



**THE REPUBLIC OF MALAWI**

**THE NATIONAL INTELLECTUAL PROPERTY POLICY**

**April, 2019**

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## **FOREWORD**

This Policy has been developed as a tool for creating an enabling and conducive environment for stimulating creativity and innovation that will in turn accelerate industrialization and economic growth and development.

The Intellectual Property system is instrumental in providing incentives for creativity and innovation which leads to wealth creation and technological advancement. While our country has maintained an intellectual property system since independence, however, in reality, protection of intellectual property rights has not resulted in the realization of the economic benefits associated with the intellectual property regime. This is because the intellectual property system was not underpinned by a policy framework designed to build the capacity of the nation to generate, protect and exploit intellectual property assets for economic growth.

This Policy provides a framework for creating a vibrant intellectual property ecosystem that will promote and support creativity and innovation and thereby catalyze industrialization and structural transformation of the economy for our national development. The successful implementation of this Policy is therefore critical to the realization of the vision to transform the country into a technologically driven middle income economy as well as the strategy on industrialization and structural transformation of the economy in Malawi Growth and Development Strategy III.

I therefore wish to assure the nation of Government's strong commitment to provide the necessary leadership, support and enabling environment for the successful implementation of the Policy.



**Samuel B. Tembenu, SC**

**MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS**

## **PREFACE**

This is the first Intellectual Property Policy that our country has developed. The aim of the Policy is to provide a roadmap for using intellectual property as a tool to invigorate creativity and innovation for sustainable economic growth and development of this country. This Policy underlines the recognition by Government of the strategic role that the intellectual property system can play in fostering industrialization and the structural transformation of the economy as articulated in Malawi Growth and Development Strategy III.

Intellectual Property is crosscutting and as a result, this Policy is relevant to a number of sectors including: science and technology, industry and trade, agriculture, environment and natural resources, education and vocational training, arts and culture, as well as public health. Accordingly, the development of this Policy involved consultations with stakeholders in these sectors; and the academia, research and development institutions, Ministries, Departments and Agencies, private sector and civil society. It is therefore essential to ensure that this Policy is mainstreamed in the various sectoral goals which are relevant to the realization of the aspirations contained in this Policy.

The successful implementation of this Policy will require multi-stakeholder coordination and collaboration across Ministries, Departments and Agencies, the academia and research and development institutions, the private sector, development partners and the public. In this regard, my Ministry will establish an inter-ministerial committee and a national working group which will be coordinated by the Department of Registrar General, in order to promote policy coherence, mainstreaming of intellectual property in sectoral policies as well as to facilitate coordination in the implementation of this Policy. I, therefore, call upon all the stake intellectual property holders to embrace this Policy and work together in order to realize the vision that this Policy encapsulates for the betterment of our country.



**Gertrude Lynn Hiwa, SC**

**SOLICITOR GENERAL AND SECRETARY FOR JUSTICE**

## Acronyms and Abbreviations

ARIPO	African Regional Intellectual Property Organization
COSOMA	Copyright Society of Malawi
DHRMD	Department of Human Resource Management and Development
DPs	Development Partners
DRG	Department of Registrar General
EAD	Environmental Affairs Department
FTAs	Free Trade Agreements
GIs	Geographical Indications
IP	Intellectual Property
IPRs	Intellectual Property Rights
LDC	Least Developed Country
MCCCI	Malawi Confederation of Chambers of Commerce and Industry
MGDS	Malawi Growth and Development Strategy
MITC	Malawi Investment and Trade Centre
MRA	Malawi Revenue Authority
MSMEs	Micro, Small and Medium Enterprises
MDAs	Ministries, Departments and Agencies
MoAIWD	Ministry of Agriculture, Irrigation and Water Development
MOCECCD	Ministry of Civic Education, Culture and Community Development
MoEST	Ministry of Education, Science and Technology
MoFEPD	Ministry of Finance, Economic Planning and Development
MoFAIC	Ministry of Foreign Affairs and International Cooperation

MoH	Ministry of Health
MoHS	Ministry of Homeland Security
MoITT	Ministry of Industry, Trade and Tourism
MoJCA	Ministry of Justice and Constitutional Affairs
NAC	National Aids Commission
NCST	National Commission for Science and Technology
NCHE	National Council for Higher Education
NIPP	National Intellectual Property Policy
NRB	National Registration Bureau
NSO	National Statistical Office
NGOs	Non-Governmental Organizations
OPC	Office of the President and Cabinet
SC	Senior Counsel
TEVETA	Technical, Entrepreneurial Vocational Education and Training Authority
TRIPS	Trade Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## **Glossary of Terms**

**Copyright** relates to the rights that creators have over their literary, artistic and scientific works. The works covered by copyright, include: books, music, films, paintings, sculptures, computer programs, databases, advertisements, maps and technical drawings. In addition to the rights of creators, the subject of copyright extends to what are known as neighbouring rights.

**Expressions of Folklore** mean subject matter in the literary, dramatic, musical or artistic fields, belonging to the traditional cultural heritage of a people, developed, preserved and transmitted by ethnic or local communities.

**Genetic Resources** refer to genetic material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity. Examples include: material of plant, animal, or microbial origin, such as medicinal plants, agricultural crops and animal breeds.

**Geographical Indication** means an indication which identifies goods or products as originating in the territory of a country, region or locality in that territory, where a given quality, reputation or other characteristic of a product is essentially attributable to its geographical origin and in a case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

**Industrial Property** refers to patents for inventions, trademarks, industrial designs, utility models and designations of origin.

**Intellectual Property** refers to creations of the mind, such as inventions; literary and artistic works; designs; symbols, names and images used in commerce.

**Patent** refers to time limited exclusive right that is granted to protect inventions and innovations that fulfil the patentability criteria of novelty, inventive or non-obvious, and industrial applicability or useful. Patent rights are granted in return for full disclosure of the idea underlying the invention. Patent rights last for the maximum of 20 years during which time the owner of the patent is granted the ability to prevent anyone else from making, using, selling, offering for sale, or importing the invention.

