

E/CN.4/1997/6

28 January 1997

ENGLISH

Original: FRENCH/SPANISH

COMMISSION ON HUMAN RIGHTS

Fifty-third session

Item 10 of the provisional agenda

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

Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1996/77

<http://www.hri.ca/fortherecord1997/documentation/commission/e-cn4-1997-6.htm>

V. THE HUMAN RIGHT TO NATIONALITY

111. The Special Rapporteur has again expressed his concern at the violence in the eastern part of the country and his conviction that the land conflict between the so-called indigenous ethnic groups and the Banyarwanda has been exacerbated by political considerations connected with electoral processes and the laws governing nationality. (4)

112. The armed conflict in Southern Kivu arose from similar causes, though it has reached a much higher level of intensity (see section XII). In view of its disastrous consequences, this conflict will be considered in greater detail.

113. However, aside from the problem of Kivu, deprivation of nationality is today a way of punishing political dissent.

A. Legislation prior to 1971

114. Already before independence there were arguments about the nationality of the inhabitants of Kivu. Masisi, Rutshuru, Idjwi Island and other areas belonged until 1910 to the Kingdom of Rwanda-Urundi, at that time a German colony. In 1922 the League of Nations handed over those territories to Belgium, which in 1925 annexed them to the Congo. Later the colonial administration organized the transplantation of persons (see E/CN.4/1997/6/Add.1, para. 19). The transplanted population thenceforth had the same status as those nowadays called "original inhabitants", and accordingly Legislative Decree 25/554 of November 1959 laid down that citizens of Rwanda-Urundi could elect and be elected to councils on the same terms as Belgians with metropolitan or Congolese status, provided they could prove 10 years' residence in the Congo. While this Decree made no reference to nationality, it did regulate one of the effects thereof: the right to vote and to be elected to public office. On 23 March 1960 Electoral Law No. 13 reaffirmed that a person required Congolese status in order to vote, or 10 years' residence in the Congo to be a citizen of Rwanda-Urundi.

115. Resolution No. 2 of the Brussels Round Table, prior to independence, recognized as Congolese all persons who had already been recognized as such. Some of those taking part in

that Round Table were actually children of transplanted persons, sitting as Congolese. This resolution remained in force until 1964, since neither the Fundamental Law of 19 May 1960 nor the Law of 17 June on public freedoms, which were to come into force on 30 June in the Belgian Congo and Rwanda-Urundi, dealt with the subject of nationality.

116. Article 6 of the so-called Luluaburg Constitution of 1964, in accordance with Resolution No. 2 of 1960, declared to be Congolese as of 30 June 1960 all persons one of whose ascendants was or had been a member of a tribe or part of a tribe established in the Congo before 18 October 1908 (la nationalité congolaise "est attribuée, à la date du 30 juin, à toute personne dont un des ascendants est ou a été membre d'une tribu ou d'une partie de tribu, établie sur le territoire du Congo avant le 18 octobre 1908"). The Banyarwanda are Bahutu or Batutsi who were established in the territory of the Congo before that date, and are therefore Congolese by virtue of nationality of origin and not by naturalization. They therefore continued to be treated as such in censuses and elections, and this was confirmed in a Decree of 18 September 1965.

117. The 1967 Constitution does not repeat the wording of the previous one, but article 46 thereof provides that the matter shall be regulated by legislation. Transitional article I maintains in force all such rules as are not contrary to the Constitution. In practice this matter continued to be governed entirely by the Constitution of 1964, and wherever the new Charter referred to "Congolese" (arts. 5, 7, 11, 15, 17, 18, 21, 37 and many others), it was always understood that this meant those whom the previous laws had recognized as such. [[back to the contents](#)]

B. The laws of 1971 and 1972

118. These rules are criticized for collectively granting Zairian nationality to the Banyarwanda. The Decree-Law, adopted by the Head of State when Congress was in recess, provided that persons originating from Rwanda-Urundi and established in the Congo as of 30 June 1960 were Zairians as of that date.

119. There is no argument about who the author of that Decree-Law was: Bisengimana Barthélémy, a Rwandan refugee who had come to the Congo in 1960 - and was therefore not Congolese because he did not have the 10 years' residence prescribed in previous laws - at that time President Mobutu's Cabinet Director. If the Decree-Law granted "collective recognition" of nationality, it was only to those who, like Bisengimana, were not Congolese, i.e. to those who did not meet the requirements of previous laws, not to those who were already Congolese.

120. The nationality act required under the Constitution was promulgated only on 5 January 1972 as Law No. 002, article 1 of which recognized as Zairian on 30 June 1960 any person with one ascendant who was a member of one of the tribes established in the territory of the Republic of Zaire as defined by its frontiers of 15 November 1908 and subsequent modifications. Article 15 added that persons originating from Rwanda-Urundi who had taken up residence in the province of Kivu before 1 January 1950 and had thenceforth continued to reside in Zaire until the entry into force of the Law acquired Zairian nationality as of 30 June 1960.

