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Risk factors of Statelessness in the Democratic Republic of Congo

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ABSTRACT

Statelessness in African's Great Lakes Region: Risk factors of Statelessness in the Democratic Republic of Congo

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This thesis studies the risk of statelessness in the Democratic Republic of the Congo. It briefly analyses the issue of identity in the Great Lakes region, in particular, the four classic Great Lakes countries of Burundi, the DRC, Rwanda and Uganda, the question of ethnic marginalization through a historical analysis of the root causes of the antagonism of ethnic conflicts in the region. It demonstrates that belonging before colonization was based on community membership and clan solidarity rather than allegiance to a state and ethnic antagonism was a colonial creation. Thus, the discrimination and marginalization that we see today reflect the colonial policies of discrimination between colonists and colonized.

It shows that the legal framework of nationality was defined by the political agenda and manipulation during democratization for electoral purposes on the eve of the independence of the DRC. Ethnic conflicts are born out of

economic aims around land management. The causes of statelessness are rooted in the failure of the Congolese State. The thesis concludes that citizenship in the DRC must be rethought with a focus on the right to a nationality to each individual. The old provision on the nationality of origin based on ethnicity should be replaced by modern citizenship based on jus soli and attachment to the State through developing a strong sense of connection and belonging to the Congolese nation.

Keywords: **Statelessness, Nationality, citizenship, Africa`s Great Lakes region, conflict, Ethnicity.**

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ABBREVIATIONS AND ACRONYMS

ACHPR: African Commission on Human and People's Rights

AFDL : Alliance des Forces Démocratiques pour la Libération

DRC: Democratic Republic of Congo

ECOWAS: Economic Community in the West African States

EIC: Independent State of Congo État Independent du Congo

ICGLR: International Conference of the Great Lakes Region

IOM: International organization for Migration

NCDP: National Congress for the Defense of the People (CNDP)

RPF: Rwandan Patriotic Front

UNHCR: United Nation High Commissioner for refugee

Chapter 1. INTRODUCTION

1.1. Background

Throughout the 1960s, most of the African countries gained their independence, leaving century of slavery and colonization. The access to sovereignty came along with the attributes and problems assigned to modern states. The government, the territory and the population constitute the State. The country is linked to the people in its territory by the link of nationality.

Nationality is the legal bond between an individual human being and the State in which he belongs. Citizenship expresses the sovereignty and the jurisdictional power of a State and belonging of an individual to a national community. Nationality provides to the individuals a series of rights, including the right to vote, to undertake various businesses and work, to obtain valid documents such as a driving license or passport to travel abroad and the most critical protection from that State. Nationality also entails several obligations to the citizens, ranging from tax obligations to conscription (Shaw, 2014). International law has no precise definition of nationality, but sometimes contradictory descriptions of the various national laws; therefore, the scope of the rights and duties that nationality confers depends on one State to another.

International law gives freedom to the domestic law of states to define the conditions of granting nationality. Nationality as an attribute of territorial sovereignty, each State determines the rules relating to the possession or acquisition of its nationality. Thus, a conflict of laws for the determination of citizenship rises on the international scene and therefore, creates a distinct category of persons without nationality, the stateless.

The 1954 convention relating to the status of stateless persons defines it by "a person who is not considered as a national by any state under the operation of its law", a person who is not recognized by any state as his citizen, who has no homeland. According to a person who experienced statelessness "To be stripped of citizenship is to be stripped of worldliness; it is like returning to wilderness as cavemen or savages… A man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man… they could live and die without leaving any trace, without having contributed anything to the common world."[1]

Statelessness is an absolute negation of identity, a legal aberration or abnormality. It's a denial of one's humanity, a violation of fundamental Human rights.

[1] Hannah Arendt, The Origins of Totalitarianism, cited in UNHCR, Nationality and Statelessness, a handbook for Parliamentarians n°11, 2005

Contrary to common belief, Statelessness occurs everywhere in the world; it affects both developed countries of the North and the developing countries of the south. According to a report of the UNHCR, 3 853 983 stateless persons were under his protection in the World in 2017 and 712 000 from Africa among them 974 in Central Africa and Great Lakes region.[2] This phenomenon has been recognized for the first time as a global problem in the first half of the twentieth century. Internationally, many texts provide a legal framework to States to prevent and protect their citizens from statelessness. These are the 1954 convention relating to the status of the stateless person, the 1961 convention on the reduction of Statelessness and the article 15 of the Universal Declaration of Human Rights of 1948 which declares: "*Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality*". At the African regional level, there is no such disposition in the legislation. However, we can see implicitly in the provision of the article 5 of the African Charter on Human and people's rights, the right to a nationality, as read by the African Commission on Human and People's Rights (ACHPR) in its resolution 234 [3]. The commission considered that the right to a nationality is implicitly contained in the provision of article 5 that guarantees, among other

[2] UNHCR Global Report 2017
[3] https://www.achpr.org/sessions/resolutions?id=260

things, the right of respect for the inherent dignity of the human person and the recognition of his legal personality and is, therefore, indispensable for the enjoyment of the fundamental rights guaranteed by the Charter. This reading of the Commission was confirmed in its established jurisprudence affirming that the absence of nationality is a denial of the rights guaranteed by the ACHPR. The African Union itself has no mechanisms to eliminate statelessness[4].

Despite the widespread of this phenomenon in the world, few countries possessed accurate statistics of the people affected by the question of statelessness, especially African countries. The problem of statelessness is not a high priority internationally, and particularly in Africa, there are more pressing issues such as sustainable and inclusive development. The Great Lakes region, in particular, has been dominated for the past thirty years by wars, rebellions and various armed conflicts and the search for peace at the expense of other national and international concerns. It is the case of DRC, second-largest country of Africa and the biggest of the regions, which has been struggling with internal conflicts since its independence. Clashes in the area have intensified since the 1994 Rwandan genocide. The latter sent back to the DRC, thousands of refugees among them members of the former military of the regime suspected of having

[4] Affair John K. Modise vs Botswana, African Commission on Human and People's Rights, Comm. No. 97/93(2000).

committed massacres as well as genocide, then in 1996 and 1997, when the Congolese President MOBUTU was stripped from power by the AFDL.

In April 2019 the Government of Kenya, which exercised the executive secretariat of the International Conference of the Great Lakes Region, and the UNHCR co-organized a Ministerial conference on the Eradication of Statelessness in the Great Lakes Region. The key outcomes of the Ministerial Segment of the forum were the following achievements and indicative pledges by the ICGLR Member States, as well as organizations from the region, to be delivered at the High-Level Segment on Statelessness. [5]

Knowing the factors that promote, i.e. the causes, origins, sources of statelessness in the Great Lakes region is very important to combat and eradicate this violation of human rights. On the other hand, knowing the causes combined with risk factors then becomes imperative to prevent future cases of Statelessness.

The causes of statelessness are various and cannot be quoted exhaustively, but they can be classified into two categories: legal and structural causes, administrative and cyclical causes. The law is the principal cause of statelessness. Indeed, the definition of statelessness indicates the first cause, a

[5] Ministerial Conference on the Eradication of Statelessness in the Great Lakes Region, Nairobi from 16-18 April 2019

person who is not considered a national by a state under the operation of its law. Thus, it is within the rules on the nationality of States that we find special provisions excluding specific individuals or groups of individuals from the community of national citizens of these States. These particular provisions have their origins in the nature and structure of the societies as well as the history that make up each State. The laws on nationality reflect the context of the functioning of the traditional organizations established in a given territory, their evolution over time as well as the circumstances that led to the formation of a nation-state on this space.

Nationality laws define the conditions for acquiring and losing nationality. The nationality deriving from the sovereign power of each State, the rules on citizenship is often different from each other; this difference creates a gap in which a category of people falls and ends up without any nationality, the stateless. It occurs when one state grants nationality by descent only (*jus sanguinis*) and another state grants its based-on place of birth only (jus soli). For example, State A, in which the individual is born, applies jus sanguinis. Still, the individual parents are from state B. State B, on his side, uses *jus soli*, but the individual was born in state A. Therefore, the individual is rendered stateless.

This example above is one of many types of law as a source of statelessness. The special provisions which create causes of statelessness may

exclude provisions on the right to a nationality, include discriminatory provisions based on race, sex, religion and ethnicity, provisions on marriage, dual nationality, naturalization, loss and deprivation of nationality, renunciation and reacquisition of nationality.

What can be noticed is that many nationality norms adopted in the sixties in Africa, and until now, do not fully comply with international norms on the prevention and reduction of statelessness. However, the standards of international customary law and international treaties bound them.

There are also administrative causes of statelessness, which demonstrate that there is a difference between law and actual practice. Often, the questions, here, are most extensive red tape to access to registration as citizens.

The historical context of the region, in particular, and of Africa, in general, helps to understand the origins of the causes of statelessness. The artificial borders created during colonization led to the creation of African states, leaving people of the same ethnic groups, culture and family separated by boundaries and living and possessing different nationalities. Conflicts in the Great Lakes region, especially ethnic war, have been the basis for large-scale population movements in their flight from war and combat zones. More than 25 years later, most of these

displaced people have not yet returned home, creating other potential homes for statelessness.

The question of identity and belongings are at the heart of several conflicts. Initially in Rwanda, these conflicts have been exported to the Eastern Democratic Republic of the Congo, creating several armed groups at the root of the destabilization of the entire region, thus creating a risk of statelessness for whole populations. The denial of the citizenship right of the people of Kinyarwanda expression living in the eastern D.R. Congo owing to their ethnicity is one of the risk factors of statelessness.

1.2. Research Questions

The main research question to be addressed is:

What are the risk factors of statelessness in the DRC? How do they pose a threat to the Congolese people?

To have a satisfactory answer to the question, the study will discuss the below sub-question

How citizenship and belonging are perceived and organized in Africa's Great Lakes?

1.3. Purpose of the Study

The purpose of this study is to analyze the risk factors of statelessness in the Democratic Republic of Congo, to provide recommendations in preventing statelessness and underline an ignored modern tragedy at the regional level. And to achieve that, the analyses of the issues related to nationality and citizenship, administrative practice, wars and conflicts of this region will be the core of the study. The research will also carry out an analysis of the laws on the nationality of the four countries of the area under investigation based on the international protection framework of stateless persons.

This contribution to the risk factors for statelessness will theoretically identify the risks to the Congolese populations of falling in a situation of de facto or de jure statelessness. It proposes preventive measures to be taken by Congolese leaders, as well as practices and habit to be internalized by the Congolese population in general to prevent future cases of statelessness.

1.4. Definitions of terms

Statelessness is the State of a stateless person, a person without legal nationality.

Article 1 of the convention relating to the status of Stateless Persons defines a stateless as a person who is not considered as national by any state under the operation of its law.

This purely legal definition does not reflect the whole reality of statelessness. Indeed, a person may hold nationality on paper but does not possess the attributes attached to that nationality. The question becomes, thus, how effective is this nationality.

De facto stateless is thus born of this distinction between the possession of nationality and the enjoyment of the rights attached to it. The difference between the de facto stateless and the de jure stateless is that the latter does not officially hold the nationality of a state; *de facto* statelessness, on the other hand, is one who does not have effective citizenship. The *de facto* stateless person has a nationality but does not benefit from his effects like the protection. It is the case of refugees who are de facto stateless and not de jure. Refugees hold the nationality of a state but are not protected by the government. (Massey, 2010)

Thus, all refugees are *de facto* stateless, but not all *de facto* stateless persons are refugees. This notion is illustrated by German Jews who, while holding German citizenship, were persecuted by Germany. It was not until 1941 that they were formally denationalized.

Nationality and Citizenship

Whether the two terms tend to express the same things in International law, a distinction must be made as we are in the Common law system and French civil law system when it comes to Citizenship.

In the common law system, citizenship describes at the domestic level, the legal bond between the State and the individual. Nationality means the same thing but tends to be more used and restricted at the international level. The word nationality expresses the legal bond between an individual and the State in the French civil law system. However, Citizenship, la *citoyenneté*, describes more this moral bond of belonging to a community, to a State, it represents a national identity through the participation in the political and public space. This term has a sociological and cultural connotation, whereas nationality is a purely legal term.

In short, in French civil law, the term nationality has a mechanically legal connotation, whereas citizenship has a moral and social value. As Staples noticed it, has nationality has a precise legal meaning and carries much baggage and has agreed with the experts on statelessness, that there is no accurate definition of nationality (Staples, 2012).

For this study, both terms will be used with the same meaning following the law of treaties where they are used interchangeably.

1.5. Significance of the study

This research will be necessary for decision-makers in the Great Lakes sub-region, civil societies in the sub-region, non-governmental organizations involved in the promotion of human rights and the protection of stateless persons. Given the common and unique history of these four countries, understanding the issue of citizenship and belonging requires a combination of the joint efforts of these states to eradicate this phenomenon.

The study also analyzes risk factors for statelessness to find preventive measures in the Democratic Republic of Congo. It has the merit of being one of the first research on the risks of statelessness in the Democratic Republic of Congo. It will contribute to the documentation on the issue of statelessness in Africa in general and on the specificity of the Congolese context concerning the risks facing Congolese populations.

1.6. Scope and limitation of the study

The study will cover the four classic Great lakes African countries (Burundi, DRC, Rwanda and Uganda) and the period from 1960, the period of independence the countries of this region up to now.

It will focus on the particular case of the Democratic Republic of Congo for the questions of Risk of statelessness. As the question of nationality and the subsequent risk of statelessness awaits the entire population, the study will collect

data in the major cities of DRC given the restriction of access to the rural area in this period of the pandemics od COVID-19.

1.7. Outline

The study consists of seven chapters; the first consists of an introductory presentation to the problem. Chapter two discusses the literary review, Chapter three the methodology and the theoretical framework.

Chapter four provides an overview of the international regime for the protection of stateless persons and the right to a nationality. In this chapter, we will briefly discuss the origins of the international protection regime and its content, followed by the question of the right to nationality in Africa.

Chapter five delves into the historical context of the question of citizenship and belonging in Africa's Great Lakes. Here we will mainly analyze the evolution of belonging and nationality legislation in the four countries of the Great Lakes sub-region and their impact on the issue of Statelessness.

Chapter six analyzes the risk factors for Statelessness in the DRC. It examines the results of the survey on the issue of nationality and the risks of Statelessness in Congolese society.

We will conclude in the last chapter by proposing recommendations in the form of preventive measures to prevent future cases of Statelessness.

Chapter 2. Literature review

A decade ago, the few scientists to conduct research, complained about the lack of interest of the scientific community on the issue of Statelessness. Of course, the question of statelessness is closely linked to the question of citizenship or nationality, which the writings on the latter are abundant, the two questions constitute the two opposite sides of the same coin. The issue of statelessness is detached from the simple phenomenon of legal ownership of citizenship and touches on cross-cutting topics ranging from identity to security. It consists of all the obstacles preventing individuals from having full participation in society.

The literature focus on statelessness has increased in recent years, mainly thanks to the contribution of the specialized agencies of the United Nations and especially the UNHCR, which has financed numerous studies on the issue. But despite this, literature is still rare on the risk of statelessness in Africa and non-existent in the Great Lakes region. The studies carried out focus on specific cases of statelessness in West Africa, where are located the majority of the stateless people reported by the UNHCR. The most illustrative example is the study conducted in 2015 by Bronwen Manby for the UNHCR and IOM entitled Nationality, Migration and statelessness in West Africa. This study focuses on a

comparative analysis of nationality law in ECOWAS region and the links between statelessness and migration; it shows how it is important the effectiveness of the State where the individuals lived for their rights. Another study by the same author on the initiative of the same UNHCR to a region close to the area under investigation is Statelessness and citizenship in the African community of 2018.

According to Deng in Ethnic Marginalization as Statelessness: Lessons from the Great Lakes Region of Africa, African states are in the midst of a dilemma over the tensions between the deprivations of ethnic marginalization and expectations of citizenship. Recognition of ethnicity as a reality of nation-building will create more significant fragmentation of the population, ignoring it will have serious political repercussions. He demonstrates this dilemma, starting from the case of Banyamulenge (Tutsi) of Congo, where their exclusion to date has created more problems threatening even the existence of the Congolese State. He believes that the conflicts in the Great Lakes region have among its causes, the dispute over the right to nationality of the Rwandophone populations, which is at the same time a consequence and a contributing factor to the crisis. (Deng, 2010)

"Statelessness and Citizenship, a comparative study of the benefits of nationality" is an inquiry into the existing relationship between state citizenship

and statelessness. Bradley Blitz and Maureen Lynch try to answer the question of whether citizenship increases access to other human rights? After analyzing 8 case studies, which focuses on a formal stateless group, they note that citizenship increases access to a multitude of human rights benefits. However, citizenship does not guarantee the full enjoyment of rights. The authors demonstrate that the relationship between citizenship and human rights is eminently complicated. They note that citizenship acquisition does not solve all the problems associated with statelessness. In one case, former stateless persons are marginalized after obtaining citizenship.

On the other hand, statelessness is not a coherent problem that has one magic solution but depends on the context. Successful solutions, in some cases, could not succeed in others. It is clear from the case studies that the relationship between statelessness and citizenship is not at all compelling. Citizenship alone is not enough to allow the full enjoyment of human rights. Out of caution, the authors do not make any conclusion leaving the reader to draw his conclusion.

In Retheorizing Statelessness, Staples Kelly asserts that in the current state order, stateless people constitute a rather crucial political pressure group and that the deprivation of national and legal status does not remove political power. She argues that former statelessness theorists such as Hannah Arendt confuse legal status and subjectivity and therefore pay little attention to personal

relationships that, she argues, can foster a political identity of opposition and struggle. In the book, she advances a new theorization of statelessness, recognizing the importance of national identity, but also emphasizing forms of inclusion and individual political action that do not depend solely on state membership. She develops her theory of belonging and examines two cases based on studies of statelessness, that of the Eastern Democratic Republic of Congo and Rohingya of Burma. The subject of the DRC, she explains, one cannot ignore the weakness of the state apparatus in this crisis of belonging. The inability of the State to exercise the monopoly of the Force has created the conditions for the development of armed groups whose first characteristic is ethnic belonging. (Staples K, 2012)

For Manby, Citizenship in Africa: the law of belonging, the law is at the same a problem and a solution for the statelessness in Africa. In her book, she discusses the right to a nationality that reinforces the sense of belonging and supports nation-building efforts. Unlike most of the literature on African nationality, which focuses on the post-independence challenges of state-building, including the roles of ethnicity in conflict or the struggle for access to natural resources, Manby focuses on the contents of nationality laws and their role in the inclusiveness of individuals in their State of residence. She argues that “the substantive and procedural content of nationality laws can in itself either

undermine the project of nation-building that has so bedevilled the continent or become a tool to use in that effort". Thus, she pleads for individuals the right to a nationality "in the State where he or she has the strongest connections; Where he or she was born and brought up, has earned a living, born children, and centred his or her life". Her Study cases show that nationality is more manipulate by African political elites than by non-African elites as a result of a long history of intra-African migration. They drafted and revised the laws to build a favourable electorate. Nationality coupled as with the right to vote is a sufficient justification to manipulate the nationality law. The case studies, finally, show how the questions of belonging and membership in the form of nationality laws are often crucial stakes in the armed conflicts that have taken place throughout Africa. (Manby, 2018)

In the Birthright Lottery: Citizenship and Global Inequality, Shachar proposes a new criterion that she calls *jus nexi*. She believes that the acquisition of nationality at birth, whether through the place of birth or lineage, is arbitrary. Citizenship by birth is "a form of untaxed inherited property". The *jus nexi* suggest that the State should base citizenship on "the social fact of belonging", which is evident when a person has "genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties" with a specific state. (Shachar 2009).

Chapter 3. Methodology and Theoretical framework

In this chapter, I describe the research strategy that I have used to study the risk factors of statelessness in the Democratic Republic of Congo in particular and the question of citizenship and belonging in the Great Lakes region in general.

3.1. Methodology

The study used different qualitative research methods and a quantitative description.

The approach that I consider most appropriate was that of documentary technique, specific to the historian through the consultation of archival documents; to understand how the issue of membership is perceived and organized but also how inclusion and exclusion policies have been adopted and implemented through the different nationality laws in the Great Lakes region in general and in the DRC in particular. Therefore, our primary source was the library.

To understand the phenomenon of Statelessness in the DRC as well as the risks incurred by the population, we have associated to the documentary technique that of the interview and the survey with a sample of the Congolese people. I argue that the risk of statelessness lies in the failure of the State to fulfil

his mission of building strong institutions and exempt from corruption and nepotism.

3.1.1. Target population

For the collection of data, the study targeted a population located in the big cities where access to the means of modern communications is more accessible and where the administrative services still functioning correctly. The study made this choice following the online response collection tool used.

3.1.2. Sampling

The study targeted some 100 young adults and particularly university executives. They were in a position to tell about their knowledge of nationality issues and the possession and accessibility to civil registration documents.

3.1.3. Description of data collection Instruments

The study used a series of 20 questions to achieve the expected objectives. The questionnaire used consisted of multiple-choice, closed and open-ended questions. This method allowed predefined responses proposed to the respondent while allowing them the choice of adding their responses, reactions and comments. The questionnaires have been designed to provide an understanding of:

- Public access to civil registration documents;

- Their understanding of the importance of identification documents in the process of establishing nationality;
- The organization and operation of the civil registry services;
- Difficulties in the process of accessing the office of registration and acquiring the various civil status documents;
- General knowledge of the nationality issue, procurement procedures and evidence mechanisms.

3.2. Theoretical framework

International human rights law framework and international instruments for the protection of stateless persons and the fight against statelessness at the regional level will serve as a basis for analysis.