**Registered Designs** refer to novel aesthetic aspects of articles which are designed for visual rather than functional appeal. An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or colour. The protection of designs promotes creativity and innovation in the creation of appealing designs which also help consumer choice over similar products.

**Related rights** relate to rights of performing artists, producers of phonograms and those involved in radio and television broadcasting.

**Trademarks** refer to signs or symbols which distinguish the goods or services of one undertaking from another undertaking.

**Traditional Knowledge** refers to any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one generation to another. It may include agricultural, environmental or medicinal knowledge, and knowledge associated with genetic resources.

**Utility Model** refers to an exclusive right that is similar to a patent and is granted for low level inventions or innovations which do not meet the criteria for a grant of patent. Utility models are also referred to as "petty patents" and are granted for incremental innovations which may fall short of stringent patentability requirements."

## **1.0. INTRODUCTION**

The intellectual property system is the cornerstone of the modern knowledge economy and a tool for economic growth and development. Government has in Malawi Growth and Development Strategy III identified industrialization and structural transformation of the economy as a key priority area essential to maintaining long-term growth and economic development. This is in line with the long-held vision of the Government to transform the country into a technologically driven middle-income economy as stated in Vision 2020. It was against this background that Government established the National Commission for Science and Technology to promote innovation in science and technology for economic development. The National Intellectual Property Policy provides a framework for fostering the generation, protection and exploitation of IP as the catalyst for technological advancement and economic growth and national development.

The basic purpose of the intellectual property system is to protect and incentivize creativity and innovation for the knowledge based economy and national economic growth. Effective protection of intellectual property rights incentivizes and catalyzes creativity and innovation by allowing creators and owners of Intellectual Property Rights to commercially exploit and thereby profit from their creations or intellectual property. As well as providing incentives for creativity and innovation, the intellectual property system facilitates the diffusion of technical knowledge and fosters technology transfer which is necessary for technological advancement.

Government is aware that the mere existence of intellectual property laws, however, does not in itself translate into the realization of the economic benefits which stem from the intellectual property system. While Malawi has provided for the protection of intellectual property rights since independence, the intellectual property rights system has not resulted in the realization of the benefits associated with the system. This is because the introduction of intellectual property protection during the colonial era was not anchored on a deliberate policy to stimulate technological advancement and economic growth. Rather, the colonial intellectual property system was merely an extension of the intellectual property system of the United Kingdom as the colonial power which was motivated by the need to provide protection and market in the colonies for intellectual property owners at home. Consequently, despite its economic importance, the intellectual property system has until now, existed at the periphery of economic policies and strategies and has, as a result, not been effectively utilized as a tool for economic

growth and development. This has in turn, resulted in the overlooking of the offices responsible for intellectual property administration and management in the country, namely the Department of Registrar General and COSOMA during various policy or economic strategy consultations which would have benefited from their input.

Through this Policy, therefore, Government will raise the profile of intellectual property, and explicitly integrate it into the national development agenda in order to bolster and leverage the intellectual property system as a tool for technological advancement and sustainable economic growth. The Policy lays the foundation for a vibrant intellectual property ecosystem for catalyzing creativity, innovation and knowledge-based entrepreneurship.

### **1.1. Overview of the Intellectual Property System in Malawi**

The intellectual property system refers to the legal and institutional or administrative frameworks that pertain to the protection of intellectual property rights in a territory. The intellectual property system also includes the international intellectual property instruments that the country is a party to.

#### **1.1.1. Legal Framework**

Intellectual property falls into two main categories, one being industrial property which includes patents or utility models for protecting technological inventions, trademarks for goods and services and industrial designs; the other being Copyright and Related Rights, which protects literary, artistic and derivative works.

Malawi has protected industrial property since independence through the intellectual property statutes and administrative apparatus which the country inherited from the former colonial power, United Kingdom. At independence, Malawi inherited the Patents Act [Cap 49:02], Trademarks Act [Cap 49:03], and the Registered Designs Act [Cap 49:05] of the Laws of Malawi, as part of the legal heritage. Apart from the Trademarks Act which was repealed by the Trademarks Act (Act No. 28 of 2017), the Patents Act and Registered Designs Act are still in force. The new Trademarks Act provides for the protection of Geographical Indications (GIs). In addition, the Breeder's Rights Act (Act No. 20 of 2018) provides for the protection of breeders of new varieties of plants.

The protection and management of copyright and related rights is governed by the Copyright Act (Act No. 26 of 2016) which repealed the Copyright Act of 1989.

### **1.1.2. Intellectual Property Administration and Management**

The administration and management of the intellectual property system in Malawi is conducted by two institutions. The Department of Registrar General, under the Ministry of Justice, is responsible for the administration and registration of industrial property in Malawi. The Department is also the office responsible for intellectual property matters in the country.

Copyright is administered by the Copyright Society of Malawi which currently falls under the Ministry responsible for Culture.

### **1.1.3. International Dimensions of Intellectual Property**

IPRs are territorial in nature, meaning that rights granted in one country are not enforceable in another territory. Consequently, right holders are required to obtain rights in all the territories where they seek protection. Malawi is therefore a member of the African Regional Intellectual Property Organization at the regional level and the World Intellectual Property Organization at the international level. These organizations facilitate the grant of rights in multiple countries at the regional and international levels through various regional and international instruments which Malawi is a party to, and these are an important element of our intellectual property system.

## **1.2. Definition of the Problem**

The intellectual property system has not been effective in stimulating creativity and innovation for technological advancement and economic growth in the country. This is because the national IP system has existed at the periphery of national development agenda since the country inherited colonial IP laws at independence. The IP system is still characterized by outdated IP laws and institutions for the administration and management of intellectual property, and lack of deliberate and coordinated policies aimed at leveraging the IP system as a tool for stimulating the generation, protection and commercialization of IP assets. As a result, there is a dearth of local patents as a measure of local innovation and most of IPRs protected in Malawi are foreign generated.

