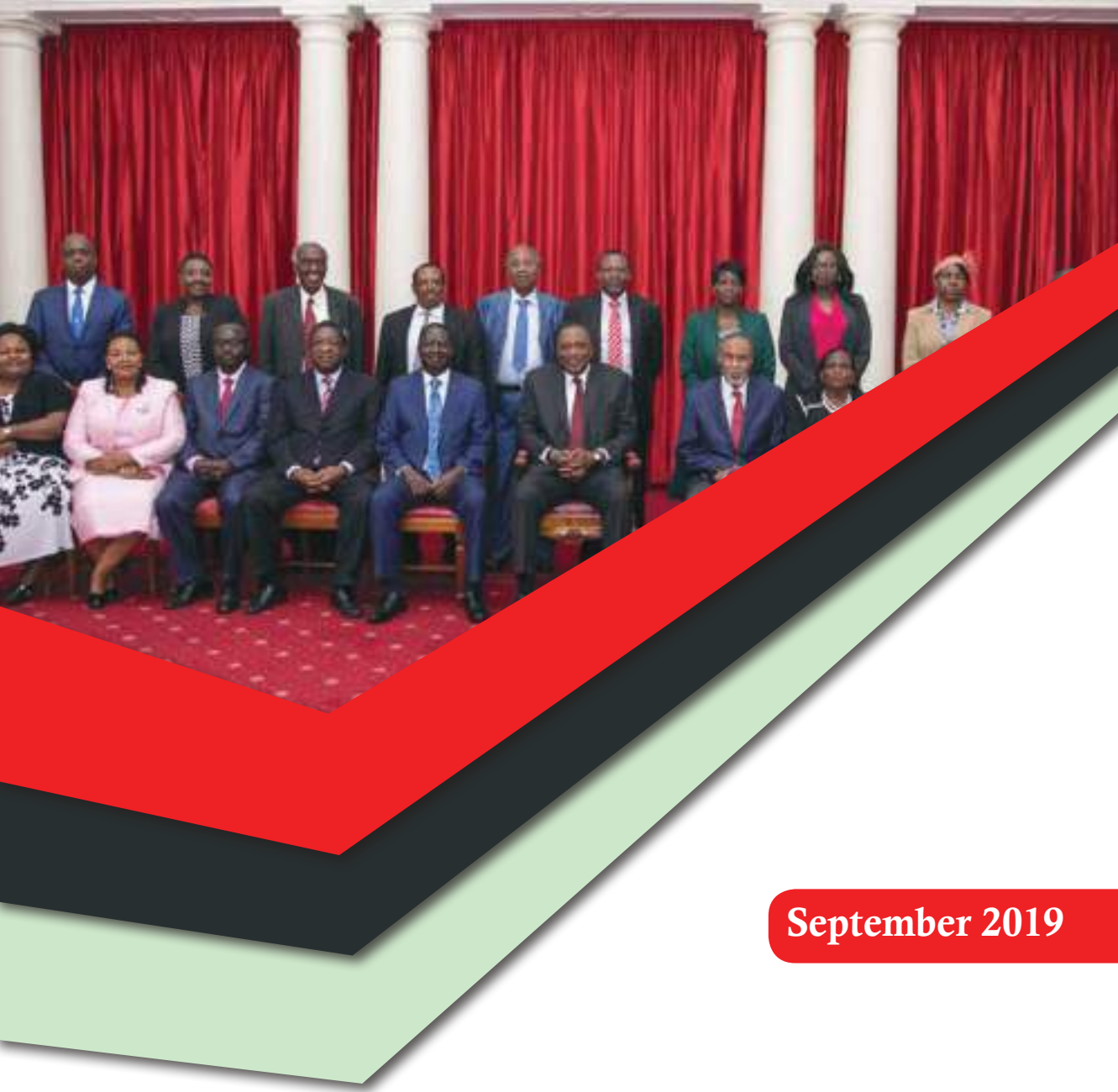




September 2019

“CAPTURED” AT CONCEPTION:

The Unlikely Promise of BBI and the
Quest for Reforming Kenya



“CAPTURED” AT CONCEPTION:

The Unlikely Promise of BBI and the Quest for Reforming Kenya

Ken Orengo

This is a “ground zero” report by the Uwazi Consortium revealing that the Building Bridges Initiative is unlikely to deliver up to the expectations of the people of Kenya. The study shows that the process is opaque, exclusive, inconsistent with the law and ineffective. The study concludes that the outcomes of the process will be a rubber stamp of the predetermined “shared objectives” between Uhuru Kenyatta and Raila Odinga rather than an expression of the will of the people of Kenya.



