

CONSTITUTIONS AND CONSTITUTION MAKING PROCESS (PAPER 1)

1. Identify two importance of the Kenyan constitution.

- ✓ It is the basis of all legislations in the country.
- ✓ It spells out the structure of the government and outlines functions and the powers of each arm.
- ✓ It ensures equality of all Kenyans.
- ✓ It spells out the powers of those in authority/government and its relationship to the governed.
- ✓ It spells out the duties and rights of the citizens of Kenya and in this way, it enables the citizens to know what is expected of them

2. Give two methods of amending the constitution in Kenya.

- ✓ Through parliament
- ✓ Through referendum/ popular initiative

3. Give five challenges that Kenyans encountered in the search for a new constitution.

- ✓ Conservatism i.e people are resistant to change
- ✓ Illiteracy/ ignorance i.e lack of understanding and improper interpretation of the constitution
- ✓ Conflict of interest between church and state
- ✓ Lack of political will as shown by failure of 2005 referendum
- ✓ Personal interest overriding national interests where some people opposed the changes because it would disadvantage them
- ✓ Lack of funds for civic education, printing and distribution of the draft
- ✓ Divergent views of the parties involved e.g the committee of experts versus the parliamentary select committee

4. Outline the key stages involved in the constitution- making process in Kenya.

- ✓ Debate of contentious issues emanating from different stakeholder in the constitution making process
- ✓ Collection of public views after the general debate
- ✓ Civic education by various groups e.g civil society, MPs, law experts, clergy, CKRC
- ✓ Convening of constitutional conference to negotiate over the contentious issues
- ✓ Drafting the constitution - This is a technical process that involves local and international experts
- ✓ Referendum for the draft to get approval from the citizens
- ✓ Enacting the constitution by the parliament i.e the parliament approves the constitution which therefore becomes the new supreme law of the land
- ✓ Promulgation of the constitution i.e the constitution is presented to the people by the president who declares it to be the new law that will govern the state.

5. State five agreements reached after the Second Lancaster House Conference.

- ✓ The meeting arrived at establishing a coalition government.
- ✓ KANU advocated for a centralized system of government.
- ✓ The legislature was to consist of two houses, the Upper House and Lower House.
- ✓ The head of state was the Prime Minister.
- ✓ Drawing of the independence constitution.

6. Describe the features of the independence constitution.

- ✓ It provided a Governor General who was the head of state on behalf of the queen and the Prime Minister as the head of government.

- ✓ It provided for an independent judiciary to ensure justice and prevent corruption
 - ✓ It set up a judicial commission to appoint judicial officers.
 - ✓ It provided for six regional governments and whose power included control of land, education, health and the police.
 - ✓ It entrenched rules of citizens and fundamental rights of citizens.
 - ✓ It specially provided for the establishment of the public service commission and the board to ensure fair and effective government.
 - ✓ It provided for the establishment of National Assembly consisting of the Senate and House of Representatives.
 - ✓ It provided for the tenure of office of the judges and attorney general.
 - ✓ It provided for separation of powers for the three arms of government.
 - ✓ It spelt out that the party with majority seats forms government.
 - ✓ It spelt out powers and responsibilities of the central governments and regional governments.
- 7. Name one commission which took part in the investigation of 2007-2008 post-election violence in Kenya.**
- ✓ Kriegler commission.
 - ✓ Waki commission
- 8. Identify one change made by the new constitution on the executive arm of the government.**
- ✓ Devolution of power to regions by creation of national and county governments.
 - ✓ Executive powers of the president were reduced.
 - ✓ Ministers to be referred to as Cabinet Secretaries not appointed from elected members of parliament but professionals.
 - ✓ Vice president, named as a running mate by the contesting president before elections.
 - ✓ Limited number of Cabinet Secretaries (-14 - 22)
- 9. Identify two groups that participated in the second Lancaster house conference of 1962.**
- ✓ African representatives (KANU, KADU, APP)
 - ✓ Asian representatives.
 - ✓ White settler's representatives.
 - ✓ Colonial officials.
- 10. Name the last stage of constitution making process in Kenya.**
- ✓ Promulgation of the constitution.
- 11. How do Kenyan constitution promote national unity?**
- ✓ Unites all Kenyans
 - ✓ Provides for all Kenyans rights
 - ✓ Guarantee equal opportunities to all Kenyans
- 12. Identify the classification of Kenyan land according to the new constitution.**
- ✓ Public land
 - ✓ Community land
 - ✓ Private land
- 13. Identify five characteristics of a written constitution.**
- ✓ Provides a clear guideline in case of crisis/transition.
 - ✓ It is rigid and cannot easily be manipulated.
 - ✓ It is ideal for a newly formed state.
 - ✓ It preserves the identity of diverse ethnic and racial groups.

