

UNIT 7: CONSTITUTIONS AND CONSTITUTION MAKING

The term 'constitution' refers to a set of agreed principles and rules which state the structure and powers of a government

The constitution of Kenya is a supreme law that binds all people and all state organs at national and county level. It outlines the structure of government, defines the powers and prerogatives of the head of state, states the compositions, functions and powers of parliament, states the compositions of the executives and outlines the duties and rights of the citizens.

Constitutions vary in various countries depending on different experiences and their form is determined by the following.

- a) The historical background of a country
- b) Geographical factors. For example the numerous islands of Japan must be catered for in their constitution
- c) Religious beliefs of the people. Some countries have the Islamic Sharia law in their constitution e.g Libya and Somali
- d) Race composition of a country. For example, in South Africa the apartheid racial policy had been included in their constitution.

Functions of a constitution

- a) The constitution provides the legal ground from which the laws of the country are made.
- b) It spells out the powers of government and its relationship to the governed.
- c) It spells out the rights and duties of all citizens. It also provides the options a citizen has, legally, if those rights and freedoms are violated.

Types of constitutions

1. *Written constitution.*

This is a constitution in which the basic principles concerning the organization of government, powers of its various agencies and rights of the subjects are consciously written down in one document.

The first country to adopt a written constitution was USA after she attained political independence from Britain on 4th July 1776. France adopted it in 1791 following the French revolution of 1789. The primary objective of these adoptions was to include the rights of the citizens to avoid abuse by those in power.

Other countries with written constitutions include many European, African, Latin American and Asian countries. Kenya also has a written constitution.

Characteristics of a written constitution.

- a) It acts as a standard of reference to which the acts of the government of the day may always be compared.
- b) It is a rigid document that cannot be altered easily.
- c) It is only amended through a clearly spelt out procedure which is followed to the letter.
- d) There must be a special body entrusted by the legislature with the work of drafting the constitution.
- e) Once drafted the constitution must get the approval of the legislature.

Advantages of a written constitution.

- a) Since the procedures of amending a constitution are clearly spelled out, it is not easy for politicians or other interest groups in the society to alter it.
- b) In case of a crisis, the constitution provides very clear guidelines on the procedures to be followed, thus restoring stability in the country.
- c) Since a written constitution is rigid, it therefore recognizes that there are fundamentals in a state, e.g rights of citizens, powers and duties of the president, which should never be easily changed. Change can only be done after adequate consideration.
- d) It is fundamental to a newly formed nation so as to take off in an orderly and organized manner.
- e) A written constitution is important to ensure that the identity of the various groups are preserved and maintained in a country with diverse racial groupings, religion and ethnic composition.
- f) Since it is arrived at after thorough and careful consideration by all, it therefore unites the people in the nation as it would have acquired recognition and acceptance from the majority of the citizens.

Disadvantages of a written constitution.

- a) Due to its rigidity, it can fail to respond to changing circumstances and can therefore easily become obsolete.
- b) A written constitution tends to make the judiciary too powerful as it is the only body that interprets the document. Where the executive and the legislature control the judiciary, the constitution can easily be manipulated.
- c) Some written constitutions are too detailed and rarely understood by the ordinary citizens.

d) The procedure for amending the constitution is slow and costly. This causes delays which could lead to civil disorder in a society.

2. Unwritten constitution

This is a constitution where the fundamental principles of the organization and powers of the government are not contained in one document but rather in several scattered documents to add to the customs of a country. For example, the British constitution.

Sources of British constitution.

