

Federal Government of Somalia

Somali Data Protection Authority

Terms of Reference: Embedded Local Legal Advisor (Individual Consultant)

1. BACKGROUND

The Federal Government of Somalia (FGS) has recently passed a new data protection law - the Somali Data Protection Law (DPL) 2023 - that requires the establishment of Somali Data Protection Authority (DPA) to oversee the implementation of the law. The Authority is the lead Federal Government body mandated to implement and enforce compliance with the DPL, and formulate national regulations related to data protection. The objectives of the DPL include:

- Protecting data subjects from risks arising from the processing of their personal data, including risks to their rights and liberties under the Constitution of the Federal Republic of Somalia;
- Promoting data processing practices that protect the security of personal data and privacy of data subjects;
- Ensuring that personal data is processed in a fair, lawful and accountable manner;
- Facilitating the secure transfer of personal data about citizens and residents of the Federal Republic of Somalia held by international organisations to appropriate government entities for purposes of providing public services and related governmental functions;
- Establishing a framework for secure government processing of personal data to enhance the welfare of the people of the Federal Republic of Somalia; and
- Increasing the beneficial use of personal data in the digital economy of the Federal Republic of Somalia and its participation in regional and global economies.

In performing its duties, the Data Protection Authority is guided by the Constitution of the Federal Republic of Somalia (FRS) and other relevant laws, such as the National Communications Law 2017¹, which lays the basis for a competitive and enabling legal and regulatory environment for ICT services in Somalia and the National ICT Policy 2019-2023². The Data Protection Law fills a gap in FGS's foundational legal frameworks considered critical for developing a vibrant local digital economy and supporting integration in regional and global digital markets.

The DPA is currently a key beneficiary of a World Bank-financed investment operation, the Somalia Capacity Advancement, Livelihoods and Entrepreneurship through Digital Uplift Project (SCALED-UP). The Project, inter alia, seeks to strengthen FGS's capacity to support wider access to digitally-enabled services and ensure that the enabling legal frameworks are in place to support said scale up in digital services.

¹ See: <https://nca.gov.so/wp-content/uploads/2022/01/National-Communication-Law.pdf>

² See: <http://mptt.gov.so/wp-content/uploads/2019/04/Draft-National-ICT-Policy-Strategy-Somalia-V0.6.pdf>

As part of the support provided by the Project, an international legal advisory firm was engaged to support the development of enabling legislation for the digital economy, including in areas such as data protection, cybersecurity, e-transaction, access to information etc. The firm delivered draft legislation for data protection which was the basis for the enacted DPL. To ensure the legislation is rooted in understanding of the local context, the Authority needs to coordinate the implementation of the DPL with relevant public and private entities. To this end, the DPA needs a locally-based consultant to act as legal resident expert.

The Legal Adviser will play a crucial role in ensuring that the Authority is compliant with data protection laws and regulations.

2. OBJECTIVE

The main objective of the embedded individual Legal Adviser will therefore be to strengthen the DPA's capacity in respect to developing legal and regulatory frameworks that are conducive to supporting the implementation of the DPL in the context of expanding ICT adoption and growth of the digital economy in Somalia, including digital flagship projects currently underway.

3. ROLE AND RESPONSIBILITIES

In supporting the DPA, the Consultant will carry out the following duties:

- Support the development of new regulations related to the DPA's mandate, by acting as a legal focal point and main liaison, including in respect to other legal technical assistance received by the DPA (see below);
- Provide legal advice on the implementation of data protection policies and procedures;
- Ensure that the DPA is kept up-to-date with progress on legislation being developed that concern the DPA, relaying key information and providing regular status updates to management and explaining implications for the DPA;
- Review legal documents such as legal notices, agreements and memoranda of understanding to which the DPA is a party to ensure Government interests are protected and advise the DPA accordingly;
- Ensure the Authority is compliant with all relevant data protection laws and regulation, including regional and international obligations;
- Advise the DPA on the interpretation of the DPL, as well as any amendments to legislation around communications and technology, or any supporting regulations that need to be developed;
- Provide legal guidance on international data transfers and cross-border data flows;
- Represent the DPA in legal disputes involving the Authority;
- Provide legal support in the investigation and enforcement of data protection laws;
- Support the DPA in public consultations on proposed legal actions with relevant stakeholders (private sector, academia, investors, civil society, and other branches of government), as needed;
- Undertake any legal research required in relation to legal action or texts being prepared by the DPA, as and when required;

- Support drafting and/or vetting of bills and/or subsidiary legislature to ensure consistency with ICT Policy, other relevant policies, and regulations, and advise the DPA on relevant issues;
- Provide mentorship to junior staff members of the DPA, developing tailored training programs and building the DPA's institutional legal capacity in support of sustainable knowledge transfer;
- Draft, review and advise on contracts between the DPA and its suppliers/ partners; and
- Oversee the translation of new regulations from English to Somali to ensure that different language versions are aligned.

4. DELIVERABLES

- Prompt technical assistance, as required, on-demand;
- In areas not covered by DPL, prepare draft amendments to the Law and develop regulations consistent with the National ICT Policy and Strategy (2019-2023) and the Communications Law, and future sector legislations as needed;
- Provide legal advice in the form of legal comments, memos, briefing notes, and discussion; papers, including legal advice on local law aspects of the drafts that the firm provides; and
- Trainings for DPA staff.

The Consultant will be expected to report on key deliverables monthly to demonstrate impact and progress, based on a detailed quarterly work plan developed in close consultation with the DPA.

5. QUALIFICATIONS

Legal Advisor should have the following qualifications and experience:

- A law degree from an accredited university;
- Qualified to practice law in Somalia and at least 10 years' relevant experience of practicing law in Somalia or abroad;
- Firm understanding of the Somali legal context including knowledge of the Somali provisional constitution and legal framework in Somalia;
- Experience of drafting, revising, and analyzing bills and subsidiary legislations is highly preferred;
- Knowledge of legal issues related to the digital economy is highly preferred, including related to telecommunication, data protection, cyber security, access to information, e-commerce;
- Excellent communication skills – both written and verbal, including the capacity to communicate complex and technical issues in simple terms to local and international stakeholders
- Ability to work well under pressure and to meet tight deadlines, demonstrating a high level of motivation, confidence, integrity and responsibility;
- Excellent interpersonal skills, including the ability to work independently, effectively in a team/task force as a team member or leader, and with senior staff and managers

- Demonstrated ability to listen and integrate ideas from diverse views, create partnerships and collaborate with others, advocate and influence, resolve conflicts constructively, and work effectively across boundaries even without active guidance from management
- Demonstrated ability to communicate effectively in English and Somali

6. DUTY STATION & LENGTH OF ASSIGNMENT

The Advisor is expected to be based in Mogadishu, Somalia, at the DPA, and be able to travel within the country as well as overseas (if necessary). The Advisor will initially be hired for a year, with a 3-month trial period, following which the contract could be subject to renewal based on performance.

7. APPLICATION

Interested applicants must submit the following to demonstrate their qualifications:

- Candidate's CV;
- Motivation letter describing candidate's interest in the assignment, relevant past professional experience, and detailing why the candidate should be considered for the role;
- At least three references.