Robert Cooper (Breaking of Nations): the theory of the pre-modern world: the pre-state, post-imperial chaos where the States do not fulfil their obligations, do not meet the criteria of Max Weber of the legitimate possession of the monopoly of the force. It is particularly true for the many African States and in particular the DRC, the State is not the sole holder of the armed force, the multitude of armed groups and various actors' control all or part of the national territory. These circumstances have occurred and continue to appear as the State no longer assumes its role as the protector of the people, but instead abuses this

monopoly of force against its people. Therefore, various armed groups and movements are created to defend the population. Some in the form of unarmed self-defence groups to protect their territory, others in the military and armed groups to protect their community. Most of these groups are transformed into armed groups, which from the advocacy of ethno-community interests become political movements that challenge the legitimacy of the State. We saw it in 2004 with the demands of the armed group NCDP. These groups not only support the political ambitions of some leaders but also receive support from foreign states in the exploitation of mineral resources.

This theory allows us to understand how the failure of the State in its obligations allows ethnic groups who feel marginalized in their right to nationality to take up arms to claim it and threaten the safety of the entire Great Lakes region.

Chapter 4. International protection regime of Stateless Persons and the right to a nationality

The legal framework for Statelessness is defined mainly and significantly around two international conventions that of 1954 on the status of stateless persons and of 1961 on the reduction of Statelessness. They are supplemented by treaties and conventions on human rights concerning the right to a nationality mainly Article 15 of the Universal Declaration of Human Rights. Despite this legal arsenal, the definition of statelessness remains unclear probably due to the generosity that international law leaves to each State, the freedom to define who is its national and who is not. Another notion that remains confused and is not addressed by these conventions on statelessness is of De facto statelessness. Indeed, the legal framework speaks of the stateless de jure, the de facto stateless, however, is not defined. Refugees with nationality are generally considered de facto stateless because they do not enjoy the protection of their country, although there are also de facto stateless non-refugees. The international community recommended the treatment of de facto stateless persons as stateless de jure to enable them to acquire a nationality. Where the *de jure statelessness* refers to the non-existence of nationality, the *de facto statelessness* refers to the ineffectiveness of an existing nationality (Massey, 2010).

4.1. International protection regime of Stateless Persons

4.1.1. Statelessness before the 1954 convention

The issue of Statelessness was first raised at the end of the First World War by the League of Nations when the Convention on Certain Questions Relating to the Conflict of Nationality Laws was adopted at the 1930 Hague Conference on the Codification of International Law. Before this period, the issue of Statelessness was not considered significant, given the non-significant number of non-refugee stateless cases. Only stateless refugees were considered [6]. At this conference, a protocol on Statelessness was adopted to determine the relationship between stateless persons and the State of which he, last, held nationality. The purpose of this protocol was to guarantee the right of stateless persons to benefit from the nationality they had previously possessed before migrating to another state without taking another nationality. This protocol was not successful enough due to the lack of enthusiasm by countries to ratify it (Massey, 2010).

- **Evian conference of 1938**

The problem increased with the influx of millions of refugees into Europe with the emergence of Nazi Germany and Fascist Italy, which saw people fleeing these two oppressive regimes, including Jews stripped of their nationality as well as Italian refugees. The Evian Conference was organized in 1938 at the initiative

[6] The study of Statelessness, 1949

of the USA to find a solution to the problem of the growing number of Jews. It was decided that they would be resettled in other countries, and particularly in North America, despite very humanistic rhetoric, no state was ready to receive them. The United States refused to increase its annual quota of 27,000 Germans, and France and the United Kingdom gave overcrowding as a reason. The latter through Lord Winterton will propose Kenya as a solution for small resettlement of Jews closing the door to Palestine, a proposal that will meet no enthusiasm. The States of South America, despite a welcome speech to the Migrants, had space only to agricultural workers and Jews did not correspond to the profiles of Peasants, the lack of resources and the competition of national workers were going to be a problem[7]. Now called "people without a country" the Jews did not have a solution to the conference. It was a meeting where states proclaimed good intentions without taking concrete action. The conference had the merit of pushing states to agree on the creation of a refugee organization to be established after the Second World War under the name of the International Refugee Organization (IRO) renamed United Nations High Commissioner for Refugee in 1952.

[7] Evian Conference on Political Refugees. (1938)., http://www.jstor.org/stable/30011106 accessed September 21, 2020

- **The memorandum on statelessness**

After the Second World War, in 1946 the intergovernmental committee on refugees established at the Evian conference, although with no mandate on stateless persons, distributed a memorandum entitled "statelessness and some of its causes: an outline" to officers of the United Nations Relief and Rehabilitations Administrations. UNRRA was established in 1944 to provide emergency assistance to displaced people and assist them involuntary repatriation to their countries of origin. Having been trained to manage the refugees, the Officers occasionally encountered more complex cases, people of indeterminate nationalities and claiming to be stateless, who did not fit into the definition of refugees. UNRRA was incorporated into the United Nations in its creation in 1945.

The memorandum was the first document to define Statelessness by distinguishing between stateless persons of de jure and de facto. For the memorandum, the de facto stateless person is a person who has a nationality, is located outside the territory of the State of which he holds nationality and has been denied the protection of the diplomatic and consular services of his State. Persons who did not receive diplomatic and consular protection services from their State because of the incapacity of that State, as in times of war or occupation, were not de facto stateless. For the memorandum, to be classified as de facto

stateless, a voluntary act of refusal of protection on the part of a state against his nationals was required, which differs from the temporary lack of protection. The de facto stateless are persons not protected by any government, although not yet denationalized by their State (Massey, 2010). The case of Jew is striking since it constitutes a reference case for statelessness, they were first stateless de facto (recognized as such by the doctrine) between 1935 and 1941 periods in which they were regarded as second-class German citizens by the German Nationality Act of 1935, and stateless de jure after their denationalization by a decree dated 25 November 1941. The Nuremberg Act of 1935 distinguished between the citizens of the Reich. The first were essential of an Aryan race possessing all civil rights and the other German nationals without civil rights or military obligation. The Jews were in the latter category. The 1941 decree enshrined the denationalization of all Jews who had their residence outside German territory; therefore, all German Jews settled in other countries, and German Jews refugees who had fled persecution from the Reich lost their nationality as of November 25, 1941.

Compared to the definition of the memorandum, The Jews were the exception to the meaning of the de facto Stateless because they lived within the territory of the State of which they held nationality.

- **The study on statelessness of the UN Economic and Social Council (ECOSOC)**

Article 15 of the Universal Declaration of Human Rights enshrined the right to nationality, the right to change nationality and the right not to be arbitrarily deprived of nationality; despite this, the phenomenon of statelessness continued to be observed all over the world. To fully understand this phenomenon, the UN ECOSOC adopted the Resolution 116 (VI) D on stateless persons in which it recognized the phenomenon of statelessness and wanted to undertake a study on existing situations of statelessness, nationality legislation, international conventions on statelessness and provide recommendations. Therefore, on August 8, 1949, the study on statelessness was produced by the Secretary-General, in which the definitions included in the memorandum were extended in particular the aspect on the individual renunciation of protection. Recognizing the two categories of statelessness, the Study defined the de facto stateless person as the one who has left his country and no longer receives protection and assistance from him either because the authorities of his country refuse to grant him or because he, himself has renounced this protection.

The studies on Statelessness pursued two complementary objectives to improve the situation of stateless persons and to eliminate the phenomenon. These two objectives will be dealt with consecutively the 1954 and 1961

conventions. At the end of the study, the Secretary-General recommended two types of solutions, one, on the fight against the causes of Statelessness and the other on reducing statelessness. The first recommendation laid down two principles: the right to nationality at birth for children and the non-loss of nationality before obtaining a new one. It also called on states to bring their legislation in line with the first two principles. Finally, it suggested that the Committee ask the Secretary-General to continue studies to propose the drafting of a new convention to the Member States of the United Nations, the conventions on the codification of international law in 1930 are not sufficient and should be revised.

The second recommendation, based on the principles contained in the first recommendation, calls on states to comply by avoiding the loss of the nationality of individuals, including:

- The right to regain nationality upon submission of a petition within a reasonable time to persons who have been deprived of it for racial, political or religious reasons and who have not obtained a new nationality in the meantime. The same goes for those deprived of their citizenship because they have been abroad for a long time, so those who have renounced their nationality without obtaining a new one.

- The right to regain nationality for women who have lost their nationality as a result of marriage or through the consequences that have resulted (dissolution, divorce, etc.);
- The right to receive the nationality of the territory in which they were born for children who did not receive the nationality of their parents and those of unknown or stateless parents;
- The establishment of a reasonable period for the choice of the nationality of persons who have become stateless as a result of the succession of states.
- The creation of infrastructure for stateless people and specific categories of stateless persons for naturalization in the country in which stateless people have lived for a long time[8].

- **Adhoc committee on statelessness**

After reading the study, the Council took it into account and adopted Resolution 248 (IX) B of August 1949 establishing an ad hoc committee made up of representatives of 13 countries, the committee was tasked to consider the opportunity of preparing a revised and consolidated convention on the

[8] A study on Statelessness

international status of refugees and stateless persons; and to consider mechanisms to eliminate the problem of statelessness, including the appropriateness of asking the International Law Commission to prepare a study. And finally, to propose any other suggestions that he deems appropriate while considering the suggestion of the Secretary-General included in the study on statelessness (Massey, 2010). In its initial report, the committee proposed the drafting of a convention on the status of refugees only with an additive protocol on the status of stateless persons. With this in mind, most of the provisions of the refugee convention were to apply to stateless people [9]. In this draft, there was no mention of de facto statelessness, but the definition provided tended to speak of de jure only.

After discussing the initial report and considering the comments provided by governments, the Council will submit a final report to the General Assembly of a Convention on the Status of Refugees and the Additional Protocol on Stateless Persons. By Resolution 429 (V) the United Nations General Assembly convened a conference of plenipotentiaries to complete and sign the Convention and the Additional Protocol. The conference will be held in Geneva in July 1951. It will finally adopt only the Convention on the Status of Refugees, the protocol on the status of stateless persons who were not refugees will be referred to the

[9] Report of the Ad Hoc Committee on Statelessness and Related Problems, Lake Success, New York, 16 January to 16 February https://digitallibrary.un.org/record/499026?ln=fr accessed on September 29, 2020 11:50

authorized bodies of the United Nations because it required more detailed studies. This convention will be accompanied by the 1967 Refugee Status Protocol.

4.1.2. The 1954 convention relating to the status of Stateless Persons

The General Assembly by Resolution 629 (III) asked the Secretary-General to communicate the draft of the Protocol on the Status of Stateless Persons to all states that participated in the 1951 conference, explicitly requesting their input from the provisions of the Convention on Refugees applicable for Stateless Persons. At the same time, the Economic and Social Council was required to review the protocol by receiving feedback and take the necessary steps before submitting the text to signature after the implementation of the Refugee Convention.

After the implementation of the Refugee Convention in April 1954, the Economic and Social Council decided to convene a second conference of plenipotentiaries with the same participants to discuss the revision of the draft protocol on Statelessness and its possible opening for signature. During the debate, it will become clear that the protocol, which was to be an additive to the refugee convention and had to apply some of its provisions mutatis mutandis to stateless persons, would not necessarily have the same signatory states. Thus the signatories of the protocol would be obliged to apply provisions which they had not agreed on. In the same vein, the Convention would grant the same rights to

refugees and stateless persons, whereas in the definition, they are two different categories. For these reasons, the conference will decide to take a separate convention by revisiting all the provisions of the refugee convention that were to apply to the cases of stateless persons. The convention was opened for signature on September 28, 1954.

Main provisions of the convention

- **Definition and exclusion (Article 1)**

The convention defines a stateless person at Article 1 as "a person who is not considered as a national by any state under the operation of its law", this the very definition of de jure statelessness. The Convention excludes from its scope the category of stateless refugees [10] who are protected by the 1951 Refugee Convention and its 1967 protocol. Thus, some stateless refugees could fall under the definition and eligibility of the two conventions in which case they are still under the protection of UNHCR and should benefit from the more favourable regime of the refugee convention. The General principle of the law of "lex

[10] The refugee convention article 1 point 2 defines a refugee as a person As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. ….

posterior" is not applicable because the two texts are not consecutive on the same subject but distinct in their purpose (Robinson, 1955). By this definition, the convention relying on the application of a country's law leaves aside the case where the laws of a country grant discretion to the government of a state to strip a person of his nationality. In the end, the purpose of this provision was the absence of nationality, so if it was proven that a person had no nationality, he was considered stateless within the meaning of the Convention. During the debate in the 1954 conference, the issue of evidence of statelessness had not been addressed, leaving the margin to the State of residence of the person claiming to be stateless to decide on this issue. It should also be pointed out that this purely legal and mechanical definition does not address the specifics of nationality, so each State is free to define the rules that govern nationality. The convention, on the other hand, to protect stateless people, sets out principles related to the acquisition, granting, loss of nationality and renunciation.

Therefore, are excluded:

- People already receiving assistance from UN agencies other than UNHCR,
- Persons who, in the country of residence, enjoy the equal rights to those of citizens of that State whom the status of Stateless would make no sense.

- Suspected persons:

  1. To have committed a crime against peace, a war crime or a crime against humanity

  2. To have committed a serious crime of a non-political nature outside the country of residence before being admitted;

  3. That is guilty of acts contrary to the purposes and principles of the United Nations.

- **Rights and Obligations (Article 2 and Chapter 2)**

Stateless persons should comply with laws and regulations as well as public order in the host state. This is to control political activity in their host country but also a measure that aims to reassure the host state that the stateless persons it receives on its territory will be subject to laws and political restriction. As for other rights, the Convention asks States to grant the regime it grants to foreigners (Article 7) in general for certain rights and other fundamental rights as it gives to its nationals (such as social benefits like the right to education, but also freedom of religion - art 4, etc.). Surely, the question of the rights enjoyed by foreigners was subject to the reciprocity of treatment, since stateless persons had, in theory, no homeland to which reciprocity could be exercised. It was pointed out that the treatment of foreigners to be enjoyed by stateless persons should be

the treatment specified in the host state's legislation and not based on diplomatic reciprocity (Robinson,1955).

- **Non-discrimination (Article 3)**

The convention calls on States Parties to refrain from discrimination based on race, religion or country of origin in the application of this convention to stateless persons. Although this provision has listed only three causes of discrimination, there are still several sources of discrimination. In practice, however, in the context of the Universal Declaration of Human Rights, any discrimination that stateless persons might face could be considered by States.

- **Administrative measures (Article 25-28)**

The agreement provides that a stateless person, who cannot benefit from the administrative assistance of his State of nationality during the exercise of certain rights, the contracting State on which he resides will ensure that he or she is assisted. Thus, he will be issued an ID and a travel document as a Stateless person. Besides, the contracting State will grant stateless persons who regularly stay in their territory the right to choose their place of residence and to move freely subject to regulations applicable to foreigners.

- **Expulsion (Article 31)**

Stateless persons can only be deported based on national security or public order. Deportation must be carried out in the execution of a court order where the stateless person will have had the right to provide evidence of exoneration unless there are national security reasons against it. In the case of deportation, he will be given a reasonable time to seek admission to another country.

- **Naturalization (Article 32)**

The contracting State must, as far as possible, facilitate the assimilation and naturalization of stateless persons. In particular, it will seek to speed up the naturalization procedure and reduce, as far as possible, the taxes and costs of this procedure.

The convention was adopted by the United Nations Conference on the Status of Stateless Persons, which was held from 13 September to 23 September 1954 by 23 nations. To date, it has 94 States Parties. Only Uganda and Rwanda have already ratified the convention among the states in the Great Lakes region.

4.1.3. The 1961 convention on the Reduction of Statelessness

In December 1954, the United Nations General Assembly adopted Resolution 896(IX) on the reduction and elimination of Future Statelessness. This resolution expresses the general assembly's willingness to convene a

plenipotentiary conference to build on a convention on the reduction and elimination of future Statelessness based on the draft of the International Law Commission. This conference should be convened on the condition that 20 States express their willingness to cooperate on this matter since many States felt that the draft of the commission infringed on the sovereignty of the states. The question of nationality was a sovereign prerogative of each State.

But it was not until March 1959 that the conference finally took place in Geneva on the reduction of The Future Statelessness in which 35 states would participate. The commission had prepared two drafts of the convention, the first draft of the convention was for the elimination of future Statelessness and the other on the reduction of future Statelessness. The two texts provided for jus soli as a method of substituting nationality for jus sanguinis if the person was otherwise stateless.

Due to the complexity of the issue and, above all, due to the difference in the conception of nationality by the individual States, the conference was unable to complete the work within the allocated time. Indeed, there was a great difference in perception between states advocating jus sanguinis and those advocating jus soli especially the issue of the deprivation of nationality which was more manageable in the countries of jus soli than those of jus sanguinis. The convention will be finalized on August 28, 1961, in New York and will deal with

the Reduction of Statelessness as a compromise has been reached on the issue of deprivation.

The purpose of the convention was to establish rules allowing a person, who would otherwise be stateless, to obtain a nationality from one of the contracting states with which he or she has permissible ties such as a residence. The convention gives preference to jus soli as a mechanism to combat statelessness in countries where jus sanguinis applies.

Provisions of the Convention

- **Nationality at birth**

Articles 1 to 4 of the Convention concern the rules for the attribution of nationality to persons at birth who would otherwise be stateless. Where this right is not granted at birth, the State must provide mechanisms for obtaining it later at its request. The agreement sets out an exhaustive list of the conditions under which a state may subordinate the acquisition of its nationality, including:

- The Age of Submission of the Application, which must be between at least 18 and 21 years of age at most, with a one-year submission period;
- The condition of residence on the territory of the contracting State whose duration must not exceed ten years, of which five years at the earliest before the application is filed;

- Not to be convicted of a national security offence or convicted of criminal violations of a sentence of at least five years.

A child born to a mother holding the nationality of a contracting state acquires the nationality of the latter if, otherwise, he would be stateless. The child found on the territory of a state is deemed to have been born in that territory and of parents with the nationality of that State (Article 2). A child born on board a ship or aircraft is deemed to have been born in the territory of the country of the aircraft registration or flag of the ship (Article 3).

Individuals who would otherwise be stateless have failed to apply for lack of age or residency to obtain the nationality of the State in the territory from which he was born may apply if required in a contracting state of which one of his parents was national. Suppose the legislation of the contracting State whose nationality is sought determines whether the child follows the condition of the father or that of the mother. This request should not be rejected. This application may be subject to the conditions set, the age of which must not be less than 23 years, the residence over a period not exceeding three years before the application and the acquisition of another nationality before or after that application.

In general, these provisions are intended to prevent cases of statelessness at birth by the mechanisms of attribution of nationality at birth by law in any contracting state or by requesting from the competent authorities in the

applicant's country of residence according to conditions established by the laws of the State in question and framed by general rules set by the convention.

- **Loss and renunciation of nationality (Articles 5 to 7)**

The convention provides that in circumstances where a person loses his nationality as a result of the law or his renunciation, the contracting states must ensure that this is done on the condition of the acquisition or assurance of the acquisition of a new nationality for him and his descendants.

In section 7 and 4, the convention sets out the exceptions to which a person may lose nationality. This is the naturalized individual who resides abroad for a period that cannot be less than 7 consecutive years and does not manifest the desire to retain nationality.

- **Deprivation of nationality (Article 8 and 9)**

No individual may be deprived of nationality for racial, ethnic or religious reasons, if such deprivation may render him stateless. Exceptionally, he may be deprived if he obtained this nationality using a false declaration. Similarly, the Convention allows, remarkably, states to deprive an individual of his or her nationality on the grounds of:

- Lack of loyalty to that State by assisting another state, receiving remuneration from another country and conduct likely to harm the essential interests of the State;
- Have taken an oath of allegiance to another state that demonstrates its willingness to repudiate its allegiance to its homeland.

To proceed with deprivation, the State must use legal means as a fair trial where the individual has the right to present its defences.

- **Transfer of Territory (Article 10)**

In the event of a transfer of territory, the contracting states must ensure that the inhabitants do not become stateless as a result of this transfer. If a contracting state receives a territory, it will have to grant its nationality to the populations without which they would become stateless.

- **Body of Assistance (Article 11)**

The Convention provided for the creation of a United Nations institution to receive and review requests from individuals seeking the benefit of the convention to assist them in the introduction of the application to the competent authority. Given that by the 1951 Convention on the Status of Refugees UNHCR had been given the mandate to deal with refugees including stateless refugees, the United Nations General Assembly had asked UNHCR to temporarily assume

the functions of the agency provided by article 11 of the convention pending the creation of this new body.

4.2. The right to a nationality

The right to a nationality is a fundamental right enshrined, particularly by the Universal Declaration of Human Rights in Article 15. It implies the right to acquire, change and retain a nationality for each individual. Deprivation of nationality places an individual in a precarious situation that does not allow him to enjoy certain rights guaranteed by the Law of Nations. Possession of nationality enables an individual to enjoy the diplomatic protection of that State and to exercise other fundamental rights, which is how it is described as the right to have rights.

The right to nationality is recognized by several international instruments, including:

- The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5),
- The International Covenant on Civil and Political Rights,
- Convention on the Rights of the Child (Article 7),

- Convention on the Elimination of All Forms of Discrimination against Women,
- Convention on the Nationality of Married Women,
- Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

At the regional level, the texts on the right to nationality are recognized in the various regional human rights texts. At the African level, the African Charter of Human and Peoples' Rights does not explicitly recognize the right to nationality in its provisions, but the jurisprudence of the African Commission on Human and Peoples' Rights has often noted that the right to respect for human dignity and recognition of one's legal personality contained in the African Charter of Human and Peoples' Rights includes, among other things, the right to a nationality (CFR Modise case against Botswana). Given that the African Charter was taken by taking into account the universal charter of human rights that establishes the right to nationality as a fundamental right, it can be concluded that the commission considers this right among those related to its dignity.

