

# Public Participation Modalities and Framework: A Review of Legislative Processes

Dr. Andrew Shangarai Jumanne; Ph.D

DOI: <https://dx.doi.org/10.47772/IJRISS.2024.8120146>

Received: 23 November 2024; Accepted: 07 December 2024; Published: 07 January 2025

## ABSTRACT

This study examined the modalities and frameworks of public participation within Kenya's legislative processes, focusing on its effectiveness, awareness, and the barriers that hinder meaningful citizen engagement. A qualitative research design was employed, utilising semi-structured interviews with Members of Parliament (MPs), civil society representatives, and members of the public who had participated in public hearings or consultations, to gather primary data. The study used purposive sampling to select participants who were directly involved in or affected by the legislative process. Thematic analysis was applied to identify key themes. Findings revealed significant gaps in public awareness of the rights to participate in the legislative process, with many citizens unaware of how to engage meaningfully. Although legal frameworks for public participation exist, their application is inconsistent, and public involvement was often limited. Barriers such as political interference, resource constraints, ineffective use of technology, and limited time for engagement further undermined the effectiveness of public participation. Despite these challenges, positive examples of public participation leading to changes in legislation were noted, particularly in areas like environmental law and community development. The study underscores the need for comprehensive reforms to enhance public participation, ensuring that it is inclusive, accessible, and reflects citizen input in legislative outcomes.

**Keywords:** Public Participation, Legislative Framework, Governance, Stakeholder Engagement

## INTRODUCTION

Public participation is a cornerstone of democratic governance, particularly in promoting transparency, accountability, and inclusivity. It allows citizens to engage in the decision-making processes that affect their communities, providing a platform for expressing their views, needs, and preferences (Barrett & Brunton-Smith, 2017; Cornwall, 2017). Effective public participation not only enhances the legitimacy of governance but also ensures that policies are responsive to the needs of the populace. Reflecting this global priority, the United Nations' Sustainable Development Goals (SDGs), specifically Goal 16, emphasize the importance of public participation in building effective, accountable, and inclusive institutions at all levels (Hope, 2020).

Internationally, public participation is enshrined in frameworks such as the Aarhus Convention, a United Nations Economic Commission for Europe (UNECE) treaty that grants public rights regarding access to information, decision-making participation, and justice in environmental matters (Devane, 2016; Zhao & Butcher, 2022). Many countries globally, including those in the European Union, North America, and Asia, have institutionalized mechanisms like public consultations, referendums, and community-based participatory planning to support citizen engagement in governance.

In Africa, public participation is increasingly recognized as a crucial element of democratic governance and sustainable development. The African Charter on Democracy, Elections, and Governance urges member states to implement participatory processes, ensuring citizens' voices are heard in policymaking and legislative processes (Domingo & Shiferaw, 2022). Additionally, the African Union (AU) promotes public participation

to foster political stability and sustainable development across the continent (Graham & Graham, 2019). Countries like Uganda and Tanzania have adopted participatory frameworks across different government levels, although challenges in implementation persist (Joseph, 2017; Pallangyo et al., 2018; Mulumba et al., 2021).

In Kenya, the 2010 Constitution embeds public participation as a fundamental democratic principle, notably in Articles 1, 10, and 118, requiring the government to ensure citizens' involvement in all decision-making processes, especially in legislation. However, despite these constitutional mandates, numerous empirical studies highlight significant challenges to meaningful participation. For instance, Ronoh, Mulongo, and Kurgat (2018), in a study conducted in Kericho, Bomet, and Narok Counties, identified challenges like negative public attitudes, lack of citizen willingness, insufficient political goodwill, limited capacity for engagement, political interference, demand for incentives, and time constraints as major barriers to effective participation.

This article examined the modalities and frameworks of public participation within Kenya's legislative processes, analysing how effectively these mechanisms uphold the democratic ideals embedded in the Constitution and the extent to which they influence legislative outcomes.