- a) *Statutes.* This refers to an Act of Parliament. Examples of statutes that comprise the British constitution are;
 - Act of Union with Scotland of 1707 that determined the territorial boundaries within which the United Kingdom's constitution operates.
 - Parliament Act of 1911 that governs the relationship between the House of Commons and the House of Representatives
 - The Reform Acts of 1832 and 1834 which determine succession to the throne.
- b) *Customs.* This refers to ancient or traditional practices or the common law. For example, the first born inheriting the throne.
- c) *Laws of precedents.* Past accepted principles may be applied to a new set of facts in a judgment and this may eventually become part of the law of the land.
- d) *Customs of parliament.* House procedures including standing orders and other regulations are part of the British constitution.
- e) *Historical documents.* The following two important documents form part of the British constitution;
 - *The Magna Carta (1215AD)* that contained the promises by the England King that he would not levy taxes outside the three legal feudal taxes without the consent of the legal counsel
 - *The Petition of Right (1628)* in which King Charles I agreed not to levy taxes unless through the Act of Parliament.
- f) *The Conventions and Practices* that have become respected over the years are also part of the British constitution.

Advantages of unwritten constitution

- a) It is flexible and adaptable to changing circumstances in the society. This is especially valuable during periods of rapid socio-economic and political changes.
- b) It is indigenous and therefore suited for a state.
- c) It can be changed by ordinary legislative process.
- d) It provides continuity with the nation's traditions and is therefore accepted and respected by the people.

Disadvantages of an unwritten constitution.

- a) It gives the courts too much work in handling matters as they search for constitutional principles not only in judicial decisions but in different statutes and customs.
- b) Because of the nature of the unwritten constitution, it is not easy to protect the rights of people effectively as the fundamentals of the state are not recorded in a few or a single document.
- c) An unwritten constitution tends to be vague and indefinite as compared to the written constitution.
- d) An unwritten constitution presupposes that the people are politically conscious and alert and will ensure that their rights and liberties are respected.

Features/qualities of a good constitution.

- a) Definiteness; it must depict clear intelligence and one which facilitates thinking. It must define its content clearly.
- b) It should be comprehensive/ it must be short but inclusive of all the issues involved in government operation.
- c) Should be durable and elastic/ it should neither be too rigid to amend or change nor so flexible as to encourage interference of its basic principle.
- d) Should be able to protect fundamental rights and freedom of citizen/a bill of rights must be provided for in the constitution, showing the extent to which the government can interfere with individual rights.
- e) Amendment procedure must be stated clearly.
- f) The constitution must be representative of the diverse social and political spectrum of the people.
- g) It must exhibit supremacy of the people/ it must make the will of the people as the basis of government.
- h) It must stipulate the choice of government through free and fair elections

- i) Statement of national wealth. /It must have a clear statement on how resources are to be managed and how wealth created is to be distributed.

Constitution making process in Kenya in pre-colonial, colonial and post colonial eras.

Pre- colonial era.

The rules and regulation that formed the constitutional basis of pre-colonial communities in Kenya were mainly formulated by the councils of elders and then handed down from generation to generation.

The constitution was unwritten constitution guiding only the political, economic and sociocultural activities

Colonial Era (1885- 1960)

Kenya was under the British colonial rule after the Berlin Conference upto 1963. The constitutional developments in the country were greatly influenced by the settlement of immigrant communities like the white settlers, the Asians and Christian missionaries. These communities competed with the Africans for control of economic resources and political power.

The turning point in Kenya's pre-colonial constitutional developments was the outbreak of Mau Mau war and subsequent declaration of a State Of Emergency on 20th October 1952 by Sir Evelyn Barring. When the colonial secretary Oliver Lyttelton visited Kenya in 1954, he proposed the following constitutional reforms.

~ Establishment of a multi-racial council of ministers representing the three races setting for two Indian and one African minister (B.A Ohanga became the first African Minister)

~ It proposed direct representation of Africans in the LEGCO

~ Lifting the ban on African political parties/district associations.

In 1958, a new constitution was proposed by Lennox Boyd. The constitution led to increased number of elected Africans in the legislative council (from 8 to 14). It led to introduction of multi-racial representation in the legislative council. It led to the increase of the number of African ministers to two.

The African elected members demanded for a constitutional conference culminating into the independence constitution.

