



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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24 January 2006

### **COD100961.FE**

Democratic Republic of Congo (DRC): Procedure and conditions for Congolese nationals of Rwandan origin to reinstate their nationality  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### **Legal aspects**

A report from a mission to Kinshasa and Kisangani conducted jointly by the Belgian organization called the General Commissioner for Refugees and Stateless Persons (Commissariat général aux réfugiés et apatrides, CGRA), the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides, OFPRA), and the Swiss Federal Office for Refugees (Office fédéral des réfugiés, ODR) provided the below outlined historical evolution of the Law on Congolese Nationality as it relates to Congolese nationals of Rwandan origin. This joint mission was carried out under the ARGO project, [translation] "an administrative cooperative program of the European Commission (EC) in the areas of asylum, immigration, visas and border control" (Projet ARGO Oct. 2004, 3).

According to the report, the nationality issue originated with the Congolese constitution of 1 August 1964, which denied Congolese nationality to Rwandophones (Congolese nationals of Rwandan origin or Congolese nationals who speak Rwandan or Banyarwanda) who were [translation] "transplanted" from Rwanda to DRC between 1930 and 1954 (Projet ARGO Oct. 2004, 44). However, the subsequent Decree-Law (décret-loi) of 18 September 1965 stipulated that the descendants of the transplanted people could choose to become Congolese nationals (ibid.).

With Order (ordonnance-loi) No. 71/020 of 26 March 1971, which addressed people from "Ruanda-Urundi" [which became Rwanda and Burundi] who were established in Congo before 30 June 1960, all Rwandophones established in DRC [then Zaire] before 1960 could [translation] "regain their nationality" (ibid.; see also *Dialogue* Aug.-Sept. 1996, 21). However, less than a year later, Law No. 72/002 of 5 January 1972 denied anew Congolese nationality to Rwandophones who arrived in DRC after 1 January 1950 (Projet ARGO Oct. 2004, 44). Later, Law No. 81/002 of 29 June 1981 clearly stated that [translation] "any person with an ancestor who was a member of a tribe that was established within the country's borders, as defined on 1 August 1885, is a national of Zaire;" most Congolese nationals of Rwandan origin therefore lost their Congolese nationality (ibid.).

According to Oswald Ndeshyo Rurihose, dean of the faculty of law at Kinshasa University, by stripping a part of the Kinyarwanda-speaking Zairians of their Zairian nationality, Law No. 81/002 of 29 June 1981 was [translation] "unjust, arbitrary and unfair" (*Dialogue* Aug.-Sept. 1996, 3). According to him, the persons targeted by that law were the Congolese from North Kivu (the Masisi, Goma and Rutshuru areas), South Kivu (the Kalehe, Baraka and Uvira areas) and Shaba (the Moba area) (*ibid.*).

Lastly, Law No. 04/024 of 12 November 2004 on Congolese Nationality specifically states in its preamble that:

[translation]

This Act aims to address the provisions of . . . the Transitional Constitution as well as the pertinent criticism of Congolese legislation on nationality expressed by the delegates who sit on the Inter-Congolese Dialogue, particularly Order No. 71/002 of 28 March 1971, Article 15 of Law No. 72/002 of 5 January 1972, and Decree-Law No. 197 of 29 January 1999, which amends and completes Law No. 81/002 of 29 June 1981 (DRC 12 Nov. 2004, i).

Article 6 of the 12 November 2004 law also stipulates that [translation] "any person belonging to an ethnic group or nationality whose people and land were part of the territory that became the Congo (now the Democratic Republic of Congo) upon independence [on 30 June 1960] is of Congolese origin" (*ibid.*, 3).

A report from the BBC, referring to the Congolese constitution, stated that, by granting nationality to all ethnic groups in the country's territory at independence, the new Congolese constitution would simultaneously recognize the "citizenship of thousands of ethnic Tutsis, who were transplanted to the then Belgian-ruled Congo back in the 19th Century" (14 May 2005). The new constitution was approved by 84.31 per cent of the voting population in a 19 December 2005 referendum (DRC 11 Jan. 2006).

### **Procedure and conditions for reinstating nationality**

A Doctor of History and researcher at the Centre for the Study of the African Great Lakes Region (Centre d'étude de la région des Grands lacs d'Afrique de l'Université d'Anvers) at the University of Antwerp in Belgium, who is also an expert in Central Africa and the Kivu region in particular (Centre d'étude de la région des Grands lacs d'Afrique n.d.), provided the information in this and the next paragraph during an 8 December 2005 telephone interview. With the passing of Law No. 04/024 of 12 November 2004, Congolese nationals of Rwandan origin automatically regained Congolese nationality. To the researcher's knowledge, no nationality reinstatement procedure has been planned and no conditions have been imposed; Congolese nationals of Rwandan origin are not required to report to the government authorities in order to reinstate their Congolese nationality. In cases of doubt, the person concerned must go to his or her chieftaincy of origin to obtain documentary evidence that he or she is a Congolese national, or the person must find five people to attest to his or her nationality if residing far from his or her place of origin. The same is true for all other Congolese.

The Kivu region expert also stated that the problem does not reside in

Congolese nationals of Rwandan origin reinstating their nationality, but in the prevailing mistrust between them and members of other ethnic groups, particularly in Kivu. That mistrust has also been exacerbated by many years of war in DRC since 1996 (8 Dec. 2005).

