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STATE CRISIS AND THE EMERGENCE OF REFUGEE WARRIOR COMMUNITIES:

A CASE OF THE KIVU REGION, EASTERN CONGO

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DECLARATION

I Assumpta Evaline Mukami Nyaga hereby declare that this research project is my original work and has not been submitted for any degree award in any other University.

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This research project has been submitted for examination with my approval as the University Supervisor

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DEDICATION

This research project is dedicated to my family for the encouragement and emotional support provided throughout this whole period. You have consistently helped me keep perspective on the importance of pursuing one's passions in life. Many Thanks.

To the Victims of Conflict.

Those who seek each new dawn with unyielding hope and incredible courage.

A just portrayal of humanity in the face of unmerited cruelty.

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ABSTRACT

In spite of having attained independence from Belgium in 1960, the Democratic Republic of Congo (formerly Zaire) has continuously experienced protracted and sporadic violent conflicts over the last four decades. The 1994 Rwandan Genocide and the subsequent influx of almost one million refugees did not only amplify a humanitarian crisis but more significantly tilted the scale of ethnic balances in Eastern Congo. The main objective of the study is to examine the major question of Citizenship and its link to ethnicity. What defines a real Congolese? Should the definition be based on time of arrival on the territory? How can the central government define Congolese citizenship in respect of both civic and customary law? For Kinyarwanda-speaking inhabitants in the Kivus, East Congo the issue of citizenship is subsequently interwoven with ethnic identity which further determines right to customary power and territorial rights.

The refugee influx creates two major dilemmas: a state crisis for the Congolese government in the Kivu region where customary law continues to define political and social aspects of both natives and those perceived as non-natives. The manipulation of the Citizenship Law and with the absence of an adequate security apparatus the conflict continues to wreak havoc exemplified by dilapidated infrastructure, refugee influx, internal displacements and emergence of ethnic based armed groups (both internal and external).

Secondly, due to ethnic imbalances, fear of losing political authority and the quest for both local and national citizen recognition by different ethnic groups leads to taking up of arms by refugee communities and the local natives. The emergence of refugee warrior communities interrogates the conventional definition of a 'refugee'. How has exile duration, political agency and ethnicity played a role in the conventional understanding of refugee communities specifically in the Kivu Region. The prolonged exile nature of some refugee communities has led to the struggle to find a sense of 'belonging'. However, refugee communities who resort to violent political activities causes a predicament for humanitarian agencies and by large the international community on how to classify refugee communities who embody and conspicuously exercise political rights. This research concerns itself with the fate of the Kinyarwanda-speaking inhabitants of Eastern Congo.

The study adopted identity theories of both instrumentalist and constructivist scholars to explain the nature of two warrior refugee communities, the Banyamulenge and the Democratic Forces for the Liberation of Rwanda giving an understanding of the resolutions both groups have made in relation to the local indigenous community and the Congolese state. The civic /ethnic power dichotomy in the democratic Republic of Congo has played a significant role in influencing ethnic based tensions, ethnic-based armed groups and has been expressed through the 'bearers' of power definition of ethnic citizenship and identity legitimization resulting to the emergence of refugee warrior communities.

The research employed the use of published government and policy documents, contemporary periodicals and books and articles written by authoritative scholars and organizations in the subject matter. The study findings revealed that the civic/ethnic power dichotomy continues to play a major role in the Kivu region conflict resulting to the emergence of refugee warrior communities. The research concludes by discussing adequate measures to be undertaken by the Congo government, humanitarian agencies and the international community that will provide a durable solution to attaining an environment where post conflict building can flourish in the Kivu region and by large halt the recurrence of conflict and militarization of communities within the Great Lakes region. The research adds to the existing academic literature on refugee warrior communities thus allowing venture into the subject of citizenship status of refugees and the policies to be employed for the implementation of peace and sustainable development.

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MAP OF THE STUDY



¹ Rift Valley Institute. A map of the Eastern DRC highlighting Ituri, North Kivu and South Kivu. (map) “Rift Valley Institute” (http://riftvalley.net/map/eastern-drc#.V_46wn1EfIV) (Accessed on 30 September 2016).

LIST OF ABBREVIATIONS

ALiR-	Armée de Libération du Rwanda.
ADF-	Allied Democratic Forces
AU	- Africa Union
CNDP	-National Congress for the Defense of People
CNS	- Sovereign National Conference
DDR	- Disarmament, Demobilization, Reintegration
DDRRR	-Disarmament, Demobilization, Repatriation Reintegration, Resettlement
DRC	- Democratic Republic of Congo
Ex-FAR	- Former Rwandan Armed Forces
FAC- Forces	- Armées Congolaises or Congolese Armed Forces.
FARDC	- Forces Armées de la République Démocratique du Congo.
FAZ	- Forces Armées Zairoises. Zairian army during Mobutu's regime
FDLR	- Forces démocratiques de libération du Rwanda.
FMLN	-Farabundo Marti National Liberation Front (FMLN)
ICG	ó International Crisis Group
ICGLR	- International Conference for the Great Lakes Region
IDPs	- Internally Displaced Persons
LRA	- Lord's Resistance Army
MONUC	United Nations Organisation Mission in the Democratic Republic of the Congo
MONUSCO-	United Nations Stabilisation Mission in the Democratic Republic of the Congo
MLC	-Mouvement pour la Libération du Congo.
RCD	- Rassemblement Congolais pour la Démocratie (Congolese Rally for Democracy)
RPA/RDF	-Rwanda Patriotic Army, renamed Rwandan Defence Forces

M23	- March 23 Movement/ Congolese Revolutionary Army
PARECO	- Coalition of Congolese Patriotic Resistance
SADC	-Southern African Development Community
SPLA	- Sudan People's Liberation Army
SSR	- Security Sector Reform
UN	- United Nations
UNHCR	- United Nations High Commissioner for Refugees
UNITA	- National Union for the Total Independence of Angola
UNSC	- United Nations Security Council

DEFINITIONS

Banyamulenge- Ethnic Tutsi pastoralists who have lived on the Highlands of South Kivu since the late 1800s.

Banyarwanda-Congolese Rwandophones both Hutu and Tutsi.

Banyarushuru - Hutu's that migrated to Rutshuru before 1959

Banyamasisi -Hutu's that migrated to Masisi before 1959

Genocidaire ó A person involved in perpetrating a , especially the 1994 Rwandan genocide

Interahamwe- Hutu extremists militia group

Impuzamugambi- Hutu militia in Rwanda and together with the interahamwe militia were responsible for the 1994 Rwandan genocide

CHAPTER ONE: INTRODUCTION

1.0 INTRODUCTION

This chapter includes a historic background of the study, the statement of the problem and objectives of the study. It also gives a justification for the subject matter, a review of literature and the scope and limitations of the research undertaken. The theoretical framework and research methodology conclude the chapter.

1.1 BACKGROUND TO THE STUDY.

The research involves an in-depth analysis on the systematic patterns of how ethnic identities of refugee populations have been constantly used as a vehicle for mobilization by host communities and external sources. Ethnic identity and the claim to citizenship defined on the bases of language, body maps, regional ties and migration patterns.² Lemarchand argues that for a comprehensive understanding of the Central African conflict system, media reporting must begin by understanding the conflict's historical nature.³ The Belgian colonial rule was based on distinct legal and political structures. First based on race, Europeans were accorded more rights than black Africans while second based on the ethnicity of natives and non-natives. Furthermore in dividing the colonial population, indirect rule led to the creation of two distinct legal regimes: Civic power represented by the urban or central state was governed by civil law whereas the Native Authority represented by the local or rural ethnic groups was governed by customary law. While civil law was largely founded on universal rights, customary law on the other hand was based on tradition, authenticity and enforcement and more importantly law that was ethnic

² Rene Lemarchand Reflections on the Crisis in Eastern Congo, *The Brown Journal of World Affairs*, Vol.16 No. 1 (2009) pp 119-132

³ Rene Lemarchand, *The Dynamics of Violence in Central Africa* (Philadelphia: University of Pennsylvania Press, 2009.) p ix.

specific. Thus in the Belgian Congo we had numerous native authorities each ethnically ruled by a central administration.⁴

Mamdani expounds on the contrast in the organization of civil and customary law. Civic law (exemplified in numerous modern constitutions) was role specific. The roles of the government i.e. Executive, legislature and judicial were clearly defined including the power they could exert. Native law was based on a synthesis of power exerted by one individual, normally the chief. This power gave a chief the right to coerce subjects to follow customs. While civic law dealt with political and civil aspects of the state, native law largely consisted of the community and fiscal aspects of the natives and the distinct importance of membership within an ethnic community providing accessibility to the most valued commodity, land. Land not only represented (and still represents) a source of livelihood for the natives but also a sense of ethnic association.⁵

As many African states underwent independence and power was handed over to post-colonial African governments, civic authority was deracialized⁶. But in some African nations, customary or native law remained ethnicized and continues to make clear distinction between indigenous and non-indigenous ethnicities based on group rights.