### **Public Participation as Enshrined in the 2010 Constitution**

Public participation became a foundational principle in Kenya with the adoption of the 2010 Constitution, which enshrined it as a core national value and principle of governance. Article 1 affirms the sovereignty of the people, declaring that all sovereign power belongs to citizens, who can exercise this power directly or through elected representatives. Article 10 designates public participation as one of Kenya's national values, alongside inclusivity, transparency, and accountability, mandating that governance and decision-making processes reflect the will and aspirations of the people. Additionally, Article 35 grants every citizen the right to access information held by the state, enabling informed and meaningful citizen engagement. Article 69 strengthens this mandate in environmental governance, requiring the state to encourage public participation in sustainable use, management, and conservation of natural resources. Similarly, Article 232 underlines the importance of public participation in public service, ensuring that democratic values and citizen involvement permeate all levels of government.

The Constitution also emphasises public participation within devolved governance frameworks, especially through Article 174, which establishes the devolution principle aimed at enhancing self-governance and empowering communities to participate directly in local development through county governments. Articles 196 and 201 extend these principles to county assemblies and fiscal governance, requiring transparency and public participation, especially in budget formulation. Furthermore, Article 118 mandates Parliament to conduct its business openly and inclusively, including public hearings on legislative matters, ensuring that legislative processes remain accessible to the people. Article 184 applies the constitutional principles of public participation to urban governance, requiring urban management structures to be inclusive and participatory, thereby allowing city and municipality residents to influence governance that impacts their daily lives.

Through these constitutional provisions, Kenya embeds public participation across various governance spheres, asserting that effective democratic governance is rooted in the active involvement of citizens in decision-making processes that shape their communities and the nation.

### **Public Participation and Parliament's Legislative function**

Public participation has been integrated into the legislative functions of various jurisdictions around the world, with notable examples from post-apartheid South Africa. Kabingesi (2021) emphasises the critical role of public participation in fostering democracy, good governance, and accountability, particularly in the context of South Africa's transition after the 1994 democratic elections. This period marked a significant shift, providing South Africans of all races the opportunity to engage with Parliament and have their voices heard in the legislative process. The South African Constitution mandates that Parliament not only represent the

people but also facilitate public participation, ensuring that citizens are consulted on issues that directly affect their lives.

Similar practices are evident in other jurisdictions around the world. In the United Kingdom, the Parliament facilitates public participation through the process of public petitions and select committee inquiries, allowing citizens to submit views on proposed legislation and hold decision-makers accountable (Bochel & Bochel, 2017; Rose-Ackerman, 2021). The UK Parliament's approach to public consultation and engagement is enshrined in its constitutional tradition, which includes formal procedures for incorporating public input into the legislative process (Bochel & Bochel, 2017).

In the United States, public participation is a core feature of the legislative process, with citizens encouraged to engage with elected representatives through town halls, public hearings, and lobbying (Lambiase, 2018). Public hearings, in particular, provide an opportunity for citizens to voice their concerns about proposed bills, which are often held by Congressional committees. Similarly, Canada and Australia also emphasises public consultation in legislative processes, with public submissions often playing a key role in the review of proposed laws (Staniszewska et al., 2018; Rodiyah, Idris, & Smith, 2023). The Australian parliamentary system promotes inclusivity by ensuring that diverse voices, including those from marginalized communities, are heard during the decision-making process (Rodiyah, Idris, & Smith, 2023).

In Uganda, public participation in the legislative process is emphasised in the country's Constitution and is institutionalised through public hearings and consultations held by parliamentary committees (Joseph, 2017). The Ugandan Parliament invites citizens, civil society organisations, and other stakeholders to engage during the review of proposed bills. This inclusive approach is intended to ensure that legislation reflects the needs of the population (Mulumba et al., 2021). However, the extent of public influence on legislative outcomes has been a subject of debate, with critics arguing that participation often lacks impact due to challenges such as limited public awareness and political interference. Nonetheless, Uganda's model demonstrates a commitment to ensuring that citizens have a voice in governance, especially in the context of post-conflict reconstruction and democratic consolidation.