There are other texts at the African level, although guaranteeing the right to nationality, do not provide full protection against the risk of Statelessness. It

is the case of the African Charter of the Rights and Welfare of the Child in Article 6; point 3 stipulates that every child has the right to acquire a nationality. It is also the protocol on women's rights in Africa but very limited because it enshrines the right to the nationality of women only in the context of marriage. And at this level of marriage, it also does not grant the right of the married woman to pass her nationality to her spouse.

Recommendations were made to African states at the African Citizenship Symposium organized by the African Union Commission in Nairobi in 2012. In these recommendations, African states were called upon to "develop a regional legal instrument on Statelessness that takes into account African realities, such as nomadism, historical migration and the issue of borders"[11]. Indeed, the Commission had noted that the right to nationality, as a "fundamental human right", was not protected in Africa, for reasons related to the arbitrary deprivation of nationality to persons based on race, ethnicity, language, religion, discrimination based on sex, non-compliance with the rules relating to the prevention of cases of statelessness arising from the succession of states, and the systematic non-registration of births in many African states.

[11] Africa Commission on Human and Peoples` Rights, 2014. The right to Nationality in Africa

In 2013, the African Commission, aware of all these problems and acting in its mandate (Article 45 of the African Charter), gave its Special Rapporteur on Refugees, Asylum Seekers, Migrants and Displaced Persons the task of conducting an in-depth study on the right to a nationality. The final report of the commission amended by the addition of contributions from organizations and experts in the field was produced in 2014, made recommendations, the main of which was the proposal for the adoption of an additional protocol to the African Charter of Human and Peoples' Rights on the right to a nationality. The proposed protocol was to emphasize:

- Fundamental principles relating to the right to nationality including the need for African states to enshrine the right to a nationality of each man and woman or child in their domestic law, the enjoyment of the right to nationality without discrimination, the introduction of safeguards to prevent statelessness in their national laws, the limitation of the discretion of states granting and loss of nationality by human law obligations, the institution of procedures to limit arbitrariness in the acquisition, loss and change of nationality, the institution of recourse mechanisms for the victim of the violation of the right to nationality and finally to ensure a consistent set of laws, strategies and regulations on nationality laws.

- The rules governing nationality of origin must comply with Article 6 of the Charter of the Rights of the Child by avoiding the case of statelessness at birth, they must allow persons without nationality to avail themselves of the nationality of the country with which they have the best ties, the right of the woman to transmit her nationality in the same way as the man and the elimination of the distinction between children born out of wedlock and in wedlock.
- The rules concerning acquired nationality must facilitate the acquisition of nationality without discrimination, they must facilitate the recovery of nationality by a mere declaration of the married woman in the event of a divorce, the facilitation and introduction of a reasonable period for naturalization in the country of residence, and finally, the limitation to the bare minimum of the difference in treatment between the nationality of origin and the nationality acquired.
- Recognition of multi-nationality in their legislation.
- The succession of states should allow people to choose the nationality of one of the successor states with which they have the best attachment.

- The loss and deprivation of nationality must be reasonable and proportionate under international standards and must only be taken after the person has proved possession of another nationality.
- The obligation for states to register births on its territory without discrimination.
- The rules governing the means of proof and due process in the case of nationality must be available to all without discrimination and obtained within a reasonable time.
- The rules governing the treatment of foreigners must minimize the limitations of the individual rights of this category of persons.

Chap 5. Citizenship and Belonging in Africa`s Great Lakes

In this chapter, we will examine the question of belonging and citizenship in the Great Lakes region to understand the origins of nationality issues and consequently that of Statelessness in the area and the DRC in particular.

5.1 Introduction

Longtime considered as a tourist paradise in the heart of Africa, thanks in particular to the green natural landscapes of the highlands between lakes and mountains, the fresh hills, like the Swiss landscape, and the diversity of the wildlife ecosystem, The Great Lakes of Africa is now portrayed as a region bloodied by massacres of people, repeated killings, conflicts that never end, and the spectacle of people on the roads with their baggage fleeing the atrocities of war. Yet the populations of this region were described as wise, laborious and welcoming, on which the Holy Spirit had «breath in a tornado», the famous Burundian expression of the 1930s. (Chretien, 2000)

Anglo-Saxon explorers discovered the Great Lakes of Africa in the 19th century (Richard Burton, David Livingstone and Henry Morton Stanley), looking for the sources of the Nile and especially after the publication of Burton's book

The Lake Regions of Central Africa in 1860. As the name indicates, it is an area between a circle of lakes within the boundaries of the East African Rift Valley.

At the source of the White Nile, this region is composed of lakes Albert and Édouard in the West, Victoria in the East and Kivu and Tanganyika in the Southwest, the latter two serving the Congo River basin. Located on either side of Ecuador between 2 degrees north and 5 degrees south, the geography of the region is characterized by its relief consisting of uplands situated at an altitude between 1000 and 2000 meters, high mountains among the highest peaks of Africa, including active volcanoes (Nyiragongo and Nyamulagira in the East DRC). The region has a heavy rainfall with the influence of winds coming from the Indian Ocean to meet the mountainous terrain. The area, very fertile, is characterized by a very high density of population.

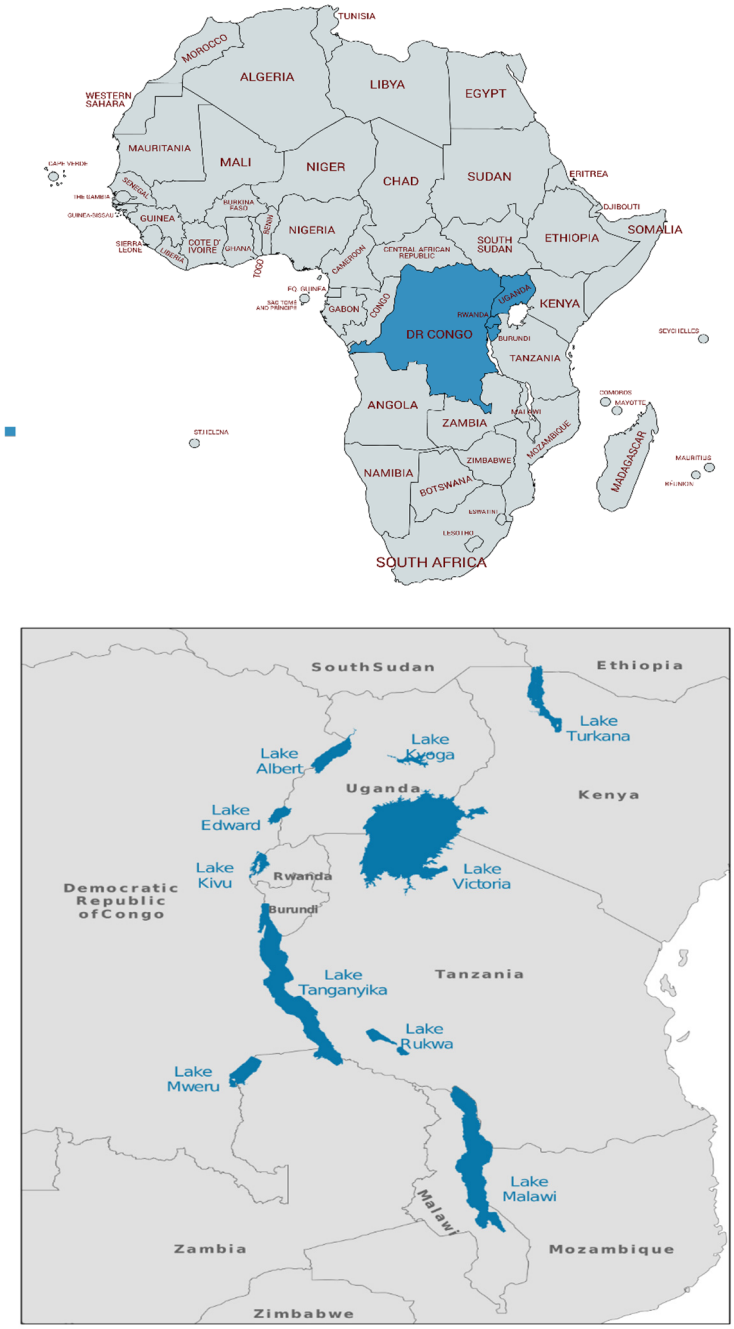
The name "The Great Lakes of Africa" is more political than geographical. It identifies the four African countries (Burundi, DRC, Uganda and Rwanda) that border the Great Lakes of the East. Geographically, it should incorporate in addition to the four countries, all the countries bordering these lakes, Kenya to the east of Lake Victoria, Tanzania, east of Tanganyika, south of Victoria and north of Lake Malawi, Zambia south of Tanganyika, Malawi to the west of Lake Malawi and Mozambique to the east of Lake Malawi. In addition to these lakes mentioned above, other lakes are more modest in terms of their impact on the

geopolitics of the region. Turkana in Kenya, one of the saltiest in the world and affecting a small part of southern Ethiopia and Lake Moero or Mweru on the border between the DRC and Zambia.

This expression has been popularized by the press, particularly over the past 30 years because of the humanitarian tragedy that has been unfolding there since the 1990s with the Rwandan genocide, the Burundian civil war and the conflicts in eastern DRC that continue to this day.

The history of this region is so complex that it raises passions and controversies, partly because of the lack of written materials, that it creates school controversies in the writings of historians, it is sometimes manipulated by politicians as well as by various actors with no scientific expertise. The Great Lakes region is characterized by oral societies, such as most African regions, whose faithfulness in the transmission of narratives after several generations becomes debatable and sometimes reflects only an interpretation of the past of the narrator's realities.

Figure 1 Maps of Africa`s Great Lakes Region



Source: Internet

The central hypothesis on the settlement of this region is the primacy of small people commonly known as pygmies by historians (Mbuti, Twa, etc.) As indigenous people of the area and Central Africa in General. It is a people of the forest, living from hunting and gathering and above all a nomadic people. The Bantu who constitute the greatest people of Africa, occupying half the space of the African continent from the regions of Cameroon to the southern tip of South Africa, from the Atlantic coast to the Indian coast of the continent, came from the region between Cameroon and Nigeria and headed south in search of arable land 4,000 years ago according to Joseph Greenberg (Lavancher, 1998). The Nilo-Hamitic people of Semitic origins from Abyssinia who moved south with herds of cattle with long horns to the Great Lakes region in the recent past without details but are estimated between 6 centuries and a thousand years. (Chretien, 2000)

Nevertheless, the distinction of peoples and races based on the common language of origin is contested by a category of the scientific community, including the French historian Jean Pierre Chrétien. He rejects the notion of ethnicity; for him, the Bantu does not exist. The distinction between Bantu and Hamites in the Great Lakes region is a creation of the European Colonists in complicity with Catholic missionaries. How to distinguish a Hutu, so-called Bantu and a Tutsi, supposed to be a Hamite when they are not different either by

language or culture, let alone by history. The consequence of this antagonism between Hutu and Tutsi led to the tragic genocide of 1994 in Rwanda, the effects of which continue to this day. This antagonism continues to create tensions in the Great Lakes of Africa. Indeed, when the first German arrived in Rwanda, he found socio-economic differences between classes, there was, on the one hand, a group specializing in cattle breeding, the Tutsi and on the other hand a group specializing in agriculture, the Hutus. But it was later proved that none of the groups was purely specialized in livestock or agriculture, the Hutus also had cattle and the Tutsis, on their side, the fields. The only thing that stood out was that cattle were the ultimate good and only the wealthiest and most powerful had it. The king, as his noble court was all of pastoral origin, they were, thus, Tutsi. As in all African royal monarchies, the Royal Court despised both small-scale farmers and small-scale herders. Having not observed conflicts based on an opposition between the Hutu or Tutsi social categories, or actual war between breeders and farmers, Instead, European observers described the oppression of the king and his court on all subjects without distinction (Vidal, 1995). It is clear that the notion of ethnicity in the Great Lakes region, and particularly for the Hutu and Tutsi ethnicities, as we know it today, is different from that of the past. Ethnicities in the modern sense were built during colonization because before colonization no distinctive criteria were allowing them. Both Hutus and Tutsis

have occupied a common space for several centuries, using the same language, having the same religious beliefs, and sharing many of the same cultural practices.

Unlike the coastal regions of Africa whose exploration by Europeans began centuries ago. The history of the Great Lakes region has dated only very recently to the 19th century, a few years before the Berlin Conference on Sharing Africa territories. The first to visit the region is Anglo-Saxon explorers financed by the Royal Geographical Society following the testimonies of religious missionaries and traders who spoke of lakes and kings and used to frequent the eastern coast of Africa across the Indian Ocean. Their testimonies were collected in London. The Anglo-Saxon explorers will be the first eyewitnesses of the kingdoms of the great lakes, Richard F. Burton will describe Burundi in 1858, John H. Speke, Buganda in 1862, the German Account von Gotzen will enter Rwanda in 1894. And from 1870, Protestant and Catholic missionaries will establish themselves in the region. After the 1885 Berlin Conference, the European settled their occupation, the British in Uganda, the Germans between Lake Victoria and Tanganyika (Rwanda, Burundi and mainland Tanzania, Tanganyika) and the Belgians through the Independent State of the Congo, property of the King of the Belgians Leopold II, which became in 1908 the Belgian Congo, in the west of Lake Kivu. At the end of the First World War and

the defeat of Germany, its territory was divided between the Belgians (Rwanda and Burundi) and the British (Tanganyika or Tanzania mainland)

5.2. Citizenship and belonging in the precolonial period

The pre-colonial period in Africa is characterized by great empires and kingdoms, certainly, the history of the region is vast and goes several millennia before contact with the European. In order not to get lost in the conjunctures and interpretations of several historians, we can focus on one to two centuries before colonization that allows us to understand the notion of citizenship and belonging during this period.

The Great Lakes Africa experienced the same political organization of kingdoms with traditional sovereigns, kings (mwami) with political, spiritual and even legal power. These great kingdoms can be divided within the present limits of the states, although the limits of the most important kingdoms sometimes extended beyond the limits of the present states. In Rwanda, a large kingdom characterized by several Tutsi dynasties dominating a majority Hutu and a minority of small Tutsi breeders. In Burundi, the power was in the hands of the Baganwa dynasties of Hutu origin. Uganda has known several kingdoms, the most famous of which are Buganda, Bunyoro-Kitara, Nkore and Toro (Mamdani, 1996). As for the DRC, it has known several empires and kingdoms, the Lunda empire, which is known by its famous monarch Mwant Yav Nawej, the Kongo

kingdom led by King Nzinga A Kuvu, the Kuba kingdom, the Luba and Lunda empire. The kingdoms mentioned above are, of course, the most powerful that the region has known, not the only ones, other small kingdoms had existed throughout the region, it is the case of the small ones of the west Kivu Lake, the kingdoms of Bafuliru, Bashi and the Bahavu. This period was characterized by wars of conquest for the extension and enlargement of the lands, once a territory conquered it became a part of the conquering kingdom and the population was subject to the new sovereign. The latter often kept the former ruling dynasty, which managed the territory on his behalf, in the image of a provincial governor.

The place of individuals in the traditional pre-colonial society in this area was defined by their membership in a family, a clan. The clan implied membership in a common ancestor, a single patrilineal lineage. The nature and structure of the clans were different in the Kingdoms of the region, in Buganda the clan structure was more segmented, ranging from clans to sub-clans, from sub-clans to major lineages and these, to minor sub-clans. In Bunyoro (east of Lake Albert), Burundi, and west of Lake Kivu, the number of clans was significant, reaching more than 200 per kingdom. In Rwanda, on the other hand, the number of clans was fewer and more structured going up to 20 clans and these were divided into sub-clans that contain each one the lineages. Historians have long argued that the political organization of the Great Lakes region based on

personal ties could only be of feudal types. They were based on the European model of feudalism which consisted of power, personal bonds and land. The kings (bami) had vassals, to whom they ceded land concessions, the vassals in their turn ceding fiefs to their people in the form of farmland or cows. (Chrétien, 2001)

In this dynamic, the nationality of an individual or his membership of a population that composed the pre-colonial states was very different from the current notion of nationality. The latter is linked to that of the modern state as conceived in the 19th century in Europe. In the colonial and postcolonial state, it is strictly regulated by texts and laws, the foreigner is easily identified because he does not hold the required documents. In the pre-colonial period, however, membership was based on a bond of allegiance between the sovereign and the subjects, based on a family bond, a clan and ethnic lineage or religious belief rather than integration into a national community.

In the least densely populated part of the Congolese forest with very small communities, membership was determined by family ties rather than political or religious ties. The foreigners who passed by were welcomed and the abundance of the land made it easy to integrate those who wanted to stay and settle.

The notion of belonging is associated with that of land management, a system of management of foreigners existed and allowed the integration of foreigners through the authorization to use the land, this is the case in the eastern part of the DRC (Manby, 2018).

Generally speaking, the question of who was and who was not a member was less urgent given the vastness of the territory, the low density of the population and the rate of migration. Foreigners were easily accepted if they swore allegiance to the king and through rites of initiation they were integrated into society.

5.3. Colonial period

When Europeans arrived in the region in the 1850s and 1860s, explorers were motivated by the search for the sources of the Nile and missionaries by the conversion of unbelievers not yet under the influence of Muslims. A true war of religions to counter Islam will settle down and sometimes even Christians will have friction between themselves, French-speaking Catholics, the white fathers on the one hand, and British Protestant missionaries on the other.

Obsessed with their objective of colonization and control, European colonizers did not seek to understand the social structure they found on the spot but rather divided society on a racial basis with an ethnic notion. Having first noticed the aristocracy in power, they classified them one hand the class of

aristocratic lords, the Tutsi breeders and the peasant agricultural mass Hutu on the other hand. This separation will have more effect in Rwanda and Burundi, than in Uganda, where the kingdom of Buganda was a little more modern and evolved than the others. To moralize society, they will use religion through missionaries to better establish their authority.

To understand the notion of citizenship in this region during colonization, one must consider the three models of management of colonies, the British indirect rule, the Belgian paternalism and the German protectorate. The nationality of individuals during this colonial period depended, therefore, on the status of the colony. The division of the German colonies between Belgium and Great Britain will mean that the nationality laws of this region will come from the legislative traditions of these two countries, the British common law and Belgian civil law.

5.3.1. British Indirect rule in Uganda

The British managed their colonies through indirect administration. The power of Buganda, which remained Uganda's greatest kingdom at the time, was respected but profoundly weakened. Under British protection, the kingdoms retained relative autonomy, the colonialist maintained the king, the British colonial exercised justice, and the king formed a consultative parliament in the form of a chamber of peers designated by himself. The type of regime created by

the colonist is a type of oligarchy headed by the king surrounded by the landlords, the power of the king was greatly diminished but represented a substantial emotional value to the population as the symbol of ganda identity. With the agrarian reform, which instituted the private ownership of land and the redistribution of land, they created a class of notables, of landowners, like feudal lords and the mass of peasants, deprived of their lineage rights, will find themselves without land and reduced to mere tenants.

On the Nkore side of the Kingdom (now the Ankole), colonialists came to settle there a little later on the request of the latter, just after the war and the invasion of the Nkore by the neighbouring Kingdom of Rwanda in 1891. The war broke out as a result of the Nkore's desire to restore its cattle decimated by the rinderpest of 1891 (Chrétien, 2001).

The Kingdom of Toro will ally itself with the British on its own because they had restored it, Kings, to the head of his Kingdom after the neighbouring Kingdom of the Bunyoro tried to dispossess him of his throne. Thus, in 1900 an agreement between the Kingdom and the British was signed.

The Kingdom of Bunyoro, meanwhile, will be conquered by force because it has decided to resist the White invader, his lands will be ceded to the neighbouring Kingdoms of Toro and Buganda.

Figure 2 Kingdoms of Uganda

Source: Internet (http://springtimeofnations.blogspot.com)

Unrest was recurrent in the early 1900s, mainly in other Kingdoms other than Buganda, where the illusion of the preservation of former powers by the colonial administration by placing faithful Baganda servants in place of the originals was not well perceived. Even so, the settlers placed natives from these kingdoms, who were not always of royal origin, they were contested because of the spiritual aspect of traditional power and the expectation of the return of the exiled sovereigns.

The British colonies were divided into three categories, dominions, protectorates, and colonies, later to which will be added the territories under the mandate of the League of Nations. The dominions were autonomous territories, but recognized the sovereignty of the British Empire and gradually gained their

independence, such as South Africa, Australia, Canada, India (including present-day Pakistan), Ireland, Sri Lanka (formerly known as Ceylon) and New Zealand in 1931 (Manby, 2018). The protectorates were British Overseas Territories controlled by local authorities. They consisted of maintaining the existing authorities and institutions by attaching to them colonial advisers, but the sovereign powers such as diplomacy, the army and the control of trade were ensured by the colonizing power. The territories under mandate are former German colonies whose management were entrusted to the allies at the end of the First World War and the defeat of Germany by the League of Nations.

As Uganda has had a protectorate status since 1894, his citizens enjoyed the status of a protected British person, which was a status reserved for indigenous and native peoples of the protectorate before the 19th century. This status granted the right to benefit from British protection once outside the protectorate. The protected status of the crown was lower than that of the British citizen and the colonies. This status was very ambiguous since it also applies to persons from territories under the mandate.