The history of migration within Eastern Congo goes back to the pre-colonial era, most significantly the labor migrations during the colonial period but according to Mamdani addressing colonial boundaries shall not solve the recurrent violence experienced in Eastern Congo rather more focus should be on the institutionalization of political systems specifically the civic-ethnic dichotomy and its impact on the lives of the indigenous and migrants population.⁷

⁴ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis." *Social Text* 17, no. 3 (1999): 53-62. <https://muse.jhu.edu/> (accessed June 23, 2016).

⁵ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis."

⁶ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis."

⁷ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis."

In the case of the Kivu region, refugee warrior communities like the Democratic Forces for the Liberation of Rwanda (FDLR)⁸ who at one time were perceived to be ‘refugees’ now seek to be recognized as legitimate political actors within the local political system (mostly through violent means). Since most of these combatants see repatriation resulting to reprisal by the Rwandan government and cooperation between the Congolese and Rwandan governments in capturing FDLR members, this chronic cycle of violence is bound to continue especially in the absence of effective state protection peace for the Kivu region population.

On the other hand there is the fate of the Banyamulenge community whose story is double-coined depending on who is narrating it. Many Native Congolese see them as ‘foreigners in native clothes’ or ‘the Trojan horse of the Rwandan regime’. But according to the community all Tutsi in the South and North Kivu have a right to claim ‘indigeneity’⁹. Historically they formed part of the labor migrations during the colonial period but also and more importantly part of refugee populations who fled Rwanda during the Rwandan revolution from 1959 to 1961. Since Belgian rule emphasized ethnic power, colonial native administrative units favored larger ethnic communities over the smaller ethnic groups especially those believed to be non-natives. The Banyamulenge citizenship rights were further manipulated severely by the Mobutu regime through the reconstitution of the Citizenship Law and defining this group’s ethnic origin vis a vis the time of arrival in the Kivu region. The indigenous communities have also taken up arms against the Banyamulenge when the latter has sided with the Rwanda government during the Congo wars. Lemarchand observes that as Tutsi Banyamulenge have been discriminated upon by indigenous Congolese; Hutus (including former genocidaires and Hutu refugees) are treated more amicably. One of the reasons for this is that during the second Congo war Hutus As allies

⁸ A Hutu rebel group created in September 2000 out of the Armée de Libération du Rwanda ALiR forces based in the Kivus and other Rwandan Hutu, ex-FAR, Interahamwe, and non-génocidaire refugees integrated in the Congolese army defenses.

⁹ Lemarchand, *The Dynamics of violence in Central Africa*, 66.

of former president Laurent Kabila fought against Rwanda's incursions thus they are not viewed as foreigners or non-natives.¹⁰

With part of its population in constant tension concerning their rights to be identified as legitimate Congolese citizens, the Congolese government is faced with the crisis of how to merge both civil and ethnic law in a manner that respects the ethnic origins and cultures of the indigenous population as well as the Banyarwanda people.

1.2 Statement of the Research Problem

Mamdani thoughtfully asks:

“What happens when yesterday's victims act out of a determination that they must never again be victimized, never again? What happens when yesterday's victims act out of a conviction that power is the only guarantee against victimhood, so that the only dignified alternative to power is death? What happens when they are convinced that the taking of life is really noble because it signifies the willingness to risk one's own life, and is thus, in the final analysis, proof of one's own humanity?” (Mamdani, 2009)

The endless cycle of aggression in the Kivu region raises the question of the state's capabilities to exercise its legitimate power of sovereignty and state protection. To establish effective peace building initiatives and to relieve the population from decades of violence, poverty and under-development. What action must the state take in order to resolve the civic/ethnic dilemma for future generations? A civic/ethnic dilemma whose consequences are exemplified by the violent political and economic activities that both the native and non-native communities are determined to continuously exploit. How has revised Citizenship Laws influenced the contested citizenship discourse? As the state seeks to resolve the question of “belonging” how will it solve the complex conflict dynamics and the prolonged exile situation of members of the FDLR and other refugees

¹⁰ Rene Lemarchand, “Reflections on the Crisis in Eastern Congo,” *Brown Journal of World Affairs* 16, No. 1 (2009): 124

communities vis a vis the political demands of their Rwandan neighbor? How have both local and international legal provisions defined the lives of Natives, non-natives and refugee communities? Lastly how will the Congolese state, humanitarian agencies and the international community classify refugees who resort to violent political activities? What are the implications of not recognizing refugee communities as politically capable agents who may resort to violent struggle and consequently become warrior refugee communities? What are the implications on the receiving state, the sending state, humanitarian agencies and in particular the local community in which the refugees find refuge?

1.3 Objectives of the Study

The research concerns itself with the subject of Congolese citizenship of the Kinyarwanda-speaking inhabitants of Eastern Congo and subsequent emergence of refugee warrior communities. A state crisis influenced by the civic-ethnic dichotomy primarily the right to belong to a native power, the right to land and the quest for national political recognition. The study of the historical and current nature of refuge of two warrior refugee communities, the Congolese Banyamulenge Tutsi and the FDLR gives an understanding of the resolutions both groups have made in relation to the local indigenous community, the Congolese state (carry on/stop fighting).

1. Examine the relations between Civic (national) and customary (local) forms of authority in the colonial period and their influence on the lingering problem of defining citizenship and ethnicity in the Kivu region.
2. Assess the shortfalls of the conventional understanding of the nature of a refugee in relation to the emergence of refugee warrior communities and response by major actors.

3. Assess effective strategic alternatives to be implemented by the Congolese government, regional and international organizations to allow the cessation of violent conflict and encourage a conducive environment for post-conflict peace building.

1.4 Research Questions

1. Does the DRC government have the capability to solve the politicized question of citizenship, ethnic identity and institute a definition of the 'Congolese identity' that will not lead to the emergence of ethnically-aligned militia groups?
2. What are the substantial implications of disregarding the political capacities of refugee communities by humanitarian organizations, the sending state and receiving state?
3. Does the weak state and lack of state protection contribute to the limited successful results of strategic measures implemented and what recommendations based on a multifaceted approach will bring an end to the cycle of conflict in the Kivu region for the country to begin a sustainable post-conflict peace building process?

1.5 Justification of the Study

Mamdani suggests that African state collapse discourse should be analyzed by how political power was organized during the colonial period and its spillover influence in the post-colonial era. He acknowledges the Berlin Conference and the Scramble for Africa did lead to the drawing up of arbitrary boundaries but in the case of The Congo an understanding of the civic/ethnic dichotomy of power/authority structures will aid in identifying the root problem faced by the state in the Kivu Region, the citizenship question and governance inconsistencies of the different post-colonial regimes.¹¹ Lemarchand points out 'that in the absence of a functional state'¹², a

¹¹ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis." *Social Text* 17, no. 3 (1999): 53-62. <https://muse.jhu.edu/> (accessed June 20, 2016).

