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by

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on

“Public Participation and Parliamentary Oversight”

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1.1 Introduction

1.1.1 Public Participation

According to the United Nations (2005), public participation is the involvement of individuals in decisions that affect their lives. The UN recognizes public participation as both a **democratic imperative** and a **fundamental human right**. Article 21 of the Universal Declaration of Human Rights (UDHR) affirms every **person's right** to take part in the governance of their country, either directly or through freely chosen representatives. The International Covenant on Civil and Political Rights (ICCPR) underscores this right, particularly in Articles 20 and 27, which affirm citizens' entitlement to participate in public affairs. Article 13(1) of the African Charter on Human and Peoples' Rights (ACHPR) affirms the right of citizens to participate in governance and influence public policymaking, including in the formulation of laws, programs, budgets, and policies.

Public participation is broadly defined as the process through which individuals, groups, and organizations engage in decision-making on public matters that have either direct or indirect implication for them (Organization for Economic Co-operation and Development (OECD), 2001).

The International Association of Privacy Professionals (IAPP) (2021) asserts that, public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process. IAPP further holds the view that public participation will influence the decision; promote sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers. Accordingly, there has been increasing awareness of its importance in governance, and a growing number of nations have institutionalized participatory practices through legislation, policies, and guidelines (Sharma, 2008).

Public participation is also widely recognized as a fundamental component of democratic systems. The Inter-Parliamentary Union (IPU, 2015) characterizes it as the bedrock of democracy, emphasizing its foundational role in legitimizing and sustaining democratic institutions. In some jurisdictions, such as the Netherlands, Germany, Denmark, and Sweden, public participation and access to information have been codified in law since before the Middle Ages (Maarten, 2021). The UN, UDHR, ICCPR, ACHPR and IAPP accentuate public participation as a right as well as fundamental in the realization of democracy.

Similarly, Fung (2006) argues that public participation is intrinsically linked to democratic governance, highlighting its function in enhancing transparency, accountability, and citizen engagement. Together, these perspectives underscore the integral relationship between public participation and the democratic process, suggesting that meaningful civic involvement is both a prerequisite for and an indicator of a functioning democracy.

Notably, public participation can be initiated either by members of the public or by government authorities. At its core and very important, public participation entails integrating the views and inputs of all stakeholders into governance processes (Creighton, 2005). As such, it facilitates stakeholder involvement in shaping social, economic, cultural, political, and environmental decisions that influence their well-being and life experiences.

1.1.2 Parliamentary Oversight

Globally, parliaments have three major functions namely: law making, oversight and representation. For the purpose of this paper, the author shall focus on parliamentary oversight. Yamamoto (2007), avers that parliamentary oversight is the function by which a parliament holds the government accountable on behalf of the people. This involves parliament reviewing, monitoring, and supervising government activities to ensure they are efficient, effective, and in line with the public's needs.

Despite the existence of robust constitutional and statutory obligations, legal and policy frameworks, as well as the Rules of Procedures that require respective legislatures to undertake public participation in their oversight functions, the practice remains weak and inconsistent. This gap has been evidenced by the growing number of petitions filed in courts, public demonstrations and picketing against parliamentary oversight raising critical concerns.

Policy and academic questions therefore rise as to the level of disconnect between the legal guarantees of public participation and its actual implementation oversight.

This paper intends not just to share experience of parliamentary oversight but also to address this lacuna by systematically analyzing the extent, quality, and efficacy of public participation in parliamentary oversight. It is anticipated that the insights generated will not only augment the existing body of academic literature but also provide a critical policy assessment on the

effectiveness of constitutional mandates in shaping inclusive parliamentary oversight practices. The policy justification is rooted in the persistent disjuncture between the constitutional and statutory provisions on public participation and their practical implementation in the parliamentary oversight.

1.2 Public Participation in Parliamentary Oversight Function in Selected Countries (US, Canada, UK, and Kenya)

Globally, parliaments are responsible for holding the executive to account. This is realized through the parliamentary oversight function that ensures that government policies and actions are both efficient, comply with the relevant laws and commensurate with the needs of the public. Parliamentary oversight, therefore, is crucial in checking excesses on the part of the executive arm of government. Yamamoto (2007) asserts that parliamentary oversight extends to every field of governance. He expounds that governance can only stand to gain from the growing prominence and scope of parliamentary oversight.

