



**FEDERAL GOVERNMENT OF SOMALIA  
THE MINISTRY OF COMMERCE AND INDUSTRY**

**TERMS OF REFERENCE**

**CONSULTANCY SERVICES TO SUPPORT FORMULATION OF A NATIONAL  
INTELLECTUAL PROPERTY LAW FOR SOMALIA.**

**February 2025**

## **A. Background**

The Ministry of Commerce and Industries of Somalia is responsible for facilitating trade and improving the competitiveness of the country's businesses through three main categories: policy, legal framework, and management. The Ministry formulates, develops, and implements policies to strengthen commerce, promote domestic industries to promote exports and foreign investment in the country, and enhance the use of advanced technologies for increased productivity. In addition, it oversees the creation and enforcement of relevant investment laws and regulatory frameworks. Furthermore, the Ministry manages and collaborates on the collection, research, and sharing of commerce and industry information to attract investment, while also focusing on capacity development and advancement of skills within the country and ministry staff.

Under the Horn of Africa Initiative, the World Bank is funding the De-Risking, Inclusion and Value Enhancement of Pastoral Economies Project (DRIVE) and the Ministry of Commerce and Industries is one of the project beneficiaries. DRIVE Project aims to protect pastoralists against drought shocks, using a package of financial services including drought insurance, payment, savings, and provision of credit funding, and to connect the pastoralists better to markets by upgrading the livestock value chains and facilitating the regional livestock trade. This project is regional, and Djibouti, Ethiopia, Kenya, and Somalia are the participating countries. The development objective of the Project is to enhance de-risking, financial inclusion, and value addition of pastoral economies in the HoA.

## **B. Context and Rationale**

In the contemporary global economy, the significance of intellectual property rights (IPRs) for driving innovation, economic growth, and sustainable development cannot be overstated. The protection and enforcement of IPRs is crucial for fostering a conducive environment for creativity, attracting foreign investment, and facilitating technology transfer. Recognizing this importance, countries worldwide are striving to establish robust legal frameworks for IPRs that align with international standards while catering to their specific national circumstances.

Somalia is at a pivotal juncture in its economic development, with aspirations to enhance its integration into the global trading system and attract investment for its growing industries. A comprehensive and well-defined national legal framework for IPRs is a fundamental requirement for achieving these ambitions.

## **C. Existing Legal and Policy Landscape**

Somalia currently operates with an outdated trademark law from 1955, last amended in 1987 and a copyright law which dates back 1970. There is no comprehensive legal framework or institutional mechanism in place to regulate and enforce intellectual property rights across other domains. This legal lacuna presents significant challenges to businesses seeking to protect their intellectual assets and hinders the country's ability to fully leverage the benefits of a robust IPR regime.

While Somalia is not yet a member of the WTO, it is actively pursuing accession. Joining the WTO would require Somalia to adopt intellectual property laws that comply with the standards set out

in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The TRIPS Agreement provides a comprehensive framework for IPR protection, covering areas such as copyright, trademarks, patents, industrial designs, and undisclosed information.

Somalia is also a member of regional economic blocs such as the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA) and the African Continental Free Trade Area (AfCFTA). These regional agreements highlight the need for cooperation and harmonization in the field of IPRs to facilitate trade and economic integration. COMESA, for instance, has an IP Policy that encourages member states to assess their IPRs and promote their harmonization. The AfCFTA is currently negotiating an IP Protocol that aims to establish a continental framework for IPR protection and enforcement.

#### **D. Need for a New National Legal Framework for IPRs**

The development of a new national legal framework for IPRs is essential for Somalia to:

- **Meet international obligations:** Compliance with the TRIPS Agreement is a prerequisite for WTO accession, and adherence to regional IP frameworks is essential for effective participation in COMESA and the AfCFTA.
- **Foster innovation and creativity:** Strong IPR protection incentivizes individuals and businesses to invest in research and development, leading to the creation of new products, processes, and technologies.
- **Attract foreign investment:** Investors are more likely to invest in countries with predictable and reliable legal systems that safeguard their intellectual property.
- **Promote technology transfer:** A robust IPR regime facilitates the transfer of technology and knowledge from developed countries to developing countries.
- **Enhance competitiveness:** Protecting intellectual property enables businesses to differentiate themselves in the marketplace and gain a competitive edge.
- **Support the growth of key industries:** Somalia has identified key sectors for economic development, such as agriculture, fisheries, and livestock. Effective IPR protection in these sectors is crucial for attracting investment, promoting innovation, and enhancing productivity.

