

Kenyan constitution amendments thru time

<http://wildaboutafrica.wordpress.com/2010/07/13/kenyan-constitution-amendments-thru-time/>

This is how I fee, totally paralysed. Should we vote Red or green on Kenya's proposed new constitution?

Lest We Forget, Dr MAKODINGO has attempted a historical review. Hope it helps...

## **Origin of Kenya**

The territory now known as Kenya came into existence on 12<sup>th</sup> December 1897 as a protectorate of the British Monarch. The people were put under the political and military patronage of the Queen of England.

In 1920, Kenya was made a British Colony, the territory becoming part of the British Empire.

Imposition of colonial order was achieved through military force, introduction of a new faith, use of English law in place of African Customary laws and the imposition of an economic order that was intended to create wealth for the colonial settlers. Existing constitutional orders of the African communities were destroyed.

An administrative system of Chiefs, Dos, DCs and PCs were created to enforce the colonial order.

This oppressive system was vehemently opposed by the African peoples. Three factors combined to accelerate and bring about the desired changes under the colonial order: Resistance by local communities, Weakening of the British Empire by the cost of World War II, and the increased climate for self-determination and respect for human rights.

## **Constitutional Landmarks to Independence:**

### **1954: The Littleton Constitution.**

§ Named after the then Colonial Secretary, Sir Littleton

§ This was the first Multiracial Constitution

§ Established a Council of Ministers of 12

§ 6 were to be appointed by the Governor

§ 6 Elected: 3 Europeans, 2 Asians and 1 African.

o The African representatives rejected these arrangements.

### **1958: Lenox-Boyd Constitution**

§ Increased the Council of Ministers to 16

§ Half elected, and half Appointed.

§ Europeans were still the majority.

§ Redistribution of Land, release of political prisoners and Repeal of repressive laws not addressed

§ Demand for full independence was in the air

§ Africans demanded for a Constitutional Conference to negotiate for Independence.

### **1960: Macleod Constitution**

§ A product of Lancaster I in 1960

§ Provided for a majority of Africans in LEGCO( of 65 Members) and Council of Ministers

§ Provided for Independence

§ Alluded to self-internal government.

### **1961: First Multiracial Election**

§ Held in February 1961

§ KANU won the polls but refused to form Government demanding the release of Kenyatta as a precondition

§ KADU, the opposition formed government

### **1962: Lancaster II**

§ Resulted into internal self-rule

§ Queen still had control over Legislature, defence, Internal security and Foreign Affairs

§ Majimbo present

### **1963: Constitution passed as an Act of British Parliament in April and became Law May 31<sup>st</sup> 1963.**

§ Fully Bicameral Parliament with 131 House of Representatives and 41 Senators

§ Cabinet headed by PM

§ First internal government took office on June 1<sup>st</sup> 1963

§ Marked the first Madaraka Day

§ Later, Lancaster III was held

§ In December the Country became Independent as a Dominion but not a republic

§ The Queen was still the Head of State, and PM Kenyatta Head of Government

### **1964: Independent Parliament amended the Constitution to make Kenya a Republic**

§ Majimbo system heavily eroded

§ Concentration of power in the presidency began

§ Created the basis of a single-party system

Between 1964 and 1991, successive amendments sought and did achieve to recreate the Colonial Order in Kenya, only this time, a Kenyan was the Monarch.

Note that even after independence;

§ Colonial repressive laws remained unchanged

§ Colonial Administrative system remained intact

§ The political system became a wealth-creating system for the elite through corruption.

Between the short period covering 1963 and 1991, the Kenya Constitution was amended several times. These include:

### **1. The Constitution of Kenya (Amendment) Act No 28 of 1964**

§ Made Kenya a Republic

§ Created office of the President and made him both Head of State and Government

§ President elected by House of representatives constituted as Electoral college

§ Executive Authority of Jimbos highly watered down

§ Modified provisions for Citizenship and local authorities

### **2. The Constitution of Kenya (Amendment) (No 2) Act No 38 of 1964**

§ Transferred to Parliament powers to alter regional boundaries. Originally the power of the regions

§ Independent sources of revenue to regions stopped making them entirely dependent on Central Government

§ Regional Presidents designated Chairmen

§ Appointing authority of Judges given absolutely the President's. Requirement for consultation with at least 4 Regional presidents before appointing CJ removed

§ Ex-Officio MPs lose their votes in NA

### **3. The Constitution of Kenya (Amendment) Act No 14 of 1965**

§ Constitution amendment threshold reduced from 90% to 65% in Senate and 75% to 65%

§ Executive power of regions deleted completely

§ Abolished appeals to privy councils; Supreme Court replaced with High Court

§ Approval of Emergency increased from 7 to 21 days and threshold reduced to simple majority from 65%

§ Removed provisions concerning control of Agricultural land transactions from the Constitution

#### **4. The Constitution of Kenya (Amendment) Act No 16 of 1966**

§ Required MPs who had not attended NA for over 8 sittings or imprisoned for over 6 months to lose their seats ( Many KANU rebels were not going to NA) and some had joined KPU

§ Minister in charge of citizenship given discretion to grant Citizenship to Commonwealth citizens residing in Kenya for over 6 months

§ Increased powers to rule by decree in NEP

§ National Youth Service included in disciplined forces.

#### **5. The Constitution of Kenya (Amendment) (No 2) Act No 17 of 1966/Turn Coat Rule**

§ Required for an MP to seek re-election at the end of the session of his defection

§ Meant to deal with Odinga and Co who had left KANU for KPU without resigning their seats. Odinga and Kenyatta's wars started in earnest.

