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Amani National Congress (ANC)

Presentation to the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report During the Validation Forum

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1.0 Introduction

[Comments on chapter 2, Lack of a National Ethos, of the BBI Report Pgs. 30 to 35; Chapter 1, Notable Issues that Kenyans must deal with, of the BBI Report Pgs. 21 to 29 and Chapter 12, Conclusion, of the BBI Report Pgs. 98 to 99]

From the onset, I would like to thank the *Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report* for giving us as ANC Party time during this validation forum to express ourselves on the BBI Taskforce Report.

As Amani National Congress (ANC) Party we support the BBI objective of building bridges to a united Kenya in which we move *from blood ties to a nation of ideals*. This is the dream that the founding fathers of our country had in mind when they coined the national anthem.

However, I note that there are a few challenges which the BBI process has encountered that must be addressed if it is to gain the confidence of Kenyans and achieve broad consensus.

One of the challenges the BBI process is facing is the impression created, either by design or by default, that it is intended to serve the interests of a few individuals. It is important therefore that the Committee reassures Kenyans that this process will be inclusive and ensure that the voice of Wanjiku, Mwenda, Akinyi, Nafula, Nyaboke, Fatuma, Akai, Kinjal, Wawuda, Atiang, Nkirote, Naserian and Chebet is heard. To this effect, as ANC we take exception to recurrent remarks by sections of the political class that certain paths and outcomes



will come out of the BBI within certain timelines, whether Kenyans like it that way or not. Such remarks are reckless and should be discouraged.

Besides the impression created that the BBI process is intended to serve the interests of a few, the other major challenge that BBI process must address is fatigue associated with the culture of setting up commissions and taskforces whose reports are never implemented but continue to gather dust on shelves or if implemented, they are implemented partially. Some of the reports include the following:

- *Truth Justice and Reconciliation Commission Report;*
- *Independent Review Commission on the General Elections held in Kenya on 27th December 2007 (famously referred to as the Kreigler Commission Report);*
- *Commission of Inquiry into the Illegal /Irregular Allocation of Public Land (famously known as the Ndung'u Land Commission);*
- *Report of the Judicial Commission of Inquiry into Tribal Clashes in Kenya (popularly known as the Akiwumi Commission of Inquiry),*
- *Report by Parliamentary Select Committee to investigate Ethnic Clashes in Western and Other Parts of Kenya 1992 (famously known as the Kiliku Report); and,*
- *, Commission of Inquiry into Post-Election Violence (famously known as the Waki Commission Report).*

Will BBI Report suffer the same fate?

Kenya's biggest challenge is not lack of sufficient reports but a leadership deficit in which there is no political will and commitment to implement the reports of



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commissions of inquiries, committees and taskforces. The public must reach a place where it holds its leaders accountable.

Although the BBI conversation is partly a result of the quest for electoral justice, no effort has been made to revamp IEBC to make it strong and truly independent.

As presently constituted, IEBC lacks the capacity and necessary autonomy to run its affairs as an independent body. For example, even with a simple task of procuring its election materials and technology, it has to go through the executive.

Having laid the foundation, allow me to make substantive submissions on the BBI Report and our position as a party.

My presentation is structured under five thematic areas, namely: Electoral Justice, Peace & Cohesion, The Economy, Environment & Climate Change and Governance.



2.0 Electoral Justice

[Comments on Chapter 5, Divisive Elections, of the BBI Report Pgs. 48 to 51]

Amani National Congress (ANC) supports the principle of one man one vote and the equality of that vote.

In order to achieve electoral justice in Kenya, we must be deliberate about making IEBC autonomous and truly independent and with sufficient capacity to discharge her functions. Towards this end, there are other recommendations such as obtains in the Kreigler Report but allow me to state key interventions that are needed:

2.1 Provide adequate funding to IEBC to ensure that it performs its constitutional obligations. Just like other commissions, the funding for IEBC should be drawn directly from the Consolidated Fund to avoid executive mischief.

2.2 Hold IEBC accountable to its mandate, especially of continuous voter and civic education. This will clarify expectations, diffuse suspicions and empower the voter to effectively carry out their civic duty.

2.3 The composition and size of IEBC should be drawn from qualified Kenyans with requisite competencies and command the trust of Kenyans to deliver on free, fair and credible elections.

2.5 IEBC must be compelled to publish full elections returns within the election petition period as a measure of. This includes the total number of registered voters, votes cast in favour of each candidate and spoilt votes.