In 1914 the British Nationality and status of Alien Act granted British subject status throughout the empire although the dominions retained autonomy to define their nationality text, and possibly not to grant nationality in their dominion to people of different skin colors (people of African and Asian origin),

the British government will implicitly recognize the right of the dominions to apply segregation and not to interfere in their domestic affairs. (Karatani, 2003).

In 1948, the British Nationality Act was passed, standardizing nationality laws in the British Empire, establishing a new citizenship status in the United Kingdom and the colonies. This act was part of a larger complex of the Commonwealth citizenship, which also included the citizenship of new independent Commonwealth states, mainly former dominions. It granted citizenship based on *jus soli* to all those who were born in the kingdom or one of the colonies. Foreigners had the right to naturalize in the colonies or the UK. Theoretically, all citizens had the same rights as citizens of the crown, but in practice, those of Africans and Asians were limited. As an example, the Africans were limited in their respective spaces for their movement, which was not the case of the British born in the United Kingdom.

Despite, the publication of the 1948 statute, protected British status continued to apply in protectorates such as Uganda. This status was even codified by special laws in the protectorates and applied to all persons born in them and whose parents did not yet have British citizenship. Similarly, the Dominions retained their nationality laws. The Ugandans thus retained this status until the country's independence in 1962.

5.3.2. The German Protectorate of Rwanda-Urundi

At the end of the nineteenth century, the Germans were more concerned about securing their border with the other colonial powers, the Belgian Congo in the west and British Uganda in the north, and especially containing the Belgian Congo which had commercial aims on the region. In 1896 and 1897, the first contacts were made between Burundi and Rwanda. The kingdom of Rwanda more powerful and organized than its neighbour will be the first to accept German protection, the Burundian monarchy will oppose the Germans for at least 7 years.

It should be noted that the Kingdom of Rwanda sought the support of the Germans against the Belgians who had established themselves on the other side of Lake Kivu and who had previously crushed the army of a former king of Rwanda. In the beginning, the relationship between Germans and Rwanda is an alliance that will turn over time into submissive as the Germans take military control of the region. They established the first permanent military post with a Military Officer in 1901. It was in 1900 that the first mission of the White Father missionaries settled permanently in Rwanda with the agreement of the mwami (King) and the German military authorities who followed the situation from Tanganyika (Tanzania) (Chretien, 2000).

On the Burundian side, the King and his leaders, for a long time refused the European presence on their lands. They ended up being submissive by arms.

To achieve this the Germans will rely on internal dissident, which they will end up betraying once the country is conquered and pacified. They will resettle the rightful *mwami* there, recognize him as the King of all Burundi.

Inspired by the indirect administration established in neighbouring Uganda by the British, the Germans will establish the same system in the two protectorates of Burundi and Rwanda, while trying to avoid the same mistakes that have caused problems in Tanganyika, notably by the movement "Maji-Maji (water-water)". Nevertheless, unrest broke out in northwestern Burundi, an area made up mostly of very independent Hutu populations, which did not accept foreigners or Tutsi leaders from the centre. The indirect management model was based on a highly centralized German concept which worked well in Rwanda because of the centrality of the power, It could not be the same in Burundi with regions that did not respond to central power and the type of the management of Burundian royalty that was composed of several leaders, a little more autonomous from the king of Burundi.

The German colonization of Rwanda and Burundi did not take more than thirty years until 1921 when the two colonies were placed under the tutorship of Belgium by the League of Nations, Germany had not had time to define rules specific to the nationality of the indigenous populations of these two colonies.

When the Belgians took control of the territory of Rwanda-Urundi, which they annexed to the Congo as the 7th province, they initially continued with the indirect administration inherited from the Germans, relying in particular on the Tutsi aristocrats and the Catholic Church. Later, they will draw inspiration on their experience in the Belgian Congo for the administration of this new province, by importing administrative staff from the Congo. Catholic fathers will play a predominant role in the conversion to Catholicism of young Tutsi, considered as the future of colonialism and the country, the progressive elimination of traditional rites and customs which they will describe as paganism which does not correspond to Christian wishes. The newly formed elites were to be "*docile and grateful to the colonial state and the church for taking them paternally into their charge.*" Thus, the powers of the traditional leaders will decrease until the disappearance of certain chiefdoms, mainly Hutu and their dynasties, the creation of new chiefdoms and sub-chiefdoms more Christian and especially Tutsi, because they were deemed to be more capable of leading and more obedient to the Belgian authorities they were trying to emulate.[12]

During the Belgian colonization, the missionaries will occupy a place in the administrative management of the colony, they will be directly in charge of

[12] https://www.axl.cefan.ulaval.ca/afrique/burundi.htm consulted on August 20, 2020 at 11:30

Education, Culture and health. Since the German administration relied on the use of Swahili as an official language and learning, the Catholic missionaries under Belgian colonization will instead promote the local languages, Kinyarwanda in Rwanda and Kirundi in Burundi, judging Swahili too close to Islam.

The Belgians also did not care to define the notion of nationality in this new province, but through the missionaries, they have shaped a new identity of these populations by creating these ethnic categories Hutu and Tutsi that did not exist before. In the beginning, a Hutu could become Tutsi and vice versa, since this was based on a social classification and hierarchy, a peasant could become an aristocrat if he accumulated sufficient wealth composed of land and cattle. Similarly, an aristocrat could be deposed if he no longer fulfilled the criteria of this social class. In trying to create an administrative hierarchy of feudal type, the quality of noble and aristocrats was extended to a whole race (Chretien, 2000).

5.3.3. The Belgian paternalism in Congo

The first contact with Europeans began in 1482 in the western part of the country with the Portuguese in contact with the kingdom of Kongo. The settlement itself began later in the 19th century with Anglo-American explorer Henry Morton Stanley in his quest for the Congo River. He was later commissioned by King Leopold II of Belgium. At his initiative, the conference on sharing Africa was organized in 1885 in Berlin. After the conference, when

the shared colonies became the property of the European states, Leopold II will be recognized as the sole owner of the Congo and its sovereign. From 1885 to 1908, Leopold II renamed the Congo into the Independent State of the Congo (EIC) which was more a commercial enterprise, a private domain of exploitation, than a state. This period was marked by atrocities on the Congolese population, committed by the mercenaries employed by King Leopold II, including the mutilation of women and children when they did not respect the rubber production quotas.

Although it did not meet the requirements of a modern state, the EIC had the same status as Belgium and was governed by its texts, except for the absence of a constitution, headed by King Leopold II, who was at the same time Head of State and King. Sovereignty was not in the hands of the people but the hands of King Leopold.

Nationality in the independent state of Congo was governed by the decree of December 27, 1892. Under the decree, nationality is acquired by combining *jus soli* and *jus sanguinis*, by naturalization, by presumption for children found in the territory of the Congo of unknown nationality and parents, and finally, by option for children born in the territory of foreign parents.[13] In 1895, a system

[13] « La Vérité sur le Congo », *Bulletin mensuel de colonisation comparée*, 1907, p. 420. Online resources

of registration in the register of civilized populations was created by royal decree. Registration was proof that the Congolese had reached a certain level of civilization. As nationals, registered Congolese had, in theory, all the civil rights attached to them within the geographical limits of the EIC. It, therefore, excluded children born abroad from Congolese parents, a fact that could only happen exceptionally since the Congolese population had virtually no right to move. Similarly, a child who's one of the parents was a foreigner was excluded.

The Congo was ceded to Belgium by Leopold II in 1908 following international pressure against the horrors endured by the Congolese people. Some authors will call it the forgotten genocide (Braeckman, 2008). Thus, the EIC became Belgian Congo, a colony of the Belgian state. Therefore, there are no longer two states, but one and Congolese nationality no longer exists.

Belgium's paternalistic policy had as its main feature the treatment of Africans as eternal children who did not grow up and needed a Belgian tutor to make them leave the state of barbarian childhood to that of a mature adult, a civilized one. In 1908, when the Colony was taken over, Belgium promulgated the Colonial Charter, which served as the constitution of the new Belgian Congo. From the outset, the Charter specifies that the Belgian Congo has a separate legal personality from Belgium. Belgian citizens retained the rights attached to Belgian nationality in the Belgian Congo. Registration is maintained, the distinction

between registered and unregistered will lie in the existence of two legal orders, the former enjoying, as well as foreigners and Belgians, civil rights recognized by the laws of the Belgian Congo, their statutes are governed by national laws, the European civil law. The latter, like the registered ones, enjoyed civil rights recognized by the laws of the colony, but mainly governed by customs, as far as they were not contrary to colonial laws.

The populations of the colony are called indigenous and are managed by customary authorities who apply custom. Their rights were very limited, following the paternalistic policy, the natives had to be authorized either by the colonial authorities or by a European master to exercise certain rights. To circulate in the colony, the natives had to have an indigenous passport allowing them to circulate for more than 30 days in another constituency other than their own. To travel abroad, the indigenous person had to have a special permit and in the case of Europe be covered by a European who acts as guarantor by depositing a deposit to the colonial authorities.

Registration was the highest level of the Congolese elite, allowing them to be assimilated to Europeans in public life and to benefit from the many advantages that unregistered people did not have, such as access to hospitals, European neighbourhoods, cinema, European schools for children of the registered… (Ndaywel, 1998)

From 1952, the automatic registration was revoked, mainly that of the wife and children of the registered. The conditions for obtaining the certificate were difficult to meet as the registered ratio on the number of Congolese was 1 in 100,000 and will be the basis of the frustrations of the indigenous populations. The disgruntled were both registered and unlisted persons who were refused registration, the former felt that they did not have enough privileges, and the latter were jealous of the latter.

5.4. Nationality laws since Independence

Class inequalities between indigenous peoples and the segregation of Europeans towards Africans will trigger movements of revolts and emancipations that will lead to the independence of African states in the majority in the 1960s. In the Great Lakes region, the DRC gained independence on 30 June 1960, Rwanda and Burundi on 1 July 1962 and Uganda on 9 October 1962.

However, independence did not bring tranquillity to these new states but rather coincided with the beginning of violence in most of the states of the region. The elites who will take in hand the destinies of their states will have to deal with the consequences of the manipulation of African ethnography for the needs of colonization, as well as all the demands of the populations silenced for long. It is in this context that the texts on nationality will be drawn up in these new States.

5.4.1. Citizenship laws in Uganda

Uganda, like most British colonies, negotiated its independence and design its first constitution with the British settler in 1961. In Lancaster, the negotiated constitutions of the British colonies share the same nationality provisions that followed the Common Law principle of jus soli. (Kotecha, 1975).

The post-independence transition has been quite stormy. After independence Milton Obote became prime minister and worked with the king of Buganda as a presidential figure. This predominance of Buganda imposed even in the name of the country was not everyone`s taste. Obote's inability to govern well because of the multitude of power centres rooted in the ethnic divide repealed the constitution and promulgated an interim constitution in 1966 with the assistance of his Chief of Staff Idi Amin Dada. In 1967, a new constitution was adopted, which enshrined the centrality of power with a presidential regime by abolishing the kingdoms. Idi Amin takes power by a coup following the country's economic deterioration and accusations of corruption in 1971. In 1978 the war is commonly known as Ugandan-Tanzanian, more specifically a Ugandan rebellion supported militarily by Tanzania. Amin's annexation of a section of the Kagera will push Tanzania to support the rebellion and bring down Idi Amin, who fled the country in 1979. After Idi Amin, the country will not be able to have a stable government until 1980 with the contested election of Obote,

which will trigger a civil war. The fighting lasted until 1985 when Obote was again overthrown by a military coup by his generals. The military regime will also collapse under the pressure of the National Resistance Army rebellion and in 1986 Yoweri Kaguta Museveni seized the capital Kampala and took power.

Chapter II of the 1962 Ugandan Constitution talked about citizenship by setting out the conditions for citizenship. Ugandan nationality could be acquired either automatically, by registration, or by naturalization. Was entitled to automatic Ugandan nationality on October 9, 1962, first, any citizens of the United Kingdom and colonies born in Uganda before independence and or having the British protected person status, and whose parents or one of them was born in Uganda. Second, any citizens of the United Kingdom and colonies or a British protected person born outside Uganda but whose father had become or should become a Ugandan citizen of origin.[14] As we see here, the constitution advocates double jus soli for the nationality of direct origin.

Persons born in Uganda but from parents born outside Uganda could obtain nationality by registration. Registration is extended to all British protected persons and British colonies or naturalized persons registered in Uganda under the British Nationality Act of 1948. The married woman obtained the nationality

[14] Uganda constitutional instruments, 1962, online resources, accessed on August 22, 2020

of the husband, who held the nationality of origin, by registration if the husband could have held it but had died before Uganda's Independence. Naturalization, discretionary, was done based on residence for two years in the country for all other people.

The 1967 Constitution will remain the same as the 1962 Constitution on the issue of citizenship in particular on its key points. It will differ only by abolishing gender discrimination. (Zakaryan, 2020). Article 4 1 (b) states "every person born in Uganda after the commencement of this Constitution one of whose parents or grandparents is or was a citizen of Uganda", unlike the previous constitution which specified in article 8 (2) the transfer of nationality by the father only.

From the first constitution of 1962 and even 1967, a large number of Asians among whom the Indians and Pakistanis who were established in Uganda at the beginning of the 20th century will automatically become Ugandan citizens. At the time of negotiation preceding the independence of Uganda, the authorities of the United Kingdom, intending to avoid dual nationality, had amended their Nationality Act to ensure that all British citizens residing in Uganda who will be granted Ugandan nationality cease to be British. This situation will not benefit Asians who could obtain nationality by the 1962 constitution, either by origin or registration. Each time they had to prevail themselves of their Ugandan

nationality, they were asked to produce the birth certificate in Uganda as proof, for a country that had not introduced the birth registration system only in the recent past, it was almost impossible for many of them. Unlike native populations from whom this evidence was not sought, the lack of proof of birth was automatically a result of expulsion from Ugandan territory (Kotecha, 1975). Those who wanted to apply to the Office of the Registrar of Birth and Death had difficulty obtaining them, given the short time allowed for acquisition and the high volume of applications, the government had to close the offices for several days. Not to mention the poor practice of Ugandan officials in handling Asian cases. It was also required by Section 2 of the Ugandan Independence Act of 1962, under the exclusivity of Ugandan nationality, to renounce any other nationality held within a required period, once Ugandan nationality was acquired. Thus, those of the Asians who had succeeded in acquiring Ugandan nationality within this period will be stripped of their nationality on the ground that they had not renounced British nationality within the period required by the constitution (Zakaryan, 2020). This situation will create a large number of stateless persons of Indian origin in 1972, such as Mr Dahyabhai Ashabhai Patel, a prominent jurist who was a member of the Ugandan parliament and held several posts in Uganda who was expelled in 1972 under Putschist President Idi Amin Dada. (Kotecha, 1975). The remainder, who had not yet opted for Ugandan citizenship would

prefer to avail themselves of British citizenship under the British Nationality Act of 1948, since it granted the same rights to citizens of British origin as those of African or Asian origin and that they remained citizens of the United Kingdom and the colonies. It was the same in Kenya, where the Kenyan government did not look at the population of Asian origins favourably.

This situation has been explained by many scholars as not being an ethnic problem, but rather an economic one, that it is due to the disadvantages and discrimination towards African by colonialists who favoured Asian traders. These have enriched themselves to the detriment of indigenous African populations who have taken the reins of power, in turn, have begun to repress Asians. (Manby, 2018,2)

In 1983, the government passed a law allowing all stateless persons of Asian origin who left the country to return to the possession of their confiscated property under the Amin regime. Unfortunately, this measure will not allow stateless persons to regain their right to citizenship because they will still be unrecognized as Ugandan citizens. The procedure put in place was that when a person's citizenship was in doubt, he would have to provide documentation to prove it, which would bring back most of the above cases where it was impossible to possess the birth certificates.

In 1995, a new constitution was introduced after national consultations which are still in force. Unlike the 1962 and 1967 constitutions, which set out general and non-discriminatory rules on nationality to solve the problem of Ugandan citizens of Asian origin, the 1995 constitution will be based on a more ethnic definition, from the great ethnic diversity of Uganda. It will, therefore, decide on the situation of the many African refugees and immigrants. Article 10 (a) defines nationality at birth by: "every person born in Uganda, one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February 1926, and set out in the Third Schedule to this Constitution"[15]. This constitution lists and defines citizenship based on 26 ethnic groups, and the first constitutional amendment of 2005 adds 9 other ethnic groups, including the Banyarwanda in the central and southern part of the country (Zakaryan, 2020). While the Banyarwanda has managed to be considered indigenous communities in Uganda, the Asian communities have failed to be considered indigenous communities in Uganda. This marginalization and deprivation of citizenship of a group whose ethnic origin was not legally reflected in the national affiliation were not likely to facilitate national cohesion or protect them from statelessness. This placed

[15] Constitution of Uganda, online resources accessed on August 26, 2020 at 11:05 https://www.parliament.go.ug/documents/1240/constitution

Uganda in the ranks of countries that did not respect the African principle of the right to a nationality and a violator of the principle of non-discrimination.

With the 1995 constitution, the jus sanguinis extended only to people from indigenous communities established in 1926 when the borders of Uganda were established by the British, thus persons who are not Ugandan by birth cannot pass their nationality to their descendant (Art 10 b). Jus soli, meanwhile, will be relegated to the condition of residence in Uganda before 9 October 1962, date of independence and will be subject to citizenship by registration. Ugandans who obtained nationality by registration or naturalization, which is the case for Asians, had no right to pass on nationality to their descendants.

The acquisition of Ugandan citizenship by residence is subject to an extended residence of 10 years on Ugandan soil (Art 12 (2) (b)) for migrants, and for those who lived 20 years in the Ugandan soil before the 1995 constitution (Art 12 (2) (c)).

Discretionary naturalization is a matter for parliament and is possible only if the individual speaks a vernacular language of Uganda or English and is resident on Ugandan soil for 20 years.

Dual nationality is prohibited, any person who becomes Ugandan renounces former nationality and any Ugandan who loses his Ugandan

nationality by marriage, recover it once the marriage is dissolved and, in the event, that he would risk losing this new nationality.

People at risk statelessness in Uganda

As we have just seen above, the Constitution of Uganda in the application of the provisions on nationality that exclude several groups that are not retained among the ethnicities recognized by the constitution. These groups are at risk of statelessness. These include descendants of Asian settlers during the colonial period, long-term refugees in Uganda, the Maragoli community in Kiryandongo (Western part), and the Somalis of Somalia and Somaliland. (Manby, 2018,2)

Given that the Asians could not obtain the nationality of origin, but rather by registration or naturalization, their children had to go through the same process to obtain the nationality. Thus, they were born and raised in Uganda without Ugandan nationality. For some, they should live 38 years as stateless persons before becoming a national, because the period of the minority is not considered within 20 years of residence before applying for naturalization.

Refugees from the various wars and conflicts in the region who have been received in Uganda and who live there for a very long time do not qualify to be registered as Ugandan nationals, according to an interpretation of the Constitutional Court Ugandan in 2015 (Manby, 2015). Most of these refugees

have been living in Uganda for almost 50 years like the Rwandan refugees of 1959, 1973 and the 1990s, the Congolese refugees of the period of the 1964 rebellion and the 1996 wars, of the South Sudanese of the period before secession in the 2000s. In practice, however, things are different, since many of the refugees do not necessarily live in refugee camps and have the right to work and move freely in the country, some have been identified as Ugandan citizens, these include the Congolese people around Lake Albert who fled from the other side and were able to register as citizens in 2014. This is contradictory, given the fact that Banyarwanda refugees belonging to the constitutionally recognized ethnic groups are not eligible for citizenship.

The Maragoli community is a typical example of the colonial consequences on the membership and nationality of individuals. They are part of a branch of the Luhya ethnic group of Kenya, arrived in Uganda in the 19th and early 20th centuries as workers in the construction of the East African Railway and others at the invitation of the Bunyoro King. They were not included in the indigenous communities of the 1995 constitution, nor were they included in the 2005 amendment. They were sometimes treated like Ugandans and registered as members of the Bunyoro ethnic group. They pleaded for a long time to be considered an indigenous community, and many times they were heard and resolutions in the direction of regularization were issued, but materialization is

still a problem to this day (Manby, 2018). They are currently facing several challenges, including the lack of identity cards, which pose a risk to their children who cannot register at birth or study.

Somalis from Somalia and Somaliland in Uganda are descendants of Somali migrants from the colonial period, Others were expelled from neighbouring Kenya in the 1989's, and the rest were Somali refugees fleeing the fall of the Somali state in the 1990s. Like all the other categories above, they are not members of the Ugandan Indigenous Communities and therefore do not qualify for Origin Citizenship and many are not informed of the option of registration based on long-term residence and are also hampered by administrative formalities of registration and naturalization due to lack of birth certificate.

5.4.2. Citizenship laws in Rwanda

Former German protectorate and placed under a mandate from Belgium in 1922, Rwanda attains its independence in an atmosphere of high tensions and violence between the Tutsi ethnic group and the Hutu majority supported by the Catholic Church and Belgian Christian workers' movements who saw them as a popular movement that fights against social inequalities. Long cherished by the colonists, the Tutsis were abandoned by the latter because they were considered too nationalist, they claimed the independence and autonomy of the country too

soon to the taste of the Belgians. The Hutu elites, in return, felt that they should wait and insisted on preconditions, among others, the fall of the predominance of Tutsi feudalism (Chretien, 2000). From the country's elite, the Tutsis have become second-class citizens, barely tolerated. The unrest and institutionalized discrimination of Tutsi that will characterize this period between the two ethnicities will expel King Kigeri V and thousands of Tutsi refugees in Burundi, Congo, Tanzania and Uganda.

