



BBI II: The Making of an Imperial Presidency

By Dauti Kahura



The day after “Super Tuesday” — 23 February 2021 — when the BBI constitutional amendment bill achieved the minimum 24 counties needed to call for a referendum, I was at the famous Gikomba Market by 7 a.m. and as usual, the day’s business had already started well before the break of dawn. But a lot has changed at the market in recent times: the coronavirus pandemic has gravely affected the flow of business, the economic downturn that started in 2018 has hurt many traders and the midnight fires have returned.

“Those fires are set by arsonists,” said one of traders that I had gone to see. “They are meant to drive us out from this area, but we’ve been resilient because we’ve refused to give up the land and business.” The last fire that completely gutted the traders’ goods was on 25 June 2020. Two days later, just after the traders had finished rebuilding their semi-permanent structures that are constructed with timber and iron sheets, they were “welcomed very early morning by rumbling bulldozers and the National Youth Service (NYS) brigade that supervised the destruction of the newly-built structures,” said the traders.

“The director-general of Nairobi Metropolitan Services (NMS) Mohamed Badi (nicknamed Saddam Hussein) had ordered the demolition. It was clearly evident our endurance was getting on the nerves of powerful forces in the government. For the longest time, we’d always suspected that a powerful politician has been eyeing the piece of land that the main market sits on. Now he was determined to drive us out of this area,” said the traders. An L-shaped high stonewall fence had since been erected

to curve out the coveted piece of land.

I had gone to Gikomba to find out from the traders what they thought of the second BBI report — now that it had been passed by the Members of County Assemblies — and its various recommendations and findings. Some of the traders had actually taken the trouble to read sections of the PDF version that had been circulated around. “Look at what happened to us in the midst of COVID-19. Some of the people who have been planning to grab the market are the same people selling us a poisoned chalice. Who do they take us to be? Tell us, how do you claim to be building bridges by destroying people’s livelihoods?” exclaimed the traders.

In November 2020, a fierce fire gutted half of the remaining Ngara open-air market in downtown Nairobi. “I got a call past midnight on the morning of a Monday and was told the market was fire,” said Kihara, 22-year veteran of the market. “By the time I arrived at the market in the dead of the night, the fire had burnt all my goods.” The traders had to start all over again. In 2017, 17 acres of the market were forcefully fenced off with a high perimeter stone wall, displacing hundreds of traders. “That land was grabbed by a relative of the most powerful political family in this country,” alleged Kihara, “and you dare talk to me about BBI.”

The Gikomba and Ngara traders said BBI was about one thing only: “Uhuru’s plan to hold onto presidential power. For him to do that, he had to rope in Raila Odinga and lie to him that this time round he would make him king. Our businesses, which are our sole livelihoods, have been destroyed several times, Uhuru has mortgaged the country and his government is made up of thieves. Instead of him dealing with the urgent matter, that of resuscitating the economy, he’s been plotting how to stay on.”

“The MCAs may have passed the bill and we know why they passed it - I mean, what was expected of them after the car grant deal?” asked Gilbert Kanyi, a 71-year-old trader and one of the pioneers of Ngara Market. “We’ll be waiting for them. Is 2022 an eternity? The MCAs have just kissed their political ambitions bye bye. In central Kenya, where I come from, we’ll not be re-electing them. Let them enjoy their goodies while they can.”

Soon after the central Kenya MCAs passed the bill, an MCA from Nyeri stopped at Sagana town to catch a drink. No sooner had he sat down than patrons who recognised him accosted him. They took all their bills and dumped them on his table and walked away: “You recently received a bonus, pay those bills!” It was a harbinger of what the MCAs, at least in central Kenya, will be facing in the coming 16 months. They are marked men; they will hardly be able to move around without being constantly taunted by the electorate.

“We didn’t vote for the bill because we liked it. It is because we were arm-twisted and blackmailed and even threatened with being hauled to court,” a central Kenya MCA told me. “You know many of the county tenders are given to MCAs; corruption, scandals and cutting corners are never far from an MCA. We had to toe the line.” The MCA said governors supervised the voting procedure. Apart from the promise of a car grant, it is alleged that each MCA received a “sitting allowance” of KSh200,000.

The traders said if the referendum is held, they will troop to the booths early to defeat it. The *mitumba* (second-hand clothes) businessmen said that Kikuyus were not talking much. “They are quiet because they’re decided on what to do: reject BBI. How many votes do the MCAs have? Will they also bribe all of us to vote for it?”

