



## CALL FOR EXPRESSION OF INTEREST:

### CONSULTANCY TO DEVELOP A TOOLKIT FOR PUBLIC PARTICIPATION IN CONSTITUTIONAL REVIEW PROCESS

#### **A. BACKGROUND**

ICJ Kenya's vision is a just, free and equitable society. Its mission is to protect human rights, and promote the rule of law and democracy in Kenya and across Africa through the application of legal expertise and international best practices. The Organization is currently implementing its 2016 – 2020 Strategic Plan and has set out to achieve five main strategic objectives namely; to promote and protect the observation of human rights; support the strengthening of democratic governance; improve access to justice; promote justice for international crimes and gross human rights violations and; protect and promote civic space in order to enhance enjoyment of human rights and participation in governance in Kenya and the region.

#### **B. BACKGROUND OF CONSULTANCY**

Kenya is no stranger to Constitutional review processes. The first constitutional referendum in 2005 failed to pass by 57% to 43%. The second in 2010 created a two-tier legislature, established an independent electoral commission, devolved governments, and notably curbed presidential powers. With a 68% approval, this was a resounding vote of confidence in the new constitutional structure. The post-2010 era has seen several factions of the society call for constitutional reforms. In 2014, the Budget and Appropriation Committee formed a Working Group to audit the impact of the implementation of the Constitution on the economy, setting the stage for changes on the supreme law. The Working Group which was led by the Auditor General noted in one of its conclusions that although the public spending was on increase, it was not attributable to the implementation of the Constitution. The policy choices by both the Executive and the Legislature had occasioned increased spending in certain sectors and, therefore, one could not blame the Constitution as an expensive venture.

In 2016, the Coalition for Reforms and Democracy (CORD), embarked on a quest to amend the Constitution through a popular Constitutional amendments which was popularly known as

“Okoa Kenya.” This initiative was unsuccessful after it was rejected by Independent Electoral and Boundaries Commission for not meeting the constitutional threshold to support a Constitutional amendments by popular initiative guided by Article 257 of the Constitution.

Remarkably, since the promulgation of the current Constitution, Kenya has held three disputed presidential elections; in March 2013, in August 2017 and its repeat in October 2017. The 2017 elections rekindled the political tensions that have hitherto become a hall mark in any given presidential election. The political tension was pacified by a symbolic handshake in March 2018 which heralded a show of unity between President Uhuru Kenyatta and NASA leader Raila Odinga.

As part of the reconciliation deal, the Building Bridges Initiative (BBI) team was formed and gazetted to generate practical policy proposals for implementation. Since the inception of the BBI, calls for the Constitutional amendments have been advanced with an apparent persistence that the consultative efforts to unite Kenyans must lead to constitutional reforms.

The germane issues identified for reform include; the current political structure which is perceived as a winner take-it-all system thus there is need to restructure the system to accommodate other political actors through a distributed power structure, and reducing the number of counties, members of Parliament, and members of county assembly to cut the bloated wage bill. It is noteworthy that these proposals are being advocated for less than 10 years after the promulgation of the new constitution which was a product of revived conversations on constitutional review subsequent to the 2007 post-poll skirmishes. In essence, the 2010 Constitution has not been given sufficient time to shape the political landscape and change cultural and political mentalities, attitudes and behaviours.

In most cases, debates about constitutional reform in Kenya are devoid of meaningful public participation. Public participation in Kenya is enshrined in the Constitution as one of the cardinal values and principles of governance. It upholds democracy, good governance, and the rule of law by providing the citizens with a chance to be directly involved in decision making in government processes. The ongoing clamour for constitutional review is driven by agendas of individual politicians. This kind of arrangement where the agenda is shaped by the political class denies the citizens an opportunity to contribute meaningfully to the constitutional reform agenda.

In light of the foregoing, ICJ Kenya seeks to develop a public participation toolkit to enhance the engagement and participation of the citizens in the constitutional amendment debates.

### **C. TASKS TO BE PERFORMED**

The assignment of the consultant includes the following mandatory activities:

1. Development of a consultancy plan and methodology together with the calendar of activities;
2. Conduct the consultancy in accordance with the agreed research plan and methodology; and
3. Development of a toolkit for public participation in the constitutional review process.

