



Why BBI Will Not Promote Peace or Prevent Violence

By Patrick K. Mbugua



President Uhuru Kenyatta has touted the Building Bridges Initiative (BBI) report as the panacea for peace that will end political and/or election-related violence in Kenya. Mr. Kenyatta has not given Kenyans his definition or understanding of peace, but his lines of argument affirm his minimalist understanding of peace or what peace studies (PS) call negative peace. Students of peace studies caricature this concept of peace as akin to peace between the proverbial happy slave and the slave master.

Overall, Mr. Kenyatta's arguments on peace and political violence in Kenya are based on flawed premises, among them a very naïve essentialist view of ethnicity, and a tunnel vision of Kenya's social divides. But that is a topic for another day. Rather, this commentary aims to assess whether BBI is a panacea for peace and whether it can prevent political and/or election-related violence in the future. I will comment on the BBI process and analyse who perpetrated the past political violence and why, and then evaluate BBI's response to that political violence. The article will end with a comment on an observed and horrifying pattern of current events that negates BBI's proclaimed intentions.

Exclusive process

A core dictum in peace studies, which originates from Mahatma Gandhi's moral philosophy, is the unity of processes and ends. The dictum posits that the process that is used to engender social change should be consistent with the goal. This means that if the end goal is inclusion, then the process for attaining this goal should be inclusive because an exclusive process cannot attain inclusion.

The BBI process fails this test because it started as an exclusive and opaque process driven by two men, President Kenyatta and Mr. Raila Odinga. For example, out of the 14 members and 2 co-chairpersons who comprised the BBI task force, 9 were political affiliates of either Kenyatta or Odinga. Therefore, one can infer that the process was heavily skewed towards the interests of the two men and all the public hearings were just a ploy to rubber-stamp a predetermined outcome. We can discern this predetermined outcome from the BBI report's proposals on past political violence.

Sections on political violence

While the BBI report's proponents tout it as the solution to past political and election-related violence, neither the 2020 edition nor the 2019 draft mentions or analyses the causes of that violence. However, there are three sections that relate to the issue: i) The section on Ethnic Antagonism and Competition (pages 4-5); ii) the section on Divisive Elections (pages 9-12); and iii) the section on Kenya National Guide on Combating Impunity (pages 43-45) in Annex A. However, the latter section deals with disobedience of the law and court orders by senior civil servants and rich Kenyans; it does not address the nexus between impunity and political violence. Therefore, I will assess the other two sections.

The report refers to *ethnic antagonism and competition* as a "major threat to Kenya's success". It then proffers two solutions: inclusion of national unity, character, and cohesion in the school curriculum, and criminalisation of hate speech and of use of violence before and after elections.

Further, the report mentions *divisive elections*, but the section is baffling because it provides a very simplistic, almost sophomoric, comment on past elections in just two paragraphs on pages 9 and 10. It then blames "foreign models" adopted from "the democratic West" for engendering what it terms "Us versus Them" election competition, with "Us" and "Them" being based on ethnicity. It adds that "lack of inclusivity" is the "leading contributor to divisive and conflict-causing elections", and claims that Kenyans associate "the winner-takes-all system with divisive elections".

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From these cursory assertions, the section recommends the expansion of the Executive branch to comprise a president, a deputy president, a prime minister, and two deputy prime ministers as the solution. Supposedly, an expanded executive will be "more inclusive" and will not "generate the same bitterness and tensions as we see when the fight is for the position of the President". The surprising aspect is its reference to "the power-sharing model of the 2008 Coalition Government" as the standard.

The other paragraphs of the section on pages 10 and 12 do not deal with political violence. Rather, they deal with parliamentary representation and the introduction of Mixed-Member Proportional

Representation (MMP).

Reading these two sections is really perplexing. Who perpetrated the past political violence in 1992/93, 1997/98, and 2007/2008, and why? Did peasants die in the Rift Valley in 1992/93 and 1997/98 because the country had no prime minister? Did the rural subaltern wake up one day and attack each other because they were ethnically different? Did the rural and urban subalterns die in 2007/2008 because of the winner-take-all system?

Analytical approach

This article applies a peace studies framework to understanding how the form of violence that occurred in Kenya in the 1990s and 2007/2008 is organised. The framework postulates that the social construction of political violence is a discursive process that is based on five pillars. First, violence organisers discursively construct boundaries of exclusion using pre-existing markers such as ethnic, racial, cultural, linguistic, or religious identities. Second, they rally the common identity within the exclusion boundary around imminent “threats” or “dangers”. That is, they articulate threats and victimhood narratives within the constructed boundaries. Third, they target those outside the constructed boundary as the “threats” and the “enemy-other”, and they demonise and dehumanise them. Fourth, they discursively renegotiate norms of violence. And fifth, they suppress counter-hegemonic and anti-violence voices.