#### **6. The Constitution of Kenya (Amendment) (No 3) Act No 18 of 1966**

§ Period of NA review of Emergency orders increased from 2 to 8 months

§ Greater and wider derogations of Fundamental right and freedoms permitted. Removed the provision calling for reasonable justification for such derogations

§ Meant to allow for detention of recently defected KPU leaders

#### **7. The Constitution of Kenya (Amendment) (No 4) Act No 19 of 1966**

§ Both houses amalgamated to form on National Assembly

§ Increased constituencies by 41 to accommodate Senate MPs

§ Quorum of NA fixed at 30

§ Speaker of NA made Chair of ECK assisted by two Presidential appointees

§ References to Senate deleted and life of NA extended to end in June 1970 instead of 1968

#### **8. The Constitution of Kenya (Amendment) Act No 4 of 1967**

§ Meant to clear doubt over Section 42A (Turn Coat Rule)

§ Backdated the effect of the Fifth Amendment to 1963.

§ KPU members argued that the amendment came after they had decamped

§

**9. The Constitution of Kenya (Amendment) Act No 16 of 1968**

§ Abolished Provincial Councils and deleted from the constitution any references to the provincial and district boundaries and alterations thereof

**10. The Constitution of Kenya (Amendment) (No 2) Act No 16 of 1968**

§ Election of President made to be by Universal Suffrage

§ Every party required to nominate a Presidential Candidate

§ Ballot paper made to pair President and MP from same party

§ Independent candidates barred from contesting

§ Qualifications for presidency introduced

§ President empowered to appoint members of PSC and nominate 12 MPs

§ Altered provisions of presidential succession and removed parliamentary approval for state of emergency declaration

**11. The Constitution of Kenya (Amendment) Act No 5 of 1969**

§ Consolidated all the Constitutional amendments as at February 1969 thereby resulting in a revised Constitution for Kenya in one document which was declared to be the authentic document

§ Membership of ECK altered by making all members appointed by the President

**12. The Constitution of Kenya (Amendment) Act No 10 of 1974**

§ Reduced the age of voting from 21 to 18

**13. The Constitution of Kenya (Amendment) Act No 5 of 1974**

§ Made Kiswahili one of the official languages of the National Assembly

**14. The Constitution of Kenya (Amendment) Act No 1 of 1975**

§ Repealed Constitution of Kenya (Amendment) No 2 of 1974

§ Provided that all financial resolutions and written laws be presented to the House shall be written in English, and all other issues would be debated in Kiswahili

§ Extended the Presidential prerogative to include annulling disqualifications arising out of a ruling of the Elections Court – Ngei Amendment (meant to benefit Ngei)

**15. The Constitution of Kenya (Amendment) Act No 13 of 1977**

§ Established the Court of Appeal

§ Abolished the right to directly remit compensation for acquisition of property abroad without complying with foreign exchange regulations

**16. The Constitution of Kenya (Amendment) Act No 1 of 1979**

§ Provided for use of English as an alternative Parliamentary language

§ Proficiency in Kiswahili made a prerequisite for qualification for people seeking parliamentary office

**17. The Constitution of Kenya (Amendment) Act No 5 of 1979**

§ Specified period within which a civil servant must resign to seek office

§ 6 months prior to preliminary elections

**18. The Constitution of Kenya (Amendment) Act No 7 of 1982**

§ Introduced Section 2A that changed Kenya from a *de facto* to *de jure* one party state making Kenya a one-party state by Law

§ Turn coat rule(Fifth Amendment) repealed

§ Definition of a Political Party deleted

§ Method of nominations for General Elections amended making them a preserve of KANU

**19. The Constitution of Kenya (Amendment) Act No 6 of 1986**

§ Repealed Section 89 which provided for automatic Citizenship for people born in Kenya after Dec 1963. Henceforth, either of your parents must be Kenyan

**20. The Constitution of Kenya (Amendment) Act No 14 of 1986**

§ removed Security of Tenure of AG and Auditor & Controller General

§ abolished office of Chief Secretary

§ provided for a new min 168 and max 188 Constituencies

**21. The Constitution of Kenya (Amendment) Act No 20 of 1987**

§ Made all Capital offences non-bailable

§ torture of Political prisoners entrenched in the Criminal Justice system

**22. The Constitution of Kenya (Amendment) Act No 8 of 1988**

§ Legalised detention of Capital offenders for 14 days without trial allowing for time to torture

§ Removed security of tenure of Constitutional office Holders

### **23. The Constitution of Kenya (Amendment) Act 1990**

§ Returned the Security of tenure of Constitutional office Holders

§ Provided for a max of 210 and min of 188 Constituencies

### **24. The Constitution of Kenya (Amendment) Act No 12 of 1991**

§ **Repealed Section 2A of the Constitution hence ending the *de jure* one-party rule in Kenya**

§ **The Turn Coat Rule (Fifth Amendment) was reintroduced**

§ The nomination procedure leading to elections of the National Assembly and Presidency were amended to accommodate multi-partism

§ A definition of a political party was adopted.

The Amendments were meant to:

- Strengthening the Executive relative to the other arms of government
- Emasculating other arms of government
- Derogating fundamental human rights and civil liberties

Why the Amendments require Constitutional Review

- They have made the President more powerful than the King
- Led to manipulation of Legislature and Judiciary
- The Presidency controls distribution of national resources
- The people(Civil Society) have no say on [policy formulation and implementation
- Sycophancy and Corruption have been institutionalised
- Less protection of Human Rights
- Made it difficult for democracy to thrive
- Citizens are cowed by force of oppressive laws
- Elections are manipulated
- Tribalism and Ethnic animosity institutionalised i.e. through quota system

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Regards,

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“I’m not arrogant, just Smarter”