¹² Lemarchand *Reflections on the Crisis in Eastern Congo*

gaping institutional void is created thus enabling warring factions to establish themselves politically and militarily.¹³ Academically, the research suggests a different discourse from the commonly argued one in which 'collapsed' African states are measured against the same political and socio-economic determinants as modern European states. The organization of power during the colonial era is rarely used as a basis to determine the effects of the employment of colonial native authority in the modern African state. The political interests and demands of refugee communities in Eastern Congo conflict have changed dynamically based on their enabling environment be it the residing government, influence from regional players and role played by humanitarian assistance agencies. The study may also assist academics from the sociology and psychology disciplines that can get the broader picture concerning the psychological factors that influence the habits of refugee warrior communities.

It is paramount for policy makers to come up with effective strategies and policies that will address once and for all the question of citizenship for the large population in Eastern Congo. A holistic approach that specifies specific responsibilities for all key players including provisions against human rights violators. Policies that will pin-point crucial aspects of the crisis so as formulate effective post conflict peace building programs geared towards the political and socio-economic well-being of all Congolese citizens.

Knowledge is power, the public needs to understand the underlying factors that have led to the protraction of the conflict so as to be better positioned to call on national governments, regional organizations like the African Union to support national and international campaigns and initiatives that seek to halt human right violations in Eastern Congo.

Since the Rwandan genocide, the conflict in Eastern Congo has led to avoidable loss of human lives, underdevelopment in a region believed to be the richest in vital natural resources and rather

¹³ Lemarchand *Reflections on the Crisis in Eastern Congo*

sadly the participation of suspect interested parties and players whose motives are guided by greed and opportunistic tendencies. The research hence seeks to answer the questions: What is the most effective multifaceted approach towards efforts of bringing peace, security and effective governance in the DRC?

1.6 Scope and Limitation of the Study

The research is being conducted to determine one of the major determinants of the state crisis in the DRC. The subject matter will involve an in-depth analysis of the colonial organization of power both at the national level and the grassroots. This colonial civic/ethnic dichotomy shall then be used to analyze the present organization of power/authority in the Congo, more specifically Kivu region (area of ongoing conflict). Diverse ethnicity and citizenship definitions have been ingrained into the national/civil and rural/customary political and social instruments/institutions of authority. Ethnicity and citizenship continue to play a key role in the political and socio-economic interests and decision-making apparatus within the Kivu region.

Due to the relevance of the colonial system's method of local governance, the study will give a historical background of the different levels at which power was disseminated by the colonial authorities linking it to the present state crisis in the Kivu region.

The period 1994-2003 was one marked by a rise of refugee warrior communities involved in violent conflict across the Kivu region. Most significant was the occurrence of the Rwandan genocide and the different ethnic identity roles played by the Banyamulenge and FDLR during the two destructive Congo wars. The second period is the period that marks the 2nd and 3rd phase of the Kivu conflict 2012-2015: The political and ethnic decisions the Banyamulenge communities have made to engage in conflict mostly influenced by the egotistical citizenship laws instituted by the Mobutu regime and the taking up of arms by the local indigenous communities against those they perceived as non-natives.

On challenges the research may face is getting access to various interviewees who may provide reliable primary data collection specifically refugees in refugee camps in the Kivu region, ex-combatants and current combatants. Furthermore due to the sensitivity of the subject matter limitation of time and security concerns to travel to the Kivu region the research will rely and critically evaluate the validity and reliability of all secondary data authors. The research has employed secondary data from reliable international organizations like the United Nations Security Council (UNSC) reports, the African Union (AU) protocol documents and published government documents, speeches, and archival reports by international organizations and secondary data from books and articles written by authoritative scholars, academic journals and other sources.

The use of secondary data has also aided in the clarification of the research question which is partly historical based due to the analysis of the colonial political system structures. This has assisted in giving an avenue for the research to focus on the rarely explored determinant of the state crisis in the DRC: the civic native dichotomy.

1.7 Literature Review

1.7.1 COLONIAL CIVIC/ETHNIC DICHOTOMY IMPACT ON THE CONGO.

The subject matter of the impact of colonialism on Africa has been controversial with contenders of the various schools of thoughts either defending colonialism in Africa as a prerequisite of a ÷civilizedø continent while the other extreme arguing that colonialism had no positive impact on Africa.¹⁴ The former largely identified as European and Eurocentric historians maintains that the progressive political, economic and social impacts outweigh the adverse impacts. The latter school of thought composed of mainly African and Marxist scholarsø views colonialism as a system that enforced exploitation and social change. Karl Marx believed colonial regimes as

¹⁴ A. A. Boahen, *African Perspectives on Colonialism*: (Baltimore, The John Hopkins University Press)1987. pp 94-112

capitalist exemplified by inequality, exploitation of labor causing uneven development.¹⁵

Renowned historian Walter Rodney thus summarizes the situation:

“The argument is on the one hand, there was exploitation and oppression but on the other hand colonial governments did much for the benefit of Africans and they developed Africa. It is our contention that this is false. Colonialism had only one hand, it was a one-armed bandit.” (Rodney. 1972: 223)

Irrespective of the school of thought one may choose to side with, one glaring liability is the method in which the colonial powers choose to create the boundaries of present day African states. It is a fact that the ethno-cultural, geographical and ecological realities of the African continent were not considered. Resulting in artificial boundaries drawn across former nations, ethnicities, kingdoms and empires.¹⁶ Examples being the Akan in Ghana and the Ivory Coast and the Somali found in Somalia, Ethiopia and Kenya. The DRC (formerly Zaire) is no stranger to this, proven by the presence of the Bakongo people in the Congo (Brazzaville), DRC, Angola and Gabon.¹⁷

When Mahmood Mamdani writes about the “invention of the *indigène*” he describes it as the creation of political institutions by colonial powers, a discriminatory system exemplified by race in the urban cities and tribe in the rural areas.¹⁸ Within the Kivu region the dilemma of the Banyarwanda speaking minority is a somewhat misunderstood subject. How and why would a population be in constant conflict? Is it purely over natural resources or the old myopic self-centered power-hungry desire of man? Is it an irrational violent conflict held hostage by a few

¹⁵ K. Marx and F. Engels, *On Colonialism*, (Moscow, Foreign Languages Publishing House) 1850.

¹⁶ Boahen, *African Perspectives on Colonialism*

¹⁷ Ibid

¹⁸ Mahmood Mamdani. "The Invention of the Indigène." *London Review of Books* 33 no. 2 (2011): 31-33, <http://www.lrb.co.uk/v33/n02/mahmood-mamdani/the-invention-of-the-indigene>.

internal and external elite who reap incredible profits from the extraction of globally consumed minerals and the sale of armaments?

M. Mamdani describes the Belgian colonial rule as one based on distinct legal and political structures. First based on race i.e. Europeans were accorded more rights than black Africans and second based on ethnicity specifically for the natives or indigenous people. Furthermore in dividing the colonial population, indirect rule led to the creation of two distinct legal regimes: Civic power represented by the urban or central state was governed by civil law whereas the Native Authority represented by the local or rural ethnic groups was governed by customary law. While civil law was largely founded on universal rights, customary law on the other hand was based on tradition, authenticity and enforcement and more importantly law that was ethnic specific. Thus in the Belgian Congo we had numerous native authorities each identified ethnically ruled by a central administration.¹⁹

In our area of study, the Banyarwanda speaking minority of the Kivu consist of three groups: The *Banyaruchuru* and the *Banyamasisi* of the North Kivu and the *Banyamulenge* in the South Kivu. While the first two are largely Hutus the third group are exclusively Tutsi. To further demonstrate the significance of nativity while the Hutu of *Ruchuru* are considered 'indigenous' and have their own Native Authority, the native status of Hutu of *Masisi* has been contested by other ethnic communities in the region. The Tutsi of *Mulenge* is a whole different case consisting of discrimination both at the local levels and in past momentous periods at the national level through civil legislation of nationality.²⁰

¹⁹ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis." *Social Text* 17, no. 3 (1999): 53-62. <https://muse.jhu.edu/> (accessed June 20, 2016).