This social construction of violence requires moments of social uncertainty, especially political and economic crises. Using this framework, the pattern of violence in the 1990s was pretty straightforward.

Moments of uncertainty

Over the years during the Jomo Kenyatta and Daniel arap Moi regimes, Kenya became a full-blown autocracy where the party, government, and civil service essentially fused into a single hierarchical structure of power under the personal control of the president. The system was opaque and centralised around the personality of the president. As a result, political practice revolved around personalities and one-on-one closed-door dealings, instead of a predictable public stand on policy issues and coherent ideological positions. The system was a spiral pyramid of patron-client relations, with the president at the apex as the chief patron. Below the president were his clients at the provincial and district levels, who functioned as patrons in the regions.

The institutions of patronage were financed by grand corruption, and buttressed by top-down political tribalism in which regional clients claimed to speak for “unified” ethnic groups. The overall system functioned like a retail market in which political leaders dispensed money, opportunities, and “development” in exchange for blind loyalty. Some scholars have referred to this style of controlling a country as retail politics.

The system was reinforced by political intimidation and instruments of repression, including detention laws and political assassinations. Therefore, those who articulated and pursued alternative forms of organisation, especially social class mobilisation, were either intimidated, imprisoned on trumped-up charges, detained without trial, or assassinated.

When the struggle for multiparty democracy intensified in 1990/91, the Moi regime turned to these oppressive methods. Thus, the police violently repressed public protests in Nairobi and its environs, killing at least 50 young men. Some democracy proponents were detained, others run away into exile, and publications supporting pluralism were banned.

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However, the demand for democracy coincided with two factors. First, worsening economic performance and, thus, a decline in revenue and resources for buying loyalty. Second, a greater international concern over human rights violations, which limited the use of formal repression. The resultant political and economic crises created a moment of social uncertainty that shook the Moi regime. In turn, the regime changed its strategies for the looting of the state and enforcing informal forms of repression.

Organised political violence

The central plank of informal repression was unleashing “ethnic” militias and gangs on the innocent civilian population. At first, a group of senior government ministers and KANU politicians would hold a series of public rallies in certain geographical locations, especially in the Rift Valley. The dominant message in these rallies would be hate narratives centred on nativist thinking and autochthonous notions of identity. The narratives would disparage national citizenship and its accompanying rights and instead divide the population into two groups: natives (indigenous or locals) and guests (settlers, immigrants or outsiders). Framing the latter as threats, they would demonise and dehumanise the “guests” as the “enemy-others”. Then they would threaten violence against them. To suppress anti-violence voices, they would label natives who rejected such violence as “ethnic traitors”.

Subsequently, armed militias would attack the innocent civilian population. In some instances, the militias would be dressed in “traditional clothes” and would be carrying “traditional weapons” to disguise the killings as ethnic. Thereafter, government officials, the police, and the pliant media would portray the killings as spontaneous “ethnic clashes” or “land clashes”.

To reinforce the “ethnic clashes” narrative, President Moi would appear in public in a foul mood and accompanied by the same politicians who had organised the violence. He would lecture Kenyans about peace, portray the country as an island of peace in a region of anarchy, claim credit for that peace, and then blame the opposition and the victims. A few days later, an opposition politician or activist would be arrested. This was the pattern in the 1992/93 and the 1997/98 violence.

Therefore, Uhuru Kenyatta and his BBI brigade are dead wrong. The 1990s violence was not ethnic or “tribal”; it was not about ethnicity or cultural or linguistic differences. Rather, it was politically organised and the villains were senior politicians and bureaucrats in the Moi regime. Incidentally, the chairman of the BBI process, Mr. Mohamed Yusuf Haji, was the Rift Valley Provincial Commissioner at the time, while another BBI member, Mr. Amos Wako, was the Attorney-General. Further, the impunity enjoyed by the implicated politicians partly contributed to the violence of 2007/08.