Rwanda gained independence in 1962 with Grégoire Kayibanda, a Hutu, as its first president. The Belgians left, as in the Belgian Congo, without having prepared transitional provisions for the new states, as the British did in their colonies. Thus, no nationality legislation was made during this period before independence.

The first law on nationality was drawn up in 1963 and modelled on the Belgian Nationality Code. This law had two categories of acquisition: nationality of origin and nationality of acquisition. The nationality of origin applied at the same time the jus sanguinis and jus soli. Was Rwandan the legitimate child whose father was Rwandan? This also applied to the adoption of a foreign child by a Rwandan father who had lost his nationality through the adoption. The mother transmitted the nationality only if the father was stateless or whose nationality was unknown.

Jus soli applied to newborn children found on the territory of Rwanda by unknown parents but lost this quality once the nationality of the parents is known. The acquisition of nationality was possible through marriage for foreign women marrying a Rwandan, but also for the child of a foreign father and a Rwandan mother after the majority of 18-year, if he had not acquired before the nationality of his father, after having submitted the application and lived during the 3 years preceding his application in Rwanda. [16]The woman who married a Rwandan could retain her nationality if she made a declaration within a year of the marriage. Dual nationality was prohibited, thus a Rwandan who acquired a foreign nationality lost his Rwandan citizenship. As seen above for adoptions of minor children, an adult could also be adopted on condition of renouncing his or her original nationality.Naturalization was possible through a presidential decree after the approval of the National Assembly and was conditional on a residence of at least ten years in the territory of Rwanda.

Grégoire Kayibanda was overthrown by General Juvénal Habyarimana through a coup in 1973 and the latter will remain in power until he died in 1994, which triggered the unfortunate events that will set the whole region on fire. During the 1990s, Rwandan refugees launched a war of liberation that failed

[16] Rwandan nationality code of 1963 online resources accessed on August 26, 2020 https://www.refworld.org/docid/3ae6b4ff6.html

to push the government to organize their peaceful return to Rwanda. These events led to the 1993 Arusha Peace Agreement between President Habyarimana and the RPF on the ceasefire accompanied by 6 protocols, including the protocol on reintegration and the protocol on the repatriation of Rwandan refugees and the resettlement of displaced persons. This protocol is the source of dual nationality in Rwanda. Article 7 of the protocol recognized the principle of dual nationality. At the end of the 1994 killings, the RPF came to power and formed a government of broad-based transitions with other political parties that did not take part in previous governments or subsequent killings. Based on the Arusha protocols, the return of Rwandan refugees was possible and those who had lost their nationality following the acquisition of foreign nationalities were able to regain their nationality without losing the nationalities acquired elsewhere (Dusabe, 2020).

In 2003 a new constitution was drawn up, Reaffirming the principle of dual nationality and automatic acquisition for all descendants of Rwandan refugees from 1959 to 1994 if they return to settle in Rwanda. This constitution allows anyone of Rwandan origin to apply for nationality.

In 2004, the Nationality Code was adopted and promulgated. This new law reaffirms the principle of dual nationality. It grants the same rights to men and women in the transmission of nationality to their children without

discrimination from birth outside marriage but also to spouses (Art 4, 9). A foreign or stateless man who married a Rwandan woman may apply to acquire Rwandan nationality within two years after the marriage and provided that the marriage has been registered to the registrar and continues to share conjugal life. Any child born in Rwanda of unknown or stateless parents to whom the nationality of no parent can be attributed had Rwandan nationality, the same was true of children found in Rwandan territory who were supposed to be born in the territory of Rwanda. A child born on the Rwandan territory, of foreign parents, could, at the age of 18, upon request, obtain Rwandan nationality. Minor adopted children had an automatic nationality upon adoption.

The naturalization procedure has been simplified, the parliamentary authorization will be abolished, the authority will be changed from the President of the Republic to the Minister of Justice and the residence period will be reduced from 10 years to 5 years. Finally, the competence of nationality issues will change from the Ministry of the Interior to that of Justice (Dusabe, 2020).

In 2008 a new organic law of Rwandan nationality was adopted and brought some novelties while retaining the achievements of the 2004 law. This law brings an institutional novelty with a new institution, the Directorate-General of Immigration and Emigration (DGIE) in charge of all questions relating to migration and nationality, including the processing of files, after their reception,

acquisition, renunciation and recovery of nationality. The adoption of adults that existed since the previous act is being removed. The conditions for naturalization are reinforced, including the possession of sustainable economic activities in Rwanda, respect for culture and patriotism, not been characterized by a genocidal ideology. This last point demonstrates the fierce struggle of the Rwandan regime against any attempt to deny the genocide. The law also abolished the automatic re-acquisition of nationality to Rwandans of origin introduced in the 2004 law. In the latter, it granted automatic re-acquisition to all the refugees of 1959 and 1994 and their descendants. The reason for this change is largely unknown as Rwandans continued to return to their home countries, including the women and children of those living in the forests of the eastern DRC.

Finally, this law has the particularity of being taken after the accession of Rwanda in 2006 to the 1961 Convention on the Reduction of Statelessness (Manby, 2018 2). To this end, in Article 2 of the Definitions Act, point 7 refers to the 1954 United Nations Convention on the Status of Stateless Persons.

In the 2015 constitutional revision that allowed President Kagame to run for a third term, the provisions on Rwandan nationality did not change.

People at Risk of statelessness in Rwanda.

The issue of statelessness has been particularly relevant for Congolese refugees living in Rwanda since the 1996-1997 war in the DRC, these Kinyarwanda-speaking refugees from the provinces of North and South Kivu have been living in Rwanda for more than 20 years. Since they are refugees, their children do not benefit from the provision of the nationality law which refers to children born in Rwanda to unknown or stateless parents. On the other hand, the acquisition of nationality through the long-term residency procedure would be a solution or the provision on "otherwise stateless" children who obtain nationality based on nationality on Rwandan territory. The problems faced by these refugees is that, despite their desire to return to Congo and the various repatriation agreements signed between the DRC, Rwanda and UNHCR, no repatriation has been made to date, mainly due to the suspicions of the people of Kivu, but also to the fact that the Congolese, in general, believe that these refugees are not Congolese and therefore have no right to return. This is in addition to the fact that, in general, Kinyarwanda-speaking populations in eastern DRC, even the legitimate Congolese populations of Rutshuru in North Kivu province, are considered Rwandan and foreign by a large part of the population of the country.

5.4.3. Burundi nationality laws since independence

Burundi was together with Rwanda, part of the same province of Ruanda-Urundi placed under the mandate of the Kingdom of Belgium by the League of

Nations. He gained independence on the same day as Rwanda. Unlike Rwanda, Burundi will not experience the same Hutu-Tutsi divide and the massacres that followed in neighbouring Rwanda, at least at the very beginning of independence. However, internal struggles for the conquest and exercise of power were developed with the creation of the multitude of political parties that were composed indifferently of Hutus and Tutsis. What their brothers were going through in neighbouring Rwanda, especially with the added thousands of refugees, gradually began to awaken the Tutsis about the risks they were running. After independence, Burundi took the form of a constitutional monarchy led by King Mwambutsa IV, who successively appointed several prime ministers, sometimes Hutu, sometimes Tutsi. After the 1965 elections despite the Hutu majority in parliament, the king appointed a Tutsi prime minister, a coupled him to be overthrown and he fled to Congo and later to Switzerland. The country will be plunged into a crisis that will continue with the massacres of Tutsi peasants in Muramvya province, east of Bujumbura. This massacre will be the trigger that will confirm Tutsi's suspicions about their fate, as it was the case in Rwanda. In 1966 another coup was attempted by Hutus, they will be fought by Captain Michel Micombero, Secretary of Defense, of Tutsi origin. In the same year, he removed the regime and proclaimed the republic with him as president. He remained in power for 10 years before finally being deposed by another military

coup led by Deputy Chief of Staff Colonel Jean Baptiste Bagaza of Tutsi origin (Chrétien, 2000).

As in Rwanda, the Belgians have left no transitional arrangements or comprehensive frameworks on nationality. Burundi took its first nationality law in 1971, during the transition period from the Royalty to the Republic, under Micombero in a period of high ethnic tension.

In 2000, a new reform of the nationality code was adopted. This law bases the original nationality on the jus sanguinis through the father, regardless of the place of birth of the person whether in Burundi or abroad. The natural child who is also recognized by a Burundian father has nationality of origin. The Burundian mother can only pass on her children if only the father is unknown through a court decision, as well as a child disowned by the father.

The child born, the child found and proved that he was born on the Burundian's territory and the child whose paternal parentage cannot be proven acquires nationality by presumption, in the latter case the child obtains it only if the mother acquires or recovers Burundian nationality. Since a woman does not have the same rights as a man, she can acquire nationality when she marries a Burundian or a man who acquires Burundian nationality by option but the opposite is not possible.

Naturalization is done by decree of the President of the Republic, at the request of an individual of 21 years of age at least and permanently residing in Burundi for 10 years before naturalization, if he (she) is married to a Burundian citizen the period is reduced to 5 years. He must justify his attachment to the Burundian nation and his assimilation to a Burundian citizen. The application for naturalization of the minor child is made at the same time as the request of the parents.

A draft law was drafted in 2018 to join the 1954 United Nations Convention on the Status of Stateless Persons and the 1961 Convention on The Reduction of Statelessness and to date, the law has not yet been adopted.

Burundi has not had several changes to the laws on nationality this shows that nationality is not a major problem, however, there is small gender discrimination in the sense that the woman can only pass the nationality if the father is unknown or the child has been disavowed by the father. The 2005 constitution (Article 12) advocates equal rights for children born to Burundian men and women. However, the 2000 Nationality Act not yet amended, contains the few discriminatory provisions.

People at Risk of statelessness in Burundi

Burundi is recognized as a country of asylum. However, there are populations at risk of statelessness, such as Omanis. The first Omanis arrived in Burundi in the 1880s from the Indian Ocean coast at the same time as the Swahili population, during slave raids. During the colonial period, they became merchants and held documents attesting their Omani nationality. At the expiration of these documents and any changes in the civil status, they had to go to Oman for these administrative procedures. Not having that money many couldn't get there. Thus, few Omanis have valid documents, the remains have no Omani nationality or have difficulty proving it. Since Burundian law allows their descendants born in Burundian territory, to obtain Burundian citizenship through naturalization. In 2014, the Burundian government through the National Office for the Protection of Refugees and Stateless Persons (ONAPRA) in partnership with UNHCR conducted a survey of Omani intentions into the possibility of acquiring Burundian nationality as a solution. Families who participated in this study refused. Therefore, the risk of statelessness is very high for the descendants of these Omanis.

5.4.4. Citizenship in DR Congo since Independence

The only Belgian colony in Africa, the Democratic Republic of Congo gained independence on June 30, 1960, under pressure from the Congolese. Anti-colonial movements began in 1956 with various social movements of grievances

across the country, the "*évolués*" demanded more rights, more religious freedoms for the Kimbanguists, the fight against colonial oppression of peasants and workers who demanded better working conditions and better wages. These demonstrations culminated in the riots of 4 January 1959 in Leopoldville (now the capital Kinshasa) which took place after the colonial authorities refused to allow an ABAKO (Alliance of Bakongo) march. It is with these demonstrations that the idea of immediate independence will be launched (Nzongola, 2002). The Belgians will be forced to call for a round table in Brussels in 1959 with the principal Congolese leaders from the class of educated Africans, known as the "évolués ". Having not trained enough intellectuals to take over, the Belgians will have to train a few executives in the rush in favour of this negotiated independence. The Church in charge of education had been able to train only a dozen of the university executives against several hundred priests.

At the 1959 Brussels Roundtable, the question of nationality was barely touched by the delegation of Congo, where the right to vote was granted to all Congolese and any Ruanda-Urundi national who had resided in the Belgian Congo for 10 years (Jackson, 2007). In this provision, we see an attempt to manage the issue of populations of Rwandan and Burundian origin, but also the question of acquiring nationality based on the residence on Congolese territory.

This policy of inclusions on the eve of independence also demonstrates the weakness of the status of these populations.

After independence, the first government was formed with Joseph Kasa-Vubu as president and Patrice Emery Lumumba as prime minister. The consequences of independence that were not prepared or foreseen will be unrest in the early years of the young state. The violence that follows will be added to the institutional crisis between Kasavubu and Lumumba. There was a revolt within the army, Congolese soldiers mutinied against their senior European officers because independence had not made any changes in their conditions, and especially with the statement of The Chief of Staff Émile Janssens of Belgian origin: "*After independence is equal to before independence for the public force*" and the demand for independence of several provinces including Katanga and its consequences. In this turmoil, Belgium will intervene militarily, which will turn the mutiny into a military conflict between Congo and Belgium. It was in this disorder that Colonel Joseph Désiré Mobutu seized power in 1965 and suspended all institutions, he ruled the country for 32 years, after which he had been ousted from power in 1997 by Laurent Désiré Kabila.

On the legislative front, the first text governing the new state is the fundamental law of 19 May 1960 relating to the structures of Congo. This provisional text granted by the Belgians to the Images of Western constitutions

of the parliamentary type could not unite the Congolese in the constitution of a truly democratic state and was doomed to failure. This was demonstrated by the institutional disorder due to the mimicry of the Belgian system where the power to remove the prime minister by the king is theoretical and not practical and to the unpreparedness of the Congolese, where President Kasavubu replaced Prime Minister Lumumba and the latter also replaced the president of his post because he held the majority in parliament. In this cacophony of the early years of the DRC, issues of nationality were not on the agenda.

In 1964, with the calm of the situation in the country, a second constitution, commonly referred to as the Luluabourg constitution was adopted, which defined the DRC as a federal state with a parliamentary system. It is in this constitution that for the first time the question of nationality will be addressed in Section II. It affirms the principle of the exclusivity of Congolese nationality. It is attributed to any person whose ascendants is or has been a member of a tribe, established on the territory of Congo before October 18, 1908 (the date of the transformation of the independent state of Congo into Belgian Congo). With this first constitution, the DRC adopts a nationality posture based on descent and the tribe, a tradition inherited from the Belgian law with nationality based on ancestry that already creates a blur in the management of this great territory. These provisions will be the first to begin the policy of exclusion in the DRC. Having

made no transitional arrangements on nationality before their departure, the Belgians created a situation likely to create stateless persons in the heads of the transplanted of 1934 from Rwanda. Indeed, in 1934, the Belgians created the Banyarwanda Immigration Mission, which transferred Hutu and Tutsi populations from Rwanda, which was heavily congested, to develop the vast fertile territory of Masisi. To this end, the Belgians, through the prosecutor of King Etienne Declerk, will negotiate with the customary chief Hunde, André Kalinda, the transfer of land of an area of 349.1 Km^2 for the installation of these transplants [17]. These populations, which make up 80% of the population of the present-day Masisi territory, had the status of citizens of the Belgian Congo because when they arrived in the district of Kivu, they deposited their Id of Ruanda-Urundi and they received those of the Belgian Congo. With the provision in the 1964 constitution, they became stateless during this period of deprivation of nationality.

This constitution will be followed by the Decree-Law of 18 September 1965 on the organic law relating to Congolese nationality. The decree enshrined the jus soli in favour of newborn children found in Congo as well as gender equality in the transmission of nationality, by filiation or adoption. To avoid

[17] http://www.ethnonet-africa.org/pubs/rdcint1.htm accessed September 5, 2020

statelessness, the law submits the renunciation of Congolese nationality to the production of proof of possession of foreign nationality. A woman who marries a Congolese man receives Congolese nationality by a declaration within 6 months if her law of origin withdraws her nationality as a result of her acquisition of a new nationality.

After the 1965 coup d'état and the seizure of power by General Mobutu, a new constitution was drafted and submitted to the popular referendum that adopted it in 1967. This constitution enshrines a classic presidential regime in the sense that power is concentrated in the hands of the president without concession to the parliament. It was under this constitution that the Decree-Law No. 71-020 of 26 March 1971 on the acquisition of Congolese nationality by people from Ruanda-Urundi under the instigation of Barthelemy Bisengimana, the chief of staff of the President of Tutsi origin, was promulgated by President Mobutu. At a time when the president had all the powers in his hands with the party-state, the Popular Movement of the Revolution (MPR), Bisengimana was an all-powerful man since he was the president's closest collaborator, from whom all decisions came. This decree-law was controversial because it recognized as Congolese, people from Ruanda-Urundi settled in the Congo as of June 30, 1960. This text granted mass nationality without considering the realities on the ground. Thus, even refugees who fled the violence in Rwanda and Burundi in 1959, not to

mention all the illegal immigrants and migrants of those countries established in Congo before 1960 were granted nationality to the detriment of the population of the eastern provinces. Instead of solving the problem of transplants of 1934, this text will rather inflame it because from now on in the collective imagination of the Congolese all the Rwandans speaking populations will be considered as foreigners.

In 1972, Law 72-002 of 5 January was promulgated as a result of the provisions of Article 5 of the 1967 Constitution. It grants Zairean nationality on June 30, 1960, to all populations of which one of the ascendants is or was a member of one of the tribes established on the territory of the Republic of Zaire [18] within its borders of 15 November 1908. Section 15 of the Act legally rehabilitated 1934 transplant recipients and their descendants in their right, while excluding refugees from 1959 and beyond. Indeed, it stipulated that persons from Ruanda-Urundi who were established in Kivu province before 1st January 1950 and who have continued to reside since then in the Republic of Zaire until the entry into force of this law acquired Zairian nationality on 30 June 1960. In practice, however, they were always assimilated to the Zairians because they held their identity cards and even took part in public affairs. An observer would ask

[18] With the movement of back to authenticity initiated by the President Mobutu, the country was renamed Zaire as well as the river that crosses it.

why in a country with immigrants originated from many countries only the group of immigrants from Ruanda-Urundi could take advantage of this special measure. The answer would probably lie in the common colonial past whose residence was permitted by the colonial power, but above all through the participation of the people of these origins in the affairs of the state and particularly occupying key positions in the MPR. At the same time, Zairianization was established, when the businesses and properties of the former colonialists were confiscated and returned to the Zairians, Bisengimana, all-powerful will favour the people of his ethnicity by granting them numerous properties in Kivu as well as several positions of responsibility in the apparatus of the state. In a country where land management was the responsibility of customary authorities and ownership belonged to indigenous peoples, this land control by the Rwandophone community and especially Tutsi will cause a turmoil in the Hunde indigenous populations of Masisi and will grow from a regional preoccupation to a national problem from which the nationality of Rwandophones will once again be questioned.

In 1981, after the fall of Bisengimana in 1977, after several demands of the people of Kivu addressed to President Mobutu, a legislative council of the MPR will look into the 1972 law and will produce Law No. 1981/002 on June 29, 1981, on Zairean nationality. This law will be a bombshell for all the

Rwandophone populations of Kivu without exception because it`s not only deprived the Masisi's "*transplantés"* of nationality, but it also created a total confusion, especially since it restored the nationality of origin to belonging to an ethnic group that existed on the territory of the DRC in 1885. Indeed, in 1885 the borders as they are known to date since independence did not exist, Africa was a vast territory where every kingdom, empire and people of the same culture lived on vast territories spread over the territory of several present states. At the Berlin conference, the borders were drawn imprecisely, they were refined over time, thanks in particular to topographical data carried out on the ground, and for the cases of the DRC in 1910-1911 thanks to the agreement between the Belgians and the Germans. Of all the Rwandophone populations of the East, only Rutshuru nationals could trace their settlement on the territory before 1885. Basing nationality on spatial data from the independent state of Congo was as dangerous as irresponsible. It was materially impossible for any Congolese to prove his membership on such a distant date and such an imprecise territory as the ISC was. This will be the source of several conflicts and the ensuing war in the eastern provinces of the DRC. Nevertheless, this law had some innovations such as considering the matrilineal customs of Zaire by allowing the woman married to a foreigner to pass on nationality to her child. The law also established the individual character of the application for naturalization, removing the mass

agreement of Article 15 of the previous law. This law and ordinance 82-061, which carries out some of its measures, will revoke the certificates of nationality resulting from this law, rendering the*"transplantés"* stateless again (Manby, 2018,1). This law is effectively violating the legal framework on statelessness by arbitrarily depriving the nationality of persons who possessed it and who was not supposed to possess another under the principle of exclusivity of Zairean nationality included in the 1972 law.

In response to the law, a group of 5 Rwandophones intellectuals, mainly Tutsi, will send a letter to the General Secretary of the United Nations calling for the right to self-determination of the people of the Goma, Rutshuru, Walikale, Masisi, Kalehe and Idjwi areas through a referendum for the creation of a new state. In this letter, they denounced the exclusion of the people of Rwanda origin from the Zairean nation by the MPR and the deprivation of Zairean nationality as well as the small and large naturalization to which they were asked to comply, which was one of the innovations brought by the nationality law of 1981. This letter has caused the international community to react to the situation in Zaire. Faced with international pressure, the Zairean government will create a national identification service in 1986 to identify the populations of Kivu and to identify Kinyarwanda-speaking populations to facilitate the administrative procedure for acquiring nationality. Identification operations were poorly perceived and

provoked violent protests in the territories of Fizi, Mwenga and Shabunda in South Kivu to the point where the national identification service was abolished in 1988. The 1987 elections were never held in Kivu.

