



The Advocate

DECEMBER
2024

**"LAWS FOR THE PEOPLE BY THE PEOPLE:
EMPOWERING CITIZEN PARTICIPATION"**

**THE ROLE OF ACTION
PLANS AND CIVIL
LIBERTIES IN CITIZEN
PARTICIPATION.**



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Editor's Note



Welcome to this enlightening edition of the LSK Advocate e-Magazine, themed "Democracy in Action" with a sub theme on, "Laws for the People by the People; Empowering Citizen participation".

This edition seeks to bridge the gap between citizens and the laws that govern them, emphasizing the importance of active participation in the democratic process. It also aims at exploring the multifaceted nature of democracy—its triumphs, its challenges, and the vital role each of us plays in fostering a just and equitable society.

In an epoch marked by rapid social change and evolving political landscapes, we find ourselves at a crucial moment in history where the principles of democracy are being both tested and celebrated.

Our exploration begins with the core belief that laws should reflect the will and needs of the populace. Within these pages, you will find a collection of articles and insights that illuminate how empowered citizens can shape legislation, advocate for their communities, and hold their representatives accountable. From civic engagement initiatives to grassroots movements, we showcase inspiring examples of how ordinary individuals have made extraordinary impacts.

We also delve into the tools and resources available for citizens to navigate the legal landscape, highlighting the importance of education and awareness in fostering effective participation. Whether through voting, advocacy, or community organizing, each of us has the power to influence the laws that affect our lives.

As you engage with this content, we hope you feel inspired to take an active role in shaping the legal frameworks that govern us. Together, let's champion the idea that democracy thrives when citizens are informed, involved, and empowered. Consequently, we encourage you to consider your own role in this ongoing narrative.

In conclusion, I would like to quote an anonymous scholar who stated that, "Democracy is a slow process of stumbling to the right decision instead of going straight forward to the wrong one."

Thank you for joining us on this journey towards a more participatory legal system. Your voice matters, and every action counts.

Happy Reading!

Florence W. Muturi
Secretary/ CEO
Law Society of Kenya



LAW SOCIETY OF KENYA

ADVOCATES DISCIPLINARY TRIBUNAL

KNOW YOUR TRIBUNAL



ESTABLISHMENT

The Advocates Disciplinary Tribunal (ADT) plays a crucial role in upholding the standards of the legal profession in Kenya. The ADT is established under Section 57 of the Advocates Act, Cap 16.



MANDATE

The ADT is mandated to hear and determine complaints lodged against Advocates. The LSK Secretariat through the Compliance & Ethics Directorate, serves as the administrative arm of the Tribunal. It receives the affidavits of complaint from the Advocates Complaints Commission (ACC) and forwards them to the Tribunal members for prima facie determination. Once a case to answer is established, the Secretariat allocates the matters case numbers, sets them down for plea taking and undertakes service upon advocates. The Secretariat through the Compliance & Ethics Directorate also ensures advocates comply with orders of the Tribunal.



CONSTITUTION

The ADT is comprised of the Attorney-General, Solicitor-General or a person deputed by the AttorneyGeneral, six advocates, the Chairman, Vice-chairman and the Secretary of the Law Society. The Secretary of the Society is the Secretary to the Tribunal.



KEY STAKEHOLDER

The Advocates Complaints Commission (ACC) operates in close coordination with the LSK and the Tribunal. The ACC is established under Section 53(1) of the Advocates Act. It is mandated to receive complaints of professional misconduct against advocates. The ACC works to promote reconciliation, provide amicable settlement through Alternative Dispute Resolution (ADR) and conduct investigations with regard to complaints lodged against advocates. Additionally, the ACC may refer and prosecute complaints of professional misconduct before the Tribunal, at no cost to the complainants.

WHO CAN INSTITUTE A COMPLAINT AGAINST AN ADVOCATE?

- Any member of the public aggrieved can lodge a complaint against an Advocate.
- An advocate can lodge a complaint against a fellow advocate.

WHERE DO I LODGE MY COMPLAINT AGAINST AN ADVOCATE?

- An aggrieved party can either lodge a complaint directly with the Advocates Disciplinary Tribunal or with the Law Society of Kenya or with the Advocates Complaints Commission.

HOW DO I LODGE A COMPLAINT AGAINST AN ADVOCATE?

1. Write a letter to the Law Society of Kenya lodging a formal complaint against the advocate. Ensure to include the full names of the advocate and have the complaint signed.
2. Alternatively, you may lodge a complaint through the Advocates Complaints Commission. You will be required to fill in the provided help form. Subsequently, the Advocates Complaints Commission will carry out investigations into the matter and lodge a complaint on your behalf, with the Advocates Disciplinary Tribunal.
3. You may also prepare six sets of Affidavit of Complaint under section 60 of the Advocates Act to be forwarded to the Tribunal for determination.



ADVOCATES DISCIPLINARY TRIBUNAL

KNOW YOUR TRIBUNAL

HOW DO I LODGE A COMPLAINT BEFORE THE ADVOCATES DISCIPLINARY TRIBUNAL?

Prepare six (6) sets of Affidavits of Complaint (Under Section 60 of the Advocates Act)

↓
File the Affidavits at LSK

↓
Service by the LSK to the accused Advocate (private prosecution)

↓
Prima Facie Stage

↓
Plea taking Stage

↓
Hearing Stage (by affidavit evidence)

↓
Judgement stage

↓
Mitigation and Sentencing Stage

↓
Enforcement of Tribunal Orders

ADVOCATES DISCIPLINARY TRIBUNAL SANCTIONS

Where a case of professional misconduct has been made against an advocate the Tribunal may order the following: the advocate be admonished; the advocate be suspended from practice for a specified period not exceeding five years; the name of the advocate be struck off the Roll of advocates; the advocate to pay a fine not exceeding one million shillings; or the advocate to pay to the aggrieved person compensation or reimbursement not exceeding five million shillings.

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LAWS FOR THE PEOPLE BY THE PEOPLE: EMPOWERING CITIZEN PARTICIPATION



By Paula Gatheru

Sovereignty of the people is the core principle in democracy, enumerated in Article 1 of the Constitution, and therefore, all laws must seek to safeguard citizen sovereignty.

Kenya is among the nine African countries that have made significant strides towards citizen participation and empowerment, according to a report by IDEA, but also riddled with its own set of challenges that we shall delve into.

There are several statutory provisions that are supported by an international framework that enhance participation in the legislative processes, safeguard the rule of law and advance human rights which is the essence of citizen participation. The International treaties that Kenya has ratified include the Banjul Charter, the Declaration of the International Conference on Public Participation, the Rio Declaration and the ICCPR which majorly focus on advancing human rights and consequently Chapter Four of the Constitution (the Bill of Rights) forms the basis for citizen participation and sovereignty of the people.

The Basis for Citizen Participation.

Citizen participation is fueled by good governance, fair and transparent elective processes, the rule of law, independence of the judiciary, policy and legislative guidelines, independence of oversight authorities, adequate civic education and sensitization and promoting access to information.

The basis for public participation was conceptualized post the 2010 constitution through conferences and workshops that resulted in the Draft Devolution Policy 2015. They are a basis for implementation strategies that are premised on Article 118 at the National level.

Citizen (public) participation in Kenya is also largely implemented through decentralization of power in the form of devolution, premised on Article 174 and 196, which lays the foundation for citizen participation at the County level and subsequently advances inclusivity and sensitization.

Citizen Awareness For Participation and Empowerment.

The National Governance Sector plan calls for sensitization to create public awareness which is a building block towards a transformative Kenya and the Vision 2030 sector plan. In Article 35, the state is obligated to provide information to safeguard basic human rights. Interested parties can apply through the Access to Information Act on a given sectoral issue. When citizens are empowered and informed, it ensures accountability for administrative acts (enshrined in Article 232), aids in the proper management of public resources and addresses improper governance which consequently safeguards democracy and the rule of law, which are the tenets of citizen participation.

Civic education also promotes access to information. It can take the form of orderly public forums to discuss legislative matters such as policies and bills as well as county budget and economic forums so as to promulgate citizen discourse. It also strengthens actions plans and implementation strategies. Closely linked to access to information is access to public services and responsiveness in government programs to sustain transparency, accountability, performance and safeguard democracy.



Hurdles that affect sensitization efforts include; limited comprehension of governance processes, political interference in some instances, logistical barriers which include geographical constraints and divides based on digital information, lack of cooperation from the public and sometimes insufficient mechanisms to incorporate public feedback.

These can be remedied through strengthening oversight bodies, upholding access to information and civic education, using written communication to invite citizen participation (media advertisements and the digital media), inviting feedback using written submissions, engaging stakeholders or interested parties in a given sectoral legislation and if there is necessity for public forums, to enforce security safeguards and engaging local administration in mobilization so as to manage crowds.

The Role of Action Plans and Civil Liberties in Citizen Participation.

The national values and principles in creating policies and enacting laws found in Article 10, are the conceptual point for statutory action plans that promote public participation.

The said action plans (also initiatives) include; citizen participation in an administrative action that affects the public stipulated in the Fair Administrative Act, public participation in leadership appointments particularly in government agencies, the intergovernmental structures for dissemination of information to the public stipulated in the Intergovernmental Relations Act, the guidelines in the Public Finance Management Act to ensure citizen participation in budget making, the Urban Areas

and Cities Act that allows for residents to participate in the management of affairs that affect them and also the County Government Act that underscores the importance of Access to Information and participation in enactment of laws.

Articles 27 and 33 of the Constitution provides for equality and freedom of expression respectively, which essentially advance civil liberties that sustain public participation. Freedom of the press and association are crucial and they are rooted in administration, participation and expansion of the civic space.

