



Is the BBI a Trojan Horse Disguised as a Guardian Angel?

By Rasna Warah



I have resisted commenting on the recently launched Building Bridges Initiative (BBI) report, mainly because in Kenya today if you oppose the BBI, you are labelled as being in Deputy President William Ruto's camp, and if you support it, you are seen as being on the side of President Uhuru Kenyatta and his new ally, former opposition leader, Raila Odinga. And since I do not belong to either of these groups, I was afraid that by commenting on the report, I might inadvertently be labelled pro-Uhuru or pro-Ruto.

Critics of the BBI have mainly focused on whether amending the constitution through the BBI process is, in fact, unconstitutional as it would bypass many of the requirements for amending the 2010 constitution, which are onerous and virtually impossible to fulfill without a national consensus. Some critics, like the Kenya Conference of Catholic Bishops, say that by giving the president power to appoint a prime minister and two deputy prime ministers, the BBI is calling for a return to an imperial presidency.

On the other hand, supporters of the BBI - particularly the "handshake" stakeholders and many commentators in the mainstream media - have lauded the BBI for being the magic pill that will unite the country and spur social and economic development.

Intellectual surrender

Having now read the abridged version of the BBI report, I can conclusively say that it has failed to address the biggest crisis facing this country – that of poor leadership. The most offensive and egregious section of the report is undoubtedly the opening Validation Statement, which places the responsibility for all that is wrong with this country squarely on the shoulders of Kenyans – not on our leaders, who got us into the mess we are in in the first place.

The report states: “Kenyans decried the fact that Kenya lacked a sense of national ethos and is increasingly a nation of distinct individuals instead of an individually distinct nation. And we have placed too much emphasis on what the nation can do for each of us – our rights – and given almost no attention to what we each must do for our nation: our responsibilities.”

As Wandia Njoya pointed out in a [recent article](#), what the BBI has effectively done is told Kenyans that they are to blame if their rights are violated. And if moral and ethical standards have dropped across the country, it’s not because the country’s politicians have lowered moral and ethical standards and have set a bad precedent, but because Kenyans just don’t know how to behave properly. It’s called blaming the victim.

It suggests that Kenyans are somehow wired to be evil or corrupt, that decades of state-inflicted brutality against citizens – an offshoot of a neocolonial dispensation where citizens are treated as gullible and exploitable subjects – has nothing to do with the culture of impunity we find ourselves in. That the contemptuous way in which we are treated by state institutions – at police stations, in public hospitals, in government offices – is somehow our fault. And that the example of how to behave was not established by the state and its officials that consistently fail to deliver justice to Kenyans and turn a blind eye to violence committed by state and security organs, especially against the poor. Remember, this is a country where a chicken thief can end up spending a year in jail, but a minister who has stolen billions from state coffers can get away scot-free.

Njoya writes:

We are told that discussing history is blaming colonialists and refusing to take responsibility for our own actions. That discussing ethnic privilege and patronage is attacking every single member of that ethnic group. That discussing patriarchy is blaming men. That explaining systemic causes of problems is explaining away or excusing those problems. Every public conversation in Kenya is a war against complex thinking. We have reached the point where Kenyan public conversations are pervaded by this system of intellectual simplification.

Hence the BBI’s proposal to set up a new commission to address “indiscipline in children, breakdown of marriages and general erosion of cultural values in today’s society”. Presumably, this commission will take on the role of parents, school teachers and community leaders “by mainstreaming ethics training and awareness in mentoring and counselling sessions in religious activities and through community outreach programmes”.

What is being implied here is that if only Kenyans were more religious, they might not behave so badly. (I wonder if the drafters of the report know that Kenyans are among the most religious people in the world. Yet we are consistently ranked as among the most corrupt countries on the planet.)

The BBI report recognises that ethnic divisions have polarised the country, but it does not acknowledge that ethnic polarisation is the result of a political leadership that forms opportunistic tribal alliances for its own advantage and is happy to pit one ethnic community against another in order to win elections.

Moreover, its recommendations on how to reduce ethnic animosity appear to be based on the idea that if you force different ethnic communities to live in close proximity to each other, Kenya will miraculously become a society where all ethnic groups live together in peace and harmony.

There is also this misguided belief that if the people in authority are from an ethnic group that is distinct from the ethnic group that these people lord over, there will be more accountability (a model borrowed from the Kenya Police and the colonial and post-colonial district and provincial commissioners' templates). Hence the Ministry of Education should "adopt policy guidelines that discourage local recruitment and staffing of teachers".