- ✓ Promotes unity since it is arrived at after thorough consideration by a product of consensus.
 - ✓ Procedures for the amendments are clearly spelt out.
- 14. Explain five similarities between the independent constitution and the new constitution of Kenya (2010).**
- ✓ Bicameral legislature.
 - ✓ Regionalism/devolved government.
 - ✓ Civil service/public service
 - ✓ Independent judiciary.
 - ✓ Impartial electoral commission.
 - ✓ The bill of rights.
- 15. State any one function of a constitution.**
- ✓ It provides the legal ground from which laws are made.
 - ✓ It spells out the powers of the government and its relationship to the governed.
 - ✓ It spells out the rights and duties of all citizens.
 - ✓ Spells out the structure of the government and the function of each organ.
 - ✓ To reflect the wishes of the people and their social, economic and political aspects.
- 16. Explain five challenges Kenya faced in the process of making a New Constitution.**
- ✓ Non-cooperation from some groups and people (failing to vote).
 - ✓ Illiteracy of some citizens.
 - ✓ Lack of enough materials e.g. copies of drafts.
 - ✓ Lack of enough civic educators.
 - ✓ Disagreement between constitution writers.
 - ✓ Politicization of the process.
 - ✓ It was too long and tedious.
- 17. Outline the main terms of the National Accord and Reconciliation Act of 2008.**
- ✓ Formation of grand coalition between PNU and ODM.
 - ✓ Mwai Kibaki to be president while Raila Odinga PM.
 - ✓ Creation of two posts of Deputy Prime Ministers.
 - ✓ Division of an expanded list of cabinet posts according to party's proportional representation in parliament.
- 18. What were the executive authority to be shared between PNU and ODM?**
- ✓ State two characteristics of a good constitution
 - ✓ Should define duties and rights of citizens
 - ✓ Should define duties and functions of the arms of government
 - ✓ Should provide for fundamental human rights.
- 19. State two advantages of a written constitution.**
- ✓ It is not easily altered by selfish persons for their own interests.
 - ✓ In case of a crisis, it provides a clear guideline on the procedure to be followed.
 - ✓ It is usually rigid as it recognizes the fundamental rights in the country.
 - ✓ It is good for a newly formed state to start in an orderly manner.
 - ✓ It recognizes all the people in the country, regardless of their status.
 - ✓ It unites the people as it is made after a thorough consultation.
- 20. Identify ways that could be used to amend the constitution in Kenya.**
- ✓ Through a parliamentary vote that must achieve two thirds majority support.
 - ✓ By a referendum in which at least twenty per cent of registered voters in at least twenty-four counties should give approval.

- ✓ By a simple majority vote by the citizens in a referendum.
- 21. State five features of the Independence constitution of 1962.**
- ✓ A federal government was adopted with six regions each retaining considerable powers through the central government.
 - ✓ The National Assembly was bicameral consisting of the Senate and the House of Representatives.
 - ✓ It spelt out the powers and responsibilities of central and regional governments.
 - ✓ It created the post of the Prime Minister to head the Government.
 - ✓ It created the post of the Governor General representing the Queen of England as the head of state.
 - ✓ It safeguarded the interests of the minority groups like the Europeans and Asians.
 - ✓ It provided for an independent and impartial judiciary to ensure that justice is done.
 - ✓ It led to the formation of an Independent Electoral Commission that would ensure impartiality and honesty during elections.
 - ✓ It provided that the party with majority seats could form the government which would comprise of the Prime Minister and Cabinet ministers.
 - ✓ A bill of rights spelling out the fundamental rights and freedoms of all citizens was included in the constitution.
- 22. State two main features of the 1962 constitution of Kenya.**
- ✓ Had a bicameral legislature
 - ✓ Regionalism / Federalism
 - ✓ Protection of minorities rights
 - ✓ Independent judiciary
 - ✓ Independent civil service
 - ✓ Independent electoral commission
 - ✓ Bill of rights
- 23. What was the main reason for convening 2nd Lancaster House Conference in 1962?**
- ✓ To draft the independence constitution.
- 24. Name the main constitutional amendment made in 1975?**
- ✓ Kiswahili and English was made to be the official languages in the National Assembly.
- 25. State the national holidays recognized by Kenyan constitution.**
- ✓ Madaraka day (1st June)
 - ✓ Mashujaa day (20th October)
 - ✓ Jamhuri day (12th December)
- 26. What major political change was introduced during the Limuru Conference of 1966?**
- ✓ The amendment abolished the office of the K.A.N.U. Vice-President and in its place created eight Vice-presidents of the party.
- 27. Give two components of the Kenyan constitution.**
- ✓ Structure of government
 - ✓ All rules pertaining to the state
 - ✓ Composition function and powers of parliament
 - ✓ Composition of the executive
 - ✓ Composition of the judiciary
- 28. Give the main constitutional change in Kenya in 2008**