²⁰ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo* September 1997, report submitted to the General assembly of the Council for the Development

As stated above ethnic identity is linked to Native Authority, both during the colonial period and presently. Access to group rights could only be through membership into an ethnic group. Being under the authority of a Native Authority (composed of three tiers) meant access to the privilege of customary rights. Being part of an ethnic group that had access to the top two levels of the Native Authority assured one of: confirmation of ethnic belonging and issuance of an identification documents, allocation of customary land and access to customary justice in a tribunals chaired by the top local administration.²¹ Thus a dilemma for an ethnic group like the Tutsi of Mulenge. Another contentious issue is the use of the term Banyamulenge and the meaning it carries based on who uses it. After the 1972 genocide of Hutus in Burundi, the Banyarwanda of South Kivu who are mainly Tutsi, in an effort to distance themselves from the happenings in Burundi, insisted on being called Banyamulenge ‘people of Mulenge’ especially after the 1977 elections. Thus instead of identifying with a ‘foreign’ ethnicity they would be identified by a territory within the Kivu region creating a better chance to gain access to customary group rights. But the local indigenous Congolese specifically the Bafuliro see the term as a way of the non-indigenous to hide their real identities and gain access to a resource like land which should be the reserve of a native.²²

To further understand the ethnic aspect in view of the Eastern Congo conflict, Rene Lemarchand, a scholar in the subject of ethnic conflict and genocide in Rwanda and Burundi gives a historical analysis of the two prime ethnic groups that prominently featured not only in the present conflict

of Social Research in Africa (CODESRIA), Dakar, Senegal, 14-18 December 1998: (Centre for African Studies University of Cape Town, 20 November 1998)

²¹ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo* September 1997,

²² Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo* September 1997, report submitted to the General assembly of the Council for the Development of Social Research in Africa (CODESRIA), Dakar, Senegal, 14-18 December 1998: (Centre for African Studies University of Cape Town, 20 November 1998)

but also past conflicts including crimes of genocide.²³ The refugee warriors in the Eastern Congo conflict comprise different groups with contrasting histories and political interests. The Banyamulenge Tutsi refugees of the 1960s were part of the RCD óGoma which fought in the Second Congo War (1998-2003) and believed to be supported by the Kagame-led government. The post-1994 Hutu Refugees who formed FDLR in 2000 are a combination of the agents of the Rwandan genocide, Hutu Refugees and ex-Rwandan army officers who also participated in the 2nd Congo War. Other groups like Mai-Mai and M23 militia groups have also been involved in the conflict. Although parties to the conflict have constantly been defined by their ethnic identities, ethnic diversity cannot be the sole cause the conflict.²⁴ Cross-border refugee movements and the extent of conflict may be linked to the level of ethnic balances within refugee camps and conflict zones. Refugee movements may aggravate pre-existing indigenous ethnic hostilities and conflict as observed in the case of Eastern Congo.²⁵

For Lemarchand political, social, and economic exclusion are the basis of conflict in the region. When significant segments of the population remain excluded for instance, the Hutu in Rwanda at present and the marginalization of ethnic groups in Eastern Congo, resolution to conflicts shall be elusive.²⁶ Burundi's last twenty four months has been characterized by sporadic violence, an attempted coup, Burundian refugees influx into Rwanda and Congo all instigated by President Pierre Nkurunziza's decision to add a third term to his rule and a failed coup attempt by Burundi Army General Godefroid Niyombareh .

²³ Lemarchand, *The Dynamics of violence in Central Africa*

²⁴ Lemarchand, *The Dynamics of violence in Central Africa*

²⁵ Lars-Erik Cederman and Luc Girardin, Beyond Fractionalization: Mapping Ethnicity onto Nationalist Insurgencies. *American Political Science Review*. 101(1), 2007: 173-185

²⁶ Lemarchand, *The Dynamics of violence in Central Africa*

Dixon Kamukama gives three different views to try and explain why the conflict in Rwanda happened, which at its peak resulted in the genocide of over 800,000 Tutsis and moderate Hutus. During the pre-colonial times, Rwanda had three ethnic sub groups who spoke the same language, Kinyarwanda, The Hutu, Tutsi and Twa (the majority being the Hutu). Then the major difference was the role each sub-group played in the society, Kings and Princes came from the more organized Kingdoms of the Tutsis while the Hutus and Twas were the serfs.²⁷ These inequalities were manifested and maintained during the colonial period. Germany (1892) and later Belgium from 1916 were the two European colonialists who saw the class differences as being advantageous to them and such maintained the status quo basing it on their belief of 'divide and conquer'. They created more 'artificial' bridges between the groups by stating that the physical features of the Tutsis made them superior in stature to the Hutus thus they were the ones given posts within the colonial government while menial jobs were preserved for the Hutus.²⁸ But he further goes on and says that during the colonial time that although the class divide existed, this was not as important as the distinction in mode of production. While Hutus are subsistence farmers, Tutsi are pastoralists while Twas are hunters and gatherers. The groups co-existed since they all had a role to play for each other. In the post-colonial era, the leadership that took over the colonial government and the subsequent government of President Habyarimana did not address the issues of inequalities. Just like his predecessor, Habyarimana endorsed the identity card systems indicating which ethnic group a citizen was from, the same determined access to employment opportunities and who someone would eventually marry.²⁹

One cannot ignore the fact that colonialism and its effects continue to be felt in Africa more so in the Great Lakes conflict. Under Belgian rule, Rwandan Tutsis (even though the minority) were

²⁷ Dixon Kamukama. Rwanda Conflict: Its Roots and Regional Implications. Fountain Publishers Limited, 1997

²⁸ Ibid

²⁹ Dixon Kamukama. Rwanda Conflict: Its Roots and Regional Implications

favoured over their Hutu brothers but this drastically changed in 1959 when Rwanda gained its independence which was followed by anti-Tutsi protests and Tutsi exiles into Uganda. Following suit Rwanda's neighbour Burundi after gaining independence in 1962 the then Tutsi regime carried out Hutu killings; it is these same Hutus who fled into Rwanda who were used to preach Hutu power and regard their Tutsi brothers as inferior which led to the 1994 Tutsi Genocide.³⁰

1.7.2 Refugee Migrations and Refugee Warrior Communities

The phenomenon of refugee movements is not new but the various factors that characterize such movements have gradually evolved and are at times intertwined. The 16th and 17th Century refugee flows were characterized by flight from *religious persecution* exemplified by the Huguenots in France fleeing for their protestant beliefs. In the 18th and 19th centuries, political ideologies were one of the major drivers of refugee movements. Known as the century of Revolutions it was during the French revolution when *political persecutions* increased across Europe. The French monarchy under pressure from opposing political and societal views was abolished and more a democratic society created.³¹

The above two explanations are termed as the 'classical types' of factors influencing refugee flows. The early 20th century and onwards saw the emergence and frequency of both nationalistic and ethnic factors as drivers of refugee movements across Europe. People were forced to flee their homelands not only because of violent conflict but largely due to the growth of nationalism. As empires (Austro-Hungarian and Ottoman) collapsed, this led to major territorial changes which

³⁰ Mamdani, Mahmood. *When victims become killers: Colonialism, Nativism, and the genocide in Rwanda*. Princeton University Press, 2014

³¹ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989. p xiv

resulted to consolidation of power through national unity. The Second World War was marked by a mass exodus of the Jewish nation because of their ethnicity from German invaded areas. The 1948 Palestinian Exodus from Mandatory Palestine resulting refugee flows to Lebanon, Syria and Egypt resulting to the creation of Refugees warriors emanating from refugee camps falling under the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA).³²

Although refugee movements can be explained by any one of the above, with the rise of globalization, there are multifaceted factors that influence such movements more so since the conclusion of the Cold war. Scholars of refugee movements agree the common determinant of refugee movements to be violent conflict.

