MIGRATIONS AND CONGOLESE NATIONALITY: an issue of conflict?

Unsuccessful attempts to the peaceful settlement of conflicts in the East DRC.

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“The failure of the post-colonial state in Africa does not simply translate the congenital inability of African politicians to govern their states based on the principles of modern democracy. Further, it expresses the historical failure to update the administrative institutions and economic structures inherited from the colonial politics, adapting to a model of participation and tolerance that integrates differences.

Today we are witnessing a difficult overtaking, an impossible coexistence and transplant between civic and ethnic that challenges the cohesion and political harmony. The binône "native-immigrant" seems to radicalize these forms of sociological oppositions inherited from colonization as can be seen today in the Democratic Republic of Congo and Côte d'Ivoire after Mobutu and Boigny.”

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1 Photo is from the archives of Caritas Congo
2 Kafarhire M. Toussaint SJ, THE OTHER FACE OF CONFLICT IN CRISIS THE GREAT LAKES. Historical memory on the crisis of citizenship in Kivu. P.1

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<tr>
<td>DIC</td>
<td>Dialogue Inter congolais</td>
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<tr>
<td>MLC</td>
<td>Mouvement de libération du Congo</td>
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<tr>
<td>RCD/N</td>
<td>Rassemblement congolais pour la démocratie /National</td>
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<td>RCD</td>
<td>Rassemblement congolais pour la démocratie</td>
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<tr>
<td>RCD/Goma</td>
<td>Rassemblement congolais pour la démocratie/Goma.</td>
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<tr>
<td>RCD/ML</td>
<td>Rassemblement congolais pour la démocratie/ Mouvement de Libération</td>
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<tr>
<td>SADC</td>
<td>Communauté de développement de l’Afrique Australe</td>
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<tr>
<td>ONU</td>
<td>Organisation des nations unies</td>
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<tr>
<td>OUA</td>
<td>Organisation de l’unité africaine</td>
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<tr>
<td>SMI</td>
<td>Structure militaire d’intégration.</td>
</tr>
<tr>
<td>MPR</td>
<td>Mouvement populaire de la révolution</td>
</tr>
<tr>
<td>HCR</td>
<td>Haut conseil de la République.</td>
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<tr>
<td>HCR-PT</td>
<td>Haut conseil de la République-Parlement de transition</td>
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<tr>
<td>AFDL</td>
<td>Alliance des forces démocratiques pour la libération du Congo</td>
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<tr>
<td>FPR</td>
<td>Front patriotique rwandais</td>
</tr>
<tr>
<td>RDC</td>
<td>République Démocratique du Congo</td>
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<tr>
<td>CNDD-FDD</td>
<td>Conseil National pour la Défense de la Démocratique - Forces</td>
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<tr>
<td>AfDLP</td>
<td>pour la Défense de la Démocratie (mouvement rebelle du Burundi)</td>
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<tr>
<td>CNS</td>
<td>Conférence Nationale Souveraine</td>
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<tr>
<td>EIC</td>
<td>Etat Indépendant du Congo</td>
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<tr>
<td>Ex-far</td>
<td>Anciennes Forces Armées Rwandaises du président Habyarimana</td>
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<tr>
<td>FAC</td>
<td>Forces Armées Congolaises</td>
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<tr>
<td>FLC</td>
<td>Front de Libération du Congo</td>
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<tr>
<td>CLPC</td>
<td>Comités locaux permanents de conciliation</td>
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<tr>
<td>DRC</td>
<td>République Démocratique du Congo</td>
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<tr>
<td>RPF</td>
<td>RPF</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<tr>
<td>for the Defense of Democracy (rebel movement in Burundi)</td>
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<tr>
<td>CNS</td>
<td>Sovereign National Conference</td>
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<td>EIC</td>
<td>Congo Free State</td>
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<tr>
<td>Ex-far</td>
<td>Former Rwandan Armed Forces of President Habyarimana</td>
</tr>
<tr>
<td>FAC</td>
<td>Congolese Armed Forces</td>
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<tr>
<td>FLC</td>
<td>Congo Liberation Front</td>
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<tr>
<td>CLCS</td>
<td>permanent local conciliation committees</td>
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<tr>
<td>CNDDP</td>
<td>National Congress for the Defence of the People</td>
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<tr>
<td>DDR</td>
<td>Disarmament, Demobilization and Reintegration</td>
</tr>
<tr>
<td>FARDC</td>
<td>Military of the Democratic Republic of the Congo</td>
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<th>Description</th>
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<tr>
<td>CNDP</td>
<td>Congrès national pour la défense du peuple</td>
<td>Farce of National Defense and People's Armies of Congo</td>
</tr>
<tr>
<td>DDR</td>
<td>Désarmement, démobilisation et réinsertion</td>
<td>Disarmament, Demobilization and Reintegration</td>
</tr>
<tr>
<td>FARDC</td>
<td>Forces armées de la République démocratique du Congo</td>
<td>Forces of the Democratic Republic of Congo</td>
</tr>
<tr>
<td>IVP</td>
<td>Institut Vie et Paix</td>
<td>Life and Peace Institute</td>
</tr>
<tr>
<td>M23</td>
<td>Mouvement du 23 mars</td>
<td>Movement of 23 March</td>
</tr>
<tr>
<td>ONU Femmes</td>
<td>Entité des Nations Unies pour l’égalité des sexes et ’autonomisation des femmes</td>
<td>United Nations Entity for Gender Equality and Empowerment of Women</td>
</tr>
<tr>
<td>PARECO</td>
<td>Patriotes résistants congolais</td>
<td>Congolese Patriots Resistance</td>
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<tr>
<td>PDI</td>
<td>Personnes déplacées internes</td>
<td>Internally Displaced Persons</td>
</tr>
<tr>
<td>SSU</td>
<td>Stabilization Support Unit (Unité d’appui à la stabilisation)</td>
<td>Stabilization Support Unit</td>
</tr>
<tr>
<td>STAREC</td>
<td>Programme gouvernemental pour la Stabilisation et la Reconstruction de l’est de la RDC</td>
<td>Government Program for Stabilization and Reconstruction of the eastern DRC</td>
</tr>
<tr>
<td>VSBG</td>
<td>Violences sexuelles et basées sur le genre</td>
<td>Sexual Violence and Gender-Based Violence</td>
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I. INTRODUCTION

The Democratic Republic of Congo incorporates diverse populations, representing virtually all sub groups of the black race: Bantu, Sudanese, Pygmies, Nilotic (Hamitic)... But the cultural and ethnic diversity, which could have been an element of mutual enrichment - and hence of development - led to ethnic conflicts of several kinds, some of which have given birth to open warfare. Without underestimating the involvement of neighboring countries which, for different reasons, intervene militarily in the Congo since 1996, we consider that the wars that bloodied the country are of very important ethnic dimension. So that solving problems proves of paramount importance.

The persistence of ethnic conflicts, insecurity affecting people and property are all factors that demonstrate the extreme complexity of the problems of identity and ethnic groups, the problem of nationality law, issue of borders and their articulation with the interests of states and peoples, the problem of peaceful coexistence towards hostile ethnic groups each other, minority rights issues and relationship management between majority and minority, demographic problems, and problems of consecutive refugees in chronic instability of Eastern neighbors of Congo.

1. The limits of the research.

On the sidelines of migration and transplantation of Barundi and Banyarwanda people particularly, and the ambivalence of an exclusive nationality law, the issue of a permanent crisis remains worrisome.

The issue of Congolese nationality is central to various concerns, including at the international level. As the world has been approaching resolutely human interactions, Congolese nationality remains a factor of exclusion, oscillating within the ambivalent trends. As in many African countries, this issue is inherent to various conflicts and improperly command democratization orders since the 90s. This issue has never been resolved in a sustainable way and at this point, is one of the bottlenecks of a permanent crisis whose ramifications to internal or external lobbyists are not useful, yet important factors to understand the problem at the global level.

Huge risks are possible if we are not careful; on the horizon of the third millennium, risks related to Congolese nationality as possessive as exclusive and punctuated by rigid principles. Nationality is a concept which lays the foundations of the right to citizen participation, remains in the DRC, a framework on excessive patriotism appearances, yet open to debate and reforms.

The persistence of ethnic conflict, insecurity suffered by people and property are all factors that demonstrate the extreme complexity of the problems of identity and ethnicity, the problems of the law of nationality and the right to nationality, the border issues and their linkage with the interests of states and peoples, problems of consistency of customs - in fact currently constitute a key element of various claims as a result of migration and transplantation, the problem of peaceful coexistence of ethnic groups between them, minority rights issues and relationship management between majority and minority, demographic problems, and problems of refugees consecutive to chronic instability in eastern neighbors of the Congo.
The fact that the Barundi and Banyarwanda people are basically farmers and pastoralists, has always posed the problem of land occupation. These activities which require extensive lands, do not flourish and thrive everywhere. Increasingly the Burundi and the Rwanda, quite cramped and limited in terms of space, experience an exponential rise in population, overcrowding, which limits proper land use.

This brief outline does not aim to find all the dimensions of migration legislation and that, however, converged to the DRC, whose nationality laws are dual aspect with a certain ambivalence in relation to the peaceful enjoyment of this nationality.

It intends, rather, to: encourage social practices and policies to maintain a peaceful multicultural and peaceful multi-ethnic ensemble, diagnose the current challenges that must be met absolutely through peaceful coexistence among all communities in the Congo.

Analyzing a dichotomy within the Congolese legislation on citizenship, before addressing migration issues that are particular factors relating to the claims of Congolese nationality, having had result in ongoing crises and perceptible inter-community tensions in the DRC to date, specifically in the Eastern regions, appears relevant.

The DRC conflict seems intractable. The paper seeks to unravel some of the dimensions of this perpetual violence by an explanation of how this conflict is perceived by those who live, who’ve been transplanted and those who were forced to flee. We consider the interaction between the notions of identity (citizenship), access to power (customary…) and, subsequently, access to natural resources including land.

One of the challenges tearing DRC apart includes the tendency of using ethnicity and citizenship for various interests including land ownership and having control on natural resources. We can grasp the root causes of the prevailing ethno-political competition, discrimination, and violence insofar as we take seriously the following question: How are identity and ethnicity related to the conflict?

Migrations, Nationality, Conflict, Ethno-Political Competition, Discrimination, and Violence are key elements for this paper. Let’s note that the DRC is a multi-ethnic society, and local communities have been living in mutual understanding and solidarity for many years. However, some groups have been on the forefront in fighting for political power, having control on customary power, land and natural resources. Unfortunately, these groups have lost sight of a very important element which is that of social cohesion.

An analysis of the key excerpts of the following the following three concepts: Aboriginal Barundi, Banyarwanda and Banyamulenge suggests the most important elements of the source of conflict in Eastern DRC which are:

- The history of migrations to Eastern DRC (the concept of the first arriving at the site, the first occupant of the site).
- The land dispute or the issue of land tenure.
- And, in between, there is the issue of the Congolese national of origin that is associated with land acquisition and subsequent local tensions.

"The issue of identity is paramount, especially since it has become inseparable from that territory. A simplified representation opposes indigenous availing themselves of customary rights under the prior art, including land rights, foreigners [Tutsi and Hutu] from successive
waves of immigration in Zaire. Zairean legislation, instead of simplifying it, has complicated this thorny issue of nationality by excluding them from the common law of Ruanda-Urundi established in the former Kivu."

2. Methodology:

The working method is based on a documentary and analytical research, interviews and personal analysis of the situation and issues. This work ranges from a chronological vision (Chapter I and II mainly) and an analytical vision coupled with possible recommendations (Chapter III, Chapter IV and Conclusion).

3. Brief history:

A first question is: does it exist the Barundi in Congo? Does it exist the Banyarwanda in Congo? Yes and no. Yes, to the extent that there are distinctly a community of Burundian refugees and another one of Rwandan refugees, recognized as such, which came in 1972, 1959, 1994 and just enjoying refugee status. They are not involved directly in the conflict.

And no, because logically, apart from refugees, we cannot and we should not say that there are Congolese Burundians or Congolese Rwandans. The Rwandans are inhabitants of Rwanda and Burundians are inhabitants of Burundi, there is no confusion to do about it.

Sociologically and historically, Kivu is a mixture of people of different origins although the populations that appear the most in the course of events are Burundians and the Rwandophones.

At the end of colonization and the Berlin Conference; emigrations in the region and fratricidal wars that have marked the history of Rwanda and of Burundi, many Burundians and Rwandans were already accidentally settled at the other side of Congolese border where they had started local activities. But if they have acquired Congolese nationality by naturalization or by the principle of *jus soli*, why are they still and always identified as Rwandans or Burundians?

Logically speaking, apart from the aforementioned refugees, it does not exist Burundians who are Congolese, but there would be Congolese of Burundian origin, since there are Congolese of Rwandan expression in Congo but not Rwandans who are Congolese. This is the national Law on Congolese nationality which does not allow a concurrent citizenship to Congolese nationals.

The Germano-Belgian agreement concluded in 1910 has handed over a portion of the Rwanda-Urundi territories to Germany. This agreement, however, left Burundian populations (Uvira territory) and the Rwandan population on the Congolese side of the border. A part of Burundian populations (of Burundi) and Banyarwanda (Rwanda) in the precolonial era, will be regarded as being of Congolese land and of the Belgian colonial administration.

The important thing to know is that this is a matter of transplanted peoples rather than of immigration.

Since the *seventeenth century to the time of colonization*, two tiny kingdoms of Burundi and Rwanda gradually formed within defined boundaries, each under the authority of a sovereign, the "Mwami". The two countries share the same population, consisting mainly of Hutus (estimated at 84% of the population), Tutsi (15%) and Twa (1%). These people live
together, speak the same language (in Rwanda, Kinyarwanda and Burundi, Kirundi) and share the same civilization.

Over the centuries, they developed the two major axes of their economy: livestock and agriculture. Despite the tangle of agro-pastoral activities, social categories emerge: the Tutsi are traditionally farmers and cattle owners (owning cows is the prominent symbol of wealth); Hutus, farmers cultivate small plots of land. The Twa live from gatherings.

“The evolution of the political history of the two kingdoms is complex and different. In short, Rwanda, the monarchy was based on the Tutsi elite that had a monopoly of power, however, varies from one region to another, at the expense of the Hutu majority in number yet. This policy rule, accompanied by an economic and social supremacy has led to a feeling of exclusion for Hutu frustrations and tensions between the two components of the population.

At that time, in Burundi, regional and socio-political cleavages were less apparent than in Rwanda”.

Two factors explain, in large part, the tensions that have persisted for decades between Hutu and Tutsi peoples established in Rwanda, Burundi and the Kivu provinces, border province in eastern Democratic Republic of Congo (formerly Zaire): the ethnic problem and its political exploitation, population migration connected with population growth and land management, exasperated by the legal systems related to Congolese nationality.

On their arrival, German and Belgian colonists supported the Tutsi elite, using for their own benefit their local traditional institutions to impose colonial rules, especially those established in Rwanda under the reign of Mwami Rwabugiri (1860-1895). They then erected the country on the Burundi template "considered as a less perfect or degraded state."

"It was the first turning point in the contemporary history of the country, on which would be built, and, eventually, collapse, the whole building”.

Both the colonizer and the local elite had interest in adopting the pernicious racist notions about the Tutsis and Hutus concocted by missionaries, explorers and early anthropologists. These concepts are based on the physical appearance of many Tutsi in general larger and thinner than the majority Hutu. Thus, a racist theory without foundation known under the name of Hamitic hypothesis was widespread. Under this assumption, the Tutsis were from a higher Caucasians from the Nile Valley and had probably even of Christian origins. The Tutsi could be regarded as forming an upper class. It was considered the smarter, more reliable, more workers, than the Hutu Bantu majority. Belgians have so appreciated this natural order of things that a series of administrative measures, taken between 1926 and 1932, institutionalized the cleavage between the two groups (race being the explicit concept used at the time, prior to the introduction of the softer notion of ethnicity), all culminating in the issuance, to every Rwandan, of an identity card showing that he was Hutu or Tutsi. The social and political frustrations then crystallize from the exclusion of Hutus.

So many seeds of massacres that have bloodied the last 40 years the relationship between Hutus and Tutsis in the Great Lakes region. Just as "ethnic" factor, the demographic factor plays a crucial role in the emergence of tensions between the Hutu and Tutsi communities.

_According to Roland Poutier, geographer, "The Great Lakes region is distinguished by its high population density, a source of pressure on land of rare intensity in Africa._
With densities of about 225-230 inhabitants / km², Burundi and Rwanda are the most densely populated countries on the continent. ³

Over the years, the combination of demographic and ethnic tensions, land disputes, periodically generates outbreaks of deadly violence between Hutu and Tutsi since 40 years to reach in 1994 the dreadful climax of the Rwandan genocide.

