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## **‘It’s now or never’ for new constitution**

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**By Saturday Standard Team**

*Prof Yash Pal Ghai, the respected legal mind that chaired the Bomas review talks and saw his product torn to pieces by politicians before eventual defeat in the 2005 referendum, says it is now or never.*

Ghai’s counsel is a one liner – the time to give Kenyans a new constitution is now or never.

Reason? "Every constitution making process almost always comes at a critical moment for a country and this is it for Kenya," said the man who has overseen such reviews in countries scarred by conflict such as Nepal, Afghanistan, East Timor, Uganda and Eritrea.

In times of peace, Ghai said, people do not see the need for a new constitution. The search for one is seen as an enormous and expensive exercise that is not a priority. People ask whether there is really a good reason to pursue it.

"When the crisis has been so deep the international community virtually moves in and takes over the country, that is a deep enough problem to convince a nation to revise its constitution. That is what happened in Cambodia, East Timor, Afghanistan and Nepal," the legal scholar said.

Ghai spoke as Electoral Commission chairman Samuel Kivuitu, who presided over a flawed election that nearly took Kenya to civil war, turned up at the Kriegler Commission.

He pointed an accusing finger at politicians before the judicial team probing the conduct of the disputed elections last year. Kivuitu discouraged rushed overhaul of the electoral body.

ECK is the target of reforms to shield it against manipulation but Kivuitu said not a word on the pressures and interferences from the Party of National Unity and ODM-Kenya, which he talked of in December, when he

conceded he was neither in control nor privy to some of the things that were taking place as the nation's impatience soared. Nonetheless he accused politicians of dishonesty and bribery. Some questions

Kivuitu's push for gradual reforms of ECK, and Ghai's subtle advice of piecemeal reforms could, just as the Law Society of Kenya proposed last week, be the easiest way to achieve the dream that has eluded Kenya for two decades.

But this triggers the questions:

**\*Is Kenya ready for a new constitutional referendum as it still nurses the wounds of the disputed elections?**

**\*Is President Kibaki, whose 'imperial' powers are target of review ready to be in a weakened office in the middle of his last term?**

**\*Is Prime Minister Raila Odinga prepared for the prospect a new constitution could mean death of the National Reconciliation Accord?**

**\*What will be Raila's fate if the accord collapses with his office and that of his two deputies Musalia Mudavadi and Uhuru Kenyatta?**

**\*What would it mean for Kibaki's and Raila's legacies if they fail to unite the country the way they did ahead of the signing of the peace accord on February 28?**

**\*What guarantees are there, that once again the review as agreed in the Annan Deal, won't be hamstrung, not by its wholeness, but disagreements on one-liners, say, on religion, devolution, President's and PM's powers and even size of Cabinet?**

**\*If all fails would the Kivuitu team, discredited as it is, but cushioned by security of tenure, supervise 2012 General Election?**

**\*If it is bound to flop, is Kenya ready to push another several billions, in the thick of a world economic crisis, into the sinkhole?**

**\*Would the nation hold if the new bid flops, or will Kenya's so-called 'Eastern' and 'Western' blocs, as loosely defined in the loyalty to Banana and Orange, as well as PNU and ODM, grind at each other on the fault-lines?**

**\*If the political leadership fails to smoothen the way and the dream dies, how will Kenyans who, for two decades, have yearned for a new constitution take it?**

**What will it mean for the health of the nation? Will it spur ethnic hostilities that always seem to lie beneath the veneer of one nation, one people?**

**The questions could be hard, but harder will be the exercise of transacting the exercise without losing either of Kenya's two main political blocs.**

**Last week Justice minister Martha Karua tabled the two Bills spelling out the road map for the review. The Annan deal anticipated a new constitution within one year, but the process is behind schedule, and anxiety is rising.**

**But it could come to zero if it is marred in divisiveness and suspicions that undermined the formation of the Grand Coalition Cabinet.**

**Either way, it is a race against time, and as Prof Ghai says, this is the best season to plant if we want a bountiful harvest. But booby-traps seem strewn across the farms, yet the farmer smells famine ahead.**

**Meanwhile, one look at Ghai and Kivuitu is a reminder of the nation's cry for a new constitution, no matter the hurdles that could be erected by political exigencies and rivalries and ethnic suspicions.**