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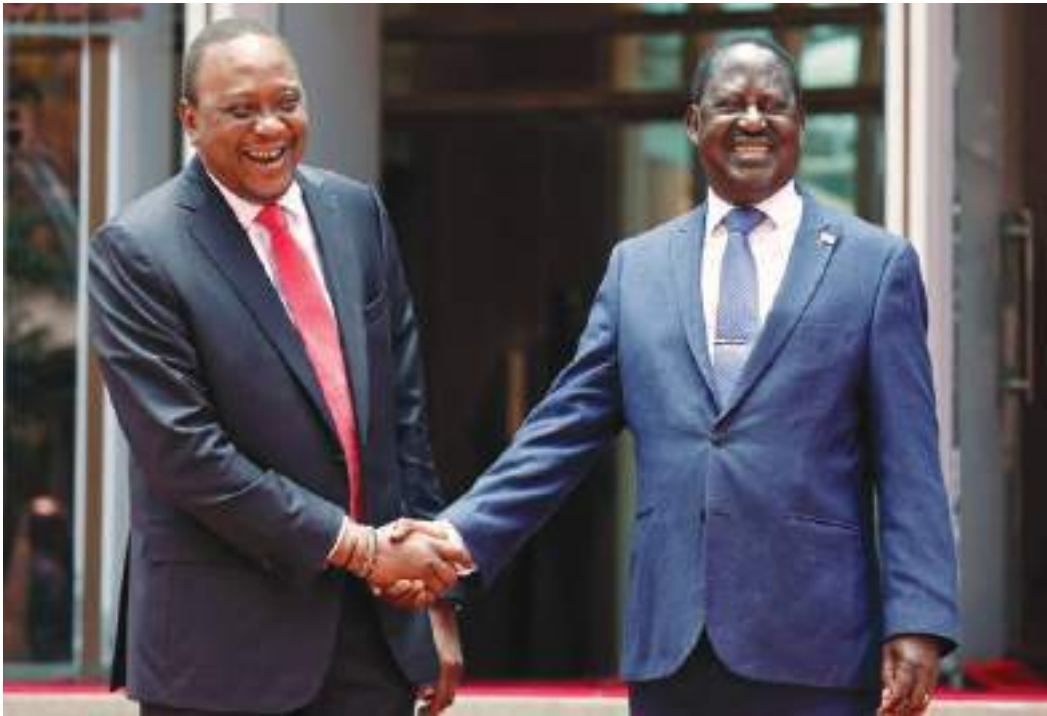
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List of Acronyms

BBI	Building Bridges Initiative
CVE	Countering Violent Extremism
CKRC	Constitution of Kenya Review Commission
EACC	Ethics and Anticorruption Commission
GC	Governing Council
IPPG	Inter Parties Parliamentary Group
KADU	Kenya Africa Democratic Union
KANU	Kenya Africa National Union
KICC	Kenyatta International Convention Center
KNHREC	Kenya National Human Rights and Equality Commission
LDP	Liberal Democratic Party
NAC	National Alliance Coalition
NCIC	National cohesion and Integration Commission
NAK	National Alliance Party of Kenya
NARC	National Rainbow Coalition
NASA	National Super Alliance
NCTC	National Counter Terrorism Centre
NEC	National Executive Committee
NPSC	National Police Service commission
NRM	National Resistance Movement
ODM	Orange Democratic Movement
USA	Unites States of America



A new dawn



Kenya's President Uhuru Kenyatta (L) greets opposition leader Raila Odinga of the National Super Alliance (NASA) coalition after addressing a news conference at the Harambee house office in Nairobi, Kenya March 9, 2018.

It has been an interesting period since 9th March 2018 when President Uhuru Kenyatta and Raila Odinga shook hands. In this event, famously known as the 'handshake', the two leaders made a declaration to cease all hostilities between them and find common grounds in the interest of moving the country forward. A document signed by both leaders and titled 'Building Bridges to a new Kenyan Nation' was launched in the same month, highlighting 9 issues to be addressed with an aim of creating a united nation. A programme commonly known as the Building Bridges Initiative (BBI) was established to assist in the implementation of the shared objectives. The initiative, made up of 14 members and 2 co-chairpersons, was officially gazetted on the 31st of May 2018¹ with a term of 1

1 See the Standard Newspaper, "*14-member Building Bridges initiative task force gazette*", 31 May 2018 at www.standardmedia.co.ke/article/2001282464/14-member-building-bridges-initiative-task-force-gazetted

year. The team commenced their task from the first week of June 2018², and in May 2019, had their term extended by 5 months until October 2019 to present their report to the two principals³.

A relieved nation

The handshake ended the acrimonious political rivalry between the Jubilee and the National Super Alliance (NASA) coalitions. The presidential elections of August 2017 in Kenya caused this bitter rivalry between the two coalitions, throwing the country into turmoil especially after Kenyatta's victory was nullified by the Supreme Court and subsequently winning a repeat election in October 2017 which was boycotted by his opponents. In a speech at Uhuru Park Nairobi on the 25th of October 2017, NASA leader Raila Odinga declared the transformation of NASA coalition into the National Resistance Movement (NRM)⁴. The movement was formed to embark on a campaign of defiance and non cooperation with the government including a boycott of all goods and services offered by businesses benefiting the government. On the 30th of January 2018, the NASA leader Raila Odinga was sworn in as the peoples' president⁵ after which a plan was hatched to cripple Uhuru's government by organizing weekly pickets, rallies, processions and demonstrations in Nairobi, Kisumu and Mombasa. These tensions escalated until March 2018 when the leaders of the two coalitions agreed to end the hostilities.

2 www.kenyans.co.ke/news/29548-uhuru-railas-building-bridges-team-commence-work-june

3 <https://nairobinews.nation.co.ke/news/uhuru-term-building-bridges>

4 See the U-Report, "What Kenyans Have to say After NASA's Transformation to the National Resistance Movement", at <https://www.standardmedia.co.ke/ureport/story/2001258441/what-kenyans-have-to-say-after-nasa-s-transformation-to-national-resistance-movement>

5 <https://citizentv.co.ke/news/raila-swears-self-in-as-peoples-president-189610/>

Mixed fortunes



A review of the handshake more than a year after President Uhuru Kenyatta and Raila Odinga shook hands reveals that Kenyans are divided on the effects of the handshake⁶. For much of the general public, the handshake played a big role in restoring peace and unity in the country. This is confirmed in a survey by Ipsos showing that 80% of Kenyans still supported the handshake more than a year on⁷. For business people, the handshake brought back a conducive working environment which had been affected by the boycott of certain products and sustained mass protests in major cities and towns. For some in the political sector the handshake has weakened the opposition and significantly affected the relationship between President Uhuru Kenyatta and his Deputy William Ruto. The two were perceived to be very close before the handshake.