Many sociologists and behavioural scientists might argue that, in fact, if you want more accountability and cohesion in a community, the leadership should come from that same community. So, for instance, if police officers belong to the same ethnic community that they serve and protect, they are more likely to be more accountable to that community because any signs of misconduct on the part of the officer will be perceived as having a direct bearing on the welfare of that community. A bribe-taking officer is more likely to be reprimanded by his community because it is his community that suffers when he takes a bribe. A Kalenjin police officer posted in Malindi, for instance, will not care what the Giriama community he is extorting bribes from or is brutalising think of him because he is not part of them and is not accountable to them or to their community leaders and elders. This accountability is further diminished by the current practice of police officers regularly being transferred to different localities.

Similarly, in schools, particularly those in remote or marginalised areas, it is important that the teachers be from that community because they also play the role of mentors and role models. We are more likely to follow in the footsteps of someone who looks like us and who has a similar history than someone who doesn't. Which is why Vice President-elect Kamala Harris has opened the doors to leadership for so many girls and women of colour in the United States.

This is not to say that the BBI report glosses over the problems facing marginalised communities. On the contrary, it makes it a point to highlight that "the marginalised, the under-served and the poor" are suffering and are in urgent need of "an immediate helping hand and employment opportunities to help them survive". What the report fails to recognise is that the Constitution of Kenya 2010 was designed to ensure that such communities are not condemned to perpetual poverty. Devolution was supposed to sort out issues of marginalisation by ensuring that previously marginalised communities and counties are empowered to improve their own welfare. By making them recipients of hand-outs, the BBI has added insult to their injury.

Thankfully, the report does recommend that previous reports by task forces and land-related commissions, including the Ndung'u Land Commission and the Truth, Justice and Reconciliation Commission (TJRC), be implemented. My question is: If President Uhuru Kenyatta did not implement the recommendations of the TJRC, which handed its report to him in May 2013 shortly after he assumed the presidency, what guarantees do we have that he and his BBI team will implement the recommendations now? The president has also failed on his promise of a Sh10 billion fund for victims of historical injustices. What has changed? Clearly not the leadership (and here I mean the entire leadership, not just Uhuru's).

Silences and omissions

Moving on to another marginalisation issue: women's representation. We all know that Parliament has actively resisted the two-thirds gender rule spelled out in the constitution. So what epiphany has occurred now that suddenly there is an urgent desire to include more women in governance institutions? If Parliament had just obeyed the constitution, there would not be a proposal in the BBI

to ensure that no more than two-thirds of members of elective or appointive bodies be of the same gender. It would be a given.

And yet while BBI gives with one hand, it takes with the other. The BBI task force proposes that the position of County Women's Representative in the National Assembly be scrapped.

What's worse, the BBI actually appears to welcome the recommendation of "some Kenyans" that Independent Electoral and Boundaries Commission (IEBC) commissioners be appointed by political parties. Really? If you think that the 2007, 2013 and 2017 elections were fraudulent and chaotic, then wait for serious fraud and possible violence in an election where the electoral body's commissioners represent party interests. (If I had my way, I would disband the IEBC altogether and put together a non-partisan body comprising foreign officials to run elections in this country. Maybe then we would have some hope of a free, fair and corruption-free election.)

The BBI is also silent on the role of the IEBC in vetting candidates, and ensuring that they adhere to Chapter Six of the Constitution on leadership and integrity. Let us not forget that many of the candidates in the last two elections had questionable backgrounds, and some were even facing charges in court. Why did the IEBC not ensure that those running for office had clean records?

On the economy, or what it calls "shared prosperity", the BBI, emphasises the role of industry and manufacturing in the country's economic development but is silent on agriculture, which currently employs about half of Kenya's labour force and accounts for nearly 30 per cent of Kenya's GDP, but which remains one the most neglected and abused sectors in Kenya. It's a miracle that our hardworking and much neglected farmers are able to feed all of us, given that they receive so little support from the government, which consistently undermines local farmers by importing cheap or substandard food and by providing farmers with few incentives.

Besides, it is highly unlikely that Kenya will become a factory for the region, let alone the world, like China, because it simply does not have the capacity to do so. Why not focus on services, another mainstay of the economy?