The first significant displacements of Rwandophone populations begin in 1937 when the DRC, then “Congo Belge”, encouraged the immigration of Banyarwanda population (from Rwanda) "allogeneic" to serve as labor on its vast fields and very extensive plantations alongside the local communities identified as "indigenous".

In 1960, there were about 200 000 Banyarwanda living in the DRC. Rwandan Tutsi and Burundian Hutu still emigrated in Kivu, after the independence of their respective countries in 1962; others fled Burundi after the genocide unleashed against them by the Bujumbura Tutsi regime in 1972 and later to escape the civil war. In DRC they found a land that resembled to theirs, with green mountains, healthy air and familiar agricultural practices.

The influx in the Republic of Zaire of hundreds of thousands of Hutu refugees after the Rwandan genocide in 1994 totally disrupted the complex and already fragile demographic balance. Among the refugees, there were Interahamwe militia (a Hutu paramilitary organization), the group which was the spearhead of the genocide, and soldiers of the Rwandan Armed Forces (FAR). Hatred between Hutu and Tutsi settled on Congolese territory, then reached its climax and its strong point.

Pressure on land in the Kivu provinces increased with more disastrous consequences. The competition for access to land and means of survival such as water and wood became conflict factors between groups condemned to live together. These conflicts were poorly arbitrated by traditional leaders, shaken by so much upheaval and population displacement, and who retained a meager vestige of their previous powers.

From the late 1990s, another ingredient has been added to make the region a powder keg: the discovery of coveted minerals used in the electronics industry and a series of other natural resources of great value such as coltan and cassiterite (tin oxide mineral) in North Kivu, gold from Ituri and South Kivu and also tropical wood, charcoal, meat, tea, quinine and papain. The militias and armies were quick to exercise their control over the main mining sites, from where they get to date very large sums.

In Eastern DRC, the membership and access issues are inextricably linked to the conflict. The politicization of these issues is long-standing. For example, between 1937 and 1955 the Belgian colonial administration has displaced some 85,000 Tutsis and Hutus from Rwanda to Congo. These transplanted people were added to over 95,000 others from Burundi who were in Congo at that time. This migration, and other successive waves, led to tensions between the communities ‘native' and individuals of Rwandan descent.

After the independence, the Citizenship Act (Law), passed and enacted in 1971, gave Congolese nationality to all those who had emigrated to the Congo before 1960, including,

³ Roland Poutier, The war in Kivu, a multidimensional conflict contemporary Africa, Special Issue, 4th quarter 1996, French Documentation)
de facto, migrants for the period 1937-1955 who were initially excluded by the 1964 Constitution, which had set as deadline October 1908 to obtain citizenship.

A year later, this date was changed to 1950. Finally, in 1981, the 1972 Act has been canceled and the deadlines have been pushed even further than in the Constitution (to August 1885). Consequently, throughout the post-colonial period, Rwandan or Congolese descendants were in an uncertain legal situation. In addition, national politicians have frequently exploited the situation and manipulated local rivalries over land, resources and political power. The propaganda by individuals who defined themselves as "indigenous" against the "foreigners" from Rwanda or Burundi, has fueled fears of ethnic cleansing and militia resurgence.

These hostilities have intensified due to the influx of over a million refugees Rwandan Hutu in 1994, at the end of the Rwandan genocide. They culminated in two wars that bound increasingly these local conflicts in a broader regional struggle for economic control and political-military power.

In addition to the ambiguity of citizenship rights, the issue of land distribution has not been clearly resolved. While modern laws are in force, access to land is generally granted by powerful local leaders who rely on traditional customary law. The latter has been illegal since 1973, when all lands were declared state property. Consequently, two land rights systems exist side by side and come to contradict: the traditional system based on ethnic citizenship and the modern system based on individual property rights.

Consequently, the issue of land ownership has caused much confusion and indecision. Since the beginning of the first war in 1996, the land, having been the source of armed conflict, was more often used as a resource to perpetuate these conflicts: the land became an asset to local warlords (both rebel groups and criminal elements within the Congolese army) that control the distribution.

The 2004 law on Congolese nationality of the Transitional Government of the DRC, which gets the inclusiveness of the 1971 Act by granting citizenship to all individuals living in Congo at independence in 1960, however, leaves some number of unanswered questions. It creates legal breaches and enforcement problems, which will be again in the following years, instrumentalized against Rwandan descent Congolese.

This propensity to exploitation is likely to continue, given the recent agreements on the return of refugees, for example, the tripartite agreement in February 2010 between UNHCR, DRC and Rwanda. Local communities in eastern Congo challenging the nationality of the people returning from Rwanda and question their identity as refugees. Fear of increased competition for scarce land available just stoke concerns. The return of refugees could eventually change at the local level, sometimes fragile balance of powers, especially for membership issues and access to land.

4. 1972 and 1981 marked the stages in the evolution of this status.

In 1994, following the Rwandan genocide and the overthrow of the Hutu regime in Rwanda, demographic pressure due to the flood of 1.2 million Rwandan refugees, Hutu mostly, to the Kivu complicated coexistence between Zairean and Banyarwanda indigenous (Zaire Hutu and Tutsi from Rwanda) long-established in Kivu. The genocide also hardens relations Banyarwanda Hutu and Tutsi together.
An anti-Tutsi hostility settled in Zaire even prompting the Mobutu regime to question the achievements of their Zairean nationality, including the Banyamulenge, the oldest installed. Indeed, "April 28, 1995, Zaire's parliament adopted a series of resolutions designed to assimilate all Zaireans of Rwandan origin, including the Banyamulenge (Tutsi Zaireans of Rwandan origin) acquired Zairean nationality fraudulently and call for their expulsion, cancellation of property contracts and the prohibition of their associations." *(The concept "Banyamulenge" comes from the word Fuliru "Mulenge" which means sadness. This is due to the mistreatment that Belgian colonists inflicted to the local population of the village of Kishagala and around. During the colonial era, a police station was established in the village clan Bashale. And before that, he was a football field that served as a place where whips were administered to the villagers. It was also a place of exchange of various products between villagers and the Belgian colonists. When someone committed a crime, an offense, contravention or other matter found fault by the settler, was being taken there for rehabilitation. That's why it was a place of sadness, pain and other.)*

Thus, the Banyamulenge think they are threatened by the implementation of these measures, the pretext to take up arms and start a rebellion against the Zairean government on Oct. 13, 1996 in Kivu, which is found in the fighting.

**II. A QUICK REVIEW OF NATIONAL AND INTERNATIONAL LEGISLATION.**

1. **National legal framework with dual facets**

In the Great Lakes region, the issue of ethnic identity is the epicenter of many hypotheses that explain the crisis. The boundaries of Belgian and German colonies in the Great Lakes region were drawn on an ethnographic basis.

The protocol that sanctioned the agreement was signed in Goma on June 25, 1911. During the partition, there was a part of the Hutu population which was accidentally rediscovered in the Belgian Congo in the North Kivu and has Congolese nationality to date.

The Democratic Republic of Congo is a creation of the external colonial epic of the late nineteenth century. It brings together within it: diverse populations, representing almost all of the black subgroups such as: population Bantu, Sudanese people, Pygmies and Nilotic (Hamitic). But this cultural and ethnic diversity, which could be an element of mutual enrichment - and hence of development - led unfortunately to ethnic conflicts of several kinds, some of which have given birth to open warfare.

The persistence of ethnic conflict, insecurity that people suffer from and property are all factors that demonstrate the extreme complexity of identity issues and ethnic groups, the problem of nationality law, the problem of borders and their articulation with the interests

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7 Vandewoude: documents related to the old district of Kivu (1908 to 1922, ACB No. 3, Brussels, p 19
of states and peoples, the problem of sustaining customs - in fact currently constitute a key element of the various claims following the migration, the problem of peaceful coexistence between ethnic groups hostile to each other, rights issues minorities and relationship management between majority and minority, demographic problems, and problems of refugees consecutive to chronic instability in Congo’s eastern neighbors.

Congolese nationality is too possessive, sometimes a framework on excessive patriotism appearances, yet debatable and calling needs for a profound reform.

Articles 10 and 72 of the Constitution of the Democratic Republic of Congo of Feb. 18, 2006, amended by Law No. 11/002 of Jan. 20, 2011, define the general framework for Congolese citizenship. While Article 10, first paragraph, states that Congolese nationality is "one and exclusive", and "cannot be held concurrently with any other nationality", the third paragraph of that article states that "are Congolese by origin, persons belonging to ethnic groups whose persons and territory constituted what became Congo (now the Democratic Republic of Congo) at the time of independence.

This is either nationality of origin or individual acquisition. As for Article 72, it must be recalled that Congolese might be by origin to be candidate for the presidency of the Republic.

Of course, an organic law determines the conditions for recognition, acquisition, loss and recovery of Congolese nationality.

**The Organic Law and the Ministerial Order**

Article 26 of Law No. 004/024 of 12 November 2004 on Congolese nationality asserts that "Any Congolese citizen who acquires a foreign nationality loses automatically Congolese nationality".

According to Article 6 of the same law, "Congolese nationality by origin is recognized from birth to the child in consideration of two connecting elements of the individual to the Democratic Republic of Congo, i.e. its affiliation to the respect of one or two Congolese parent (jus sanguinis), belonging to ethnic groups whose persons and territory existed at the time of independence (jus sanguinis and jus soli) or at birth in the Democratic Republic of Congo (jus soli). First, it’s worth to mention a gap regarding the lack of accurate definition of nationality of groups of reference by that article 6 of the law. Secondly, this article opposes Article 10-3 of the Constitution.

Furthermore, Article 1 of the Ministerial Decree No. 261 of 4 July 2006 laying down certain measures for implementing Law No. 004/024 of 12 November 2004 on Congolese nationality, requires a certificate of legislation specifying that according to the law of the country of the recipient, the citizens of this country lose their nationality if they voluntarily acquire a foreign nationality. How should we then understand, in this case, the situation of a child born from a Congolese parent and one foreigner parent whose country recognizes the inalienable character of his nationality? Is it not unfair and inhumane to force him to make the choice between the nationalities of his parents, at the risk of jeopardizing the best interests provided for in Article 3-1 of the International Convention on the Rights of a Child?

**The contradictions and conflicts**

The first paragraph of section 10 of the Constitution which stipulates that the Congolese nationality "cannot be held concurrently with another nationality". In addition, this nationality is already "one and exclusive". Unless, therefore, the current provision is
intended to strengthen the non-recognition by the Congolese state of foreign citizenship owned by a Congolese national by origin.

However, Article 10-3 establishes two distinct legal status for Congolese nationality: Congolese nationality of origin and Congolese nationality acquisition. As for Article 72 of the Constitution, it legalizes inequality between Congolese since only the original Congolese may be candidates for the presidential election. These two provisions contradict articles 12 and 66 of the Basic Law on equality of all Congolese before the law and their right to equal protection of the laws, non-discrimination and strengthening national unity.  

➢ The DRC challenged by the degeneration

In DRC, the issue of nationality has spilled ink and saliva as well as blood. Some marginalized groups have deemed fit to use force in order not to be excluded from the political-economic and social sphere of the DRC. In the Kivu provinces, land and ethnic identity are major factors of conflict. Over the past forty years, the Congolese nationality laws were changed four times, sometimes to the detriment of certain groups who were intermittently deprived of their right to Congolese citizenship.

Thus, as we can well realize it, the “issue of nationality” is definitely the most painful and most complex problem to which the DRC has faced in 45 years of independence. This is the central problem that explains, in large part, the wars that the DRC has experienced in 1996 and 1998. It is especially true because the nationality confers rights on citizens that foreigners have no or not easily acquired (land rights, right to elect and be elected, etc.) This often results in the temptation to constantly question the nationality of a political rival in the elections or appointments policies.

Thus, management of nationality issues is very sensitive, and that almost all the governments of the DRC failed to maintain properly, issue of great importance as a factor of national cohesion and peace. The nationality is related to patriotism, which, itself, is a deliberate expression of citizenship. The nationality issue, half-processed, has been at the center of endless crises that have overshadowed the DRC, the claims are founded on various movements, dynamics, alliances with ethnic resonance.  

Used alternately as a sanction and / or a gratuity in respect of Rwandophone community, Congolese nationality was placed at the center of issues, quarrels and wars in the last decade of the twentieth century.

Tutsi people, who took refuge behind the ethnonym Banyamulenge that their Congolese origin was disputed and due to the limitation of their rights, are themselves manipulated by the powerful, or are the target of xenophobic discourse. Recognition or ignorance of the nationality of the Banyamulenge and Banyarwanda has always been based on their

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8This is the same situation of Article 4 of Law No. 004/024 of 12 November 2004 on Congolese nationality. It states that "all ethnic groups and nationalities whose persons and territory constitute what became the Congo (now the Democratic Republic of Congo) at independence must enjoy equal rights and protection under the law as citizens. Thus they are subject to, as such, "the same obligations" and "duties" in accordance with Articles 63, 64, 65 and 66 of the Constitution that contradicts Article 72 mentioned above. Can we conclude that Congolese citizens have equal duties without the same rights?

9It’s not only an issue of belonging as the zairianization initiated by Mobutu in 1974, following its politic of "using authenticity" had the effect of dispossessing them of their expatriate businesses, farms and agricultural areas to entrust them to Zaire and to create a middle class of typically Zairian case
allegiance or opposition to the ruling elites. This particular situation of the Banyamulenge is a constant of post-colonial political history of the DRC.

As if that was not enough, the already violent political competition has been exacerbated by confusion introduced by two successive Congolese nationality laws (Zaire) in 1972 and 1981. In 1972, a solution is envisaged. Under the instigation of Bartholomew Bisengimana, former Mobutu’s chief of staff from 1969 to 1977, a Law enacted conferred automatically and collectively the Congolese or Zairean nationality (Congo or Zaire) to Rwandan migrants arrived in the Kivu before independence.

Far from appeasing or aggravating tensions between indigenous groups and the so-called Banyarwanda, this law increased tensions while provoking indignation among the population of Kivu. These tensions will be aggravated by another law enacted in 1981, which annulled the previous one and did not recognize the Congolese nationality only on individual request and through the naturalization process. By pouring in extreme contrast, the new law plunged into “illegality” and “underground”, a population that had grown and demographically representative enough, particularly in the Kivus and Katanga.

Let’s indicate that the new law on nationality, which has further marginalized the Banyarwanda will prove a powerful rallying slogan for the Tutsi-led rebellions in the East. The late Laurent Désiré Kabila regime has not done any exception: until August 1998, he argued that the Banyamulenge people were indeed Congolese but a few days after their involvement in the rebellion-invasion RCD (Congolese Rally for Democracy) in 1998, the same president denied this status to those people, yet he was about to integrate an article about their Congolese nationality in the Act, then.

It should be recalled that the issue of nationality has been divisive in the DRC after independence because it affected the rights of members of certain groups from owning land and / or hold political office, which had adverse consequences for the exercise of political and economic power in the country. In general, changes in nationality laws have been caused by conflicting interests, political and economic, of the leaders and politicians of different ethnic groups. Thus, frustrations and claims have meant that some groups took up arms to get their votes.

➢ An anachronistic and transgenerational issue: the Congolese nationality through legal provisions:

- The Round Table:

The Fundamental Law that served the young state’s first constitution does not define the Congolese nationality. However, Resolution No. 2 of the Brussels Round Table, prior to independence, recognized as Congolese all those who had already been recognized as such by the colony. As we said above, the Banyarwanda delegates, including transplanted sons, participated in the Round Table as Congolese.

In addition, the Electoral Act No. 13 of March 23, 1960 reserved the exercise of political mandates to “exclusively Congolese”. Although this law does not specifically focused on nationality, it does not regulate unless one of its most important consequences: the right to elect and especially to be elected at the provincial and national level. Now, as we have shown above, many Banyarwanda were elected and had achieved high office of state in 1960.
- **The constitution of Luluabourg:**

It is in this constitution of 1964 that, for the first time, the Congolese will define their nationality. At the end of Article 6 of the constitution, is declared Congolese at June 30, 1960, any person whose ascendants is or was a member of a tribe or part of a tribe established in the territory of the Congo before 18 October 1908 (date of transfer of EIC to Belgium).

Logically, this definition of citizenship has two consequences:

- The Banyarwanda of the Rutshuru territory, whose territory was finally recognized in the Congo in 1910, and the Banyamulenge of the South Kivu Province, settled on the sets of Itombwe before 1908, should be Congolese under the nationality of origin.
- The descendants of transplanted, who arrived on Congolese territory between 1930 and 1954 lost their status of Congolese that they had until that date. But in fact, they will continue to be treated as Congolese in the census and elections.

- **The Constitution of 1967:**

The first constitution of the Mobutu era does not address in detail the nationality. At most, it states in Article 46 that the issue is governed by law.

- **Law No. 002 of January 5, 1972:**

On 5 January 1972 was promulgated Law No. 002 with Zairian nationality. At the end of his first article, are considered Zairean at June 30, 1960, those whose one of the ascendants is or was a member of one of the tribes established in the territory of the Republic of Zaire in its borders of 15 November 1908 as subsequently amended.