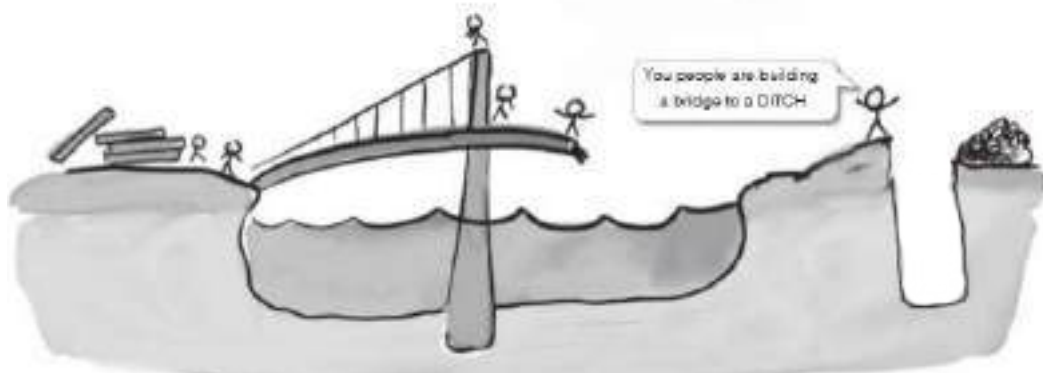
6 See Capital News, “Mixed Reactions on Uhuru-Raila one-Year-old Handshake”, at <https://www.capitalfm.co.ke/news/2019/03/mixed-reactions-on-uhuru-raila-one-year-old-handshake/>

7 See “Kenyans Unwavering Support for the Handshake”, at <https://www.ipsos.com/en-ke/kenyans-unwavering-support-handshake>

Chapter 1

BUILDING BRIDGES TO OBLIVION

There is an inconsistency in how the Building Bridges Initiative (BBI) was conceived and how it is being implemented. Rolling out of the initiative as a task force facilitated using public funds raises the question “is it legal to follow up on individual agreements of personal shared objectives using state resources”?



The global perspectives of building bridges

Creating Initiatives for building bridges are common in many parts of the world where there are conflicts between interest groups or where there is a sense of exclusion felt by some interested groups. For instance, in the United States of America (USA), one of the major injustices that has attracted civil society engagement in the post-Cold War era is religious fundamentalism which has polarized Muslim and Christian relations. As a result, there are many initiatives that have been put in place over time to offer hope for relations and dialogue between American Muslims and American Christians⁸. For instance, the Doris Duke Charitable Foundation has a Building Bridges Grant Program with a goal

⁸ Muslim-Christian Relations in the United States. <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199862634.001.0001/oxfordhb-9780199862634-e-025>

of contributing towards a more just civil society and greater well-being among these people. This is achieved through support planning and implementation of projects that engage USA based Muslim and non-Muslim populations in arts and media experiences designed to advance relationships and understanding for mutual well-being⁹. Another example is the Berkley Center for Religious Peace and World Affairs at the Georgetown University which organizes the Building Bridges Seminar that brings together internationally recognized Christian and Muslim scholars for intensive study and knowledge transfer for understanding and improved relationships¹⁰. There are many other building bridges initiatives across the world with a range of objectives, for example overcoming barriers to employment and education, strengthening economic vitality of a region, fostering cultural awareness, increasing collaboration and partnerships between public and private sectors, conflict resolution among others.

A history of handshakes in Kenya

Kenya has a rich history of the politics of handshakes since independence. There are different opinions on the number of handshakes that have been there in Kenya's history. The first handshake was between Kenya African Democratic Union (KADU) and the British settlers¹¹. When it became inevitable that Kenya will attain independence, KADU was formed by politicians who did not agree with the ethnic dominance of the Kikuyu and Luo in the nationalist movement, led by the Kenya African National Union (KANU). KADU's interest was to defend the interest of minority ethnic groups. On the other hand, the British settlers did not have confidence that after giving independence to Kenya, the nationalist movement led by KANU would guarantee protection of their land rights. The handshake between KADU and the British settlers became popular with the British Empire and with Kenyans who wanted continuity and therefore significantly

9 Doris Duke Charitable Foundation has a Building Bridges Grant Program. <https://www.ddcf.org/what-we-fund/building-bridges/goals-and-strategies/building-bridges-2018-19-grants-program/>

10 <https://berkeleycenter.georgetown.edu/projects/the-building-bridges-seminar>

11 African Tribalism, African Socialism and the Goal of Political Democracy in Kenya. Page 69-71

challenging Kenyatta's leadership after he was released from prison and made the first president of KANU. The second and most celebrated handshake during independence was the merger between KANU and KADU which took place within a year after independence and saw the dissolution of KADU as a political party. KANU won the first general election in 1963 but reluctantly, agreed to form government under the KADU federal constitution which was supported by the British Empire in order to accelerate the declaration of independence. There are different opinions on why the merger took place. Some argue that President Jomo Kenyatta wanted Kenya to revert to a single party system while others argue that this was a strategy to strengthen conservative forces in KANU while isolating the nationalist forces in the party¹². In 1997, Political actors from both the ruling party KANU and the opposition crafted a deal with the civil society to save the country from a threat of mass action and boycott of the general election. This gave birth to the Inter Parties Parliamentary Group (IPPG)¹³. In 2002, National Alliance Party (NAK) which was born out of the National Alliance Coalition¹⁴ (NAC) got into a merger with the Liberal Democratic Party¹⁵ (LDP) to form a new party, the National Rainbow Coalition (NARC) which won the general election. In 2008, President Mwai Kibaki and opposition leader Raila Odinga shook hands to end the 2007-2008 post-election violence after 2 months of a mediation process led by the late Kofi Annan. This led to the formation of a grand coalition government and an agreement on a process to review the constitution – including the electoral system - in order to restore stability and prevent such threats to it in the future. Most important, it was grounded in several negotiated agreements underpinned by critical constitutional guarantees.