In the lead up to the 2017 presidential elections, both Gikomba and Ngara were the bastions of Jubilee Party support, and more so its candidate Uhuru Kenyatta. Scarcely three years after

President Uhuru made his supporters go to the polls twice in 80 days (August 8 and October 26, 2020), the mere mention of President Uhuru in a conversation among the traders oftentimes leads to heated debates and near fist fights. “We’ve said in this market [Gikomba] we don’t want Uhuru’s name mentioned. It leaves a bad taste in our mouths,” said one of the traders. At Ngara Market, the traders had ostracised one of their own for irritating them with his continued support for President Uhuru.

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“It took us a long time to realise that the Kenyatta family has always been interested in their self-promotion and self-perpetuation. We the rest of the Kikuyus have been cogs in a wheel, to propel the family to economic and political power. This time round we’re saying loudly that we are tired of the Kenyatta family,” said Kihara. “In all the years that I’ve been at Ngara Market, this road next to the [Nairobi] River had never been repaired, you wouldn’t even have known a road existed, it had completely chipped away, but the other day it got a face-lift. Why? Because the family has bought two properties, which it has been developing and which Uhuru comes to supervise, often at night”.

Kenyatta fatigue

Kikuyus are currently experiencing Kenyatta fatigue. They are craving for a clean break from the domineering family, said a 70-year-old businessman from Murang’a County. “For 50 years, the Kenyattas have lorded it over the Kikuyus, but the Kikuyus could be waking up to the realisation that they don’t have to be their serfs forever. The apparent selfishness of the family, economic hardship, wanton theft in the government, a political handshake that had nothing to do with their welfare, had finally dawned on the Kikuyus that they are pawns in a chessboard.”

The BBI is a ploy by the Kenyatta family to continue maintaining a stranglehold on national politics through deceit and subterfuge, said the old man John Njoroge. “My father was detained at Manyani detention camp by the British for six years because he was fighting to see a free Kenya of the future for his progeny and not for that progeny to be latter-day slaves of the Kenyatta monarchy. How the Kikuyu people wiggle out of the Kenyatta family iron grip will not be easy, but an opening has been created, they must now seize the moment.”

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“The President has been saying that the handshake is about peace and unity, that it is important to unite Kenyans who every cycle of five years fight over election results,” said Njoroge. “Really? Why, since 2007, is there always a propensity for violence after elections? Is it not because of electoral theft? And how do you deal with the theft? By creating an imperial presidency? Right? Tell me, how does increasing the powers of the presidency solve the theft of votes? Maintain peace? Of course, by appeasing the tribal lords...”

The BBI plan is nothing more than a power rearrangement by the status quo. Its grander scheme is to ensure presidential power does not slip from the political dynamos that have ruled the country since 1963. The document is about the expansion of the presidential executive powers,” said an insider who is a BBI constituency coordinator for Kiambu County and cannot be named because he is not authorised to comment on matters BBI. “I may not for sure know who the imperial presidency is

for, but I can tell you for sure who it is not for - Raila Odinga.”

The garden path

“Raila Odinga is being led on. I mean, stop and think about it - do you really believe the Kikuyu political barons would dream of doing such a thing? Creating a powerful position for their eternal political nemesis? Power is not something to be handed over to someone like a gift. The son of Jaramogi is about to learn - if he hasn't learned already - that he has yet again been led down the garden path.”

President Uhuru's apparent thirst for greater political power and how to play power games was cultivated and inculcated through his association with President Daniel arap Moi, his political godfather. “It is Moi who put in Uhuru's head the notion that he would be too young to abandon power,” alleged the insider. But for Moi, he had a greater scheme for Uhuru, even as he was socialising him with power play.

“Moi had always wanted Gideon to be at the core of the matrix of governance in Kenya and the person to help his favourite son is Uhuru Kenyatta.” Part of the BBI's unspoken mission is to sneak Gideon into that matrix of power, said the coordinator. “Although Gideon was his favourite last born son, Moi pampered the boy too much, he doesn't know how to do anything for himself - especially where his father thought mattered most: politics.”

The insider shared with me the content of a tête-à-tête he once had with President Mwai Kibaki: “Kibaki one time summoned me to his private office at Finance House in the city centre. After the usual pleasantries, he delved into the heart of the matter - ‘listen so-and-so, you never ever cede power under whatever circumstances. Is that clear to you?’ After Kibaki assumed the presidency in January 2003 through a coalition of parties, among them the National Alliance of Kenya (NAK) and the Liberal Democratic Party (LDP), murmurs began to be heard of a Memorandum of Understanding that had not been honoured.