Article 15 of that law added that people from Rwanda-Burundi established in the province of Kivu before 1 January 1950 and continued to reside in Zaire since then until the entry into force of the law acquired Zairian nationality 30 June 1960. This law legally rehabilitate the descendants of transplanted people.

- **Act No. 002 of 29 June 1981**

As it’s the case in all crisis situations, scapegoats and "foreign immigrants" become a well-specified target. June 29, 1981, Zaire has a new citizenship law that completely reverses the principles of that of 1972. Now we must have an ascendant who was a member of a (part of) a tribe established in the Congo in its borders of August 1, 1885. After the adoption of the new Law on Citizenship, a national identification operation was launched to "fix" the status "non-Zairian" of Rwandophones.

The identification was organized in the two Kivu and the areas of Moba and Kalemie. Following the 1981 Act, all Tutsi or Hutu deputies’ candidates are rejected because of their dubious nationality ". Discrimination and exclusion begin to wreak havoc.

This law assumes that the Banyarwanda have collectively acquired Zairean citizenship only from 1972. In its statement of grounds, it’s said that the new law expressly cancels Article 15 of the 1972 Act that would have granted collectively "nationality to groups of foreigners." At the end of Article 4, is the Zairian at June 30, 1960 a person whose one of the ascendants is or was a member of one of the tribes established in the territory of the Republic of Zaire in its limits of 1 August 1885 (date of creation of the EIC), as amended by subsequent
conventions. It is logical to consider that from this date, the transplanted progeny had lost their Zairian nationality.\(^\text{10}\)

### 2. International framework

#### Summary

The Universal Declaration of Human Rights, followed, in this, by several other international and regional instruments, establishes the right to nationality and the right not to be arbitrarily deprived of his nationality.

Although it is for each State to determine its national through its legislation in accordance with the terms of Article I of nationality established April 12, 1930 by the Codification Conference of The Hague, however, it requires compliance with international conventions, international customs and the principles of law generally recognized with regard to nationality. In any case, the discretion power traditionally accorded to States on the acquisition and loss of nationality, is not without limit. Thus, it is necessary to consider whether Article 2 of Law No. 004/024 of 12 November 2004 on Congolese nationality attaches recognition, acquisition or loss of Congolese nationality to the application of international conventions and legal principles recognized in respect of nationality.

#### Given the restrictive tendencies to Congolese nationality acquisition, international instruments reframe:

This is in terms of interstate relations and nationality laws conflict that international law has intervened in the early twentieth century. \(^\text{11}\)

A connecting link for the exercise of certain state prerogatives. As the diplomatic protection, nationality also gives necessary legal status for the exercise of many civil and political rights. The Universal Declaration of Human Rights, followed in this by several other international and regional instruments, establishes the right to nationality and the right not to be arbitrarily deprived of his nationality. Children and certain groups of vulnerable people, also benefit from a specific recognition of the right to nationality. However, international law leaves states free to determine the conditions obtaining citizenship by birth or descent (under the principles of jus soli and jus sanguinis) or by naturalization.

- **The Universal Declaration of Human Rights** states in Article 15 that everyone has the right to a nationality. This implies that no one may be struck statelessness. Similarly, in the same article, it states that no one shall be arbitrarily deprived of his nationality. Any deprivation of nationality for reasons other than lack of loyalty to the state is arbitrary.

- **The rule of non-discrimination** inspires the International Law of Human Rights. It was enshrined in Articles 55 of the UN Charter, 2 of the Universal Declaration of Human Rights, the International Covenant 2.1 on Civil and Political Rights, 5 the International

\(^{10}\) As Léonard Kambere wrote pertinently: "It’s true that Rwandans living in Congo since before the fifties and their descendants have mostly cut the umbilical cord that bound them to the motherland. Many have built their entire lives in Congo without thought of one day returning to Rwanda. Some did not even know for a long time they had the status of foreigners in Congo. In other lands, citizenship would be granted to them correctly according to the system of jus soli, Right of Land."

\(^{11}\) In his famous Nottebohm in 1955, the International Court of Justice defined nationality as the "legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with a reciprocal rights and duties.

www.absolutelyjusticeandpeace.org
Convention on the Elimination of All Forms of Racial Discrimination, and 2 of the African Charter on Human and Peoples’ Rights. Given this rule, nationality deprivation that does not have as reason acts that break the loyalty to the country, is discriminatory.

The principle of non-discrimination on nationality, enshrined in Article 5 of the European Convention on Nationality, however, prohibits absolutely not differentiated treatment between citizens, as they have acquired citizenship at birth or retrospectively by an act of naturalization.

- **Protection against statelessness:**

The right to nationality is also governed by the United Nations Conventions of 1954 and 1961 on the Statelessness. These instruments, adopted to clarify the status of stateless persons and to give them a certain number of fundamental rights, also aim to prevent and reduce statelessness in the world (more than 10 million according to the United Nations).\(^\text{12}\)

The 1961 Convention on the Reduction of Statelessness establishes therefore the general principle that a person may not be deprived of his nationality if such deprivation renders stateless. *Article 8 of the Convention, however, authorize the deprivation of nationality, even if it creates statelessness, in limited circumstances. These exceptions to the general principle covers hypotheses such as obtaining citizenship through misrepresentation or other fraudulent act or behavior likely to cause serious prejudice to the state’s essential interests.*

The Convention also prohibits discrimination of racial, ethnic, religious or political nature in the event of withdrawal of nationality. It also requires that the procedural guarantees accompany loss of nationality, failing to make it arbitrary.

- **Arbitrary deprivation of nationality:**

The prohibition of arbitrary deprivation of nationality, which protects the right to keep one nationality at least, is set out by the Universal Declaration of Human Rights as a corollary of the right to nationality. This general prohibition is repeated in many international and regional conventions.

The measures leading to the deprivation of nationality, as permitted by international law, must meet a number of conditions in order not to be arbitrary:

- They must be based on a clear legal basis;
- They must serve a legitimate aim that is consistent with international law;
- They must be proportional to the interests they seek to protect and
- Procedural safeguards must be implemented to enable the claimant to submit his defense before an independent body.

*Moreover, the International Law Commission has recently submitted to the UN General Assembly draft articles on the expulsion of aliens, dealing in Article 8 the issue of deprivation of nationality under the ban arbitrary deprivation of nationality. The UN General Assembly*

\(^{12}\) *A plan for protecting those without citizenship or rights: Nationality is a legal bond between a person and a state. Nationality provides people with identity, and enables them to exercise a wide range of rights. Statelessness occurs when an individual is not considered as a citizen of any state, and it affects an estimated 12 million people worldwide. Read: [http://www.unhcr-centraleurope.org/en/resources/conventions/statelessness-conventions.htm](http://www.unhcr-centraleurope.org/en/resources/conventions/statelessness-conventions.htm)/*
decided to consider at its next session the advisability of elaborating a convention on that basis. 13

The Secretary General of the United Nations, in its report "Human rights and arbitrary deprivation of nationality" to the Council of Human Rights in 2009, recalls that "the concept of arbitrariness applies to all acts of State, whether legislative, administrative or judicial. The concept of arbitrariness can be interpreted as covering not only acts against the law, but also, more broadly, those with inappropriate, unjust or even unpredictable. " 14

In 1991, the Zairian government confiscates the land of the Banyamulenge settled long ago in Uvira. With the Rwandan conflict, thousands of Banyarwanda return to Rwanda, where they have no longer roots. Other Tutsi decide to join the RPF in Uganda before conquering power in Rwanda and come back to cause trouble in Kivu.

"This question of nationality in Kivu has long poisoned relations between individuals and groups with which they identify. The uncertainty concerning the status of a significant fraction of the inhabitants of the region could not only promote political manipulation, with even more successful than the population found itself in a situation of economic competition, competition for land. Rights and citizenship of the soil tend to merge, raising facing different categories of users, provided that the land has become too rare to meet all the uses for which it is requested. Access to land, the right claim to the territory in a context of increasing population pressure is a key structural components of the conflict in Kivu ", 15

Despite the urgency, we must go step by step, starting first recognizing those who are Congolese citizens (who are eligible and who have the right to elect), then recognizing dual nationality Congolese citizens and children Congolese, one spouse is a foreign national. For foreigners who want to become Congolese citizens while keeping their original nationality, wisdom and caution must push the Republic to wait in order not to jeopardize the future. When establishing nationality and recognition of Congolese will pose no problem, we can then, ten years later, the question of dual citizenship referendum for those foreigners who want to become Congolese citizens while retaining their nationality original. This would mean prior identifying the population, reorganize the public administration and civil status before the problem of dual citizenship, because the answer to this question must come from the people. Ask the two problems at the same time (the recognition of nationals and foreigners on national territory and dual nationality) would be to bring the Republic into a new impasse in the run, mainly because the population is already suffering as because of

13 Created November 21, 1947 by the United Nations General Assembly (resolution A / RES / 174 (II)), the International Law Commission’s mission is to promote the progressive development and codification of international law. The status of the Commission is annexed to the resolution.
14 The Human Rights Council is an intergovernmental body within the United Nations system, consisting of 47 states that are responsible for strengthening the promotion and protection of human rights around the globe. "All victims of violations of human rights should be able to turn to the Council of Human Rights as a forum and a springboard for action." Ban Ki-moon, Secretary General of the United Nations, 12 March 2007 opening of the 4th session of the Human Rights
15 Professor Fweley Diantikutwa recommends: The issue of nationality in the eastern DRC has become so recurrent that it requires an urgent solution, intelligent and ultimately, because it looks like a thorn in the back of the Republic. There is a necessity and urgency of a new law in order to innovate and scratch abuse. In this paper, we propose innovations that focus on: the need to create a National Office on nationality, the change in the base year, the loss of nationality and naturalization obtained with the joint agreement and the applicant’s province of residence.
the cacophony on the issue of nationality will not accept that the question of nationality and dual nationality be asked and answered at the same time.

Insofar Zairean nationality yesterday and Congo today is "one and exclusive", i.e. it cannot be held concurrently with another nationality, foreigners, including Banyarwanda and Barundi who held it between 1972 and 1981 were supposed to have no other nationality at that time.

Therefore, by depriving them of their Zairian nationality by law No. 002 of 29 June 1981, this has made them stateless, which is contrary to the spirit of the above-mentioned article.

Article 9: "The Contracting States shall not deprive of their nationality group of individuals or individuals racial, ethnic, religious or political on grounds" It is difficult to argue that Law No. 002 of June 29, 81 has not violated this article, to the extent that it has withdrawn its nationality, by not granting, to an ethnic group: the Banyarwanda. Even then, the children of these, born between 1972 and 1981 while their parents had the quality of Zairean, and that could keep their Zairian citizenship, were also deprived of their citizenship

- **Individual complaint mechanisms:**

The Human Rights Council of the United Nations has set up a complaint procedure allowing it to know gross and systematic violations of human rights in a particular state, regardless of the acceptance of treaty obligations by the concerned country. The procedure does not take place, in principle, in public, and does not provide compensation for the alleged victims. Other individual complaint procedures available to the various bodies established under international human rights. These individual applications are conditioned to the exhaustion of domestic remedies, and can lead to a binding decision for compensation of the victims concerned. The right to nationality is frequently evoked in these instances.

**III. WHO IS CONGOLESE CITIZEN AND WHO’S NOT? ANALYSIS.**

1. **Summary of the literature review**

The dichotomy and the procrastination of nationality laws in the DRC, as mentioned above, opened the breach to discord, misunderstanding and unnecessary rivalries because it came out of legislation at double speed, two-sided legislation and which devoted a legal instability of group members.

Defining who is, and who decides “who is legitimately Congolese”, remains at the heart of the ongoing violence. Exclusive and polarized notions of identity and belonging have thrived (and been encouraged) in DRC where the state is so weak that it lacks the ability to control its own resources and protect its people.\(^{16}\)

At the same time, exclusionary political sentiment has been fuelled by a growing discourse of autochthony (also understood as “indigenousness”) and its antithesis, allochthony, in popular and elite circles in DRC.\(^{17}\)

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\(^{16}\) International Alert, 2007, p. 7.

A new law on nationality adopted by the country’s transitional government in November 2004 was intended to permanently clarify who is and is not a national of Congo. Our views are that the ability for individuals and groups to meaningfully assert the bond of citizenship as the basis of rights to Congolese citizenship and therefore have access to resources offers a powerful antidote to many of the root causes of violence.

Furthermore, regardless of the content of the law, it is clear that it is not being applied and has not helped significantly to re-define local understandings of inclusion and exclusion: on the ground, notions of belonging continue to be profoundly contested. Yet despite the fact that the law offers the possibility of asserting citizenship to most of the contested populations, it remains a compromise between promoting an inclusive framework for citizenship based on birth and the proactive creation of de facto ties of belonging, and continuing to rely on ethnicity as a basis on which nationality is claimed.18

Therefore all efforts need to be made to promote and implement the new citizenship law at the grassroots, with respect to those elements that recognize the right to belong of contested populations. Specifically, the basis for Congolese citizenship needs to be clarified at a local level in such a way as to end violent conflict over this key issue.

At the time of decolonization of the Congo, the issues of Immigrants Barundi and Banyarwanda were still pending while the refugees’ issues having fled the horrors of the so-called social revolution of 1959 were still on the table. The acceleration with which the political events between 1958 and 1960 led to the country’s independence almost surprises everyone and leaves in the shade a question that does not have the same urgency as the fight against the colonizer. Thus it is recognized that Belgium had not bequeathed to the young Congolese State, an easy situation to manage, the very fact that the Round Table held in Brussels in January 1960 had not ruled on the legal status transplanted Banyarwanda in Kivu by the colonial administration. However, at the local level where it arises, the issue of immigrants and transplanted Banyarwanda, is important. It puts the spotlight on the native-immigrant pairs, the first land law and land loan by the latter. 19

18 “To clarify the issue of the Congolese nationality, the sources approached recommend that the possibility for individuals and groups to avail the bond of citizenship as the basis of membership rights and access to resources provides a powerful antidote to most the root causes of violence. The new law on Congolese nationality was adopted by the transitional government in November 2004, and was intended to definitively clarify who is and who is not a national of Congo. Yet despite the fact that the law provides the possibility of claiming citizenship to most of the people questioned, it remains a compromise between promoting an inclusive framework of citizenship based on birth and the proactive creation of belonging and continuing to accept ethnicity as a basis for claiming citizenship. In addition, apart from the content of the law it is clear that it is not applied at the local level and has not changed local understandings of inclusion and exclusion on the ground of belonging notions continue to be challenged. Efforts should be made to promote and implement the new law at the basic level, compared to the elements that recognize the right of ownership of disputed populations. In particular, the basis of citizenship must ensure unequivocal clarity locally so as to put an end to violent conflict on the issue” “Identity and Conflicts in DRC, Who belongs where?” Working paper International Refugee Rights Initiative and Social Science Research Council, No 3, March 2003

19 “The loss of traditional authority (Native authority) of Gishari in 1957 resulted concomitantly in loss of ethnic rights whose geopolitical space based any civic claim. However, the Congo transition to sovereignty through independence opened a new perspective, offering a broader national framework as the only ethnic terroir. In North-Kivu for instance, the national components may come from representation at the provincial level through elections. The numerical superiority of the Banyarwanda allowed them to win the municipal elections in North Kivu and access to political positions for both the central government and provincial. This situation perceived as a usurpation of both ethnic and civil rights will lead to the uprising of indigenous Bahunde of Masisi and said war of Banyarwanda between 1963 and
2. **What CEPGL has sought to solve in an unclear context of Congolese nationality?**

On 20 September 1976 was created the Economic Community of Great Lakes Countries, called “CEPGL”. It grouped within it the following States: Republic of Zaire (currently DRC), Republic of Burundi and the Republic of Rwanda. Its mission was twofold: economic integration and border cooperation.

Its main objectives were:

- Ensure security of member states and their populations so that no element comes not disturb the peace and order in their respective borders.
- Promote and intensify trade and the movement of persons and their property.
- Design, define and promote the creation and development of activities of common interest.
- Cooperate closely in the social, scientific, cultural, political, military, financial, technical, and tourism sectors, especially in judicial, health, energy, transport and communications.

Generally, CEPGL and its organs functioned until 1996. The assassination of the two Presidents (Rwanda and Burundi 1994) and the wars in Congo have certainly caused the cessation of activities of the organization and left a mixed record largely negative. The targets have not been met, they were worthless. Neither integration nor the security of the population were at the rendezvous. CEPGL turned into a club of three Heads of State (Rwanda, Burundi and Zaire) in their interest as well as insecurity.

A marathon guerrilla and a reversal of power in Zaire, now Democratic Republic of Congo will be accompanied by massacres of Rwandan and Zairian populations without distinction, on Zairian soil, in 1996. The Zairean population then and now Congolese considered these indistinctive and undifferentiated massacres as "paying a heavy price" due to his generosity and hospitality. The invasion of the country by foreign armies from August 1998 until 2003 disguised as rebellion is reported to be the first African world war.