12 See *"Ethnic Barons, Handshake Politics and Raila's Accidental Legacy"*, at <https://www.theeastafricanreview.info/op-eds/2018/05/26/ethnic-barons-handshake-politics-and-railas-accidental-legacy/>

13 See *"Is This Another IPPG Moment"*, at <https://www.the-star.co.ke/opinion/columnists/2016-05-27-is-this-another-ippg-moment/>

14 A coalition of civil society groups and three opposition political parties led by Mwai Kibaki, Charity Ngilu, and the late Michael Wamalwa Kijana

15 Raila led faction of the New KANU which protested the choice of Uhuru Kenyatta as the presidential candidate

An agreement between individuals

By contrast, the decision by President Uhuru Kenyatta and Raila Odinga to meet and agree to find common grounds in order to restore peace and stability was without any input from their political support bases. There are no reports of Raila's decision being a resolution of the Orange Democratic Movement (ODM) National Executive Committee (NEC) or the Governing council (GC) of the party. Similarly, for Uhuru Kenyatta there are no reports of the Jubilee Party's NEC or GC resolving to have such a meeting with NASA or its leaders. Representatives of the Jubilee or NASA parties were not invited to the talks that led to the handshake. Speaking in a public function in Kitui on the 9th of July 2018, Raila said that top leaders from both parties were left out of his March 9 meeting with President Uhuru Kenyatta to avoid discussions on the 2022 political transition¹⁶. It is apparent that the administrative and the executive branches of the state were not involved in the agreement on shared objectives between the two leaders. Therefore, going by the definition of public policy, the written formal statement signed by the two leaders does not amount to public policy and therefore cannot be a principled guide to the actions of the state administrative and executive branches.

Rolling out of the Building Bridges Initiative/Programme as a task force facilitated by public funds raises the question "is it legal to follow up on individual agreements of personal shared objectives using state resources"? The Constitution of Kenya requires that the making of law or public policy and the implementation of the same is bound by national values and principles of governance as provided in article 10 and that there must be public participation. One can conclude that there is an inconsistency in how the BBI was conceived and how it is being implemented.

16 See the Star *"Raila: Why Kalonzo and Ruto were locked out of handshake"*, at <https://www.the-star.co.ke/news/2018-07-10-raila-why-kalonzo-and-ruto-were-locked-out-of-handshake/>

Chapter 2

AN ANECDOTE OF PROCASTINATION

The 9 issues identified as causes of political, economic and social problems in Kenya through a formal statement released by President Uhuru Kenyatta and Raila Odinga in March 2018, have already been addressed in existing laws and are within the mandates of existing independent commissions.



Ethnic Antagonism

Ethnic antagonism was first argued by sociologist Edna Bonacich in the early 1970s. In her theory of a split labor market, she argues that ethnic antagonism emerges where two or more racially/ethnically distinct groups of workers vie for the same jobs, and where the total cost to the employer (including wages) of hiring workers from one group is significantly lower than the cost of hiring from the other group¹⁷. The writer concluded that ethnic tensions do not occur at individual level prejudice but in the social structure and political power levels. The people of Kenya are ethnically diverse and they culturally value their ethnicity. This makes it easier

¹⁷ Bonacich, Edna (October 1972). "A Theory of Ethnic Antagonism: The Split Labor Market". *American Sociological Review*. 37 (5): 547–559

for groups to be mobilized around ethnicity. Due to the opportunistic nature of politics, politicians find it cheaper to mobilize their support bases around ethnicity rather than around social and economic issues that cut across. In this case, the split labor market theory applies in the competition for elective positions and power in Kenya, therefore the divisive election cycles that the country repeatedly experiences. The Constitution of Kenya 2010 in several parts addresses this issue. Article 10 gives the national values and principles of governance in which ethnicity is not included. Article 27 on equality and freedom from discrimination, expressly prohibits the state or any individual from discriminating another person directly or indirectly on the grounds of ethnicity. There is no exception on how political parties are formed and organized, article 91 (2) provides that a political party shall not be founded on an ethnic basis or engage in advocacy of hatred on that basis. Both the Kenya National Human Rights and Equality Commission (KNHREC) and the National cohesion and Integration Commission (NCIC) have a responsibility to ensure that the provisions of the Constitution in articles 10, 29 and 91 are applied to prevent ethnic antagonism.

The persistence of ethnic antagonism as a result of political competition in Kenya, despite having solutions in the law, and in context of a political environment similar to the one described in the split labor market theory, suggests that the solution may lie in social change. The Kenyan electorate should desist from “selling themselves cheap” by being mobilized around ethnicity to support political leaders. Instead, the electorate should support leaders who can relate to their issues and have solutions to these issues. Such a shift would guarantee that ethnic antagonism does not thrive.

Exclusion

In the formal statement released by President Uhuru Kenyatta and Raila Odinga, inclusivity is identified as one of the greatest challenges Kenyans face. In the same statement, under the issue of devolution, exclusion in the counties is highlighted

where large local communities have isolated smaller local communities. Exclusion, whether active or passive, is one of the principal reasons why affected groups resort to violence and protests. Active exclusion refers to proactive exclusion of known actors from political, economic, or social decision making processes by people in power. Passive exclusion is tacit, and occurs when known actors are left out of decision-making processes because they lack the means to assert their interests in the processes¹⁸. The Constitution of Kenya through articles 10, 27 and 91 has addressed the challenge of active exclusion. Passive exclusion if any goes unnoticed. The problem of exclusion in Kenya is not real but created by dishonest politicians who use exclusion campaigns to whip up ethnic emotions and consolidate their support bases. In a country with 42 tribes and an average of 5 sub tribes for each tribe, it is almost impossible to form a government where all tribes are represented¹⁹.