Oversight models differ from one parliamentary jurisdiction to another. Garvey et. al, (2024) in their Journal Congressional Research Services allude that, in the US, the Congress engages in oversight of the executive branch through the review, monitoring and supervision of the implementation of public policy. The Congress undertakes these oversight techniques through special investigations, reporting requirements and the use of the appropriations process to review executive authority (Garvey, et. al., 2024). According to the authors, congressional oversight ranges from formal committee hearings to informal Member or staff contact with executive officials; from staff studies to support-agency reviews; and from casework conducted by Member offices to studies prepared by non-congressional entities such as commissions and inspectors general. The US Congress takes advantage of mechanisms like the Freedom of Information Act (FOIA, 1966) to have unfettered oversight. However, studies show low engagement rates (around 20-30% in local budgeting) due to polarization and resource disparities (Barnes et al., 2004).

In Canada on the other hand, the oversight model integrates multicultural participation through oversight bodies like the National Security and Intelligence Review Agency (NSIRA, 2019), emphasizing transparency in intelligence and budgeting, with public consultations yielding higher

trust levels (70-80%) than Kenya's 40-50% (International Civil Liberties Monitoring Group (ICLMG), 2017).

The United Kingdom's Joint Committee on Human Rights and devolved assemblies (e.g., Scotland) promotes inclusive oversight, but post-Brexit studies note gaps in citizen influence, similar to Kenya's elite dominance (Boughy, 2017). These comparisons underscore Kenya's progress in constitutional mandates but highlight needs for stronger enforcement. Jäntti et al. (2023) link robust participation in these countries to lower corruption perceptions, a metric where Kenya lags (Corruption Perception Index (CPI) score 32/100 in 2023). Comparatively, in the Australian House of Representatives, parliamentary oversight is exercised through committees (Howard & Kreiss, 2009). According to Hendriks and Kay (2019), the Australian legislature has undergone a 'participatory makeover' and hosts open days and communicating the latest parliamentary updates via websites and social media.

The National Assembly of Kenya exercises oversight through a number of avenues such as approving appointments, processing removal from office of the President, the Deputy President and other State officers, oversight over national revenue and its expenditure, and oversight of State organs, among other actions. For instance, Articles 201, 221, and 232 of the Constitution of Kenya empowers the National Assembly to undertake budget oversight while considering the national budget. The public are accorded an opportunity to make submissions or attend public hearings to give their views on financial matters. With regard to approval of appointment of state officers, the Kenyan public can participate in the process by expressing their views on suitability or otherwise of public officers and provide grounds for their removal by petitioning Parliament.

1.3 Public Participation in Parliamentary Oversight at the East African Legislative Assembly

The institutional framework of the East African Community (EAC) is based on the principle of separation of powers, with the East African Legislative Assembly (EALA) as the Legislative arm of the Community along various of Organs of the Community forming the Executive branch and the East African Court of Justice, the judiciary arm of the Community. Under this set up, all regional policies, programmes and projects are implemented at Partner States level by the relevant Cabinet members or government agencies. As a result of this set up, parliamentary oversight is

exercised both at national level, by the National Parliaments, and, at the regional level, by the EALA. The role of both the parliaments in overseeing the implementation of EAC policies, programmes and projects is critical to achieving the objectives of the EAC integration.

In the case of the East African Legislative Assembly, oversight is exercised through interrogating regional policies, projects and programmes and public funds earmarked to pursue them to ensure efficiency and effectiveness in their implementation and administration. The Assembly carries out this duty mainly through the respective committees of EALA.

The oversight tools include:

- a) **budgetary oversight** which EALA discharges to provide direction on the EAC spending and allocation of resources, as per Article 132 (5) of the Treaty which provides that: *“the resources of the Community shall be utilized to finance the activities of the Community as shall be determined by the Assembly on the recommendation of the Council.”* This mandate provides an important opportunity to EALA to debate the budget and allocate resources in line with the priorities of the Community. Budgetary oversight entails approval of **the annual budget of the Community** as well as any **supplementary budget** proposed after the appropriation phase.
- b) **on-spot assessment** of the status of implementation of regional policies, laws, projects and programmes in the Partner States. On-spot assessment activities are undertaken by the various Committees of the Assembly
- c) regular progress reports and calls for action (**Resolutions**) in relation to the implementation of the various programmes and projects provided by the Council on the basis Article 59 (3)(b) of the Treaty which provides that: *the Assembly may by a majority of votes cast request the Council to submit any appropriate proposals on matters on which it considers that action is required on the part of the Community for the purpose of implementing this Treaty.*
- d) **Questions (priority questions and non-priority questions) to Council** seeking for information or pressing for action.
- e) **annual report on the progress made** by the Council in **the development of its common foreign and security policies** (Article 59 (3) (c) of the Treaty.
- f) **Annual reports on the activities of the Community** submitted by the Council as per Article 59 (3) (a) of the Treaty

- g) Debate on **the report of the Audit Commission on the Accounts** of the Community (for all Organs and Institutions of the Community) as mandated by Article 134 (3) of the Treaty.