Distrust settles exponentially vis-à-vis the populations of Rwandan expression indiscriminately from populations of Burundian expression; Rwanda and Burundi having been considered as a coalition against the cohesion of the Congolese community, having had as mentor the Uganda and other sponsor countries.

Increasingly the hatred grew in the Congolese community, demanding a new deal: the possession of the Congolese nationality "ius soli" and-or "ius sanguinis". Failing that, an individual procedure of naturalization or acquisition of nationality should be opened to individuals who wished to be Congolese citizen. This is then the whole debate around the "congolité" which did not leave the country at the peaceful state. Wars on little-known claims have multiplied to end this debate and install a complete confusion on the question of Congolese nationality.

In a perspective of peace; to some fundamental questions, urgent and coherent responses should be provided, or at least clarify these gray areas to rule out the most common

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1964 by which the latter wanted to free themselves from the tutelage of native leaders who perceived abusive tributes as landowners”. MAMDANI Cf. M., op.cit, p.242; NDAYWEL Isidore, op.cit, p.538-560)
confusions by which identity issues would found the current crisis in the region and in the DRC.

My point is that beyond the legal considerations on citizenship ius soli and jus sanguinis, multi-dimensional parameters such as land, natural resources, local customs, and secessionist prospects ... have fueled more debate on identity.


1. Regional dimension:

Let’s analyze a little the evolution of the crisis in the DRC, from its origins to the resolution attempts: The beginning of the Great Lakes crisis backs in the context of the recent past, in the early 1990s with the civil war in Burundi (October 1993) and the genocide in Rwanda (April-July 1994). Various other remote causes can be established, as acknowledged by the presidents of the region in paragraph 3 of the Declaration of Dar es Salam in November 2004. This statement is the foundation of the "process of the Great Lakes " (PGL). The already deep crisis, fueled by internal political and ethnic tensions to the various countries of the region, has been exacerbated in the DRC by the consequences of the two previous conflicts, including the large number of refugees they have produced. This situation will gradually make the DRC the epicenter of the Great Lakes conflict, a kind of iceberg head of the whole of Central Africa crisis.

Since 1996, the DRC plunged into a deadly war in two stages which divides it into 3 zones of distinct influences and facilitates organized plundering of its natural resources.

- The first Congo war (1996-1997): May 17, 1997 the joint military venture of Uganda, Rwanda and Burundi brings Laurent Kabila at the head of the Republic of Zaire, after forcing the president Mobutu into exile. The coalition is supported throughout the African continent. The area is controlled by Uganda and that Rwanda joined on the sidelines of the 1994 genocide. This emerging strategic area is defined as the axis of the three K: Kampala, Kigali and Kinshasa. It is designed to fill the void left by the fatal departure of Mobutu, a former ally.

- The Second Congo War (1998-2003): On 2 August 1998, 14 months after the capture of Kinshasa, occasional allies mutually separate. The break occurs at two levels:
  - Internationally, Laurent Désiré Kabila took issue with respect to the image of former malleable and manipulable sacrificed revolutionary. His old reflexes of Marxist and Congolese nationalism advocated by Lumumba resurfaced.
  - At the sub regional level, L. D. Kabila is much more tied to nationalist ideals. He rejects the tutelage imposed on it by its neighbors, and yields to the claims of the Congolese population who protested against the presence of Rwandan and Ugandan officials at the head of the army, police or diplomacy. Divorce is

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20 Arsène Mwaka Bwenge, "From one CEPGL to another: what alternatives to current strategies of integration and cooperation for development?" Centre of Political Studies, University of Kinshasa
21 In the words of Father Rigobert Minani Bihuzo SJ “The Lusaka agreements and their implications", www.grandslacs.net/doc/3229.pdf
consumed. The eastern DRC is again invaded by Rwanda, Uganda and Burundi, former sponsors of the AFDL who brought Laurent Désiré Kabila to power 14 months earlier. So for the second time in two years, Uganda, Rwanda and Burundi are involved to integrate by force DRC to the bosom of their area of influence. Rwandan and Ugandan armies settling permanently in the territory of the DRC, fueling local areas of lawlessness in the creation of ethnic or national rebellions militias who devote their allegiance flawless.

Rwanda and Uganda take openly and respectively part to the creation of the Congolese Rally for Democracy and the Congo Liberation Movement, the two main Congolese rebel movements. On the other side, Kinshasa gets military support from Angola, Zimbabwe, Chad and Namibia as well as the diplomatic backing of Congo, Senegal, Gabon, Cameroon, CAR and Sudan. The Second Congo War mobilizes, among others, RSA mediation efforts, Zambia, Kenya and Tanzania and occupies almost 10 years of the sub-Saharan Africa.

2. How Congolese nationality underlay the genesis of the conflict in the Region

Punctuated by sporadic interruptions, the DRC conflict has grown steadily since 1960. The chronology of the country’s history is dotted by mutinies of Public Forces (1960), secessions wars (1960-1963), regional insurgencies (1964-68), guerrillas (69-70). Although around 80s, the curve was sloped down, the lights door of violence with a political connotation and a relative renewed tensions occurred in the early 90s. Various forms of confrontations (urban riots, mutinies in the armed forces, rising public insecurity, renewed ethnic clashes) reappeared, revived by degradation regimes and the pernicious effects of the bloody crisis in the Great Lakes region.

When most analyzes about the war in the DRC seem to limit its cause to economic issues, political reasons are less significant and deserve proper consideration and analysis. The error in our opinion would be to raise the same level and sometimes confusing, causes political and economic consequences or otherwise.22

Many causes are mentioned behind the crisis in the Great Lakes, but more specifically in the eastern DRC. In the browsing, one of them seems important but if not ambitious, it is the claim of the original Congolese nationality. It is after this that the issue might come to a failed state and a weak institutional framework. It is from here that also came all the conquests orchestrated by some neighboring countries of the DRC whose objective was to infiltrate and control the national institutional framework.23 Suggesting output channels without setting consistently and ultimately the political issue could again jeopardize the

22 In the Report of the UN Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, a point on the recall of facts states that favorable conditions especially in the East of the country are the origin of the current occupation and the struggle for the exploitation of natural resources in the Democratic Republic of Congo. (See point D of the report).

Mahmood MAMDANI also alluded to the idyllic nature of Kivu as bait for the colonizer, installation and exploitation of the region. Having needed a work force, he simply pushed to resort to the people of the periphery that he transplanted from Rwanda. Read about When Victims Become Killers. Princeton University Press, 2001, p.239-240.

23 As Gaxotte Peter would say, when the state weakens, the best-armed individuals regain power (Gaxotte Pierre, la Révolution Française, Paris, Fayard, p.13)
future of the country and hatching latent misunderstanding that has always underpinned conflictual relationship between natives and migrants in the eastern part of the country.

The cross-border dimension of the conflict has created a complex interdependence between the Congolese regimes and conflicts in neighboring countries moving at a snail’s pace but safely in the logic of immediate neighbors of the African Great Lakes Region.

The aggravation of internal and regional tensions spawned a process of increasing militarization of Congolese society, with an increase in military spending, massive recruitment of girls and boys, growth in violence against women, rape, recruitment and use of children in armed groups, mobilization of self-defense militias halfway between a politico-military action and criminal activity. The number of fighters is estimated at over 900,000, not counting those cataloged as "part-time" fighters. In addition, approximately 300,000 of these fighters, nearly 10% would be children associated with armed forces and groups.

The genocide of the Republic of Rwanda in 1994 was probably the straw that broke the camel. The flow of hundreds of thousands of Hutu refugees and their massive presence in the Kivu provinces (North and South) negotiated by France and granted by Mobutu, led to the degradation of the eastern Congolese ecosystem. Moreover, the war in the sense of unfinished business in the mouth of the new government in Kigali will now be exported to the DRC and continue in the refugee camps turned into real military strongholds of the ex-FAR. These, remember, had retreated with weapons and money, but at the same time, they had either inherited the weapons left by the French military after Operation Turquoise, or had bought from other Zairian soldiers to reorganize the reconquest of Kigali. We also note a political imbalance that was gradually manifested through nationality claims. The Banyamulenge, who are the first people to initiate claims of Congolese nationality, through the mouth of Pasteur Bizimungu - first president of Rwanda after the 1994 genocide - reiterated their imperative to be recognized without further trial, Congolese. And Pasteur Bizimungu, a defender of the ideology of the Banyamulenge, to remind those who would dare to refuse recognition of the Banyamulenge Congolese nationality, to be cautious.

On the other hand, after the war by the RPF (Rwandan Patriotic Front) which led to the fall of Hutu Habyarimana regime, the Tutsi wanted to quickly get rid of the Banyamulenge considered "mercenary fighters" and, in their eyes, become troublesome; and in the same way Museveni, after receiving reinforcements of Tutsi in his NRA (National Resistance Army) that led him to power in 1986, got rid of helping them to regain power in Rwanda. Anyway, another non-revealed reason remains, for sure, to challenge and pursue Hutu considered as "main perpetrators of the Rwandan genocide" in DRC even in their last stronghold, in the refugee camps to inflict them correction, vengeance and an unprecedented setback; simultaneously dismantle these camps to ensure that the new government of Kigali which was still fragile has mastered security settings by neutralizing the danger and threat to fear.

24 Toussaint KAFARHIRE, THE OTHER FACE OF CONFLICT IN THE CRISIS OF THE GREAT LAKES. Historical memory on the citizenship crisis in Kivu, p.2
Following the 1994 Rwandan genocide, Rwandan refugees flooded and swept in large masses in the DRC, mainly in the eastern regions, which allowed free entry to the Interahamwe and other Rwandan fighters yet fenced and housed in camps with refugees who are civilians.

And during these times, the Barundi, peaceful in the Plain of Ruzizi in Uvira, unwarlike, except some armed groups that were rather opposed to political regimes in Burundi, namely the FNL and FDD, went constantly about their farming activities without being worried; however simply wiping mistrust and hatred due to their origin. This disdain, this crisis of confidence was based solely on ethnic considerations.

It is perhaps this mistrust that continues today with assassinations and killings of influential members of both Barundi and Fuliru communities in the Plain of Ruzizi, which always create social cohabitation rantings and complicate vision of lasting peace in this part of South Kivu. It may also be an extension of the killings in 1997 called Makobola riding, an area that straddles the territories of Uvira and Fizi and subsequent assassinations. The list is long.

Worse, it is this spectacular distance between the Bembe tribe and the Banyamulenge tribe, yet also living in the same territory of Fizi, which is becoming increasingly worrying, causing creation of self-defense groups and militias of tribal allegiance. This distance cements a social crisis that may, at any moment, bloody the Fizi area inexorably. It fundamentally alters the prospects for a peaceful community and living in the area.

3. The Great Lakes and cyclical instability: roots of crisis

- Migration and colonization as remote causes of the conflict

The causes of instability and the recurrence of cross-border conflicts in the Great Lakes region are to be found in the immediate and distant history of peoples and states which compose it. The phenomenon of migration, voluntary or forced, is probably at the core of conflict in the region. All conflicts in the region have in common the presence of a people widely regarded as indigenous majority and having in front of him an installed minority, sometimes age-old way on a shared common territory.

In the DRC, as we have seen above, the colonial policies, particularly for labor needs, helped to establish a more or less sustainable Rwandophones and Barundi populations in North and South Kivu.

Other reasons have contributed to the regional fire which often rekindles rekindling the least. Henry C. Hoeben identifies three main reasons that encouraged early movements of Rwandan-speaking populations to the eastern regions of Congo:

- The periods of famine that ravaged Rwanda in 1905, 1928 and 1929, from 1940 to 1943 and that of 1950-1952

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26 Some observers, including Colette Braeckman, a Belgian expert on the region, describe the conflict as the first African world war. And placing the emphasis on the number of African countries involved, the complexity of external sponsorships (or business-State) and the magnitude of the consequences, direct and indirect, caused by the conflict. Since 1996, the DRC plunged into a bloody war in two stages that partitions the three separate zones influences, and facilitates organized plundering of its natural resources.

27 Henry C. Hoeben, Human Rights in the Democratic Republic of Congo from 1997 to today, a challenge to the churches
• Overcrowding of Rwanda
• The labor required in plantations, mines, industry and roads in Congo.

These massive waves of immigration, especially that of 50 years, will help to create or strengthen on Congolese communities, rather heterogeneous clusters, previously nonexistent, called of the “Banyarwanda”, referring to the Rwandan cultural and geographical roots of its people and their Kinyarwanda language.

The first tensions between Banyarwanda and local populations occur fairly quickly after independence, contributing to political exploitation by some old political parties, of the consequences of such immigration. These tensions are then characterized by episodes of revolt of Rwandophone populations against local authorities.

In 1963 and 1964, a segment of the population Rwandophone for a regional separatism tried in vain to get the territories of Rutshuru, Masisi and Goma by a revolt that will be curbed by the ANC (Congolese National Army). Meanwhile, the new Hutu government of Rwanda led a policy that drives hundreds of thousands of Tutsi into exile mainly in the DRC, Uganda and Tanzania.

➢ **The Great Lakes after independence: logic of mutual exclusion, land conflicts and problems of nationality.**

• demographic pressures and land disputes

These initial tensions, the consequences of internal migrations and more recent migrations due to demographic pressures and the resurgence of increasingly frequent land disputes between local leaders and Rwandophone populations will help export, sustainably, the political and territorial scheme of mutual exclusion that is already running through the binomial Hutu / Tutsi in Rwanda and Burundi. This pattern will be brought to scale, and established as applicable to a pair Bantu / non-Bantu, making the regionalization of the conflict, feasible.²⁸

• DRC in the era of the factions

Two years after the defeat of the rebellion of the M23 in late November 2013, there still are more than 70 armed groups in the eastern Democratic Republic of Congo (DRC). Proliferation established by the Panel on Congo (GEC), a research project led by Jason Stearns and Christoph Vogel. The two researchers have just established a new mapping of armed groups in Kivu full lessons. The end of the M23 was made to believe that a period of stability would finally open in Kivu, after 20 years of endless war since the end of the Rwandan genocide of 1994. In October 2015, the researchers note, however, that 69 armed groups are still active in

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²⁸ Cyril Musila made the same analysis: “the systematic antagonism between Hutu and Tutsi in Rwanda as in Burundi and the gradual regionalization as ethno nationalism across the region refers to the intensification of agrarian and land struggles in these countries and especially in Kivu of Congo Zaire where there is still available land. So, in the territories of three countries where these entities is threatened, its congeners “feel solidarity duty to intervene.” “Populations of Congo (Nande, Shi, Bembe, Fuliru Rega, and others) and the Hutu (Rwanda, Burundi) being classified as Bantu ethnic groups and the Tutsi (Rwanda, Burundi) and Hima (Uganda) classified, for their part, as belonging to the Nilotic groups.”

[www.absolutelyjusticeandpeace.org](http://www.absolutelyjusticeandpeace.org)
eastern Congo in a highly degraded humanitarian context: 2.6 million people remain displaced in the region and 6.4 million people in need of emergency food aid.29

We can present, in the most recent order, the main armed groups in the eastern DRC as follows: See Appendix 30

Has East DRC substantial assets to recover after a so dark table studded with countless challenges?

Only a year after their "joint venture" politico-military, Laurent Désiré Kabila decided to break with the political, economic, diplomatic and military control imposed on him by Rwanda and Uganda.

For nearly a year, the Congolese army is led by Rwandan officers. Congolese diplomacy is also hostage. Kabila's unilateral decision to suspend military cooperation with the Rwandan and Ugandan sets fire to the powder.

On 2 August 1998, only 15 months after the fall of Mobutu, Congo and the whole Great Lakes region, slipped back into a war that will last 4 years, will make millions of people killed in the DRC and will cost in the Congo more than $ 18 billion.

This is a war on multifaceted evolution: if in its infancy it is nothing more than a thinly veiled attack on a coalition of neighboring countries (Rwanda, Uganda and Burundi), it slowly took the face of one and several rebel movements externally supported.

After the failure of the attempted coup, a liberation military movement will arise from the initiative of neighboring countries. This is actually the Congolese Rally for Democracy (RCD), hatched by two sponsors decided to maintain control of natural resources that abound in the eastern provinces of the DRC.

The subsequent schism of the Ugandan-Rwandan couple will affect the RCD rebel movement, which will burst into "a multitude of warring factions, one on behalf of Rwanda, and the other on the Uganda account but all terrorizing and exploiting the local population. The Movement for the Liberation of Congo (MLC) of Jean-Pierre Bemba appeared on the scene shortly after."31

This same MLC which widened the scope of the regionalization of the conflict in the Great Lakes and confirmed the cynical assumption of an army without border having gone twice, in the most brutal way, to assist the regime of President Patassé in Central African Republic to thwart the advance of the troops of the former rebel Bozize, now president of the CAR.

