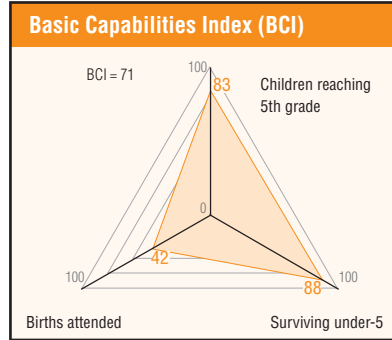## ■ KENYA

Mired in the unsolved *National Question*

Following the announcement of the presidential election results on 30 December 2007, giving a second term to Mwai Kibaki, Kenya has been mired in its worst political crisis since independence. Over 1,000 people have died and nearly half a million have been violently displaced. Unless restorative justice is implemented to deal with the deep historical roots of this calamity, it may have an indelible impact on Kenya's tortuous path to democracy

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Basic Capabilities Index (BCI)

BCI = 71

Children reaching 5th grade: 83

Births attended: 42

Surviving under-5: 88

Gender Equity Index (GEI)

GEI = 59

Empowerment: 10

Education: 87

Economic activity: 81

Violent social conflicts are often perceived either as conspiracies or as expressions of spontaneous bursts of political action, in the majority of cases triggered by an extraordinary event. Less attention is generally given to the social preconditions of a crisis, including the politic and economic structures, as well as the processes and perceptions that make such action possible. This may begin to explain why the international media reduced the Kenyan crisis to a Luo-Kikuyu rivalry, a dubious election or an African malaise rooted in warrior tribalism. This is a misunderstanding of the Luo-Kikuyu dialectic. In post-colonial African societies the unresolved issues concern land ownership, distribution of public resources, language, political marginalization, gender discrimination, and so on, all of which are expressed in terms of what we can call 'negative ethnicity,' rather than the other way around. In post-colonial Kenya these issues have constituted state-building challenges: their resolution would have precluded the systematic development of ethnic cleavages in general.

Colonial and neo-colonial processes resulted in the growth and concentration of state power as key instruments in organizing society, along the lines of a centre-periphery dichotomy. In Kenya, as in other African countries, the vestiges of colonial and post-colonial state building gave birth to an ethnocentric system of political oppression and economic marginalization by ethnic and sub-ethnic elites that defined themselves and others according to ethnic criteria in order to mask the underlying class tensions. While in other countries, like Somalia, this system has led to the total collapse and disintegration of the state, in Kenya it has left thinly
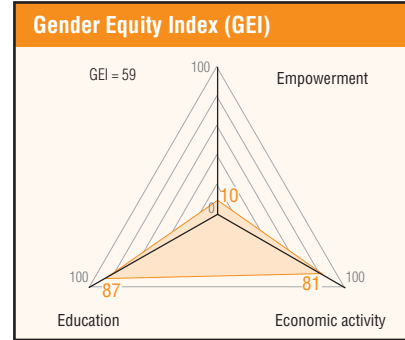
concealed fault-lines that would inevitably one day shatter due to the build-up of tectonic pressures resulting from unresolved aspects of the *National Question*.

In order to understand the disruptive politics of negative ethnicity one must appreciate the dynamic political-economic context within which ethnic interactions occur. The changes in state power that transform political-economic relations foster new forms of solidarity while ethnic and sub-ethnic configurations of any nature, far from expressing primordial tendencies, are cultivated in large part by transformations within the political economy itself. To be sure, cultural and geographic affinity may provide an important basis for solidarity and cleavages that, under exceptional circumstances, might enable the mobilization of sub-national identities that affect the larger context of political action.