**E.** Intellectual Property is a cross-cutting issue which is relevant to all types of industry and services, products impacting also climate change, access to medicines, creative industries, food security, cultural development, food security, artificial intelligence, etc. For Somalia, a national IP strategy can provide a coherent framework to create and support linkages across different institution. and outline how policy developments related to IP and their implementation can take place in a coordinated manner at the Federal and state level. This consultancy will support the FGS to strengthen the IP law, protection and provide a framework for enforcement to encourage innovation and investment in the country.**Objectives of the Consultancy Service**

The overarching objective of this consultancy service is to develop a comprehensive and robust national legal framework for IPRs in Somalia. This framework should be aligned with international best practices, adapted to the specific needs and context of Somalia, and designed to contribute to

the country's overall economic development goals. The specific objectives of the consultancy service are:

- **Conduct a comprehensive assessment of the existing legal and policy landscape for IPRs in Somalia including laws for patents, trademarks, designs, geographical indications, and copyrights.** The consultancy should also look into IP statistics and related regulations (e.g, consumer protection, food security, legislation and policies). This assessment should identify gaps, overlaps, and inconsistencies in the existing legal framework and analyze its compatibility with international standards and regional agreements.
- **Review international best practices and frameworks for IPR protection, drawing on sources such as the WIPO-administered treaties and conventions (e.g., Berne Convention, Paris Convention) and model laws, the TRIPS Agreement, and regional IP frameworks in Africa.** It will also draw on the Patent Cooperation Treaty (PCT), Trademark Law Treaty, and other IP agreements.
- This review should assess the relevance and applicability of these frameworks to the Somali context, taking into account factors such as economic structure, institutional capacity, and legal traditions.
- **Draft a comprehensive national and federalized IP law for Somalia, encompassing all relevant categories of intellectual property.** This law should be clear, concise, and enforceable, and should establish mechanisms for the registration, protection, and enforcement of IPRs. The law should:
  - protect and promote intellectual property rights in Somalia
  - Provide legal mechanisms for addressing IPR disputes and enforcement
  - enable strategic use of the IP system in all economic sectors, such as agriculture, livestock, culture, energy, food, health, science and technology, industry, services such as creative industries, etc.;
  - strike an appropriate balance that affords IP protection without stifling innovation, creativity and competitiveness; and
  - ensure better alignment and coordination with national policies.
- **Develop implementing regulations and guidelines to operationalize the national IP law.** These regulations should provide detailed procedures for the administration of the IP system, including the filing of applications, the examination of applications, the granting of IP rights, and the resolution of disputes.
- **Design a capacity building program to strengthen the institutional framework for IPRs in Somalia.** This program should aim to enhance the capacity of relevant government agencies, the judiciary, and law enforcement officials to effectively implement and enforce the national IP law.

## F. Scope of Work

### 1. Inception Phase:

- **Desk Review and Inception Report:** Conduct a comprehensive review of existing legal and policy documents relevant to IPRs in Somalia. This review will include the outdated 1955 trademark law and its subsequent amendments, along with any existing policy frameworks related to intellectual property. Analyze these documents to assess their alignment with international standards, particularly the provisions of the TRIPS Agreement, the WIPO-administered treaties and conventions (e.g., Berne Convention, Paris Convention) and model laws, and the IP policies of regional blocs such as EAC, COMESA and the AfCFTA. This phase will culminate in the submission of an Inception Report outlining:
  - A detailed methodology for the consultancy, outlining the planned activities, timelines, and data collection methods.
  - A comprehensive assessment of the existing legal and policy landscape for IPRs in Somalia, identifying gaps, overlaps, and areas requiring reform.
  - A preliminary framework for the proposed national IP law, taking into account international best practices and the specific needs and context of Somalia.
- **Stakeholder Consultations:** Conduct extensive consultations with key stakeholders to gather diverse perspectives and ensure the inclusivity of the national framework development process. These consultations will engage:
  - **Government Ministries and Agencies at the Federal and State level** included, but not limited to: Ministry of Commerce and Industry (MoCI), Ministry of Agriculture, Ministry of Fisheries and Marine Resources, Ministry of Culture and Tourism, Attorney General's Chambers, relevant regulatory bodies, and enforcement agencies.
  - **Private Sector Representatives:** Business associations, chambers of commerce, industry leaders, and representatives from key sectors such as agriculture, fisheries, and livestock. Representatives from creative industries including visual arts, media, publishers, writers, artis, performers, music industries, libraries, museums, etc).
  - **Civil Society Organizations:** Groups advocating for consumer rights, access to knowledge, and the protection of traditional knowledge and cultural expressions.
  - Legal practitioners, patent attorneys, judicial authorities;
  - Local communities for the protection of traditional knowledge
  - **Academia and Research Institutions:** Experts in intellectual property law, economics, and development studies.
  - **International Organizations:** Representatives from WIPO, WTO, COMESA, AfCFTA Secretariat, USPTO, and other relevant development partners.
  - These consultations will involve workshops, interviews, focus group discussions, and online surveys to ensure broad participation and the capture of diverse viewpoints.

