



CALL FOR EXPRESSION OF INTEREST ON: ELECTIONS TECHNOLOGY AND ELECTORAL JUSTICE IN KENYA

1.0 INTRODUCTION.

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental, non-profit and member-based organisation. The organisation has a membership drawn from the Bar and the Bench. ICJ Kenya's mission is to promote human rights, democratic governance, justice, and the rule of law in Africa. ICJ Kenya's objective is to develop, strengthen, and protect the principles of the rule of law, enjoyment of human rights, independence of the Judiciary and the legal profession, and promote the provision of legal services.

2.0 BACKGROUND OF THE CONSULTANCY.

ICJ Kenya acknowledges that Elections are increasingly becoming technology-driven in all parts of the election cycle. Globally, there is evolving pressure on Electoral Management Bodies (EMBs) to provide technological "solutions" to run aspects of the electoral process. This Election Technology, including digital solutions (collectively referred to hereinafter as Election Tech), is already used in different phases of the electoral cycle by election management bodies (EMBs), voters, political parties, electoral justice, media, and others. However, every aspect of using technology in elections is political.

Therefore, it is imperative that technology in elections is transparent, backed up by legal and policy underpinnings and procedures to build and maintain the trust so integral to the election process. The vacuum of misunderstanding about technology, compounded by political disinformation and misinformation, can sow distrust in the electoral process, the exact opposite outcome that the employment of technology in elections is trying to achieve.

Electoral tech and its attendant dispute resolution mechanisms have been mostly explored separately in global discourse, and the critical intersection has been ignored. Therefore, when legal challenges to election results are presented to the courts involving the use of election technology, the Judiciary is often caught off guard, lacking the understanding of how the technology works or not backed up by appropriate

legal or policy procedures to assess claims. This allows petitions to challenge the election results, alleging irregularities in the election tech and inadvertently creating a space for doubt to be cast on the integrity of elections, which can destabilize a nation.

JUSTIFICATION

Given the foregoing, Election Tech and related solutions must comply with the applicable principles for democratic elections. However, the practical application of legal principles to digital technologies is not easy. The first difficulty lies in the general character of the legal tenets, which are formulated in general and broad terms. Their application to a specific context requires interpretation which must clarify the exact meaning and practical implications that arise from the principles.

The second major difficulty lies in the technical nature of digital solutions, whose internal setup and functioning can be understood only by a handful of specialists but not by the layperson without technical help. Yet, it is the layperson (voter, election officials, judge, observers, etc.) who must use, check and ultimately trust the digital solution such as the Biometric Voter Registration system (BVR), vote counting and tabulation, and results from the transmission that makes up the Kenya Integrated Election Management System (KIEMS) and the results it yields.

It's against this backdrop, ICJ Kenya proposes to engage a consultant to:

- a) Develop a Policy Paper on Election Technology on related legal and policy underpinnings with reference to relevant case law and international and regional standards.
- b) Deliver training workshops for the Judiciary on the use of election technology and how legal procedures need to be adapted to support the assessment of challenges regarding election technology ahead of the General Elections in August 2022

3.0. OBJECTIVES OF THE CONSULTANCY.

- A. The objective of the consultancy is to equip Kenya's Judiciary with knowledge and strengthen its capabilities in assessing the merit of legal challenges brought to the electoral court involving electoral disputes around the use of technology in elections. The consultant will be expected to utilise innovative approaches to effectively involve all relevant stakeholders to ensure an all-inclusive approach.

- B. Develop a policy brief that will concretize the principles for democratic elections to clarify their meaning and extract the requirements that apply to the respective context. The handbook will further translate these legal requirements into parts that regulate the setup, use, and control of technology solutions in Elections. The handbook will also refer to case law.

4.0 SCOPE OF WORK AND EXPECTED OUTPUTS.

- a) Develop a policy brief that will concretize the principles for democratic elections to clarify their meaning and extract the requirements that apply to the respective context (Election and Technology). The policy brief will further translate these legal requirements into parts that regulate the setup, use, and control of technology solutions in Elections and refer to local and international case law on technology and elections.
- b) The consultant will conduct training for Court of Appeal Judges, and Supreme Court Justices On Election And Technology.
- c) The consultant will prepare training materials for the participants.

5.0 COMPETENCY AND EXPERTISE QUALIFICATIONS

The person required to undertake the assignment must have;

- a) Masters in law and/or public policy with a bias towards technology
- b) Be an advocate of the High court with more than 10 years of experience.
- c) Extensive practical knowledge and experience in elections and the electoral cycle;
- d) Experience developing/writing knowledge resource products, i.e., policy briefs and handbooks. These should be specifically targeted on elections and a diverse group such as election actors, governments, other key stakeholders, and other relevant duty bearers;
- e) Excellent analytical skills and ability to review literature extensively;
- f) Ability to research and draw data from case studies and experiences from other jurisdictions;
- g) Ability to produce high-quality outputs in a timely manner;
- h) Experience in the usage of computers and office software packages (MS Word, Excel, internet, etc.);
- i) Strong analytical, presentation, and writing (English) skills.

6.0. DURATION OF THE WORK

The overall consultancy period for all activities is 20 days. Start date 17 May – 10 June 2022.

7.0 REPORTING AND MANAGEMENT ARRANGEMENTS

The consultant shall work closely with the Programme Manager and Programme Officer Constitutional Reforms and Implementation and Judicial Strengthening and Reforms portfolios. The Executive Director will maintain overall supervision of the consultancy.

8.0 APPLICATION PROCEDURE

Applications should include the following:

- a. A detailed Curriculum Vitae (CV) highlighting qualifications and experience relevant to this assignment.
- b. Any other information that demonstrates the qualification and suitability of the consultant to perform this assignment.
- c. An interpretation of the Expression of Interest with a comprehensive budget and work plan covering professional fees and expenses related to carrying out the assignment.

Interested applicants should submit their applications by way of a cover letter motivating their application, accompanied by a CV (maximum three (3) pages) with details of three (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** and copy **procurement@icj-kenya.org** to be received on or before **16 May 2022**.