Presidential impunity, a biased electoral commission and a flawed election

In the run up to the ill-fated election of 28 December 2007, members of the opposition parties announced that the impending elections would not be free and fair unless the Electoral Commission of Kenya – the body with statutory authority to run elections – was reconstituted to reflect the interests of the contending political parties. Deaf to this legitimate claim, the President, by means of extra-democratic power, appointed individuals (believed to be his cronies) to the Commission. This was widely perceived as tilting the balance in favour of the incumbent, the Party of National Unity. This is the same Commission that has now been accused, by both foreign and domestic observers, of interfering with the vote tally and thereby compromising the integrity of the results. Reacting to an unjus-
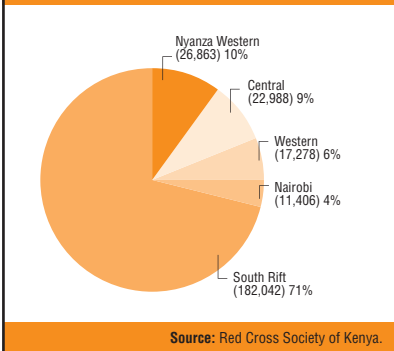
tifiable delay in announcing the results in some districts and to alleged anomalies in the tallying process, the supporters of the opposition Orange Democratic Movement (ODM), which had taken a clear lead, announced they would take to the streets should President Kibaki be declared the winner.

Since the crisis arose, political analysts and media commentators have debated whether a) the announcement of the results triggered spontaneous inter-ethnic violence, b) was the result of a well-planned political conspiracy aimed at the ethnic cleansing of certain communities, or finally c) the conflict was a response to the historical fault-lines of the *national question* – fault-lines that violently split open to expose the fraudulent results of an otherwise historic election.

A closer analysis of all of the relevant factors shows that only by taking a) and b) together is it possible to find a reasonable explanation to the conflict.

CHART 1. Distribution of internally displaced persons (IDPs) countrywide Post election countrywide statistics

Nyanza Western (26,863) 10%

Central (22,988) 9%

Western (17,278) 6%

Nairobi (11,406) 4%

South Rift (182,042) 71%

Source: Red Cross Society of Kenya.

The unresolved National Question

Kenya became independent from the British Empire in 1963, following a bloody war that left the post-colonial peoples more united as a nation state than as a society. The war of liberation, instead of ushering in a national democratic process, provided the seeds for a process of class differentiation based on a land privatization policy that favoured the formation of a leadership characterized by extreme tribal loyalties and excessive concentration of power.[1]

Appropriate land and resettlement policies would have helped to avoid eventual conflict but successive presidents – from Kenyatta through Arap Moi to Kibaki – failed to adopt them.

Under President Jomo Kenyatta, the emergent post-colonial state resorted to every trick in the book to replicate the practices of the colonial governor: an imperial presidency presiding over the unequal economic development of ethnic regions. Based on politics of satrapy, the State implemented a land policy heavily skewed in favour of the ruling cliques, given to the expansion of ethnic-territorial power; and presided over the unequal distribution of jobs (in both the state bureaucracy and the private sector) and also unequal distribution of national resources.

Land alienation has primarily affected the fertile Kikuyu, in the Kalenjin/Pokot, Mjikenda and Maasai lands of Central, Coast and Rift Valley provinces respectively. These large tracts of land were initially lost to the British colonial settlers and the Arab coastal merchants and then to the post-colonial land tenure/use adjustments and the pressing need the new government had to resettle members of communities who had borne the brunt of colonial land alienation. The Kikuyu were the first to register their grievances against the Kenyatta government, having lost their smallholdings to members of their own community who were believed to have collaborated with colonial suppression of the Kikuyu-led Mau Mau war of liberation from 1952 to 1960.

In the Rift Valley, the Kalenjin, who had lost their land to the settlers, expected to be the beneficiaries of a post-colonial resettlement. Instead, the Kikuyu, with the assistance of Kenyatta, himself a Kikuyu, purchased the vast lands vacated by the colonial settlers, who were frightened by the prospect of imminent decolonization.[2] This was also contrary to expectations, since the Kikuyu were expected to be resettled in the Central Province, and created a domestic Kikuyu diaspora more than 100 miles west of their tribal homeland around Mt. Kenya. This scenario was replicated in the Coast province, where the elites associated with the

former regimes grabbed potentially commercially profitable beach land, leaving indigenous Mjikenda squatters landless.

Thus groups that had lost land to the colonial settlers, including the Kalenjin, the Massai and Mjikenda, lost again to the state-supported Kikuyu companies and individuals that bought up nearly all vacated settler farms. Successive governments have treated resulting grievances with calculated indifference. President Moi owed his presidency to the Kikuyu expansionist project. President Kibaki, now caught up in the maelstrom, expected that any flair-up would be settled by state force.

