

HAKI NA SHERIA DIALOGUE FORUM

3rd MARCH 2020, NAIROBI – KENYA

The Konrad-Adenauer-Stiftung Rule of Law Program for sub-Saharan Africa convened a dialogue forum in Nairobi bringing together targeted key stakeholders to discuss the ***Building Bridges Initiative (BBI): Transformative Agenda or 2022 succession politics?*** The guest speaker was Prof. Yash Pal Ghai a renowned Professor of Law and an expert on Constitutional Law and Human Rights.

Prof. Ghai started by noting the challenge of defining what Building Bridges Initiative (BBI) really is! He pointed out the ever-changing

nature, approach and objectives of the initiative depending on who was being engaged. In a bid to unpackage it, he began by reviewing the constitutional reform journey to the realization of the Constitution of Kenya, 2010 (the Constitution).

He shared a detailed account of the steps undertaken during the development of the Constitution where he played a critical role. While drafting the Constitution, his team sought to incorporate as much as possible, the views, values and major concerns of the citizens who represented different shades and persuasions.

Regrettably, once the process reached the political stage, some of the most important elements in the draft, notably, the system of government (Kenyans wanted a parliamentary system) and Devolution (drafters proposed 14 units to among other reasons, safeguard the interests of all ethnic communities) were arbitrarily changed by the political class without meaningful consultation and participation of the citizens or the input of the drafters. He lamented that the political class changed the system of government to presidential and established 47 counties out of selfish political interests.

He noted that BBI therefore, started as an initiative meant to correct the ‘previous mistakes’. He reviewed the 9 core challenges that BBI is supposed to tackle namely; Ethnic antagonism & Competition, Lack of a national ethos, Inclusivity, Devolution, Divisive elections, Safety and Security, Corruption, Shared Prosperity as well as Rights



and Responsibilities of Citizens and attributed them to lack of commitment and lack of implementation of the constitution. He observed that Kenya had the most elaborate and comprehensive chapter on Bill of Rights in the world yet very little had changed on the ground for the ordinary citizen. He noted that from the study conducted by his institution (*Katiba Institute*), almost every area of the Constitution had become worse instead of becoming better.

In his view, both the President and the leader of opposition (the main actors behind the BBI) have enough power, clout and influence to bring about the desired change in line with the provisions of the constitution without the BBI if they wanted to do so.

He criticized the government for wasting public funds campaigning for the BBI without giving adequate time and providing a friendly environment for Kenyans to fully participate. In his view, just like had happened with the constitution review process, the politicians had taken over the BBI process thereby jeopardising the chances of coming up with a product that will be beneficial to the people of Kenya.

In the ensuing discussions, participants raised several constitutional and political issues that Kenyans must be aware of, must consider and must be engaged in. Some of the issues highlighted were,

- Failure by the politicians to respond to the critical questions on the BBI process – its objective, sources of funding among others;
- Possibility of having a referendum due to the proposed Constitutional changes – what will be the question(s), how will it be funded considering the hard economic times and the prevailing budgetary deficit in the country?
- The cost of Devolution and whether its benefits are worth the price that Kenyans are paying;
- How to tame the rising tribalism in the country both at the national and county levels;
- The generally weak and ineffective role of Public Participation and the duty of citizens in fighting for the protection and promotion of their human rights;
- The true intention of the “handshake” and the lack of opposition as a consequence, and its impact on democratic development in Kenya.
- Poor level of constitutional literacy among citizens.

While beseeching the political class to commit to the principles and implement the Constitution for the benefit of everyone, Prof. Ghai and the participants agreed on the need to;

- Translate the constitution into Swahili to ensure wide readership;
- Produce easy reference booklets on the key provisions of the constitution in a bid to enhance constitutional literacy;

- Counties to work together on certain common aspects as opposed to working separately for prudent utilisation of the available resources and for meaningful impact;
- Continuously vet and hold accountable all the political leaders at the point of election and during their tenure in office.

In his concluding remarks, Dr. Arne Wulff, the Director of the Rule of Law Program pointed out that **“Democracy needs democrats and thrives on participation.”** He challenged Kenyans aspire to achieve that standard if true dividends of democracy are to be realised.

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