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Profile

The disputed nationality status of the Kinyarwanda-speaking populations of the provinces of North and South Kivu in eastern Democratic Republic of Congo (DRC) has been at the heart of the conflicts that have afflicted the region with devastating consequences since the early 1990s. It is hard to estimate how many people are stateless, since most Congolese are undocumented, but several hundred thousand Banyarwanda who can trace their origins in Congo back to 1960 and should be nationals under the law adopted in 2004 face systematic difficulties in gaining recognition as Congolese.

Other minorities in Congo also face challenges, but it is the status of the Banyarwanda that has been most difficult to resolve.

History

The territory of the DRC is enormous, and its population comprises several hundred ethnic groups: it is one of the most diverse countries in Africa. In North and South Kivu, the provinces in the east most affected by conflict over the past two decades, the majority ethnic groups are the 'indigenous'

Nande (North Kivu), Bashi and Barega (South Kivu), with substantial minority populations made up of other 'indigenes', including pygmy groups, and many speakers of Kinyarwanda, the language of Rwanda. Known collectively as Banyarwanda, they are mainly Hutu, with a minority Tutsi. While Tutsi are traditionally regarded as pastoralists, and Hutu and the 'indigenous' groups have been cultivators, most groups have always raised cattle when they can.

The origins of the Banyarwanda in DRC are diverse. Parts of the territory that is now DRC were prior to colonization subject to the Rwandan king. Their inhabitants became *de facto* Congolese citizens in February 1885, when the Berlin Conference recognized the Belgian King Leopold II's 'private' Congo Free State. In 1908 the Congo Free State became a colony of the Belgian state; borders were adjusted in 1910 by agreement between Germany, Belgium and Britain. Following the First World War, the German territories of Rwanda and Burundi were handed to Belgium by League of Nations mandate in 1922. The Belgian colonial administration then established a policy of organized transplantation of tens of thousands of people from the already densely-populated Rwanda and Burundi to work on plantations in what is now North Kivu in eastern Congo. Both immediately before and over the decades since independence, the Kivu provinces have also taken in refugees fleeing violence in Rwanda and Burundi, including the massive surges around the time of the Rwandan genocide in 1994.

One sub-group of the Banyarwanda today in DRC are for the most part descendants of Tutsi pastoralists who migrated to the area around Mulenge in what is now the province of South Kivu from Rwanda, Burundi and Tanzania mainly in the eighteenth and nineteenth centuries, but some of them perhaps earlier. From the mid-1970s, this group began call themselves 'Banyamulenge' (people of Mulenge), a term which has come to be used more generally to refer to Congolese Tutsi.

There were no transitional provisions adopted on nationality when Congo obtained independence from Belgium in 1960, but Article 6 of the 'Luluabourg' Constitution of 1964 - the first constitution of the new state and the first legal determination of nationality - declared to be Congolese 'all persons one of whose ancestors was or had been a member of a tribe or part of a tribe established in the Congo before 18 October 1908', the date on which the Belgian Congo was created. This position was confirmed in the nationality law of 18 September 1965. Arguments that the presence of *some* Rwandophones on Congolese territory before 1908 meant that all could claim citizenship were not accepted.

A decree-law adopted in 1971 specifically addressed their situation, providing that people originating from Rwanda or Burundi (only) and established in Congo on 30 June 1960 had Congolese nationality. In 1972, a general nationality law promulgated soon after the change of the country's name to Zaire moved the date of arrival for this group back ten years, to 1 January 1950.

In 1981, after the fall from favour of the Banyarwanda adviser to President Joseph-Désiré Mobutu who had pushed these changes, a new code of nationality was adopted by the Zairian parliament which established dramatically more restrictive rules. It provided for attribution of nationality to 'any person one of whose ancestors was a member of one of those tribes established in the territory of the Republic of Zaire as defined by its frontiers of 1 August 1885', the date on which the borders of the Congo Free State were officially recognised.