29 Jason K. Stearns and Christoph Vogel: The Landscape of Armed Groups in the Eastern Congo, December 2015 "The complexity of the war in eastern Congo, with its intricate network of actors pursuing many interests, can be overwhelming and confusing. The region is conducive to the emergence and development of armed groups and warlords, note "Enough Project ". http://www.enoughproject.org/multimedia/infographic-networks-eastern-congos-two-most-powerful-armed-actors

"One of the ways to predict where will emerge a new insurrection in the DRC is to look into past movements: Armed groups generate armed groups, as military leaders take advantage of existing networks and veterans, and revive ties with traffickers, arms dealers and miners, "said a report Usalama project. http://riftvalley.net/resources/file/RVI%20Usalama%20Project%209%20Mai-Mai%20Yakutumba.pdf

30 http://reliefweb.int/report/democratic-republic-congo/briefing-les-groupes-arm%C3%A9s-dans-les-troops-de-la-rdc

31 Report of the UN Panel of Experts on the plundering of natural resources in the DRC, op. cit.

www.absolutelyjusticeandpeace.org
It was only after the departure and vacuum of invading troops of Rwanda and Uganda in 2003, that the war will enter its third phase where there proliferation of smaller warlords took place, mainly in Ituri, and the establishment in the region of a logic of ethnic tensions between the Hema and Lendu themselves curiously also traditionally herders or farmers.

The emergence of tensions between Fuliru and Barundi in Uvira, recurring tensions between Bembe and Banyamulenge in South-Kivu, ethnic tensions in North Kivu following a competition for land, the local leadership-related claims, claims of territories, ... these tensions and confrontations that they cause, quickly recalled a lack of preparation by the previous governments to a mutual understanding, a multi-ethnic tolerance and poor management of nationality issues and or Congolese citizenship.

A multitude of armed groups will emerge in South Kivu, North Kivu, North Katanga and Ituri, many of them with an ethnic connotation.

Given this constellation of regional, State or non-State actors, the international community will launch the idea of an international conference for peace and stability in the Great Lakes region.

V. THE CONGOLESE CITIZENSHIP STATUS OF BARUNDI IN THE PLAIN OF RUZIZI?

According to history, in 1800, a certain Ntoroge led some groups of Burundians shepherds to Mboko in the Fizi area. A second migration brought the Burundians farmers in the Ruzizi plain. Later, many of their descendants were assimilated to Bafulero. A third migration brought the "Bazige". When these Burundians arrived in the plain, the Bafulero were not yet established.32

In the southern area of South Kivu, five ethnic groups are found there. While Bembe, Vira and the Fuliru which say they are layers and indigenous landowners, Rwandophones Banyamulenge and Burundians are immigrants settled in this area by the colonial power. Unlike the Burundians in the Plain of Ruzizi, immigrants Banyamulenge are the only ones who claim autonomous territories like Minembwe area.

It fits to note that the Ruzizi Plain is coveted because of its comfort very strategic graphic ground to allow cross-border trade.

The challenges of Ruzizi plain are mixed, especially as this plain is a strategic point in particular to the security of the DRC, as it is in a border area (Burundi, Rwanda, Uganda). She is full of resources and multisectorial several rebellions took as a starting point that plain. We quote: the rebellion organized by the Mai-Mai groups with conspiracy customary head of Uvira territory, Ndare Mwami, who was also a founding member of the RCD, is playing a double game in as close ties with Mai groups -May present in his chieftain and eventually join in 2001 the Mai-Mai supported by Kinshasa (4). Taking Uvira for a week by Mai-Mai in October 2002 allows the Mwami Ndare to build his image as resistant against

32 But sixty years later, in 1986, the Mwami of Bafulero declared that 95% of the population of the 'leadership of Burundians' was Bafulero against 5% Burundians and obviously under the influence of ethnocentric propaganda Rwandan Hutu he denounced the "tyranny of the Tutsi without rights, Hutu Bafulero". He concluded that the Burundians had to "go" in Burundi. Which at least has the advantage of making clear the challenges of what might be called agitprop history.
the RCD. The Mwami Ndabagoye, meanwhile, strengthens his position within the RCD and became a senator during the transition.

From 2004, following a decision of the Kinshasa government that wishes aside the former executives of the RCD, the Mwami Ndabagoye is deprived of his customary power and Bafuliro is termed as traditional chief in the chiefdom of the Ruzizi plain by the administrator territory. The Bafuliro and reach their objective historical control of customary power in the Ruzizi plain and Burundians see themselves as sidelined.

Chiefdom of Ruzizi Plain has long been the scene of violence, of identity character, between Bafuliru and Barundi, two ethnic groups in the South of the South Kivu province.

The questions on nationality and land have often been at the heart of their rivalries and have divided communities of commonly said “Barundi” and other local communities, mainly Fuliru. The Bafuliru consider the Barundi as invaders and immigrants from Burundi who came to occupy the lands of their ancestors.

The Ruzizi Plain is populated by Bafuliru and Barundi, who are estimated to represent respectively about 80% and 20% of the population of the area. Each community has reinvented recent history to legitimize its presence and its right to govern.  

Reasonably, we can situate the beginning of the permanent and continuous incursion of Burundians (commonly called the Barundi) in the Congo, in the Ruzizi Plain around 1900 to 1903. This is justified by the beginning of the effective occupation of Ruanda-Urundi in 1899 by Germany with the Usumbura military organization. We realize more, until the end of the First World War, apart from the Burundian group “Zige” installed first in Kisanga and then in the Highlands of Muhungu (Uvira), no other Burundian group has stabilized in the Plain of Ruzizi. This group established in the South was very compact and helped fighting against the Burundian rebels who went to Congo and returned again in Burundi. To reward the Barundi for their support in the fight against the mutineers, colonial administrators in 1928 created the “leadership - chiefdom of Barundi” in the territory of Uvira.

This historical survey allows us to better understand how to ask “the question of nationality” for Barundi, so fiercely debated in this part of Congo.

To be Congolese in 1996, it was important to have an ancestor belonging to a tribe in this country that the Berlin Conference had graciously given to Leopold II in 1885.

Twenty years after the Berlin Conference, several 'Congolese' tribes had never heard neither Berlin nor Leopold II, or the Congo. But this event passed completely unnoticed by the majority of the inhabitants of this vast territory, the event that occurred entirely outside of the will of concerned Africans, is the origin of today live a nightmare significant number of Congolese citizens.

According to the Constitution of 1 August 1964, was Congolese "any person whose one of ascendants is or has been a member of a tribe or tribal party established in the territory of

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33 Interview with Crisis Group, Territory administrator, member of the United Nations, civil society representative, Uvira, 19 and 23 January 2013)
34 Katembo Kakozi, Explanatory socio-political Factors of conflicts in the African Great Lakes Region, Laval University, Memory, Winter 2005, p. 20)
Congo before October 18, 1908" The law of June 29, 1981 speaks of the territory of Zaire "within its limits from 1st August 1885 as amended by subsequent agreements.”

Thus, the people who live for three or four generations in Congo, would be foreigners in the only country they have ever known.

Thus, Rwandophone groups that came from Rwanda-Urundi are trying to prove that their ancestors at a time when Africa knew no borders and where tribes circulated without any obstacle that hostile tribes had actually set foot on land which in 1885 will become private property of Leopold II.

Let's note that it is rather the imperatives of national unity and justice that guided the drafting of the 1972 law. The Law No. 72-002 of January 5, 1972 has dedicated social reality that has existed for more than a generation in the field. It grants Congolese nationality to all immigrants from Rwanda-Urundi established in Kivu before 1 January 1950 and who continued to reside in Zaire since. Its Article 15 says:

"The people from Rwanda-Urundi who were established in the province of Kivu before 1 January 1950 and have continued since then to reside in the Republic of Zaire until the entry into force of this law, acquired Zairean nationality on the date of 30 June 1960. “

The Political Bureau of the Popular Movement of the Revolution (MPR) specifies that the law is adopted "to end the intrigues and speculations."

At that time, all the "heavyweights" of triumphant Mobutu gave the best of themselves. It takes a good dose of ethno-racism to claim that it is the "critical" Bisengimana, former Mobutu's cabinet director at the time, who treacherously "misled" all the great intellectuals of the Board of Commissioners and the Parliament.

On June 29, 1981, Zaire has a new nationality law that completely overturns the principles of the one of 1972. Now you have to have an ancestor which was a member of a (part of a) tribe established in the Congo in its borders August 1, 1885. After the adoption of the new Law on Citizenship, a national identification operation was launched to "fix" the “non-Zairean” status of Barundi and Rwandophone. The identification was organized in the two Kivu and Moba and Kalemie areas. Following the 1981 Act, Tutsi or Hutu all parliamentarian candidates are rejected because of their dubious nationality '. Discrimination and exclusion begin to wreak havoc. The Mobutu regime to save itself in the crisis, is beginning to draw people one against the other, especially in Kivu. A crisis is looming on the horizon.

On reading the explanatory statement of the law n ° 04/024 of 12 November 2004 on Congolese nationality: "Congolese nationality of origin is recognized from birth to the child in consideration of two connecting elements from the individual to the Democratic Republic of Congo, namely filiation in respect of one or two Congolese parent (jus sanguinis), belonging to ethnic groups and nationalities whose people and territory constituted the Congo at independence (jus sanguinis and jus soli) or birth in the Democratic Republic of Congo ".

The principle of recognition of Congolese nationality applies to Congolese who is original either by affiliation, either by descent or even by presumption of law.

Under Article 6 of Law No. 04/024 of 12 November 2004 on Congolese nationality "is Congolese origin, persons belonging to ethnic groups and nationalities whose people and
territory constituted what became Congo (now the Democratic Republic of Congo) to independence.

The noticeable differences of the Congolese Laws on Rights attached to Nationality have thus granted, implicitly or explicitly, Congolese nationality to “Burundians” immigrants in the Uvira territory under the principle of “acquired rights”.

VI. THE BANYARWANDA STATUS

A report of a mission to Kinshasa and Kisangani conducted jointly by the Belgian organization of the General Commissioner for Refugees and Stateless Persons (CGRA), the French Office for the Protection of Refugees and Stateless Persons (OFPRA) and the Federal Office for refugees (ODR) from Switzerland described below the historical development of the law on Congolese nationality in regard to the Congolese of Rwandan origin. This joint mission was conducted as part of the ARGO project, an "administrative cooperation program of the European Commission (EC) in the fields of asylum, immigration, visas and border control"36

According to the report, everything starts with the Congolese constitution of 1st August 1964 which deprives Rwandophones (or Congolese of Rwandan origin, Congolese of Rwandan expression or Banyarwanda) the “transplant” of Rwanda in DRC in 1930-1954, from Congolese nationality.37 However, a subsequent "Decree" dated 18 September 1965 stipulated that the descendants of these transplanted people could freely opt for Congolese nationality.38

With the Law No 71-020 of 26 March 1971 relating to persons originating from "Rwanda-Urundi" [now Rwanda and Burundi] established in Congo before 30 June 1960, "all Rwandophones” established in DRC [then Zaire] before 1960 "regain their nationality"39. However, less than a year later, Law No. 72-002 of January 5, 1972 deprives again Rwandophones arrived in the DRC after 1 January 1950 of their Congolese nationality40. Subsequently, Law No. 81-002 of 29 June 1981 stated in particular that is “Zairean anyone whose one of descendants is a member of a tribe established in the territory within its limits from 1st August 1885”; most of Congolese of Rwandan origin lose therefore their Congolese nationality.41

Finally, Act No. 04-024 of 12 November 2004 on Congolese nationality, highlights, especially in the "Explanatory Memorandum" that: this law is intended to respond, first to the provisions of [....] the Constitution of the transition, and secondly to relevant criticisms by delegates to the Inter-Congolese Dialogue against Congolese law nationality, especially the Law No. 71-002 of March 28, 1971, Law No. 72-002 of 5 January 1972 in Article 15 and Decree-Law No. 197 of 29 January 1999 amending and supplementing Law No. 81-002 of June 29, 1981 (DRC November 2004).42

36 ARGO Project 2003, October 2004
37 ARGO Project Oct. 2004, p.44
38 ibid.
39 ibid, see Dialogue in August-September 1996, p. 21
40 ARGO Project Oct. 2004, p. 44
41 ibid.
42 DRC November 12, 2004, i.
The Act also states in Article 6 that "Congolese of origin anyone belonging to the ethnic groups and nationalities whose people and territory constituted what became the Congo (now the Democratic Republic of Congo) to independence "[30 June 1960] in 1960.

Thus, referring to the Congolese constitution, it should be noted that in granting citizenship to members of all ethnic groups in the national territory at the time of independence, the new Congolese constitution simultaneously and expressly granted citizenship to thousands of Rwandans and Burundians transplanted in what was the Belgian Congo during the 19th century. The new constitution was approved at 84, 31% during a constitutional referendum on Dec. 19, 2005.

All considerations made, this shows enough how Congolese legislation on nationality, very unstable and often contradictory over time, opened huge gaps to claims of any kind on Congolese nationality, including those who could not claim that nationality. Who is currently Congolese of Rwandan origin or expression, or who’s Rwandan national without possibility of claiming Congolese nationality under Law No 04-024 of 12 November 2004?

Thus, I note that with the adoption of Law No 04-024 of 12 November 2004, the Congolese people of Rwandan or Burundian origin have "automatically" regained Congolese nationality. Normally at this stage, no reintegration process of Congolese nationality was planned and no conditions have been imposed. The Congolese of Rwandan or Burundian origin are currently, in no way, required to report to government authorities in order to recover their Congolese nationality. In case of doubt, the interested person must go to his original chieftaincy (chiefdom) to collect and bring documentary evidence proving that he is a Congolese national, or simply seeks to find five people who can testify about his nationality if he lives far away from his place of origin. It is the same for all other Congolese people of other origins.

The problem lies not in the recovery of nationality by Congolese of Rwandan or Burundian origin, but rather in the distrust and disdain that exist between them and members of other ethnic groups, especially in the Kivus.

I can even deduce from the law of November 2004 that the Congolese of Rwandan or Burundian expression (Tutsis and Hutus) are considered "original Congolese citizens and not by acquisition," since "the time dimension" is merely limited to the date of Congo independence, and not in 1885, as in the previous law. Furthermore, since the adoption of this law, no further action has been taken against Congolese of Rwandan or Burundian origin for the re-integration or claim of Congolese nationality. To date, I think, internal tensions and violence should no longer be revived by the ethnic or citizenship dimension.

It’s equally rash to assert that there’s no Congolese Banyarwanda, better, Congolese of Kinyarwanda expression rather than saying that all Banyarwanda living on Congolese soil are indigenous of the territory that they claim. The majority of this population are rather non-indigenous and often it is this category of persons which was the cause and the object of socio-political misunderstandings in Congo. From the viewpoint of historians and social scientists, there are three different groups of Banyarwanda having always lived in the Congo and which have a significant difference in the nature of the claims of citizenship. Generally, only one of these three groups appears to be unanimously as indigenous while the other two have never...

...
lost their status as immigrants. This is respectively the Banyarutshuru in North-Kivu, mostly Hutu. The Banyamasisi (Hutu and Tutsi), however, again in North Kivu and Banyamulemunge living in South Kivu (only Batutsi) have always been regarded as immigrants having come during different periods. What difference can there be between these three groups? What is the nature of the crisis they generate and what has been the basis of relations conflict between these communities themselves and other peoples of the region?245

The situation of Banyarwanda of Congo deteriorates in 1972 following the political developments in the Great Lakes region. Indeed, a true genocide of the Hutu just took place in Burundi that year. While in Rwanda, Juvenal Habyarimana took power by so-called Cultural Revolution, following the so-called social revolution of 1959. The terror left by the Rwandan genocide has made unpopular Batutsi throughout the region, while more than 200,000 Hutus are thrown on the road to exile. The influx of these insecure in Kivu former immigrants including 1959 refugees who turn to the Kinshasa government to seek protection.

It was finally in 1981 that parliamentarians have adopted the nationality law based on jus soli, recognizing only the individuals who had their ancestors, born and living in Congo before 1885, the year that marks the demarcation of political boundaries by the Berlin conference. The 1981 Law will be confirmed to the general forum of the National Sovereign Conference ten years later, which was a highlight and a defining moment in the political history of Congo after independence.46

A new socio-political dynamic in the 80s around the issue of nationality will be expressed in the claims and the Kivu Banyarwanda regroupings who felt aggrieved by this new law. UMOJA came to the day and included all Hutus and Tutsis living in North Kivu. Sekimonyo Cosmos (Hutu) and Munyankuo David (Tutsi) co-chaired.