3.0 Peace & Cohesion

[Comments on Chapter 3, Responsibilities and Rights, of the BBI Report Pgs. 37 to 43; Chapter 4, Ethnic Antagonism and Competition, of the BBI Report Pgs. 44 to 46; Chapter 6, Inclusivity, of the BBI Report Pgs. 57 to 61; and, Chapter 10, Safety & Security, of the BBI Report Pgs. 88 to 92]

Durable peace does not come automatically but it is a product of social, economic, cultural, political, environmental and religious justice. In order to achieve this, we propose the following:

3.1 Deal with impunity in which the rule has collapsed and people have become a law unto themselves without the restraining fear of consequences.

3.2 Address democracy deficit by ensuring that we do not build one bridge as we destroy others.

3.3 Put closure to our painful past and use the lessons learnt to build a stronger future for all of us. We cannot dwell on the past. The future awaits us.



4.0 The Economy

*[Comments on Chapter 7, **Shared Prosperity**, of the BBI Report Pgs. 63 to 71; Chapter 8, **Ethnic Antagonism and Competition**, of the BBI Report Pgs. 44 to 46; and, Chapter 8, **Corruption**, of the BBI Report Pgs. 73to 78]*

Is the economy working for Kenyans? Is it creating jobs for the Kenyan youth? Is it encouraging the farmer? Is the tax regime in Kenya fair to the common mwananchi?

These are the questions that need to be answered if we are to achieve shared prosperity.

4.1 Public Debt Management

ANC is gravely concerned by the country's state of public of debt. This is the highest and most burdensome debt book in our history since independence and it is almost unmanageable. There is an urgent need to re-examine our debt portfolio with a view of renegotiating the terms to favourable repayment terms.

The relationship between the National Treasury and the Public Debt Management Office is incestuous. The latter ought to have sense of independence and autonomy in management of public debts and report to the public through parliament on national debts but under the current dispensation, this is not the case



ANC Proposes the following:

4.1.1 *The establishment of an independent Public Debt Management Authority (PDMA) with clear objects and functions chief of which shall be managing public debt at National and County Governments levels.*

ANC is in the process of drafting legislation to implement this and we ask for the support of the Committee.

4.1.2 *Put in place a proper disclosure mechanism where members of the public are periodically informed on the state of public debts-the loan agreements, the terms of loan and the state of the loan.*

4.2 Tax Regime

ANC strongly feels that the tax regime has become punitive, extractive and non-responsive to spurring economic growth and job creation. This is fueled partly by corruption and burdensome public debt. As ANC we recommend that the government shall take deliberate steps in:

4.2.1 *Putting in place strategies for expanding the tax base commensurate with the growth of economy.*

4.2.2 *Addressing the ease of doing business to grow the economy on a continuous basis.*

4.3 Corruption & Wastage in Government



One of the main threats to an economy that works for all is corruption. Unfortunately, the fight against corruption has been hampered by weak institutional framework and lack of political goodwill.

In order to address corruption, we propose the following:

4.3.1 Ensuring adequate funding to the judiciary and investigative offices and the office of prosecutor.

4.3.2 Conduct continuous and random lifestyle audits of public officers

4.3.3 Asset recovery mechanisms should go for seizure of unexplained wealth in relation to wealth declaration and returns filed. This will improve the quality and accuracy of returns filed.

4.4 Youth and Job Creation

Article 55 of the Constitution of Kenya states that, “the state shall take measures, including affirmative action programmes, to ensure that the youth-

- (a). access relevant education and trainings
- (b). have opportunities to associate, be represented and participate in political, social, economic and other spheres of life
- (c). access employment
- (d). are protected from harmful cultural practices and exploitation

ANC Proposes:

4.4.1 That government enhances its programme of attachment and internship policy through the National Industrial Training Authority (NITA) to prepare the youth for the job market.



4.4.2 That the government initiates partnership with the private sector to maximize of opportunities for youth through deliberate incentives.

4.4.3 That mainstreaming of youth affairs at political parties, county and national government to prepare them for leadership roles.

4.4.4 That entrepreneurship, talent and innovation be nurtured among the youth to enable them maximize on the potential.

4.5 Empowered Farmer

Kenya's economy is largely agro-based and there is need to ensure that the farmer is put at the centre of all policy and strategy decisions.