The independence constitution (1960-1962)

The first Lancaster House Conference (1960)

Attended by all members of Legco and two nominated members, the conference received the following demands;

- a) Africans demanded for true democracy, where one man would have one vote.
- b) The Arabs wanted to retain the ten-mile coastal strip, while Somalis wanted reunification with Somalia.
- c) Michael Blundell, representing a section of Europeans demanded for a multi-racial government while Captain Briggs representing the white extremists demanded for creation of provinces along racial lines.

All these proposal were moderated by the British government

The period after the first Lancaster House conference witnessed a lot of differences among Africans and among other races. Among the Africans, the differences culminated into the formation of KANU in March 1960 at Kiambu with James Gichuru as president and KADU in Ngong Town with Ronald Ngala as the president.

The main difference between KADU and KANU was that while KANU was advocating for a unitary government, KADU wanted a federal system

The second Lancaster House conference (1962).

When KANU refused to form government despite winning the elections, demanding for the release of Jomo Kenyatta, KADU formed a rather minority government that was heavily dominated by the colonial officials. Such a government was rejected by most people thus creating instability that led to the British Authorities calling for the second Lancaster House Conference.

The following important issues were discussed;

- a) The future of the coastal strip that belonged to the sultan prior to colonialism.
- b) The future of North Eastern Province(North Frontier District)
- c) Security of the minority.

The participants in the formulation of the independence constitution were representatives of various political parties: - Paul Ngei (APP), KADU and KANU. Others were representatives of the Asian and European communities.

The 1962 conference settled for a federal structure with a strong central government.

A coalition government was formed briefly but when the 1962 constitution was promulgated, it was followed by a general election in May 1963.

The third and final conference in 1963 resulted in the drafting and adoption of Kenya's first independent Constitution by the British Parliament

The 1963 constitution established a parliamentary system with executive powers vested in a cabinet headed by a Prime Minister, The Queen of England remained Head of State.

Independence (1963)

Kanu won the May elections and Kenya Attained internal self-government with Jomo Kenyatta as the first Prime Minister on 1st June 1963. Kenya attained full independence on 12th December 1963 when the Queen ceased to be the head of state.

Kenya has been using the *Independence Constitution* upto August 2010 though with so many amendments.

Main provisions of the independence constitution of Kenya.

- a) The independence constitution provided for a regional/majimbo government with each of the seven regions having a regional assembly and president. The boundaries of the regions were given protection in the constitution.
- b) It also provided for a bicameral parliament consisting of the senate and the house of representatives/upper house and lower house. The lower house comprised 117 elected members and 12 special members. The senate comprised 41 members representing the 41 administrative districts and one representing Nairobi city
 - a) *Though the senate was subordinate to the House of Representatives, it had powers to authorize*
 - b) *declaration of a state of emergence, 65% of the senators were required to approve the amendment of constitution. Also all Bills required approval of both houses.*
- c) The constitution stipulated that the Prime Minister (appointed by the governor) was to be head of Government and Queen the Head of State, represented by the Governor General.
- d) The powers of the governor were defence of the country, foreign affairs, internal security and approval of legislation.
- e) The constitution recommended a multiparty system of government and the party with the majority of seats forming the government.
- f) It contained the Bill of Rights, which protected the individual's rights. The Bill of rights was modeled on the European convention on Human Rights and Fundamental freedoms.
- g) The constitution provided for an elaborate scheme to protect the minority rights. The minorities in this case were the Europeans, Asians and some indigenous communities.
- h) Independent Electoral commission was set up consisting of the speakers of the two houses and a nominee of the Prime Minister. Also it comprised nominees representing the regions. This was to ensure impartiality and honesty in elections.
- i) The constitution provided for an independent and impartial judiciary to ensure justice and prevent corruption. Judges were accorded security of tenure which was extended to the Attorney General, the government's principal legal advisor.
- j) It provided for public service commission. The aim was insulate the civil service recruitment and promotions from abuse and corruption.
- k) An independent land board.

Post –colonial Era (1963-2010).

From independence to Multi-party democracy period (1963-1991)

Like many former British colonies, Kenya started off with a west Minister system of government.

