



BBI: Political Tool or State-Building Opportunity?

By Nicholas Githuku and Robert Maxon



When the history of Uhuru Kenyatta's second term at the helm of Kenya's political leadership is written, it shall cast him in Machiavellian light as a wily fox—a scheming and unscrupulous prince. This history, shall perhaps, at the same time, be magnanimous and laudatory of Raila's repeated efforts, over the long duration of his career, to demonstrate pragmatism and build bridges on more than three occasions. Indeed, these two politicians, perhaps, shall be looked upon by such an objective history quite kindly for being able, somewhat, to douse the intense fire and latent political violence before and after the 2017 elections. It is undeniable that the private talks, the subsequent highly public political and symbolic "handshake," and the BBI consultation process was ["created by people in the executive to stabilize the state."](#) However, as contemporary political commentators observed, this initiative has quite a few pitfalls, blindsides, and shortcomings, and this, history shall not forgive. As the constitutional lawyer, and political commentator, [Kamotho Waiganjo noted](#), the BBI shall not "fundamentally solve our problems." Moreover, the country's fundamental problems do not lie in the law, but elsewhere.

When put in historical perspective, this political initiative, and the debate around it, only opens the more important discussion of Kenyans coming to terms with their social realities. As Waiganjo stated, citizens must have "an honest national conversation about what ails" Kenya— what takes away our ethos? Why do we celebrate unethical conduct by public servants and officials? Why do we

elect people we know are thugs? Why is it that we are corrupt in every sector of our society? According to Waiganjo, that is the substantive conversation that Kenyans ought to have in every sector of society, be it private or public. As such, the BBI cannot be expected to be the be-all and end-all silver bullet that will solve all the country's various problems (and especially not the two [twin tyrannies of ethnic expectation and institutionalized corruption](#) that feed off each other, and are inextricably connected).

As already noted above, while the initiative staved off violence and bloodshed, it largely remains an elite initiative as opposed to being people-led and driven as the protracted constitution-writing process of the 2000s was and, therefore, cannot be as radical, and revolutionary. And, [if anything was revolutionary, it was the 2010 constitution](#), which was the result of a people-driven process. When the account of this process is written, it shall record that this process was, indeed, anything other than "a reform document," and that, while the report may contain some strains of what could pass as reform, "[it is inherently inconsistent with itself.](#)"

As Wanjiru Gikonyo noted, the initiative failed the litmus test of elite accountability and answerability. In Gikonyo's own words, the two political leaders, and the elite in general, ducked being accountable and answerable regarding the precipitous 2017 events by hiding behind BBI. Neither does the report mention the rampant economic or financial crimes perpetrated against the people of Kenya, and nor does it comprehensively address issues of economic marginalization. As such, the report did not only "fail spectacularly to be accountable to the people," but it, for the most part, descended into "political theatre". In the end, it is Kenyans who were had by the political class. "We have been snookered," [as Gikonyo put it](#). And, given the benefit of hindsight, honest and objective *wananchi* looking back would say, "No, we needed to get out of this charade. We were snookered. The report cherry-picked this or that carrot for women; another carrot for devolution; that carrot for youth; and put together all these various carrots in an unfathomable framework."

In observing that BBI was akin to trying to fix fundamental and systemic governance weaknesses and failure using a Band-Aid approach, [Gikonyo could not have been more apt](#): "It is a whitewash process, but this whitewash process is also trying to take us forward by taking us backwards. It is taking us forward from the chaos we have now, taking us back to the coalition government, because . . . without a vision, and failing to have a progressive mind-set, they [pro- BBI politicians] are saying things were a bit better when we had a coalition government. Let us put some . . . Band-Aid on our governance system and go back there."

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Lastly, it is also worth observing that, while widespread grassroots "consensus" was sought, the process was not necessarily greeted with enthusiasm. A [survey](#) conducted by Tifa, a polling firm, at the beginning of 2021 revealed that only a paltry 29 per cent of registered voters said they would vote for the BBI proposal or referendum to amend the 2010 constitution. Conversely, 32 per cent of Kenyans said that they would vote "No" to oppose constitutional changes suggested by the BBI. Another [computer-aided telephone survey](#) conducted at the end of January 2021 by Radio Africa Group revealed that the BBI referendum appeared to be on shaky ground. This poll found that 43 per cent of *wananchi* did not support the process compared to 21 per cent who were pro-the process. However, there was, according to this poll, "a potentially high swing vote as 25 percent say that they 'do not know much about BBI,' while 11 percent 'don't care either way.'" Furthermore, 40 per cent said they would not vote although 60 per cent said that they would. Without a doubt, the BBI process, like the electoral process historically, is quite divisive, which in Kenya, can only

forebode trouble of a terrible kind.

The irony of the BBI process is that, while it was intended to stabilize the state, to build bridges between perceived rival ethnic groups, and to cohere the nation by healing past divisions, it appears to have succeeded in re-sowing seeds of old tribal hatreds across the country. As in the past, Kenya perches on delicate tenterhooks thanks to the “building bridges initiative.”

Obstacles on the way to Canaan: can Kenyans afford the democracy they crave?

This also is a key question. Indeed, it has enjoyed a lengthy history in Kenya, particularly regarding the issue of federalism or *majimbo*. A criticism raised against such schemes from the 1940s through the early 1960s was that federalism was too expensive for Kenya. The right-wing European politicians (*e.g.*, the Federal Independence Party) who advocated devolution of powers to settler-controlled provincial or district councils sought an exclusionary political, economic, and social order that would keep political control and land in the White Highlands in the hands of the European minority while maintaining racially segregated schools and hospitals. Critics pointed out that [such a system of government would be very expensive](#). For these federalists, exclusion had to be maintained no matter what the cost, [especially in the case of schools](#).

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KADU's proposed *majimbo* scheme that emerged in 1961-62 also drew criticism as to potential cost from colonial officials and members of the public in addition to the leaders of KANU. This criticism focused on the creation of regional governments and duplication of functions. Peter Habenga Okondo, one of the architects of KADU's federal proposals and a principal spokesperson for federalism, answered such criticisms bluntly. He wrote in November 1961, “If we want to preserve individual liberty what is the cost?” No cost was too high, he asserted, if Kenyans wanted to maintain a system of separation of powers and functions and “maintain the democratic process of government” that he claimed Kenyans longed for (*East African Standard*, 23 November 1961). The argument that no cost is too high to pay for civil liberties and representative government has since that time been reiterated during the debates surrounding the adoption of the 2010 constitution and by some of those supporting the constitutional changes called for in the BBI reports.

Yet these supporting arguments leave unmentioned issues that in the past have proved controversial and difficult to surmount. Two economic issues that raised concerns of cost during the transition to independence have yet to be confronted and put to rest. These are the issues of land ownership and labour mobility under a devolved system of government. At about the same time Okondo was advocating for regional governments with control over land and the government work force in their areas, civil servants at the British Colonial Office expressed concern that if regional assemblies were given the right to allocate land to owners and tenants, this would go against British proposals for a free market in land. The officials feared that KADU's proposed system was “a reversion to the old tribal concepts from which we have been trying to get away in the new policy of regarding land as an economic asset” open to purchase or lease by any Kenyan. Jobs might be reserved only for individuals born in the devolved unit of government (British National Archives: CO 822/2242).

These concerns were allegedly laid to rest after the demise of KADU and the scrapping of *majimbo*, but the ethnic clashes of the 1990s and the 2007 post-election violence indicated that such was not the case. Do the BBI constitutional amendments promote a constitutional and legal environment that finally “solves” these issues? This is a key question yet to be definitively answered.

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