Not long after, said the insider, Njenga Karume also summoned him. “‘My dear friend, power is never given away, do you get it?’ Remember Mzee Njenga was Kibaki's bosom buddy, but in the general elections of December 2002, Njenga had miscalculated and backed the ‘wrong horse’ -. Uhuru Kenyatta who lost to Kibaki. A remiss Mzee Njenga quickly collected himself, reworked his networks with Kibaki and went to pledge his loyalty to a recuperating Kibaki at Nairobi Hospital.”

For who is intended the creation of an imperial presidency more powerful than the presidency enshrined in the 2010 Constitution? Why was it furtively sneaked into the document if its intentions are noble? If we can answer that question we may begin to unravel the mystery of the real BBI agenda, said the insider.

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“The Kikuyu populace maybe cross with President Uhuru now, but at the appropriate time, he knows which buttons to switch and they will be turned on for his bidding. God forbid if Uhuru presented himself once again as a presidential candidate after a referendum that changes the constitution, with the imperial presidency clause intact. Who do you think the Kikuyus would vote for? The recent dissonant choruses from one Raphael Tuju and some evangelical pastors about Uhuru staying on after 2022 did not come out of the blue.”

In November 2020, Tuju, who is the secretary-general of the ruling Jubilee Party, made an off-the-cuff remark about the party extending President Uhuru's term beyond the expiry of the mandated two-term limit which ends 2022. "I want to state there's consensus especially from those of us holding senior positions in the party that it still needs Uhuru's passion to bring this country together," said Tuju.

"The BBI I [first report] which was presented to the public on November 27, 2019 at Bomas of Kenya had a weakened ceremonial presidency with an executive prime ministerial position. The switching of the executive powers between the newly proposed president and prime minister positions and their deputies in BBI II [second report] is geared to serve a certain purpose for a certain person. The BBI II document is about one thing: how to retain executive powers by the powers that be. The rest of the issues purportedly discussed in the report are decorations; they are sugar and spices to give the document a palatable taste," said the Kiambu County coordinator. "They don't matter and anybody looking for any meaning from them is looking for a mirage."

Nested games

Major (Rtd) John Seii, a BBI team member, opened a can of worms soon after the release of the report to the public, when he claimed that some of them had been duped into signing the document without re-reading it. It is unfortunate that some of the members of the team took for granted other members' gullibility to pass the now contested document, to paraphrase the words of the former army man.

The second BBI report was allegedly written in a boardroom by President Uhuru's innermost loyalists, said the constituency coordinator. "There was nothing like a second time validation; these are the people who changed the section on executive powers. Who are these Kenyans whose views were that we increase the powers of the president? I'd really like to see the notes detailing these facts, but of course, there are no notes." The authorship of that report apparently divided the team, albeit away from the prying public, with some members hinting that it might be just a matter of time before the beans are spilled.

The BBI team members were called on 16 October 2020 and asked to travel to Nairobi for the signing of the final document. "There's no roadmap for growing or revamping the battered economy," said one of the members to me. "It is all about recapturing state power. Kenyans will soon discover that for themselves and it will be a huge anti-climax. They will not support the document. If the proponents of the BBI document were serious, they would be addressing the political-economy ills of the country. The clamour to push for the signatures' campaign in the wake of the dangerous and devastating coronavirus was both immoral and insensitive; the locusts never went away, Kenyans' dwindling economic fortunes have seen some of them unable to afford food. Today many of them cannot afford healthcare."

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"If you read that document - from the front to the end, then backward to the front, it leads you to one thing - presidential powers. If you remove the section on national executive powers from the report, it ceases to be BBI," said the team member. "These three things: a deteriorating economy, food insecurity and lack of affordable healthcare have crippled Kenyans' capacity to participate in the national affairs of the state. Since 1963 till now, the political class has been typically interested in self-aggrandisement and self-perpetuation. The people have always been on their own. They have

never been so alone, especially with this BBI.”

“The real architects of the BBI are involved in nested games. All that effort and money thrown around the report is about one thing – containment. Containment of one man: Raila Odinga,” alleged my BBI source. “President Uhuru and his team realised that for him to preside over a fractured country, nearly torn asunder by ethnic animosity, he needed to tame Raila. ‘Keep your friends close, keep your enemies even closer’, is a Mafioso dictum, but one that also applies well in *realpolitik*.”