The concept of refugee warrior communities was first presented by Zolberg, Suhrke and Aguayo in 1989, who argued that "the mass exit of a large proportion of the sending state leads to an arena in which groups vie for power as if they were microstates. ...the outcome is a proliferation of warrior bands, verging on a war of all against all"³³ But a clear distinction must be made to differentiate intra-state insurrectional groups, legitimate refugees and the refugee warrior (the three groups do overlap each other in practice).³⁴

Refugee warriors are highly conscious refugee communities with a political leadership structure and armed sections engaged in warfare for a political objective are it to recapture the homeland,

³² Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*

³³ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*

³⁴ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*

change the regime or secure a separate state.³⁵ This was made to refer to the Palestinian refugees who had waged war on the Jordan Kingdom in 1970 and continued to play a significant part in the Lebanon political war in Lebanon after militarization of the Palestine refugee population. Other examples are the Tutsi rebels who invaded Rwanda from Uganda during the Rwandan civil War in 1990, the Kurds based in Iraq and Iran have waged war over territorial issues against Turkey and Iraq.³⁶

Sarah Lischer argues out three important factors that determine the militaristic capabilities of a refugee community: the intensity of refugee political organization before exile, the preparedness of the host country to avert military activity and the efficiency of the state, regional and international security structures and the availability of resources from aid agencies and external factors that may aggravate conflict. The three factors can further be aided by three proposed categories of refugee communities. Situational refugees flee their homes when violent conflict impends their safety and livelihood security. They are not initial targets of the violence and do not participate in the conflict. They are ready to return home as long as peace is assured, regardless of the political aftermath of the conflict that exiled them. Their political structure is next to none in the receiving state and do not involve themselves in any civil or armed activity in support of either side of the conflict in their country of origin.³⁷ Persecuted refugees on the other hand have to be reassured of protection from their prosecutors before returning home thus they flee based on direct persecution or oppression based on ethnicity, religion, political identity. This mass exit can very well lead to group solidarity resulting into political or military organizations among the refugees. The last group is state-in exile refugees who consist of political and military

³⁵ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*

³⁶ Kristian Berg Harpviken, *From 'Refugees Warriors' to 'Returnee warriors': Militant Homecoming in Afghanistan and Beyond*. (George Mason University: Global Migration and Transnational Politics, working Paper No. 5 2008)

³⁷ Sarah K.Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

leaders who use the refugee crisis as a tactic to circumvent detection in a civil war. This group has the highest predisposition for political violence and can be defined largely by the 3 major factors described above.³⁸

Howard Adelman emphasizes that in the case of Eastern Congo the emergence of refugee warrior communities is as a result of international political relations and exploitation of humanitarian relief rather than the core conflict that initially produced the conflict.³⁹ In the case of Eastern Congo, the significance (whether by intention or not) of the proximity of the refugee camps to the sending country and size of the refugee camps and the legitimating function the civilian refugee population presents the armed refugees which further avails prime candidates for recruitment. The role the international community has played including governments, the United Nations (peacekeeping forces) and the humanitarian aid agencies is of importance. Legitimacy of the host country's existing regime and the politicization of ethnic identities continue to influence the ongoing conflict. In support of Adelman the initial reason that created the conflict and the consequently the refugee crisis has been overrun by changing political and economic factors that have led to the conflict being contracted. Legitimacy of the host country's regime and the politicization of ethnic identities aid in understanding the different outcomes of the refugee influx in both Rwanda and Tanzania.

Numerous strategies and policies have been recommended. Willingness of both the sending and receiving countries to prevent violence, coordinated repatriation programs that seek to reduce the time spent in refugee camps. External actors' role in influencing governments to practice democratic processes, effective DDR processes that involve both sending/host government and

³⁸ Sarah K. Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*.

³⁹ Howard , Adelman. "Why Refugee Warriors Are Threats". *Journal of Conflict Studies* 18.1 (1998): 1-23. Print.

local communities. Lischer proposes a controversial policy of having private security forces within the camps and if conflict continues the closure of certain camps.

Karen Jacobsen who wrote a paper titled '*A Safety first approach to Physical Protection in refugee camps*'⁴⁰ sought to analysis the security and safety complications experienced in camps and refugee hosting regions, draws out case specific strategies about a security-first policy. Here again comparison shall be made between the refugees who fled to Tanzania to those in Eastern Congo area and how the political and ethnic context influenced the ongoing conflict or the lack of it in Tanzania. What did the Tanzanian government do different from the DRC regime or did other factors influence the refugee crisis in the DRC. Together with other strategies is the Safety First approach applicable in the Eastern Congo conflict as more refugees emanate from the recent political unrest in Burundi and the protracted refugee situation in the Kivu region.

Findings

From the above literature review the first objective has been explained by describing the structures of the political colonial structures. Mamdani having researched widely on the subject has defined it as a discriminatory system based on race in the urban cities and tribe/ethnicity in the rural areas.⁴¹ Thus the emergence of refugee warrior communities is based on this discriminatory system that the post-colonial government did not seek to modify to cater for a post-colonial population that included natives, immigrants and refugees. Ethnic identity theories

⁴⁰Karen, Jacobsen. "A" Safety-First" Approach to Physical Protection in Refugee Camps." Working Paper No. 4 (Inter-University Committee on International Migration MIT May 1999). Available from http://web.mit.edu/CIS/www/migration/pubs/rrwp/4_safety.pdf

⁴¹ Mahmood Mamdani. "The Invention of the Indigène." *London Review of Books* 33 no. 2 (2011): 31-33, <http://www.lrb.co.uk/v33/n02/mahmood-mamdani/the-invention-of-the-indigene>.

explain further the necessity for recognition and equality of ethnic groups within an existing territorial state.⁴²

1.8 Summary of Literature Gaps

While there is no doubt that the humanitarian global community is overly concerned with the high level of suffering in the Kivu region, the protracted conflict is evidence enough that a different approach must be taken to achieve lasting peace, security and sustainable post conflict peace building mechanisms.

Instead of attributing the evident state crisis on two frequent discourses: artificial nature of African state boundaries and African state 'reproduction' based on the modern European state through current globalization experiences, this research takes the less talked about more complex and emotive discourse. Ethnicity. Citizenship. Post-Colonial impact on political governance.⁴³

By employing identity theories and defining ethnicity in the DRC context, the research gives insight into the links between ethnic power, legitimate citizenship recognition and the on-going conflict. The research does not dispel the influential economic aspect of the conflict but rather puts forth that the major proximate factors are rather the social and political aspects. Furthermore an analysis of the various citizenship laws/decrees enacted in the past shall help in understanding how civic/customary dichotomy has contributed to the state crisis including the emergence of refugee warrior communities. If Europe and the Americas solutions after the major world wars were not based on replication, solutions to the Congo civic/ethnic crisis shouldn't either. The research adds to the less frequented discourse of the colonial bifurcated power structures on which the DRC has and is building its 'modern' state upon.

⁴² G. G. Ismayilov, 'Ethnic Conflicts and Their Causes' *Khazar Journal of Humanities and Social Sciences*, Vol 3 No. 4 (2008) pp 50-63

⁴³ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis

1.9 Theoretical Framework

Theoretical research on ethnic identities is not a recent phenomenon; various schools of thought have tried to explain ethnic conflicts and ethnic group formations. Various scholars have formed social science arguments by exploring the relationship between ethnicity and building, ethnicity and modernity, ethnicity and consociational democracy and migration and ethnicity.⁴⁴ It has been observed that conflict within national boundaries increased in the last quarter of the 20th century into the 21st century. Although several theories have been used to explain the conflict in Eastern Congo (a prominent argument being the greed versus grievance theory) this research employs ethnic identity theories based on the premise that the ethnic conflict in the Kivu region is linked significantly to citizenship recognition. In this specific case ethnicity and citizenship is linked to the historical experiences of the refugee communities and the indigenous population in the Kivu. The world has experienced the ethnic violence in the Balkans, ethnic divisions in Northern Ireland, the Israeli-Palestinian ongoing conflict, racial tensions in South Africa and the worst post-cold war ethnic violence being the Rwandan genocide.⁴⁵ As we seek to explain the interrelationship between citizenship, ethnic identity to the emergence of refugee warrior communities and state, we ought to ask ourselves: Do we define 'ethnicity' as either inherited or socially constructed? What determines ethnic membership or classification?⁴⁶

Ethnicity has been defined as collective belonging based on common descent, language, historic experiences, culture, race or religion.⁴⁷ In similar terms Weber states that 'ethnic groups are human groups who possess a personal belief in a common descent based on similarities of physical type, traditions, memories of colonization and migration; however the combination of

⁴⁴ Ashutosh Varshney. 'Ethnicity and ethnic Conflict'. *Oxford Handbook of Comparative Politics*, (2007) Pp274-95

⁴⁵ Ashutosh Varshney. 'Ethnicity and ethnic Conflict'.

