



International  
Labour  
Organization



Better  
Regional  
Migration  
Management



## Term of Reference

### International Consultant to develop Regulation of Private Employment Agencies for the Federal Republic of Somalia

#### 1. Background

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Somalia is a country of origin, transit, destination, and return. Conflict, insecurity, poverty, and famine have led to high emigration rates, especially over the last 20 years. According to the United Nations Department of Economic and Social Affairs (UNDESA) international migrant stock data for 2020<sup>1</sup> shows 2,034,221 Somali migrants are living outside the country, where majority of them live in the United Kingdom, the Netherlands, Norway, Sweden, the United States, Saudi Arabia, Canada, and Australia. According to the United Nations High Commissioner for Refugee (UNHCR) data, as of April 2023<sup>2</sup>, there are 685,198 Somali refugees, where majority of them remain in neighbouring countries, mostly in Kenya (301,526) and Ethiopia (253,616).

There is also a lot of irregular mobility out of Somalia, where common ways out of Somalia are the use of the three main migration routes: crossing by sea to Yemen (which is less popular since 2015 due to the conflict in Yemen) and moving on to the Gulf countries; moving south through Kenya to South Africa; and west through Sudan and Libya in the hope of crossing the Mediterranean Sea and reaching Europe often relying on informal recruiters who operate both within and outside the country to facilitate their journeys. Security, economic opportunities, and decent living conditions are the major pull factors for Somali migrants. The US Department of State's Trafficking in Persons Report 2022 ("TIP Report")<sup>3</sup> states that dubious employment agencies facilitate human trafficking by targeting individuals desiring to migrate to the Gulf States or Europe for employment. The report further indicates that some women in Somaliland act as recruiters and intermediaries to transport victims to Djibouti and Ethiopia for the purposes of forced labour in domestic work or sex trafficking. Similarly, a report from IOM's Migrant Response Plan for the Horn of Africa and Yemen in 2022, shows that around 4,579 Somali migrants arrived in Yemen via treacherous boat journeys to Saudi Arabia. Somalis also migrate to neighbouring countries like Kenya, Ethiopia, and South Africa, where Somalis often set up small businesses and work as casual and domestic workers in Gulf countries.

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<sup>1</sup>[https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa\\_pd\\_2020\\_international\\_migration\\_highlights.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf)

<sup>2</sup> [Document - Somalia Situation: Population Dashboard - 30 April 2023 \(unhcr.org\)](#)

<sup>3</sup> [Somalia - United States Department of State](#)

The Ministry of Labour and Social Affairs (MOLSA) reviews the contracts of migrant workers in Somalia prior to the approval of work permits and does inspection services at the workplaces to assess their working conditions. According to their data, there are 25,000 migrant workers in Mogadishu who originate from the IGAD region and the Middle East, and, approximately 15,000 work permits have been issued in the last two years mainly to nationals of Kenya, Uganda, India, the United Kingdom, Pakistan, and Bangladesh, who work as doctors, teachers, and cleaners, or have jobs in construction, hotels, NGOs, and for the United Nations. Significant numbers of highly skilled migrants arriving from Syria also work in the health sector. Migrant workers include IT workers, cooks, and plumbers who have arrived in Somalia with the regional peace-keeping mission of the African Union Transition Mission in Somalia (ATMIS). However, as per the ILO Labour market assessment country report on Somalia<sup>4</sup>, there is lack of data on migrant workers in Somalia and formal migration process mostly hinders job creation opportunities since work permit process (which is tied to residency permits) may present an obstacle to being an employer, that is, to setting up a business that employs others. Moreover, the assessment also revealed that Somalia is among those African countries whose constitution allows for dual nationality, and which, as a result, benefits from skills brought in through the labour market integration of migrant workers of Somali ethnicity.

Somalia's National Development Plan 2020–2024<sup>5</sup> recognizes that lack of sustainable economic opportunities for the youth is a major driver of out-migration and indicate that two thirds of Somali youth wish to migrate abroad in search of livelihood opportunities. Similarly, the national employment policy recognizes the wide social and economic implications of labour migration by clearly indicating that the lack of decent employment opportunities has contributed to high rates of irregular migration, and emphasizes the need to build the capacities of the public employment services with the view of developing a labour market information system (LMIS) that provides the basis for the design, implementation, monitoring, and evaluation of policies and regulations that are better focused and targeted. Accordingly, the National Development Plan promotes regular labour migration and the use of private employment agencies in facilitating employment opportunities abroad for aspiring migrant workers. However, the national development plan doesn't show mechanisms for regulating and monitoring for PrEAs but the finalized labour code provides the directorate of public employment of MOLSA with the responsibility for regulation, supervision of employment management, monitoring or enforcing compliance for PrEAs, and forbids forced or compulsory labour in Article 6.