Corruption

Corruption in Kenya is both a systemic and a political problem. Different reasons have been given for the existence of corruption in government. The introduction of a democratic system may lead to incentives for corruption²⁰. For example, during the process of election campaigns, some politicians use the “it’s our turn to eat” notion to whip ethnic emotions of exclusion. This is an example of the political problem of corruption, which Michela Wrong argues is why corruption is prevalent in Kenya²¹. Corruption in the government of Kenyan is largely due to a deeper problem of institutional failure, rather than a cultural one. This means than corruption can be attributed to the predominance of arbitrary power, especially in the statutory order, which grants executive, legislative and judicial

18 See a Briefing paper for the UN High-level review panel “Inclusivity in Peace Processes”, at <https://i.unu.edu/media/cpr.unu.edu/attachment/1005/Inclusivity-in-peace-processes.pdf>

19 See the Standard “Kenya: Politics of Inclusion and Exclusion”, at <https://www.standardmedia.co.ke/article/2000227494/kenya-politics-of-exclusion-and-inclusion>

20 See Inge Amundsen, Political Corruption: An Introduction to the Issues 18 (Chr. Michelsen Inst., Working Paper No. 7, 1999)

21 See Michela Wrong, *It’s our Turn to Eat: The Story of a Kenyan Whistle Blower* (2009)

arms broad powers without establishing effective procedural mechanisms to circumscribe their exercise²². The systemic form of corruption exists in lower levels of government and is perpetuated by public officers who are accustomed to unethical practices and exploitation of loop-holes in the processes of expending public funds, for their personal gains.

The provisions of Chapter 6 of the Constitution of Kenya on leadership and integrity address the issue of corruption. The Ethics and Anticorruption Commission (EACC) is established to independently ensure compliance with the provisions of this chapter. The deeper problem of institutional failure in fighting corruption is due to the failure of the EACC.

Rights, responsibilities, safety and security

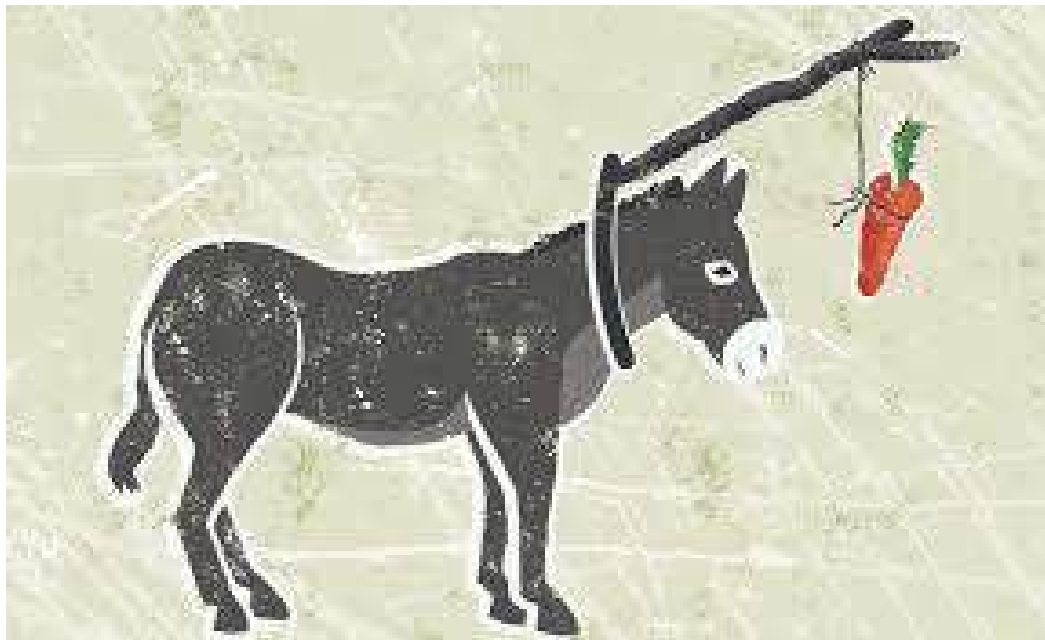
The issues of rights and responsibilities have been addressed in chapter 4 of the Constitution on the Bill of Rights, whereas safety and security and safety are addressed in chapter 14 of the Constitution on national security.

An exercise in futility

Forming another task force to collect views on the 9 issues (Ethnic antagonism and competition, lack of national ethos, inclusivity, devolution, divisive elections, safety and security, corruption, shared prosperity, responsibilities and rights) is duplicitous and amounts to interfering with the mandates of the KNHREC, NCIC, EACC and the National Police Service commission (NPSC). These issues are historical and have been addressed in the findings and recommendation of task forces and commissions of enquiries in the past including those of Kiliku (1992),

22 Migai Akech (2016). Abuse of Power and Corruption in Kenya: Will the New Constitution Enhance Government Accountability? Indiana Journal of Global Legal Studies Vol. 18 (1) pp. 341-394

Akiwumi (2002), Ndungu (2003), Kriegler (2008), Waki (2008), the Ouko task force (2009) and the Truth, Justice and Reconciliation Commission (2009).



The findings and recommendations contained in these reports significantly informed the Constitution of Kenya Review Commission (CKRC) processes and therefore have been addressed in the Constitution of Kenya 2010.