Civil liberties are affected by improper governance, limited civic awareness, discrimination and inequalities, lack of funding and resources for oversight authorities and state insecurities.

Sensitization initiatives serve to expand and safeguard the civic space. Improper governance is remedied by an action plan in Articles 104 and 119 of the Constitution (a citizen complaint and grievance redress mechanism- which is also a sensitization initiative), whereby there can be a recall of elective leaders or a petition to parliament so as to hold elective leaders accountable to safeguard citizen sovereignty and participation.

Additional initiatives include social accountability activities (such as use of citizen score cards) and affirmative action strategies (such as responsive and participatory budgets) founded on Article 56.

Closing Remarks.

A conclusive summary is the South African case of Doctors for Life. An advocacy group lodged a petition that there was insufficient public participation in the enactment of certain health statutes. The court determination was premised on the role of the legislature in advancing human rights and democracy in citizen participation as supported by the international and constitutional framework.

The statutes were invalidated and held in abeyance based on the reasoning that democratic values, social justice and human rights are premised on the people's will.



Protecting Kenya's Economic Growth

SASRA Licenses, Regulates and Supervises DT & Specified NDT SACCOs to secure members' deposits

The SACCO Societies Regulatory Authority (SASRA) was established under the Sacco Societies Act no. 14 of 2008, with the responsibility to license SACCOs to undertake Deposit Taking business and to supervise and regulate SACCO Societies. The Authority has currently 176 Deposit Taking Saccos (DTS) and regulates other 183 Specified Non-Deposit Taking SACCOs (NDTS).

EMPOWERING CITIZEN PARTICIPATION: PUBLIC PARTICIPATION AS AN ABSTRACT NOTION



By Linus Nyerere

In the recent times, Kenya has undergone significant milestones in the principle of public participation. Recent events surrounding the contentious Finance Bill paint a unique picture of the future of public participation.

Since its ascent into power the current government has consistently ignored the concept of public participation while undertaking significant initiatives that substantially affect the public. Such disregard has led to incidences of public outcry and widespread protests. In the last protests Kenyans in their thousands took to the streets across the country and for the first in history invaded the National Assembly for failure to consider their views while creating legislation.

The protests which began earnestly in June 2024 were ignited and inflamed by punitive proposals in the Finance Bill 2024 by members of the National Assembly that had sought to impose Incremental taxes ranging up to 16% vat on basic commodities such bread, edible cooking oils and products, sugar, airtime, mobile money transfer services, housing levy, NSSF contributions, social health insurance fund, yearly motor vehicle tax, fuel.

As soon as the bill was tabled, protests broke out across the country with clarion call being, “Occupy Parliament”.

This exacerbated when majority of the members of Parliament supported the proposals in opposition to the views of the majority Kenyans and their constituents in particular.

Before the Invasion of the National Assembly, protestors reminded their members of Parliament that they were watching them as they voted for the Finance Bill 2024. In their numbers Kenyans across the country warned their elected representatives and called upon them to totally reject the Finance Bill 2024 which sought to introduce punitive changes to the taxation regime. However, contrary to the demands and views of their constituents, members of the National assembly and particularly those of the ruling party which has majority members voted overwhelmingly for the Bill, when it was called for a vote by Parliament both in the first and second readings.

While the members of Parliament had strategically gathered in the National Assembly to conduct the vote on the contentious finance bill second reading, protests were raging on across the country. Inflamed by their outright ignorant and selfish representatives, Kenyans took the streets in fashion never seen before. In Eldoret



a huge wheelbarrow, which is the symbol of the ruling party whose majority members had consistently vowed to supported the Bill, was terrifically brought down by enraged protestors who chanted that they had brought down the symbol of lies and broken promises.

When the news broke out that Members of Parliament had voted Yes for the contentious bill, Thousands of protestors who had taken to the streets to rally Parliament to reject the punitive bill across the country became more agitated. In Nairobi the Protestors now turned the Protests to Parliament buildings with thousands chanting Occupy Parliament. Strengthened by their resolve, the now enraged protestors marched to Parliament, undeterred by the heavy police presence, and invaded the Parliament premises, with many being shot dead by Snipers and Officers who had taken positions within the Parliament premises.

Across the country similar, events were being witnessed with houses, businesses, and numerous properties belonging to Members of the National Assembly who had initiated and proposed the punitive forms being attacked and torched down. The protests which were began by young people had slowly spread tentacles and now majority of Kenyans irrespective of age brackets had become angered by the outright disdain and contempt expressed by

their elected representatives regarding their views.

Speaking after the invasion of his house by irate Molo residents who had sought to demonstrate their anger with their representative who betrayed their wishes, the Finance Committee 2024 Chairperson Hon Kimani Kuria Molo MP Kimani Kuria stated that he has forgiven all those who invaded his home in Elburgon, Nakuru County, looted property and set his poultry and car on fire. The Legislator Kimani who was in the constituency for a development forum asked the Directorate of Criminal Investigations to set free all suspects.

In Kieni, the area member of parliament was also not spared by agitated residents. Soon as he voted Yes for the contentious Bill, thousands of his constituents raided his supermarket business, torched it and thereafter razed it down. The Kieni Member of Parliament Njoroge Wainaina spoke later pointing out that he had incurred losses worth millions of shillings to the tune of Kshs. 550 million.

In Nakuru East, the area member of parliament Mr David Gikaria and his wife took the unique approach to express their regret for supporting the Finance Bill 2024. Shocked the turn of events and increased hostility from their constituents, the two took to their social media profiles to express their regret and apologies for supporting the Finance Bill 2024.

In catchy photos, they rocked white matchy t-shirts with “I am sorry, Please forgive me for not listening to You” and “Please forgive him for not listening to You” clearly printed.

Kenya is not the only country that has recently experienced significant events flowing from the disdain of public views by elected representatives. In Bangladesh, protestors in their millions toppled the Government of long-serving prime minister Sheikh Hasina following weeks of intense anti-government protests. The protest had begun in early July as peaceful demands from university students to abolish quotas in civil service jobs which were reserved for relatives of veterans from Bangladesh’s war for independence from Pakistan in 1971. Millions of the students and young people who were jobless argued that the system was discriminatory and needed to be overhauled.

Within a few weeks, the protests had reached industrial scales and were more fueled by the repressive responses the govt had adopted which include repeatedly cutting off internet access in parts of the country, imposing a nationwide curfew, and describing agitated and demonstrating citizens as terrorists seeking to destabilize the nation.

The Place Public Participation in the Society

Participation, as opposed to the evident belief that seems to exist among the majority of legislators, is not a pedestrian concept. As a national principle and value under article 10 of the Constitution, Public Participation is a Pertinent element in the development of the country.



It imposes a significant duty on the holders and wielders of publicly donated power. In the exercise of such authority lies a duty to consult with and consider the views of donators and electors.

Through engagement, opinions, information and ideas that are needed for representation, law-making, public policy formulation and oversight that meet people’s expectations and aspirations can be brought to parliament and assist decision-making so that no one is left behind. In doing so Parliament can avert a disconnect with the public that it serves by showing that the community is being listened to and heard, thereby countering rising public distrust and discontent. Indeed in **Mui Coal Basin Local Community & 15 Others –vs- Permanent Secretary Ministry of Energy & 17 Others (2015)eKLR** the Court stated that in determining the design of a public participation regime the government agency or public official must take into account the subsidiarity principle wherein those most affected by the policy, legislation or action must have a bigger say and their views must be more deliberately sought and taken into account.

Amid today's changing societal needs, the parliament also needs to make every effort to be visible while considering public views. By offering genuine opportunities for dialogue between people and their elected representatives, Parliament can help to build trust and reinforce its relevance to society. As such elected representatives ought to put emphasis on listening to the people and the community at a large, as opposed to claiming to be omniscient regarding what affects the people.

The author is an Advocate of the High Court of Kenya

In this age of technology, it is also important for parliament to keep up with the rapid pace of Technological change by prioritizing their digital transformation, particularly in its approaches to public Engagement.

Declining trust in public institutions simply means that parliament cannot simply continue with its business as usual. It challenges parliaments to assess the progress they have made and to step up their efforts at engagement.



ADVOCATES' PRACTICE STANDARDS CAMPAIGN ALERT:

Masqueraders, Quacks, Impersonators and Unauthorized/Unqualified Persons



Who is an Advocate of the High Court of Kenya?

01

A person duly entered to roll of Advocates and has a practicing certificate for the current year.

You can check the practice status of such an advocate on online.lsk.or.ke by clicking on **Search Advocate** and entering the name of the advocate. If the Advocate has a valid practicing certificate(PC), it will be **Active**. If not, it will be **Inactive**.

In case an advocate is practicing without a PC, please report to the Director Practice Standards by email to compliance@lsk.or.ke or send a letter to LSK Secretariat.