### **1.3. Purpose of the Policy**

The purpose of the Policy is to catalyze the generation, protection and exploitation of intellectual property assets by creating an enabling environment and modernizing IP administration, with a view to invigorating measurable innovation and creativity for economic growth and development. Further, the aim of the Policy is to raise the profile of IP as a tool for enhancing entrepreneurship and business competitiveness. The Policy will therefore, serve as a guiding document for all stakeholders who have a role to play in the promotion of intellectual property as a tool for wealth creation and sustainable development.

### **1.4. Linkages with other Relevant Policies and International Instruments**

The Policy has been linked to the following national policies and international instruments:

#### **1.4.1. National Policies**

This Policy is anchored on Malawi Growth and Development Strategy III which identifies industrialization and the structural transformation of the economy as a key priority area. Accordingly, this Policy compliments Malawi Growth Development Strategy III (2018) by providing a framework for realizing industrialization and structural transformation of the economy through promotion of creativity and innovation and active participation in the knowledge economy. In this regard, this Policy is also linked with the National Science and Technology Policy (2004) which is aimed at promoting science and technology in the country; and the Industrial Policy (2016) which aims at ensuring the industrialization and structural transformation of the Malawian economy by coordinated policy efforts to address key constraints and increase the productive capacity of industry with a focus is on manufacturing.

The Policy is also related to the Malawi Trade Policy (2016) which, among other objectives, aims at providing support and certainty for traders in the external and domestic markets, strengthening linkages between domestic and international trade and facilitating cross border market access opportunities for Micro, Small and Medium Enterprises. In this regard, the Policy is also linked to the Buy Malawi Strategy (2016) which is anchored on the vision to stimulate domestic production and growth by inspiring the consumption of locally made goods and services and thereby drive competitiveness of enterprises; National Micro, Small and Medium Enterprises Policy (2019); and the Private Sector Development Policy (2009) whose mission is to develop and promote an economic environment which helps Malawi achieve her shared vision

of transforming from a predominantly consuming and importing country to a predominantly manufacturing and exporting one.

On the protection of traditional knowledge and traditional cultural expressions as well as copyright, the Policy is linked to the following National Policies: the Malawi National Environmental Policy (2004) whose goal is to promote sustainable social-economic development through the sound management of the environment and natural resources; and the National Cultural Policy (2015) which aims to identify, preserve, protect and promote Malawian arts and culture for national identity, unity in diversity, posterity and sustainable socio-economic development.

The Policy has also been informed by the Malawi Public Sector Reform Policy which, among other objectives, aims to restructure public sector institutions so that they are able to deliver key services and Malawi Growth Development Strategy III outcomes. The Policy also aims to reposition the public service to be responsive to the global modernization agenda in order to be in a position to facilitate modern and transformative programmes.

#### **1.4.2. International Instruments**

This Policy is linked to various regional and international instruments which relate to intellectual property that Malawi is a party to. At the regional level, this Policy is linked to the Lusaka Agreement which establishes African Intellectual Property Organization and to the protocols that ARIPO administers for its member states, which Malawi is a party to or has signed, namely: the Harare Protocol on Patents and Designs; Banjul Protocol on Marks; Swakopmund Protocol on the Protection of Traditional Knowledge and Genetic Resources, and the Arusha Protocol for the Protection of New Varieties of Plants.

At the International level, this Policy is linked to instruments which are administered by the World Intellectual Property Organization which Malawi is a party to, namely: the Paris Convention on Industrial Property; the Berne Convention on the Protection of Literary and Artistic Works; the Marrakesh Treaty; the Patent Cooperation Treaty; and the Madrid Protocol on International Registration of Trademarks. The Policy is also linked to the Agreement on Trade Related Aspects of Intellectual Property administered by World Trade Organization.

The aim of the regional and international instruments is to promote protection of intellectual property rights at both the regional and international level. The regional and international

instruments also facilitate the cross-boundary registration of intellectual property rights for the benefit of owners of IPRs due to the territorial nature of intellectual property protection.

## **2.0. BROAD POLICY DIRECTION**

### **2.1. Policy Goal**

The overall goal of the Policy is to leverage IP as a tool for promoting and stimulating creativity and innovation for economic growth and development.

### **2.2. Policy Outcomes**

1. Modernized and improved IP administration and management.
2. Effective and balanced legal framework and environment for IPRs.
3. Increased generation, protection, exploitation and commercialization of IP assets both within and outside of Malawi.
4. Increased awareness about IPRs among the general public, policy makers, potential users such as creators, innovators and artists, entrepreneurs, the industry academic and research and development institutions.
5. Increased uptake and utilization of the IP system by various stakeholders, including the academia and research and development institutions, private sector and the industry, the youth, MSMEs and the informal sector.

### **2.3. Policy Objectives**

1. Establish effective institutional framework for the modern administration of IPRs.
2. Provide effective and balanced protection of IPRs.
3. Create an IPR ecosystem that will stimulate creativity and innovation.
4. Strengthen the exploitation and commercialization of IPRs.
5. Create awareness about the role of the IP system.

### **3.0. POLICY PRIORITY AREAS**

The Policy has identified five priority areas whose implementation will be key to the realization of the aspiration to foster intellectual property led industrialization and structural transformation of the economy as outlined in this Policy.

#### **3.1. Policy Priority Area 1: Effective Institutional Framework for Modernizing Administration of IPRs**

The administration of IP is a vital element of an IP system and an integral part of the innovation system of the country. The role of an IP office is to examine IP applications and grant rights consistent with international standards and best practice. Beyond granting protection to IPRs, the IP office generates and implements policies and strategies directed at stimulating innovation and driving economic growth and development. Accordingly, the effectiveness of IP office depends on availability of skilled and trained human resources on technical matters of IP but also on administration, Information and Communications Technology (ICT), research and policy. Furthermore, to be effective, the IP office needs to be adequately resourced and have an appropriate operational structure.