Actually, studies on the 2007/08 violence have noted that President Mwai Kibaki’s biggest failure was his inability to dismantle the structures of informal violence, and their supporting discursive practices, which emerged in the 1990s. Instead, these structures of extra-state violence diffused during the NARC era such that by 2007, politicians were patronising and funding urban gangs that had emerged as a result of autonomous processes of urbanisation, unemployment, and the vacuum of control in urban areas. A key consequence of this impunity was the erosion of confidence and trust in state institutions, especially security and electoral institutions. It is this mistrust that predisposed politicians and their supporters to view elections as a do-or-die zero-sum game.

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In other words, the 2007 election turned disastrous due to the convergence of several factors. Among these was President Kibaki’s failure to address impunity and the discursive practices of the 1990s. Another factor was the intensification of ethnic mobilisation and the generation of new hate narratives by all political formations.

Studies show that vernacular FM radio stations were some of the main propagators of the hate campaigns. For example, a Rift Valley-based vernacular FM station aired materials of a xenophobic nature against the Kikuyu, while FM stations from Central Kenya promoted a siege mentality and disparaged members of the Luo and Kalenjin communities. Studies have also documented some Central Kenya FM radio stations framing one presidential candidate as a murderer and a latter-day Idi Amin Dada.

In essence, therefore, the so-called “tribal violence” and “tribal divisions” are not a reflection of conflicts between distinct and well-organised cultural communities. Rather, they are outcomes of deliberately organised political violence. Indeed, there are reliable reports that have recommendations on these issues, including the Truth Justice and Reconciliation Commission (TJRC) report, the Waki report, and the Kriegler report. Similarly, the 2010 Constitution established several independent institutions to address these issues. It’s quite revealing that Mr. Kenyatta chose the BBI instead of implementing these reports or strengthening the existing independent institutions, including the National Cohesion and Integration Commission (NCIC).

Not a peace document

Even though its proponents have hailed the BBI report as being the pathway to peace, it is evident that there is no linkage between the report’s recommendations and the quest for peace and an end to political violence in Kenya. The section on *divisive elections* proposes an expanded executive and cites the power-sharing model of the 2008 Coalition Government as the reference point. Yet that model was extremely shaky and the prime minister was always complaining.

However, this proposal is horrifying for more fundamental reasons. First, it does not address state-orchestrated violence and impunity that have been the bane of Kenya’s politics since 1990.

Second, nothing in the proposals nor the entire BBI report would stop the losing candidates from perpetrating violence.

Third, the report assumes good faith on the part of the appointing authority and presumes that the president, deputy president, prime minister, and deputy prime ministers will come from different ethnic groups. But good faith cannot be legislated, as President Kenyatta has demonstrated through his multiple actions and omissions that have violated the 2010 Constitution, and his contemptuous disregard of the current Deputy President, William Ruto, since 2018.

Fourth, the proposed expansion of the Executive is perilous as it will validate and reify ethnic boundaries because ethnicity is the assumed basis for allocating the added executive positions. A key lesson from the 2008-2013 era is that the key players in the coalition government became the chief proponents of ethnic mobilisation, hate speech, and impunity in both the 2013 and 2017 elections.

Fifth, the proposal to appoint ANY of the MPs from the majority party or coalition of parties to be prime minister and any other persons as deputy prime ministers is a recipe for factional fighting because it undermines the authority of political parties to choose their own representatives.

Sixth, the proposed structure will perpetuate the current patron-client system and codify the president's ability to entrench patrimonial and clientelist rule. Indeed, it echoes the late Mobutu Sese Seko's strategy in Zaire of co-opting would-be opponents, letting them feed at the state trough, rotating them in and out of office, and encouraging them to become wealthy through corruption to neutralise them. But as the collapse of Mobutu's Zaire shows, such a strategy does not foster durable peace.

The section on *ethnic antagonism and competition* proposes the inclusion of national unity, character, and cohesion in the school curriculum. But it is baffling how this will stop impunity, top-down political tribalism, or stop the clients of a president from perpetrating violence when it suits them.

Also, the section recommends criminalisation of hate speech and of the use of violence before and after elections. This is equally bizarre because both hate speech and the use of violence during elections are already criminal under current laws. However, hate speech and threats of violence remain rampant in the country primarily due to impunity and selective application of the law. Indeed, there is a horrifying pattern of political practice that outrightly negates BBI's proclaimed intentions.

Current observations

Keen observation of current events shows that President Uhuru Kenyatta is using the 1990s playbook. His handshake rapprochement with Raila Odinga split his Jubilee Party into two wings. Since then, his Jubilee wing has been consistently articulating threats and narratives of victimhood. They are always demonising and dehumanising the targeted "enemy-other". They are subtly and discursively renegotiating the norms of violence, and they are blatant in their attempts to suppress alternative voices.