Chapter 3

THE BALANCING ACT

In appointing the task force to implement the roll-out of the BBI, President Uhuru Kenyatta and Raila Odinga did a good job in an attempt to cope with several, often conflicting factors and political interests.



Legal framework

The Constitution of Kenya article 27 (4) provides that “the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth”. Further, Article 81 (b) provides that “Not more than two thirds of the members of elective or appointive bodies shall be of the same gender”. Article 54 (2) provides that the State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive

bodies are persons with disabilities. Article 55 (b) provides that the State shall take measures, including affirmative action programmes, to ensure that the youth have opportunities to be represented and participate in political, social, economic and other spheres of life.

Section 7 of the National Cohesion and Integration Act states that “all public appointments shall seek to represent diversity of the people of Kenya and that no public entity shall have more than a third of its staff from the same ethnic community”.

Rewarding political cronies



President Uhuru Kenyatta and Raila Odinga with some members of the Building Bridges Initiative taskforce at State House, Nairobi.

Out of the 14 members and the 2 co-chairpersons of the BBI team, 9 have known political affiliations which may be attributed to their selection. Paul Mwangi is Raila's former legal aide and was appointed in the past to advise NASA on the

legal framework for elections²³. Ambassador Martin Kimani is the President's special envoy for Countering Violent Extremism (CVE) and Director of Kenya's National Counter Terrorism Centre (NCTC)²⁴. Adams Oloo is a senior lecturer at the University of Nairobi and has been seen on many occasions in the past working for NASA²⁵. Agnes Kavindu contested and lost the Machakos women representative seat as a candidate for the Jubilee Party during the 2017 general elections²⁶. Florence Omoso was a member of the ODM Party's appeals tribunal, which was handling cases lodged by dissatisfied aspirants during the party nominations in preparation for the 2017 general elections²⁷. Amos Wako is the sitting senator for Busia County sponsored by the ODM Party, Yusuf Haji is the sitting senator for Garissa County sponsored by Jubilee Party, Maisen Leshomo is the sitting women representative for Samburu County sponsored by KANU and Rose Moseu is the sitting women representative for Makueni County sponsored by the Wiper Democratic Movement party.

Regional and gender balance

The remaining 7 members appear to be representing the interests of certain regions or communities. Major (Rtd) John Seii was the first elected chairman of the Kalenjin Council of Elders in 2009 and is the coordinator of the Myoot Council of Elders and the chairman of the Uasin Gishu Peace Forum²⁸. Prof. Morompi Ole Ronkei is a trustee of the Maa Trust and is a well respected Maasai elder²⁹. James

23 See the Star "Raila Hires Technocrats to Help him Steer his bid for Presidency", at <https://www.the-star.co.ke/news/2017-07-04-raila-hires-technocrats-to-help-him-steer-his-bid-for-presidency/>

24 <https://www.ict.org.il/Worker.aspx?ID=731#gsc.tab=0>

25 On the 30th of June 2017, Adams Oloo addressed a press conference together with NASA spokesperson Salim Lone at the Okoa Kenya offices calling for the IEBC to release KPMG audit reports of the voters register

26 <https://www.kenyans.co.ke/news/19210-muthama-reveals-what-happened-between-him-and-agnes-kavindu>

27 See the Standard "ODM Tribunal Split Over Nominations Verdict" at <https://www.standardmedia.co.ke/article/2001238504/odm-tribunal-split-over-nominations-verdict>

28 <https://hivisasa.com/posts/what-you-need-to-know-about-major-rtd-john-seii-the-handshake-team-member>

29 themaatrust.org/our-trustees/

Matundura is the chairman of the Gusii Council of Elders³⁰. Saeed Mwaguni is an Associate Professor in Environmental Science at the Technical University of Mombasa, Archbishop Zecheus Okoth is a former leader of the Kisumu Diocese of the Roman Catholic church, Bishop Lawi Imathiu is a retired Archbishop of the Methodist church and Bishop Peter Njenga is a retired Bishop, formerly of the Diocese of Mt. Kenya South of the Anglican church. It appears that the Kalenjin, Maasai, Gusii, Luo, Mount Kenya and Coastal communities have representation. Florence Omore, Amos Wako, Rose Moseu, Agnes Kavindu, Yusuf Haji and Maison Leshomo appear to also represent the interests of the Luhya, Kamba and marginalized communities. Therefore one can conclude that the major communities in Kenya are represented in the membership of the task force. However, in a country with more than 40 tribes and an average of 5 sub-tribes for each tribe, it impossible to achieve an ideal regional representation²⁰.

Out of the 14 members of the task force, 4 are women; Maison Leshomo, Florence Omore, Rose Moseu and Agnes Kavindu. This meets the requirements of the one-third gender rule.

Not a perfect balance

In appointing the task force to implement the roll-out of the BBI, President Uhuru Kenyatta and Raila Odinga did a good job in an attempt to cope with several often conflicting factors and political interests. They have complied with the principles of regional, ethnic and gender balance. However, there is no consideration for representation of the youth and persons with disabilities. Political loyalty appears to be given most weight in selecting the members; this is understandable because the initiative is a political process. It therefore begs the question: if the issues identified in the terms of reference for the BBI are affecting all Kenyans, why are representatives of other political parties left out? Does this imply that

30 See the Standard "Politicians Skip Gusii Elders Meet", at <https://www.standardmedia.co.ke/article/2000222451/politicians-skip-gusii-elders-meet>

a personal agreement between President Uhuru Kenyatta and Raila Odinga can produce the solutions to all issues affecting the people of Kenya? The team has a wealth of experience from the church, having 3 retired Bishops from the Anglican, Catholic and Methodist churches. However, this appears to discriminate against other faiths, especially the Muslims who have no representation in the task force. Despite playing a significant role in the struggle for reforms, human rights and the fight against corruption in Kenya, Civil Society Organizations likewise lack representation in the task force. Civil Society Organizations are not represented in the taskforce despite playing recognizable roles in the struggle for reforms, human rights and the fight against corruption in Kenya.

