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Op-ed

SOUTH AFRICA'S BETRAYAL OF ITS PEOPLE: HOW OUR LAWMAKERS ARE GUTTING THE PROMISE OF PUBLIC PARTICIPATION

By Daryl Swanepoel

South Africa's Constitution is often hailed as one of the most progressive in the world, a beacon of human dignity, equality and participatory democracy. It enshrines the right of every citizen to be heard in the making of laws and policies that shape their lives. Yet, almost three decades into our democratic experiment, this sacred principle is being hollowed out by the very institutions meant to defend it.

Public participation, the heartbeat of any living democracy, has become a box-ticking exercise. The ruling elite has turned a constitutional obligation into a bureaucratic inconvenience. And as a result, we are witnessing the slow, dangerous erosion of democratic legitimacy.

A constitutional right reduced to political theatre

Section 59 of the Constitution commands the National Assembly to "facilitate public involvement" in lawmaking. Sections 72 and 118 extend this duty to the National Council of Provinces and provincial legislatures. These are not polite suggestions, they are binding obligations.

Yet, courtrooms across the country are littered with the evidence of government's disdain for this duty. More than twenty pieces of legislation have been struck down by South Africa's courts over the last decade for failing to meet constitutional participation standards. The *Doctors for Life* case (2006), the *South African Veterinary Association* case (2018) and the *One Movement South Africa* ruling (2023), each one a damning indictment, expose a pattern of contempt for the people's voice.

In *Doctors for Life*, Parliament passed four major health laws without so much as a public hearing. The Constitutional Court tore into the legislature, declaring the laws invalid and reminding our representatives that participation is a cornerstone of democracy, not a perfunctory ritual.

Twelve years later, lawmakers repeated the same mistake. In the *Veterinary Association* case, Parliament inserted a major amendment into the Medicines and Related Substances Act without consulting affected professionals. The Constitutional Court again struck the law down, another costly embarrassment.

And in 2023, when Parliament imposed an absurd 15 percent signature threshold for independent candidates to contest elections, the Court ruled it unconstitutional, noting that such a barrier was "never subjected to public debate or expert justification." It was a slap in the face of democratic inclusion.

These rulings make one thing crystal clear: South Africa's leaders are not just failing at consultation, they are actively defying the Constitution.

The cost of cynicism

This failure is not academic. It is moral, financial and existential.

Every time the Constitutional Court strikes down a law, it costs taxpayers millions. These are funds that could have been used for housing, clinics or school infrastructure, squandered instead on fixing self-inflicted wounds. But the greater cost is democratic decay. When citizens see their submissions ignored, their participation reduced to ceremonial theatre, they disengage. Apathy becomes rebellion. Disillusion turns to protest.

Indeed, the service delivery crises, the marches and the burning tyres across townships are symptoms of this betrayal. People protest in the streets, because they are silenced in Parliament.

A democracy in name only

The rot runs deep. Too often, public hearings are announced with mere days' notice, as in the *One Movement South Africa* case, where the public was notified on a Thursday of hearings scheduled for the following Monday. In some cases, attendees were bussed in and coached to echo party lines. That is not participation, it is propaganda.

Even when submissions are made, they vanish into the black hole of bureaucracy. Committees "note" them, but seldom engage with their substance and citizens never receive feedback on whether their voices influenced the final law. This equates to governance by going through the motions, which is no more than an elaborate performance to maintain the illusion of democracy.

Let's call it what it is: tokenism. It's the simulation of consultation without the substance of engagement. And it is unconstitutional.

The betrayal of the constitutional promise

Our Constitution was born out of struggle, a covenant forged in the fires of apartheid's exclusionary rule. It promised that never again would the people be governed without their consent and/or participation and yet today, the democratic state is drifting toward the very elitism it once overthrew.

This is not merely a procedural failure, it is a betrayal of the foundational principles of our republic, accountability, transparency and participatory governance.

Public participation was meant to be the mechanism through which the governed could shape their destiny, to ensure that the poor and marginalised have a voice in the corridors of power. Instead, it has become a privilege reserved for the well-connected, the digitally literate and the resourced. For millions in rural and township communities, participation is still a constitutional promise, not a lived reality.

A judiciary doing the job of Parliament

It is a tragic irony that the Constitutional Court has become the last line of defence for democracy, the institution that must continually rescue the people from their representatives. Time and again, judges

have had to remind lawmakers of their duties, suspend invalid laws to prevent governance chaos and send Parliament back to redo its homework.

But judicial reprimands alone cannot save us. Courts can strike down laws, they cannot cultivate a culture of listening. The solution must come from within the political system and from a reawakening of ethical leadership and civic conscience.

How we lost the spirit of democracy

The reasons for this democratic backslide are many.

Some legislators view public participation as an obstacle, an irritant that slows down the march of party agendas, whilst others simply lack the resources or understanding to conduct meaningful consultations. Legal advisors rubber-stamp bills without proper scrutiny and executive departments rush legislation to meet political deadlines and in the end, expediency trumps constitutional fidelity.

But let's be honest, this isn't about ignorance alone. It's about power. True participation disperses power and that terrifies those who hoard it, and opening the legislative process to genuine citizen input threatens entrenched interests, ideological purity and patronage networks. And so, the system has evolved to mimic participation while neutralising its impact.

What needs to change - NOW

If South Africa is to rescue its democracy, reform must be both structural and cultural.

1. Establish an Independent Public Participation Ombud.

This office should monitor whether public consultation standards are met, issue compliance certificates before bills are passed and impose sanctions for failure. Without enforcement, constitutional obligations remain dead letters.

2. Codify a "Right to Feedback."

Every legislative body should be compelled to publish "participation impact reports," explaining how public input shaped or failed to shape the final law, because such transparency will rebuild trust and discourage performative engagement.

3. Embrace digital democracy.

Parliament must invest in multilingual, accessible online platforms allowing citizens to read bills, submit comments and track outcomes and for those without internet access, SMS and radio-based systems can democratise access.

4. Re-train state attorneys and parliamentary legal advisors.

Too many unconstitutional laws slip through multiple layers of legal review. This points to incompetence or complicity. Either way, it demands urgent professional reorientation in constitutional literacy.

5. Punish "sham consultations."

If public hearings are manipulated, rushed or one-sided, they should be invalidated. The officials responsible must face disciplinary or even legal consequences. Pretend participation is constitutional vandalism.

6. Civic education for all.

Democracy thrives when citizens know their rights. Schools, community centres and local governments must embed participatory literacy into civic life, because the Constitution cannot protect those who do not know how to wield it.

A call to conscience

Public participation is not about inconvenience, it's about justice. It is the oxygen of democracy. And when government stops listening, democracy suffocates.

Our lawmakers must remember that Parliament does not belong to parties, it belongs to the people and therefore every time they ignore submissions, rush hearings or dismiss dissenting voices, they chip away at the moral authority of the state. And every time a court strikes down their handiwork, it is not just a legal defeat, it is a confession of constitutional failure.

The spirit, not the symbol

South Africa cannot afford a democracy that only exists on paper. The Constitution was not written to decorate court shelves, it was written to live in the daily experiences of its people and as such, upholding its spirit means ensuring that every voice counts, especially those historically excluded from power.

If public participation continues to be treated as a nuisance, our democracy will decay from the inside out and so the time for polite reminders is over. This is not a procedural issue. It is a moral emergency.

The Constitutional Court has done its part. Now Parliament and the Executive must do theirs. The people are watching and this time, they must not be ignored.

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