Similarly, in Tanzania, public participation is embedded in the constitutional framework through provisions that require the government to involve citizens in the decision-making processes, particularly in the development of laws and policies (Babeiya, E. E., & Masabo, 2017; Philipp, 2017). The Tanzanian Parliament has created opportunities for public input, especially through consultations and town hall meetings (Philipp, 2017). However, there are concerns about the quality of participation, as public consultations can sometimes be conducted in a manner that limits genuine engagement, with feedback often being disregarded by lawmakers (Philipp, 2017). Despite these challenges, Tanzania's framework remains a critical effort to foster democratic governance and ensure the people's views are integrated into national policies.

Despite the mechanisms in place to encourage public participation, significant challenges remain in ensuring that it meaningfully influences legislative outcomes across various jurisdictions. In South Africa, while public participation is a strategic priority, Kabingesi (2021) identifies gaps in its implementation, such as insufficient public engagement, lack of awareness, and limited impact on decision-making processes. Similarly, in Uganda, although public consultations and hearings are embedded in the legislative process, challenges such as limited public awareness, political interference, and a general lack of political will often undermine the effectiveness of these participatory efforts.

In Tanzania, public participation is also institutionalized, yet concerns persist about the quality and genuine impact of these consultations, with citizens often feeling that their feedback is disregarded or inadequately incorporated into legislative decisions. These challenges highlight the need for more robust frameworks and practices to ensure that public participation truly influences the legislative process and leads to policies that reflect the will and aspirations of the people.

Building on these observations, this study explores the legal frameworks governing public participation in various national legislative systems. By analysing how different countries incorporate public views into the

legislative process, the study seeks to identify best practices and areas for improvement that could inform Kenya's own public participation mechanisms.

## **METHODOLOGY**

This study employs a qualitative research design to explore the modalities and frameworks of public participation in Kenya's legislative processes, with a focus on the gaps and challenges highlighted in previous research. The study sought to understand how public participation was incorporated into the legislative process, the effectiveness of existing frameworks, and the barriers to meaningful citizen engagement. To gain an understanding of the subject, the research utilised both primary and secondary data sources, including interviews with key stakeholders and an analysis of relevant legal and legislative documents.

### **Data Collection Methods**

Primary data was collected through in-depth semi-structured interviews with key players in the legislative process. These included Members of Parliament (MPs), parliamentary staff, representatives from civil society organisations, and members of the public who had participated in public hearings or consultations. The target population was 567. The aim was to capture the perspectives of those directly involved in or affected by public participation in the legislative process. Secondary data was gathered through a review of existing literature, including government reports, academic studies, and legal documents that outline the legislative processes and public participation frameworks in Kenya.

### **Sampling**

Sample-resampling was applied, where the target sample became 148 target respondents. A purposive sampling technique was employed to select participants who have a direct stake in public participation within the legislative process. A total of 148 interviewees were selected, including 91 Members of Parliament, 17 representatives from civil society organisations, and 40 members of the public who have actively participated in public hearings. The choice of participants was based on their experience and expertise in public participation, with the goal of ensuring a diverse range of perspectives.

### **Data Analysis**

The data collected from the interviews was transcribed and analysed using thematic analysis. Key themes related to public participation frameworks, challenges, and the effectiveness of current mechanisms were identified and coded. This approach allowed the researcher to draw connections between the data and the identified gaps in public participation practices. Additionally, content analysis was used to assess the secondary data from legal documents and legislative records to evaluate how well public participation was embedded in legislative procedures. Word cloud was also utilised in identifying key themes across the different respondents.