### 2. Drafting and Validation Phase:

- **Drafting of the National IP Law:** Based on the findings of the inception phase and incorporating feedback from stakeholder consultations, draft a comprehensive national IP law for Somalia. This law will encompass all relevant categories of intellectual property, including:
  - **Copyright and Related Rights:** Provide protection for literary and artistic works, including music, books, films, computer software, and databases, ensuring alignment with international standards such as the Berne Convention and the WIPO Copyright Treaty.
  - **Trademarks:** Establish a system for the registration and protection of trademarks, service marks, and geographical indications, contributing to brand development, consumer protection, and fair competition.
  - **Patents:** Define the criteria for patentability, including novelty, inventive step, and industrial applicability, balancing the need to incentivize innovation with provisions for access to essential technologies.
  - **Industrial Designs:** Protect the aesthetic aspects of industrial products, fostering creativity and innovation in design.
  - **Undisclosed Information (Trade Secrets):** Safeguard confidential business information, providing a competitive advantage and encouraging investment in research and development.
  - **Plant Variety Protection:** Establish a sui generis system or adopt a relevant international framework like UPOV to protect new plant varieties, promoting agricultural innovation and food security.
  - **Traditional Knowledge, Traditional Cultural Expressions, and Genetic Resources:** Develop provisions for the protection of traditional knowledge and cultural expressions, considering the specific needs and interests of local communities and the principles of the Nagoya Protocol.
  - Creative Industries: develop a framework and provisions for the protection of music, film, software, design, and publishing industries
  - Geographic indications: develop provisions for providing specific geographical indication to assess if a product must possess qualities, characteristics or a reputation essentially attributable to its place of origin or production
  - The draft law should be clear, concise, and enforceable, incorporating principles of transparency, accountability, and due process.
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- **Development of Implementing Regulations and Guidelines:** Prepare detailed implementing regulations and guidelines to operationalize the national IP law. These regulations will provide specific procedures for:
  - The filing and examination of IP applications
  - The granting and maintenance of IP rights
  - Dispute resolution mechanisms
  - Enforcement procedures, including border measures, civil remedies, and criminal sanctions

- The regulations should ensure efficiency, fairness, and accessibility for all stakeholders.
- **Institutional Framework Design:** Propose a suitable institutional framework for the administration of the national IP system. This may involve:
  - Establishing an autonomous Intellectual Property Office (IPO) with a clear mandate and adequate resources
  - Strengthening existing institutions, such as the MoCI, to effectively manage IP-related functions.
  - Establishing specialized IP courts or tribunals to adjudicate IP disputes
  - Defining the roles and responsibilities of various stakeholders, including government agencies, the judiciary, law enforcement officials, and private sector actors
  - The institutional framework should ensure effective coordination, transparency, and accountability.
- **Capacity Building Program:** Design a comprehensive capacity building program to enhance the knowledge and skills of stakeholders involved in the IP system. This program will target:
  - **Government Officials:** Training on IP law, policy, and administration for officials from the IPO, relevant ministries, and enforcement agencies
  - **Judiciary and Law Enforcement Officials:** Sensitization workshops and specialized training on IP enforcement, adjudication, and the handling of IP-related crimes
  - **Private Sector:** Workshops and awareness campaigns to educate businesses on IP rights, registration procedures, and commercialization strategies
  - **Academia and Research Institutions:** Support for IP research, curriculum development, and the establishment of IP clinics to provide practical training and legal assistance
  - **Civil Society Organizations:** Engagement and capacity building to enable effective advocacy on IP-related issues, particularly those concerning access to knowledge, public health, and the protection of traditional knowledge.
  - The capacity building program will utilize a variety of methods, including workshops, seminars, online courses, and the development of training materials.