VII. THE ISSUE OF ETHNIC CONFLICTS AND THE CONGOLESE NATIONALITY

1. Outline

Upon accession of the Congo to independence on 30 June 1960, citizens of all categories of Banyarwanda cited above were considered Congolese full. Thus, during the communal elections opened to Congolese citizens in 1959, Mr. Marcel Bisukiro Hutu Rutshuru (North Kivu) was elected councilor of the town of Bukavu, zone of Kadutu (Province of the South-Kivu). Similarly, four Banyarwanda had participated in the conference of the Brussels-Panel that decided on the independence of the Congo.

At provincial and national elections in 1960, several political personalities of Rwandan expression were as well elected. This included: Marcel Bisukiro, Senator of Kivu, Joseph Midiburo, another Hutu from Rutshuru, national deputy of North-Kivu; Cyprien Rwakabuba Shingga, Tutsi from Rutshuru territory, provincial parliamentarian from his territory of origin; Jean Ruiyereka, Tusti of Masisi, national parliamentarian.

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245 Kafarhire Toussaint SJ, The Other Face of conflict in the Great Lakes crisis, Historical Memory on the crisis of citizenship in Kivu, p4).
46 Habyarimana, by a military coup, had just replaced the civilian government of Kayibanda Gregory and proposed to continue the cleaning of Tutsi descendants, even those from mixed marriages, scattered across universities, and who continued to take the place of Bahutu in the education program.
Later, Marcel Bisukiro was appointed Minister of Foreign Trade in the Lumumba government; Midiburo Joseph was promoted at the Second Vice-Presidency level of the Chamber of Deputies (he will even be President of the National Assembly in 1963); Cyprien Rwakabuka Ruiyereka and Jean were named respectively Ministers of Finance and Education of the Government of Kivu.

This brief introduction wants to demonstrate before and at the time of accession of the Congo to independence, that there were either problems of cohabitation (to the point that Bisukiro was elected in a predominantly inhabited by Bashi community of the city of Bukavu), or nationality issue.

2. **Attempts to settle conflicts related to migration by the Laws in the DRC:**

In 1960, Belgium granted to the Congo a Basic Law as an interim constitution until the Congolese people give themselves a constitution a day after the country’s accession to international sovereignty. The Basic Law determines the borders that match those of the Congo Free State. Congo, in its borders inherited in 1960 is from 30 June 1960, an independent state whose inhabitants have, on the conditions determined by law, the same nationality in the territory within which they have the freedom to move and settle. In that same basic law, Belgium has left the new Congolese state, Art. 219, free to define himself the conditions for acquisition of nationality.

Following irregular migration and insubordination of migrants, conflicts between immigrants and native population regularly took place. The Zairean government tried to resolve the situation through legislation. On 5 January 1972, the Zairian identity is recognized to the Banyarwanda, the Barundi and other groups based in the DRC under the same circumstances and conditions: Is Zairian, everyone whose one of the ascendants is or has been a member of one of the tribes established in the territory of the Republic of Zaire in its limits of 15 November 1908 and as modified by subsequent agreements.47

In the spirit of the Luluabourg law, "Are Congolese those whose one of the ancestors belonged to a tribe or tribal entity settled on Congolese territory before 15 November 1908". Two conditions must be met: have influence and be a member of a tribe. This underlines the exclusivity of Congolese nationality. All those who have had their ancestors on Congolese territory before the mentioned date became collectively Congolese to the date of accession to independence.

Here it is important to consider, not without reason, why the constituents of Luluabourg posed two contradictory principles, as they have done the hard part by opening up to the world, the ethnic dimension and contractual dimension of the Congolese nationality.48

The confused nature and especially falsifying identity documents make the Law non-operative. It eventually was repealed and replaced by another, that of 29 June 1981. This

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47 Article 15 states: The people from Rwanda and Burundi which were established in the province of Kivu before 1 January 1960 and who have continued to live since then in the Republic of Zaire until the entry into force of this Act have acquired Zairian nationality on the date of 30 June 1960

48 Professor Mwayila Tshiymbé addresses this confusion by stating this: "on the one hand, when the Luluabourg constitution is drafted, the Democratic Republic of Congo has not emigration traditions of its people in the world to think, willingly or unwillingly, that some citizens take foreign citizenship; secondly, conceptual innovation of the Congolese nationality of origin was a shock to the Congolese political class."
law clarified the issue by bringing some innovations such as "recognizing the mother to also pass Zairian nationality by descent; the establishment of a small and a large naturalization and the abandonment of the legislative procedure to the administrative procedure, the loss by express option of the quality of the Zairian citizen who marries a foreigner, the strictly individual character of demand for Zairian nationality, except for the addition of the territories referred to in Article 109 paragraph 3 of the Constitution ".

This law makes more restrictive access to Zairian nationality which is recognized solely to those from Rwanda-Urundi established in the province of Kivu before 1 January 1950 following a decision by the colonial authority. It maintains the criterion of a single nationality and refuses that Zairian nationality is held concurrently with another nationality. It states that to be recognized Congolese (nationality of origin), the membership tribe was to be installed inside the Congolese borders of the August 1st, 1885.

This allows to question the colonial archives to properly establish the tribes and large families living in Congo from that year, and from the information obtained in the Official Bulletin 1885 (specifying the borders of the Independent State Congo still floating and fixed in agreement with Germany to Rwanda and Urundi, with France and Portugal), it is possible to establish the family tree of tribes and large Congolese families.

This staggering legislation has attempted to address the issue of Congolese nationality in utter cacophony. Apart Burundians and Banyarwanda who were already established in the Congo in 1908 limits (Ruanda - Urundi), the question of claims for citizenship from the Kinyarwanda expression groups established in East DRC should return to the table of the legislator.

Marital exchanges and internal migration have sometimes blurred the background. The relative ease with which IDs are obtained or falsified accentuated the confusion.

3. **Internal perspectives for the settlement of nationality-related conflicts:**

The DRC is one of the few countries in the world with nine neighboring countries. This situation leads to differentiated cooperation problems with each neighboring country but also security issues.

Internal mechanisms do not exist formally. They can however match the pattern of negotiations, mediations and various agreements that have been conducted and concluded in the past, with the aim of bringing peace to the DRC in a special way and in the Great Lakes region in general. This is also an opportunity to castigate this remarkable lack of institutionalization of alternative mechanisms of conflict resolution that are a recommended tool for institutional and legal reforms in the DRC. The reference in this paragraph to the peace agreements with the aim of laying the foundations for the stabilization of the DRC is

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49 see Art. 1

50 If the 1981 Act has complicated the 1964, it has at least clarified that Banyarwanda, Barundi and Banyamulenge in Congo installed before 1885 are Congolese full and that there should not be any quarrel. But since there is a “but”, if clearly define its Banyarwanda and Banyamulenge and their descendants is the real question, it is for the Congolese government to respond dispassionately and without qualms. The answer to this question highlights the need for a national Office on nationality, offers

FWELEY Diangitukwa states: “The 1981 Law contributes to the deterioration of inter-community relations. Indigenous and foreign camp and freeze their positions in a vigilante attitude that paves the tribal violence, as it is the case in Masisi, Rutshuru and currently in Beni and Lubero, then rebellions as constantly led by the Banyamulenge.
the rule here, otherwise the resolution of conflicts arising from citizenship claims in the DRC will struggle to institutionalize especially since the law has not definitively settled the question of groups and individuals who have enjoyed the Congolese under the influence of the 1972 Act.

In light of the various crises identified as such and resulting in claims of ethnic or tribal identity closely linked to the confusion that Congolese laws on nationality have created, solving approaches, though sometimes ineffective or inappropriate, have not failed. Timidly began, the resolution of internal conflicts experiencing dynamic pulse through the various negotiations and mediations undertaken to try to end peacefully the crisis.

Without denying that the historical process in the DRC yesterday, as today reveals many bloody shocks, many conflicts within and between communities, the objective study of the sources and ethnographic data clearly shows that the Congolese civilization is essentially defined in terms of dialogue, compromise, coexistence and peace, but non-codified mechanisms.

Nationality in the Eastern DRC has become so recurrent that it requires an urgent, consistent, intelligent and ultimately solution, because it looks like a thorn in the back of the Republic. There is a necessity and urgency of a new law in order to innovate and scratch abuse. A law that should include recognition of and need for ADR as supportive mechanisms to conflict resolution is desirable.

"The Kivu, North and South, continues to follow an uncertain and even chaotic trajectory according to sources. On the one hand, armed clashes continue between disparate armed groups and the regular army, fueled by the feeling of opposition all that is foreign-born."

As stated in the introduction, the basis of this research puts up with the analysis of conflicts related to migratory movements in the past, which led to disputes and claims of Congolese nationality by those having moved from Rwanda, Burundi to DRC, or those from the former Ruanda-Urundi. How did the legal instruments address this issue which has remained a problem from day to day?

It is these challenges that are seen today as engager factor for violence and the current crisis shaking the DRC whose nationality legislation was unstable and currently offers very little security to groups or individuals that, allegedly, have already acquired this nationality by the laws of 1972 and 2004.

If we can claim to resolve conflicts related to transplants and immigrations in the DRC which resulted in violence due to identity and local leadership claims, it is important to visualize the major factors of this. These factors are considered how being the driving explanations of the crisis in the DRC particularly and the Great Lakes broadly.

The causes of conflict are widely considered to be external rather than internal to the Congo. In particular, the Congolese crisis is seen as imported from Rwanda in connection with other countries which seem not to appear directly at the stage of the crisis. People feel that the conflict has spread and intensified in the east of the DRC after the 1994 genocide occurred in neighboring Rwanda with the arrival of refugees and genocide in the country. The plethora

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51 G.Villers and AD Willame, they state that the clashes between those who consider themselves" authentic Congolese to those they call" people of dubious nationality ", c that is to say, essentially those having been transplanted and immigrated in the East DRC.

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of militia and rebel groups that have proliferated then either consists of individuals from outside or groups that have formed to defend against these Rwandan invaders.

Although there was no official confrontation between Rwanda and Congo and despite rapprochement between the two countries, it was clear that it is perceived as an external conflict that is being conducted on Congolese soil with various aims including identity, local leadership, territories claims.

Perceptions stating that the conflict is "external" reflect both the reality of foreign intervention in the DRC and a presumption that certain groups do not fall within the legitimate claims of belonging. For example, the fact that the National Congress for the Defense of Identities of the People (CNDP) and the Democratic Liberation Forces of Rwanda (FDLR) (two of the main warring militias) are respectively associated with the pan-Tutsi or pan-Hutu identities, having been operating across the region is taken as evidence that all Hutu or Tutsi are not, somehow, Congolese despite the fact that some of these populations are present on the territory that is now DRC since before independence. In fact, many people suggest that those who speak Kinyarwanda could be recognized as Congolese if they renounced to ethnic ties.

Proving a legitimate status of "Congo" remains crucial to gain power at the local level in the Kivus - and therefore have access to enjoyment of national wealth and rights. In particular, define who is actually Congolese determines access to land. So, citizenship issues, access to power and land ownership are all related: "owned" land is a limited benefit if it is not accompanied by political rights or access to power to defend these rights. Moreover, political rights are subordinated to the recognition of the citizen belonging both locally and nationally.

The conflict in the Congo as external, exacerbated deep-rooted perceptions that communities that are presumed to be sympathizers or allies of Rwanda - especially those that are expressed through variations of the Kinyarwanda language - are necessarily considered "foreigners." The conflict, therefore, focuses on the foreign character of the actors in the conflict.

In the Democratic Republic of Congo, in post-independent period, the region of Kivu (North and South) is the part that shares own violence in the sub-region of the Great Lakes: land, institutional, security and physical violence where mistrust and competition for both the natural resources (land) and political (power) remain very present. For it was from before 1960 until 1994, the advent of migratory flows officially organized or illegal from Burundi and Rwanda. **There is at this stage no formal agreements between the DRC and neighboring countries on the transplant peoples in DRC. This was done de facto.** They have created a very early logic of distinction and of confrontation between the Banyarwanda populations speaking kinyrwanda and from Rwanda including the Burundian expression, against the natives. Analyzed summarily as ethnic conflicts, confrontations and violence that accompanied them were expressed in two ways.

First in terms of land, insecurity of land tenure and land dispossession of farmers resulted in violence that caused many deaths in local conflicts. Then politically, the group Banyarwanda and Barundi (Hutu and Tutsi alike) and Aboriginal politicians have tried to marginalize each other and to acquire dominant positions in political bodies at regional and national level.
Because these dominant positions are privileged ways for land appropriation and manipulation of new land laws that are enacted during this period. Thus the political and violent competition for land already has been exacerbated by the confusion brought by two successive laws on Zairian nationality in 1972 and 1981, thus granting the conflicts between the two groups an institutional framework.

Since independence of the Democratic Republic of Congo in 1960, a sharp disagreement has developed between the two groups regarding nationality and the territorial coverage of Rwandan origin and other populations. **These three issues – nationality, local leadership and territory** - will thus remain connected without an institutional framework or the state interventions which arrive at clarifying the conditions for peaceful coexistence of these groups.  

The current situation in the DRC yet complex, the last law that governs Congolese nationality which dates back to 2004, and that governing the foreigners Police in the DRC which dates back to 1983, have not been thoroughly reviewed. Meanwhile, the context of the conflict, constantly-evolving in the DRC, sets new parameters which, if taken into account, the crisis would be lessened. The East DRC’s conflict, resulting from migration movements and settlements, is multifaceted and generated claims of several forms including: claims related to identities, claims of territories, claims of local leadership by Rwandophones who are the tenors. For most of Congolese, the trigger for this endless conflict so far, and mercilessly ravaging eastern DRC, is attached to the exiled Rwandan mainly. If the degree of responsibility of Rwandans is difficult to verify, it seems clear, however, that the causal link between the genocide in Rwanda and the Congolese conflict generated a few glorious image of Rwandan immigrants in the DRC, the image of intruders on Congolese territory, which emigrated to protect themselves and were warmly welcomed, but today abusively claiming the territories where they settled. It is the same transplant operations that have not left free DRC of its legislature with misappropriations of rural and sometimes urban lands to the detriment of peaceful peasants.

For the Congolese population, this attitude is none other than the witness of Rwanda’s former desire to annex eastern Congo, full of riches as far as Rwanda is poor in resources. However, it remains important to emphasize that we cannot speak of "hatred of the

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52 In 1938, the colonial government put in place the commission No. 128 / November 02 TFR1 who appointed M.Etienne Declerk King’s deputy public prosecutor at the Court of First Instance in Bukavu, as Delegate to Negotiate an ACT ASSIGNMENT, the benefit of the colony, the rights which the Bahunde traditional authorities had on a plot of 349.1 km2. Mr Declercq served as attorney of Bahunde leaders. The negotiations succeeded successfully in 1939, and 13 November of the same year was finally signed the "Act on the sale of indigenous rights" between the colony represented by Amédée Van Cleemput, Masisi territory Assistant Administrator and customary authorities of the Bahunde community represented by M.Declerk and Grand Chief of Bahunde, Mr. André Kalinda. The price of the land was of 35,000 F at that time. From 1930 to 1954, Belgium transferred in Masisi thousands of Banyarwanda Hutu and Tutsi, who today ended up becoming the majority of the Masisi territory (80% of the population). Two facts demonstrate that the colonial power, in undertaking such transfers of populations, granted citizenship status to those immigrants of the Belgian Congo:
- When immigrants arrived in the North Kivu district headquarters, they gave their map of Rwanda-Burundi and authorities issued their citizens booklets of Belgian Congo;
- Immigrants were organized "customarily" on the land where they were installed. So every village was led by local notables. It was even created a traditional chieftaincy for transplant Banyarwanda: the Chiefdom of Gishari at the head of which was placed Wilfried Bucyanayandi. Read: Kabuya Lumuna Sando, « Conflits à l’Est du Zaïre », Kinshasa, 1997, P.P 80-81

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Rwandans”. A fellow Congolese does not hurt to rub a Rwandan or Murundi; it is rather the political elites that disturb and generate this troublemakers image, especially as Rwandans are few, but in key positions, generating frustration and suspicions of favoritism. The persistence of this conflict and the difficulties to improve the situation, despite several attempts of peace agreements certainly fall under several explanations.

It is correct to argue that many of the Congolese nationality law proceeds from the sovereignty of our country. We wish, however, to remind that the exercise of sovereignty recognizes the limits imposed by international rules and principles of human rights as outlined above.

4. **Attempts to settle conflicts in the East DRC:**

Following a warfare led by a coalition of national and regional forces (foreign forces including Rwanda, Burundi and Uganda), May 16, 1997, President Mobutu went into exile in Morocco, a day just before the entry of rebel forces in Kinshasa and the self-proclamation of Laurent Kabila as president of the Zaire renamed Democratic Republic of Congo.

As the former allies were behaving in the DRC as in a conquered territory, Laurent Désiré Kabila decided to break these alliances, July 27, 1998. This sharp break, if one can say so, and the refusal of former allies of being expelled from Congolese territory, caused the outbreak of a new war conducted by the new coalition forces on 02 Aug. 1998.