## **RESULTS**

The findings of this study are based on the analysis of both primary and secondary data sources. Key themes and patterns emerged from the interviews with participants and the document analysis, highlighting the current state of public participation in Kenya's legislative processes, the effectiveness of existing frameworks, and the challenges hindering meaningful engagement. The results are organized into the following key areas: awareness and understanding of public participation, effectiveness of legislative frameworks, and barriers to effective participation.

### **Awareness and Understanding of Public Participation**

One of the key findings of this study was the varying levels of awareness about public participation across different groups. While most Members of Parliament (MPs) and civil society representatives demonstrated a

good understanding of the legal provisions surrounding public participation, members of the public were generally less informed. Many respondents expressed uncertainty about how they could engage in the legislative process, particularly in terms of attending public hearings, submitting opinions, or participating in consultations. Public awareness of their rights to participate in the legislative process remains low, primarily due to insufficient outreach and communication strategies by the relevant authorities.

Furthermore, MPs noted that public participation is often seen as a formality rather than a meaningful process. Some MPs shared that while they are aware of the constitutional requirements for public involvement, they often struggle to engage the public meaningfully due to the technical nature of legislative matters and the lack of simplified communication channels.

### Effectiveness of Legislative Frameworks for Public Participation

The study found that the legislative frameworks for public participation, as outlined in the 2010 Constitution and various legislative provisions, are generally in place but are not fully effective in facilitating broad-based citizen engagement. Public participation is mandated through various provisions such as Articles 118, 196, and 174 of the Constitution, but the application of these provisions is inconsistent.

Interviews with parliamentary staff and civil society representatives revealed that while public participation is institutionalized through mechanisms like public hearings, the quality and extent of participation remain limited. Several participants pointed out that although parliamentary committees hold public hearings, the number of people who actually attend or participate in these hearings is often low. The hearings tend to attract only those who are already knowledgeable or have vested interests in the bills being discussed. Moreover, public submissions during these hearings are often not fully considered in the final decision-making process, leading to perceptions that public participation is merely a procedural step rather than a genuine attempt to influence legislation.

### Barriers to Effective Public Participation

The study identified several key barriers to effective public participation in the legislative process. Here is a summary of the barriers in a word cloud.

#### Word Cloud: Barriers to Effective Public Participation



Figure 1. barriers to effective public participation in the Legislative process

The key terms like "challenges," "political," "time," "resource," and "awareness" stand out, highlighting the main obstacles in the public participation process. The key barriers to effective public participation in the legislative process are as presented below.

**Limited Public Awareness:** As mentioned, many citizens lack awareness about the available opportunities to participate in the legislative process. A significant portion of the public does not understand the procedures



The above word cloud visually highlights the key terms and themes, such as "influence," "ignored," "views," "public," and "disillusionment," reflecting the core perceptions of the respondents regarding the impact of public participation in the legislative process.

The results section of this study highlights both the strengths and weaknesses of public participation in Kenya's legislative processes. While there are mechanisms in place to encourage citizen involvement, several barriers prevent these processes from being fully effective, limiting the impact of public participation on decision-making.

## DISCUSSION

The varying levels of awareness and understanding of public participation found in this study highlight a significant gap between the intentions of legislative frameworks and the practical reality of public engagement. While MPs and civil society representatives generally demonstrated a good understanding of the legal provisions, members of the public were often unaware of their rights and the processes available for engaging in legislative matters. This lack of public awareness can be attributed to inadequate outreach and ineffective communication strategies, which fail to educate citizens about their roles in the legislative process. Furthermore, the perception of public participation as a mere formality, rather than a genuine opportunity for influence, reflects the broader challenge of ensuring that legislative mechanisms are both accessible and meaningful. The technical nature of legislation, coupled with the absence of simplified channels for communication, exacerbates this disconnect, reinforcing the need for more inclusive and accessible public engagement strategies.

