

Laws can be legally valid yet democratically deficient

In democratic systems, laws should not descend from Parliament as top-down commands. They ought to emerge from society as expressions of the collective will. This is the constitutional promise of public participation. Yet in Uganda, as in many post-colonial democracies, legislation is frequently passed in the name of the people with only tokenistic involvement. Public hearings and memoranda are collected, but too often these serve as procedural formalities rather than genuine opportunities to shape outcomes.

The result is a widening gap between popular sovereignty and the reality of law-making: citizens are invited to speak, but rarely able to influence what is decided. Public participation is not a mere procedural courtesy. It is a constitutional mechanism for transmitting the will and consent of the governed into governance. Uganda's 1995 Constitution anchors this principle. Article 1 affirms that all power belongs to the people. Article 38 grants every citizen the right to participate in the affairs of government, individually or through representatives, and the right to participate in peaceful activities to influence the policies of government through civic organisations. National Objective II(i) further requires the State to empower and encourage active citizen participation at all levels.

Currently, Parliament's Rules of Procedure made under Article 90, provide the only main formal avenue for public participation through parliamentary committees. These commit-

tees may call for public memoranda and invite selected individuals to give evidence. However, this framework falls short of full democratic standards. It relies heavily on written submissions and limited oral presentations, with no requirement for statistical accountability or demonstrable influence on final outcomes. Moreover, the process lacks a clear constitutional mandate for proactive facilitation.

A robust assessment must, therefore, examine four interlocking elements: transparency, timing, facilitation, and influence. Transparency requires timely access to draft laws and relevant information; without it, participation becomes uninformative. Timing ensures that engagement occurs before decisions are effectively settled; late consultations merely legitimise

predetermined outcomes. Facilitation demands inclusivity—processes that reach beyond elite spaces and enable broad civic engagement, including active outreach to distant, rural, and marginalised communities. Yet all these elements converge on one decisive test: influence. Without a realistic chance that public input will shape the law, participation remains symbolic.

Comparative jurisprudence strongly supports this position. In South Africa's landmark *Doctors for Life International v Speaker of the National Assembly* (2006) and in Kenya, where courts have consistently demanded "real and not illusory" participation, the emphasis is on effect rather than mere form. In Uganda, however, judicial recognition remains more cautious. In *Male Mabirizi & Others v Attorney General*

(Constitutional Petition No. 49 of 2017), Justice Kenneth Katuru affirmed the constitutional importance of public participation. He however stopped short of annulling the process, citing judicial deference to Parliament's internal procedures and the practical difficulties of scrutinising legislative processes.

When participation lacks real influence, laws may be legally valid yet democratically deficient. This erodes public trust and institutional legitimacy. Democracy is not measured by whether citizens are allowed to speak, it is measured by whether their voices can shape decisions. Public participation without influence is a procedure without power.

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