In Malawi, administration and management of IPRs is divided between the Department of Registrar General, which historically administers industrial property, and COSOMA which administers copyright. In addition to IP, the Department of Registrar General which is the overall Policy holder for IP, is also responsible for conducting the following important roles: registration and regulation of businesses and companies; registration of movable securities; administration and regulation of insolvencies and receiverships; collection of estate and stamp duties; acting as Registrar of Marriages; and the registration and regulation of political parties under the Political Parties Act. The Department is positioned in main line Civil Service under the Ministry of Justice and Constitution Affairs and as a result has no operational or financial autonomy.

The lack of operational and financial autonomy of the Department of Registrar General, limits its effectiveness as an IP office, in the administration of the IP system, including its effectiveness as the office responsible for business registry services. In addition, the separation of functions relating to industrial property and copyright policy in the DRG and COSOMA respectively

presents a challenge in the coordination and implementation of IP activities. Moreover, COSOMA is placed under the Ministry responsible for culture.

**Policy Statement:** Government undertakes to create an effective institutional framework that will modernize IP administration and management in Malawi.

### **Strategies**

- 1) Develop and implement the modernization plan for the Department of Registrar General in order to create a modern autonomous agency.
- 2) Develop legal framework for the establishment of an autonomous office responsible for administration of intellectual property and other mandates of the Department of Registrar General.
- 3) Develop and adopt an operational business model.

### **3.2. Policy Priority Area 2: Generation and Protection of Intellectual Property Assets**

Generation of IP assets relates to the creative and innovative endeavor which results in the development of IPRs. IP assets are IPRs such as patents, trademarks and copyright which companies or individuals use to protect their creations or innovations. The protection of IPRs in the country is therefore an indicator of both innovative activity and the attractiveness of the country to innovation and protection of IP assets.

Despite the existence of an IP system since independence, output of locally generated IPRs is extremely low. IPRs statistics, as a measure of creativity and innovation in the country, suggest a dearth of locally generated or protected IP assets. Patent statistics in particular, show that over 99% of patents granted in the country originate from foreign countries. Academic and research and development institutions whose work is expected to generate IP assets do not file for patent protection. Similarly, most of the trademarks registered in Malawi are foreign owned. In the copyright sphere, most of the copyright content available in Malawi is foreign generated.

It is also worth noting that because IPRs are territorial in nature, local owners of inventions and innovations may need to file for IP protection in other countries in order to maximize the economic potential that may arise from the IPRs. Protection of IPRs in other countries can be

very expensive as it entails payment of usually high local filing fees or hiring of local attorneys in multiple countries to facilitate local protection as well as enforcement of IPRs. In Malawi, local innovators, including academic and research and development institutions may not have the resources or budget lines to obtain protection of their IPRs in foreign jurisdictions and thereby exposing themselves to loss of potential economic benefit.

### **Policy Statement:**

Government undertakes to create an environment that will foster and enhance the generation and protection of IP assets.

### **Strategies**

- 1) Provide incentives for development of IPRs in academic and public research and development institutions.
- 2) Mainstream the generation of IP as a key performance indicator for both institutions, and employees and link the amount of public funding for research and development activities in academic and research institutions to IPR output.
- 3) Promote the development of institutional IP policies in universities and publicly funded research and development institutions.
- 4) Establish an innovation fund to provide special incentives for innovations and creation of IPRs in areas of national interest such as energy, agriculture and health.
- 5) Develop guidelines for supporting the international protection of locally generated IP assets with high marketability potential in other countries.
- 6) Promote reverse engineering and adaptation to local conditions of existing technologies in academic, research and development institutions and vocational training institutions in order to build innovative capacity.
- 7) Promote innovations based on traditional knowledge and traditional cultural expressions.

### **3.3. Policy Priority Area 3: Effective Exploitation and Commercialization of IP Assets**

IP assets are exploited and commercialized when the protected innovations are developed and put on the market or the IPRs are licensed or sold to another person with the capacity to develop the innovation and put it on the market. The exploitation and commercialization of IP require finances, infrastructure, and business acumen or networks which the creator or owner of IP may not possess.

It has been observed in Malawi, that publicly funded research and development work in universities and public research institutions does not result in commercialization. Emphasis is placed on publishing or dissemination of output for academic and career progression or peer recognition at the expense of the economic returns that would flow from successful commercialization of the IPR output.

#### **Policy Statement:**

Government undertakes to promote the exploitation and commercialization of IP assets generated in Malawi:

#### **Strategies**

- 1) Develop and implement guidelines for supporting commercialization of IP within and outside the country.
- 2) Promote establishment of innovation centres or units in public universities and research institutions to be responsible for protection and commercialization of IP assets.
- 3) Develop contractual and licensing guidelines to facilitate commercialization of IPRs.
- 4) Develop and implement a strategy for IP and branding for micro, small and medium enterprises for business competitiveness and growth.
- 5) Identify avenues for showcasing and marketing Malawian originating IPR-based products.
- 6) Develop a national database of IPRs originating from Malawi.
- 7) Create or strengthen rights holder or inventor associations to support the creative industry that may add value and exploit creative works.

### **3.4. Policy Priority Area 4: Effective and Balanced Legal Regime for IPRs**

An effective and balanced IP legal framework is the foundation of a conducive environment for creativity and innovation to flourish. An effective and balanced IP legal framework is one that offers a suitable level of protection in order to stimulate creativity and innovation and supports business competitiveness, provides sound enforcement mechanisms. Furthermore, a balanced IPR legal regime implements international IP instruments and commitments consistent with national interests.

Except for copyright and trademarks, the legislation on patents and registered designs is old and outdated and as a result not in keeping with international standards, obligations and best practices. Furthermore, the current IP legal framework does not provide enough safeguards for public health and access to essential medicines and health technologies in the context of the TRIPS Agreement, and does not provide for the protection of traditional knowledge, genetic resources and traditional cultural expressions.

#### **Policy Statement:**

Government undertakes to provide an effective and balanced IP legal framework that will promote creativity and innovation for sustainable development.