The first Constitutional amendment in independent Kenya was in 1964. Kenya became a republic and the executive became presidential. The senate and regions were also abolished.

A Constitutional review in June 1982 officially transformed Kenya into a one-party state.

A parliamentary act in December 1991 repealed the one-party system provisions of the constitution and effectively established a multiparty system.

The period after 1992 was influenced by Global issues like the decline of the cold war, collapse of the Soviet Union in 1989 and the intensified struggle for democracy all over the world.

In 1997, the Inter Party Parliamentary Group (IPPG) was formed with membership from the Opposition and KANU mps. The aim was to come up with minimal constitutional reforms to level the ground before the 1997 general elections

The following reforms were approved;

- a) The KBC shall observe fairness in providing balanced all-inclusive political views in the news coverage.
- b) Membership of the Electoral Commission to be reviewed to accommodate the interest of the opposition.

- c) Registration of Parties would be done without unnecessary delay.
- d) The powers of the chiefs that would likely interfere with political activity at local level be contained.
- e) The police Act be amended to provide for politically impartial police force
- f) To repeal a number of laws restricting civil and political rights, and abolition of the offence of sedition

In 1997, a constitutional review commission, called the Constitution of Kenya Review

Commission (CKRC), was established to provide civic education, seek public input and prepare a draft constitution.

In October 2000, parliament passed a Bill entrenching the CKRC into the independence constitution. It was now headed by Professor Yash Pal Ghai and comprised 15 commissioners

In June 2001, the CKRC was expanded to include other groups like the People's commission following the amendment of the 1997 Constitution of Kenya Review Act.

The CKRC act specified a 2 year time frame for completion of the review process.

However, its activities were marred by controversy in 2002 and the ultimate dissolving of parliament in October 2002 by president Moi. He even attempted to dissolve the commission, thanks to its being entrenched in the independence constitution.

When the NARC government took over power in 2003, the review exercise was reviewed. The National Constitutional Conference was convened at Bomas of Kenya and came up with what came to be known as the **Bomas Draft** constitution. However the political elite did not support the Bomas Draft.

In 2005, Parliament amended the constitution of Kenya Review Act to allow the Attorney

General to come up with the *Proposed New Constitution*, popularly known as the **Wako Draft**

The draft constitution was ultimately rejected by Kenyans at the constitutional referendum in 2005 because of disagreements amongst various stakeholders.

In December 2007, Kenyans participated in the general elections that were followed by Post Election Violence caused by the controversy that surrounded the results of the elections.

Steps towards realization of a new constitution in Kenya from 2008.

- a) On 28 February 2008 The National Accord and Reconciliation Act (NARA) was signed by President Kibaki and Prime Minister Raila Odinga. Agenda No 4 of this arrangement was a new process to finalize the long awaited constitution of Kenya

The main provisions of the National Accord were:

- ✓ Establishment of a grand coalition government with two parties; PNU and ODM sharing power.
 - ✓ Raila Odinga was to become Kenya's second Prime minister after the position was created in the accord arrangement
 - ✓ Two deputy Prime Minister Positions would be filled by the PNU and ODM parties respectively.
 - ✓ Provision for An expanded cabinet with the two parties being accorded slots as per their proportion in the house.
- b) In 2008 the *Constitution of Kenya Review Act 2008* was passed and a Committee of Experts (CoE) was established as the main technical constitutional review organ to drive the process.
 - c) The CoE was chaired by Nzamba Kitonga, the deputy chair was Ms Atsango Chesoni, other members were Ms Njoki Ndung'u, Mr Otiende Amolo, Mr Abdirashid Hussein, Mr Bobby Mkangi, Professor Christina Murray (South Africa), Dr Chaloka Beyani (Zambia) and Dr Frederick Ssempebwa (Uganda).
 - d) 23 February 2009 Members of the CoE were appointed by the President were later on sworn in,
 - e) On 17 November 2009 CoE released the draft to the public and invited views and comments on the draft constitution,
 - f) By 23rd February 2010. CoE had submitted the final draft of constitution to the Parliamentary Select Committee.
 - g) On 4th August 2010 Kenya held a Constitutional Referendum where the new constitution was overwhelmingly endorsed.
 - h) On 28th August 2010, the new constitution was promulgated and became operational making Kenya the first independent African state to depart from the independence constitutions.