A representative from Héritiers de la justice, a non-governmental human rights organization in Bukavu, the county seat of the province of South Kivu, stated in correspondence sent to the Research Directorate on 6 January 2006 that with the Law of November 2004, Congolese nationals of Rwandan origin (Tutsis and Hutus) are considered [translation] "nationals by origin and not nationals by acquisition," because the time of reference is the date of independence and not 1885, as in the previous law. He explained that since the new law was passed, no additional steps have been imposed on Congolese nationals of Rwandan origin in order for them to reinstate their Congolese nationality (Héritiers de la justice 6 Jan. 2006).

The representative of Héritiers de la justice, in referring to the constitutional referendum of 18 and 19 December 2005, indicated that Congolese nationals of Rwandan origin from Kivu took part in the identification and registration of voters and voted in the referendum, without any discrimination whatsoever (ibid.). He added that a [translation] "by no means insignificant" number of them, who were working in Rwanda, had crossed the border to be registered and to participate in the referendum (Héritiers de la justice 6 Jan. 2006).

The same representative, contacted by telephone in Bukavu on 10 January 2006, explained that Congolese nationals of Rwandan origin present the same pieces of identification as required from other nationals in the identification process for an election or referendum vote.

According to Article 8 of Law No. 04/028 of 24 December 2004 on the identification and registration of voters in Democratic Republic of Congo, the following conditions apply for registration on the electoral list:

[translation]

the person must be a Congolese national;

the person must be aged 18 years on the closing date of the identification and registration period;

the person must be in the Democratic Republic of Congo at the time of identification and registration;

the person must enjoy all his or her civil and political rights (DRC 24 Dec. 2004).

Article 10 of the same law stipulates that the following pieces of identification are required as proof of the voter's age and identity:

[translation]

- a certificate of nationality or a statement in lieu of a certificate of nationality;

- a national identity card;
- a national passport;
- a secure national driver's licence;
- the Congolese pension booklet issued by the National Social Security Institute (Institut national de sécurité sociale) or by any other legally recognized Congolese institution;
- a student card;
- a military card (ibid.).

A provision under this same Article 10 also states that should a person fail to provide one or more of these documents, the Registration Centre will consider the testimony of five witnesses who are already registered on the electoral list for that Registration Centre and who have lived in its riding for at least five years (DRC 24 Dec. 2004)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

#### References

British Broadcasting Corporation (BBC). 14 May 2005. "New DR Congo Constitution Backed." <<http://news.bbc.co.uk/2/hi/africa/4546535.stm>> [Accessed 31 Oct. 2005]

Centre d'étude de la région des Grands lacs d'Afrique at the University of Antwerp, Belgium. 8 December 2005. Telephone interview with a researcher.

\_\_\_\_\_. N.d. "Équipe." <[http://www.gralac.org/pers\\_f.htm](http://www.gralac.org/pers_f.htm)> [Accessed 7 Nov. 2005]

Democratic Republic of Congo (DRC). 11 January 2006. Independent Electoral Commission. "Référendum: le oui l'emporte avec 84,31%." <[http://www.cei-rdc.org/article.php3?id\\_article=68](http://www.cei-rdc.org/article.php3?id_article=68)> [Accessed 12 Jan. 2006]

\_\_\_\_\_. 24 December 2004. National Assembly. *Loi n° 04/028 du 24 décembre 2004 portant identification et enrôlement des électeurs en République démocratique du Congo*. <<http://www.cei-rdc.org/loident.pdf>> [Accessed 16 Jan. 2006]

\_\_\_\_\_. 12 November 2004. National Assembly. *Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise*. <<http://www.cei-rdc.org/loination.pdf>> [Accessed 16 Jan. 2006]

*Dialogue* [Brussels]. August-September 1996. No. 192. Oswald Ndeshyo Rurihose. "La nationalité de la population zaïroise d'expression kinyarwanda au regard de la loi du 29 June 1981."

Héritiers de la justice. 10 January 2006. Telephone interview with a representative.

\_\_\_\_\_. 6 January 2006. Correspondence from a representative.

Projet ARGO. October 2004. *République démocratique du Congo. Ethnies et groupes armés dans l'Est de la République démocratique du Congo*. Mission to Kinshasa and Kisangani conducted by the Commissariat général aux réfugiés et apatrides (CGRA), the Office français de protection des réfugiés et apatrides (OFPRA) and the [Swiss] Office fédéral des réfugiés (ODR) respectively in May and July 2004.

#### Additional Sources Consulted

**Publications:** *Africa Confidential*, *Africa Research Bulletin*, *L'Afrique des Grands lacs: Annuaire 2004-2005*, *Jeune Afrique/L'Intelligent*, Resource Centre country file.

**Internet sites, including:** AllAfrica.com, Amnesty International, BBC News, *CIA World Factbook*, European Country of Origin Information Network (ECOI.net), Factiva, Freedom House, Human Rights Watch (HRW), IDP report of Norwegian Refugee Council, International Crisis Group (ICG), International Federation for Human Rights (FIDH), Migration News, Minorities at Risk Project, Relief Web, UNHCR, United Kingdom Immigration and Nationality Directorate (IND), US Committee for Refugees and Immigrants, United States Department of State.

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