

The Constitution (Definition)

The word constitution is derived from a latin word *constitutus* which means “set up” or established. It therefore refers to a structure or document that forms a state. That which forms or constitutes something is the basis upon which it stands.

A constitution is an outline of basic principles that govern the nature, functions and limits of a group of people. It is the basic framework that determines the purpose of the group/country/state and the relationship between it and its members. It is the basis of a government’s powers and authority. It is the law that carries out its purposes, the court decisions that interpret its concepts and the administrative regulations that enforce its principles.

The first Kenyan Constitution was enacted on 12th December 1963 whereas the constitution for the new dispensation was enacted on 27th August 2010. Its in a written form. It provides a comprehensive frame-work of rules through which a country can operate. The constitution is therefore the single formal document which defines the composition and powers of different organs of the state.

Article 2 of our constitution provides that “it’s a constitution of the Republic of Kenya and shall have force of law throughout Kenya”. It is the Supreme Law.

“If any law is inconsistent with this constitution, this constitution shall prevail and the other law shall to the extent of the inconsistency be void. Our constitution is therefore a major and leading source of our laws”.

A constitution may be written or unwritten. A written constitution is one which most of the important provisions are enacted in a forms document.

Kenya’s current constitution promulgated on 27th August 2010 is a written constitution. It provides for a rigorous approach to amendments at Chapter 16. This is meant to guard against arbitrary and uncalled for amendments.

The current constitution has a total of 18 Chapters, 264 Articles and 6 Schedules. It establishes the legislature (Chaps 8), the Executive (Chapt 9) the Judiciary (Chapter 10) and fundamental rights & freedom.

Lord James Bryce defines the constitution as constituting of those rules of laws which determines the form of its government and the respective roles of its organs and the respect rights and duties a citizen and a citizen towards the Government.

K.C Wheare states that a constitution is the whole system of government of a country.

We can also say that a constitution is a set of fundamental principles or established precedents according to which a state or other organizations are governed. These rules together make up or constitute what the entity is. When these principles are written down into a single collection or set of legal documents those documents may be said to comprise a written constitution.

Constitutions concern different levels of organizations. A treaty which establishes an international organization is its constitution in that it would define law that organization is constituted. A constitution defines the principles upon which the state is based. It also provides the procedure in which laws are made and by whom, some constitutions, especially written constitutions also act as limiters of state power by establishing lines which the state rulers cannot cross e.g fundamental rights.