



Where Is the BBI Headed?

By Ngala Chome



On January 3rd 2018, an [article](#) which I co-wrote with [April Zhu](#) was published on this platform. Its central premise: many years of political reform in Kenya have failed to muzzle dissent within the political establishment. Exactly three years later, Kandara Member of Parliament, Alice Wahome, seems to have [sounded](#) the alarm bells.

Rehearsing the message of her speech during the burial of Charles Rubia, a key figure in Kenya's struggle for democracy, she castigated Uhuru Kenyatta and Raila Odinga (she described Raila as Uhuru's new political mercenary for hire) as the "biggest existential threat to Kenya's declining economy and democracy". In short, Wahome was referring to the re-emergence in Kenya of a political culture of intolerance directed by the President himself. In fact, Wahome's statement, coming as it does at the beginning of the year, may set the tone for opposition politics in the run-up to the 2022 general-elections.

But it has also rekindled memories of a sermon by a young Dr Timothy Njoya at St. Andrews Church in Nairobi thirty years ago, which garnered publicity and uproar in equal measure. During that New Year's sermon, the young reverend remarked on the collapse of authoritarian regimes in Eastern Europe, and speculated about the return of multi-party politics in Kenya, a bold statement at the time. While his speculations would become a reality only two years later, he was immediately rebuked by politicians, all of whom were members of the ruling party, KANU—at the time the only political party in Kenya.

Njoya's sermon is on my mind as I watch the condemnations that Wahome is receiving for criticising the political establishment. In a political climate akin to the one in which Njoya voiced his remarks, I see the re-setting of a dangerous trend in Kenya, a re-setting whose origins can be traced back to the aftermath of the 2007-08 post-election violence, but which was re-energised by the March 2018 handshake between Uhuru and Raila.

Indeed, since the March 2018 settlement, Kenyans have become accustomed to an increasingly irritable and angry president. He demands, but is not able to command, unfettered loyalty. More often than not, he unleashes in public bitter diatribes in his mother tongue targeted at people who disagree, or poke holes in his leadership. He continues to be on the [defensive](#) regarding his under-performing and expensive mega-infrastructure projects.

The climate of intolerance that the president is creating is the public face of a deeper and much more insidious plan. It is part of a wider attempt at remarrying the forces that have preserved the political status-quo in Kenya since independence, and which the Building Bridges Initiative (BBI) process seems to be in the service of. The shouting down of Kipchumba Murkomen, the Senate Majority leader, during the launch of the BBI report at the Bomas of Kenya last November, and the recent jibes that have been thrown at Alice Wahome for criticising Uhuru, are quite revealing and instructive.

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In an insightful [piece](#) also published on this platform, Akoko Aketch contends that the BBI exercise is a crisis of how the long-standing beneficiaries of the political establishment—a distinctly Gikuyu elite—can reproduce their domination “after Uhuru Kenyatta’s disastrous economic record, and of how to avert the possibility of having a president who is hostile to this elite’s interests.” He submits that the “BBI is a revisionist project and a mock test of a political formula that has sabotaged Kenya’s democracy since independence.”

The recent [extension](#) of the term of the BBI task-force is, for instance, being perceived as a way of creating more time to introduce radical proposals, such as the creation of the position of an Executive Prime-Minister, a position that, as many have argued, Uhuru will be qualified to assume come the next general elections in 2022. This thinking is not entirely pedestrian. While Uhuru has himself stated that he is not interested in another term as president, the push to change the constitution, his public attitudes regarding opposition politics, and the ongoing re-centralisation of power by the central government (despite devolution), leave a lot of room for speculation.

One way in which the elite in Kenya has reproduced its power is by putting the blame for the country's woes squarely on the Kenyan public. In this script, underdevelopment and political violence is the work of Kenyans of poor judgement, political dissidents and their often-unemployed youthful followers, not the result of years of unaddressed injustices and skewed redistribution of power and resources. In fact, this line of thinking is one of the primary messages of the BBI report. Dr Wandia Njoya, in a [recent article](#) published on this platform, summarised the report as a “declaration of war by the political class against the people of Kenya”. In a painfully convoluted manner, the report, in its attempt to locate, or explain the lack of a national ethos, adopted a language that is not only recriminatory and accusatory, but is also regrettably informal.

