MEMORANDUM ON PUBLIC PARTICIPATION

PRESENTED TO:

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

UNIVERSITY WAY, ANNIVERSARY TOWERS, 6TH FLOOR,

NAIROBI

GEORGE MORARA
VICE CHAIRPERSON
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
JULY 2017
**A. INTRODUCTION**

1. The Kenya National Commission on Human Rights (KNCHR) is a constitutional body established under Article 59 of the Constitution of Kenya and Section 3 of the Kenya National Commission on Human Rights Act No 14 of 2011 (revised) 2012. It has the core mandate to develop a culture of human rights through the promotion and protection of rights and fundamental freedoms in the Republic of Kenya.

2. KNCHR is mandated to monitor state and non-state actors to ensure that they comply with both national and international laws and policies as well as human rights standards in all their undertakings. KNCHR further reviews legislation and policies to ensure compliance with the Constitution and international human rights standards and principles. In addition, KNCHR has the mandate to give advisories to the Kenyan government on issues of human rights.

3. The KNCHR submits this memorandum pursuant to the above mandate and upon the invite by the Independent Electoral and Boundaries Commission to make representations before it on matters relating to Public participation in Procurement matters. The submissions herein are also informed by KNCHR’s role in the electoral process having monitored the 2005 referendum, the 2007 elections, the 2013 political primary nominations and General Election thereof.

**B. PROPOSED RECOMMENDATIONS ON PUBLIC PARTICIPATION**

4. The Commission is of the view that public participation or public involvement should comprise of the involvement of various groups of stakeholders and the general public in decision-making and giving consideration of the input from the public in the decision. Public participation processes are to complement the expertise, experience and the training from the technocrats housed within the IEBC in their decision making.

5. In crafting the appropriate design and procedure of conducting the public participation, the IEBC should give due regard to the needs and problems at hand having identified them from the views and opinions of the relevant stakeholders in
order to craft the solutions that would be feasible and most appropriate in the prevailing circumstances.

6. The Commission submits that meaningful public participation should be anchored in the following principles:

**DUTY TO INFORM**

7. The IEBC has a duty of informing the public by providing information to help them understand the procurement processes and the options available in view of the limited timeline and consulting with the public to obtain their feedback on alternatives or decisions involving the public to ensure their concerns are considered throughout the decision process. The IEBC should also determine through its internal structures as to how will the public be kept informed throughout the process by communicating in a clear manner the expectations from the public participation process to boost transparency.

8. The Commission is of the view that in procurement processes, the IEBC should determine the level at which the involvement of the public participation would potentially influence the outcome of the decision arrived at. It would therefore be critical for the IEBC to determine the nature of public input they would want to welcome and the opportunities for stakeholders to have their concerns, interest and desires addressed.

**THE DUTY TO CONSULT**

9. In view of the decision of the Court, the KNCHR submits that in consulting with the relevant stakeholders and the public, the IEBC is to accord them an opportunity by inviting them to as for their opinions and consider them ultimately when it makes its decision. Albeit that fact that it is left to the discretion of the IEBC to determine the particular points of the processes when consultation is to be done, KNCHR submits that the presidential elections are a critical component of the general elections in Kenya and thus the duty to consult at every process is of importance.

**DUTY TO INVOLVE**

10. This process entails the inclusion of stakeholders and the public in general where they are invited to the procurement processes and are provided multiple opportunities to
give their input in decision making of the IEBC. However, it is the IEBC to be the
decision maker and that the stakeholders do not give high influence over the
decision. It would be for the IEBC to give direct feedback to the stakeholders and the
public on how their input helped to influence the ultimate decision. Whereas the IEBC
has involved stakeholders and the public, the decision it makes should not result in a
conflict of interest in view of the fact that the stakeholders are directly affected by
the decision of the IEBC.

11. From the foregoing, KNCHR is of the view that the IEBC should ensure that the
ultimate decision arrived at from the public participation process should be fair,
transparent, non-partisan and seen not to favour any side of the political divide or
result to a conflict of interest in view of any of the political actors.

CONCLUSION

12. KNCHR concludes by reiterating the sentiments herein that an all-inclusive process is
key to achieving the desired outcome of having the tendering process of the
Presidential ballot papers conducted in credible free and fair elections. KNCHR lauds
the efforts of the IEBC in welcoming various stakeholders to obtain their input on the
tendering process and is confident that the IEBC would endeavour to do all in its
function and powers to secure the right to a free, fair and credible come General
Election the 8th of August 2017.

SIGNED BY:

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For GEORGE MORARA
VICE CHAIRPERSON-KNCHR