The BBI also talks of harnessing regional trade and cooperation and sourcing products locally but, again, we know this is simply lip service. If Uhuru Kenyatta's government was keen on improving trade within the region, it would not have initiated a bilateral trade agreement with the United States that essentially rubbishes and undermines the country's previous regional trade agreements with Eastern and Southern African countries and trading blocs.

On the yoke around every Kenyan's neck - corruption - the BBI's approach is purely legalistic and administrative. It wants speedy prosecution of cases involving corruption and wastage of public resources and it wants to protect whistleblowers. (Good luck with the latter. In my experience, no whistleblower protection policy has protected whistleblowers, not even in the United Nations.)

BBI also wants to digitise all government services to curb graft. But as the economist David Ndi pointed out at the recent launch of the Africog report, "Highway Robbery: Budgeting for State Capture", if corruption is built into the very architecture of the Kenyan government, no amount of digitisation will help. Remember how the Integrated Financial Management Information System (IFMIS) was manipulated to steal millions from the Ministry of Devolution in what is known as the NYS scandal? Computer systems are created and run by people, and these people can become very adept at deleting their digital footprints from these systems. As the former Auditor-General, Edward Ouko, pointed out, when corruption is factored into the budget (i.e. when budgets are prepared with corruption in mind), corruption becomes an essential component of procurement and tendering processes. So let's think of more creative and innovative ways of handling graft within government.

Which is not to say that the BBI task force has not struggled with this issue. There are various proposals to amend public finance laws to make the government more accountable on how it spends taxpayers' money. But we know that these laws can be undermined by the very people responsible for implementing them, as the various mega-corruption scandals in various ministries and state institutions have shown.

A Trojan horse?

Many Kenyans suspect that perhaps the real and only reason for the BBI is that it will allow for the creation of new powerful positions – such as that of prime minister to accommodate both Raila Odinga and Uhuru Kenyatta – and will set the stage for a return to a parliamentary system of governance instead of the current presidential “winner-takes-all” system. But while the latter might appear to be a worthwhile endeavour, the fact that former opposers of the new constitution and the parliamentary system now appear to be endorsing both suggests that there is something more to this than meets the eye. As Prof. Yash Pal Ghai has repeatedly stated, the constitution endorsed at Bomas was premised on a parliamentary system and was only changed at the last minute to accommodate a presidential system. That is how we ended up where we are now.

It also appears strange that those who benefitted most from the presidential system now want to change the constitution. As Waikwa Wanyoike, [put it](#):

Worse, those hell-bent on immobilising the constitution have done so by conjuring up and feeding a narrative that it is an idealistic and unrealistic charter. Because they wield power, they have used their vantage points to counter most of the salutary aspects of the constitution. Uhuru Kenyatta's consistent and contemptuous refusal to follow basic requirements of the constitution in executing the duties of his office, including his endless defiance of court orders, stands out as the most apt example here.

Yet all this is calculated to create cynicism among Kenyans about the potency of the constitution. Hoping that the cynicism will erode whatever goodwill Kenyans have towards the constitution, the elites believe that they can fully manipulate or eliminate the constitution entirely and replace it with laws that easily facilitate and legitimise their personal interests, as did Jomo Kenyatta and Moi.

If indeed we want to go back to a parliamentary system through a referendum, then we should hold the referendum when the current crop of politicians (some of whom, including Uhuru Kenyatta and William Ruto, were opposed to the 2010 constitution in the first place) are not in leadership positions because many Kenyans simply don't trust them to do what is in Kenyans' best interest. After all, a fox cannot be relied on to guard a chicken coop.

Already the president has urged Parliament to pass laws that conform to the BBI proposals – this even before the proposed referendum that will decide whether the majority of the country's citizens are for or against the BBI's raft of recommendations. In other words, the BBI proposals may become laws even before the country decides whether these laws are acceptable and are what the country needs.

Are the goodies proposed in the BBI, such as providing debt relief to jobless graduates and allocating a larger share of national revenue to the counties, just enticements to lure Kenyans onto the BBI bandwagon so as to ensure that the current political establishment consolidates its hold on power? Is the BBI a Trojan horse disguised as a guardian angel? Only time will tell.

One possibility, however, is that a groundswell of public opinion against the BBI might just overturn

the whole process.

Published by the good folks at [The Elephant](#).

The Elephant is a platform for engaging citizens to reflect, re-member and re-envision their society by interrogating the past, the present, to fashion a future.

Follow us on [Twitter](#).