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02

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PLEASE NOTE THAT THE SEARCH ENGINE IS ACCESSIBLE ON <https://online.lsk.or.ke/>

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A New Dawn for a Kenyan Government of the People, for the People and by the People



BY BETTY KARIUKI

Abraham Lincoln's Gettysburg Address on November 19, 1963 and his famous words, "government of the people, for the people and by the people" remains monumental and profoundly relevant to modern-day Kenya as if the same were said today. In fact, if Lincoln were alive in today's Kenya political scene and the events of the past few months, he would have probably replaced these words with, "government of the Gen-Z, for the Gen-Z and by the Gen-Z". The Gen-Z generation of Kenyans spearheaded the recent protests and demonstrations against the Kenyan government which reached an all-time high in June to August this year (2024) resulting in the much-needed awakening by the Kenyan political elite. Government responses in the aftermath were evidence enough of a future Kenya where ordinary citizens will engage with government as an informed party in the social contract. The new dawn was outrightly reflected in the level of penetration of information through Gen-Z-led civic

education, use of technology-driven tools and platforms, wide-range youth engagement and disbandment of tribal alignments in political governance. To begin with, the Constitution of Kenya, 2010 which has been praised as progressive provided an unshakeable foundation for shaping this foreseeable Kenyan future by providing for various rights including the right to assembly, demonstration, picketing and petition (Article 37), freedom of the media (Article 34), the freedom of expression and opinion (Article 33), and the right to access to information (Article 35) which gave credence to the widespread digital activism and citizenry participation. The protests exposed the level of access to laws by ordinary Kenyans who turned to these laws to back-up their arguments against government's intended actions. Without a doubt, the Constitution legitimized the fight against government's impunity and highlighted the much-needed civic education to dissipate ignorance in governance and national leadership.

While the Constitution remained a cornerstone during the protests, it goes without saying that technological advancements played a pivotal role in amplifying the growing concerns of citizens about governance and their role in it. It was not surprising that the Gen-Z ignited conversations and discussions on policy and regulatory developments in matters national budget, expenditure, appropriations, taxes and corruption, using tech tools such as phone applications, moreso, artificial intelligence tools such as ChatGPT and social media platforms. With these resources these topics which in the last few years have majorly been a reserve for the political class and the elite upper-middle class became household discussions for any ordinary Kenyan. Social media platforms such as Tiktok, Instagram and X (formerly Twitter) turned to educational platforms where people discussed potential laws, politically instigated leadership decisions and their impact to lives and the economy at large. It is these platforms that further legitimized the concerns of protestors forcing the initially adamant government to respond to concerns raised. In fact, the President of the Republic appeared on an X platform to attend to citizenry concerns and queries one-on-one.

In addition to the protests being led by a generation of young Kenyans and the various reports showing that majority of the population comprises of youth, it is apparent that in the near future, Kenya should prepare to usher in a generation of informed and well-educated citizens who are actively engaged in government. Literally, it appears that it shall be a government of the people, for the people and by the people as opposed to what has been the position since independence, a country whose development agendas are marred by elitist political stances, segregated citizenry participation, inequalities by design, watered down integrity and disdain for transparency. When all shall be said and done, and dust has settled, Kenya will ultimately be a country that has persisted through all challenges and resorted to the core values of our laws as provided under Article 10 of the Constitution.

Unlike in many European countries where political decisions and alignments are along the lines of race and issues that affect ordinary citizens, Kenyan political decisions have for the longest time been based on tribes and tribal alliances. Nonetheless, the protests were purposefully driven by clear cut agendas that discouraged tribal alignments which were run under headlines and hashtags such as “Tribeless” and “Gen-Z Kenyans” with a view of excluding divisions on tribal lines.

In principle, the current reality of the Kenyan government and its relationship with citizens, as demonstrated by the nation-wide demonstrations, may soon reflect what Lincoln envisioned as a true democratic government. A government where the efforts and sacrifices of those who fought for independence from the Brits shed blood, lost property and lives in exchange for freedom do not go down the drain.

A new dawn for a country borne in war, blood and bitter tears. A symbolically newborn country that respects its citizenry's opinions, views and contributions to law making through substantive public participation. A country where civic education and citizen participation is a respected component of good governance rather than an act of mere correctness or procedural necessity.

The author is an Advocate of the High Court of Kenya



LAWYER'S PROFESSIONAL INDEMNITY COVER

WHAT IS COVERED

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- The compensation is upto the limit of liability covered.

WHY A LAWYERS PI COVER

- Increased risk of being sued as a Lawyer
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- The standard of care is equated to the degree of qualifications/ skills/ experience he/she possesses
- Better informed consumers who know their rights

WHY MADISON

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- Their qualifications and period of experience in the profession
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- Number of other staff
- Limit of indemnity required-Per event and aggregate
- Gross fee Income (Audited accounts)
- Previous claims history

10

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A NEW OUTLOOK TO CITIZEN PARTICIPATION FOCUSING ON THE GEN Z PROTESTS AGAINST THE FINANCE BILL 2024



BY DR. WYNE MUTUMA

Democracy comes from 2 Greek words 'damos' meaning the people and 'kratos' meaning power and therefore the power of the people. Abraham Lincoln, U.S.' 16th President, described Democracy as a system of governance of the people by the people for the people. It encompasses one important aspect which is the sovereignty of the people. The Constitution of Kenya in Article 1 recognizes that all sovereign power belongs to the people. Today, Kenya is more aware of their sovereignty and their fundamental role in ensuring that their concerns and needs are well articulated in governance. The Media through radio, television and social media platforms informs citizens in urban and rural areas of their responsibility to participate in public legislation and processes. The most recent actualization of citizen participation showing democracy in action is the Generation Z (Gen Z) protests to phase out the proposed Finance Bill of 2024. Despite diversity in gender, age, tribe, traditions or culture, Gen Z protests were able to mobilize a huge following physically and online to phase out the Finance Bill.

Gen Z's called for good governance, the rule of law, inclusivity, accountability and transparency in government actors and corporations. It was inspired by crosscutting concerns about the Kenyan economy, unresponsive politics, decrepit and classist education and health sectors, and extrajudicial and enforced disappearances. It demonstrated great voluntary public participation that has gained global recognition.

Kenya's youths have clearly demonstrated their passion to have an effectively running country in legal formation and implementation. The youth are key to democracy, as Kofi Annan quoted, 'No one is born a good citizen, and no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth.' The youth were able to leverage the use of technology through social media platforms, use of Artificial Intelligence in generating fantastic posters to spread their message far and wide.

Current laws and practices on citizen participation

The Constitution of Kenya 2010 article 10 recognizes public participation as a value and principle. In article 118 requiring parliament to engage the public in its legislative work and Article 196 requiring County government to involve the people in the county level making laws. The County Governments Act (2012), National Cohesion and Integration Act (2008) and Independent Electoral and Boundaries Commission (IEBC) Act for part of the legislation. Civil societies can also advocate for citizen participation and hold the government accountable.

Government uses public forums and consultations to engage citizen input into legislation. An example is Baraza, which are public community meetings. It involves reaching out to different communities, sharing information on given laws to propose solutions, concerns and amendments. It helps in creating public awareness and a means to get feedback and collect data on how different issues affect the communities. However, there have been concerns as to the level of public participation, low number of attendees, consideration of feedback, clarity and truth of the information disseminated. This contributes to a loss of public trust.

The Gen Z have shown us the opportunity to leverage technology and the internet to ensure that there is public participation. One unique aspect with the protests was the voluntariness to participate without the usual political influence to act.

They were able to stand their ground on the Finance Bill leading to the Bill being set aside.

Lessons learnt from the Gen Z protests on citizen participation

Gen Z highly utilized technology at hand through their phones to propagate their message through social media platforms like X, Whatsapp, Tik Tok, Facebook and Instagram. They were able to transmit clear information in a fast and efficient manner with creative posters generated through artificial intelligence. In addition, they generated informative, simple and relatable videos explaining the Finance Bill. It propelled a wider reading of the Bill. The Government can leverage on developing digital platforms and available technology to allow for public participation. The use of relatable, creative art and culture illustrations acted as a lure to educate the youth on the ongoing protests and participate in driving the agenda.

The process was inclusive with the diversity in gender, age, cultures, traditions and tribes defying the regular tribal fronts in public participation. Different generations were engaged as the youth widely shared the posters and videos with their parents. Pro-activity towards public participation happened without political influence. The young protestors voluntarily walked the streets to voice their concerns. Great public participation over the years had been linked to political influence yet without a political party or opposition

driving protests, the youth were able to rally each other into participating in phasing out the bill and demanding accountability, transparency and good governance.

What of those who are unable to access technology? A big percentage of citizens in Kenya own a form of technology, from phones, smartphones and laptops enabling us to leverage on technology through videos, virtual meetings, posters, radio and television news giving detailed information needing public participation. Still there is a percentage of our population cannot access technology especially in the marginalized areas. Public forums and consultations need to be maximized in this instance. Public sensitization or awareness on matters governing the country should be prioritized for effective public participation. Civic education is needed on the importance of public participation and the sovereignty of the people in governance. The state actors and corporations need to be transparent and accountable to the public in order to build trust.

Conclusion

Citizen participation in regulations and government processes is crucial for the development of a democratic society. It plays a significant role in promoting fairness, transparency, and accountability, ensuring that decisions made by public institutions reflect the needs and concerns of the people. When citizens actively engage in these processes, it strengthens the legitimacy of the government and its policies. With the rise of digital technology, there is now a unique opportunity to expand and enhance citizen involvement, making it easier for individuals to voice their opinions, share feedback, and contribute to decision-making processes. The power of technology in amplifying citizen engagement has been vividly demonstrated by movements like the Gen Z protests, where social media platforms became powerful tools for organizing, mobilizing, and influencing change. Given this potential, the government should take strategic steps to leverage technology to broaden its digital presence, actively engage with citizens on social

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Habeas Corpus Can Deter Torture on Forced Disappearance

Unprecedentedly, the “Generation Z” uprising defied the Kenya Kwanza government’s 2024 Finance Bill. Mass protests against excessive tax increases precipitated widespread abductions, torture and extra-judicial killings. Yet, the law’s innocence presumption recognizes a suspects’ claims that certain procedures be followed. Take article 51(2) of Kenya’s Constitution. Habeas corpus entitles a detainee to be produced and have his charges proclaimed publicly.