- ✓ The signing of a national reconciliation and accord act which led to creation of coalition government and creation of the post of prime minister.
 - ✓ Rights of citizens
- 29. Identify two types of land holdings in Kenya**
- ✓ Public land occupied by state e.g first land, oil field land
 - ✓ Private land owned by a person either as free hold or lease hold
 - ✓ Community land belongs to community e.g shrines grazing land, first for hunters' community
- 30. Give one provision of the national accord of 2008.**
- ✓ Establishment of a grand coalition government.
 - ✓ Executive authority would be divided between PNU and ODM.
 - ✓ Mwai Kibaki was to retain the presidency while Raila Odinga would become the prime Minister
 - ✓ Two Deputy Prime Minister positions would be created to be filled by PNU and ODM
 - ✓ Divisions of an expanded list of cabinet posts would be according to the party's proportional representation in parliament.
- 31. State three characteristics of a good constitution**
- ✓ It should have a clear procedure of amending it
 - ✓ It should be one that responds to any changes in the state
 - ✓ Should protect the rights and freedoms of the citizens
 - ✓ Should not be easy to tamper with
 - ✓ It should be clear / definite / not ambiguous
 - ✓ It should be comprehensive
- 32. Explain six advantages that Kenya enjoys from a written constitution**
- ✓ Kenya's constitution is readily available for reference
 - ✓ It has well defined procedures of amending it.
 - ✓ Kenyan constitution cannot be easily interfered with by those in power
 - ✓ It helps to protect the rights of the minority, marginalized and people with disability
 - ✓ It has promoted National unity
 - ✓ It is accepted by majority of the people
 - ✓ It is clear and addresses issues in Kenya in a definite manner
- 33. Identify five requirements in the constitution making process.**
- ✓ Provision of civic education.
 - ✓ Collecting views from the public.
 - ✓ Drafting the constitution.
 - ✓ The draft constitution is published for the public.
 - ✓ The review commission holds public hearing in all areas for further recommendations.
 - ✓ Convening of a national constitutional conference to amend or reject the recommendations.
 - ✓ They agreed upon issues are re-drafted and presented to the Attorney General by review commission.
 - ✓ If certain issues are rejected at the conference the commission organizes a referendum for the public to vote.
 - ✓ The Attorney General publishes the draft constitution in form of a bill.
 - ✓ It is introduced in parliament for enactment.
- 34. State the main reason why the Second Lancaster House Conference was held in 1962**

- ✓ To come up with the constitution for independent Kenya / To draw up the independence constitution
- 35. What constitutional amendment made Kenya to return to a multiparty state**
 - ✓ Repeal of section 2A of the Kenyan constitution in 1991
- 36. State any two features of the new constitution of Kenya from its inception in 2010**
 - ✓ Sovereignty of the people and supremacy of the constitution
 - ✓ Republic -Kenya is a sovereign republic
 - ✓ Citizenship-Every citizen is entitled to privileges and benefits of citizenship
 - ✓ Land and environment -Land belongs to the people of Kenya collectively as a nation, communities and as individuals
 - ✓ Leadership and integrity
 - ✓ Representation of the people
 - ✓ Legislation-National Assembly and senate
 - ✓ Executive
 - ✓ Judiciary
 - ✓ Devolved government
 - ✓ Public finance
 - ✓ Public service
 - ✓ National security
 - ✓ Commissions and independent offices
 - ✓ Amendment of the constitution
 - ✓ Transitional and consequential provisions
 - ✓ General provisions
- 37. What is the meaning of the term 'National referendum'?**
 - ✓ This is a form election which sought to find public view on a particular national issue e.g the New Constitution
- 38. Give three sources of Kenyan law.**
 - ✓ African traditions and customary law e.g for marriage
 - ✓ Religious e.g the laws used in kadhi's courts
 - ✓ Common law originating from England which is the most commonly applied in Kenya courts
 - ✓ Statutory law, legislated through Acts of Parliament
 - ✓ Judicial precedents e.g rulings of the court of Appeal
 - ✓ They Kenya constitutions which contains the fundamental law of the land.
- 39. Name the type of constitution used in Kenya.**
 - ✓ Written constitution
- 40. State the main reasons for post-election violence in Kenya by the end of 2007.**
 - ✓ Dispute presidential election results often the general elections
- 41. Identify types of constitution.**
 - ✓ Written.
 - ✓ Unwritten
- 42. When was the new constitution of Kenya promulgated?**
 - ✓ 27th August 2010
- 43. State the main constitutional amendment that was made in 2010**
 - ✓ Promulgation of the new constitution
- 44. Suggest ways in which the new constitution has promoted democracy**
 - ✓ All presidential appointments must be approved by the parliament