When considering procedures to govern labour migration, on one hand, the 2015 Foreign Employment Act<sup>6</sup>, regulates labour migration to Somalia and details the procedures related to obtaining work permits for migrant workers willing to work in Somalia but does not contain any mechanisms to offer protection against violence, harassment, discrimination in the workplace, or access to complaint mechanisms. On the other hand, the draft oversees employment guideline for Somali migrant workers contains procedures for registration and provision of licenses for PrEAs, complaint mechanisms, registration and employment contracts for migrant workers, penalties for sending migrant workers oversees in an unlawful manner,

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<sup>4</sup> [wcms\\_859187.pdf \(ilo.org\)](#)

<sup>5</sup>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; <https://mop.gov.so/wp-content/uploads/2022/07/Somali-National-Development-Plan-9-2020-2024.pdf>

<sup>6</sup><https://molgov.so/federal-government-of-somalia-foreign-employment-act/>

social security, labour inspection, and reception and return for migrant workers. However, to date MOLSA did not adopt the guidelines since PrEAs complained about some of the terms and conditions within the guidelines, specifically, the registration fees, and not being part of consultations process during the drafting of the guidelines. Therefore, to streamline and develop consensus-based legislation and revise the existing guidelines for private employment agencies, MOLSA suspended the registration of new PrEAs and the renewal of licenses for the existing PrEAs.

In 2021, the Federal Government of Somalia ratified relevant ILO Conventions protecting migrant workers, namely the two migrant workers Conventions, Convention Nos. 97 and 143 and Convention No. 181 concerning Private employment agencies. In addition, Somalia also endorsed the Protocol on Free Movement of Persons in the IGAD Region<sup>7</sup> which provides mechanisms for protection of migrant workers against unfair recruitment practices including intermediary bodies, private recruitment agencies and public employment services. Based on these ratifications and endorsement, MOLSA is aiming to improve labour migration governance in the country. In addition, Somalia is currently negotiating bilateral labour agreements (BLAs) with Qatar and Kuwait on formal cooperation and protection of migrant workers. The drafted proposals of the two BLAs are general and mainly focus on facilitating fair and ethical recruitment, safeguarding conditions that ensure decent work, investing in skills development, and facilitating mutual recognition of skills, qualifications, and competences for migrant workers. Further, there is another drafted BLA between Somalia and Saudi Arabia on which Saudi Arabia wants to include in the BLA the sector of domestic workers, which the government of Somalia has not yet agreed to.

Recently, the ILO, through the Better regional migration management project, funded by Foreign, Commonwealth and Development Office of the United Kingdom Government, has built the capacity of various stakeholders on the above outlined international labour standards leading to collective commitment to ensure the domestication, implementation, and reporting of the ratified conventions. The awareness-raising workshop organized in March 2023 in Nairobi for Parliamentarians, the Ministry of Labour and Social Affairs, and social partners of Somalia, aimed to help them have improved understanding of ILO's mandate and its decent work agenda, including standard setting, social dialogue, and building the capacity of national constituents on international labour standards, in particular the implementation of C97, 143, 155, 181, 187, and 190. This has led to the development and signing of the 1<sup>st</sup> Decent work country program in June 2023 and the Ministry expressing its interest in developing regulatory frameworks to improve labour migration governance, including the development of a regulatory guidelines and legislative proposal (regulation) for Private Employment Agencies.

To promote fair recruitment and regulate the operation of private employment agencies, Convention No. 181, Recommendation No. 188 and the General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs (GPOG and Definition) are of particular importance. The objective of Convention No. 181 is to allow the **operation** of private employment agencies as well as promote the **protection** of workers using their services;

#### **Key provisions of C181:**

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<sup>7</sup><https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/event/file/Final%20IGAD%20PROTOCOL%20ENDORSED%20BY%20IGAD%20Ambassadors%20and%20Ministers%20of%20Interior%20and%20Labour%20Khartoum%2026%20Feb%202020.pdf>

- Governing the operation of private employment agencies in accordance with a **system of licensing or certification** (art. 3)
- **Not charge** directly or indirectly, in whole or in part, **any fees** or costs to workers, with restricted exceptions made for certain categories of workers and types of services after consulting representatives of workers and employers (art. 7)
- Ensure **adequate protection** (art. 11 and 12: determine adequate protection and allocate respective responsibilities of PEA)
- Provide **adequate protection for and prevent abuses of migrant workers** (art. 8)
- Supervision by **labour inspection** (art. 14)

Further, the General Principles and Operational Guidelines on Fair Recruitment forms a comprehensive approach to realizing fair recruitment through development, implementation and enforcement of laws and policies aiming to regulate the recruitment industry and protect workers' rights, and lays out specific responsibilities of governments, enterprises and public and private recruitment services.