Problematically, on 20 September 2024, barely had new Inspector General of Police Douglas Kanja been inaugurated, than abducted activist trio of Bob Njagi and brothers Jamil and Aslam Longton, were silently freed in Gachie, 60 kilometers away from their homes. Deputy IG Gilbert Masengeli was due to purge High Court Judge Laurence Mugambi’s 6-month jail sentence against him for failing to explain the “Kitengela Three’s” 32-day disappearances. A week earlier, Wajir MCA Yusuf Hussein Ahmed’s family also petitioned the High Court for habeas corpus alleging Ahmed’s abduction from Nairobi’s South “B” estate. Its outcome remains pending.

Bizarrely, even lawyers are abducted. In November 2021, Prof. Hassan Nandwa advocate went missing from Kencom bus stop. A week later he was deposited in Mwingi, 200 kilometers from Nairobi. However, his client, ex-terrorism convict Elgiva Bwire is yet to be found. In February 2021, two cars blocked another lawyer Benson Kayai’s vehicle in Nairobi West. Unknown people forcibly abducted him and sped off. Despite CCTV



By Charles Khamala

footage, he has never been seen since. In 2016, while suing the police for brutality, lawyer Willie Kimani’s missing corpse was retrieved from Syokimau River, tortured and killed with his client Josephat Mwenda and their taxi driver.

Preventing Torture

Torture comprises public official acts intentionally inflicting severe suffering on someone to punish or extract a confession. By prohibiting such cruel, inhuman or degrading treatment, the Constitution’s Article 29(f) secures all other fundamental freedoms. The “black holes” of law include detention centres and refugee camps, since torture and rape are rampant there. Article 51 rights of persons detained, held in custody or imprisoned, prevent individuals from being refouled, outlawed, arbitrarily detained, and deported or desseised.

Where did habeas corpus emerge from? What is its scope and the prospects of regional enforcement? It is a procedural right, the cornerstone preserving personal liberties by preventing imprisonment in such manner that one’s sufferings are erased. Article 25(d) makes it non-derogable. Yet it is no “get out of jail free” ticket. Rather, whenever a person is not arraigned in court within the stipulated time, the police must “produce the body” and explain why



depriving his freedom and security should continue. Naturally, because an incarcerated victim cannot swear an affidavit, any person may sue on his behalf. To enforce the state's duty to protect Gen Zs against unlawful disappearance, citizens lodged habeas corpus petitions.

Local and Global Habeas Corpus

Cepi corpus et paratum habeo, or simply cepi corpus, means a return of the writ of attachment by the sheriff. Put differently, I have taken the body, and have it ready for return, which archaically implied that the party was in actual custody. Nowadays, it is the proper return where the suspect has been arrested and granted bail. Under the Criminal Procedure Code, the High Court may order any person in Kenya to be produced and dealt with legally. Some cases are illustrative.

In *Kamau v PCIO Coast Province* [2006], the 14-day period within which murder suspects should be arraigned in court expired while they were still in police custody. The court released them on habeas corpus on depositing their passports in court and reporting weekly to the police. In *Mohamed v R* [2003] when the suspect reported to the police as ordered, he was locked up and detained. To free him, his wife was issued with habeas corpus. In *Mohamed v Commissioner of Police* [2007] Abdulmalik was detained at a police station from February 2007 until October 2007. However, by the time his wife petitioned for habeas corpus, he had already been renditioned to the US on suspicion of engaging in terrorist activities. In *Muriithi v Janmohamed* [2023], by a 3-2 Supreme Court split-decision, Muriithi's 1982 arrest from his house violated his liberty and property rights. It was an act of State.

Yet his suit for habeas corpus failed to enjoin the Attorney-General. Hence, personal allegations of detention by his business partner, then President Daniel Arap Moi, were dismissed.

State unaccountability amid judicial lethargy calls for regional courts to review police brutality. However, international criminal law does not recognize state criminality. Preventing torture may be enhanced by internationalizing the habeas corpus procedure under relevant treaties. The 1966 International Covenant on Civil and Political Rights lists the right against arbitrary arrest. However, only in cases pending before the International Criminal Court are Member States Parties obligated to extradite or prosecute culprits.

Ultimately, beyond compensation or retribution for violating someone's substantive freedom from torture, deterring arbitrary arrest or detention using habeas corpus is desirable. Article 6 of the 1981 African Charter on Human and Peoples' Rights provides that "no one may be arbitrarily arrested or detained." Therefore, the African Union's 2002 Robben Island Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa promise an effective regional procedural implementation mechanism for protecting the security of the person through prisoner's rights. However, cases may only be received from the African Commission or States Parties, unless countries accept the African Court on Human and Peoples' Rights' competence to receive cases from individuals and NGOs. Kenya has not.

The prosecution must also disclose all the necessary documentary evidence that they intend to rely on to enable the accused person to prepare for trial. This is a right of the accused under Article 50 of the Constitution.

Forced Disappearance and Criminal Punishment

In late September, 2024, denying police responsibility for 132 Kenyans missing during the Gen Z protests, then Interior Cabinet Secretary Prof. Kithure Kindiki told the National Assembly that the government lacks a policy on abductions. By November, the Kenya National Commission on Human Rights documented 1,376 arbitrarily arrests since June, with 26 abductees still unaccounted for. Such “legal black holes” exist, either because no substantive law covers the situation, or judicial review is unavailable. Gone forever, disappeared persons fade from memory. Uncreated, as if they never existed. They lose human dignity. These lawless voids began during imperial rule. In the mid-1920’s, the British colonial government tricked Kalenjin rebel leader Koitalel arap Samoei into a ceasefire, only to kidnap and disappear him. Three decades later, they captured Kikuyu Mau Mau General Dedan Kimathi. His body remains secretly buried inside Kamiti Prison, following an unfair criminal trial and execution. Denying these nationalist revolutionaries decent interments forfeited their rights to recognition.

In 2018, the then Jubilee regime forced lawyer Miguna Miguna into exile for apparent radical political expression. Upon abduction from his Runda estate abode, he was shuttled around various police stations incommunicado for six days in defiance of habeas corpus orders from Judges James Wakiaga and Luka Kimaru, issued to protect him in between capture and arraignment in court.

By further denying his re-entry to Kenya, the executive flouted orders by Judges Chacha Mwita, Roselyne Aburili and George Odunga. For over three years, numerous state officers persisted in contempt.

Habeas corpus originated from England’s 1215 Magna Carta. Received into Commonwealth countries under respective Judicature Ordinances, Kenya’s is now constitutionally-enshrined. Nonetheless, implicated officials remain undeterred. Innocents have become collateral damage, suffering physically and psychologically, even dying. Remarkably, in 2023, for torturing and murdering lawyer Kimani and others, Judge Jessie Lesiit sentenced ex-policeman Fredrick Leliman to hang, while his three accomplices each got 30, 24 and 20 years’ jail terms. Their appeals are pending.

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EMPOWERING CITIZEN PARTICIPATION THROUGH PRO BONO LAW: A CALL TO ACTION FOR KENYAN LAW FIRMS

BY EDIGAH KAVURAVU



In today's evolving legal landscape, the principle of "Laws for the People, by the People" holds significant relevance in promoting democracy and upholding human rights. This idea emphasizes the need for laws that reflect the will of the populace while encouraging active citizen participation in the legal process. Central to this is the empowerment of individuals and communities to ensure that everyone—regardless of socioeconomic status, education, or background—has equal access to justice. By dismantling barriers preventing marginalized and underrepresented groups from engaging with the legal system, inclusivity is enhanced, transforming the law into a tool for protection rather than oppression.

Pro bono legal services play a crucial role in advancing access to justice, with law firms offering their expertise to individuals unable to afford representation. These services help bridge the gap between marginalized communities and the legal system, empowering people to exercise their rights and contribute to a more equitable society. By making legal support accessible to all, regardless of financial circumstances, pro bono law firms foster greater citizen participation. Derived from the Latin term *pro bono publico*—meaning "for the public good"—pro bono work involves voluntary legal services provided free of charge to those in need. In Kenya's democratic society, where economic disparities often prevent many from accessing legal help, pro bono efforts are essential in ensuring justice for all. By taking on cases related to reproductive health, police brutality,

land rights, environmental justice, and refugee rights, pro bono advocates amplify the voices of the underrepresented, ensuring the legal system serves the needs of all citizens, not just the privileged few.

Beyond individual cases, pro bono work strengthens the broader democratic framework. Through strategic litigation, advocates challenge unjust laws and policies, promoting equality and advancing human rights. For example, cases related to land rights and environmental justice demonstrate the broader impact of pro bono work in addressing systemic issues. Strategic litigation not only reinforces democratic principles by holding the State accountable but also catalyzes legal and policy changes. By partnering with advocacy organizations, law firms influence reforms that protect citizens' rights, creating an inclusive legal environment where everyone can actively participate.

One of the most significant areas where pro bono legal work has had a transformative impact in Kenya is in the field of sexual and reproductive health and rights. A notable example is the collaboration between the Center for Reproductive Rights and various law firms to litigate cases concerning maternal health, safe abortion, and access to reproductive healthcare services. In 2019, the Center for Reproductive Rights, supported by pro bono law firms, challenged Kenya's restrictive abortion laws in the landmark case of *PAK and Salim Mohammed v. Attorney General and Three Others* (Malindi High Court Petition Number E009 of 2020).

The case sought to ensure that women and girls could access safe and legal abortion services, particularly in situations where their health or lives were at risk. The litigation aimed to change the interpretation of the law, aligning it with constitutional guarantees of the right to life, health, and dignity. By providing pro bono representation in such landmark cases, law firms play a crucial role in ensuring that the legal framework evolves to better safeguard reproductive rights, reinforcing the understanding that access to healthcare, including reproductive health services, is a fundamental right tied to human dignity and equality.