Raila’s isolation

President Uhuru reckoned that as long as Raila was allowed to play his politics outside of the state unchecked, he would not finish his second term in peace. “The whole idea was isolate Raila from his National Super Alliance (NASA) fraternity brothers, shower him with perks and presumed power and then bargain with him directly and personally. Today Raila is ostensibly all alone: he has fallen out with Kalonzo Musyoka, Moses Wetangula and Musalia Mudavadi. His western Luhya support base is cracking, he no longer commands the loyalty he did barely three years ago. The same with the coast region.”

On the eve of the collection of the one million referendum signatures, President Uhuru held a conversation with his deputy William Ruto and the ceremony to start off the collection of the signatures at Kenyatta International Convention Centre (KICC) was called off. For the Orange Democratic Party (ODM) brigade that was keen to kick off the exercise, this was not good: it signalled a false start.

Ruto’s loyalists in the divided ruling Jubilee Party, who view BBI as a calculated machination poised against the deputy president who will endeavour to capture state power come 2022, interpreted the temporary truce between their man and President Uhuru as a victory of some sort. So much so that, Ruto himself called off his troops and asked them to go easy on their opposition to BBI because he was working on a consensus with the president.

A couple of days later when the two BBI principals, President Uhuru and Raila, were ready to launch the signature campaign, the Constitution of Kenya (Amendment) Bill had been somewhat altered. For instance, the ombudsman would now be appointed by the office of the Chief Justice as opposed to being appointed by the President. The Independent Electoral and Boundaries Commission (IEBC) members would not be appointed by the political parties as earlier suggested. The establishment of the national police council and independent policing oversight had been scrapped and the creation of 70 additional constituencies was included, among other changes.

What was the reason for the abrupt changes to the amendment bill which seem to have caught Raila by surprise? Is it the Kenya Conference of Catholics Bishops (KCCB), who in their “pastoral letter” to Kenyans castigated the BBI II document? Said the bishops: “To give the President the power to appoint the Prime Minister and the two deputies risks consolidating more power around the president thereby creating an imperial presidency. This amendment could be creating the same problem it set out to solve.”

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On the politicised IEBC, the KCCB pointed out that, “the proposal to have political parties appoint members of the IEBC is a dangerous one since it will politicise IEBC compromising its independence. This proposal will turn IEBC into a political outfit with partisan interests. The

question will arise on how fair the elections will be.”

The tone of the bishops’ letter was one of dismay and disappointment with the second BBI report. Listen to them: “In the wake of the persisting effects of the COVID-19 pandemic that has hit families across the country, is this the time to subject Kenyans to heightened political activity to undertake fundamental constitutional reforms? Can the country afford to spend its very limited resources in a referendum when there is a struggle in the education and health sectors to provide for urgently needed support due to the effects of COVID-19 pandemic?”

Is it because of the Kenya Muslim *ulama*, who through their spokesperson said: “It is shocking that in just 10 years the political leadership of this country has forgotten that we struggled for 20 years to put the 2010 constitution in place. And all of a sudden, they [President Uhuru and Raila] have assigned themselves the powers they don’t have even within the constitution, that two individuals can come up shake hands and believe they carry 40 million peoples’ opinion . . . we’ve to be candid enough to say the truth, and what’s the truth? Neither Raila nor Uhuru for that matter can make decisions for 48 [sic] million Kenyans.”

Or is it as a result of the conversation that the President had with his deputy William Ruto? Is the amended bill a result of the consensus arrived at by the duo? It seems Ruto was so enchanted with the conversation that his sudden turnabout on the document must have taken his troops by surprise when he hinted that after all, it was not worthwhile to oppose the document. One of Ruto’s confidantes told me that for all the DP’s opposition to the President, he has always been careful not to be seen to oppose the president publicly if he can avoid it. “This is not the time for a bareknuckle fight. Our time is coming. For now, we must be patient and play the game.”

Raila had categorically stated that no changes would be accommodated in the BBI II document other than punctuation marks. Of course, the changes in the document went beyond the said punctuation marks.

Whatever the outcome of the BBI document’s true agenda, 16 months to the 2022 general elections, Kenyans will witness political brinkmanship at its worst even as the BBI II document is shaped and re-shaped to fit the needs of its heavily invested architects as they play out their nested games.

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