#### **Strategies**

- 1) Review legislation on Patents, Copyright and Designs.
- 2) Implement protection of utility models.
- 3) Provide for adequate and balanced enforcement procedures and ensure periodic review of remedies and sanctions for IP infringement.
- 4) Implement TRIPS Agreement, Marrakesh Treaty and other international and regional IP obligations in a manner that promotes national interest in the areas of public health, education and the environment.
- 5) Prepare legislation and strategies for the protection and exploitation of traditional knowledge, genetic resources and expressions of folklore originating from Malawi.
- 6) Enhance the capacity of the IP office for negotiation and strategic participation in international IP norm setting meetings on matters of interest to Malawi.

- 7) Establish an inter-ministerial steering committee on IP deal with crosscutting issues and ensure Policy coherence and effective implementation of strategies and IP activities.

### **3.5. Policy Priority Area 5: IP Awareness Creation and Capacity Building**

IP outreach and awareness creation entails the continuous and targeted dissemination of knowledge and information about IPRs and the IP system to various stakeholders, including the public in the IP value chain. The effectiveness of the IP system hinges on all key players such as policy makers, creators and potential IP holders, investors and the private sector as well as the public being knowledgeable about the strategic value and importance of IPRs to the country. In addition, the IP system requires the existence of specialized knowledge and skills for IP administration and management, filing of IP applications, IP exploitation as well as IP enforcement. Capacity building for IP therefore involves equipping different professionals and institutions with relevant knowledge and skills which are necessary for supporting the IP ecosystem.

In Malawi, there is general lack of awareness about the value of the IP system among key stakeholders, especially policy makers and potential IP holders, including those involved in research and development as well as innovators. Lack of awareness about IP also accounts for proliferation and consumption of counterfeit products in the country and wanton violation of IP rights, especially trademarks and copyright. There is also general lack of capacity for IP in relevant institutions and among professionals necessary for supporting the IP system.

#### **Policy Statement**

Government undertakes to raise the profile of IP as a tool for national development by building IP awareness and capacity for IP.

#### **Strategies**

- 1) Develop and promote a national slogan ‘Innovate in Malawi’ and link it to the ‘Buy Malawian Strategy’ in order to raise the profile of creativity and innovation and to create a sense of national pride in being innovative and consuming Malawian created products.

- 2) Develop and implement national IP awareness and outreach strategy.
- 3) Liaise with Ministry responsible for Education to mainstream IP issues in school curricula.
- 4) Establish the Institute of Intellectual Property Attorneys to train and examine IP attorneys.
- 5) Introduce and strengthen the teaching of IP in tertiary institutions.
- 6) Develop capacity for IP enforcement and dispute resolutions.
- 7) Create a platform for coordination of enforcement activities for IP.

#### **4.0. POLICY IMPLEMENTATION ARRANGEMENTS**

The implementation of this Policy will require multi-stakeholder approach across Ministries, Department and Agencies, the academia, Research and Development institutions, private sector and development partners. Policy implementation will be coordinated by the office responsible for IP which currently is the Department of Registrar General in cooperation with COSOMA. The implementation plan, monitoring and evaluation framework have been developed in order to guide the implementation of this Policy.

#### **4.1. Institutional Arrangements**

The following institutions will play a key role in the implementation of this Policy:

##### **4.1.1. The Ministry of Justice and Constitutional Affairs**

The Ministry of Justice and Constitutional Affairs as the policy holder for IP issues, will provide overall oversight and leadership relating to the implementation of this Policy. The Ministry will chair an inter-ministerial committee on IP that will deal with different aspects of IP emanating from this Policy in order to ensure coherence and cooperation among the various MDAs.

##### **4.1.2. The Department of the Registrar General**

The Department of Registrar General has the mandate for administration and management of IP in the country and in that capacity, it will be responsible for coordinating the implementation of this Policy. The DRG or its successor institution will therefore act as the secretariat to the inter-ministerial committee on IP. Specifically, the office will be responsible for the following:

- a) formulating a roadmap for creation of an autonomous agency that will be responsible for this Policy, administration and management of IP in the country and modernizing IP administration and management;
- b) ensuring the formulation of appropriate legal framework on IP;
- c) ensuring that IP is integrated and streamlined into related sectoral strategies;
- d) capacity building and infrastructural development for modern and effective IP administration, management and practice;
- e) developing capacity and expertise for international negotiations on issues pertaining to IP and national interest and to advise and support other MDAs regarding negotiations on IP issues;
- f) acting as the hub for the ecosystem of IP activities to ensure that every implementing institution is performing its role in tooling IP for national development; and
- g) Implementing IP awareness campaigns.

#### **4.1.3. Ministry Responsible for Culture**

The Ministry responsible for culture, as the Policy Ministry responsible for COSOMA will cooperate with the Ministry of Justice and Constitutional Affairs in the implementation of this policy.

#### **4.1.4. Copyright Society of Malawi (COSOMA)**

It is envisaged that once a new autonomous IP office is created, the Copyright Policy and administration functions will move from COSOMA to the new office and that COSOMA will focus on collective rights management on behalf of its members. Before the goal of restructuring and modernizing IP administration and management is achieved, COSOMA will closely cooperate with the Department of Registrar General in implementing strategies in this Policy which aim to create a conducive environment for IP in order to boost creativity and promote development of entrepreneurship in the arts and cultural development.

#### **4.1.5. National Commission for Science and Technology**

National Commission for Science and Technology will play the critical role of promoting the generation, protection and exploitation of IP by Malawian academic, research and development institutions and individuals NCST will be responsible for mobilizing resources to incentivize and support the generation and protection of IP, including incentivizing the learning and adaptation of existing technology to Malawian technological needs. NCST will work closely with DRG in creating an IP ecosystem that will support invention and innovation as building blocks for technological development.