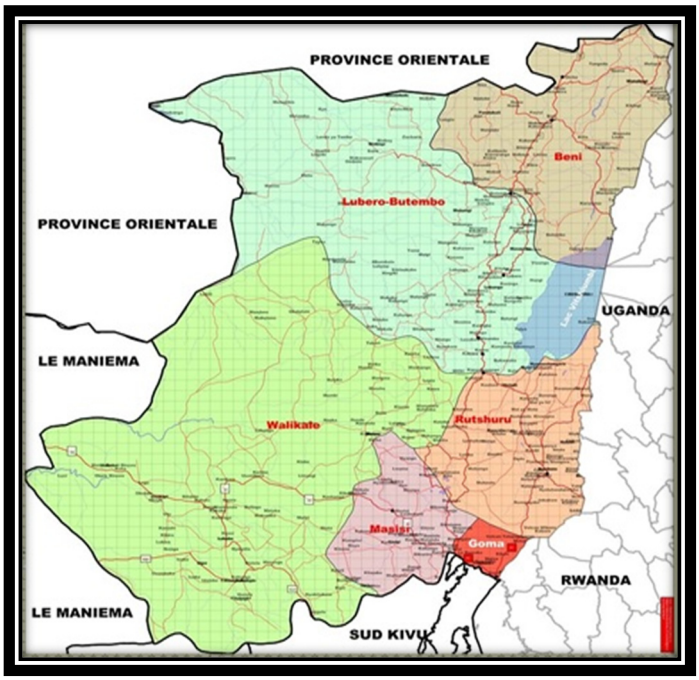
In the 1990s, after the Cold War, no longer backed by the West, the Mobutu regime was under internal and international pressure for a democratic opening of the political space. Against his will, Mobutu agreed to organize a national sovereign conference (CNS), which was to bring together all the forces of the nation, including civil society, opposition parties to discuss the country's future government following democratic openness and multiparty rule. The CNS will awaken the demons of the question of nationality that was remaining silent due to the authoritarianism of the Mobutu regime. Indeed, during the accreditation, the nationals of the provinces of North and South Kivu managed to disembark all the Banyarwanda delegates, only four Hutu delegates were able to participate in this historic forum. A subcommittee within the CNS will propose categorizing Rwandophones into four categories, pre-1885 natives, transplants, refugees and illegal immigrants, the first category being the only category to which nationality should be granted (Jackson, 2007). Finally, at the end of the work, in 1992, the CNS will not adopt final resolutions on nationality merely making recommendations given the sensitivity of the issue to maintain the

country's integrative vocation while avoiding plunging categories of people into statelessness that could damage the country's image as violators of human rights.

In 1993, violence was unleashed between the Hunde ethnic groups against the Hutu ethnic group in Masisi against the backdrop of land management, and again the issue of identity and nationality was put back on the table. The violence will escalate into Walikale and Rutshuru territory. It is in the territory of Walikale that the violence will reach a catastrophic proportion by many of the massacres committed by the militia mai-mai Hunde and Nyanga against the Rwandophone populations, whether Hutu or Tutsi. As violence begets violence, local Hutu militias responded with more killings. The intervention of the local authorities involving the army, the FAZ, against Banyarwanda will only make the situation worse. There will be many victims on both sides, each community claiming to have lost more people than the other[19]. In the conflict between Hutu and other communities, Tutsis were also targeted by either Hutu militias or Mai Mai militias of other ethnic groups. The FAZ intervened either to protect the Tutsis or to target them outright, their ambiguous attitude was denounced by the international community.

[19] DRC Rapport mapping https://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_FR.pdf , accessed September 6, 2020

Figure 3 Map of the North Kivu Province in DRC



Sources: internet (congovirtuel.com)

At the same time in neighbouring Rwanda, the Rwandan Patriotic Front was conducting offensives against the Rwandan armed forces intending to oust general Habyarimana's Hutu regime from power. In Burundi, a coup followed by inter-ethnic massacres sent thousands of refugees back to Zaire and Tanzania.

In 1994, the Rwandan genocide dumped thousands of refugees in Zaire with them, former FAR soldiers, accused of colluding with the Hutu Interahamwe militias, who planned and organized the genocide. The former FAR soldiers will join the Hutu militias in Zaire and continue the violence against the Zairian Tutsis.

Thousands of Masisi Tutsi will flee to Rwanda, leaving well and livestock. In 1995, the High Council of the Republic, Parliament of Transition, the equivalent of the parliament in the transition from the CNS's foundations, passed a resolution on nationality based on the nationality of the rwandophone populations accusing them of demonstrating a belligerent attitude towards the Zairians by fighting the indigenous customary power. This resolution will have repercussions such as the deportation of the Banyamulenge populations from South Kivu and the confiscation of their property by the Uvira Territory Commissioner in 1995. Violence against The Tutsi-speaking populations will spread throughout the eastern part of Zaire, and people were reported missing everywhere. To survive, they fled to Rwanda and Burundi when they reached the borders, their identity cards were confiscated (Manby, 2018).

In 1996, the alliance of the Democratic Forces for the Liberation of Congo (AFDL), led by Laurent Désiré Kabila with the support of Rwanda and Uganda, launched a war of liberation that led to the fall of Mobutu on May 2, 1997. The AFDL, composed mainly of Tutsi and Banyamulenge refugees from Rwanda and the Rwandan Patriotic Army, will commit killings and massacres not only in the Hutu refugee camps in Zaire but also in the local Zairian population [20].

[20] Ibid

After taking power and in the face of popular discontent with the Tutsi military, Kabila will send the Rwandan and Ugandan soldiers' back home. Disgruntled Rwanda will create a new Rebellion the Rally for Congolese Democracy (RCD) on August 02, 1998, the RCD will be militarily mostly Tutsi.

Laurent D. Kabila renamed Zaire, the Democratic Republic of Congo in 1999 and in the same period he took the Decree-Law No. 197 of 29 January 1999 which amended and supplemented the Nationality Act of 1981. In essence, the decree incorporated the provisions of the Law of 81 by replacing only the name of the country. Thus, Kabila's former Rwandophone allies under AFDL were again without nationality, given the condition of being a member of a tribe existing in the territory in 1885. Kabila was assassinated in January 2001 and was replaced by his son Joseph Kabila. The latter will begin negotiations to end the war.

In 2002, after several peace negotiations, the Sun city agreements in Pretoria for a cessation of hostilities were completed. A transitional government was set up with the 1-4 system in 2003 through the comprehensive and inclusive transition agreement in the DRC. The Transitional Government was chaired by President Joseph Kabila accompanied by four vice-presidents from four main rebel movements, the RCD, the MLC (The Liberation Movement of Congo), the political opposition and the government of President Kabila.

To satisfy everyone mainly the RCD part which was composed of Tutsis and Banyamulenge, the constitution of the transition to its article 14 will promote equal rights and protection before the law between citizens, these being understood as all ethnic groups and nationalities whose persons and territory constituted what became Congo at independence [21]. Indeed, Vice-President Azarias Ruberwa of the RCD component was Tutsi Munyamulenge, in charge of the Interior, Security and Defence, this shows the force at which nationality began to be negotiated by arms because before that period he was considered foreign and therefore could not aspire to high office in the country.

It was under the transitional government in 2004 that the 04/024 law on Congolese nationality was proclaimed, which is still in force to this day. This law was enacted in the context of the transition with the transitional parliament composed of delegates from the former belligerent components and among them representatives of the Tutsi and Banyamulenge community for the RCD camp. The Nationality Act 2004 law as well as the constitution of the transition is the result of political compromises. It meets two legal and security considerations. It was taken for inclusion within the country through the community of citizens by ending the social divide created by the question of nationality, after a long period

[21] Article 14, transition constitution of the DRC

of war and conflict, but also to comply with the Convention on the Reduction of Statelessness of 1961, although the DRC is still not a party to this convention. The DRC was cited in several international reports pointing out that the denial of nationality to the Rwandophone populations was unethical and illegal. The DRC violated its commitment to the Convention on Racial Discrimination and the African Charter of Human and Peoples' Rights (Jackson 2007). On the security front, the issue of nationality was recognized as one of the demands of the RCD rebellion and the horror of the war which lasted for the following 4 years. The law sets out two categories of nationality, nationality by the origin and by acquisition. Nationality refers to the provisions of the constitution of the Transitions by basing the origin on the independence date of June 30th. Congolese nationality remains one and exclusive, dual nationality is excluded but referred to the future legislature for consideration.

Nationality of origin is recognized to all ethnic groups and nationalities whose persons and territory constituted what became Congo at Independence. This provision includes all waves of transplant populations that settled in the DRC before 1960 but excluded all refugees from the 1960s. Equality between men and women is recognized in the transmission of nationality. The child born in the territory of the DRC of stateless parents and children born from foreign parents who cannot pass on their nationality to them because of the legislation of

their countries of origin which recognizes only the jus soli are Congolese of origin. The newborn child found in the territory of the DRC of unknown parents is also Congolese of Origin.

The power of naturalization is granted to the Minister of Justice after deliberation of the Ministerial Council following the compliant opinion of the National Assembly.

Although the explanatory memorandum of this law was to restore the peaceful coexistence of all strata of society on Congolese territory, this law continued the same flaws by basing nationality of origin on an ethnic basis which is the factor that incites division within the Congolese nation. Similarly, by failing to determine the list of ethnic groups present at Independence on the territory of the DRC, it leaves a blur that could be exploited by people of bad faith by excluding certain ethnic communities from the nationality of origin. Finally, by adding the term nationality present on the territory to Independence, it creates a breach for all illegal migrants present on the territory of the DRC as well as their descendants who can claim Congolese nationality at any time availing themselves of the presence of theirs parents in Congo at Independence. It could be argued that the term "nationalities" replaced that of "people from Ruanda-Urundi" contained in Article 15 of the Controversial Nationality Act of 1972, which had been nullified by the 1981 Act.

A country that shares its border with 9 states and living ethnic communities on both sides of the borders, the notion of uniqueness and exclusivity of nationality looks outdated. Moreover, in the light of globalization, which allows the movement of populations establishing themselves in foreign states, for various reasons, while maintaining a strong link with their home nation; this provision is likely to exclude not only Congolese people from the diaspora who for certain reasons acquire the nationality of their host countries but also foreigners who have been living in Congo for a long time and have forged very strong links with the Congolese nation to the point of considering it as their second homeland. Article 26 of the 2004 law stipulates that anyone who acquires a foreign nationality automatically loses Congolese nationality.

In the same year, in anticipation of the first democratic elections in decades, the law on the identification and enrolment of elector was enacted, and provided as proof of nationality to be registered, apart from the written evidence, the testimony of 5 witnesses already on the list of electors and residing for 5 years in the same electoral district as the enrolment centre [22]. This provision was a recognition of the weakness in population management as well as that of the civil

[22] LOI N° 04/028 DU 24 Décembre 2004 portant Identification et enrôlement des électeurs en République Démocratique du Congo

registry services at the local level, recalling that the last general census of the population was organized in 1984.

In 2006, the constitution of the second republic was adopted by referendum, which repeated the same features of the 2004 Nationality Act, excluding nationalities whose persons constituted what became the DRC at the Independence. The 2006 constitution put an end to the problem of nationality in legal terms, in fact, and mainly in terms of perception, Rwandophones and especially Tutsis are considered by a large part of the population as migrant foreigners, seeking to take over the eastern part of the DRC and annex it to Rwanda and other neighbouring countries.

The DRC also faces the problem of statelessness, mainly from refugees, the Congolese who have sought refuge in neighbouring countries, and refugees from neighbouring countries who have sought refuge in the DRC for many years and have lost ties with their countries of origin. In the first category of Congolese refugees, the first is the Rwandophones populations of the east who have fled the violence that this part has suffered in recent decades and sought refuge in neighbouring countries and mainly in Rwanda. Their situation is more complex because, in DRC, they are considered as foreigners who must remain at home in Rwanda by the local populations; in the host countries where they find themselves, they are considered as refugees who must return home. The time

spent in this situation of refuge continues to lengthen and is likely to worsen the situation, especially since all the landmarks of their homes will be at risk of disappearing. In a country that has experienced many post-conflict land conflicts in recent years, including the return movement of displaced people, the repatriation of refugees will trigger new land disputes. When UNHCR attempts their repatriation to Congo, even with the government's agreement, there is the problem of integration and acceptance by other local populations in the DRC, not to say hostility that could lead to a new cycle of ethnic violence. Faced with this situation of powerlessness and non-reaction on the part of the Congolese authorities, these populations remain in a precarious situation in the host countries.

Citizenship in the countries of the sub-region was forged in a context of colonization and its divisional ethnographic excesses. The first laws on the nationality of the countries of the Great Lakes region and especially the 4 countries above were drawn up in the periods of post-independence unrest against the background of artificial internal ethnic divisions created by European colonizers.

Long before colonization, the modalities of belonging and citizenship were different from those of the modern and Western conception of nationality. Already at that time, the nature of the states was of several types. According to

Professor Joseph Ki-Zerbo, Africans were not organized by centralized state power, so their identity and nationality invoked several types of citizenships, each with "its framework, its terroir, its management and self-management groups." The individual identified himself first by the family, the village, the clan and finally the royal ruler. The people did not always agree between them, but despite the tensions and differences that existed, they lived in a kind of symbiosis, a sharing of languages, cultural customs and practices, religions, etc.

Colonization changed all this by its practices and laws, which is imported from a different philosophy. The most typical example is that of two Hutu and Tutsi ethnic groups, who shared a large number of customs and practices became enemies in the eve of the end of colonization because of a policy carried out throughout colonization.

Colonial policies have sometimes been implemented out of ignorance of local customs and cultures, sometimes on purpose to divide to rule better, as the case of the Belgians in Rwanda by relying on one ethnic group, created by themselves, rather than another. These have been the basis of exclusionary policies in newly created states. Post-independence unrest followed by displacement of refugees, the policies of settlement and labour migration during colonization, as well as the unpredictability of the provisions governing

nationality issues before their departure by colonizers, are all factors that are the root causes of identity crisis and belonging in the region.

The categories of stateless persons and people at risk of statelessness in this region are made up of historical migrants and their descendants, persons relocated during the colonial period for colonial management and production needs, long-time refugees with no connection to their countries of origin and descendants, border populations and ethnic groups on both sides of several borders linked to colonial history and delimitation arbitrary borders. The reasons for the risk of statelessness are mainly due to colonial history and divisionist policies implemented during this period, the unrest and conflicts that followed the Independences and which continue to this day as in the DRC, legislation designed on discriminatory and ethnic basis institutionalizing a policy of exclusion and sometimes poorly applied. Finally, population management and systems for maintaining dysfunctional and outdated civil registries no longer meet the contemporary needs of population management in modern states. Identity issues have also been manipulated by politicians seeking positioning to win over the electorate by mobilizing the masses through ethnic rhetoric and fear of the foreign invader who risks occupying the land and driving the natives from their homes.

The philosophical conception of the Western state model is different from that existing in precolonial Africa. African leaders, at the end of colonization, failed to create a national identity but rather, as many of the constitutions and laws on nationality demonstrate, a tribal identity. The first African leaders, most of whom were early intellectuals, failed to emulate the Western model of the modern state.

Chapter 6. Risk of Statelessness in the Democratic Republic of Congo

Figure 4 Map of DRC and it`s provinces

Source: Internet (www.accord.org.za/conflict-trends/rebellion-conflict-minerals-north-kivu/)

6.1. Introduction

As we have seen above the causes of Statelessness are virtually the same in most states of the world. And as researcher Katja Swider has suggested, the roots of Statelessness are to be sought in the very existence of states. Indeed,

Statelessness cannot exist without the existence of the state; the two are connected. It is up to States to eliminate Statelessness. However, the criteria of definitions for identification are contained in the 1954 Convention on the Status of Stateless Persons; in the end, it is the States that create the conditions for the emergence of this phenomenon but also the mechanisms for identifying this category of populations, defining who is national and who is not. The state becomes, even more, the cause of Statelessness when it fails to assume most of the responsibilities recognized by the law of the nations. As a result, cases of statelessness are more common in states with low governance capacity. It then becomes necessary to analyze the nature and functioning of these states, especially administrative practices, to understand the risks of statelessness that it poses to its population.

Statelessness is caused by several factors such as positive conflicts (conflict leading to multi-nationality) and negative conflicts of nationality (conflicts leading to the absence of nationality), discrimination in nationality laws (it can be based on gender, religion, race and ethnicity), state succession and the modification of borders as was the case after the independences where the dissolution of the colonial states had created new states where populations with the nationality of the colonial state are now left with no one of the new states. The absence of documents, which is sometimes considered a source of

statelessness, is generally a risk factor for statelessness. Most often the risks of statelessness arise from the inability of individuals to prove their nationality, and in the specific case of the DRC, we analyze the factors that impact people's lives in obtaining administrative documents to prove their nationality and thus the exercise of their right.

The aim in this chapter is to qualitatively and quantitatively describe and analyze the risk factors that can cause statelessness through data collected by a survey questionnaire as well as by consulting the various reports collected in the past by various agencies to propose practical recommendations as a preventive measure. We start with legislation governing nationality (2) through access to identification documents and birth registrations (3), conflicts, security risks and natural disasters (4), ethnic marginalization (5) and finally, we will review the institutional framework for the protection of stateless persons in the DRC (6)

6.2. The Law on Nationality as a Risk Factor for Statelessness

In its explanatory statement, the 2004 Nationality Act, which is being implemented in the DRC, purported to incorporate modern standards, particularly the Convention on the Reduction of Statelessness, into its various joints. Although the law was based on good intentions and compared to previous laws, the Nationality Act, the 2004 law provides in its provisions specific mechanisms for combating and preventing statelessness. But when we confront the 1961

convention and the 2004 law, we realize that certain provisions perpetuate the risks of statelessness.

The DRC's nationality laws since independence have always had three principles in common: the principle of uniqueness and exclusivity of nationality, a time limit for settlement on the territory of the DRC and an ethnic base for the nationality of origin. Of these three principles, two of them pose a risk of statelessness.

Article 1 of the Congolese Nationality Act, which also repeats a constitutional provision (Article 10), stipulates that Congolese nationality is one and exclusive. This principle of uniqueness does not respond or more to the reality of today's changing world with globalization and the increasingly easy mobility of people. This provision runs the risk of negative conflict of nationality if the conflict generates a case of loss of all nationalities and thus creates cases of statelessness. Dual nationality is not a magic solution, but taking it into account in the establishment of nationality provisions can help to avoid possible cases of statelessness.

It is also the case here to point out that this law does not provide in its provision’s solutions for the attribution of nationality to persons who would *otherwise be stateless*.

The second principle, based on jus sanguinis, recognizes nationality of origin to anyone belonging to ethnic groups and nationalities whose persons and territory constituted what became of Congo at independence (June 30, 1960). This provision encounters difficulty in its execution. Indeed, the DRC's ethnic groups have never been mapped since 1960. Thus, the interpretations of certain groups of peoples were the source of the exclusion of certain ethnic groups because they were not in the territory of the DRC at that time. Another observation is that for a state that wants to be modern, the notion of ethnicity, although inherent in human nature, should not be included in a legal provision on nationality. Instead, it should be based on objective criteria such as place of birth, etc.

This ethnic-based citizenship stems from the colonial heritage in Africa that had created several types of citizenship based on racial discrimination. The colonies were managed on a racial and ethnic distinction between whites on the one hand with all the advantages attached to the citizenship of the metropolis and African natives considered to be children placed under guardianship in the Belgian colonial system.

In my view, this provision is discriminatory and contrary to the provisions of Article 5 of the Convention on the Elimination of All Racial Discrimination of 21 December 1965. In this provision we also see the way to distinguish between citizens from and others who immigrated there afterwards, this too is a

source of discrimination concerning the right to nationality which advocates that all citizens should enjoy the same benefits.

6.3. Access to identification documents and birth registrations

The most significant risk for a person to become stateless is his inability to prove and confirm his nationality. Many people around the world are unable to prove their nationality due to the absence of administrative documents from the population and civil registry services. In the DRC, the population management system is failing in all aspects.

To better understand the public's access to identification documents, qualitative and quantitative analysis was necessary. Given the lack of data on the DRC, the DRC's national statistical institute has not produced any data for a long time; we decided to conduct a small online survey to collect the data.