121. This Law is consistent with those of the colonial period and those first adopted after independence in that it refers to a period of 10 years' residence in Zairian territory, and at the

most it can be argued that under its provisions Zairian nationality is "collectively" taken away from - not granted to - persons of Rwandan origin who arrived in Zaire between 1 January and 30 June 1950. Those transplanted before that date were already Zairians.

122. The 15 August 1974 revision of the Constitution in no way amends the Law of 1972, but on the contrary maintains it in force until it is repealed (transitional art. I). Only the 15 February 1978 revision deals with nationality, but without changing the rules in force, i.e. the 1972 Law: the new article 11 provides that Zairian nationality is unitary and exclusive, and that the legislation shall determine the conditions for its recognition, acquisition and loss. Hence, by what is now constitutional authority, those declared to be Zairians under the Law of 1972 continue to be so. [[back to the contents](#)]

C. Law No. 002 of 29 June 1981

123. This Law was adopted and voted in a context of pressure resulting from the fact that in Northern Kivu the "original" ethnic groups were in a minority. The Bahunde totalled 15 per cent and could be left with no political representation. The great majority were Banyarwanda.

124. The Law erroneously assumes that the Banyarwanda - whom it considers as aliens - collectively acquired Zairian nationality under Law No. 002 of 1972. This is declared in the statement of reasons, announcing that the new Law expressly abrogates article 15 which had collectively granted Zairian nationality to groups of aliens established in the country. It declares to be Zairian as of 30 June 1960 any person one of whose ascendants is or has been a member of one of the tribes established in the territory of the Republic of Zaire as defined by its frontiers of 1 August 1885, modified by subsequent conventions (art. 4). It could be argued that this provision results in abrogation under the Constitution of Law No. 002 of 1972, and that accordingly the transplanted inhabitants would have lost their Zairian nationality from the date of its enactment and been left stateless, in contradiction with every principle of international law on human rights. Even were this so, the effects of this Law could not extend to the children of transplanted persons born while the latter were Zairians.

125. In implementation of the Law, Decree No. 061 of 1982 cancels the certificates of nationality issued under the Law of 1972.

126. The Law of 1981 is contrary to article 12, on equality before the law, of the Constitution then in force, so in case of conflict the latter must have precedence over the former.

127. CERD in its report expressed the view that the provisions of Law No. 81-002 are contrary to article 5 (d) (iii) of the Convention with which it is concerned (A/51/18, para. 525). [[back to the contents](#)]

D. The Transitional Constitution

128. The 1981 Law was vigorously debated at the 1991 and 1992 meetings of the National Sovereign Conference, where it was agreed that this matter should be settled so as to prevent Zairian citizens from being left stateless, which would put Zaire among the countries that violate fundamental human rights. Nevertheless, the Transitional Constitution does not solve the problem. [[back to the contents](#)]

E. Principles of international law

129. Deputy Prime Minister Kamanda is right in maintaining, in a letter to the United Nations Security Council dated 24 October, that the adoption of rules and regulations concerning nationality is a matter subject to the sovereignty of individual States. Nevertheless, the Special Rapporteur considers that international human rights norms place limitations on the exercise of such sovereignty. The Convention on Certain Questions relating to the Conflict of Nationality Laws (The Hague, 12 April 1930) requires States Parties to recognize the laws of other States "in so far as (they are) consistent with (the) conventions" and principles of international law.

130. The first limitation concerns the principle of non-discrimination, which is the basis for all international human rights law and is exemplified by article 55 of the Charter of the United Nations, article 2 of the Universal Declaration of Human Rights, article 2.1 of the International Covenant on Civil and Political Rights, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 2 of the African Charter on Human and Peoples' Rights.

131. It is discriminatory to deprive a person of his nationality for any cause other than treason or to do so only in respect of the members of two tribes because of events that occurred over 100 years ago.

132. The second limitation is to be found in article 12 of the International Covenant on Civil and Political Rights and article 12.2 of the African Charter on Human and Peoples' Rights, which establish the right to reside in and return to one's own country. Since this right may be invoked only by the nationals of a country, revocation of nationality implies loss of the exercise of that right. Normally - and the case of Zaire is an obvious example - persons deprived of their nationality neither have, nor acquire, another; as a result, such persons are left without the protection of any State.