With the known presence of foreign troops in the war, the Congolese crisis had an international dimension. Also, the African Heads of State and the international community have rallied around this new crisis of political and institutional legitimacy.

- **Mobilization of the international community and launch the African Great Lakes “process”**

Faced with a regional impasse and the atrocity of the conflict, the context of war and the devastation it has caused in the Great Lakes region in general and in the Democratic Republic of Congo in particular; the international community and the UN Security Council will declare the situation in the Great Lakes region as a threat to peace and international security.53

This finding will push to call, for the 1291 and 1304 resolutions of the U.N. Security Council in February and June 2000, the organization of an international conference on the Great Lakes region with the main objective to set up a regional network to facilitate the adoption and implementation of a stability pact, safety and development articulated around four themes:54

- Peace and Security
- Democracy and good governance
- Economic development and regional integration
- Humanitarian and social issue Action

The international momentum generated by these two resolutions of the Security Council, initiated the process of the Great Lakes (PGL), at least the preparatory phase. The PGL

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53 Colette Braeckman, « l’enjeu congolais, l’Afrique centrale après Mobutu », Fayard
gradually generated 4 types and levels of organs. At the national level, states organize national preparatory committees (CNP) that will be established as basic organs. Their main task will be the preparation and development of the contributions of each country to the Conference.

These committees assembled at the regional level, to form the Regional Preparatory Committee (CRP) whose role is to harmonize national contributions and proposals for the submission to the Regional Inter-Ministerial Committee (CIR). The Summit of Heads of State crowns this series of committees as the supreme body of the Conference of the Great Lakes. Its mission is the adoption and ratification of the protocols and declarations from the GL process.

➢ The Declaration of Dar es Salaam and the Nairobi Pact:

In November 2004, the Declaration of Dar es Salaam on Peace, Security, Democracy and Development in the Great Lakes region ended the first Summit of the ICGLR held in Tanzania from 19 to 20 November.

Signed by the eleven core countries (DRC, Angola, Sudan, Rwanda, Burundi, Kenya, CAR, Congo, Tanzania, Uganda and Zambia), it will register as a historical starting point of PGL proclaiming:

- The collective determination to transform the Great Lakes region an area of peace and sustainable security and cooperation based on the convergence of political strategies in the context of a common destiny that the signatories are committed to achieving.
- Respect for the aspirations of peoples and the promotion of participation and partnership with stakeholders in the entire international community.

These guidelines, and the whole statement will form the basis of the Peace, Stability and Development Pact which gives to the Conference, by its signature on 15 December 2006 and its imminent ratification by national parliaments, a supranational status, with an Executive Secretariat headquarters in Bujumbura, Burundi.

Thus conceived Conference was institutionalized in a context of regional diplomatic dialogue at the highest level. The pact creates, in addition to the Executive Secretariat, a monitoring mechanism and a special Fund for Reconstruction and Development of the Great Lakes region.

The pact includes both signatories of the Declaration of Dar es Salaam (see above), the group of co-opted countries (Botswana, Egypt, Ethiopia, Malawi, Mozambique, Namibia and Zimbabwe) and the African States members of the GOF (Gabon, Nigeria, and RSA). He is called to be "the new regional architecture for peace, security and lasting stability; a suitable framework for the revitalization of economic development and regional integration of the countries of the region through collective promotion of democracy and good governance, legal and coordinated exploitation of natural resources and use common infrastructure, thus realizing Vision of heads of State in the statement of Dar Es Salaam.\(^{55}\)

➢ A balance sheet perspective of regional integration efforts with regard to the identity crisis in the Great Lakes

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\(^{55}\) Second Summit of the International Conference on the Great Lakes region, UNON, Nairobi, 14-15 December 2006, the draft annotated agenda.

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• **CEPGL:** The balance of the CEPGL, which operated almost in normal manner until 1996, is relative. The social and economic regional integration component failed.

Bertin Salumu identifies four conflicting visions as causes of the failure of the CEPGL. A Mobutu ‘vision’ that makes the DRC the ‘alpha and omega’ of CEPGL limited to 3 states. This vision subjects the organization to only Congolese interests.

- A Museveni vision of the Great Lakes region, much larger than the only CEPGL, should lead downstream to the creation of a swahiliphone republic consisting in southern Sudan, DRC, northern Angola, Burundi, Rwanda and Uganda (which would spearhead). So this is an expansionist vision of the influence of Uganda looking for a country or a rear periphery to ensure and sustain its economic growth, but also the resurgence of the strategic need to link its Indian coast to Atlantic Coast (DRC, Angola).
- A Kagame vision which considers the Great Lakes region as a tutsiland (composed of all the countries that host Tutsi population, whatever their status or number) with the DRC as hinterland. This vision corresponds to the old dream of a hypothetical Hima-Tutsi empire. This is a protective vision of the Tutsi ethnic group, marked by atrocities and genocide of which she was the victim that the Kigali regime brandished to justify its military intervention in the region.
- A so-called Western vision of “Balkanization” of Congo ignoring the state sovereignty of the DRC, would aim to secure the Kivu provinces in Rwanda and Burundi, thus solving the economic viability of problems and overcrowding of these two states.

• **CEEAC:** Founded in 1983, the Economic Community of Central African States (ECCAS) brought together at regional level: Angola, Burundi, DRC, Cameroon, Congo, Gabon, Equatorial Guinea, Sao Tome and Principe, Chad, CAR and Rwanda. The Rwanda withdrew from the organization in 2007. It aimed to use the assets available in Central Africa (natural resources, energy potential, forestry and agricultural resources, human resources) to promote regional cooperation and the creation of a common market.

The CEEAC is another example of an African integration strategy poorly-thought, ill-reasoned and inefficient, dispersing the integration effort in a multitude of organizations whose fields of action and skills are juxtaposed.

Despite the incorporation of security objectives, it has failed to impose to prevent various conflicts that have shaken the region. It had very little presence in the peacekeeping efforts as a regional organization. It is currently chaired by President Joseph Kabila of the DRC.

It has been conspicuously absent on the diplomatic, the military and humanitarian scene. 7 out of the 11 countries which make it up, have experienced armed conflicts of varying magnitude. Member countries clashed militarily in the DRC (Angola, DRC on one side, and Rwanda and Burundi on the other) under the neutral look of the organization whose attitude bordered on the ridiculous.

Angola participated in a civil war in Congo which ousted the elected President Pascal Lissouba, to replace Denis Sassou Nguesso to power in Brazzaville.

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The DRC has openly supported the rebellion of President Bozize, in the CAR, against the authority of President Patassé who, meanwhile, maintained cordial relations with the MLC rebellion of Jean-Pierre Bemba opposed to the Kinshasa regime, all without the CEEAC’s reaction. The attitude of Rwanda, who retired from the organization in 2007 is not to condemn, to the extent it decides, lucidly, coming off of an organization purely declaratory or fanciful. Rwanda has lost nothing by separating a regional grouping making figure of empty shell. In over 20 years of activities, CEEAC still focuses only on preparatory studies. It is appropriate to ask the question of when does-it intend to come up finally to action.

- **The International Conference on the Great Lakes Region (ICGLR):**

  The idea of organizing an International Conference on the Great Lakes Region (ICGLR) is based on the recognition of “the three fundamental characteristics of the situation in the region:

  - The first is that the conflict in the Democratic Republic of Congo has regional dimensions;
  - The second is that the people of the Great Lakes region are so closely related ethnically, culturally and linguistically that instability initially exclusively endogenous to each country quickly comes to spread and to create and maintain a dynamics of conflict throughout the region;
  - And the third is that it is in a regional framework that must be sought solutions to the conflicts and instability endemic countries

ICGLR considers all regional actors into a network. Thus, it is open to parliamentarians from the region, to non-State partners (NGOs, youth representatives, forum of women) and to the international community (gathered within the GOF). Designed as a regional consultative framework able to create the conditions for peaceful coexistence, lead to the democratization of societies and promote better cooperation between state and non-state actors in the long term, the Conference gradually institutionalized and creates an architecture that takes the form of a regional network.

This grouping is based on two pillars (*please see above*):

- **The Declaration of Dar es Salaam:**

  Signed on 20 November 2004, it is the first regional initiative to re-launch the political dialogue between the States which have clashed in the DRC. This is a significant step in the process, to the extent that it raises the priority policy options and guiding principles that govern it. It represents the commitment of the 11 core countries of the Great Lakes region to worthily face their common destiny and unite in a shared development effort in the region.

  The statement is centered on 4 main options:

  - Peace and security, in particular by promoting the adoption and application of non-aggression and common defense pact and the creation of a regional security framework for the prevention, management and peaceful resolution of conflicts.
  - Democracy and good governance, including the promotion of a culture of peace, dialogue and tolerance, consolidation of the rule of law, strengthening leadership capacity, transparency of electoral processes and effectiveness of judicial services.
  - Economic development and regional integration
- Humanitarian and social issues that the settlement of the question of refugees, protection of civilians.

- **The Nairobi Pact:**

The Pact on Security, Stability and Development in the Great Lakes Region, said "Nairobi pact", Signed in Nairobi in December 2006, this agreement reaffirms the commitment of the States of the region to work towards peace, stability and development in the Great Lakes. It specifies the priority policy options and guiding principles taken to Dar es Salaam in 2004 and urges Member States to base their relations on the principles of national sovereignty, territorial integrity, and non-interference in internal affairs of the other Member States, non-aggression, cooperation and peaceful settlement of disputes.

The pact enriched the process 10 protocols derived from choices made in the Declaration of Dar es Salaam. These are the protocols:

- Non-Aggression and Mutual Defence in the Great Lakes region
- Democracy and good governance
- Judicial cooperation
- Prevention and Punishment of the crime of genocide, war crimes and crimes against humanity and all forms of discrimination
- The fight against the illegal exploitation of natural resources
- The specific area of reconstruction and development
- Prevention and Suppression of Sexual Violence against Women and Children
- Protection and assistance to IDPs
- The property rights of returnees.
- Management of information and communication.

These protocols seek to eradicate the causes and sustainably address the consequences of cyclical conflict that decimated the region.

They intend to solve thorny issues of refugees, access to land, protection of minorities, issues of identity and the right of return; issues that were at the heart of the regionalization of the conflicts in the Great Lakes.

**VIII. MECHANISMS AND APPROACHES FOCUSED ON THE DRC CRISIS**

1. **The Lusaka cease-fire agreement and its aftermath:**

On 5 April 1999, tensions between the RCD about the dominance of Banyamulenge reached a peak when RCD leader Ernest Wamba dia Wamba moved his command center from Goma to Kisangani area controlled by Uganda. Another sign of rupture appeared when President Museveni of Uganda and Kabila signed a cease-fire on 18 April in Sirte, Libya, after mediation by Libyan leader Muammar Gaddafi, and when and RCD and Rwanda refused to take part. May 16, Wamba was ousted from the RCD in favor of a pro-Rwanda face. Seven days later, the different RCD factions fought for control of Kisangani. On 8 June rebel factions met to try to establish a common front against Kabila.

These circumstances contributed to the first cease-fire of war. In July 1999, the agreement of cease-fire agreement was signed by the six warring countries (Democratic Republic of Congo, Namibia, Angola, Zimbabwe, Rwanda, and Uganda), and on 1 August, the MLC. RCD refused to sign. Under the agreement, the forces of the various parts under the control of a
joint military commission, cooperate in disarmament and control of armed groups in the territory, particularly those identified as being at the origin of the genocide in Rwanda 1994. But the disarmament of the militias is waiting.57

The military option used to gain or retain state power failed, it has given way to bitter negotiations driven many times by the international community. Gradually, the negotiation and dialogue have emerged as way out of the quagmire imposed by this war. Held in Sun City in South Africa, the Inter-Congolese Dialogue led to the Global and Inclusive Agreement (IGA) signed on 17 December 2002. This agreement is the result of several other meetings such as the Victoria Falls Summit I and II, Pretoria, Durban, Port Louis, Nairobi, Dodoma, which called for an immediate and unconditional cease-fire in the DRC. It is also the fruit of the Lusaka Agreement, Windhoek and Gaborone meetings which have yielded other outcomes.

However, before we get to the Global and Inclusive Agreement, briefly let’s review the steps leading up. From 3 to 8 September 1998, the Heads of State have met in Victoria Falls and I have decided to:

- Mandate the Zambian president Frederick Chiluba to find a peaceful solution to the war in the Democratic Republic of Congo in bringing the warring parties to sign a cease-fire and said appointed mediator in this war;
- Instruct the Ministers of Defense and other officials to work closely with the OAU and the United Nations; and has the mandate they meet at OAU headquarters in Addis Ababa, Ethiopia, Thursday, September 10, 1998, to set terms for an immediate cease-fire and a compliance monitoring mechanism elements of the cease-fire, particularly those relating to the withdrawal of foreign forces from the Democratic Republic of Congo.

Pursuant to the decision of the Heads of States at the end of their Victoria Falls Summit II, the Defence Ministers met in Addis Ababa, September 10, 1998 and have developed the following documents:

- The cease-fire plan;
- The draft of the modalities of implementation of the cease-fire;
- The timetable for implementing the project.

While the Ugandan and Rwandan experts have largely contributed to the development of these documents at the time of their examination by the Ministers of Defence, Rwanda and Uganda have decided to leave the room by requiring the participation of Congolese rebels.

At the invitation of the Zambian President Frederick Chiluba of Foreign Affairs and Defence Ministers had held their first meeting in the Zambian capital of 26 to 27 October to discuss and adopt the draft ceasefire and the procedures developed in Addis Ababa by the Ministers of Defence.

This meeting has encountered an obstacle at the time of the definition of the belligerents who logically should sign the ceasefire agreement.

57 Let’s note that the Security Council mentioned for the first time the presence in DRC of Ugandan and Rwandan troops in June 2000 in its resolution 1304, to condemn the Kisangani clashes, more than 2 years after the start of the second Congo war.
Indeed, Rwanda and Uganda did not recognize as belligerents in the Congo war. For them it was an internal rebellion which concerned the Congolese and should therefore find a solution through negotiations between Congolese namely: President Kabila’s representatives on the one hand, and delegates of the rebellion of the other.

Thanks to the arbitration of the UN and OAU, Uganda came to recognize the presence of its troops in Congo. The Rwanda remained defiant until the end of the meeting. It was therefore necessary to initiate contacts to get to alter the position of Rwanda. Thus, a month later, on the occasion of his official visit to South Africa, the strongman of Rwanda, will recognize in the general surprise, the presence of his men in the Congo. With acceptance of Rwanda, the issue of the definition of the belligerents and the signatories of the agreement was fully solved.

Let’s note also that, after the Lusaka meeting of 26 to 27 October 1998, it was established a mechanism of close contacts to consider the amendments and the views of the rebels on Addis Ababa projects, concerning the ceasefire.

This commission, responsible for conducting close contacts, was made up with: Zambia (chair), Mozambique, South Africa, Tanzania, OAU, UN, and SADC.

The meeting in Gaborone had allowed the rebels to amend the draft cease-fire and arrangements developed in Addis Ababa. A document signed by Wamba dia Wamba was sent to President Chiluba.

November 27, 1998, the heads of state whose armies were involved in the Congo war met in Windhoek, capital of Namibia. This meeting allowed the Presidents Bizimungu, Museveni, Mugabe, Eduardo Do Santos and San Nujoma to adopt the draft agreement of cease-fire developed in Addis Ababa. It should be noted that this is at the request of Ugandan President Yoweri Museveni that the meeting had been convened by the President Namibian.

2. Context of peacekeeping:

After the signing in July 1999 of the agreement of the Lusaka cease-fire agreement between the Democratic Republic of Congo (DRC) and five regional states (Angola, Namibia, Rwanda, Uganda and Zimbabwe), the Security Council established the United Nations Organization Mission in the DRC (MONUC) by its resolution 1279 of 30 November 1999, initially to plan for the observation of the ceasefire (Lusaka agreement) and disengagement of forces and maintain liaison with all parties to the Ceasefire Agreement.

Later in a series of resolutions, the Council expanded the mandate of MONUC to the supervision of the implementation of the Ceasefire Agreement and assigned multiple related additional tasks. The country’s first free and fair elections in 46 years were held on 30 July 2006, with voters electing a 500-seat National Assembly. Following a run-off election for the presidency on 29 October, and resolution of a subsequent legal challenge, President Joseph Kabila (son of late Laurent Désiré Kabila assassinated in 2001) was declared the winner. The entire electoral process represented one of the most complex votes the United Nations had ever helped organize. Following the elections, MONUC remained on the ground and continued to implement multiple political, military, rule of law and capacity-building tasks as mandated by the Security Council resolutions, including trying to resolve ongoing conflicts in a number of the DRC provinces.
MONUC was replaced by the **MONUSCO** on 1 July 2010, the Security Council, by its resolution 1925, renamed MONUC the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to reflect the new phase reached in the country. The new mission was authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts. The Council decided that MONUSCO would comprise, in addition to the appropriate civilian, judiciary and correction components, a maximum of 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 members of formed police units. Future reconfigurations of MONUSCO would be determined as the situation evolved on the ground, including: the completion of ongoing military operations in North and South Kivu as well as the Orientale provinces; improved government capacity to protect the population effectively; and the consolidation of state authority throughout the territory.