The partnership between the Center for Reproductive Rights, the Law Society of Kenya, and other stakeholders to draft a model pro bono guideline marks a significant development in Kenya's legal landscape. Once adopted, these guidelines will provide a structured and standardized framework for law firms and lawyers to engage effectively in pro bono work. The implementation of these guidelines will

involve several practical steps to ensure that law firms can easily adopt them and make a meaningful impact in the legal community.

The guidelines will provide specific criteria for selecting pro bono cases, focusing on human rights, public interest issues, and marginalized communities to ensure pro bono efforts address systemic issues and promote justice where it is most needed. Law firms will need to develop internal protocols to assess and prioritize cases based on these criteria, directing resources to impactful cases. The guidelines will also set expectations for the quality of service, requiring competent, well-trained lawyers. Firms can support this by implementing capacity-building programs to equip lawyers with the necessary expertise to handle complex pro bono cases. Additionally,

law firms will be encouraged to establish dedicated pro bono departments or appoint pro bono coordinators to ensure efficient case management. These departments would also foster collaboration with NGOs, advocacy groups, and government bodies to amplify the impact of pro bono work. Furthermore, firms will need to track and report on their pro bono activities, including the hours worked, types of cases handled, and outcomes achieved. By documenting these efforts, law firms can evaluate the effectiveness of their pro bono work and demonstrate their commitment to enhancing access to justice.

As Kenya's pro bono culture continues to grow, law firms must play an active role in supporting its expansion. Establishing dedicated pro bono departments, rather than relying on informal practices, enhances efficiency and impact. A structured approach allows firms to allocate resources effectively, take on complex cases, and contribute meaningfully to the legal system. Pro bono work also offers lawyers valuable professional development opportunities. It exposes them to new areas of law, enhances their expertise, and allows them to witness the transformative impact of their efforts on individuals and communities. Such experiences reinforce the legal profession's role in promoting democracy and justice.

Despite its benefits, pro bono work in Kenya faces systemic obstacles, including corruption, judicial inefficiency, and political interference. These challenges hinder the effectiveness of pro bono efforts and require concerted action to address. For instance, initiatives to combat corruption within the judiciary could enhance the overall efficacy of pro bono cases. Financial pressures also pose challenges for law firms. Exploring strategies such as partnerships with international organizations, government

support, or dedicated funding mechanisms can help ensure the sustainability of pro bono efforts. Additionally, legal and regulatory barriers that limit the ability of law firms to offer pro bono services must be identified and addressed to create an enabling environment for such work.

As Kenya continues to confront challenges in ensuring equitable access to justice, the role of pro bono law firms has never been more critical. By empowering citizens, influencing legal reforms, and ensuring the law is accessible to all, these firms contribute to a more democratic and just society. The development of pro bono guidelines by the LSK and its partners presents an opportunity for law firms to formalize their efforts and expand their impact. Now is the time for Kenya's legal profession to embrace its democratic role in empowering citizens, driving legal reform, and ensuring justice is accessible to everyone. By doing so, law firms not only fulfill their professional and ethical obligations but also help shape a fairer and more inclusive society for future generations.

The Author is an Advocate of the High Court of Kenya.



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THERE IS NO DEMOCRACY WITHOUT PROTEST

By Mercy Kareji Kisanya

INTRODUCTION

Protest plays a vital role in sparking societal change and are crucial for ensuring citizen involvement in a democratic society. They provide a platform for individuals and groups to voice their opinions, raise objection and hold government or institutions accountable.

History demonstrates that protest have driven substantial changes in government actions, showcasing the power of collective efforts to challenge injustices and advocate for good governance.

As a form of dissent, protest tend to cause disruption and inconvenience. It is this disruption of daily routines that bring attention to pressing issues and fuel public debate. It is no surprise that, in June 2024, thousands of Kenyans flooded the street to protest the Finance Bill 2024 that aimed at increasing taxes. The movement, predominantly led by youth and lacking a central leader, gained momentum on social media, where activists used it to mobilize and inform the public. The protest led to withdrawal of the finance bill 2024 and firing of all cabinet secretaries and Attorney General.



In the context of recent developments and ongoing conversation about the legitimacy of citizen voicing their discontent with government actions and policies, there has been a rise in protests worldwide, often facing severe state violence in response.

The Kenya National Commission on Human Rights reported on July 16, 2024, that a total of fifty (50) protesters died in relation to the protest. They further reported that despite the continued calls for a stop to abductions they noted that the kidnapping, illegal arrest and torture of innocent Kenyans has continued and that a total of fifty-nine (59) people have been abducted or were missing.

The right to protest is a recognized and a legitimate expression of dissent, enshrined in international human rights instruments, including the Universal Declaration of Human Rights



THERE IS NO DEMOCRACY WITHOUT PROTEST

(UDHR), the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and Kenya's constitution.

According to Article 37 of the Constitution, every person has the right to peacefully assemble, protest, picket, and present petitions to public authorities, provided they are unarmed.

The Assembly and Demonstration Bill 2024

As a cornerstone of democratic values, protest is often suppressed, denounced or repressed by authoritarian governments. At the height of the demonstration, the president issued the strongest warning vowing to stop the demos and crush "faceless, formless, sponsored people" out to pledge Kenya into anarchy.

The government has an obligation to guarantee the right to protest and to protect protesters. In recent times, the government has responded to protests with the introduction of regressive anti protest laws in parliament and an increase in anti-protest policing.

The introduction of the Assembly and Demonstration Bill 2024 to the parliament is an ill-fated move and aims at curtailing the right to peaceful protest as guaranteed in Article 37 of the constitution.

The bill seeks to give state sweeping powers to clamp down on Kenyans expressing their democratic rights as provided in the constitution through public protests.

The bill gives the police extensive powers to permit, ban or break up demonstration and picketing and further give the police power to evaluate the conduct of an assembly or demonstration, providing prohibition during the event which include imposing conditions relating to public order, safety and protection of freedom of persons.

The bill proposed a more tedious process to seek permission from the regulating officer which includes three days prior notice and not more than fourteen (14) days to the event prior to the proposed date of the assembly or demonstration.

The Bill shifts the responsibility of maintaining law and order from the State to individual citizens as the organiser of the assembly or demonstration or the authorised agent shall remain present during the entire assembly or demonstration and assist the police in maintaining peace and order.

The bill imposes harsh fines or jail term for attending demonstrations and provides that a person who neglects or refuses to obey any order given or issued or takes part in unlawful assembly or convene such assembly or demonstration commits an offence

THERE IS NO DEMOCRACY WITHOUT PROTEST

and is liable to a fine not exceeding KSh100,000 or to imprisonment for a period not exceeding one year.

The bill enhances police powers to impose stringent conditions for conducting an assembly or demonstration under the guise of public safety, maintaining of public order, environmental or cultural sensitivity of place for demonstration and imposing excessive cleanup costs. Further, those involved in an assembly or demonstration whether individuals or organizations would bear joint and individual liability for any property damage caused during the event. The bill stipulates that no person at an assembly or demonstration can wear any form of disguise or mask, or clothing that conceals their face or hinders their identification.

Conclusion

In a country where the legislature has failed to provide oversight over the executive branch of the government, the bill put too many restrictions on the fundamental right to protest and this will suppress the voices of many in our society, particularly those with few alternative avenues for expressing their opinion.

This right to protest is a fundamental pillar to any democratic society, allowing citizen to challenge the status quo, demand for accountability and advocate for necessary reforms.

Legitimate protest is integral to what makes any country a free and just society, yet the recent government's actions clearly signal an intent to suppress lawful protest by utilizing all means at their disposal.

The bill comes in the context of civic space being increasingly eroded in Kenya and the right to protest being suppressed through intimidation, killings, excessive use of force, arbitrarily detention and abductions and forced disappearance by government agencies. Therefore, if the bill is passed and becomes law, it will be used by the government officials to crackdown on legitimate protests against government and shield the police from accountability for human rights violations.

Kenyans only have the right to vote after five years, but protests provide opportunities to express our views and grievances at any time. The government has a responsibility to uphold the rights of protesters by ensuring adequate security measures are in place to preserve law and order.





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ACCESS TO INFORMATION EMPOWERING CITIZEN PARTICIPATION



By Carolayne Mugoiri

There is nothing more important in a democracy than a well-informed electorate. When there is no or incorrect information, it can lead to terrible decisions and slow down or stop any attempts at thorough debate.

Information is power. Which makes an informed electorate powerful beyond measure, able to fully hold its Government to account. Through Access to Information, Kenyans can demand good governance, integrity, transparency and accountability.

The Constitution of Kenya guarantees the people of Kenya the Bill of Rights; rights and fundamental freedoms every Kenyan enjoys, within certain limitations, from and against the Government. Article 35 of the Constitution gives us the right of Access to Information. The Article provides that the “State SHALL [Kenyans have been having a field day with that word lately] publish and publicize any important information affecting the nation.” Article 232, in providing for the values and principles that should guide Public Service in Kenya, also states that public service is guided by transparency and provision to the public of timely, accurate information.

Accurate, adequate, relevant, timely information. The truth, the whole truth and nothing but the truth. This is the only way that citizens can make informed decisions to prevent abuse of power, misuse of funds and corruption and uphold the human rights of all Kenyans. Abuse of power and corruption are violations of human rights as they lead to denial of the right to education, health, life, human dignity. Unfortunately, the public learns of corrupt practices after the fact, when the deed is done. Therefore, in exercising our right of Access to Information we become more proactive in the tackling and exposing of likely avenues for corruption, and are not just reactive.