Stages in the constitution making process in Kenya since independence.

1. *Debate over contentious issues.* Issues like the entrenchment of section 2A in the independence constitution in 1981 raised concerns among various stakeholders and groups. The issue of whether to include the position of Prime Minister or not has also been debated for many years.

2. *Collection of public views.* The Saitoti commission (the Constitution review commission established by Moi in 1990) had the objective of collecting views of Kenyans concerning how KANU was to operate in the best way possible. In June 2001, the CKRC, chaired by Yash Pal Ghai was mandated to collect views as part of the constitution review process.
3. *Civic education.* In 2001, the Ghai Commission was mandated and funded to provide civic education .
4. *Convening of constitutional conferences.* For example, The 2002 National Constitution Conference at Bomas of Kenya and other similar conferences.
5. *Drafting of the constitution.* This involved both local and international experts who drafted the constitution between 2000 and 2010. This was mainly the work of the Ghai led CKRC and the Committee of experts led by Nzamba Gitonga.
6. *The referendum.* During the 2005 referendum, the Wako Draft constitution was rejected. In August 2010, another referendum was held and the 2010 proposed New Constitution was approved.
7. *Promulgation of the constitution.* On 27th of August 2010, President Mwai Kibaki presided over the promulgation of the new constitution of Kenya.

Constitutional Changes in Kenya since independence upto 2010.

1. The 1963 independence constitution marked the end of colonial rule and transformed the colony into a dominion. It established a parliamentary system with executive powers vested in a cabinet headed by a Prime Minister, who is appointed by the Queen of England from the majority party in Parliament. The Queen of England remained Head of State as represented by the Governor General who was also the Commander-in-Chief
2. By the 1st amendment *Act 28 of 1964*, published in November 1964, Kenya became a republic and the executive became presidential. The amendment outlined the criteria to be met by a presidential candidate. It made provision of a Vice President who would be appointed by the president from among the members of parliament. Jaramogi Oginga Odinga became the first occupant of that office.
3. By The 2nd amendment *Act 38 of 1964* published on 17th December 1964, the senate and regions were also abolished.
4. 3rd amendment *Act 14 of 1965*, published on 8th June 1965, altered parliamentary Majority required for approval of a state of emergency to only a simple majority from the previous 65%. The term ‘region’ was replaced with ‘province.’ The amendment altered the title of Supreme Court.
5. By the 4th amendment *Act 16 of 1966*, published on 12th April 1966, commonwealth citizens became eligible for Kenyan citizenship. Also any legislator jailed for six months or more or missed to attend eight consecutive parliamentary sittings without the speaker’s permission had to forfeit his/her parliamentary seat.
6. On 28th April 1966, an amendment was passed, published on 30th April, to compel MPs who defected from sponsoring party, to resign from parliament and seek re-election. This amendment targeted Kenya People’s Union (KPU) of Jaramogi Odinga that had been formed that year. The amendment was published, tabled, debated, passed and received presidential assent within 48 hours. (it was nicknamed ‘the KPU amendment’).
7. In May 1966, the Public Security Act was passed, published on *7th June 1966*, empowering the president to detain a citizen without trial on grounds of being a threat to state security. The president also acquired power to control freedom of the press.
8. In 1966, a constitutional amendment abolished the Bicameral Legislature and replaced it with a Unicameral Legislature, chosen directly by the electorate. The Act was published on 4th January 1967. The voting majority to change the Constitution was lowered to two-thirds of the MPs.
9. In 1968, by the 9th amendment, published on 12th April 1968, the president was empowered to alter provincial and district boundaries. The act abolished the provincial councils and all representatives to the provincial and district boundaries. This marked the end of regionalism.
10. In 1968, by the 10th amendment, *Act 45* published on 12th July 1968, the procedure for presidential elections and succession in the event of his death was laid down. Also, that all candidates for a general election should be nominated by a political party. The act also gave the president power to nominate 13 MPs to replace the 12 specially elected members of the House of Representatives.
11. In 1974, the age qualification for presidential candidates was also lowered to 35 from 40 years. The minimum voting age was altered from 21 to 18 years.
12. In 1975, an amendment of the constitution empowered the president to pardon any election offender at his own discretion. This was done to favour Paul Ngei who been found guilty of an election offence. It was named ‘*the*