⁴⁶ Philip Q. Yang. *Theories of Ethnicity. Ethnic Studies: Issues and Approaches* (State University of New York Press:2000) pp 39-60.

⁴⁷ Donald L. Horowitz *Ethnic groups in conflict*. Univ of California Press, 1985.

the similarities this belief system must exist for group formation.⁴⁸ A subject of controversy is the belief that the politicization of ethnicity on its own causes divisions between different ethnic groups resulting to violent conflict in Africa. However, ethnic heterogeneity cannot be the only factor since there exists the world over regions that have diverse ethnic groups who have not been in violent conflict. For example we have experienced conflict in the DRC and Rwanda while Tanzania remains peaceful with its numerous ethnic groups. Somalia an ethnically homogenous state experienced a civil war. Can the politicization of ethnicity be the sole determinant of violent conflict? Ihonvbere affirms that in Africa, ethnic identity, ethnicity and ethnic politics has only been denoted as negative in the context of state failure and the struggle to expand political space, displace others, appropriate resources, power domination or engagement in extra-legal agendas.⁴⁹

The primordialist approach asserts that ethnicity is a fixed characteristic derived from inherited biological attributes, territorial ownership and cultural similarities. Biological and historical roots are fixed and no variations exist in this school of thought. Thus in the case of the Rwandan genocide the difference in kinships between the Hutus and Tutsis, first physical characteristics, historical land ownership rights and cultural differences in the mode of economic activities was the basis on which Hutu Power ideology was constructed on leading to the demonizing of Tutsis and labeling them as 'outsiders'.⁵⁰ A proponent of Primordialism, Clifford Geertz defined it as 'givenness', a bond or tie that cannot be undone.⁵¹

⁴⁸ Max Weber, 'The Origin of Ethnic Groups,' in *J. Hutchinson and J. Smith (eds.), Ethnicity* (Oxford University Press, 1996), pp 35-40

⁴⁹ Julius O. Ihonvbere. "The irrelevant state, ethnicity, and the quest for nationhood in Africa." *Ethnic and Racial Studies* 17, no. 1 (1994): 42-60.

⁵⁰ Philip Q. Yang. *Theories of Ethnicity*. Ethnic Studies: Issues and Approaches (State University of New York Press: 2000) pp 39-60

⁵¹ Viera Bacova *The Construction of National Identity-on Primordialism and Instrumentalism Human Affairs*, 8 1989, 1 29-43

In contrast, instrumentalism regards ethnicity as result of personal choice independent from biological and cultural features. This school of thought views ethnicity as a means to an end, a device used by a group of individuals to systematically marshal the populace to achieve political and economic goals. Instrumentalists view ethnic conflict as a conflict of political ideologies and economic interests; one chooses which membership to ascribe to based on common goals and aspirations.

The third school of thought is social constructivism that focuses on the social nature of ethnic identity; ethnicity is a response to the unpredictability of the social environment. When society experiences situations where variations cannot be solved harmoniously for example political inequalities and social grievances, groups may result to violent conflict.⁵² For example the changing nature of the different ethnic groups in the Kivu region. The Banyamulenge had once lived in relative peace with other Congolese ethnic groups but this changed when the group with support from the Rwandan government was part of the militia that overthrew the Mobutu regime. Furthermore they assisted the Rwandan government in the 2nd Congo war. The local Congolese ethnic groups who are part of the current conflict state that they are defending their land and people from the non-natives.

The above theories of ethnic identity are plausible to explain the state crisis that exists in the Congo which this research proposes to do. Esman states that "ethnic identity can be located on spectrum between primordial historical continuities and instrumental opportunistic adaptations."⁵³

⁵² Philip Q. Yang, *Theories of Ethnicity*

⁵³ Milton J. Esman, *Ethnic Politics*. Cornell University Press, 1994.

1.10 Hypothesis

1. The civic /ethnic power dichotomy in the DRC has played a significant role in influencing ethnic based tensions, ethnic-based armed groups and the protracted conflict.
2. Customary/Native power in the Kivu region is expressed and administered through the bearers of power definition of ethnic citizenship and identity legitimization resulting to the emergence of refugee warrior communities.
3. The nature of refugee of refugee communities has dynamically changed and calls for the need to revisit the roles played by the humanitarian agencies and include safety first approaches and preventive measures of militarization of refugees.

1.11 Methodology of the Research

1.11.1 Research Design

This research will use a descriptive approach to explain and validate how the state crisis occasioned by civic/native dichotomy has predisposed the emergence of refugee warrior communities. Acknowledging that there are other factors that have influenced the case study, the research seeks to evaluate the historical nature of the civic/customary dichotomy in the DRC. The case study is significant in order to assess the correlation between Belgian colonial political system and the present state crisis exemplified by discriminatory citizenship law and ethnic violence and to predict potential negative or positive future outcomes. This will further aid in determining the proximate factors that has led to the protracted conflict, emergence of refugee communities and the failure of the concerned players to halt the conflict and attain a successful humanitarian assistance program marked by sustainable development, political stability, peace and state security. Using the case study method allows for an effective analysis to be concluded

due to inability of quantifying the issue of a state crisis that has been protracted and is linked to historical political systems.

The research uses the non-probability sample method for the population sample as the research targets a specified case study, the Kivu region.

1.11.2 Data Collection Techniques

Due to the foreseeable limitations the major technique to be used will be documented primary and secondary data including archival materials, published government papers, collected speeches and contemporary periodicals. Although document study may at times be inaccurate the research will use literature written and compiled by authoritative scholars and organization that have done adequate research on the Great Lakes conflict system. The study will also be useful in determining political and public attitudes in the future and provide an avenue for future research on the subject matter.

1.11.3 Data Analysis

Although a decisive research requires access to the various actors including refugees, militia groups, humanitarian agencies Congo government officials and others, due to time constraints and the highly sensitive subject matter the research seeks to employ a document analysis (Content analysis of written data) of collected data. An in-depth examination of systematic examples of how ethnic identities in refugee populations are used as a vehicle for mobilization by host communities, refugees and external actors. Content analysis offers applicable conclusions through the analysis and cross referencing of the collected data so as to isolate key concepts and themes from this data. The research seeks to analyze the concepts of ethnicity, citizenship and refugee warriors in the context of state crisis, refugee communities and the local indigenous people of Kivu region. Although some data references may be subjective, employed

concepts and observations do have similarities and converge in order to demonstrate the impact of colonial political systems on colonized states in the present.

1.12 Chapter Outline

Chapter one: Introduction

This chapter includes a historic background of the study, the problem statement and objectives of the study. It also gives a justification for the subject matter, a review of literature and the scope and limitations of the research undertaken. The theoretical framework and research methodology conclude the chapter.

Chapter Two: The Civic/ Customary Dichotomy

This chapter provides an analysis of the colonial political structures and its relation to the current civic/customary dichotomy that influences the state crisis in the DRC.

Chapter Three: Emergence of Refugee Warrior Communities in the Kivu region

This chapter provides a comprehensive description of the nature and structure of refugee warrior communities in the Kivu region specifically, the Banyamulenge Tutsi and the Rwandan Hutu refugees whose armed faction is the FDLR

Chapter Four: Responses to the DRC Refugee Crisis

The chapter gives an overview of the major actors who have been involved in the Congo including the armed forces of the DRC, humanitarian agencies and key external actors.