### **D. DELIVERABLES**

1. Draft inception report;
2. Proposed methodology together with the calendar of activities, which should describe in detail the proposed methods to be used in the consultancy;
3. Data sets to include: database of respondents included in the research together with contact details, quantitative data received through surveys/questionnaires, qualitative data received through interviews and focus groups (recordings/transcripts - in English/Kiswahili if available);
4. Draft toolkit for public participation; and
5. Final toolkit for public participation (with stakeholders' input).

### **E. OBLIGATIONS OF PARTIES IN THE CONSULTANCY**

a) Obligation of the consultant

1. Provide strategic leadership and guidance throughout the assignment;
2. Inform ICJ Kenya in a timely fashion on the progress made and any challenges encountered;
3. Conduct the consultancy according to the agreed plan, which will include also a calendar of activities; and
4. Submit the draft and final toolkit for public participation on a timely basis as per the contract agreement.

## b) Obligation of ICJ Kenya

1. Ensure the consultant is provided with the necessary and required resources;
2. Support the consultant with necessary background documents and information relevant for the work;
3. Facilitate the work of the consultant in accessing target groups where necessary;
4. Monitor the daily work of the consultant and bring to the attention of the consultant any concerns that may arise;
5. Provide technical oversight in the review of all deliverables; and
6. Provide timely feedback/comments on the documents resulted from this assignment.

## **F. REQUIRED QUALIFICATIONS**

1. Master's degree in social sciences, political science or law;
2. At least 10 years of experience in relevant research, project design and implementation including proven experience in policy development particularly focused on constitutional law;
3. Proficiency in English;
4. The Consultant must be well versed with constitutional matters; with good understanding of Kenya's constitutional reforms journey and existing Laws on constitutional amendments;
5. Possess a track record as a reliable Consultant;
6. Experience in mainstreaming public participation in governance;
7. Excellent planning and prioritization skills;
8. Proven ability to adapt the methodology to challenges and opportunities emerging during the consultancy;
9. Proven ability to work under tight deadlines.

## **G. CONSULTANCY QUALITY AND ETHICAL STANDARDS**

The Consultant should take all reasonable steps to ensure that the consultancy is designed and conducted to respect and protect the rights, confidentiality and welfare of the people and communities involved and to ensure that the data is technically accurate and reliable, is conducted in a transparent and impartial manner and contributes to programme learning and accountability.

The Consultant will adhere to the following principles:

1. Data control: Data processing will adhere to the principles of lawfulness, fairness and transparency and data will only be collected for specified, legitimate and explicit purposes. The data will furthermore be accurate and limited to what is necessary for the purposes in relation to which it is processed.
2. Consent: Must be voluntarily granted after sufficient information had been clearly communicated to the person involved. The consent must be bound to a sufficiently explained and specified purpose or purposes and the person must be made aware of their ability to retract their consent.
3. Transparency: Individual participants will be informed of their rights and be provided with other information regarding the data collection (such as recipients of the data and purposes of processing) in clear and plain language. The information will be provided in a 'concise, transparent, intelligible and easily accessible form'.
4. Safeguards will be put in place in terms of confidentiality of the information, privacy of the participants, data security and data protection. In this regard, the data will be kept in a form that does not permit identification of individual participants for any longer than necessary for the purpose for which the data is processed. The data will be protected against unauthorized or unlawful processing and accidental loss, damage or destruction.

## **H. BUDGET**

The applicant must include a financial offer together with all other requested documents, as part of his/her application, taking into consideration the tasks to be performed and deliverables requested. Please note that the financial offer must include all costs related to the field visits. The quality/ price ratio will be taken into consideration in the selection process.

## **I. APPLICATION PROCEDURE**

Applications should include the following:

1. A detailed CV highlighting qualifications and experience relevant to this assignment;
2. Two relevant previous research or toolkit samples – to be used only for the selection process;
3. Consultancy plan and proposed methodology (including a calendar of activities).
4. Proposed financial offer for the assignment.

Interested applicants should submit their applications by way of a cover letter motivating their application, accompanied by a CV (maximum 3 pages) with details of 3 referees to support work of a similar nature. **Applications should be addressed to the Executive Director and sent by email to: [info@icj-kenya.org](mailto:info@icj-kenya.org) to be received on or before 15<sup>th</sup> April 2019.**