Chapter 4

THE ULTIMATE INDISPOSITION

The operations of the BBI are not transparent. The task force neither has known physical addresses for its offices nor a website, postal address, telephone number(s) or email address(s). It has not established clear roles and responsibilities for the members or an organizational structure that can enable it to meet its objectives. The public hearings organized by the task force are publicized and mobilized through the National Administration structures.

BBI Team Busy At Work...



A vague organization

In a formal statement, 'Building Bridges to a New Kenyan Nation' which was jointly released by President Uhuru Kenyatta and Raila Odinga, the two leaders agreed to roll out a programme that will implement their shared objectives. "The

programme shall establish an office and retain a retinue of advisors to assist in this implementation”, the statement says.

The BBI task force has no known physical addresses for its offices. While sources indicated that its secretariat has offices at the Kenyatta International Convention Center (KICC) buildings, enquiries made at the reception of the same buildings did not confirm this. Nor does the task force have a website, postal address, telephone number(s) or email address(s). In the modern world, a website is perhaps more important than a physical address. As such, if an organization has no website, it is almost as if it does not exist³¹. The internet has become an important tool for finding and sharing information and a website is primarily a place where information about a person or organization is found. There are several advantages of having a website. A website is less expensive, has friendly environmental in terms of advertising and marketing and is conveniently accessible in any part of the world³¹. The task force likewise lacks branding; a logo, colors, other associated visuals or slogan that should make the organization immediately recognizable. According to researcher Jared Spool, branding is an investment with an aim of getting people to trust a product or a service. He claims “brands are perceptions” and “brand elements such as names and logos are shortcuts to those perceptions³²”. Without all these elements of a functional organization, the BBI task force cannot operate in an open and honest manner and therefore cannot inspire public trust.

An impotent organization

Effective organizations must be successful in producing results, and to be fully effective, must exhibit strengths in six core organizational areas; leadership, decision making, structure, people, work processes and culture³³.

31 <https://www.dogulindigital.com.au/advantages-benefits-website-for-business/>

32 See “Understanding the Full Impact of web Design on SEO, Branding and More” by Drew Hendricks at <https://www.forbes.com/sites/drewhendricks/2015/02/11/understanding-the-full-impact-of-web-design-on-seo-branding-and-more/#4ec212dc64fe>

33 <https://www.bridgespan.org/insights/library/organizational-effectiveness/the-effective-organization-five-questions>

In terms of its decision-making and structure, there are no (known) clear roles and responsibilities for its members or an organizational structure that can enable it to meet its objectives. Likewise, there is a lack of clarity in the roles of Ambassador Martin Kimani and Paul Mwangi. In the formal statement, President Uhuru Kenyatta and Raila Odinga mandated them to oversee the establishment of the task force. In some reports, the two are considered as co-chairpersons³⁴ while in other reports they are considered as joint secretaries³⁴. Other reports suggest that the team is chaired by Senator Yusuf Haji³⁵. The roles and responsibilities of the other members of the team either as individuals or as a team are not defined. When roles and responsibilities are not clearly defined, task force members are likely to be less productive. There is also a duplication of roles, confusion, disappointment, frustration and therefore lower productivity. In the absence of clearly defined roles and responsibilities, task force members will likely find it difficult to look beyond their own individual positions while understanding and respecting the unique contributions of one another. Such factors will likely undermine the likelihood of achieving success based on shared responsibility and ownership³⁶.

From a brand equity perspective, the ability of an organization to attract good talent and place the right people in the right jobs, gives it a competitive advantage³⁷. This can only be realized through competitive recruitment. This process must begin with competitive recruitment. Yet the selection of members of the BBI task force was not competitive. There were no publicly announced recruitment plans, selection committees, selection criteria or job descriptions. Therefore, shortlisting or interviews was never done. In the absence of a competitive recruitment and selection processes, the task force will have difficulty in evaluating, developing, and rewarding its members in a manner that is consistent with the priorities³⁴.

34 <https://www.capitalfm.co.ke/news/2018/11/building-bridges-team-kicks-off-stakeholder-hearings-in-nairobi/>

35 See The Standard "Building Bridges task Force to Start County Visits Next Week", at <https://www.standardmedia.co.ke/article/2001301306/building-bridges-task-force-to-start-county-visits-next-week>

36 <https://info.nicic.gov/ebdm/node/63>

37 <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199928309.001.0001/oxfordhb-9780199928309-e-7>

Furthermore, the members will not feel that their work is well aligned to the priorities of the organization³⁴.

An organization is effective when it can provide the best possible product or service at the lowest possible cost. This effectiveness in turn depends on the efficiency of the organization's work processes; these are a series of steps completed to accomplish a task that results in a particular output. A simple work-process analysis of the BBI revealed that the task force lacks documented processes and therefore cannot be effective in undertaking its mandate.

Use of ineffective methods

As reported by the media, the BBI task force has been collecting views by holding consultations with the general public and stakeholders, in public sittings³⁵. These sittings, organized by the task force, are publicized and mobilized through the National Administration³⁸ where the County Commissioners inform and invite selected participants from their respective Counties. The mobilizers have an average target of 300 invitations per County.