During the early 1990s, the 30-year Mobutu government weakened with the close of the Cold War and the end of United States support to his government. Various transitional processes were

established intending to lead to a new government, which also opened up long-standing grievances. A 1991 population census to identify and register citizens in advance of anticipated elections contributed to the raising of tensions; the voting power of the Banyarwanda, if recognized as nationals, would have had a significant effect on the electoral outcomes in the east.

In March 1993, the already tense situation erupted into violence in North Kivu. Hostilities had hardly begun to die down under efforts to negotiate peace, when, from April 1994, the Rwandan civil war and genocide spilled over into Zaire. First Rwandan Tutsis, and then, following the military success in Rwanda of the Tutsi-dominated RPF, several hundred thousand Hutus, fled across the border. Hutu militia continued their violence against Zairian Tutsi after crossing the border, and divisions between Zairian Tutsi and Hutu were stirred into active violence.

On 28 April 1995, the transitional parliament in Kinshasa adopted a 'resolution on nationality' describing all Banyarwanda as foreigners 'who have acquired Zairian nationality fraudulently'. On 31 October 1996, the parliament announced the expulsion of Rwandan, Burundian and Ugandan nationals. Violence escalated throughout the eastern regions and many more refugees fled over the borders; many had their Zairian identity cards confiscated by guards at the border and destroyed.

The upshot of these physical and rhetorical attacks was the outbreak of a rebellion in South Kivu in September 1996, which became the catalyst for a regional war in which the rebels were backed by both Rwanda and Uganda, whose troops crossed the border into Zaire in late 1996, and later by Angola. These combined forces eventually ousted President Mobutu from power in May 1997, despite support to the government from Zimbabwe and others, and installed rebel leader Laurent-Désiré Kabila as president in Kinshasa; as well as instituting their own administration in much of the east. The country was renamed the Democratic Republic of Congo.

When President Kabila decided to expel Rwandese and Ugandan contingents from his army in August 1998, a new war broke out in the east, with the active backing of Rwanda. Hate speech leaflets multiplied denouncing the invaders and their puppets who allegedly sought a central African Tutsi domination.

In January 2001 the president was assassinated, and succeeded by his son. Joseph Kabila quickly began steps to end the war, culminating in a 'global and all-inclusive agreement on the transition in the DRC' signed on 17 December 2002. A transitional government was formed in 2003. The transitional constitution provided that 'The ethnic groups and nationalities whose representatives and territories made up what became the Congo at independence should enjoy equal rights and equal protection of the law as citizens.'

In November 2004, a new nationality law was adopted, after heated debate in the transitional parliament, which established the foundation date for nationality as 1960. However, the law still founded Congolese nationality on ethnicity, rather than on place of birth or length of residence, giving nationality by origin to 'every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence.' A referendum in December 2005 overwhelmingly approved a new constitution, which came into force in 2006. Article 10 confirmed the nationality of members of ethnic groups who were present in the territory of the state at the time of independence in 1960. Access to naturalization was made easier on paper; though excluded from naturalization were those who were guilty of economic crimes or had worked for the profit of a foreign state, common accusations against the Banyarwanda.

Efforts to stabilize the eastern regions stalled, and Banyarwanda former rebels returned to arms in disappointment at the political settlement and with the support of the Rwandan government. The deployment of a UN peacekeeping mission, MONUSCO, repeated efforts to negotiate peace, and pressure on Rwanda to end its interference reduced the most active hostilities, but the security situation remained fragile.

Current situation

President Joseph Kabila's constitutional term limit expired in December 2016, but presidential elections were indefinitely postponed, putting at risk a decade of relative stability. Activity by armed groups in the Kivus flared up with the rise in political tension. The status of the Congolese Banyarwanda and the return of refugees from Rwanda remained among the most difficult issues to resolve.

Ways forward

The situation of the Banyarwanda and other minorities in Congo whose nationality is doubted will only be resolved in the context of a much broader resolution of the ongoing political crisis and the rebuilding of the Congolese state. Part of this resolution will have to involve the creation of an objective criterion for determining citizenship, such as the birth of two generations in Congo (double *jus soli*) and facilitated access to temporary naturalization procedures, in place of highly subjective arguments about the membership and definition of an indigenous ethnic group.