#### **4.1.6. Ministry of Industry, Trade and Tourism**

Intellectual property and the functions of the Department of Registrar General that relate to business registrations and business enablement environment are of direct relevance to the mandate of Ministry of Industry, Trade and Tourism as the Ministry responsible for facilitating and promoting the growth of industry and trade at both domestic and international levels. MoITT deals with WTO which is responsible for TRIPS and as well as negotiates Trade Agreements most of which contain a part on IP. MoITT will therefore work closely with the Department of Registrar General/IP office on IP issues and supporting the establishment of a modern and autonomous agency responsible for intellectual property; business registrations and associated functions. MoITT will also cooperate with the Department of Registrar General in launching the 'Create and Innovate in Malawi' initiative and link it with the Buy Malawian Strategy in order to boost innovation and IP-based entrepreneurship.

#### **4.1.7. Environmental Affairs Department**

The Environmental Affairs Department as the office responsible for administering Access and Benefit Sharing Agreements with respect to the genetic resources of this country, will, cooperate with the DRG, in ensuring adequate protection of the traditional knowledge and associated genetic resources as intellectual property for development. The EAD will also coordinate with the DRG in the preparation of strategy and legislation on the protection of traditional knowledge and associated genetic resources.

#### **4.1.8. Ministry of Agriculture, Irrigation and Water Development**

The Ministry of Agriculture, Irrigation and Water Development will have the primary role of promoting and incentivizing innovations in agriculture, in particular in the implementation of legislation on new varieties of plants. The Ministry will coordinate with DRG on the implementation of the Arusha Protocol on the Protection of New Varieties of Plants.

#### **4.1.9. Department of Public Sector Reforms in Office of the President and Cabinet**

The Department responsible for public sector reforms in OPC will support and oversee the envisaged reforms and modernization of the Department of Registrar General.

#### **4.1.10. Ministry of Finance, Economic Planning and Development**

The Ministry of Finance and Economic Planning will prioritize IP to ensure the mainstreaming of IP issues in national development policies and strategies. The Ministry will also provide resources and support the creation of an autonomous and modern agency to replace the Department of Registrar General with responsibility for IP, business registrations and regulation, and associated functions which relate to collection of non-tax revenues.

#### **4.1.11. Academic and Research and Development Institutions**

Academic and public research and development institutions will have the primary role of implementing institutional IP policies and strategies directed at promoting the generation, protection and exploitation of IP in their institutions.

#### **4.1.12. Technical, Entrepreneurial Vocational Education and Training Authority**

As the agency responsible for vocational training, TEVETA will play the important role of building innovative capacity by encouraging and supporting adaptation of technology to local needs and the development of utility models and relevant incorporating IP modules in the curriculum for technical education.

#### **4.1.13. Development Partners**

Development partners will support Government in the implementation of this Policy and the modernization of the Department of Registrar General into an autonomous office.

#### **4.2. Implementation Plan**

The Policy Priority areas will be implemented in tandem with the Implementation Plan. The Implementation Plan, among others, highlights Policy objectives, strategy, responsibility and time frame. The Implementation Plan is attached hereto as *Annex 1*.

#### **4.3. Monitoring and Evaluation**

The Ministry of Justice and Constitutional Affairs shall, on regular basis, monitor progress of implementation of the Policy by key stakeholders. The Ministry will also conduct periodic evaluations to measure the progress in the implementation of this Policy. The Monitoring and Evaluation Plan is attached hereto as *Annex 2*.

The Ministry will ensure that the Policy evolves to address the changing needs in a dynamic world, however, the Policy will be subjected to review after every five (5) years.

## ANNEX 1: IMPLEMENTATION PLAN

### Policy Priority Area 1: Establish Effective Institutional Framework to Modernize Administration of IPRs

**Policy Statement 1:** create an effective institutional framework and modernize IP administration and management in Malawi

Objective	Strategy	Responsibility	Time frame
To establish effective institutional framework for the modern administration of IPRs	Develop and implement the modernization plan for the Department of Registrar General in order to create a modern autonomous agency.	MoJCA, DRG, OPC, MoFEPD, DHRMD, MoCECCD, COSOMA, MoITT, DPs	2019-2021
	Develop legal framework for the establishment of an autonomous office responsible for administration of intellectual property and other mandates of the Department of Registrar General	MoJCA, DRG, MoCECCD, OPC, COSOMA	2019
	Develop and adopt an operational business model.	MoFEPD, MoJCA MoITT, DRG, COSOMA	2019-2020

**Policy Priority Area 2: Generation and Protection of IP Assets**

**Policy Statement 1:** create an environment that will foster the generation and protection of IP assets.

Objective	Strategy	Responsibility	Time frame
To Provide effective and balanced generation and protection of IPRs	Provide incentives for development of IPRs in academic and public research and development institutions.	MoEST, NCST, DRG, COSOMA, DPs	2019-2023
	Mainstream the generation of IP as a key performance indicator for both institutions, and employees and link the amount of funding for research and development activities in academic and other institutions funded with public money to IPR output.	MoFEPD, MoEST, NCST, DRG, COSOMA	2019-2023
	Promote the development of institutional IP policies in universities and publicly funded research and development institutions.	MoJCA, DRG, DHRMD, OPC, Universities, MoEST	2019-2023
	Establish an innovation fund to provide special incentives and technical assistance to innovators, to develop innovations in areas of national interest such as energy generation, agriculture, and health technologies.	MoFEDP, OPC, DRG, DPs	2019-2023
	Develop guidelines for supporting the international protection of locally generated IP assets with high marketability potential in other countries	DRG, NCST, TEVETA, MoFAIC, DPs	2019

	Promote reverse engineering and adaptation to local conditions of existing technologies in academic, research and development institutions and vocational training institutions in order to build innovative capacity.	MoEST, NCST, DRG, TEVETA, COSOMA, DPs, Universities and colleges	2019-2023
	Promote innovations based on traditional knowledge and traditional expressions of folklore.	MoEST, NCST, DRG, TEVETA, COSOMA, DPs	2019-2023