Ngei Amendment'. The bill went through all the stages in one afternoon and received presidential assent the following day.

13. In 1975, Kiswahili was declared the national language of the national assembly.
14. In 1977, the Kenya court of appeal was established after the breakup of the East African Community.
15. The 18th amendment Act passed in 1979 was the first one under president Moi. It provided that public officers had to resign six months in advance in order to qualify as candidates for parliamentary elections.
16. In 1979, both Kiswahili and English were declared languages of the national assembly.
17. By The 19th amendment Act of 1981 published in 1982, Kenya became a *de jure* one party state. KANU became the only lawful party in Kenya. The infamous section 2A was introduced in the constitution. (Kenya had been a *de facto* one party state between 1969 and 1982). The post of Chief Secretary was created to head the public service. The first occupant being Jeremiah Kiereini.
18. By the 1985 20th amendment Act, the High Court began acting as a Court of Appeal.
19. The 21st amendment Act passed in 1985 repealed Section 89 of the constitution which provided for the acquisition of Citizenship for anyone born in Kenya after December 11th 1963.
20. In 1987, the security of tenure of the Attorney General, Chief Secretary, The Comptroller and Auditor-General was removed. The president could now dismiss them at will. Office of chief secretary was abolished.
21. In 1988, the security of tenure of Puisine Judges and Chairman of Public Service Commission was removed. The removal of security of tenure of the above officers sparked a lot of condemnation from LSK and main stream churches.
22. In 1988, an amendment was passed that provided the police with powers to hold a suspect in custody for upto fourteen days before taking him/ her to court if the crime constituted a capital offence. This is what led to detaining of persons suspected of opposing the government in the dingy basement of Nyayo House where some were tortured to death.
23. 1990- Security of tenure of the offices of AG and Controller and Auditor –General was reinstated.
24. A parliamentary act in December 1991 repealed the one-party system provisions (section 2A) of the constitution and effectively established a multiparty system. Multiparty elections were held the following year in December.
25. In 1991, an amendment that was passed limited the tenure of the president to a maximum of two-five year terms.
26. After 1997 elections, Parliament, on the initiative of the government, passed the *Constitution of Kenya Review Act* that set the pace for comprehensive constitutional reforms.
27. A constitutional review commission, called the Constitution of Kenya Review Commission (CKRC), was established to provide civic education, seek public input and prepare a draft constitution.
28. In October 2000, parliament passed a Bill entrenching the Constitution of Kenya Review Commission (CKRC) headed by Professor Yash Pal Ghai into the independence constitution.
29. In 2005, Parliament amended the constitution of Kenya Review Act to allow the Attorney General to come up with the *Proposed New Constitution*, popularly known as the **Wako Draft**
30. The draft constitution was ultimately rejected by Kenyans at the constitutional referendum in 2005 because of disagreements amongst various stakeholders.
31. The rejection of the draft constitution by Kenyans in the referendum of 2005 meant that the 1963 constitution (as amended) remained the basic law of Kenya. .
32. **28 February 2008**The National Accord and Reconciliation Act (NARA) was signed by President Kibaki and Prime Minister Raila Odinga to end violence that erupted after the December 2007 presidential elections. Agenda No 4 of this arrangement calls for a new process to finalize the long awaited constitution of Kenya
33. In 2008 the *Constitution of Kenya Review Act 2008* was passed and a Committee of Experts (CoE) was established as the main technical constitutional review organ to drive the process. The CoE was chaired by Nzamba Kitonga, the deputy chair was Ms Atsango Chesoni, other members were Ms Njoki Ndung'u, Mr Otiende Amolo, Mr Abdirashid Hussein Mr Bobby Mkangi Professor Christina Murray (South Africa) Dr Chaloka Beyani (Zambia) and Dr Frederick Ssempebwav (Uganda).
34. On 28th august 2010, the new constitution was promulgated and became operational making Kenya the first independent African state to depart from the independence constitution.