Ten billion shillings later—as [rumour](#) has it—and more than twelve months after the BBI taskforce was appointed, the report that came out of the process was peppered with an embarrassing number

of typos and presented in cheap layout and low-quality typesetting. Seductive images of the nation's (supposedly egalitarian) past are constantly reproduced and projected, as a way of distracting from the realities of the impunity that has repeatedly been unleashed on the Kenyan public by the political class since the country gained independence in 1963. In a tragic misreading of how morality and communal responsibility actually works in Kenya, the BBI report went ahead to castigate Kenyans for "running away" from their culture, and for demanding rights, as opposed to responsibilities.

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This mind-set was alive and well during and after the 2013 elections, the first after the post-election violence of 2007-08. During those elections, which were haunted by the fear of a repeat of political violence, calls for peace intensified, and they immediately became disciplinary and forbidding. People were urged not to protest or question the electoral process. Even the media joined the peace bandwagon and began self-censoring.

In the end, the state regained its dominant position in directing political debate, and the political establishment precluded a potential assault on its privileged position. In fact, the only other time when fundamental reforms would have seen the light of day was during the protracted electoral process of 2017.

But if [recent](#) revelations by Dr David Ndii regarding events in the run-up to the March 2018 handshake are anything to go by, the critical part of the drama in 2017 took place off-stage, and the elections became a mere subplot. Seen in this manner, the détente between Uhuru and Raila was, in actual sense, a way of subverting fundamental transformation in Kenya and restoring the status-quo. The BBI, as Wahome has now warned, might be the "special purpose vehicle" for this mission.

The triumph of the system

While many people, including the adversaries of the BBI exercise, had expected that the report would make drastic recommendations that would fundamentally alter Kenya's political landscape, especially the pure presidential system, the ongoing proposals to create the position of a powerful (as opposed to a prefectural) Prime Minister do not offer much promise either. In fact, whether it is true or not that Uhuru plans to become Prime Minister in a post-2022 arrangement with Raila as President, any cursory analysis of how politics actually work in Kenya will reveal that power (even under a parliamentary system that is not undergirded by powerful decentralised units) will continue to be concentrated at the centre.

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All politics, power and influence will continue to revolve around the Executive branch, whose control will continue to be grounded in its ability to direct political and economic activity across the country. In fact, combined with the minimal proposals that the report has made to restructure elections, the political party from which the President and Prime Minister will come will continue to dominate all key positions in government, producing the same exclusionary effects of the winner-takes-all system that have ailed the country's politics since the return to multi-partyism in the 1990s.

As the year progresses, the BBI will prove itself to be an exercise that is merely aimed at

reproducing what David Throup and Charles Hornsby referred to as “the triumph of the system” in their seminal book, [Multi-Party Politics in Kenya](#). The first triumph was witnessed in the 1960s. Kenya, like many ex-British colonies, was bequeathed a Westminster-style parliamentary system of government when it became independent in 1963. The independence constitution also made provisions that took away power and significant functions of government from the centralised government in Nairobi, that is, a system of eight regional governments of equal status that was known in Swahili as *Majimbo*.

However, the parliamentary system through which Kenya became independent was dead by 1964. Kenya became a Republic and Jomo Kenyatta, Uhuru’s father, became its (unelected) first President. The *Majimbo* regional system, the next target, was abolished together with a post-independence Senate, at the same time as the first opposition party, the Kenya African Democratic Union (KADU), was folding itself, citing frustration from the Executive. By abolishing the Senate, the regional governments and the parliamentary system, the first post-colonial elite-pact of domination, or the first triumph of the system, had completed its mission.

As a result, the “Imperial Presidency” was born. From 1964 to 1992, the year multi-party politics resumed, the constitution had been amended over twenty times. The amendments served to empower the Executive branch of the government at the expense of Parliament and the Judiciary. At the height of this madness (in 1990), the office of the president (OP) included a staff of 43, 230, representing a ratio of 1 in 6 civil servants. The OP became a parallel government, with considerably [more executive power](#) than actual ministries. The instability that such a structure of government can introduce in a political system—where inequality and regional imbalances are rife, and where ethnicity is inexorably intertwined with how political representation and redistribution actually works—became clearer with the reintroduction of multi-party politics in 1992. Trust among the political elite became fickle, leading to the instrumentalisation of violence and ethnic identity in the political marketplace.

