

RESEARCH PROPOSAL

Transitional Justice and Statelessness in the Congo: The Case of the Banyarwanda Congolese Tutsi

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Fundamental human rights are guaranteed by law to all men, women, and children, regardless of their nationality. Nevertheless, the stark reality is that many millions of people around the world are denied the exercise of their most basic human rights because they are not recognized as citizens of any country (1).

There are an estimated 12 million stateless people around the world. Even though this number rivals the 15.9 million refugees found globally, few people understand what it means to be stateless (2).

This study will focus on Congolese Tutsi, a segment of the descendants of the Banyarwanda people who were living in the Congo before the colonial period and prior to the independence of the Congo in 1960.

People who face statelessness are perhaps even more vulnerable than refugees. Although the near-total inability of stateless people to exercise their human rights is their central problem, many statelessness people also face social or political constraints unique to the societies in which they live.

For example, stateless people in many African countries including the Congo do not feel free to discuss their issues openly. The most obvious reason is a fear of political repression but it can also be because of some curious taboos in their cultures.

Statelessness has many root causes (3):

One of the most well-known causes is when a state dissolves and separates into different states—a situation called state succession. There are many examples of such succession: the dissolution of the Soviet Union, the break-up of Yugoslavia, the partition of East and West Pakistan, and also the decolonization processes where individuals or large populations remain without a nationality.

There are also more technical root causes, like conflicts of law, where an individual is born to a father and a mother of different nationalities and the laws that determine nationality are different in the father's and mother's country of origin. Sometimes nationality is determined by what is called *jus soli*, birth on the territory. At other times, *jus sanguinis*, nationality through descent, is the determining factor. Either approach may lead to statelessness when two nation's laws contradict each other.

Statelessness can also be caused by arbitrary deprivation of nationality when some states decide that—for reasons that do not always accord with international law—a person

should not be a citizen of the country anymore. A similar situation occurs when birth registration does not take place systematically. Children who are not registered do not have a birth certificate and cannot prove their nationality in the years that follow. In many states you still have discrimination affecting women who cannot transmit their nationality to their children. Many states are now revising those laws to provide for equality between mother and father in transmitting nationality.

The principal argument of this study will be that many Congolese Tutsis are still stateless people and deserve the special protection of the UNHCR.

In 1974, the United Nations General Assembly designated UNHCR as the UN body to contribute to the prevention and reduction of statelessness and to the protection of stateless persons.

Although the problems many Congolese Tutsis face are well-known to the International Community (4), the situation has not received the attention it deserves, and the UNHCR has not responded effectively to the root cause of these problems.

The main purpose of this study will be to raise the level of awareness of all those involved in the effort to address this fascinating issue.

The first step towards an effective response to statelessness is to fully understand the nature of the problem. To develop my thesis, I will use principally, holistic approach, human rights reports, and the existing Analytical Framework for Prevention, Reduction, and Protection used by the UNHCR for analyzing situations faced by stateless people and those at risk of becoming stateless.

These tools will help identify the causes of statelessness, the obstacles to acquisition of nationality, and the risks faced by stateless persons. It will also highlight the capacities of all concerned stakeholders to minimize those risks.

Identifying risks and causes of statelessness as well as gaps in the protection of stateless persons are necessary first steps in prioritizing and developing measures to guarantee the enjoyment of the full range of human rights, including the right to an effective nationality.

The analysis produced using the Analytical Framework for Prevention, Reduction, and Protection should comprehensively map gaps in citizenship law and practice. It should also identify unmet needs. It should serve as a basis for the collaborative development of short- and long-term strategies that support nations in preventing and reducing statelessness and ensure the rights of stateless people.

(1)UNHCR, Statelessness: An analytical frame work for Prevention, Reduction, and Protection, UNHCR, 2008

(2) Idem.

(3)Philippe Leclerc, Q&A: The world's 15 million stateless people need help
<http://www.unhcr.org/464dca3c4.html>

(4)See Robert Garreton, Report of the Special Rapporteur on the Situation of Human Rights in Zaire: Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with Particular Reference to Colonial and other Dependent Countries and Territories, U.N. Doc. E/CN.4/1997/6/Add.1 (1996)