With regard to public participation, the EAC policy and legal framework recognizes the important of public involvement in the regional integration agenda, including in the execution of the parliamentary oversight function. The Motto of the Community (One People, One Destiny) sets the tone and underscores that the integration process is for the people of East Africa. This is also buttressed by the principle of people-centred regional integration, laid down in Article 7 (1) (a) of the Treaty for the establishment of the EAC. Public participation is further underscored under Article 65 of the Treaty which mandates the Community to ensure “popular participation in the achievement of the objectives of EAC integration” by taking into account the “the opinion of the general public as expressed through the debates of elected members” at national and regional levels.

Article 65: “ *In pursuance of the policy of the Community of popular participation in the achievement of its objectives and so that the Council may be able to take into account in the exercise of its functions, the opinion of the general public in the Partner States on matters relating to the achievement of the objectives of the Community as expressed through the debates of the elected members of their National Assemblies, and those of the Assembly and to foster co-operation between the Assembly and the National Assemblies of the Partner State.*”

The above-mentioned enabling framework for public participation is not self-executing. The Assembly upholds the principle of ***people centered integration*** and appreciates its critical role as the main democratic link between the Organs and Institutions of the Community and the people of East Africa.

The Assembly has therefore established **two-way communication** where it reaches out to the people in rural and urban areas when carrying out its oversight function, notably during on-spot assessment, stakeholders’ consultations and public hearings. Citizens have also access to the Assembly through petitions that it considers and provides feedback on.

1.4 Legal, Regulatory and Procedural Enhancements or Impediments to Effective Public Participation

Available literature indicates indicate that the following legal, procedural or regulatory impediments may hamper or enhance public participation in exercising oversight:

- a) Legal, institutional, procedural and regulatory constraints that limit the effectiveness of citizen engagement. For instance, in Canada, despite sound constitution provisions emphasizing participatory democracy which are further reflected in various provincial legislation (Bish & Pincott, 2019), the developed country, there are allegations of institutional biases and power disparities that hinder the meaningful inclusion of all citizens (Bish & Pincott, 2019).
- b) Advancements in technology - the rise of social media as a tool for citizens to voice their opinions demonstrates potential for transformative civic involvement (Odhiambo, 2022). With the advancement of technology, social media provides new avenues for the government to be held accountable and to be responsive to the electorate (Vob & Amelung, 2016).
- c) Budget
- d) Leadership style- an autocratic leadership may not embrace citizens' engagements while a democratic leadership may na no issues with an opened democratic space - increased civil society engagement present avenues for enhancing participation.

1.5 Innovative Ways of Enhancing Public Participation in Parliamentary Oversight

1.5.1 Digital Solutions

- a) Open data portals for procurement and public spending.
- b) E-governance and service delivery tracking systems.
- c) Digital complaints and whistleblower platforms.
- d) ICT tools for monitoring and digital transparency.
- e) Technology for real-time monitoring and audits

- f) Online petitions
- g) Cybersecurity measures for data protection.

1.5.2 Critical stakeholders' engagement

- a) Improved coordination between parliament, media and civil society.
- b) Engaging citizens in budget planning and monitoring.
- c) Promote media freedom and investigative journalism.
- d) Ensure broad access to public information.

1.6 Recommendations for Effective Public Participation in Parliamentary Oversight

- a) Adequate notification to the public on upcoming inquiry
- b) Record of participants to a public participation exercise
- c) Feedback mechanism
- d) Capturing of Views as shared indicating reasons for their incorporation or otherwise in the parliamentary Report

1.7 Conclusion

Public participation is three pronged: as a right, realization of democracy and as a platform for feedback. It buttresses and compliments parliamentary oversight by permitting citizens to keep track of governmental actions. The significance of public participation in parliamentary oversight cannot be overstated; it gives impetus to public participation by holding the government's feet to the fire and ensuring that the inputs of citizens are not just a mere cosmetic exercise but a key pillar in whatever the government does.

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