- ✓ All appointments within government institutions must not be of the same gender
 - ✓ Minorities/marginalized /youth have been considered in the new constitution
 - ✓ There is an establishment of a bi-cameral legislature to check the executive.
 - ✓ There is an establishment of the Supreme Court to fair presidential disputes election results /matters pertaining to state affairs.
 - ✓ Members of parliament can be recalled even before election for non-performance.
 - ✓ There is establishment of independence of the judiciary
- 45. The process through which the citizens of Kenya would vote to either accept or reject a proposed constitution.**
- ✓ Referendum.
- 46. Identify two bottlenecks in the implementation of the new constitution.**
- ✓ Lack of political will among the people in power
 - ✓ Individual interests and how they can benefit from it/selfishness among politician
 - ✓ Different interpretations and lack of understanding of the constitution
 - ✓ The time factor as they compete time
 - ✓ The Kibaki succession and the intended general election
 - ✓ Fear among politicians if it is fully implemented
 - ✓ Inadequate finance to carry out the implementation
- 47. Give three external factors which influenced constitutional changes in Kenya between 1992 and 2002.**
- ✓ Adoption of multi-partism by some African countries like Zambia, Togo and Mali.
 - ✓ The decline of the cold war.
 - ✓ The collapse of the Berlin wall.
 - ✓ The collapse of the Soviet Union.
 - ✓ Donor conditions from World bank, International Monetary Fund (I.M.F), Britain
 - ✓ and U.S.A.
- 48. What is the meaning of the term 'promulgation' of the Kenyan constitution?**
- ✓ This is where a new constitution is presented to the people by the head of state (president), who declares it to be the new law that will govern the state.
- 49. Name two documents that contained the Bill of rights in colonial Kenya**
- ✓ Magna carta
 - ✓ Petition of Rights (1629)
 - ✓ Habeas Corpus (1699)
 - ✓ Declaration of rights of states
 - ✓ Acts of settlement
 - ✓ Independence constitution of Kenya (1963)
- 50. Explain five reasons why various stake holders are involved in constitutional making in Kenya**
- ✓ To give Kenyans a chance to participate in its making.
 - ✓ To ensure that the constitution is accepted by all.
 - ✓ To ensure that the process accommodates, social economic and political differences.
 - ✓ Stake holders would be accountable to the people of Kenya.
 - ✓ To ensure that the government does not manipulate and control the constitutional making process.

51. Outline two provisions of the independent constitution of Kenya.

- ✓ Provided for the establishment of a federal government
- ✓ It spelt out that the party with majority forms the government/multi-party.
- ✓ It provided position of prime minister as the head of the government.
- ✓ Spelt out the rights and obligations of individuals/bill of rights.
- ✓ Provided for a national assembly consisting of the senate and house of representatives – (Bicameral parliament).
- ✓ It divided responsibilities between regional governments and the central government.
- ✓ Established regional governments with regional assemblies and presidents.
- ✓ It spelt out the powers and responsibilities of Central government and regional government.

52. State five constitutional offices in Kenya.

- ✓ The Attorney general.
- ✓ The electoral commissioners.
- ✓ Governor of the central bank.
- ✓ Judges of the high court.
- ✓ The chief justice.
- ✓ The prosecutor of public prosecutions.
- ✓ Judges of the supreme court.

53. State three factors that determine the form of the constitution to be adopted by a particular country.

- ✓ The historical background of a country
- ✓ Geographical factors e.g. presence of Islands
- ✓ Religion beliefs of the people
- ✓ Racial compositions

54. State one constitutional provision on land ownership by foreigners in Kenya. (1mk)

- ✓ A non-citizen can only own land on the basis leasehold tenure.
- ✓ Foreigners can lease land for a period of 99 years but can be renewed.

55. Outline three changes to the Independence constitution in 1964.

- ✓ Regional assemblies were abolished
- ✓ Establishment of an executive presidency
- ✓ Kenya became a republic.
- ✓ Post of governor was abolished
- ✓ The Queen of England ceased to be the head of state in Kenya

56. State terms of constitutional reform of 1997

- ✓ The presidential terms were limited to two terms of five years each.
- ✓ Political parties were given mandate to nominate member to parliament or council depending on their party strength in the general election.
- ✓ KBC was mandated to give equally air wave to all political parties.
- ✓ The chief act was done away with / repeal.
- ✓ If a political party wanted to hold a rally was to inform the police in area rather than getting permit from the D.C

57. Give one factor which has influenced constitutional changes in Kenya

- ✓ Poor leadership.
- ✓ Lack of transparency in the Old constitution.
- ✓ Improvement of govt policies.
- ✓ Corruption.