After many years of struggle for reforms, the structure of the “[bureaucratic-executive](#)” government, at the head of which was the President, survived with minimal alterations. The only significant structural change, many have argued, was the introduction of forty-seven devolved units. However, the mandate of county governments was significantly reduced compared to that which was allocated regional governments in the 1960s. Responsibility over land administration, education, mega-infrastructure and parastatals remained in the hands of the central government, and as such, under the direction of the presidency.

Raila Odinga, who had become the political champion of constitutional reform, especially the proposal to introduce a parliamentary system and strong devolution by 2007, gave up on these demands after the outcome of that year’s elections. At the Great Rift Valley Lodge in Naivasha, where the Parliamentary Select Committee made up of 14 Party of National Unity (PNU) members and 13 Orange Democratic Movement (ODM) members that had been selected to respond to the first harmonised draft that would become the 2010 constitution had met, people feared that the politicians would not find common ground, risking a return to conflict. Indeed, disagreement reigned but some deals were struck, of which the most important—which removed the blockage that threatened a deadlock in the discussions—was made by Raila and Uhuru (reportedly in a room at the lodge). The deal saw ODM let go of the parliamentary system altogether, in favour of the presidential system. In addition, Raila (who at the time was Prime Minister in a coalition arrangement with former President Mwai Kibaki) relaxed his demands for strong devolution, that is, a three-tier decentralised system of government in favour of the two-tier system that was favoured by PNU. As a result, the 2010 constitutional draft provided for a pure presidential system. Pure in the sense that, not only would cabinet ministers be appointed from outside of parliament, but losers of presidential elections, no matter how many votes they had garnered, would not be accorded any

public office. The draft also scrapped the regional tier of government, and fixed the number of parliamentary constituencies at 290. Nothing much changed after that.

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During the parliamentary debate over the draft that took place in mid-2010, ODM MPs—notably James Orengo—continued to push for the regional governments. Raila had already hit the streets, campaigning for the draft. Orengo was left alone. The draft was eventually promulgated in August 2010, after winning the popular vote at a referendum. The powerful presidency—with slight alterations—triumphed.

Tunakula nyama: politics since 2013

County governments came into place after the 2013 general elections, but they were quickly reduced by central government bureaucrats to units of administration and development, as opposed to political representation. Feelings of exclusion and marginalisation, underpinned by unaddressed historical injustices, continued to exist, despite constitutional change. The pure presidential system that the 2010 constitution provided had worked to the disadvantage of Raila Odinga—who lost both the 2013 and 2017 elections to Uhuru.

Between the two elections, Raila held no public office, yet he continued to exercise personal influence over vast swathes of the country, where ODM, his party, had won considerable numbers of constituency and county seats. To the chagrin of many who felt unrepresented at the centre, Uhuru stated, rather arrogantly, that they—the government in power—were [eating](#) the *nyama choma* [roast meat] and that those who were in the political cold should be content only with the smell. A number of times, Raila would instigate programmes—most notably, the [Okoa Kenya](#) initiative—which, incidentally, were part of his attempts to change the 2010 constitution, but which, one could also argue, were part of his struggle to remain politically relevant.

Raila's strategy did not yield the expected results, but it had its uses. It proved that Raila was adept at combining his political fate with that of his supporters. In this way, the anger of Raila supporters that followed the announcement that he had lost the elections in 2013, and then again in 2017, could not be separated from the perception that they, also, had been excluded from the political process for many years. Following this logic, the feelings of exclusion felt by many of Raila's supporters after the 2017 elections could only be addressed if Raila himself were to become part of the Executive—very similar to the situation in 2007-08.

While it had become apparent, after the 2017 elections were concluded, that Raila was the biggest victim of a constitution that he had done much to support, his move to “shake hands” with Uhuru was more the result of defeat at challenging the political establishment over the years than it was an effort to usher in fundamental political reforms. What is more important to consider is that Raila's support of the current Presidential system in 2010 was also the result of an elite-pact with none other than Uhuru Kenyatta, his current partner in the BBI settlement nine years later.

These developments, where the political establishment that has been at the helm since the 1960s is seeking to maintain its hold on power and control, should concern Kenyans. Despite arguments to the contrary, much talk about the BBI will be about political positions, and as the current climate of political intolerance continues, fundamental questions regarding exclusion, injustice, and accountability will be glossed over, as has happened before.

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