### 3. The PSCF: Peace, Security and Cooperation Framework

February 24, 2013 - February 24, 2016. Three years ago that was signed in the Ethiopian capital, under the aegis of the UN, the Framework Agreement of Addis Ababa for peace, security and cooperation in the region Great Lakes.

It is in a context of widespread instability as the United Nations, together with the AU and other sub-regional organizations, this agreement was signed. In the hope of bringing peace to the Great Lakes region. Three years later, the Framework Agreement of Addis Ababa is struggling to assert.

This document, which also imposes a number of obligations to other Member States of the sub-region, was found at the time as a means of solving Congolese political crisis. For now, analysts argue that crises, including the one related to the 2011 elections is still not resolved, three years after the implementation of this agreement, including any monitoring mechanism has been set up from the Congolese side. To date, the current political crisis, probably a consequence of a long period of conflict, is even more complex.

Regarding the DRC, the framework agreement of Addis Ababa should allow a deepening of reforms in the security sector, strengthening the authority of the state, particularly in eastern countries. This document also provides for the achievement of progress in decentralization and the pursuit of economic development and structural reform of public institutions, all under a burst of national reconciliation.

### 4. Subsequent nominal agreements

Various attempts to end the conflict were made without success. In 2002, the situation deteriorated in Rwanda. Many members of the RCD stopped fighting or decided to join the Kabila government. In addition, the Banyamulenge are tired by the day of the guardianship of Kigali and the continuing conflict. Some of them mutinied, leading to violent clashes between them and Rwandan forces. At the same time, the eastern Congo became more secure under the government of Joseph Kabila. International aid resumed gradually as inflation was controlled again.

The Sun City agreement was formalized on April 19 in 2002. It was a framework for establishing a unified Congo, multiparty government, and democratic elections. However, there was criticism about the fact that he was not made mention of the unification of the
army, which made a little lighter the agreement. Despite various violations found with its provisions, the agreement allowed the fighting. On 30 July 2002, Rwanda and the Democratic Republic of Congo signed the peace agreement in Pretoria after five days of talks in Pretoria, South Africa. The talks were focused on two issues. One was the removal of approximately 20 000 Rwandan soldiers of Congo. The other was former Rwandan Hutu soldiers and dismantling extremist Interahamwe militia, who took part in the 1994 genocide and who continued to be active in eastern Congo. Rwanda had about 20 000 troops in Congo and refused to remove them before the Hutu militias were neutralized.

Signed on 6 September 2002, the Luanda Agreement formalized peace in the Democratic Republic of Congo and Uganda. The treaty established the withdrawal of Ugandan troops from Bunia and the improved relations between the two countries, but implementation was problematic. Eleven days later, the first Rwandan soldiers withdrew from the DRC. October 5, Rwanda announced the complete withdrawal of its troops. MONUC confirmed the departure of more than 20 000 Rwandan soldiers.

On October 21, the United Nations published a report of its expert panel on the plundering of natural resources in the Congo by armed groups. Rwanda and Uganda rejected the charges against them, that some of their military and political leaders were involved in illegal trafficking of these resources.

On 17 December 2002 the Congolese members of the Inter Congolese Dialogue, namely: the national government, MLC, RCD, RCD-ML, RCD-N, the local political opposition, civil society representatives and Mai Mai, signed a comprehensive peace agreement. The agreement outlined a plan for a transitional government which was to culminate in presidential and legislative elections within two years of signing. This agreement marked the official end of the Second Congo War.

IX. WHAT ELSE IS NEEDED FOR PEACE IN EAST DRC? CHALLENGES OF PEACE.

1. Background

Our approach, so far, aimed to demonstrate how, over time, the DRC’s legal requirements related to Congolese nationality founded imperceptibly various claims within the class of immigrants. Nationality not well defined and the legal provisions too shaky gave way to another problems: identity, local leadership, claims of territories, national ethnic belonging, land ownership...

Despite an eloquent demonstration throughout history, repeated crises in various forms, covered up and concealed the most important question: that of the recognized ethnic group, that identity, that of a customary local power, that of access to land

The inclusion of the local geopolitical conflict in eastern DRC is a need to address the problems upstream. That is to say, improving community relations and restore peace at the local level.

The bodies involved in the pacification of the Kivu region - namely, the DRC government, the UN, the African Union, the Southern African Community (SADC), the International Conference on Great Lakes region (ICGLR) and the eleven countries neighboring DRC -
make the mistake to tackle the armed conflict between opposing forces or the region without considering the roots of these conflicts.

The conflicts in the DRC seem to converge on the issue of identity and ethnicity that refers to “an exclusive nationality”, enshrined in the Congolese legislation, the issue of citizenship constantly takes precedence over the imperative and necessity of peace.

Although the role played by Rwanda, Uganda and Burundi have fueled debates, it is clear that the notions of “identity” and “national of” were much more accentuated since before, especially when it comes to the exercise of local or customary power or when it comes to access to land ownership. Whether directly or indirectly, those interviewed mentioned that these external factors have fed deep internal divisions, the most important division concerns local structures of the customary power, control of access to land and resources, including the considerable mineral wealth in eastern DRC.

Tensions over access to land do not only have preceded the arrival of refugees and militias from Rwanda in 1994, have created fault lines in communities that have been further exploited and manipulated during conflict. Once again the questions of nationality, citizenship, identity, access to power and land ownership converge: “land ownership” has a limited stake if it is not accompanied by political rights or access to power and political rights are subject to proof of national identity.

More importantly, the conflict has drawn on ethnic tensions within communities that are manipulated and amplified. Schisms within communities and between them were amplified by how militias have used ethnicity as a basis for obtaining power, the accumulation of land areas and simply to survive: they took advantage allegiances between Rwandan Hutu and Congolese one hand (in the case of the FDLR / Interahamwe) and between Rwandan and Congolese Tutsis on the other (in the case of the CNDP), for instance.

If this allegiance was founded by a sense of shared identity or simply forced, the result was the same: communities have become increasingly divided along ethnic lines and the difference in concepts were expressed in violence. However, the sheer scale of what has happened since 1994 - both in terms of those who perpetrated the violence and those who are victims - was considered by respondents as a new thing in the area.

By force of law and institutions, it is better to do everything to get the DRC out of violence and structural interethnic conflicts in order to sustainably build a strong Republic in the heart of Africa. In order to put an obstacle to institutional and legislative instability in matters of nationality, a new law clear, precise and concise on nationality is required. A law that also respects international conventions. The question of nationality is poisoning relations between individuals and ethnic groups, it results in violence amid ethnic divisions or identities. It is time for the State to set up conflict resolution mechanisms in institutionalizing them formally; enhancing transitional justice mechanisms to build a sustainable social cohesion.

Although the question of nationality was the subject of many rich and diverse debate, confusion resulting from these relationships between individuals and groups with which they identify, the law on Congolese nationality must be general and impersonal because it
must seek permanence and anticipate the future so that the society survives beyond generations.\textsuperscript{58}

2. **Challenges:**

- Ensuring peaceful coexistence between communities: Governments at all levels must make effort to create and maintain a peaceful coexistence between communities within the national society. All actors upstream and downstream are called to create feelings conducive to social harmony. The problems in North Kivu are complex as we have noted above. The Bahunde become extremely minority in Masisi, rightly fear of lacking political representation in elections. For national elections, we would believe that the majority system in two rounds is the rule because it eliminates small tribal parties and encourage the genesis of large national parties. Furthermore, we propose that for national elections, the electoral district or territory. In this way, each community finally became independent in an administrative entity with a set of exclusions and identities, be entitled to political representation. South Kivu does not face the same complex issues as the neighboring Province of the North. Here, the Banyamulenge only about 700,000 people out of a population of over 4,000,000 inhabitants. However, the feeling of hatred there seems more alive than North Kivu. The behavior and attitudes of Rwandan soldiers sponsors yesterday and today, the killings of civilians by rebels and their allies (Makobola Kasika Kamituga, Mwenga, Kaniola, Nzibira, Bunyakiri is still in South Kivu) came revive already hate relationships between communities. Nevertheless, peace is through mutual recognition and rights, including policies, which must be equal.

- Strengthening the fight against tribalism and xenophobia: Tribalism has never been a coherent approach to fight in the DRC. The solutions that were reserved to both legal and constitutional are purely cyclical. Thus it is the principle of human equality and non-discrimination, including discrimination based on ethnicity, dedicated by the Congolese independence constitutions to today. It is the same law of Ordinance No. 25-131 of 25 March 1960 on the suppression of racism and religious intolerance, and the law Ordinance No. 60-342 of 7 June 1966 on the suppression of racism and tribalism. We propose the use of a qualified expertise in the construction of a legal and institutional framework against racism, tribalism more elaborate.

- Truth and Reconciliation Commission: After the National Dialogue, it will establish a Truth and Reconciliation Commission. Composed of neutral personalities and competent, the commission’s mission will be to shed light on all the massive violations of human rights since 1991, and to establish responsibility. These include civilian massacres of: Makobola, Kasika, Kamituga, Katogota, Kaniola...

- The census of the population and the provision of identity documents: The confused nature and especially falsifying identity documents has made this Law non-operative, as

\textsuperscript{58} In the words of Jean du Bois Gaudusson and Michel Gaud in their book: l’Afrique face aux Conflits, on page 19: “The question of nationality in Kivu has long poisoned relations between individuals and groups with which they identify. The uncertainty concerning the status of a significant fraction of the inhabitants of the region could not only promote political manipulation, with even more successful than the population found itself in a situation of economic competition, competition for land. Rights and citizenship of the soil tend to overlap, pitting one against the other categories of users, provided that the land has become too rare to meet all the uses for which it is requested. Access to land, the right claim to the territory in a context of increasing population pressure is a key structural components of the conflict in Kivu”

[www.absolutelyjusticeandpeace.org](http://www.absolutelyjusticeandpeace.org)
immigrants who came to Congo / Zaire after 1960 had mysteriously have not been identified. This is why the 1972 Act was repealed and replaced by Law No 81-002 of 29 June 1981. If Luluabourg Constitution granted citizenship to ancestors of tribes settled in the Congo before 18 October 1908, the 1981 Act, later granted it only to tribes established in the territory of Zaire before August 1, 1885, it means: at the time of the division of Africa in Berlin between the major European powers of the time. Instead of simplifying the law, Zairean legislation deliberately complicated the question of nationality by excluding from the Zairian citizenship those established in the Kivu Provinces, having come from the former Rwanda-Burundi. Civic definition of citizenship replace tribal definition, which has prevailed until today, is necessary. The link attachment to the nation being individual, there is no reason to interference of the concept of "tribe" or "ethnic group" in the definition of nationality.

National integration mechanisms: A special effort has to be made to strengthen national unity by means other than verbal proclamations and allow greater national integration.

The introduction of the principle of dual nationality for those who want it. To this end, it is important to make provision for the Congolese who had lost their Congolese nationality after obtaining a foreign nationality, to reinstate, by a declaration without losing their second nationality. The definition of original nationality by descent to one of the tribes who lived in the Congo in 1885 is not appropriate because: The concept of "tribe" is difficult empirically to identify; Nobody knows exactly how many "tribes" there are currently in the DRC, and more so in the 19th century! This concept is insufficient, incomplete and opens opportunities for conflicts such as the ones DRC is experiencing.59

It is absurd to want to define the nationality of citizens of the 21st century according to the migratory movements (movements of migrations) of their ancestors in the 19th century!

The option of dual citizenship reflects the concern to not exclude from the Congolese nation those Congolese children born and grown up in the Western countries who incorporated them into their nationality, either automatically or on request. Having evolved in conditions of much better studies compared to those of the mother party, they can bring to the floor an extra stone to building development. To prevent misuse of nationality to divide the Congolese people into categories - those who have all the rights and those who do not - and discriminate Congolese born from a single Congolese parent or who have acquired Congolese nationality by birth on Congolese soil, we deem important to restrict the rights of naturalized Congolese from the exercise of the head of state function.

All this as described appears crucial for the state to incorporate a culture of peaceful cohabitation in social logic rather than recover the deficiencies of institutions and laws to the detriment of peace and development.

X. CONCLUSION

59 Célestin Kabuya Lumuna Sando, "Nationality in Congo fatal omissions and revisions risky", in Le Potentiel n° 1818 of 10 January 2000.
In the context of the DRC, the National Reconciliation Commission recommended the Lusaka agreements must be in place and especially to be operational in eastern Congo. Two types of actions are to be taken. First, a political action at national level is needed to prevent the development of the hate campaign against ethnic minorities (Banyamulenge and Burundians Banyarwanda) in the East. But this presupposes, first, two conditions: recognition of discrimination (for restoration because of illegal Congolese nationality) exerted on the above ethnic groups; the strong commitment of the leaders of the country to a final settlement of this issue.

At the provincial level (and local as well), the Reconciliation Commission, set up since 1997, is expected to resume its activities be strengthened politically and legally, and get material means in order to operate in the various administrative units of the Kivu provinces, South and North. What’s mentioned in this scenario is based on an ideal assumption of successful reunification of the DR. of Congo.

Since the moratorium on dual nationality initiated in 2009 Parliament was filed away, we cannot, in any case, blame the Congolese of origin in the same situation as their compatriot parliamentarians, senators and ministers, or senior officials, to hold foreign citizenship. In legal matters, the facts must precede the law. Adherence to this principle of law will ease tension, strengthen social cohesion and national unity - the aim is to build a Congo socially, economically and politically humanist, viable and democratic. It is therefore necessary to amend, in terms of nationality and equality of all Congolese under the law, discriminatory provision which makes impracticable the Congolese Constitution of 18 February 2006. It is clear that the Congolese Constitution is impractical because of the contradictions in its numerous features that make it up. This is mainly due to the fact that the Basic Law is full of clauses that arise in principle from organic laws and decrees. Worse, the legal position created under the influence of the old law, reference to Law No. 004/024 of 12 November 2004 on Congolese nationality, continues to have effect after the entry into force of the Constitution February 18, 2006. Thus, the question of conflict of laws arises even more acutely.

In addition, it significantly affects social cohesion since the access to citizenship becomes a matter of face, ethnicity ... but also of exclusion. Better, an issue of access denial to nationality for certain groups. It has been shown that this has been a leitmotif of engagement of hostilities in DRC, true or false, it is however important to cover this gap before leaning on other internal requirements. So it’s not just the conflict of law, there is also a social crisis affecting the coexistence of all ethnic groups in East DRC. Update on the exclusive and non-concurrent nationality is a major fact that broke a vase half empty, half full. It is time that the Congolese legislature settle this question.

The road ahead remains long in the DRC. The issues to manage are constantly kept on hold. The reforms are slow in coming. Ownership of tools and local mechanisms remain a challenge. The mechanisms upstream and downstream of local conflict resolution appear not institutionalized. The issue of citizenship still leaves ink flow and saliva. As for the recurring question of ethnicity, tribalism, immigrations ... the law still lagging steps. An almost congenital confusion on Congolese nationality who opens pathways to violence and conflict in the thank you of development. Yet the crisis exit routes are possible if not clear, however, they are non-internalized and non-institutionalized.
As Mr. Rusamira Etienne writes⁶⁰: ethnic conflicts in this part of the DRC have multiple dimensions and remain highly complex, given the number of players involved in a precarious political situation, still currently experienced by the country. This means that it does not exist in the current context a miracle solution to offer; regulation of these conflicts should be considered under three scenarios regarding the political future of the Congo:

- **A settlement in a reunified DRC**: a first hypothesis assumes that the ongoing peace process in the DRC successful, that is to say that the process actually lead to the reunification of the country under the authority of the institutions.

- **In the event of consummate partition**: the proximity factor couldn’t, in any case, become a decisive factor in the search for a lasting solution. The hypothesis here is that being citizens of the east, and no longer having the support of Kinshasa, the new leaders would be inclined to seek a lasting solution to these conflicts, or would avoid feeding them to prevent further war in their home region.

- **If the status quo**: with consummate failure of the agreement in question, it would be expected to either of these two situations, a generalized resumption of military clashes or rather their maintaining the current minimum. But in both cases, the Pacification Commission wouldn’t be operational.

The trajectory of the Congolese legislature suggests that the DRC needs legal and institutional reforms as part of conflict resolution. The crisis currently tearing apart the DRC and which is rooted in a long period of unpreparedness and legal instability is not the fact of the Congolese but the fact of the laws themselves, which remained fixed on the principle of exclusivity.

National laws on nationality, as we have demonstrated, clearly would not have opened the door to citizenship claims if the logic of this institution remained framed in a vision of promoting citizenship and not only a static procedure of Ius soli, Ius sanguinis and of acquisition.

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