Chapter Five: Conclusion and Recommendations

Chapter five provides recommendations, a conclusion to the study and suggestions on areas for further study and research.

CHAPTER TWO: THE CIVIC/ CUSTOMARY DICHOTOMY

2.0 Introduction

The scramble and conquest of Africa has been widely documented by both euro-centric and African authorities. One widely documented eccentric persona is King Leopold II of Belgium and his stringent control over the vast Congo Free State in the late 19th century. Human rights abuses were committed by colonialists all over the African continent, but the rich mineral Congo stands out specifically King Leopold's inhumane atrocities subjected upon the local populations in order to run his profit-making "Rubber Regime".⁵⁴ When in 1908 the Belgian government took over control and renamed the region Belgian Congo, a colonial administration was introduced that would have far-reaching implications upon the post-independence political system.

Whether it was direct or indirect rule, the colonialists were at the top of the pyramid and had sole political and economic over the regions they governed. During Congo's independence ceremony, Patrice Lumumba publicly (and internationally) accused the Belgian government of racism, oppression and exploitations.⁵⁵ Although all three issues are important, racism was indiscreetly played out in the national and local political administrative system. Racism and tribalism, two concepts that were key to effective rule over the colonialists "uncivilized" subjects. By analyzing the manner in which the colonial state building was systematically carried out creates a foundation to understand the current state crisis the DRC faces presently in the Kivu region.

⁵⁴ Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (New York, Houghton Mifflin Harcourt Publishing Company, 1999)

⁵⁵ Patrice Lumumba's speech at the ceremony of the proclamation of the Congo's independence. *Patrice Lumumba: The truth about a monstrous crime of the colonialists*,. Moscow, foreign languages publishing house, 1961, pp. 44-47. Retrieved from <https://www.marxists.org/subject/africa/lumumba/1960/06/independence.htm>

2.1 The Colonial Perspective

It is easy to conclude that the conflict in the Kivus is influenced largely by the vast presence of volatile raw materials highly required, used and abused the world over. But it can also be argued that with climate change and environmental degradation what will be the major power behind the conflict once these natural resources become painfully scarce. Then we have the repetitive but equally to blame factors of vast corruption within national and local institutions, partial political loyalties between government officials and elites and the emotive question of land ownership. Having been colonized for over fifty years by Belgium it is prudent to examine the first political institution/system that was the backbone of the colonial system. As much as economic exploitation and raw material depletion was evident during the colonial era, it was important for the colonial government to demonstrate to the colonized who was in power either through direct or indirect rule.

Mamdani argues that with all schools of thoughts on colonization considered, it is the remnants of the political institutions of colonial rule that could be influencing the state crisis in the Congo.⁵⁶ The crisis of democratic governance both at the national and local levels can be studied by dissecting the foundation on which it was/is being built on. The colonialists' political system was thoroughly distinct and definition oriented. Law defined the colonial state, the colonizers and the colonized but most notably was its prejudicial definition of race and ethnicity that would continue to have an impact on post-colonial Africa.

⁵⁶ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis." *Social Text* 17, no. 3 (1999): 53-62. <https://muse.jhu.edu/> (accessed June 23, 2016).

From a modern perspective both race and ethnicity more frequently than not evoke poignant sentiments in both the political and social arenas. Through the decades scholars from diverse social disciplines have defined and interpreted both concepts differently. One consensus is that both concepts are social constructed and that the social structures created by humans do govern and influence our society both positively and negatively. Race is largely attributed to biological genetics determined by the skin color, eye color, jaw structures and other physical characteristics. On the other hand ethnicity is described by factors relating to nationality, culture, language and ancestry beliefs.⁵⁷ In most cases when ethnicity is discussed it is linked to the fields of anthropology, sociology, psychology and political science. Described differently by scholars it has been defined as: an emotion-laden sense of belonging by a particular group, association based on significant symbols, a social construct based on choice, a cognitive process or a biological survival instinct based on nepotism. Whether based on one or a mixture of the above definitions, theorists have come up with various approaches to explain ethnicity.

From primordialism, instrumentalism to constructivism, a basic view is that identity is defined by a human being's relationship to the social world, a world that is situational and ever-changing. Ethnic identity may be argued to be inherently dynamic. Nonetheless, important reference points like family kinships, national citizenship, gender, language repertoire and place of residence are likely to remain constant and create stability for a group.⁵⁸

For the success of colonialism, colonial political policies introduced class struggles, tribalism and ethnic bridges within the African society. Although ethnic identity was evident in the pre-colonial era, colonizers maximized on the 'divide and rule' or 'divide and conquer' foundation policy to succeed on their first objective: political domination. The goal is to 'opportunisticly

⁵⁷ Henry E. Hale., Explaining Ethnicity, *Comparative Political Studies*, Vol 37 no.4 May (2004.)Pp 458-485

⁵⁸ Henry E. Hale., Explaining Ethnicity, *Comparative Political Studies*

use existing power structures and render small power groups less effective to challenge the overall power.⁵⁹ This imperial policy was utilized by the British Empire during its rule in India where by the indigenous populations were divided and ruled on the bases of religious affiliations mainly the Hindus, Sikhs and Muslims, while in Nigeria an ethnic division was created between the Ibos and Hausa. This policy was also accompanied by the effective method of using foreign settlers to create a division between the colonialists and the colonized. An acknowledged example is the history of the Irish Troubles more commonly known as the Northern Ireland conflict which spanned thirty years from 1968 to 1998 when the Belfast "Good Friday" Agreement came into force.⁶⁰ In 1609 Irish natives in Northern Ireland were forcibly removed from their native land and replaced by English and Scottish Protestants creating the Plantation of Ulster and with further Protestant immigration into Ulster led to religious conflicts between the native Catholics and Protestant "planters"⁶¹. Like in Africa, native labor was required consequently the native Irish were allowed to live in Ulster however, the ruling Protestants were provided the "Ulster Privilege" that allowed them access to land and lower rents thus creating a society where the Protestant invaders advanced into the high echelons of society and the Catholic natives having to struggle in their own homeland. This created the basis for the Northern Ireland conflict in the late 20th century with the division being between the Nationalists (Irish/Roman Catholics) and the Unionists (British/Protestants). The armed conflict included the Irish Republicans and Ulster Loyalists paramilitary groups and British security forces (British Army and the Royal Ulster Constabulary). The conflict has been described as a territorial war with the

⁵⁹ A. N. Maduegbuna Divide and Rule : The Bane of Effective Governance in Africa , *Humanity & Social Sciences Journal* 2015 10 (2) : 81-86

⁶⁰ Arthur Aughey. *The Politics of Northern Ireland: Beyond the Belfast Agreement*, p7.

⁶¹ The Irish Confederate Wars (1641-1653) and the Williamite War (1689-1691) end result was victories for the protestant "immigrants" in Ireland. The wars (fought along religious and ethnic lines) main goals were who would govern Ireland, which religion would predominate the land and which group would possess the vast lands.

constitutional status of Northern Ireland being the key question, fighting either to become part of Republic of Ireland or remain as part of the United Kingdom.⁶²

In Africa some pre-colonial political systems were characterized by local entities like lineage groups, village communities and age-sets involved in law-making, social control and allocation of natural resources. Although decision-making provisions varied from community to community they were largely consensus-based. Conflicts and disputes were based on consultations with no absolute winners and losers and involved parties bound by honor to fulfill their obligations.⁶³ This decentralized power systems allow both the majority and minority views to be heard thus avoiding gaps arising between the governed and those who govern.⁶⁴ On the other hand centralized systems like the Buganda of Uganda, Nupe of Nigeria were represented by different levels of concentration of power. Rulers either enjoyed absolute power or power was contained (checks and balances) by institutions like council of elders, religious leaders and administrative staff of the chiefs.⁶⁵

Colonialism is the direct and overall domination of one country by another on the basis of state power being in the hands of a foreign power.⁶⁶ Its first objective is political domination and second the exploitation of the colonized country.⁶⁷ Direct colonial rule established a centralized foreign authority within the colony with the native population being included in the lowest levels of the colonial political system. In contrast, indirect rule utilized pre-existing local power

⁶² The Troubles: Thirty years of Conflict in Northern Ireland, 1968-1998 BBC. Retrieved from <http://www.bbc.co.uk/history/troubles> on 10 August 2016.