Kenyatta's Jubilee wing, its Orange Democratic Movement (ODM) handshake partners and its social media bloggers are the most militant hatemongers in Kenya today. Further, politicians and state bureaucrats close to the president have been identified as the planners and financiers of incidents of political violence that have been witnessed in different locations this year. One can infer that the failure of the police and the NCIC to hold any of them to account is a dead giveaway.

Meanwhile, the president is always lecturing Kenyans about peace, praising the handshake as a precursor to peace, and accusing others of threatening peace. Four examples centred on Kenyatta and the interior ministry will illustrate these observations.

Example 1

On 29 October 2020, *The Standard* and *The Star* quoted Kenyatta's self-styled adviser and Jubilee Vice Chairman, David Murathe, criticising the Deputy President, William Ruto. Referring to Ruto as an "outsider" in the Mt Kenya region, he accused the deputy president of radicalising the youth in the region using the rich-poor narrative and compared the narrative to the re-invention of the outlawed Mungiki sect. Murathe's argumentation strategy was not just articulating threats and victimhood and demonising Ruto and those who support him; he was subtly raising and justifying the spectre of state violence against the deputy president's supporters the way previous administrations dealt with Mungiki adherents.

Example 2

On 21 October 2020, the *Daily Nation* quoted Uhuru Kenyatta rebuking the Abagusii people for not protecting their “son”, Interior Cabinet Secretary Fred Matiang’i, from insults by “outsiders”. His argumentation strategy was in reality articulating four things. First, he was constructing a boundary of exclusion around ethnic identity by classifying the population into “locals” and “outsiders”. Second, he was articulating a victimhood narrative that was portraying Matiang’I, and to an extent the “locals”, as victims of those he was demonising as “outsiders”. Third, he was privileging ethnic identity and diminishing national identity. And fourth, he was renegotiating the norms of violence so that the “locals” would use “defence of their son” as their justification if violence erupted.

Example 3

On 13 October 2020, the media quoted Fred Matiang’i speaking in Nyamira, which he called his “home”. In his speech, he admonished “outsiders”. While his remarks were directed at Deputy President William Ruto, he, in essence, sought to emphasise the Kisii ethnic identity over Kenyan national identity, erect a boundary of exclusion around the ethnic identity, and portray “locals” who supported those he was calling “outsiders” as ethnic traitors.

Example 4

On 4 October 2020, a group of hired youth attempted to violently disrupt a church function graced by the deputy president at Kenol in Murang’a. Instead of arresting the youth, the police violently dispersed the locals and fired tear gas canisters at innocent civilians in the church. The few violent youths whom the local people arrested confessed in front of cameras that they had been hired by well-known Kieleweke politicians from Murang’a. Further, the organisers of the event publicly claimed that some bureaucrats from the Office of the President financed the perpetrators.

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While the media framed the violence as a “clash between two rival groups” to create the impression of spontaneity, the police initially blamed two MPs who are not favoured by the regime. A few days later, the National Security Advisory Council (NSAC), comprising the same bureaucrats who had been mentioned as the financiers of the violence, lectured Kenyans about the government’s commitment to peace and security. The NSAC then blamed the deputy president’s political wing and revived the discarded Public Order Act to curtail his activities.

Subsequently, the police blamed politicians from “both sides”, but they never explained why no one was arrested or why the NCIC had not acted. Incidentally, a careful reading of Article 7 (1) (a) of the Rome Statute shows that the violence in Murang’a had all the elements of what would qualify as a crime against humanity.

Conclusion

The BBI report is not a document for ending political and/or election-related violence or building durable peace in Kenya. The relevant sections ignore the causes and consequences of past political violence. Instead, the report invents “*ethnic antagonism and competition*” and “*divisive elections*” as

challenges and hastily jumps to the expansion of the Executive as the solution. Therefore, the only inference that one can draw is that the purpose of the BBI process is to recommend the expansion of the Executive.

Moreover, there is a pattern that shows that the president and his acolytes have borrowed from the 1990s playbook on politically-instigated violence. But they would do well to remember that the widespread use of informal violence, massacres, new wars, and genocides in the 1990s led to the development of international norms, standards, and instruments to deal with these challenges. These norms and standards include those codified in the Rome Statute, whose institutional representation is the International Criminal Court (ICC). Therefore, under the command responsibility principle, the president, senior officials in the interior ministry and state security forces can be held to account for crimes under international law that could result from their court jesters' hate-mongering and informal violence mobilisation.

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