133. The third limitation stems from articles 1 and 8 of the 1961 Convention on the Reduction of Statelessness, the principles of which may be considered as customary international law and under which Zaire has the obligation to recognize as Zairian anyone born in its territory (see E/CN.4/1996/66, para. 85). [[back to the contents](#)]

F. The present state of the problem

134. The Law of 1981 and the rules governing its implementation had no practical consequences in everyday life because the Banyarwanda continued to be considered Zairian (passports, etc.). The Law did, however, have important political effects, such as the cancelling of provincial elections in Kivu in 1987.

135. The anti-Rwandan feeling noted by the Special Rapporteur (see E/CN.4/1996/66, para. 26) was increased by the arrival of over 1.2 million refugees in 1994. An HCR-PT Commission, headed by Vangu Mambueni, investigated the impact of their presence. Its conclusions reveal an "ethnic cleansing" spirit, since it is stated that Rwanda has been attempting to acquire Zairian territory and to supplant its indigenous inhabitants since 1985 and that the Tutsi are preparing for a "Hamitic Kingdom" to be known as the United States of Central Africa or the Republic of the Volcanos. All Zaire's problems are blamed on the United Nations, westerners in general, Tanzania (for organizing the Arusha Conference),

Burundi and Rwanda; these allegations culminate in a call for the "liberation" of Kivu. The Commission did not permit its members to disagree with its findings; a member who criticized it was first prevented from speaking, then dismissed from his post and deprived of his nationality.

136. The report led to the HCR-PT agreements of 28 April, which were one of the immediate causes of the conflict in Southern Kivu. They called for the unconditional and immediate expulsion of all refugees and immigrants and the revocation of the land titles of immigrants or transplanted persons who had obtained Zairian nationality under false pretences (according to the interpretation of legislation prior to that of 1981, all such persons fell into this category). [[back to the contents](#)]

G. Deprivation of nationality as a political sanction

137. One proof of the political nature of the nationality problem is the HCR-PT dismissal of four parliamentarians from their posts on the grounds that they were Rwandan nationals or collaborators: Cyprien Rwakabuba Shinga (a Zairian Tutsi who had served as regional adviser for Rutshuru since 1959, provincial minister, Senator, political commissioner in 1975, member of the Central Committee and the State MPR party Disciplinary Committee and, since 1994, National Adviser); Mutiri Muyengo (Hutu) and Rémy Kalegamire (a Havu, and therefore a member of an "original" ethnic group, who had served as municipal and regional adviser in 1958 under the Belgians, MPR parliamentarian and member of the Vangu Commission, from which he was dismissed because of his opinions). The arbitrariness of this action was confirmed by the opinion to the contrary expressed by the HCR-PT Judicial Committee. Opposition parliamentarian Christian Badibangi was also dismissed from his post when it was discovered that, while in exile, he had married a French citizen, thereby acquiring French nationality and losing that of Zaire. [[back to the contents](#)]

H. Exercise of other human rights

138. Revocation of the right to nationality deprives members of the Tutsi and Hutu ethnic groups of at least two other rights:

(a) The right to reside in one's own country, already mentioned above. The HCR-PT agreements of 28 April entailing the expulsion of all transplanted persons and immigrants, are in flagrant violation of article 12.4 of the African Convention, even if applied to foreigners - which they are not.

(b) The right to take part in the conduct of public affairs, the exercise of which requires a nationality. [[back to the contents](#)]

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C. Right to nationality

98. As has been seen, Banyarwanda who came to Zaire between 1885 and 1960 were recognized as Zairian until 1981, at which time they were deprived of their nationality and left stateless. It should be added that the 1981 law was the result of a political choice by the

Central Committee of the Mouvement populaire de la revolution during the Party-State period.

99. But many descendants of people who were living in the Congo before 1885 have also been expelled, being regarded as foreigners.

100. These people are all still stateless not only because of the way things are (neither they nor their forebears have ever lived in Rwanda or held Rwandan nationality) but also because of the Kigali Government's explicit announcement on 2 April 1996 that it did not recognize them as nationals. The announcement confirmed what the Special Rapporteur had said in his second report, namely that recognizing the Banyarwanda as Zairian would be no violation of the Transitional Constitution of 9 April 1994, article 7.2 of which prohibits double nationality, since Banyarwanda from ethnic groups in Rwanda had no nationality (E/CN.4/1996/66, para. 130).

101. The position taken by the Catholic bishops in Kivu, that it is a lie to say that the Banyarwanda are not Zairian, is thus to be applauded.

102. The Special Rapporteur also notes with concern that article 11 of a recent bill on a census needed for election purposes [\(10\)](#) stipulates that Zairian nationality is to be proved, *inter alia*, by "the identity card for citizens", which makes the problem of the cards taken away from those expelled worse. If the cards are tampered with by simply changing the photographs and given to Hutu refugees in Zaire, the refugees will have the opportunity to cast fraudulent votes.