### Policy Priority Area 3: Effective Exploitation and Commercialization of IPR Assets

**Policy Statement 1:** Promote the exploitation and commercialization of IP assets generated in Malawi

Objective	Strategy	Responsibility	Time frame
To strengthen the exploitation and commercialization of IPRs	Develop and implement guidelines for supporting commercialization of IP within and outside the country	DRG, NCST, MoITT	2019-2023
	Promote establishment of innovation centres or units in public universities and research institutions to be responsible for protection and commercialization of IP assets.	MoEST, NCST, DRG, NCHE, Public R&D Institutions, Universities and colleges	2019-2023
	Develop contractual and licensing guidelines to facilitate commercialization of IPRs	DRG, NSCT,	2019-2020

	Develop and implement a strategy for IP and branding for micro, small and medium enterprises for business competitiveness and growth.	MoJCA, DRG, COSOMA, MoITT,	2019-2020
	Identify avenues for showcasing and marketing Malawian originating IPR-based products.	DRG, MITC, MoITT, COSOMA, MoFAIC	2019-2023
	Develop a national database of IPRs originating from Malawi.	DRG, NCST, NSO	2020-2022
	Create or strengthen rights holder or inventor associations to support the creative industry that may add value and exploit creative works.	DRG, NCST, COSOMA,	2019-2023

#### **Policy Priority Area 4: Effective and Balanced Legal Regime for IPRs**

**Policy Statement 1:** provide an effective and balanced IP legal framework that will promote creativity and innovation for sustainable development.

<b>Objective</b>	<b>Strategy</b>	<b>Responsibility</b>	<b>Time frame</b>
To create an IPR ecosystem that will stimulate creativity and innovation	Review legislation on Patents, Copyright and Designs	MoJCA, DRG, COSOMA, MoCECCD	2020
	Implement protection of utility models	DRG, MoJCA,	2020
	Provide for adequate and balanced enforcement procedures	MoJCA, DRG, COSOMA	2019-2021

	Periodic review of sanctions and remedies for IP infringement	MoJCA, DRG, COSOMA,	2019-2023
	Implement TRIPS Agreement, Marrakesh Treaty and other international and regional IP obligations in a manner that promotes national interest in the areas of public health, education and the environment.	MoJCA, DRG, MoH MoITT, MoFAIC, DPs	2019-2020
	Prepare legislation and strategies for the protection and exploitation of traditional knowledge, genetic resources and expressions of folklore originating from Malawi.	MoJCA, DRG, DENR, COSOMA, MoCECCD	2020-2021
	Enhance the capacity of the IP office for negotiation and strategic participation in international IP norm setting meetings on matters of interest to Malawi.	DRG, MoJCA, MoFEPD	2019-2023
	Establish an inter-ministerial steering committee on IP to deal with crosscutting issues and ensure Policy coherence and effective implementation of strategies and IP activities.	MoJCA, DRG, OPC	2019-2020

**Policy Priority Area 5: IP Awareness Creation and Capacity Building**

**Policy Statement 1:** raise the profile of IP as a tool for national development by building IP awareness and capacity for IP:

<b>Objective</b>	<b>Strategy</b>	<b>Responsibility</b>	<b>Time frame</b>
To create awareness about the role of the IP system.	Adopt and launch a national slogan ‘Innovate in Malawi’ and link it to the ‘Buy Malawian Strategy’ in order to raise the profile of creativity and innovation and to create a sense of national pride in being innovative and consuming Malawian created products.	MoJCA, DRG, MITC, MoITT, NCST, COSOMA, MCCCCI	2019-2023
	Develop and implement national IP awareness and outreach strategy.	DRG, COSOMA, NCST	2019-2023
	Liaise with Ministry of Education to include IP in school curricula.	DRG, COSOMA, NCST, MoEST	2019-2023
	Establish Institute of Intellectual Property Attorneys to train and examine IP attorneys.	MoJCA, DRG, NCST	2020-2021
	Introduce and strengthen the teaching of IP in tertiary institutions.	DRG, COSOMA, NCST, MoEST, TEVETA	2019-2023
	Develop capacity for law enforcement agencies and the judiciary for IP enforcement and dispute resolutions	MoJCA, DRG, COSOMA	2019-2023
	Create a platform for coordination of enforcement activities for IP	DRG, COSOMA, MRA, MoHS	2019-2023

## ANNEX 2: MONITORING AND EVALUATION PLAN

### POLICY PRIORITY AREA 1: Establish Effective Institutional Framework to Modernize Administration of IPRs

**Outcome:** Modernized and improved IP administration and management

**Policy Statement 1:** create an effective institutional framework and modernize IP administration and management in Malawi

Objective (s)	Output (s)	Performance Indicator(s)	Baseline	Target	Source of Verification	Assumptions/Risks
To establish effective institutional framework for the modern administration of IPRs	Modernization plan for DRG developed and implemented	modernization plan in place	0	1	Reports on the modernization plan for DRG being developed and implemented	Commitment and willingness of stakeholders
	Legal framework for the establishment of an autonomous office developed	Legal framework for the establishment of autonomous office in place	0	1	Legal framework for the establishment of autonomous office in place	Commitment and willingness of stakeholders
	Business model developed and adopted	Business model in place	0	1	Report on developed business model	Stakeholder willingness and stakeholders

**Policy Priority 2: Generation and Protection of IP Assets**

**Outcome:** Increased generation and protection of IP assets both within and outside of Malawi.

**Policy Statement 1:** create an environment that will foster the generation and protection of IP assets

Objective (s)	Output (s)	Performance Indicator(s)	Baseline	Target	Source of Verification	Assumptions/Risks
To Provide effective and balanced generation protection of IPRs	Incentives for development of IPRs provided	Percentage of support provided for innovation	0	100	Budget Documents Reports	Stakeholders and institutions' commitment/willingness
	Generation of IP as a key performance indicator mainstreamed	Generation of IP as a key performance indicator in place	0	1	Reports	Commitment/willingness of stakeholders
	Institutional IP policies developed	Number of institutional IP policies developed	0	10	IP Policy Documents	Availability of funds, willingness and commitment of stakeholders
	Innovation Fund established	Innovation Fund in place	0	1	Financial reports Project Documents	Willingness and commitment of stakeholders
	Guidelines for supporting the international protection of locally generated IP developed	Guidelines in place	0	1	Approved Guidelines document	Stakeholders' commitment and willingness
	–Trainings on traditional Knowledge and culture based innovations conducted	number of trainings conducted	0	10	Training reports	Willingness and commitment among stakeholders