6.3.1. Description of data.

Figure 5 Gender Distribution

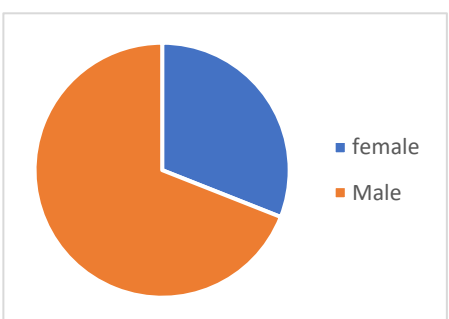
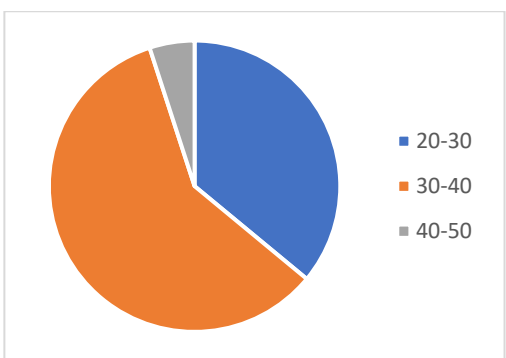


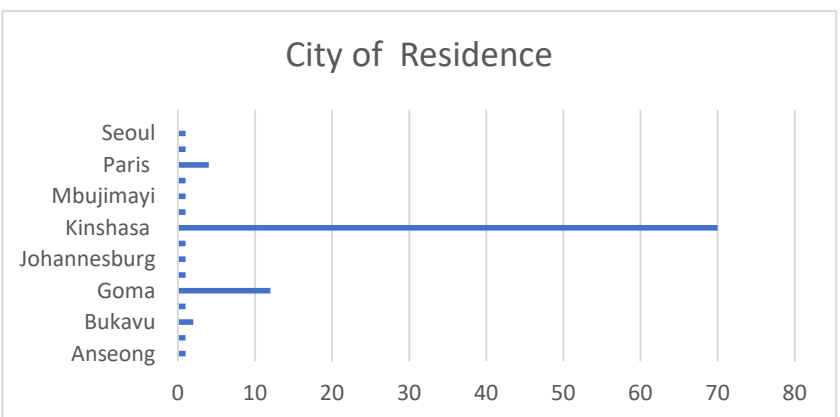
Figure 6 Age Distribution



Source: Author

Of our field survey questionnaire, 100 people, 69% of whom were men and 31% of women responded. 59% of respondents were young adults between the age of 30 and 40 (59 people), and 36% of young people between the age of 20 and 30 and 5% were between 40 and 50 years of age, this distribution is explained by the use of online data collection tools, as new technologies are not yet widespread in the country. This also explains the respondents only came from the major cities of the DRC mainly the city of Kinshasa with 68% of the respondents, followed by the City of Goma with 13% and in third place the city of Paris in France with 4% and the town of Bukavu with 3%, the others limited to 1% each.

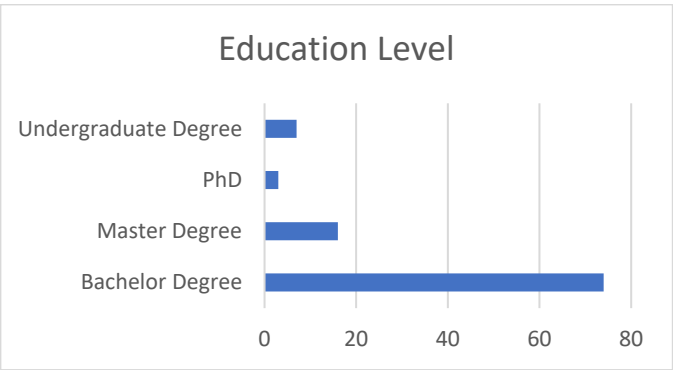
Figure 7 Distribution by the city of Residence



Source: Author

Depending on the level of education, 74% hold a bachelor degree that corresponds to 5 years of university studies, 16% have a Master's degree, 3 per cent have a master's degree, and 7% have an Undergraduate degree corresponding to 3 years of university studies.

Figure 8 Education Level distribution



Source: Author

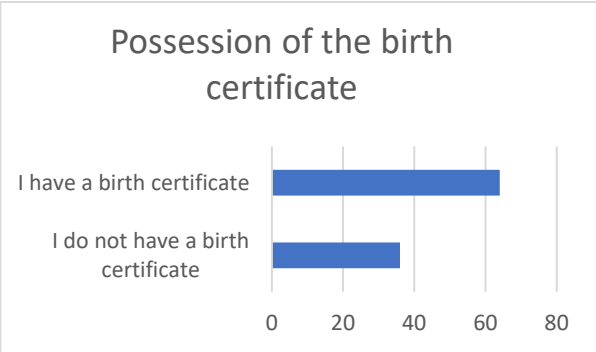
6.3.2. The birth Certificate

The declaration and registration of children at birth is an obligation of the Convention on the Rights of Children (article 6), to which the DRC is a party, and to the 2009 child protection law. The registration of the child in the civil registry establishes his legal existence in the DRC. Registration is a free operation that is done by registering in the civil registers within 90 days of the birth of the child.

The registrar registers the child on the presentation by one of the parents of the birth certificate issued by the doctor who performed the birth. The Certificate must specify the date of birth, the name of the doctor, his registration to the order of doctors of the DRC and the name of the hospital where the birth took place. At registration, the parent gives the name that will be used to identify the child in the civil registry. After registration, the registrar issues the birth certificate to the parents, which includes the name of the child, information about his birth, his progenitors and their origins. The registration of the child is the first act confirming the legal existence of a person in the DRC; it allows the preservation of a person's civil, political, economic, social and cultural rights. Thus, it is the first document used to establish the nationality of a person.

36% of respondents said they did not have a birth certificate, which is serious when you consider that they are educated, live in large cities with access to information, and where civil registry services are still functioning compared to rural areas. This fact is also contradictory since the birth certificate is the primary document allowing access to public services and acquiring any administrative document. In rural areas in the absence of reliable statistics it can be estimated that the non-existence of state services or their presence from a great distance, this percentage should double or even triple to around 80%.

Figure 9 Possession of Birth Certificate



Source: Author

According to Demographic and Health Survey II of 2013-14 of the Congolese government, in partnership with UNICEF, only one in four children is registered in the DRC, a registration rate of 25%. The survey found a slight difference between the middle (22%) urban and rural areas (30%). In terms of the gap between the provinces, contrary to what one would have thought, it is not the city of Kinshasa (39%) which has the highest registration rate but the former province of Bandundu (52%). North Kivu province has the lowest birth registration rate with less than one in ten children, which is understandable because it is the province that has experienced armed conflicts that have been uninterrupted in the last 25 years. This situation is justified by the absence of the civil registry archives; civil wars have destroyed the civil registry offices throughout the country's history.

Table 1 Children under five years old Birth Registration

Sociodemographic Characteristics	Percentage with a birth certificate	Percentage without a birth certificate	Registered Percentage	Number of Children
Age				
<2	14.5	9.1	23.6	7 661
2-4	13.8	11.5	25.3	11 275
Sex				
Male	13.9	10,4	24.4	9 409
Female	14,2	10.6	24.8	9 527
Residence				
Urban	21.0	9.0	30.0	5 765
Rural	11.1	11.2	22.3	13 172
Provinces				
Kinshasa	28,6	10,9	39,4	1 294
Bas-Congo	22,1	15,3	37,4	3 077
Bandundu	31,5	20,8	52,2	823
Équateur	8,2	10,1	18,3	2 745
Orientale	5,0	4,0	9,0	1 352
Nord-Kivu	5,4	1,9	7,3	2 005
Sud-Kivu	16,3	8,4	24,7	2 106
Maniema	11,1	4,4	15,5	640
Katanga	9,0	15,8	24,8	1 559
Kasaï Oriental	8,9	9,9	18,8	1 822
Kasaï Occidental	15,9	14,0	29,9	1 513
Economic Well-Being Quintiles The lowest	6.8	8.9	15.7	4 208
Second	11.3	12.0	23.3	4 146
Medium	12.0	11.5	23.5	3839
Fourth	15.5	10.0	25.5	3 564

The Highest	28.3	10.1	38.4	3 180
Overall	14.1	10.5	24.6	18 936

Source: Demographic and Health Survey II of 2013-14

The reasons given by respondents who reported not having a birth certificate are varied. Still, the lack of resources and the inability of civil registry services to produce the document are the most recurrent. In the open responses, four different answers attracted attention; these are:

- Ignorance of parents and lack of communication by the competent service of the importance of the act,
- The administrative red tape in the treatment
- The absence of the service at birth, the service having been implemented while the individuals became adults.
- The inopportuneness of owning the document and the absence of necessity.

When asked if it is easy to obtain the document retrospectively, 36% of respondents agreed that it was difficult or impossible to obtain the act as an adult. It should be noted that after the 90 days for birth registration, it is necessary to obtain an additional judgment from the court of the residence of the parents or the person if it is of age. Substitute judgment is onerous.

The reasons given by the 36% for the difficulty of obtaining the birth certificate afterwards are mainly financial constraint, the inability to acquire the required documents, the failure of the services to produce the documents and the ignorance of the procedure for obtaining the act. The last three reasons demonstrate respondents' ignorance of the process to be followed as well as the documents required to obtain the birth certificate. Indeed, getting a judgment is comfortable in large cities provided you have adequate resources.

For those who recognized that it is easy to get the document (45%), they still accompanied it with a comment on the financial constraint that is not within everyone's reach.

In the comments, respondents gave virtually the same reasons:

- Financial difficulties in urban areas and even more acute in rural areas;
- The lack of information from parents, hence the need to raise awareness about the importance and obligation of all parents to register their children,
- Red tape and corruption.
- The disorganization of administrative services and the heaviness of which, hence, the plea for lightening of procedures;
- The remoteness of administrative services from rural residents.

In short, the reasons for the non-reporting and registration can be summarized in four main reasons:

- Lack of information on the obligation and importance of registration and birth reporting, whether in urban or rural areas. In rural areas, this is aggravated by the distance of the administrative services from the citizens.

  In both urban and rural areas despite the presence of services, the population is unaware of the possibility of obtaining the birth certificate posterior, i.e., in adulthood and the procedure to be followed. Many do not know that a different judgment is required. In rural areas, difficulties in accessing information make it even more challenging to learn about this aspect. Finally, it should be noted that for many people registering children is useful only in times of need, when the document is required at work, to travel or in other procedures. In other circumstances, it is not helpful.

- The lack of financial resources for the majority of Congolese households living with low economic means, especially when it is necessary to acquire documents after the 90-day legal free period. In the urban environment as in the city of Kinshasa where medical care is expensive, after childbirth, families for lack of means flee hospitals without paying

the bills so they do not have access to the birth certificate that is issued by the doctor on presentation of proof of payment of the costs due to the hospital.

- The disorganization of the civil registry services which leads to the heaviness in the handling of cases and as well as to corruption. Public officials often solicit money to expedite the process of obtaining documents. Here too, we must also clarify the lack of transparency in the official tariff of each public service. In most cases, the citizens are hardly informed of the rates set by the regulations or legal texts, which administrative officials take advantage of to double, triple or even quadruple the rates to share the surplus, all to the detriment of the users of public services. In defence of public services, there is the lack of resources allocated by the State for their operation, resulting in a demotivation in the heads of public officials, who are not well paid or not at all and poorly trained for the majority, the result is low performance.

- Finally, it is necessary to clarify the peculiarity of conflict zones such as the provinces of North Kivu and South Kivu where the issue of nationality has been a serious problem since 1960, the offices of the civil registry have been vandalized and burned by armed groups or populations simply dissatisfied with their marginalization.

6.3.3. Possession of identity documents

Among the respondents, only one person said that he did not have identification and had never had it with the reason for which the service was unable to produce it. It should be noted that for more than 25 years in the DRC there has been no delivery of a national identity card, the last ones were issued in 1995-1996 just before the war of liberation. And it was more than a decade before the first identification, and voter registration operations were decided in 2005 that the voter card issued by the National Electoral Commission (NIC) should be used as an identity card pending the issuance of the real cards. Given the current context in the DRC, it seems that this process is not about to be launched any soon.

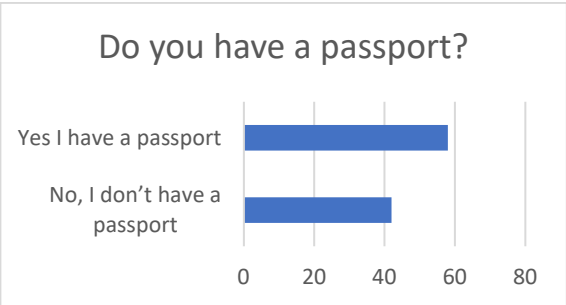
Of the 99% of respondents with a voter card/ID, 45% of them believes that it is difficult to obtain a copy once the original is lost. They give as the reason the difficulty for the service (CENI) to produce a copy outside of the election periods, the difficulty of obtaining the required documents thus the slowness in the process.

The voter card is an essential piece because it serves as an identity document for any administrative procedure or any travel on the national territory; it is the document that is requested by the officials or for any financial transaction.

In the absence of a birth certificate and identity card, the voter card is the document required to apply for the certificate of nationality.

6.3.4. Passport possession

Figure 10 Passport Possession distribution



Apart from the voter card, the passport is the second identification document used in the DRC. The passport serves as identification documents in the country whose bearer is not the national testifying to his nationality in the host country. 42% of our respondents, who live in the majority of the capital Kinshasa, said they do not have a passport because it is costly. Indeed, the Congolese passport is one of the most expensive in the world with the official price of 185 U.S. dollars in a country where a large part of the population lives below the poverty line; this document is difficult to obtain for the majority of the people. For a long time, the passport was only available in the capital Kinshasa; it was difficult for those living in the hinterland to get there given the lack of road infrastructure. For people living in the provinces, the price of the passport had to be added to the price of the airfare and his stay to obtain a passport.

6.3.5. Children born to Congolese parents in foreign territory

Children born outside Congolese territory but from Congolese parents are also entitled to Congolese nationality, the registration process is carried out at the level of consular services that act as civil services. Most of our respondents reside in the DRC, and those who live abroad are not mostly married; this question has only been partially answered. Consular services in Congolese embassies accredited to the world's significant powers or to states with which the DRC has unique relations and where there is a robust Congolese community, function properly as is the case in South Africa. Nevertheless, the majority of Congolese embassies suffer from the same problem as public services, lack of financial, material and human resources. In these countries, births are not declared, and since most States apply the principle of jus soli, most of these children acquire the nationalities of the states in which they were born.

6.3.6. Census and population management

Counting its population allows us to know precisely the number of people living on its territory, including nationals, foreigners and immigrants. The census also provides effective and efficient public policy planning.

It is impossible to have information on the Congolese population or the number of the people at present, the last general census having been organized in 1984 throughout the territory and for years the country is in a spiral of violence

and armed groups scouring its eastern part, under these conditions, it is difficult to carry out a general census not to mention the material and human inability to carry out this operation without good preparation.

6.3.7. Proof of nationality

Following Article 42 of the Nationality Act, proof of nationality is established by the certificate of nationality which is produced by the Ministry of Justice. Only 8% of respondents answered correctly; this shows that 92% of intellectuals remain unaware of documents used to prove Congolese nationality. This fact is astonishing given that 21% of respondents have studied law and subtracting the 7% of the domain that responded correctly, we end up with 14% of legal intellectuals who ignore the document proving Congolese nationality. While this study is not representative of the situation of the whole country, it demonstrates the weakness of the Congolese university education system. This situation is all the more worrying when we consider of all the other factors, namely access to modern communication tools, these people live in the big cities, and thus they have access to information, civil and administrative services that work more or less unlike those in the hinterland who do not have access to all these services.

In the end, the birth certificate, identity card (voter card), passport and even driver's license (although not the subject of this study) are all used to

identify people in the DRC. But they do not serve as proof of nationality, only the certificate of nationality, issued by the Minister of Justice, serves as evidence. The documents mentioned above are questionable in terms of nationality because they do not contain enough elements to determine the nationality of the bearer. They can be used to establish the nationality of an individual, but in themselves, they are not proof of nationality.

The certificate of nationality is sought only in specific cases such as candidacy for the judiciary or other high positions within the administration and the high state institutions.

The procedure for obtaining the voter card and passport does not provide any guarantee as to the veracity and reality of the establishment of nationality. The first is easily obtained for political reasons during election periods, where politicians seeking the electorate facilitate receiving this card even for people who are not entitled to it as minors, and the second is obtained if one has the necessary financial means. Getting these two documents does not go through a rigorous verification process. These are documents that are granted with a certain levity, so they cannot be given much credit, especially in a country where the question of nationality is a problem that has persisted since independence in 1960. The passport, for example, specifies in its text the Congolese nationality of the bearer, while obtaining, possession of the certificate of nationality, is particularly

not a prerequisite for obtaining it, most often its substitute is the certificate instead of a certificate of nationality, issued by the civil registry offices. The voter card on the other hand is obtained during the enlistment and registration of voters where in the absence of the required documents, five witnesses who have already been enlisted in the same constituency are presented. Knowing the level of the misery of the people, it is easily possible to bribe five people to come and testify, since this testimony is not scrupulously scrutinized, but rather a formality. At the level of the documents required at the time of enlistment, most papers have no legal value other than the identification of the bearer, such as the student card and the service card. So many foreigners can get these documents for a little money.

The birth certificate, which does not constitute proof of nationality, nevertheless establishes the principle of the presumption of the nationality of the holder if the law of the land is considered as one of the mechanisms for acquiring nationality. It is also proof of the child's parentage with one or more parents of Congolese nationalities. This nationality of the parents is also subject to bail because it is a nationality declared before the civil registry officer who does not carry out the systematic verification of it but instead he relies on the identification document of the parent or parents. We find ourselves in a vicious circle in which a child, although born on the territory of the DRC of presumed Congolese parents, cannot prove that these parents are or are not Congolese, certainly, they can claim

to belong to a tribe present in the territory that became the DRC in 1960 as the law on nationality says. At this level also, there is no legal mechanism for proof of belonging to a Congolese ethnic group, already that the exhaustive list of ethnic groups of the DRC present in 1960 is not known, it will remain the recourse of the customs authorities to certify whether the parents are members of this ethnic group. Let us not lose sight of the view that in some corners of the DRC conflicts of the legitimacy of lineages or families to exercise customary power remain to this day.

Therefore, the birth certificate is a fundamental document in the establishment of nationality. The concern is that it is a document that is rarely requested by the public, the latter searches for it only when necessary, during trips for example, or when it is asked for by an employer or in any other formality.

From our investigation, we find that many are not aware of issues of nationality, especially the procedures and documents required to prove it. In general, the DRC is a state that does not have strong institutions that function correctly.

The services of the civil registration present significant weaknesses in its operation but also in the quality of services it delivers. The first is the absence of operating funds, which should be allocated from the state budget. The second result of the first is the quality of the documents produced, in particular, the

securing of documents against falsification. Indeed, due to lack of resources, some civil registry services design and print their copies in private computer services, hence the risk of finding many false documents in circulation.

6.4. Conflicts, security risks and natural disasters

Since African independence, conflicts and unrest have continued to emerge in several African states, and the DRC has been of no exception. Conflicts, or more specifically those of identity, are at the same time the causes and consequences of statelessness. Since 1960, the DRC has experienced several crises and conflicts that have sometimes led to the mass displacement of people within the country and in the border countries. According to UNHCR, between 2017 and 2019 more than 5 million people in the Kasai, Tanganyika and Ituri and Kivu regions have been displaced, and thousands have taken refuge in Angola, Zambia and other neighbouring countries as a result of the violence in these regions. In January 2020, UNHCR estimated that there were more than 918,000 Congolese refugees and asylum seekers in Africa.

Conflicts and situations of permanent insecurity in which a large part of the population lives in rural areas are a factor at risk of Statelessness. People are fleeing their homes and places that have become areas of insecurity or areas of clashes between various armed groups or between government forces and armed groups for fear of persecution. In their hasty runaway, they abandon all their

possessions, including documents of values such as diplomas, identity documents and property documents. Generally, the displacement of the population is followed by looting and destruction of the villages either during the fighting or in retaliation from a group suspecting the members of a village of allegiance to their opponent. The loss of documents ultimately creates an inability to prove one's identity. If the individual, household or a whole group of people is among the populations indexed not to be Congolese as it was often the case in the Eastern part in the 1990s, then a high risk of statelessness weighs on a whole group of individuals.

Figure 11 DRC map area of conflict as of 2018

Source: The economist

The same phenomenon occurs during natural disasters that displace thousands of people from their usual housing environments to live in camps for the displaced and for those who are luckier in with their family members.

Apart from the loss of identity documents, there is also the problem of the poor maintenance of the civil registry records following the disrepair of the infrastructure which ensues by a complete deterioration of the archives. In conflict regions, there is the destruction of already precarious infrastructure and its archives during the clashes. When infrastructure is not destroyed, insecurity renders it inoperative because no attendant would risk his life for a state unable to provide protection. Natural disasters are not left behind and destroy everything in their paths.

Birth registration already has a relatively low average rate, and it is becoming even lower for displaced persons and refugees in a precarious situation where scarce resources are first allocated to basic needs such as nutrition and medical care.

The registration that did not occur brings us back to the difficulty of obtaining the civil registry document, which has a probative legal value, the birth certificate. Access to civil status documents is becoming even more difficult for refugees than for displaced persons. As displaced people are still on Congolese

soil, they are fortunate to receive assistance from the government, although very weak or from international organizations, refugees from their shores have no access because they find themselves on foreign territory and therefore do not have access to institutions of their home state. In this case, they are obliged to resort to the Congolese authorities to assist them, these being not capable they are either left to their fate, or they resort to the United Nations agency, UNHCR, and the IOM or the authority of the state over which they have sought refuge. The Convention on the Status of Refugees requires contracting states to provide administrative assistance to refugees on its territory. They (contract states) "will deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities" identity papers and travel documents. In practice, however, it is not always the case.

Ethnic unrest in the early 1990s the 1996 war of liberation and all the ensuing conflicts sent thousands of Congolese refugees to neighbouring countries, which until today continue to live in countries bordering the DRC, the descendants of refugees born on foreign territory and unrelated to the DRC have an ambiguous status that puts them at risk of Statelessness.

6.5. Ethnic Marginalization

The issue of nationality has always been a thorny issue in the DRC. The country shares its border with nine neighbouring countries, and its boundaries have been drawn without considering sociological realities leaving people of the same ethnic groups being straddle on either side of these borders. In 1981, President Mobutu declared: "*It is no secret that with nine border countries, Zaire is one of the states that host a vast number of foreigners, especially from neighbouring countries. Hence some inevitable conflicts of nationality*" (cited in Rukatsi. 2004). There are populations of various origins, Angolan people in the province of Central Kongo, Congolese of Brazzaville, ngbandi of the regions from the division of the former Equateur province are the same as the Yakoma present in the Central African Republic (Nguya-Ndila, 2001), populations of Sudanese origin in the former North-Eastern provinces of Haut-Uele and Bas-Uele, the same Nandes in North Kivu are also in Uganda with a different name, the Rwandophone Hutu and Tutsi peoples of Kivu present in both Rwanda and Burundi, the Zambian populations in the former province of Katanga have divided since to name a few. This presence is also in the other direction; there are also people of Congolese origin in these states. The question of nationality can only generate problems related to the belonging and identity of the populations of the same tribes spread over several states.

