment.

► Responsibilities Towards Clients

PrEAs have a variety of responsibilities toward both job seekers and clients. They ensure fair and ethical recruitment practices, protect the rights of all parties involved, and maintain professionalism within the industry. Some key responsibilities toward clients include:

- **Understand Client Needs:** Take the time to comprehend the specific staffing requirements and needs of clients, including their industry, culture, and organizational goals.
- **Offer Quality Candidates:** Present clients with qualified and suitable candidates who meet their requirements while ensuring that individuals have been thoroughly vetted and screened.
- **Maintain Professionalism:** Interact with clients in a professional and ethical way, honouring confidentiality and ensuring the integrity of the recruitment process.
- **Communicate Effectively:** Keep clients updated on the progress of recruitment efforts, provide regular information on candidate availability, and promptly respond to client inquiries and requests.
- **Fulfil Commitments:** Meet any contractual obligations or commitments made to clients, including adhering to deadlines, providing accurate information, and delivering quality services.
- **Facilitate the Hiring Process:** Assist clients throughout the hiring process by scheduling interviews, coordinating assessments or tests, and facilitating negotiations between clients and candidates.
- **Ensure Client Satisfaction:** Aim to meet or surpass client expectations and make certain that clients are pleased with the candidates introduced and the overall recruitment experience.

By fulfilling these responsibilities to their clients, PrEAs can build trust, enhance their reputation, and contribute to positive outcomes for everyone involved in the recruitment process.

► Reporting and Transparency Requirements

Reporting and transparency requirements for PrEAs ensure accountability, protect the rights of job seekers and employers, and promote ethical business practices within the industry. Based on jurisdiction and the regulatory framework, some common reporting and transparency requirements include:

- **Financial Reporting:** Private employment agencies may need to submit regular financial reports to regulatory authorities, outlining their financial performance, revenue, expenses, and profit margins. This helps ensure transparency and financial accountability.
- **Operational Reporting:** Agencies may need to report on their operational activities, including the number of job placements made, the types of positions filled, the industries served, and the geographic locations of placements. This information helps evaluate the agency's performance and its impact on the labour market.
- **Complaint and Grievance Reporting:** Agencies may be required to keep records of complaints and grievances received from job seekers, clients, or other stakeholders and may need to report on how these complaints were addressed or resolved. This fosters transparency and accountability in handling complaints.
- **A transparent fee structure helps prevent exploitation and ensures compliance with C181,** thereby promoting fair treatment for all parties.
- **Ethical Recruitment Practices Reporting:** Agencies may need to report their adherence to ethical recruitment practices, which includes compliance with labour laws, non-discrimination policies, and efforts to prevent human trafficking and forced labour. This showcases the agency's commitment to ethical conduct.

- ▶ **Data Protection Reporting:** Agencies are required to adhere to data protection regulations and may need to report on their data handling practices, including how personal information collected from job seekers is stored, used, and protected. This promotes transparency and ensures compliance with privacy laws.
- ▶ **Client Satisfaction Reporting:** Agencies can gather feedback from clients regarding their satisfaction with the recruitment process and the quality of candidates provided. Reporting on client satisfaction aids in identifying areas for improvement and upholding high service standards.
- ▶ **Regulatory Compliance Reporting:** Agencies must report their compliance with relevant laws, regulations, and industry standards governing the operation of private employment agencies. This may include submitting documentation to demonstrate compliance with licensing requirements, labour laws, and other regulatory obligations.
- ▶ **Annual or Periodic Reporting:** Agencies may need to submit annual or periodic reports to regulatory authorities, summarizing their activities, financial performance, compliance efforts, and any other relevant information. These reports assist regulatory authorities in monitoring an agency's operations and ensuring compliance with regulatory requirements.
- ▶ **Public Disclosure:** In some instances, agencies may need to publicly share specific information, including their business registration details, licensing status, complaint handling procedures, and contact information. Public disclosure fosters transparency and enables stakeholders to access pertinent information about the agency's operations.

By adhering to reporting and transparency requirements, PrEAs can demonstrate their commitment to accountability, integrity, and ethical conduct while also fostering trust with job seekers, clients, and regulatory authorities. Additionally, transparent reporting promotes a level playing field within the industry and contributes to the overall integrity of the labour market.

▶ Technology in Recruitment

Technology plays a crucial role in contemporary recruitment, changing how employers and job seekers connect, evaluate one another, and ultimately make hiring decisions. It impacts various elements of the recruitment process, including:

- ▶ **Sourcing Candidates:** Technology allows recruiters to expand their reach when searching for candidates. Online job boards, professional networking sites like LinkedIn, and social media platforms enable recruiters to access a larger pool of potential candidates, moving beyond traditional methods such as newspaper ads or word-of-mouth referrals.
- ▶ **Applicant Tracking Systems (ATS):** ATS software automates the process of collecting, sorting, and tracking job applications. These systems streamline administrative tasks, including resume parsing, candidate screening, and communication with applicants, thereby saving time and enhancing efficiency for recruiters.
- ▶ **Candidate Assessment:** Technology offers tools for evaluating candidates' skills, qualifications, and suitability for a role. Online assessments, pre-employment tests, and video interviews enable recruiters to assess candidates remotely and objectively, thereby minimizing bias and subjectivity in the selection process.
- ▶ **Remote Hiring:** Technology streamlines remote hiring and onboarding processes, empowering employers to recruit and onboard candidates from anywhere in the world. Video conferencing, virtual reality simulations, and online collaboration tools facilitate remote interviews, assessments, and training sessions, enhancing the accessibility and inclusivity of recruitment.
- ▶ **Mobile Recruitment:** Recruitment has become increasingly mobile-friendly due to the widespread use of smartphones and mobile devices. Mobile-optimized career websites, job applications, and communication channels cater to candidates who prefer searching for jobs

and engaging with recruiters on their mobile devices, thus enhancing accessibility and convenience.