As ANC we propose the following:

4.5.1 The collapsed agro-processing industries must be revived and supported to protect the livelihoods of ordinary Kenyans.

This includes the sugar cane sector which supports the livelihoods of more than 25% of Kenyans who rely on it directly or indirectly. Some of the sugar cane factories that need attention include Chemelil Sugar Company, Muhoroni Sugar Company, Sony Sugar Company, Mumias Sugar Company and Nzoia Sugar Company.

In order to support the sugar sector, the following steps should be taken:

4.5.1.1 Take deliberate steps to zone catchment areas for various public sugarcane factories together with a tracking system



and database sharing and institute penalties for sugarcane poaching.

- 4.5.1.2 Write off existing debts owed by farmers and struggling factories*
- 4.5.1.3 Pump in sufficient resources needed for them to operate to scale. In particular, re-introduce the sugar levy.*
- 4.5.1.4 Provide institutional and technological support needed to turn-around these companies. This includes pumping in funds for research and adapting better innovations and high-yielding, early maturing sugar cane varieties.*
- 4.5.1.5 Strengthen the cooperative movement that ensures an empowered farmer.*
- 4.5.2 Put in place an elaborate framework that facilitates effective exploitation of the potential of the “Blue Economy”.*

Exploitation of the blue economy promises more sustainable development and improvement of the economic outlook of coastal, marine and maritime communities, and the country at large. In particular, we propose:

- 4.5.3 The development of a national strategy paper on the Blue Economy*
- 4.5.4 The expansion of the Mandate of the Kenya Maritime Authority to encompass the Blue Economy functional domain, leading to it being renamed as the Kenya Maritime and Blue Economy Authority to ensure the benefits of blue economy are fully exploited for the benefit of the Country and its people.*



- 4.2.2 *The expansion of the Mandate of the Kenya Maritime Authority to encompass the Blue Economy functional domain, leading to it being renamed as the Kenya Maritime and Blue Economy Authority to ensure the benefits of blue economy are fully exploited for the benefit of the Country and its people.*
- 4.3 *A time has come for Kenya to view her swelling population as market and her unemployed youth as labour to be deployed. Consequently, Kenya should move away from positioning herself as market for foreign investors and look inward to ensure jobs are created.*
- 4.4 *We affirm The BBI Report in recognizing the need to ensure that more funding is dedicated to development as opposed to recurrent expenditure. The 70:30 ratio suggests very lean bureaucracy but the same report negates this principle by creating regional governments that have no direct impact on development at grassroots.*
- 4.5 *Speedy completion of legal and policy framework to operationalize Regional Economic Blocs as catalysts towards shared prosperity calls for all.*
- 4.6 *Further, to avoid duplication of functions and enhance efficiency and performance, the current Regional Development Authorities should come under the Regional Economic Blocs with clear funding structures between county governments and National Government.*
- 4.7 *The restructuring of the current Monitoring and Evaluation Department (MED) into National Project Monitoring and Evaluation Authority. This authority shall ensure smooth implementation of projects.*



5.0 The Environment & Climate Change

[Comments on Chapter 7, **Shared Prosperity**, of the BBI Report Pgs. 69]

Climate change is real. Kenya as a country faces huge threats to its economic well-being as a result of climate change. Climate change has resulted in interruption of individual and community livelihoods and economic downturn. This is in turn hampering inclusive economic growth which in turn is fuelling social and political instability as resource conflicts increase.

The principle of sustainable development is embodied in Art. 10 of the Constitution. Chapter 5 makes provisions on Land and Environment which needs to be enhanced as suggested

5.1 To secure the future, we propose development of a comprehensive framework for the realization of sustainable development in Kenya that ensures the country effectively mitigates and adopts to the realities of climate change

5.2 We propose the development of a comprehensive and efficient Policy and Legislative Framework that facilitates comprehensive Measures in Climate Change Adoption and Mitigation and the realization of Sustainable Development.

5.3 Enforcement of environmental protection laws, especially in the face of rapid urbanization.



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5.4 Set up an Environment Fund aimed at marshalling resources towards environmental protection. This includes conservation of key water towers, increasing the forest cover and keeping the environment.

5.5 Develop and implement programs aimed at cultivating a culture of environmental stewardship among Kenyans in line with Africa's Agenda 63 and the Sustainable Development Goals (SDGs).