The question of the nationality of the people on the borders, albeit affecting the entire DRC, has never created as much of passions, debates and controversies as those of the Rwandophone populations of the East, especially those of Tutsi origin. What is surprising is that they are not the only border populations to resemble the communities of other states as is the case with several communities in the peripheral provinces of the DRC. The only peculiarity is to have taken up arms to claim their right to citizenship as was the case in Côte d'Ivoire, in this regard the famous statement of Guillaume Soro "*Give us identity cards and we will return our Kalashnikovs*" (cited in Manby, 2011), clearly demonstrates how far the question of nationality can lead.

Although the constitution and the nationality law have already resolved the issue, it nevertheless poses a risk of statelessness for these populations, especially as the laws are dynamic and are the work of the elites in power, from which their modification is always possible. This was demonstrated in the past by the change of nationality by the ruling elite in 1981. Add to this the distrust of the rest of the population towards these people whom they accuse of having been and continue to collude with Rwanda in the aggression of the DRC and its interests. Although in the eastern part of the country, each ethnic group has its armed self-defence group, the various predominantly Tutsi armed groups (CNDP and M23) have always been best organized and occupied enough ground with

pushing the central government of Kinshasa to the negotiating table, resulting in the insertion of their fighter into the Congolese army. , hence the suspicion of being supported by neighbouring countries and in particular Rwanda, a thesis supported by the United Nations expert group (see Report of the United Nations Expert Group).

At the root of this denial of belonging to the Congolese nation lies the question of indigeneity and identity. It is disputed that they are not indigenous to Kivu, but instead Rwandan foreigners, especially since they have a closer identity and cultural connection with Rwanda than with the rest of the DRC, such as speaking the same language. As a result, these foreigners are not entitled to the land that belongs to the natives.

Going back in history, we find that the origin of the presence of the Rwandophone populations in the eastern part is of two types, incorporation and immigration. The incorporation took place in 1910 when the Belgians and the Germans signed the convention for the delimitation of their respective colonial territories. Thus, Jomba, Bwisha, Gishari, Kanurunsi and Idjwi Island were incorporated into the Belgian Congo and therefore all the populations that inhabited these regions which for the most part were Rwandan-speaking (Pabanel, 1991). Immigration, on the other hand, was organized from 1937 with the Banyarwandas Immigration Mission. The Belgians needed the workforce to

exploit the less populated Congolese land, Rwanda was overcrowded, was considered a reservoir of labour, so thousands of Rwandans were transplanted from Rwanda to the DRC, especially in Masisi.

The settlement program has had difficulties given the increasingly massive arrival of Rwandan populations advancing more and more in the west of Kivu and the opposition of local people and the leaders of Kivu who viewed these newcomers with suspicion, coming with their structure in a position of the conquest of land beyond the limits granted to them.

We must also add the refugees from 1959 to 1961, and 1973 fleeing the overthrow of the monarchy successively in Rwanda by the Republic and ethnic violence.

Figure 12 Map of North Kivu Province

Source: Researchgate (Karume Katcho)

The mixing of these immigrants from different waves with the native populations from which they share the same cultures will result in no longer recognizing who is native and who is not. Since in these transplanted populations,

we find Hutu and Tutsi indiscriminately. But only Tutsis are most often indexed. The Hutus have not always been considered Rwandan, probably due to their morphology "Bantu" which does not differentiate them from other Congolese indigenous populations, which is not the case of their counterparts who are recognizable by their particular morphology. It should be noted that this situation is prevalent in the northern province of North Kivu and particularly in the territory of Masisi. The territory of Rutshuru being composed mainly of Congolese Hutu of origin has not experienced the same persistence, this problem. The South Kivu province also has its fair share of problems with the Banyamulenge in The Fizi territory.

The first conflicts between immigrant and indigenous populations began with the war known as Kanyarwanda (1963-1965), which pitted the Banyarwanda (Hutu and Tutsi) against the other ethnic groups in the region (Nandes, Hunde and Nyanga). This conflict was born out of the management of Greater Kivu province. The former opposed the division of the province and the autonomy of North Kivu. At the same time, the latter with the support of the indigenous Hutus of Rutshuru supported the separation and autonomy of North Kivu. This conflict was put to an end by the Mobutu coup d'état of 1965 and the suppression of all new provinces.

The conflicts will be reborn with the rise of Masisi economically thanks to the creation of modern farms owned by Tutsi around the 1977s, let us remember that this thanks to Bisengimana then Chief of Staff of Mobutu, that the Tutsis benefited from the measures of Zairianization by recovering the property that once belonged to the Belgian settlers. They have been able to develop farms but with the problem of land ownership in the background. It should also be noted here the cohabitation between the traditional management land system that places customary chiefs as a manager and the land belongs to the community and not to an individual and the modern system linked to administrative authorities and representing the state in which private property is recognized. The Tutsis thus acquired the land through administrative means and their wealth at the expense of the indigenous peasant population, which found themself not only in the minority on the land it considers its own by custom but also stripped of the same land. It is the discontents of the population that will still be exploited by politicians and will result in identifying all Tutsis as foreign usurpers. It was the beginning of the marginalization that led to the 1981 law that rendered the majority of Banyarwanda of the Masisi stateless. Although it did not affect native rwandophones peoples, it affected all of them because they were considered foreigners without distinction.

Another event that will further influence was the 1994 Rwandan genocide, which sent thousands of Hutus in DRC. Before that date, the conflict opposed all Rwandophones against other ethnic groups in the region, at the arrival of Rwandan Hutu refugees, the Alliances changed, and the Tutsi allied with the Hunde and began to fight the Hutus as well as the Interhamwe (Hutu former members of the FAR, Rwandan Armed Forces). During all these conflicts, the question of nationality will remain in the background because the other ethnic groups considered all Rwandophones as foreigners, regardless of those who are indigenous and other immigrants and refugees.

The event that eliminated the few doubts about the nationality of the Rwandophones and especially the Tutsis was the AFDL (or ADFLC) war of 1996. The AFDL war was waged by the Banyamulenge (another Tutsi branch living in South Kivu) and most of the Tutsi youth who had fled ethnic violence in the 1980s and 1990s returned with the rebellion and dressed in the RPA, the Rwandan Patriotic Army. From these events to the present day, the population has no longer doubted the nationality of Tutsi, and indeed some of them are officers in the Congolese army but always defect whenever there is a pro-Tutsi rebel movement.

Since the DRC was reunited in 2002-2003, the mistrust of the rest of the population towards Rwandophones and the political manipulation has never

faded. While a particular segment of the population recognizes their nationality, they remain suspicious and sceptical of their allegiance. Indeed, the CNDP rebellions in 2004 and that of the M23 in 2012-13 were filled only with Tutsi officers, most of them from the RCD, and have always been accused of collusions with neighbouring Rwanda, such as generals Laurent NKUNDA and Bosco Ntaganda. Indeed, the intervention and interference of the Rwandan authorities in the affairs of Kivu are not new, after the independence in the war of Kinyarwanda, Rwandan Président Grégoire Kayibanda, a Hutu, intervened alongside Congolese Hutu. His successor Habyarimana did the same by using the Congolese Hutus to destabilize the Tutsis of Congo because they support the rebellion of the RPF that he was facing.

If the Tutsis are always the most pointed, it is because, unlike the Hutu, they retain many of the ties of family attachment with Rwanda. They are often criticized for the lack of integration in Congolese society and motivated only by the possession of the Congolese identity card. Thus by combining the Rwandan and Congolese nationalities, it allows them to obtain benefits of the most favourable nationality. The other thesis that would explain this indexation would be due to the racist myth of the Hamite peoples cultivated throughout the great lakes region that they seek to create a Hima-Tutsi empire that would start from

Tanzania, passing through eastern DRC to reach Ethiopia, home of the Hamitic peoples.

More recently, the installation of the Mayor of the rural commune of Minembwe on 28 September 2020 in South Kivu province has caused an outcry throughout the DRC. Minembwe is a town located in the Itombwe plateaus in the Lulenge sector, Fizi territory in South Kivu province inhabited by several local communities in the region, including the Banyamulenge, of Tutsi origin, who are still considered Rwandan foreigners by the Congolese popular mass. Indeed, the installation of the mayor Munyamulenge (people of Mulenge) awakened the old demons of the suspicion of the Balkanization of the DRC for the benefit of Rwanda, and which would be executed by the Tutsi in general. This installation was seen as the beginning of the implementation of the Balkanization plan of the DRC by granting part of the national territory to foreigners. The case has become highly publicized, mostly since the banyamulenge has spent the past year claiming to be the target of the Mai Mai militia from other ethnic communities (Bembe, Fuliro and Banyindu) in coalition with Burundian rebels. For their part, the Banyamulenge are defended by another militia led by a former FARDCs Colonel who defected to protect his community. The outcry over the installation of the Mayor of the municipality of Minembwe hides in the background the thorny issue of nationality. For many Congolese, the Banyamulenge are not

Congolese and placing at the head of the rural commune of Minembwe a Munyamulenge is a way to cede part of the national territory to foreigners that will lead to self-determination and the secession of this part of the territory.

In the end, if the Rwandophone populations and in particular the Tutsis are marginalized, this is because, firstly, at the local level they have for a long time enriched themselves to the detriment of the original populations. After all, their indigenousness on the land of Kivu has always contested, which in turn calls into question the problem of their nationality.

Secondly, the Congolese still have the image of people who have claimed their Congolity for a long time, yet they have presented themselves in Rwandan army outfits. Rwanda is so far considered as an invading state by the majority of Congolese if we add to this the trauma the horrors of the war of the AFDL as well as the rebellions of the CNDP and M23, the Rwandophone populations are far from returning to the good graces of the Congolese population. And finally, unlike the Hutu communities, which integrate more easily with the remnants of the Congolese population, Tutsi populations tend to remain reclusive among themselves; they are even accused of practising endogamy.

Third, the geographical location of the provinces of North and South Kivu in the DRC coupled with the lack of road infrastructure means that these

provinces are somehow cut off from the western part and the capital. The people of these provinces feel that the leaders in the capital city do not care much about their fate mainly because they have been living in a situation of total insecurity for more than 30 years. As a result, people in Kivu provinces who have been living with Rwandophone populations for a long time and have learned to at least live with them are more likely to accept their membership in the Congolese nation. In the west, on the other hand, and particularly in the capital, the concept of the Congolese lambda of Kinshasa is that there is no Rwandophone population in Congo, these are only foreigners.

All of these above elements lead us to conclude that marginalization is a risk of statelessness if a definitive solution of acceptance and permanent cohabitation is not found. The risk of returning to the dark years of manipulation of the law of nationality to exclude a class of population lurks in the Congolese nation.

6.6. Institutional framework for the protection of stateless persons in the DRC

Since the DRC is not a party to the conventions on the status of stateless persons and the convention on the reduction of statelessness, although it has provided for some mechanisms to combat Statelessness in its nationality law, it does not have formal means or institutions to combat statelessness.

On 08 March 2019, an inter-ministerial committee to combat Statelessness was established under the authority of the Ministry of Justice. The committee's mission is to assist the DRC government in the process of adhering to the two Conventions on Statelessness above, the development of a national action plan for the eradication of Statelessness, and the establishment, in coordination with UNHCR, of a body responsible for determining the status and protection of stateless persons, among others.

Thus, to date, no institution deals with the situation of stateless people, despite the existence of an inter-ministerial committee, the DRC has not adhered to the two conventions on Statelessness, nor has the law on nationality been harmonized to comply with the two conventions mentioned above.

Chapter 7. Conclusion and Recommendations

7.1. Conclusion

The notion of belonging in the Great Lakes region stems from the mixing of pre-colonization practices and practices born of the colonization of Africa in general. Nationality as a written legal text was unknown to all African oral societies (Nguya Ndila, 2001). Reflecting in their European historical reality, Europeans based citizenship on the law of blood and soil, Europeans have transposed this reality into their colonies. In pre-colonization traditional Africa, as mentioned above, the individual property did not exist. Still, the land belonged to the entire community under the management of the mwami (king) who decided to allocate the land to families, individuals and even foreigners who came to settle and pleaded allegiance to the king and the community. The Europeans brought the individual property and from there appropriated the African lands. In the same way, the notion of Indigeneity was developed by the settlers in their quest of understanding the operation of traditional societies that they found there.

During the sharing of Africa, the settlers, without worrying about the dynamics on the ground, especially the traditional political and cultural divisions or the existing solidarity, set geometric borders. Thus, the peoples of the same cultures were separated as a result of the division of their territories between

several colonies and those of the different cultures were brought together within the same administrative entity (Rukatsi, 2004), such is the case of the DRC whose populations of the same cultures are found on both sides of its borders with 9 states. The colonial policy has fostered the permanent settlement and immigration of people from the nine neighbouring countries who met people with whom they shared a common identity and culture.

Identity and belonging have had a significant impact on land ownership, and the issue of exclusion of a class of population is directly related to land sharing. When several ethnic groups have shared a common land for a long time; and the birth of a post-independence state fails to manage this dynamic of sharing, the easy solution becomes to wave the notion of indigeneity as a means of exclusion. By calling the other group newcomers, foreigners, and this is often the work of political leaders and opinion leaders. In this sense, indigeneity becomes a strategy and not a fact (Boas - Dunn, 2013). Upon independence, many African states, particularly those in the Great Lakes Africa, developed their nationality laws based on this policy of excluding certain groups whose political leaders did not have the support of Allegiance.

As early as the independence of the DRC, the ruling elites used the sensibility of belonging and linguistic, ethnic and tribal solidarity to have a hand on the still virgin economy space that has escaped the control of the State. Those

who have come to power have dragged the Congolese nation into this spiral that has generated violence since then until today (Nguya Ndila, 2001). The same logic is followed by nationality laws, which have been tailor-made and whose applicability has been impossible.

Indeed, nationality laws have evolved since then, making considerable efforts to combat Statelessness. Of all the four states in the sub-region, only Rwanda has legislation and an institutional framework to effectively combat Statelessness. However, in practice, there are still many people facing a high risk of statelessness in the country.

As far as the DRC is concerned, the majority of the population faces a risk of statelessness, which is due to the failure of the state in almost all areas. The significant difficulty is the inability of the Congolese people, in the middle of the 21st century, to build a nation. King Leopold II was careful not to introduce the notion of the nation when, in creating the Independent State of Congo, he was the sovereign who represented the state and was the author. The legitimacy of the EIC came from his personality as monarch. In an official letter, he defined the state by saying: "*The mode of exercise of public power in Congo can only be the responsibility of the author of the state. It is he who disposes totally of and sovereignly... of everything he created in the Congo*" (cited in Nguya Ndila,

2001). From all this, it is quite understandable to declare that the DRC is a state that exists without a nation, which should serve as a foundation.

The different cultures that have come together to make the DRC must accept themselves despite their differences and create a nation and consequently a strong state. Without acceptance or cohesion, the DRC will end up like the former Yugoslavia, which broke out in several small states following an identity crisis based on nationalism, ethnicity and religion. This is likely to happen when one considers the rhetoric in the capital city, certainly at the level of the lower people, where all the populations of the eastern provinces and especially Kivu are described as foreign Rwandans regardless of ethnicity.

Most of the risk factors for Statelessness indicate a systematic failure of the Congolese state. The re-establishment of State authority throughout the national territory should be a prerequisite. The qualitative survey, which gathered the opinions of a sample of 100 university executives living in the major cities of the DRC demonstrated the difficulty of obtaining the identification documents and especially the initial document in determining nationality, lack of information in matters of nationality, particularly the proof, documents required and mechanisms for acquiring and losing nationality.

According to our respondents, the reasons for all these problems are insufficient of financial resources, the difficulty of obtaining the documents required by the procedure, which can still be justified by the insufficiency of the means, the inability of the administrative services competent in the production of the required documents, which also has several justifications including the insufficient resources allocated and the disorganization of services due to the lack of qualified personnel. We add the failure of civics and awareness systems.

The reform of the Congolese state is not a small task. It is a long-term job that will require time and competent men who have the will and a high patriotic sense to build the DRC and transform it into a nation. Since the state exists at least, it is now necessary to develop its foundation that is the nation, a contrary path in the process of state creation.

The principle of nationality based on ethnicity in the DRC is a principle that no longer reflects the modern vocation of the State in fulfilling its responsibilities. Indeed, citizenship is a kind of legacy of belonging to a Congolese ethnic group. This privilege automatically confers citizenship without any contribution to the erection and development of the nation to which one claims to belong.

Citizenship birthright is supposed to grant a proxy for future participation in the country (Ayelet, 2009). Thus, nationality should be a fundamental right given to all based on the link with the soil, and the concept of origin should be analyzed based on attachment to the State through the development of a strong sense of connection and belonging to the Congolese nation. Nationality should no longer be based on indigeneity and ethnicity, but this social connection of the individual to his homeland. Indeed, we cannot ignore the traditional and ancestral values of Congolese society in the area of land management. Still, they should not be the source of underdevelopment but also a policy of exclusion in the 21st century.

7.2. Recommendations

At the regional level, the ICGLR has already taken steps to combat statelessness. Numerous recommendations were made in the 2019 Nairobi Action Plan on the Eradication of Statelessness covering the period 2017-2024, which are grouped around four strategic objectives of which:

- To ensure compliance with relevant legal, policy and institutional frameworks for eradicating statelessness
- Strengthening data management systems for an effective response to the challenges of statelessness
- Establish strategic and operational monitoring and follow up mechanisms

- Guarantee access to proof of legal identity, including birth certificates and nationality documentation,

Without repeating the same recommendations, this study provides some suggestions to reduce the risk of statelessness in the Republic of Congo.

Table 2 Recommendations

Problems and risks found	**Recommendations**	**Expected Outcome**	**Level of Implementation**
	Accelerate the implementation of the Nairobi Action Plan on Eradication of Statelessness		Sub-regional
	Strengthen cooperation in the domain of human right and migration		
Ethnic criteria in the Nationality law	Amendment of the Nationality law retaining only the jus soli for the nationality of origin	An inclusive and better nationality law	National level
Disorganization of the civil services and Red tape	Easing the procedure of acquiring the birth certificate and reform of the services.	Reduction of the delivery time.	
Insufficient financial resources of the people	Reducing the cost of acquiring the birth certificate and passport	Birth Certificate become accessible to the people`s purse	
Distances between services and users in rural areas	Extend the period of free registration of newborn to one year	access to the document to the largest number of people in the rural area	
Difficult in identifying nationals and foreigners	Conduct a general census and provide citizens ID	Improved identification of citizens and	

		foreigners and fewer suspicions	
Inability to produce the documents due to incompetence	Organize training and retraining seminars for civil registry officers	Production of quality documents thanks to better forms of civil registry officers	
Corruption and heaviness in handling cases	Improving the wage conditions of civil registry officials and their working conditions	Less hassle and respect of the time frame in the treatment	
Civil status services infrastructure in a state of disrepair hence deterioration of archives	Rehabilitating and building civil registry services infrastructure and allocating financial resources to them for their operation.	Better infrastructure and better back up of archive	
Ignorance of the benefit of the birth certificate	Organize an awareness campaign on the importance and need for Birth certificate and the procedures of acquiring.	Awareness of the importance of the birth certificate	
Ethnic conflict, ethnics marginalization of Rwandophones	Organize campaigns of peaceful coexistence and mutual acceptance between ethnic groups.	Cohabitation between ethnic groups and acceptance of all as a member of the same nation	

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국문초록

이 논문은 콩고 민주 공화국에서 무국적자상태로 있을 때의 위험을 연구한다. 4 대호 지역, 특히 부룬디, 콩고 민주 공화국, 르완다와 우간다의 정체성 문제, 즉, 민족 적대감과 지역의 갈등들의 근본 원인에 대한 역사적 분석을 통해 민족 소외 문제를 간략하게 분석한다. 식민지화 이전의 소속감은 국가에 대한 충성보다는 공동체 구성원과 씨족 연대에 기반을 두고 있었으며, 민족적 적대감은 식민지화에서 비롯된 것을 보여준다. 따라서 오늘날 우리가 보는 차별과 소외는 식민지배자들과 식민지 주민들을 차별한 식민지배자들의 정책을 반영한다.

국적의 법적 체계는 독립 전야의 선거가 목적이었던 민주화 과정에서 있었던 정치적 의제와 조작에 의해 정의 되었음을 보여준다. 민족간의 갈등들은 토지를 어떻게 관리할 것인가에 대한 경제적 목표에서 비롯된다. 무국적자들이 있는 원인은 콩고 국가의 실패에 뿌리를 두고 있다. 이 논문은 DRC 의 시민권은 각 개인의 국적을 가질 권리에 초점을 두고 재고 되어야한다고 결론짓는다. 구 조항 대로 민족성에 근거해서 국적을 주기보다는 토양의 법칙 (jus soli)에 기반한 콩고 국가와의 강한 유대감과 소속감을 통해 주어지는 현대의 시민권으로 대체되어야 할 것이다.

주요어 : 무국적자, 국적, 시민권, 아프리카의 대호 지역, 분쟁, 민족성

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