- **Collaboration and Communication:** Recruitment technology enhances collaboration and communication among hiring teams, recruiters, and candidates. Applicant portals, email automation, and chat platforms streamline interactions, ensuring transparency and providing a seamless experience for all stakeholders involved in the recruitment process.
- **Candidate Experience:** Technology plays a vital role in shaping the candidate experience. User-friendly application processes, personalized communication, and timely feedback improve candidates' perceptions of the employer and contribute to a positive recruitment experience, no matter the outcome.

Overall, technology has transformed recruitment by making it more efficient, data-driven, and accessible. In today's digital age, embracing and leveraging technology allows recruiters to remain competitive, attract top talent, and drive positive outcomes for both candidates and employers.

In Somalia, the influence of technology on modern recruitment is shaped by the country's unique context, including infrastructure challenges, cultural norms, and ongoing efforts to rebuild institutions and promote economic development. While Somalia faces certain limitations in technology adoption compared to more developed regions, several ways still exist in which technology enhances modern recruitment practices within the country.

The rapid development of accessible and affordable communication technology has made smartphones more available to migrant workers and potential migrant workers. Information and Communication Technology (ICT) has become a game changer in the recruitment industry, providing millions of people with access to jobs every day and thus creating a vast market from which employers can select candidates for their vacancies. The PrEAs are a driving force in utilizing this technology. Whereas several years ago they focused on highly skilled employees and experts, often with academic backgrounds, they now encompass all sectors of the economy. This, along with the increasing internationalization of the labour market, characterized by insourcing, outsourcing, and multiethnic workplaces, opens up new perspectives and challenges for the PrEAs in Somalia. However, they will need to enhance their capacity regarding ICT. Therefore, the challenges and opportunities presented by ICT should be taken into account when developing new regulations for the PrEAs.

► Role of Technology in Modern Recruitment

ICT is playing an increasingly significant role in today's recruitment procedures. According to the CIA, there were an estimated 8.844 million subscribers to mobile networks in Somalia in 2022, meaning that 50 per cent of the population had access. However, challenges stemming from recent economic difficulties have hindered telcos and the government from sustaining investment in infrastructure. The government has also faced militant groups that occasionally force the closure of internet services in many areas of the country. A National Communications Law was passed in October 2017 to establish a legal and regulatory framework for the telecom sector; however, given the poor condition of Somalia's fixed-line infrastructure (1 per cent), operators have focused on mobile connectivity (50 per cent). Following the development of services providing mobile data and broadband, the telecom market has flourished. Somali tariffs are among the lowest in Africa, and new cable systems are expected to come online in the next few years, along with planned investments from local operators, which will strengthen the country's national fibreoptics backbone, creating downward pressure on retail pricing. Approximately 2.5 million people (based on a 2021 estimate by the CIA Yearbook) are internet users. All of the above will contribute to the PrEAs' ability to offer services to larger parts of the country.

- ▶ **Online Job Portals:** Despite limited internet access, online job portals are emerging in Somalia as platforms connecting job seekers with employers. These portals enable employers to post job vacancies and allow job seekers to search for and apply to positions remotely.
- ▶ **Social Media Recruitment:** Social media platforms like Facebook and LinkedIn are increasingly utilized for recruitment in Somalia. Employers and recruitment agencies leverage these platforms to advertise job opportunities, engage with potential candidates, and build professional networks.
- ▶ **Mobile Technology:** Mobile technology is widespread in Somalia, with most internet users accessing the web through mobile devices. Consequently, recruitment platforms and job portals are evolving to be mobile-friendly, enabling job seekers to search for jobs and apply for positions using their smartphones.
- ▶ **SMS and USSD-Based Services:** Due to the widespread use of mobile phones in Somalia, SMS and USSD-based services are employed to share job information and enable communication between recruiters and job seekers. These services serve individuals with limited internet access or smartphone capabilities.
- ▶ **Remote Interviews:** Technology enables remote interviewing via video conferencing platforms, such as TEAMS, Zoom, or Skype. These platforms allow recruiters to conduct interviews with candidates located in different regions or countries, which is particularly relevant for international recruitment efforts or when travel is restricted.

While technology has the potential to transform recruitment practices in Somalia, challenges such as limited internet infrastructure, gaps in digital literacy, and security concerns must be addressed for the country to fully harness its benefits. Nevertheless, despite these challenges, technology continues to play an increasingly important role in modernizing recruitment practices and connecting job seekers with opportunities in Somalia.

**ILO Country Office for Ethiopia, Djibouti,
Somalia, Sudan and South Sudan**

Menelik II Avenue,
ECA Congo Building, 5th and 6th Floor
P.O Box 2788,
Addis Ababa, Ethiopia