It is with timely, accurate information that we can ask of Government institutions, how did the Government institution come to this particular decision? Who did it consult with and how extensive was the consultation? Are there actually experts of the particular field at work?

The Access to Information Act, 2016 provides for the operationalization of the Constitution in respect of Access to Information. For starters, a Government Institution/Public Entity should facilitate Access to Information about the institution, its functions and duties and the procedure followed in the decision-making process. It is also to publish all relevant facts on policies, and before initiating any project, publish or communicate to the public all facts in the best interests of natural justice and promotion of democratic principles. This is particularly important for effective public participation which should influence the decision made and implementation of the decision. And after the signing of any contract, the particulars of that contract are to be published including the contractor/service provider and the duration of works/services to be performed.

However, sometimes it seems that the citizens do not know exactly what information they should be in possession of, how to access this information, how to consume and apply it and what to do once they have it. Sometimes, information is kept hidden from us. For the State, the less it tells its people, the less it can be held to account. And sometimes the information is overwhelming. Watching the news in Kenya today makes us angry all the time. And heartbroken and despaired. And in the hustle and bustle of life, do we really have the time to seek information that does not meet our immediate daily needs?



But it is in our public interest and personal benefit to seek this information, ask the questions. And the law guarantees that the Government may be required to disclose information where the public interest outweighs the harm to protected interests. Above all is the need to promote accountability of the Government to the public, ensure that the expenditure of public funds is subject to effective oversight, and promote informed debate.

So how do we call for better Access to Information? Kenya has fast been moving towards becoming a digital nation. This has to include the digitization of Government records and information. The Access to Information Act, 2016 itself in several provisions makes mention of Government websites. But how many Government institutions have existing websites/portals and regularly update them? Digitization will allow for easy Access to Information by the public, from anywhere in the country.

THE PLACE OF PUBLIC INTERESTS IN SPECIALLY PERMITTED PROCUREMENT IN KENYA



BY OBED KIPKURGAT TOROTWA

Introduction

Specially Permitted Procurement (SPP) offers an alternative to traditional procurement methods. It is designed to be applied under specific circumstances where the standard procurement rules may not be feasible or appropriate.

The two main situations where SPP can be used are: *when exceptional conditions make it impossible, impractical, or uneconomical to follow the guidelines set out by the procurement laws and regulations, and when the procurement involves specialized needs that are governed by international standards or practices that are harmonized across borders.*

Public interest, in this context, encompasses a broad range of societal, economic, and environmental issues that aim to enhance the collective welfare of the population. This includes factors like social equity, justice, economic growth, job creation, environmental sustainability, governance, accountability, transparency, and public participation. The concept of public interest is vital in ensuring that the needs of society as a whole are met, especially in the context of public procurement.

Legal Framework

Article 227 of the Constitution provides the foundational principles that guide procurement activities in the country by directing the government to adopt a framework for procurement that is transparent, competitive, cost-effective, and equitable.

It also mandates Parliament to create appropriate laws for the regulation and implementation of procurement policies, which led to the enactment of the Public Procurement and Asset Disposal Act.

In response to specific procurement needs that cannot be addressed through conventional methods, the PPDA was amended to include Specially Permitted Procurement Procedures (SPPP). This was introduced through Section 114A of the Act. The section allows procurement entities to use alternative procurement methods when specific circumstances justify their use. These circumstances include:

- Exceptional requirements that make it impossible or impractical to comply with the standard procurement rules.
- Market conditions that prevent the application of the rules effectively.
- Specialized procurement needs governed by internationally recognized standards.
- Strategic partnership sourcing, which can involve collaborations with specific partners to achieve procurement objectives.
- Credit financing arrangements that support procurement.
- Any other situation that might be prescribed by the National Treasury.

The Role of National Treasury

The National Treasury plays a pivotal role in approving the use of Specially Permitted Procurement Procedures. This approval can be granted when a procurement situation aligns with the outlined exceptional conditions.

The National Treasury may approve these special procedures, but such approval is not automatic—it is subject to rigorous scrutiny to ensure it is in the public interest or for national security reasons.

Public Interest and National Security

Public interest in the context of procurement procedures refers to the collective welfare of society, which may justify the use of special procurement methods when regular procedures are not suitable. This idea aligns with the Black's Law Dictionary, defines public interest as the general well-being of the community.

The government may intervene or regulate matters that affect society at large to ensure fairness, justice, and equitable outcomes.

In *Kenya Anti-Corruption Commission vs. Deepak Chamanlal Kamni & 4 others* highlights that matters of public interest are those that involve the legal rights or liabilities of the entire public, not just private individuals or groups. These cases often involve legal questions that affect the broader society and require government regulation.

Public Participation and Constitutional Requirements

The issue of public participation in SPP has been emphasized in various legal cases. In the *Okoti v. Kenya Ports Authority & 5 others* case, the Court emphasized the constitutional requirement for public participation in procurement. The Court noted that public participation is a critical part of ensuring transparency and accountability in the procurement process by allowing the public to oversee and review procurement activities, ensuring that the public's interests are safeguarded.

The Court underscored that Article 227 of the Constitution of Kenya requires all public procurement processes to be conducted in a manner that is fair, transparent, competitive, and cost-effective. These principles are at the heart of procurement in Kenya, ensuring that procurement decisions are made in the public's best interest, minimizing waste, and ensuring that public funds are spent effectively.

National Values and Governance

The Court also stressed that public procurement must comply with the broader national values and governance principles. These principles ensure that procurement processes are not only transparent and accountable but also inclusive, equitable, and ethical. Public entities must ensure that their procurement processes are consistent with the national values of justice, integrity, and accountability, which are foundational to good governance. Failure to adhere to these values could result in a procurement process being invalidated.



PUBLIC

Conclusion

SPP provide flexibility in cases where traditional procurement methods are not viable. However, their use must be carefully justified, with strong legal and transparent justifications to ensure that public interests are adequately protected. Special procurement procedures should not be seen as a way to bypass the standard procurement rules but as an exceptional measure that is applied in specific, clearly defined circumstances. The use of SPPs must always be in line with the principles of transparency, accountability, and public participation. Public participation should not be a token exercise but an integral part of the procurement process. Only with robust involvement from the public, along with access to relevant information, can procurement decisions be evaluated objectively, ensuring the protection of public interests. The overall goal of procurement in Kenya, as set out in the Constitution and procurement laws, is to ensure that public resources are used efficiently, equitably, and transparently, while upholding national values of governance. While the flexibility offered by SPPs can be beneficial in exceptional circumstances, it is crucial to ensure that such procedures remain accountable, transparent, and legally justified, with full adherence to the principles that protect the public's interests.

The author is an Advocate of the High Court of Kenya



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ANALYSING THE EXTENT OF PUBLIC PARTICIPATION REQUIRED IN THE LEGISLATIVE PROCESS



BY AMOLLO SIMBA

The Constitution of Kenya, 2010 introduced the aspect of public participation as a cornerstone of any decision making by state organs. The rationale is in article 1 of The Constitution which bestows sovereignty on the people. As such, the people as the sovereign must be involved in the decisions that affect them. Article 10 of The Constitution provides for public participation as one of the national values and principles that bind all state organs, state officers and public officers whenever they undertake actions such as making or implementing public policy decisions. Article 118 further states that Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament. This paper, therefore, analyses the various court decisions and whether they promote the realisation of The Constitutional requirement for public participation in the legislative process.

The most recent judgment that addressed the issue of public participation in the legislative process is the Supreme Court's decision in ***Cabinet Secretary for the National Treasury and Planning & 4 others v Okiya Omtatah Okoiti & 52 others (Petition E031, E032 & E033 of 2024 (Consolidated)) (Cabinet Secretary for the National Treasury and Planning decision)*** which overturned the Court of Appeal decision in ***National Assembly & another v Okiya Omtatah Okoiti & 55 others, Civil Appeal No. E003 of 2023 (National Assembly decision)***. The Court of Appeal had earlier nullified the Finance Act, 2023 on among other grounds, inadequate public participation in the introduction of some of the provisions of the Act. The Supreme Court addressed two main issues on the question of public participation.



First, whether Parliament had an obligation to give reasons for adopting or rejecting any proposals by members of the public. The Court of Appeal had stated that Parliament had an obligation to give reasons for adopting or rejecting public views as that was in line with the requirement for transparency and accountability. Given the need for public participation to be real and not illusory, it is very important for the public to understand why their views were considered or not. The Supreme Court, however, overturned the position and held that neither articles 118 and nor article 10(2) of The Constitution obligated Parliament to provide reasons for accepting or rejecting public views. The court's reasoning was that Article 10(2) only set out the values and principles and that it was up to Parliament to set measures on how it would handle public participation.

Second, whether Parliament could introduce new provisions into a bill post public participation. The Court of Appeal had found that the provisions that had been introduced after public participation were null and void since the public had not had an opportunity to give their views on them. Parliament had introduced in the bill 18 totally new provisions which were not subjected to public participation. The Supreme Court, however, differed with the Court of Appeal and held that despite the amendments to the Finance Bill post public participation being substantive, Parliament did not have an obligation to go back to the public to seek their views prior to making the amendments. In the Supreme Court's view, the amendments were because of the views received during public participation.

In determining the threshold of meaningful public participation, it is important to also analyse the decisions that have been made by courts in other jurisdictions. In the South African case of ***Doctors for Life International vs. Speaker of the National Assembly* [2006] ZACC 11; 2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC)** the court stated that there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided. Additionally, in ***South African Iron and Steel Institute & Others vs Speaker of the National Assembly & Others Case CCT 240/22***, the court found that amending a bill without further public participation was unconstitutional.