On the effectiveness of legislative frameworks for public participation, the findings suggest that while the legislative frameworks for public participation, as outlined in the 2010 Constitution, provide a solid foundation for citizen engagement, their actual effectiveness was undermined by inconsistent application and limited engagement. Although provisions like Articles 118, 196, and 174 mandate public participation, their practical implementation falls short of fostering meaningful and widespread involvement. Interviews with parliamentary staff and civil society representatives highlighted the limited scope of participation, with public hearings often drawing only a small, knowledgeable, or interest-vested group of individuals. This restricted engagement diminishes the potential for diverse public input, leaving the process vulnerable to perceptions of tokenism. Additionally, the failure to adequately consider public submissions in the final decision-making process undermines the legitimacy of public participation and raises questions about its role in shaping legislation. This inconsistency reflects a critical gap in the legislative framework's ability to facilitate inclusive, and responsive governance.

On barriers to effective public participation, the findings underscored several significant barriers in the legislative process, each of which contributed to the limited success of the current participatory mechanisms. Limited public awareness stood out as a primary obstacle, as many citizens were unaware of the procedures for engaging in legislative activities, including attending public hearings or submitting opinions. This lack of awareness could be attributed to insufficient outreach and communication efforts by Parliament. Political and institutional challenges further complicated public participation, with political interference often overshadowing genuine public input. MPs and civil society representatives expressed concerns that political agendas and party loyalties frequently influenced which bills are prioritized, potentially sidelining public concerns. Resource constraints also played a critical role, as both MPs and civil society organisations highlighted the prohibitive costs associated with organising public participation activities, which often results in urban-centric engagement, neglecting rural or marginalised individuals/communities. In addition, while digital platforms have been introduced to facilitate online participation, the underutilisation of these technologies (such as X spaces) due to poor access and limited digital literacy in rural areas further exacerbates the participation gap. Finally, the study revealed that limited time for engagement was a recurring barrier, with short notice for public hearings and constrained timeframes for submissions, restricting citizens' capacity to meaningfully contribute to the legislative process. Together, these barriers highlight the need for

comprehensive reforms to enhance public participation and ensure that it is inclusive, accessible, and impactful.

On perceptions of public participation outcomes, the findings suggested a mixed perception. Many respondents expressed disappointment with the limited impact that public input has had on legislative decisions. Although some bills have been subject to minor adjustments based on public input, the general sentiment was that public views are often ignored or inadequately addressed in the final legislation. This has contributed to a sense of disillusionment among citizens, with many questioning whether their participation genuinely influence the legislative process. Despite these concerns, there were also positive examples cited where public participation resulted in significant changes, particularly in areas such as environmental law and community development. These instances, though not widespread, demonstrated the potential for public input to shape legislation meaningfully when the process is properly implemented. Ultimately, the findings highlight the need for a more consistent and impactful approach to public participation that not only includes citizen input but also reflects it in the final legislative outcomes.

## CONCLUSION

This study has shed light on the state of public participation in the legislative process, highlighting significant challenges and gaps that hinder its effectiveness. Despite the legal frameworks that mandate public participation, the findings demonstrate that these frameworks are not fully realised in practice. The low levels of public awareness, the limited application of legislative provisions, and the barriers created by political, institutional, and resource constraints all contribute to the marginalisation of public input. The perception that public participation is merely a formality rather than a meaningful process is widespread, underlining the need for greater efforts to make the legislative process more inclusive, accessible, and transparent.

However, despite these challenges, the study also highlighted instances where public participation led to positive changes, particularly in specific areas such as environmental law and community development. These examples, though limited, suggest that with improved communication, better outreach strategies, and a more responsive approach to incorporating public input, the legislative process can be more reflective of citizens' needs and concerns. Ultimately, to enhance the quality and impact of public participation, reforms are needed to address the existing barriers and ensure that public input is not only heard but also actively considered in the decision-making process. This will require a shift from viewing public participation as a procedural formality to recognising it as a critical component of democratic governance.