Key changes in the New Constitution.

- a) Reduction of president's executive powers.
- b) Devolution of power to regions (creation of county and national governments.)
- c) Creation of the senate and national assembly to constitute parliament.

- d) On Citizenship, Birth and registration are the only recognize ways of attaining Kenyan citizenship. Dual citizenship is now recognized by the constitution.
- e) Recognition of the Kadhi's courts as subordinate courts in the judicial court system.
- f) Expansion of the citizens' Bill of Rights to guarantee equal representation for either gender in all governance structures.

FEATURES OF THE NEW CONSTITUTION.

Why there was need to have a new constitution in Kenya.

- ✓ The need to meet the changing needs of the Kenyan society, e.g. due to population growth.
- ✓ The rise of gender sensitivity in Kenya/The need to address the rights of women which had not been adequately addressed in the outgoing constitution.
- ✓ The constant misuse of executive authority by the Moi and Kenyatta regime/ the need to give less or more power to the executive.
- ✓ The need to depart from the colonial policies that found their way into the outgoing constitution.
- ✓ The need to safeguard against social vices like corruption and land grabbing.
- ✓ The need to enhance unity and realize a liberal society due to political maturity.

Problems that Kenya faced in realization of a new constitutional dispensation.

- a) Party differences have been transferred to the constitution making process e.g. the NARC fallout, the ODM wrangles between Raila and Ruto. Etc.
- b) Sectarian interests based on tribe, religion, age, sex which is hard to satisfy. E.g in relation to creation of counties, Kadhis court and land laws.
- c) Attempts to project personality, individual or group interests rather than national interest into the process.
- d) Direct misinformation of the public and propaganda by politicians and other groups with selfish interests.
- e) Illiteracy and ignorance of the electorate and therefore easily misled.
- f) Tension and sometimes violence marred the whole review process.
- g) Limited financial resources and personnel
- h) Lack of unity of purpose and co-operation among existing political parties hence difficulty in hammering out compromise..
- i) Inadequate civic education/wrong civic education.
- j) Lack of consultation with all the interested stake holders.
- k) An attempt to tie the constitutional review process with election time-table, political programmes and interests.

Why Kenya's new constitution is regarded as supreme.

- a) The Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.
- b) No person may claim or exercise State authority except as authorized under the Constitution.
- c) The validity or legality of the Constitution is not subject to challenge by or before any court or other State organ.
- d) Any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
- e) The general rules of international law shall form part of the law of Kenya.
- f) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Functions of the Kenyan constitution.

- a) It is the fundamental law of Kenya.
- b) It has helped in establishing the philosophy, character and structure of the Kenyan government.
- c) It has laid down principles which determine government power and duties.
- d) It regulates, distributes and limits the functions of different institutions of the state.
- e) It spells out the basis of relationship between the Kenyans and the government and what rights should be in that relationship.

Role played by the Kenyan constitution in governing the country.

- a) It protects the interests of the weak in the society from those who would want to dominate them.
- b) It checks the powers of the dictatorial rulers.
- c) It defines how to rise to power hence preventing unnecessary power struggles.
- d) It provides for the separation of powers between the three arms of government.
- e) It defines the powers of those in authority hence preventing misuse of power.
- f) It defines relations with other countries

g) It specifies on how a government is to be formed.