5.6 The establishment of a national observatory and research Centre on climate change and natural disasters;





6.0 Governance

[Comments on chapter 9, Devolution, of the BBI Report Pgs. 80 to 87 and Chapter 11, Commissions and Cross-cutting Issues, of the BBI Report Pgs. 94 to 97]

6.1 Proposed system of government

The structure of the Executive arm of Government must uphold and respect the principle of one person-one-vote. We are strictly opposed to any attempt to create multiple, conflicting or ambiguous centres of State authority. The Head of State must also be the Head of Government and Commander in Chief of the Defence Forces. This authority must not be shared or open to multiple interpretations. Accordingly:

6.1.1 We support the recommendation by the BBI Report for the establishment of national executive structure in which the executive comprises of a President who is both the head of state and government as well as the Commander-in-Chief of the Defence Forces, a Deputy President, a Prime Minister who is appointed by president from the President's party subject to approval by parliament. The responsibilities of the Prime Minister must be clearly defined.

6.2 Leader of Opposition Official Opposition

6.2.1 We propose the establishment of the Office of Official Leader of Opposition with a Shadow Cabinet, corresponding to the Official Cabinet, and funded by the National Exchequer.



6.3 Proposals on devolution and the measures to strengthen it

The Taskforce correctly notes that while devolution has been embraced and made a number of recommendations aimed at strengthening.

6.3.1 We agree with the The BBI Report recommendation that the 47 counties must be retained (paragraph 160 of the BBI Report).

This is not only on the basis of viability but on the basis of avoiding marginalization that works against inclusivity objective.

We recommend that these 47 counties must be made to function with the support of Regional Economic Blocs and full implementation of devolution as envisaged.

We are totally against introduction of a third-tier of government as has been suggested at some BBI popularization public rallies.

6.3.2 We recommend that unbundling, classification, costing and transfer of functions as per Schedule 4 of the constitution.

One such example is in education where functions such as infrastructure in both primary and secondary schools such as class rooms, laboratories, toilets and teachers' houses should be assigned to county governments.

6.3.3 Entrench the principle of funds follow functions

We note that while this principle has been inscribed in the Constitution of Kenya (2010), it has not always been adhered to. The National Government has stood in the way of funds following functions. This is the case, for instance, in the health,



roads and water sectors. It should be an offence for anyone to stand in the way of funds following functions.

6.5 Proposed resource allocation and measures to strengthen devolution

The BBI Report has recommended that more funds (35% to 60% the revenue raised nationally on the basis of the last audited accounts) should be allocated to county governments as one of the ways of strengthening devolution.

6.5.1 The place of CRA

The allocation of more resources to county governments requires the strengthening of the Commission on Revenue Allocation (CRA) and the process of sharing of revenue raised nationally. In establishing the CRA, Kenyans wanted to remove the process of equitable sharing revenue of revenue raised nationally from the domain of political patronage and place it in the domain of objective criteria overseen by a professional body such as the CRA.

6.5.1.1 As part of strengthening CRA, we propose that recommendations of the CRA shall be binding on both the National Treasury and Parliament and that the burden of justifying any deviation from the recommendations of the CRA should be placed on the institution seeking to deviate from the recommendations.

6.5.1.2 Further, we propose that the role of borrowing by the national government must be re-examined to ensure that the interests of the county governments are protected.



Currently, it appears as if the national government can through borrowing distort the equitable sharing of revenue raised nationally. National government is in a position to increase its equitable share through borrowing after the division of revenue has been finalized.

6.6 Term Limits and Security

6.6.1 As ANC we propose that the security of tenure and term limits for all public and constitutional officers must be strictly protected and respected. This includes the following offices, IG, DPP, Ombudsman, CBK Governor, AG, Auditor General, Controller of Budget, IEBC Chairman, EACC, Solicitor General, Chief Justice and President of the Judiciary, as well as those of the National Executive. There should be no attempts to create new guises for these offices, both during the life of the tenure and after the tenure of any one state officer in charge for the time being.

6.7 Gender Issues

6.7.1 As ANC, we recommend that the gains made by women and persons with disabilities should be enhanced.

6.7.2 Every effort should be undertaken to address the barriers that hinder more women and persons with disabilities from participating in electoral process. This includes campaign financing, capacity building and party lists.



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7.0 Conclusion

We have raised pertinent issues which require sober engagement as Kenyans identify a trajectory of transformation in which they build bridges to a united Kenya, a nation of ideals, away from a nation of blood ties.