The Supreme Court's Cabinet Secretary for the National Treasury and Planning decision has generated a lot of debate with arguments being made that it has watered down the threshold of public participation and given Parliament a free hand in determining how to treat the public views. It also goes against the guidelines the court had set in the case of ***British American Tobacco Kenya, PLC (Formerly British American Tobacco Kenya Limited) vs Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance and Another (Interested Parties); Mastermind Tobacco Kenya Limited (the affected party), SC Petition No. 5 of 2017; [2019] eKLR (BAT Case)*** where it had stated that there must be both quantitative and qualitative components in public participation and that public participation is not an abstract notion;

it must be purposive and meaningful. If Parliament does not have an obligation to explain how it treated views from the public, then there is no way of determining whether the public participation was purposive and meaningful. The Court of Appeal's decision had rightly emphasized the critical place of public participation in the legislative process. Parliament owes it to the people to involve them in the decision making. The public participation should not just be a cosmetic exercise meant to tick the box. By providing reasons for adopting or rejecting public views, Parliament will be living up to The Constitutional dictates of accountability and transparency which are values set out in article 10 of The Constitution.

In conclusion, public participation is an important cornerstone of democracy. It ensures that citizens exercise their sovereignty and are involved in governance. The Supreme Court erred in lowering the threshold for public participation in the legislative process. With Parliament not having an obligation to give reasons for accepting or rejecting public views and being free to introduce totally new provisions post the public participation process, The Constitutional requirement for public participation may be a mere charade.

The author is an Advocate of the High Court of Kenya

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BEYOND THE BALLOT BOX: TECH-ENABLED PUBLIC ENGAGEMENT

BY WACEERA KABANDO



The active involvement of Kenyan citizens in the decision-making processes is founded on the Kenyan Constitution as a key national value. In ensuring that Kenyans have a say in policy formulation, lawmaking, and development planning, government officials must be held accountable for their decisions and ensure citizens feel ownership of decisions that affect the public which would lead to more informed and effective policies. Public participation and engagement is essential for a democratic and inclusive governance system.

Citizen's interactions with the government have evolved with digital platforms and mobile apps allowing Kenyans to participate in governance from anywhere. Additionally, government websites and policy sandboxes enable real-time access to government information, policies, and public consultations, allowing citizens to track decisions and hold officials accountable.

Ideally, these digital tools are meant to streamline processes like public hearings and petitions, speeding up feedback loops between citizens and government bodies, ensuring faster responses and more inclusive participation. However this is not always the case, as will be discussed later in this article. Dating back to pre-colonial Kenya to the recent past, public participation has always been in-person through clan meetings, public barazas, town hall gatherings, and written submissions during legislative and policy consultations. Such hearings were common during budget allocations, development projects, and local governance issues but often had challenges such as limited access to public forums thus lack of inclusivity, low awareness, logistical issues and inadequate feedback.

Legal Framework

In reinforcing the idea that the people are central to governance and decision-making in Kenya, Article 1 of the Constitution of Kenya establishes that sovereignty belongs to the people, who exercise it directly or through elected representatives; Article 10 outlines national values and principles, including democracy, rule of law, and public participation, which must guide governance, law-making, and public policy; Article 118 mandates public participation in the legislative process, ensuring openness and citizen involvement during debates and law formulation by Parliament.

To add onto this, the Public Participation Bill, 2024 establishes clearer rules for how public participation should be conducted. The potential impact, upon enactment, on tech-enabled public participation is significant, with the Bill mandating that public participation exercises be advertised digitally and allows for virtual meetings, making it easier for citizens to participate remotely.

The County Governments Act, 2012 provides a legal framework for the establishment and operation of county governments in Kenya, emphasizing the decentralization of power and resources to enhance local governance. The key aspects include digital platforms for feedback, e-consultations and information dissemination.

In the Access to Information Act, 2016 citizens are empowered by ensuring they have the right to access government-held information. It stipulates timelines for response and outlines the types of information that must be made available, fostering a culture of openness in government operations.

The evolution of tech-facilitated public participation and engagement

Platforms such as e-Citizen enable citizens to participate in various government services and initiatives online, while the Kenya Law Reform Commission utilizes its online engagements to solicit public opinions on legislative reforms.

Social media platforms like X, Facebook, and WhatsApp have emerged as powerful tools for advocacy, enabling real-time feedback and mobilization around various issues in scenarios such as #OccupyCBD. They allow users to share information quickly and organize campaigns, significantly enhancing public awareness and engagement. For instance, hashtags can unify diverse voices, amplifying messages and drawing attention to urgent matters, as seen in campaigns like #Maandamano and #KenyaNiMimi.

Zoom and Google Meet would enable government bodies to conduct public consultations online, making it easier for citizens to participate regardless of their location. This transition has not only increased accessibility but also allowed for broader participation from diverse demographic groups. Furthermore, the introduction of e-petitions empowers citizens to digitally petition government bodies on various issues, streamlining the process of voicing concerns and influencing policy decisions.

Upside of tech-facilitated public participation

This offers significant benefits that enhance democratic engagement in governance. Firstly, it increases accessibility by overcoming geographical, social, and economic barriers, allowing marginalized groups to participate more fully in decision-making processes. Secondly, the use of technology enhances transparency and accountability; tools that track citizen inputs and provide real-time updates on legislative processes ensure that

government actions are visible and that citizen feedback is documented and acted upon. Finally, tech-driven solutions improve efficiency and timeliness, facilitating faster dissemination of information and creating effective feedback loops between citizens and lawmakers. This immediacy allows for instant access to policy drafts, bills, and legislative materials, ultimately fostering a more informed citizenry and responsive governance.

Digital platforms like e-Citizen and social media tools have already enabled broader engagement, but expanding internet access, especially in rural areas (currently at 17% penetration), can ensure greater inclusivity. Movements like **#Maandamano** and **#JusticeForKianjokomaBrothers** demonstrate the power of tech in amplifying voices across diverse demographics.

The downside.

Despite its advantages, tech-facilitated public participation faces challenges. The digital divide and inequality highlight disparities in access to technology and reliable internet connectivity, particularly affecting rural areas and vulnerable populations, limiting engagement for many citizens in rural and low-income areas. Additionally, cybersecurity and data privacy concerns arise as sensitive personal information is handled in online forums, raising questions about compliance with data protection laws like the Data Protection Act, 2019, and the effectiveness of their enforcement.

Furthermore, there are legal framework limitations, with a notable lack of comprehensive legislative guidelines governing technology-driven participation, and a slow pace in adopting reforms that align with global best practices. These issues underscore the need for a more inclusive and secure approach to enhance public participation in governance.

In terms of inclusivity, digital access disparities remain a significant barrier. Rural areas, where only 17% of the population has reliable internet access, face pronounced challenges compared to urban regions. High data costs and the lack of affordable devices exclude low-income citizens, further widening the gap. Additionally, gender inequality in digital access often limits women's participation in online public forums, reinforcing social exclusion. These disparities highlight the need for expanded internet infrastructure and targeted programs to ensure equitable access for marginalized groups.

Data privacy is another pressing concern. Digital platforms that handle sensitive personal information, such as national ID numbers or financial records, expose users to potential data breaches. Although the Data Protection Act, 2019, provides a legal framework for safeguarding personal information, enforcement remains weak, leaving citizens vulnerable to misuse of their data. Furthermore, inadequate cybersecurity measures on some platforms increase the risk of hacking and system compromise, eroding public trust in digital governance tools.

Despite these challenges, Kenya's efforts to enhance transparency through platforms like the Kenya Open Data Initiative have improved accountability. However, these tools are often underutilized due to incomplete updates, limited usability, and a lack of digital literacy among rural populations, restricting their effectiveness. Programs like Ajira Digital, which offer affordable internet hubs and digital skills training, have started to address these gaps, but more significant investment is required to scale such initiatives nationwide.

So what would be recommended?

To enhance tech-facilitated public participation in Kenya, several key recommendations should be implemented. First, bridging the digital divide is essential; initiatives to expand internet access, particularly in rural areas, can be supported through partnerships between the government and tech companies to improve digital literacy. Second, strengthening the legal framework is crucial, necessitating the enactment of comprehensive legislation that formalizes tech-enabled public participation methods and amending the Public Participation Act to incorporate these digital tools effectively. Lastly, ensuring data security and privacy is vital; adopting robust cybersecurity measures will protect citizens' personal information, while greater enforcement of the Data Protection Act on digital participation platforms will build public trust in these systems. These steps will foster a more inclusive and responsive democratic process in Kenya.

Estonia is a leading example of a country that has successfully implemented measures to enhance tech-facilitated public participation through digital infrastructure, legal frameworks, and data security with Platforms like Rahvakogu enabling citizens to propose and discuss policies. Estonia's approach has increased civic engagement and trust in government processes. Kenya can replicate this by improving internet access, updating the Public Participation Act, and strengthening data security measures to foster inclusive, tech-driven democracy.

To conclude

Kenya has made significant progress in integrating technology into public participation, but to fully realize the potential of tech-driven governance, it is crucial that we act now to address the challenges and harness the benefits of these tools for a more inclusive and responsive democracy.

First, we must bridge the digital divide. While platforms like e-Citizen and Kenya Open Data Initiative are already facilitating greater citizen engagement, access remains limited, particularly in rural areas where only 17% of the population has reliable internet access. By expanding internet infrastructure through partnerships between the government and private tech companies, we can ensure that more citizens, including those in marginalized communities, can participate in governance. Additionally, targeted programs like Ajira Digital,

which provide digital literacy training, must be scaled to ensure that all citizens, regardless of their socioeconomic status, can engage meaningfully.