Public sittings/hearings are held as part of an inquiry process, at which any organisation or person can attend a hearing, either to speak to a submission or to simply observe the proceedings. To facilitate the discussions, participants are advised to outline their views in written submissions lodged prior to the hearing. However, it is acceptable for participants to lodge their submission while at the hearing without prior written submissions. The hearings are conducted in a relatively informal manner; the amount of time allocated to participants will vary. Legal representation is not necessary and there is no requirement to take a formal oath. A transcript of proceedings is produced for the record and to inform those unable to attend the hearing of the discussions that took place. Members of the

38 National Administration is one of the Departments in the Ministry of Interior and Coordination of National Government and is mandated to coordinate National Government functions in the field. This was reinforced by the executive order NO.3/2014 on the strengthening of the National Government coordination function at the county level. It has 7 Regional Coordinators, 47 County Commissioners, 289 Deputy County Commissioners, 831 Assistant County Commissioners, 3256 Chiefs and 8145 Assistant Chiefs

media may attend the hearings; however, audio recording of proceedings for broadcast by media representatives is usually not permitted. The study followed 6 public hearings organized by the BBI task force in different Counties. Low turn-outs were observed in all the hearings, suggesting that the methods used in the mobilization of participants were not effective. For example, in Laikipia County only about 100 people attended the hearing out of the expected number of 300. For all the hearings that were sampled, there was no evidence of notices given to the public through mass media³⁹ or through posters⁴⁰. The people who were invited by the respective County Commissioners were those who had participated in National Administration activities in the past, and their contact details had been recorded. For instance, one of the interviewees received an SMS from the Deputy County Commissioner (DCC) asking them to attend a hearing together with one other person of their choice. The message had details of the venue and time of the meeting and a promise of reimbursement of transportation costs but did not have any agenda. The invitees did not know how the DCC obtained their telephone numbers but suspected their numbers were pulled out of an attendance list of a public baraza they had participated in the past meant for sensitization on the National Integrated Identity Management System project (commonly known as “huduma number”). The selective invitation of participants to the public hearings raises many questions. Is it due to lack of funds to carry out proper publicity, or because the task force has a predetermined outcome and therefore is not keen on independent submissions? Either way, the manner in which the invitations were issued did not encourage meaningful stakeholder participation and therefore casts doubt on the quality of submissions received.

As a result of the low turnouts, it was observed that participants were given sufficient time to make their oral and written submissions. However, some participants complained of discrimination where submissions from people known

39 Mass media refers to a wide range of media technologies that reach a large audience through mass communication e.g. radio, television, newspapers and internet.

40 A poster is any piece of printed paper designed to be attached to a wall or vertical surface typically, having both textual and graphic elements and frequently used as a tool of advertisement of events

to be active in political party politics or those seeking or holding political positions are given preference in the hearings in terms of being recognized and given more time to present their views. When submissions from other stakeholders including civil society are not given attention, the will of politicians is likely to influence the outcomes in the final report of the task force.

Funding

Given the dubious institutional basis of BBI as described in previous sections of this Report, a key question is: who finances its operations? This includes its 14 members and the secretariat including technical personnel. How much has the BBI activities expended to date? These are not idle questions but represent issues that bear on the legitimacy and ownership of the Initiative.

First, if the State is the one underwriting operations of BBI, it is important for the operational budget of this institution to be made public to give opportunity for relevant oversight institutions to test the budget performance of the Initiative against the constitutional principles of fiscal responsibility.

Second, and more significant, the BBI is anticipated to make wide-ranging reform recommendations that bear on the governance structure of the country including the electoral management system and the structure of the executive. These recommendations touch on the core of Kenya's statehood and sovereignty and will only be effected by way of a referendum. The question then is whether BBI, which is assumed to be funded by external donors, might be swayed by the preponderance of donor interest to make recommendations incompatible with the interests of Kenyans. To what extent will BBI escape the tag of interest group capture?

Unless the funding source of the BBI is revealed, it is unlikely that its recommendations – watered and nurtured using unknown resources – will find resonance with the Kenyan electorate and citizenry writ large.

CONCLUSION

The study did not find anything that inspires confidence in the BBI. The handshake between President Uhuru Kenyatta and Raila Odinga which led to the formation of the BBI is surrounded by mystery. Unlike political handshakes that have taken place in the past in Kenya, the March 2018 handshake was neither structured nor witnessed. The result of this is that the people of Kenya are less confident and disappointed in the proceeding events. Many believe that the BBI is suspicious and has an insidious agenda. Those who have tried to explain the agenda of the BBI think that this is a conspiracy between President Uhuru Kenyatta and Raila Odinga to retain control of national politics and state power beyond the 2022 political transition. Others believe that the two leaders are hell bent on ensuring that state power is captured by people of their choice. The public hearings organized by the BBI task force are not transparent indicating that there are predetermined outcomes. The meetings are carefully, secretly organized and are therefore dress rehearsals supposed to deceive the people of Kenya. The task force was not formed through parliament or through a decision of the cabinet and therefore the issues that it seeks to address are not public policies. The task force does not have a procedural budgetary allocation, no known physical addresses or contact details. The BBI is therefore a mockery, a waste of time, a waste of resources and a rubber stamping exercise.

Uwazi Consortium is an association of civil society organizations, social movements and concerned citizens in Kenya, interested in the areas of democracy, governance and human rights. The Consortium aims at creating timely opportunities for dialogue and articulate progressive development agendas within the public discourse, that strengthen democratic governance, the role of civil society and the sovereignty of citizens in determining their own futures.

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UWAZI
CONSORTIUM

First Avenue, Upperhill,
P. O. Box 50246 - 00100,
Nairobi Kenya,
Tel: +254771219361
Email: sg@uwaziconsortium.org