### 3. Finalization and Dissemination Phase:

- **Validation Workshop:** Organize a national validation workshop to present the draft national IP law, implementing regulations, institutional framework design, and capacity building program to stakeholders for their feedback and endorsement.
- **Finalization of Documents:** Incorporate feedback from the validation workshop and finalize all documents related to the national IP framework. This will include:
  - The national IP law
  - Implementing regulations and guidelines
  - Institutional framework design document
  - Capacity building program framework

The final document has to comply with different international treaties and obligations for Somalia, such as: WIPO conventions, TRIPs agreement, AcFTA, EAC and regional agreements on intellectual property.

## **G. Deliverables, Timeline, and Payment Schedule**

The following deliverables and timeline are proposed, taking into consideration the overall assignment timeline of six months. This timeline is structured to ensure a logical flow of activities, with each deliverable building upon the previous ones. The timeline is presented in weeks from the contract signature.

<b>No.</b>	<b>Deliverable Title</b>	<b>Details</b>	<b>Timeline (Weeks)</b>	<b>Payment</b>
1	Inception Report	The report should outline the consultant's understanding of the assignment, the methodology, and the proposed work plan. It should include a detailed analysis of Somalia's current legal framework, including an assessment of the 1955 trademark law and its amendments. It should also include a preliminary framework for the national IP law.	3	10%
2	Draft National IP Law	This deliverable will comprise a draft of the national IP law, addressing all categories of IP, including copyright, trademarks, patents, industrial designs, trade secrets, plant variety protection, the protection of traditional knowledge and cultural expressions, creative industries, geographical indication. It should be informed by international best practices and Somalia's context.	12	10%
3	Draft Implementing Regulations and Guidelines	This deliverable should consist of a set of draft regulations and guidelines designed to operationalize the national IP law. These should cover procedures for filing and examination of IP applications,	18	10%



		the granting and maintenance of IP rights, dispute resolution, and enforcement.		
4	Draft Institutional Framework Design	This deliverable should outline a proposed institutional framework for administering the national IP system. This could involve the establishment of an autonomous Intellectual Property Office or strengthening existing institutions. This deliverable should also include a plan to assess the need for specialized IP courts or tribunals, define the roles and responsibilities of various stakeholders, and ensure coordination and accountability within the IP system.	22	10%
5	Draft Capacity Building Program Framework	This deliverable will outline a program to enhance the knowledge and skills of individuals and institutions involved in the IP system. The framework should specify target groups, training content, and delivery methods. It should address capacity building needs across the government, judiciary, law enforcement, private sector, academia, research institutions, and civil society organizations.	22	10%
6	Stakeholder Validation Workshop	This workshop will present all draft documents to stakeholders for their input and final adoption. The workshop should facilitate a comprehensive review and discussion of the draft national IP law, implementing regulations and guidelines, institutional framework design, and the capacity building program framework.	24	10%

7	Final National IP Law, Regulations, Guidelines, and Framework Documents	The final deliverable will be a comprehensive package, including the finalized national IP law, implementing regulations, institutional framework design document, and capacity building program framework, incorporating feedback received during the stakeholder validation workshop.	26	40%
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## H. Ideal Firm(s) Profile and Key Experts

To successfully undertake the formulation of a national legal framework for Intellectual Property Rights (IPR) in Somalia, the ideal consulting firm should possess a strong profile with a proven track record in similar assignments. The firm should demonstrate deep expertise in intellectual property law, institutional development, capacity building, and economic analysis related to IPR. Sensitivity to the unique challenges of working in fragile and conflict-affected states like Somalia is essential.

### Firm Profile

- **Core Business:** The ideal firm should specialize in economic development consulting with a demonstrable focus on legal and regulatory frameworks, particularly in the area of intellectual property law and policy. Their core business should encompass:
  - Design and drafting of intellectual property laws and related regulations.
  - Designing institutional frameworks for intellectual property authorities, taking into account the potential need for specialized IP courts or tribunals.
  - Conducting economic analyses related to the impact of IP on market competition and overall economic development.
  - Delivering capacity-building programs for intellectual property law enforcement and administration.
- **Years in Operation:** The firm should have a minimum of 10 years of experience in providing consulting services related to intellectual property rights legal framework.
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- **Experience:** The firm should have a proven track record in:
  - Assisting in the drafting of intellectual property laws or related laws and implementation guidelines, including those relevant to traditional knowledge, geographical indications, and cultural expressions.
  - Strengthening institutional capacity and improving the skills of those working on IP or related areas, particularly in the areas of enforcement, administration, and commercialization.
  - Undertaking similar assignments in developing countries, preferably in Africa or fragile contexts.