	Innovations based on traditional knowledge and culture developed and protected	Number of innovations based on traditional knowledge and traditional cultural expressions developed	0	15	Reports	Stakeholders' commitment and willingness
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### POLICY PRIORITY AREA 3: Effective Exploitation and Commercialization of IPR Assets

**Outcome:** Increased exploitation and commercialization of IP assets both within and outside of Malawi

**Policy Statement 1:** Promote the exploitation and commercialization of IP assets generated in Malawi

Objective (s)	Output (s)	Performance Indicator(s)	Baseline	Target	Source of Verification	Assumptions/Risks
To strengthen the exploitation and commercialization of IPRs	Guidelines for supporting commercialization of IP developed and implemented	Guidelines document for supporting commercialization of IP in place	0	1	Approved Guidelines document	Stakeholders' commitment and willingness
	Innovation centres or units in public universities and research institutions established	Number of innovation centres in public universities and research institutions established	0	12	operational innovation centres, minutes, reports	Stakeholders' commitment and willingness
	contractual and licensing guidelines developed	contractual and licensing guidelines in place	0	1	Reports	Willingness and commitment from stakeholders

	Strategy for IP and branding for MSMEs developed and implemented	Strategy for IP and branding of MSMEs adopted	0	1	Project document	Willingness and commitment from stakeholders
	Avenues for showcasing marketing Malawian originating IPR-based products identified	Number of avenue for showcasing marketing Malawian originating IPR-based products identified	0	35	Reports and records	Willingness and commitment from stakeholders
	National database of IPRs developed	Operational National database of IPRs in place	0	1	Operational Database of IPRs Reports	Willingness and commitment from stakeholders
	Rights holder and inventor associations created	Number of associations created	0	3	Progress Reports	Commitment and willingness from stakeholders

**POLICY PRIORITY AREA 4: Effective and Balanced Legal Regime for IPRs**

**Outcome:** Effective and balanced legal framework and environment for IPRs

**Policy Statement:** Provide an effective and balanced IP legal framework that will promote creativity and innovation for sustainable development

Objective (s)	Output (s)	Performance Indicator(s)	Baseline	Target	Source of Verification	Assumptions/Risks
To create an IPR ecosystem that will stimulate creativity and innovation	Legislation on patents, copyright and designs reviewed	Percentage of legislations on patents and designs reviewed	0	100	Review meetings Reports, copies of reviewed legislations	Stakeholders' commitment
	Protection of utility models enforced	Protection of utility models in place	0	1	Copy of legislation	Stakeholders' commitment and willingness
	Adequate and balanced enforcement procedures Provided	Number of regulatory authorities trained on enforcement procedures	0	5	Reports	Stakeholders' commitment and willingness
	Sanctions and remedies for IP infringement reviewed	Percentage of reviewed sanctions and remedies for IP infringement	0	100	Reports Reviewed sanctions and remedies documents	Stakeholders' commitment and willingness
	TRIPS Agreement, Marrakesh Treaty and	Percentage of TRIPS Agreement, treaties and	2	100	Reports	commitment/ of stakeholders

	other international and regional IP obligations implemented	other international and regional IP obligations implemented				
	Legislation and strategies for the protection and exploitation of traditional knowledge, genetic resources and expressions of folklore developed	Legislation for the protection and exploitation of traditional knowledge, genetic resources and expressions of folklore in place	0	1	Legislation document, Reports	Stakeholders' commitment and willingness
		Strategies for the protection and exploitation of traditional knowledge, genetic resources and traditional cultural expressions in place	0	1	Strategies documents	Stakeholders' commitment and willingness
	Capacity of the IP office for negotiation and strategic participation enhanced	Number of IP norm setting meetings attended	3	8	Reports	commitment of stakeholders

	Inter-ministerial steering committee on IP established	Inter-ministerial steering committee on IP in place	0	1	Minutes of the meetings	commitment of MDAs
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### **POLICY PRIORITY AREA 5: IP Awareness Creation and Capacity Building**

**Outcome:** Increased awareness about IPRs among the general public, policy makers, potential users such as creators, innovators and artists, entrepreneurs, the industry academic and research and development institutions.

**Policy Statement 1:** raise the profile of IP as a tool for national development by building IP awareness and capacity for IP:

<b>Objective (s)</b>	<b>Output (s)</b>	<b>Performance Indicator(s)</b>	<b>Baseline</b>	<b>Target</b>	<b>Source of Verification</b>	<b>Assumptions/Risks</b>
To create awareness about the role of the IP system.	National slogan ‘Innovate in Malawi’ developed and promoted	‘Create and Innovate’ slogan in place and linked to ‘Buy Malawian’ Strategy’	0	1	‘Innovate in Malawi’ promotion , reports	willingness/commitment of stakeholders
	National IP awareness and outreach strategy developed and implemented	National IP awareness and outreach strategy in place	0	1	Strategy documents, reports	willingness/commitment of stakeholders
	IP in school curricula	Number of education	0	10	Education institutions	willingness/commitment of

	mainstreamed	institutions with IP in curricula			curricula,	stakeholders
	Institute of Intellectual Property Attorneys established	Institute of Intellectual Property Attorneys operational	0	1	Institute of Intellectual Property Attorneys, Reports	willingness/commitment of stakeholders
	Teaching of IP in tertiary institutions introduced and strengthened	number of tertiary institutions teaching IP	0	10	School curricula, Reports	willingness/commitment of stakeholders
	Capacity of regulatory authorities managing IP enforcement and dispute resolutions strengthened.	Number of regulatory authorities sensitized and trained on IP enforcement	0	10	Reports	willingness/commitment of stakeholders
	Platforms for coordination of enforcement activities for IP created	Number of National and District Technical Working Groups meetings conducted	0	10	Technical Working Group Reports	Cooperation among stakeholders