Challenges to fair and effective labour migration governance and more specifically the promotion of fair recruitment in **Somalia** include the lack of adopted guidelines and legislation that regulate and monitor the operation of private employment agencies (PrEAs) in line with Convention No. 181. This has raised concerns about the growing role of unregulated PrEAs, informal labour intermediaries, and other operators facilitating the use of informal channels by migrant workers, leading to the report of cases of exploitation of Somali labour migrants in the Gulf countries and the Middle East. As per the 2022 report of the US State Department on trafficking in persons for Somalia, Somali women are taken to the Middle East, sometimes via Djibouti, where they are exposed to domestic servitude, and Somali men are subjected to forced labour as herders and laborers in the Gulf States. Therefore, it is critical to appropriately regulate PrEAs, to protect workers and recognizing PrEA important role in the efficient and equitable functioning of labour markets by matching available jobs with suitably qualified workers. In this regard, it is also important to address the needs of PrEAs, support them to comply with existing legislation and provide a business case model that underlines the economic and fiscal advantages ultimately supporting business continuity.

Given that the country has ratified Convention No. 181, MoLSA with the support of the ILO, through the BRMM Project, is planning to develop a Regulatory Guideline and legislative proposal (regulation) for PrEAs that will help facilitate fair recruitment of migrant workers in Somalia and from Somalia and ensure the protection of their workers. Further to the recommendations of the ***Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Somalia*** and the commitments of the MoLSA towards improving labour migration governance, the ILO is seeking the services of an International Consultant to support the MoLSA in developing a situational analysis of the current regulatory situation and context in which PrEAs are operating in Somalia and a national legislative proposal (regulation) and implementation guideline on PrEAs in line with the [Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement \(ilo.org\)](#), and [Establishing Fair Recruitment Processes: An ILO online training toolkit](#). It is also important to refer to [Africa Regional Fair Recruitment Report: The recruitment of migrant workers to, within and from Africa \(ilo.org\)](#) as a background document.

## 2. Objectives of the Assignment

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The overall objective of this consultancy is to undertake a situational analysis of the current regulatory situation and context in which PrEAs are operating in Somalia and develop a regulation of PrEAs and guideline in line with relevant ILO Conventions and ILO Guides on PrEA and the GPOG and Definition, that will help the Federal Government of Somalia (FGS) to regulate and monitor the operation of PrEAs in the Federal Republic of Somalia.

More Specifically, the regulation and guideline will:

- Enhance fair and effective labour migration governance through the promotion of fair recruitment principles for Somali workers moving abroad and the recruitment of migrant workers in Somalia.
- Support the MoLSA to establish a mechanism for regulating and monitoring of PrEAs operating in Somalia, also assessing the potential role of the labour inspectorate, PES and the PrEAs themselves to ensure compliance.
- Enhance the regular migration and the data management of migrant workers in Somalia by countries of origin, sector they are working in, and geographical scope.
- Assess the available labour market needs, strengthen skills anticipation systems, and improve Somali migrants access to decent work opportunities overseas. Develop gender-responsive regulatory guidelines and a legislative proposal that ensure equal opportunities and respond to the needs and challenges of migrant workers, both men and women.
- Recommend a functioning and effective complaints/grievance mechanism for migrant workers
- Establish an interagency body on fair recruitment that covers relevant focal points from Ministries of foreign affairs, labour, Gender, private employment agencies, and social partners.

## 3. Deliverables and Timeframe:

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- **Inception report:** the consultant needs to prepare a detailed roadmap explaining his/her understanding of the assignment, methodology, research and analysis tools and outline of the guideline for review and approval of the Ministry and ILO.
- **Situational analysis report:** with a view to assessing the situation with regard to fair recruitment, context in which PrEAs are operating in Somalia and having an overview of existing legislation, policies, laws and regulations, in place based on desk review and consultation with key stakeholders, including social partners.
- **Draft legislative proposal (regulation) for PrEAs and implementation guidelines:** the consultant will develop and share a draft guideline and legislative proposal for review and comments by the ministry and ILO.
- **Revise draft of the legislative proposal (regulation) for PrEAs and implementation guidelines:** the consultant will submit the revised draft guideline to the satisfaction of the ILO and the ministry after incorporating all their comments.

- **Review and validation:** the consultant will present the revised draft regulations and implementation guidelines to key stakeholders, including social partners, for their review and comments. She/he will also make a presentation of the guidelines for stakeholders in a national workshop.
- **Final national legislative proposal (regulation) for PrEAs and implementation guidelines:** the consultant will submit a final draft regulations and implementation guidelines on PrEAs edited and proofread, incorporating comments and inputs from the workshop and identify capacity building needs.