On the other hand, the Luo harbour a longstanding grievance resulting from post-colonial marginalization. Like many other ethnic and sub-ethnic groups, the Luos complain of poor infrastructure, exclusion from government and the loss of their prominent leaders in assassinations orchestrated and executed by the ruling elites. The recent electoral fraud has provided them with an opportunity to vent their long-standing frustration.

In other words, the electoral fraud has exposed historical wounds festering within the scars of interethnic conflicts, releasing spontaneously the bottled up anger, hatred and suspicion that are the result of the unaddressed national question. As a result, state authority collapsed in the opposition ODM's strongholds. Supporters of its leader, Raila Odinga, took to the streets in violent protest across the country and sought revenge on the Kikuyu community perceived to be loyal to Kibaki. The security forces reacted brutally and members of the communities supporting the ODM were violently attacked by the armed forces and Kibaki's supporters.

Restorative justice

The instrumentalist approach which assumes that the Kenyan's ethnic strife was the work of some sections of the political elite setting out to mobilize ethnic solidarity along politically motivated cleavages has failed to bring the conflict to an end. The retributive adversarial justice it relies on as a means of returning peace to the nation has contributed to increased polarization.

A non-adjudicative, problem-solving approach – not favoured by the hardliners from both sides – has found popular expression in Agenda Number Four,[3] crafted by the Dialogue and Negotiation Committee. Depending on the principal actors' good will in steering the post-conflict resettlement process, the agenda is more than likely to provide the framework to re-examine the dynamics of the socio-economic and political environment. There lies the unquestionable efficacy of *restorative* justice as a means of ensuring lasting peace in a conflict-prone post-colonial, multi-ethnic and capitalist nation like Kenya. In this approach, the presumed offender and victim are brought together in order to help both sides to appreciate the context, its impact on social life across the board, but most importantly, to establish restorative mechanisms that will take care of the common good. Let us hope that the implementation of the Agenda Number Four of the Accord will help renew Kenya's path to democracy. ■

CHART 2. Demographic distribution of IDPs (by sex and age), 12 February 2008

Region	IDPs camps	Total IDPs	Male	Female	Children
North Rift	72	89,829	9,981	29,943	49,905
South Rift	137	182,042	20,227	60,681	101,135
Nyanza/Western	63	26,863	2,985	8,955	14,924
Western	17	17,278	7,177	6,597	7,238
Central	11	22,988	2,555	7,663	12,772
Nairobi and environs	7	11,406	1,268	3,802	6,337
TOTAL	**307**	**350,406**	**44,193**	**117,641**	**192,311**

Source: Red Cross Society of Kenya.

CHART 3. Regional disparities in human development, 2004 and 2005

Source: UNDP, Human Development Index, 2006.

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1 Land alienation policy and practices resembled those of the colonial government.
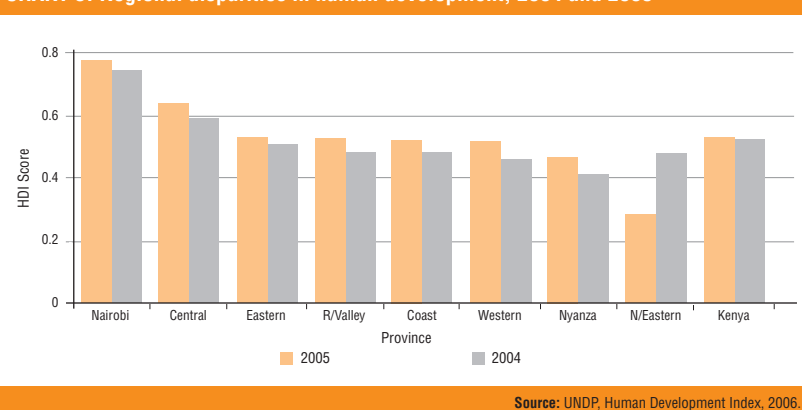
2 This followed a resettlement deal between the post-colonial government and the British involving several million British pounds, resources that were diverted towards the construction of a solid base for the development of a Kikuyu-based oligarchy of which president Kibaki is not only a product but an expression. The deep-reaching peasant and *lumpen* roots did not allow the resulting elite to develop a broad-based cross-ethnic class-consciousness.

3 Agenda Number Four as captured in the Kenyan National Dialogue and Reconciliation Accord contains long-term reforms such as land, institution and constitution changes.