## REFERENCES

1. Babeiya, E. E., & Masabo, C. J. (2017). The role of ICTs in enhancing citizens' involvement in decision-making in local governments in Tanzania.
2. Barrett, M., & Brunton-Smith, I. (2017). Political and civic engagement and participation: Towards an integrative perspective. In *Framing Civic Engagement, Political Participation and Active Citizenship in Europe* (pp. 5-28). Routledge.
3. Berry, L. H., Koski, J., Verkuijl, C., Strambo, C., & Piggot, G. (2019). Making space: how public participation shapes environmental decision-making. Stockholm Environment Institute.
4. Bochel, C., & Bochel, H. (2017). 'Reaching in'? The potential for e-petitions in local government in the United Kingdom. *Information, Communication & Society*, 20(5), 683-699.
5. Cornwall, A. (2017). Introduction: New democratic spaces? The politics and dynamics of institutionalised participation.
6. Devane, D. J. (2016). The Aarhus Convention and the experience of public participation in environmental impact assessments.
7. Domingo, E., & Shiferaw, L. T. (2022). *Digitalisation and Democracy: Is the African Governance Charter fit for the digital era*. ECDPM Discussion Paper. Maastricht: ECDPM.
8. Graham, S., & Graham, V. (2019). Quality political participation and the SDGs in African small island developing states. *Regions and Cohesion*, 9(2), 1-30.

9. Hope Sr, K. R. (2020). Peace, justice and inclusive institutions: overcoming challenges to the implementation of Sustainable Development Goal 16. *Global Change, Peace & Security*, 32(1), 57-77.
10. Joseph, D. K. (2017). Constitutional reform and good governance in Uganda: a case study of the Uganda parliament.
11. Kabingesi, A. (2021). An Assessment of Public Participation in the Law-making and other Activities of the Parliament of the Republic of South Africa (Doctoral dissertation, Stellenbosch: Stellenbosch University).
12. Lambiase, J. J. (2018). Searching for city hall, digital democracy, and public-making rhetoric: US municipal websites and citizen engagement. *The Journal of Public Interest Communications*, 2(1), 85-85.
13. Mulumba, M., Ruano, A. L., Perehudoff, K., & Ooms, G. (2021). Decolonizing health governance: a Uganda case study on the influence of political history on community participation. *Health and Human Rights*, 23(1), 259.
14. Pallangyo, E., Mbekenga, C., Olsson, P., Eriksson, L., & Bergström, A. (2018). Implementation of a facilitation intervention to improve postpartum care in a low-resource suburb of Dar es Salaam, Tanzania. *Implementation Science*, 13, 1-11.
15. Philipp, M. (2017). Public participation and elite capture: A yet incomplete struggle towards a new constitution in Tanzania. In *Public Participation in African Constitutionalism* (pp. 177-193). Routledge.
16. Quick, K. S., & Bryson, J. M. (2022). Public participation. In *Handbook on theories of governance* (pp. 158-168). Edward Elgar Publishing.
17. Rodiyah, R., Idris, S. H., & Smith, R. B. (2023). Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia. *JILS*, 8, 333.
18. Ronoh, G., Mulongo, L. S., & Kurgat, A. (2018). Challenges of integrating public participation in the devolved system of governance for sustainable development in Kenya. *International Journal of Economics, Commerce and Management*, 6(1), 476-491.
19. Rose-Ackerman, S. (2021). *Democracy and executive power: Policymaking accountability in the US, the UK, Germany, and France*. Yale University Press.
20. Staniszewska, S., Denegri, S., Matthews, R., & Minogue, V. (2018). Reviewing progress in public involvement in NIHR research: developing and implementing a new vision for the future. *BMJ open*, 8(7), e017124.
21. Zhao, Y., & Butcher, B. (2022). Coming to terms with public participation in decision making: Balancing clarity and impact in the Aarhus Convention. *Review of European, Comparative & International Environmental Law*, 31(2), 210-221.