This contract will include the development of quality:

- **Situational analysis report**
- **Regulation and monitoring of PrEAs and implementation guidelines and**
- **Process Report for the consultancy assignment**

The consultancy shall be undertaken between **1 August 2023 to 30 October 2023**.

#### 4. Reporting

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The international consultant will work under the overall supervision of the ILO's BRMM Chief Technical Advisor with line reporting to the designated Ministry of Labour and Social Affairs official of the Federal Government of Somalia.

The ILO and MoLSA will review progress of the work and provide feedback as necessary and ensure payment of agreed amounts, based on performance and deliverable assessment(s).

#### 5. Payment Schedule

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Payments will be made upon submission of quality and agreeable deliverables with associated invoices. This assignment does require travel to Somalia and thus, the prospective consultant should express interest with that condition in mind and include required budget in the financial proposal. The payment will be delivered in instalments upon delivery of the products according to the details below:

1. A **first payment of USD 30%** upon submission of the Inception Report to the satisfaction of the ILO and MoLSA.
2. A **second payment of USD 40%** upon submission of the situational analysis report and draft legislative proposal (regulation) and implementation guideline for PrEAs to the satisfaction of the ILO and MoLSA.
3. A **third and final payment of 30%** upon submission of the final validated legislative proposal (regulation) and implementation guideline for PrEAs to the satisfaction of the ILO and MoLSA.

## 6. Qualification and experience

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- University degree in law or related discipline.
- 7-10 years of experience in legal drafting, developing regulatory framework and/or working on labour migration, public employment or related topics.
- Familiarity with international and/or regional legislative framework on international labour migration, including PrEAs;
- Experience working and interacting with UN agencies and government agencies, in particular the ministry of labour, ministry of immigration or interior, as relevant.
- Excellent command of written and spoken English is essential.

## 7. Evaluation Criteria

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The successful candidate will have a mix of expertise and qualifications in the focus areas related to this assignment. Evaluation of the suitability of the Consultant to work on this assignment will be made against the following technical criteria:

| <b>Evaluation Criteria</b>   | <b>Maximum mark</b> |
|--|---------------------|
| <b>A. Expertise/Qualification</b>  |                     |
| Advanced university degree in law or related discipline.   | 10                  |
| 7-10 years of international experience in legal drafting, developing regulatory framework and/or working on labour migration, public employment, or related topics   | 10                  |
| Experience working and interacting with UN agencies and government agencies, in particular the ministry of labour, ministry of immigration or interior, as relevant  | 10                  |
| <b>Maximum Points</b>  | <b>30</b>           |
| <b>B. Proposed approach to deliver the ToR's scope of work</b>   |                     |
| Applicant demonstrates (via submitted technical proposal) their expertise working on developing guidelines. The technical proposal includes a realistic action/work plan. The evaluation to assess the understanding of scope, objectives, and completeness of response. | 40                  |
| Consultant's overall understanding of the assignment and quality and responsiveness of the proposed methodology and approach   | 30                  |
| <b>Maximum Points</b>  | <b>70</b>           |
| Total for Both Section A (30 Points) and Section B (70 Points)   | <b>100</b>          |
| Minimum Acceptable Score for the Proposal to be considered for financial evaluation.   | 70                  |

## 8. Recommended presentation of proposal

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Interested consultant must submit the following documents/information:

- **Technical Proposal**, specifying the understanding of the assignment, methodology, approach, proposed work and management plan, key personnel qualifications, and relevant experiences of the consultant; Sample(s) of accredited publication(s)/reports of similar work done previously.
- **Personal CV**, indicating all experience from similar assignments, as well as the contact details (email and telephone number) of the candidate and at least three (3) professional references.
- **Financial proposal**, the interested consultant is requested to provide a financial offer in USD that is deliverable based and includes separately professional fees related to the activity and costs for field mission dates and days, travel cost and daily allowance if needs be.

## 9. Application:

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Interested consultant can send questions if any to the ILO's Procurement Unit in Addis Ababa, Ethiopia ([ADDIS\\_PROCUREMENT@ilo.org](mailto:ADDIS_PROCUREMENT@ilo.org)) until 20 July 2023. Questions will be answered and shared with the interested organizations by Close of Business 24 July 2023.

Completed technical and financial proposals are to be submitted to [ADDIS\\_PROCUREMENT@ilo.org](mailto:ADDIS_PROCUREMENT@ilo.org) by Close of Business on 4<sup>th</sup> August 2023.

Note: - Please note that this is not a job post. Only individual consultant who submit technical and financial proposal will be considered. Offers from a firm and a group of individual consultants will not be considered.