## Key Experts

The firm should propose a team of three key experts who collectively cover all critical expertise required for developing a comprehensive national IPR framework. Each expert should have clearly defined roles, qualifications, and experience to ensure effective delivery of the assignment.

### 1. Lead Intellectual Property Law Expert – TEAM LEADER

- **Academic Qualifications:** Minimum Master's degree in Law (LL.M) with specialization in Intellectual Property Law or related field.
- **Professional Certifications:** Admission to practice law in a recognized jurisdiction. Certifications from reputable institutions (e.g., WIPO Academy) in Intellectual Property Law are essential.
- **General Experience:** At least **15 years** of professional legal experience.
- **Specific Experience:**
  - **IP Legislation Drafting:** drafting IP legislation, policies, and regulations.
  - Proven experience in developing national IP laws incorporating international treaties and accommodating LDC flexibilities under TRIPS.
  - **International Expertise:** In-depth knowledge of international IP treaties and conventions (TRIPS Agreement, Berne Convention, Paris Convention, etc.). Familiarity with WIPO-administered treaties and regional IP frameworks in Africa.
  - **Traditional Knowledge and Cultural Expressions:** Experience in integrating protection mechanisms for traditional knowledge, genetic resources, and cultural expressions into national legislation.
  - **Advisory Roles:** Advised governments or international organizations on IP law reform, particularly in developing countries or fragile states.

### 2. Innovation and Intellectual Property Policy Expert

- **Academic Qualifications:** Minimum Master's degree in Public Policy, Economics, Law, or related fields with a focus on Innovation Policy or Intellectual Property Policy.
- **General Experience:** At least **10 years** of professional experience in policy analysis, economic development, or intellectual property policy.
- **Specific Experience:**
  - **Policy Development:** experience in developing and analyzing policies related to intellectual property, innovation, and economic development. Proven experience advising governments on integrating IP policies into national development strategies.
  - **Innovation Ecosystems:** Expertise in fostering innovation ecosystems, including technology transfer, research and development (R&D) incentives, and commercialization of IP assets. Knowledge of how IP frameworks can stimulate economic growth, entrepreneurship, and competitiveness.
  - **Traditional Knowledge and Cultural Heritage and creative industries:** Experience in formulating policies that protect and leverage traditional knowledge and cultural heritage for economic development as well as creative industries.

### 3. Institutional Development and Capacity Building Expert

- **Academic Qualifications:** Minimum Master's degree in Public Administration, Organizational Development, Law, or related fields.
- **General Experience:** At least **10 years** of professional experience in institutional development and capacity building.
- **Specific Experience:**
  - **Institutional Framework Design:** experience designing and establishing institutions for IP administration and enforcement or similar. Experience in structuring IP or similar offices, including organizational design, staffing, and operational processes.
  - **Capacity Building Programs:** Proven track record in developing and delivering capacity-building initiatives for government agencies, judiciary, law enforcement, and other stakeholders in the IP sector or similar. Familiarity with adult learning principles and training-of-trainers approaches.
  - **IP Enforcement and Dispute Resolution:** Knowledge of best practices in IP enforcement mechanisms. Experience with the establishment or support of specialized IP courts or tribunals.

### Additional Non-Key Experts

While the key experts are central to the assignment, the firm(s) may include additional non-key experts or support staff to enhance the project's delivery. These may include:

- **Legal Researchers:** To support the Lead IP Law Expert in legislative reviews and drafting.
- **Training Specialists:** To assist the Capacity Building Expert in developing training materials and conducting workshops.
- **Local Consultants:** Individuals with knowledge of the Somali context to facilitate stakeholder engagement and cultural integration.

## I. Reporting Arrangements

The selected consultancy firm(s) will operate under the direct supervision of the Director General of the Ministry of Commerce and Industry. Regular reporting is essential for maintaining transparency and alignment with the project's objectives. The firm is required to provide bi-weekly progress reports, highlighting achievements, challenges, and any critical issues needing attention. Coordination with the Project Implementation Unit (PIU) of the DRIVE project and the World Bank is essential, while ensuring inputs from relevant ministries and agencies are integrated.