Second, we need to strengthen the legal framework. The Public Participation Bill, 2024 represents a critical step forward in formalizing tech-enabled public participation, but further efforts are required to amend existing laws and fully incorporate digital tools in the governance process. This includes ensuring that participation methods are not only advertised online but also accessible to those who might be less familiar with digital platforms. By amending the Public Participation Act and aligning it with best practices, Kenya can ensure a more robust, legally supported approach to public engagement.

Finally, data security and privacy must be prioritized. As more citizens engage through digital platforms, the risk of personal data breaches increases. Strengthening the enforcement of the Data Protection Act, 2019, and adopting robust cybersecurity measures will protect citizens' personal information and help build trust in these systems. Only with secure platforms can the public be confident that their input will be handled safely, encouraging greater participation in policy discussions.

In conclusion, Kenya is on the brink of a digital governance revolution that can empower all citizens to actively participate in shaping the policies that affect their lives.

Lawmakers, government officials, and citizens must work together to embrace digital tools, address the challenges of digital access and data security, and create an environment that fosters inclusive, transparent, and responsive governance. This is not just a call to action for the government, but a call to all Kenyans to actively engage, ensuring that the future of governance is truly participatory and reflective of the needs and voices of the people.

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LAWS FOR THE PEOPLE BY THE PEOPLE: EMPOWERING CITIZEN PARTICIPATION

BY ALPHONSE ODIDO



In an era of rapid technological advancement, the legal landscape is continuously evolving, offering unprecedented opportunities for citizen engagement in the law-making process. Recent innovations in legal tech are paving the way for a more inclusive and participatory approach to legislation, truly embodying the principle of "laws for the people by the people."

Currently, only a small percentage of citizens actively participate in the legislative process, highlighting the need for innovative solutions to increase engagement.

One of the most promising developments is the use of AI-powered platforms to simplify complex legal language. Afriwise, an Africa-focused legal intelligence platform, is using AI to simplify complex legal information across multiple African countries. This technology could potentially be used to translate legal information into local African languages, making legal information more accessible and understandable. Imagine a scenario where proposed bills are automatically translated into plain or local language, making them accessible to all citizens regardless of their legal background. While this technology holds great promise, it's important to address challenges such as ensuring accuracy in translations and simplifications.

Another innovative approach is the use of blockchain technology to create secure, transparent voting systems for public consultations. Implementing blockchain technology in African electoral processes could address issues of massive rigging, high costs of electoral materials, and false result declarations. A blockchain-based voting system could provide a secure, transparent, and cost-effective solution for conducting free and fair elections. For instance, Ghana has shown interest in exploring blockchain for its electoral system, potentially paving the way for other African nations.

Digital town halls, powered by virtual reality technology, could revolutionize public hearings. Citizens from across Kenya could participate in immersive discussions with lawmakers and experts, breaking down geographical barriers and fostering nationwide dialogue on crucial legal issues. This technology could particularly benefit rural or marginalized communities, giving them a voice in the legislative process they might not otherwise have.

Data analytics tools could play a vital role in gathering and analyzing public sentiment on proposed laws. By aggregating opinions from social media, online forums, and official feedback channels, lawmakers could gain a more comprehensive understanding of public

views, leading to more representative legislation. Tools like sentiment analysis algorithms could be employed to process large volumes of public feedback efficiently. However, it's crucial to consider data protection and privacy laws when analyzing public sentiment. Organizations could employ data anonymization or pseudonymization techniques to ensure valuable insights can be gained without compromising personal information.

Legal tech innovations could enhance transparency in the law-making process. Rwanda's citizen portal, IremboGov, offers over 100 services, including business registration and land transactions. The platform's user-friendly design and robust backend demonstrate how digital technology can enhance government transparency and improve citizen access to services. In comparison, Kenya's e-citizen portal, while functional, could benefit from similar enhancements to increase its scope and user-friendliness.

As we embrace these technologies, it's crucial to ensure equitable access and digital literacy across all segments of society. The legal profession has a pivotal role in bridging the gap between these innovations and the public. Law schools and bar associations could incorporate mandatory courses on legal tech, artificial intelligence, and cybersecurity to prepare future lawyers for the evolving legal landscape. This education will enable legal professionals to advocate for responsible tech adoption, balancing innovation with ethical considerations and legal compliance.

In conclusion, the convergence of law and technology offers exciting possibilities for citizen engagement in the legislative process. By leveraging these innovations responsibly, we can move closer to a truly participatory democracy where laws are not just for the people, but genuinely by the people. It's time for legal professionals, policymakers, and citizens to embrace these technologies and work together to create a more inclusive and transparent legal system for Kenya and beyond.

The Author is an Advocate of the High Court of Kenya



From the Streets to the Courts: How Citizen Advocacy Influences Legal Reform



By **Alex Wafula Wamalwa**

Introduction

Citizen advocacy has long been a catalyst for legal reform in Kenya. From the colonial era to the fight for multiparty democracy in the 1990s, as well as the on-going push for constitutional reforms, public participation has consistently shaped legislative processes and judicial outcomes. Often starting with demonstrations, these movements have played a crucial role in influencing the direction of legal change. This article traces the journey of advocacy, following its path from grassroots movements to courtroom victories, and highlighting how ordinary Kenyans have impacted the development of jurisprudence and governance.

Historical Context: From Armed Resistance to Representation

In colonial Kenya, resistance to colonial rule primarily manifested through armed struggles, with movements like the Mau Mau and leaders such as Koitalel Arap Samoei and Mekatilili wa Menza rising against oppressive systems. However, as Western education spread and civil consciousness grew, the push for representation took root. Eliud Mathu's nomination to the Legislative Council (LegCo) in 1944 was a pivotal moment, marking a shift from violent resistance to engagement with governance structures. This opened new avenues for citizens to demand their rights through institutional mechanisms like parliament.

Grassroots Movements and Legal Reforms

Kenya's journey from the streets to the courts is exemplified by the relentless push for the Constitution of Kenya, 2010. This was not an overnight achievement; it followed decades of public participation and protest, notably the 1991 repeal of Section 2A, allowing multiparty politics. The transition continued with the 2008 enactment of the Constitution of Kenya Review Act, which led to the promulgation of a new constitution in 2010.

The Constitution of Kenya, 2010 became a cornerstone of civil rights, radically redefining the relationship between the state and its citizens. Article 1 underscores the sovereignty of the people, who can exercise power directly or through their elected representatives. It empowered citizens, not just in theory but in practice, as seen in public participation's role in recent protests and court battles over laws like the Finance Bill, 2024, and the Social Health Insurance Fund (SHIF).

One notable example is the opposition to the Finance Bill, 2024. Public outcry and legal challenges eventually led to significant changes of the Bill and ultimate withdrawal by the President of the Republic of Kenya. Similarly, widespread dissatisfaction with the SHIF triggered debates about its impact on ordinary citizens, again showing how public participation continues to influence policy and legislation post-2010.

The Role of Courts as the People's Safeguard

While Parliament is constitutionally mandated to represent the people's will, there are times when its legislative actions do not resonate with the electorate. In such moments, Kenyans have increasingly turned to the Judiciary for recourse. Public interest litigation, bolstered by the 2010 Constitution, has become a vital tool for challenging unconstitutional laws and ensuring government accountability.

For example, petitions challenging provisions in the Finance Bill, 2024, and the Privatisation Act demonstrate how the courts are instrumental in upholding constitutional principles when parliamentary processes fall short. Article 10 of the Constitution enshrines public participation as a national value, and the Judiciary plays a key role in ensuring that this principle is respected.

Challenges Faced by Citizen Advocacy

Despite these successes, the journey from street protests to court victories is often arduous. Grassroots movements frequently face resistance from the Government, and limited access to legal resources can deter citizens from pursuing their cases. Legal aid organizations, civil society groups, and even the Law Society of Kenya have played a critical role in bridging this gap, offering much-needed support to ensure that public grievances reach the courts. Advocates of the High Court of Kenya, like Adrian Kamotho Njenga and citizens like Honourable Senator Okiya Omtatah have significantly contributed to litigating public interest matters over the years.

Political and corporate interests can further complicate advocacy efforts. Nevertheless, the resilience of Kenya's citizen movements, combined with the strength of public interest litigation, continues to yield results.

Public Opinion and Media: Amplifying Advocacy

The media has played a crucial role in amplifying the voices of Kenyans. Both traditional media and digital platforms have become powerful ...

tools for mobilizing public opinion. Social media, in particular, has empowered Kenyans to organize protests, raise awareness, and gather support, as seen in recent movements like #JusticeforKenyans.

In the case of the Finance Bill, 2024, social media platforms became hotbeds for public discussion, enabling swift mobilization of citizens who opposed the bill. This engagement not only pressured lawmakers but also helped fuel court challenges, proving that public sentiment, when amplified, can have a tangible impact on legislative processes.

Delegation of Authority: The Disconnect Between Parliament and the Electorate

The Kenyan Constitution recognizes that the people delegate their sovereign authority to elected representatives in Parliament. However, there are times when the laws passed by Parliament, such as the Housing Levy and the Privatisation Act, fail to reflect the people's will. When this disconnect occurs, citizens turn to peaceful protests and the Judiciary to ensure that their concerns are addressed. The courts, as guardians of the Constitution, ensure that the laws passed uphold national values and democratic principles.

Conclusion

Citizen advocacy, whether through protests or court actions, remains fundamental to Kenya's democratic process. From the colonial period to today, Kenyans have consistently used both the streets and the courts to demand accountability. The Constitution of Kenya, 2010, continues to be a powerful tool in this advocacy, safeguarding the rights of the people and ensuring that their voices are heard. As Kenyans continue to engage in civic participation, it is clear that both grassroots advocacy and legal mechanisms are essential for meaningful and lasting reforms.

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