⁶³ Relevance of African Traditional Institutions of Governance. Economic Commission for Africa, *Development Policy and Management Division*, October 2004.

⁶⁴ Relevance of African Traditional Institutions of Governance. Economic Commission for Africa,

⁶⁵ Relevance of African Traditional Institutions of Governance. Economic Commission for Africa,

⁶⁶ Stephen Ocheni, Basil C. Nwankwo., Analysis of Colonialism and Its Impact in Africa. *Cross-Cultural Communication*, Vol.8 (3) 2012 pp 46-54.

⁶⁷ Stephen Ocheni, Basil C. Nwankwo., Analysis of Colonialism and Its Impact in Africa. *Cross-Cultural Communication*, Vol.8 (3) 2012 pp 46-54.

structures to control parts of acquired colonies. While initially direct rule was widely employed the dilemma of effectively governing the native majority arose. A bifurcated colonial state was the answer, a historically formed structure that has created obscure challenges and obstacles to democratic governance in post- independent Africa.

The frequently simplified yet complex mission of 'civilizing' the uncivilized continent carried out in the 19th and 20th century has undoubtedly left a legacy that continues to shape the political and social structures of modern day Africa. A legacy defined fundamentally by law. The 'civilized' laws of Europe were used to govern the European settlers while the natives had to conform to the civil laws; they had no access to the civil rights enjoyed by the Europeans. This presumed 'civilized' society enjoyed citizenship rights, political rights and free access to market institutions. Direct rule signified by a segregation of races one denoted by its own as 'civilized' (the Europeans), the other denoted as 'uncivilized' (African) by its new masters. A single legal order characterized by an unmediated centralized despotism. On the other hand, direct rule was based on a mediated decentralized despotism represented by a state-enforced customary order (further endorsing a pre-colonial African society) with authoritative powers to govern the native population.

Although both direct and indirect rule did converge at times, it was the decentralized despotism that more effectively answered the native majority question. A political system that first legally separated population based on race (Europeans settlers, Asians and native Africans) and second, separation of native Africans into ethnicities and tribes governed by Native Authorities based on

customs and supervised by Europeans from a racial central government. According to Mamdani
“Two forms of power under a single hegemonic authority.”⁶⁸

As earlier stated, authoritative powers did exist prior to the colonial period but the main difference was that under colonial rule, the “privileging” of the Native Authority or chiefship was endorsed as law. A single institution (state appointed by the Europeans) now implementing various non-customary powers. For example, social domains like the households, age sets and gender associations now fell under the authority of the chiefs and most significantly land was now defined as a customary possession.⁶⁹

Another subject of importance is the politics of patrimonialism; Weber used the concept to describe Western European feudalism characterized by domination whose legitimacy is derived from tradition. Certain norms are seen as inviolable for the ruler, who is free to use the administration and military as personal instruments. Examples are the 12th century knightly aristocracies in France and England who had legitimate authority outside of the central ruler’s authority. An emphasis is made on the mutual responsibilities of both rulers and their subjects. Rulers must be held accountable to their actions which are guided by certain norms. Some scholars have argued that there is a misconception of Weber’s definition and that the current state of some African governments denoted by corruption, clientelism and autocracy should not be based on patrimonialism⁷⁰. Fukuyama describes it as political recruitment based on the two principles of kin selection and reciprocal altruism⁷¹.

⁶⁸ Mahmood Mamdani., *Citizen and subject: contemporary Africa and the legacy of late colonialism*, Princeton University Press (1996). P 18

⁶⁹ Mahmood Mamdani., *Citizen and subject: contemporary Africa and the legacy of late colonialism*.

⁷⁰ Max Weber *Economy and Society* Vol.2 Berkeley/Los Angeles:University of California Press 1968.

⁷¹ Francis Fukuyama., *Origins of Political Order: from Prehuman times to the French revolution* (1st paperback ed.). New York, NY: Farrar, Straus and Giroux., 2011 p 439.

2.2 The Civic/ Customary Dichotomy in the DRC

The crisis the Congolese government faces in Kivu region has been linked to ethnic conflicts over administrative positions, lack of citizenship recognition by the state of some ethnic communities and the urban-rural link characterized by political clientelism. Congo's bifurcated state was governed by a legal and political apparatus that defined two distinct political identities. Race distinguished the indigenous from the non-indigenous population. The non-indigenous, the white settlers or the beneficiaries of the colonial system were ruled through the civic law, the urban people. The indigenous, the racially 'African' or the rural population belonged to various ethnic spheres, different tribes ruled by different customary laws. This division created a problem for African immigrants who were not only considered racially African (by the colonialists) but also non-indigenous by Native Authority and the native people.

The post-colonial period was marked by political reforms. With a racialized civil identity and ethnicized native identity a reconstruction of law was paramount. The de-racialization of civic identities was embraced and led to the cessation of defining civic rights based on race or place of origin. Mamdani describes two types of post-colonial political reforms: The radical approach and the conservative approach.⁷²

Countries like Ghana and Tanzania who took the radical approach sought to dismantle the numerous Native Authorities, seeking change rather than continuity. A single customary law that transcended ethnic boundaries was created, a law that applied to all rural people regardless of ethnicity or tribe. Point to note is the above notwithstanding, the differentiation between customary and modern or urban and rural still existed. In order to dismantle the colonial ethnic

⁷² Mahmood Mamdani., *Historizing Power and responses to power: Indirect Rule and its Reform*, Social Research:: Vol.66 (3) Fall 1999, pp 859-886.

based political system further radical approaches like pro-democracy movements and radical nationalism were established. Prime examples of radical nationalists Thomas Sankara in Burkina Faso and Yoweri Museveni in Uganda. Uganda introduced village-based councils and committees that separated the colonial infused powers of the chief. Legislative and executive powers were carried out by a council of all village adults and a committee elected by the village council respectively. A structure that reorganized power from below and through popular support.⁷³

While de-racialization was practically carried out, de-ethnicization was more the exception than the norm for conservative reformists. The infused powers of the Native Authority remained intact, continuing to function as a decentralized despotism even though the urban central state was deracialized and some countries even embracing representative parliamentary democracy. Just like the colonialists didn't see the need of allowing the native to enjoy democratic rights, the post-colonial native/rural population was allowed to enjoy civic rights including elections of parliamentary representation but within the rural areas the chief's powers administered through customary law remained intact; law that was and is still based on ethnic identity in the Kivu Region.⁷⁴

Through civic citizenship (defined in the Congolese Constitution⁷⁵) the Congo population is entitled to citizenship, individual, political and civil rights. But with the Native authorities in the Kivus ethnic citizenship is based on rights that are accessible only through group membership, the group being an ethnic community. Unlike civic citizenship, group rights offer social and

⁷³ Mahmood Mamdani., *Historizing Power and responses to power: Indirect Rule and its Reform*, Social Research:: Vol.66 (3) Fall 1999, pp 859-886.

⁷⁴ Mahmood Mamdani., *Historizing Power and responses to power: Indirect Rule and its Reform*

⁷⁵ Chapter 2 of *The Constitution Of The Democratic Republic Of The Congo*, 2005. Adopted by the National Assembly On May 13, 2005, and Approved By The Congolese People By The Referendum Of December 18 And 19, 2006

economic needs, more so the need to use or own land as a source of livelihood. A dilemma arises for a group of citizens depicted to be of non-indigenous origin. The Kinyarwanda-speaking populations in the Kivu region are historically divided into the Banyamulenge, the Banyamasisi and the Banyaruchuru.⁷⁶ More frequently than not it is the Hutu and Tutsi identities (in Rwanda and Burundi) that has increasingly spurred emotive violent conflicts first between the non-indigenous and secondly amid the indigenous (native) groups and the non-native ethnic groups.

During Belgian colonial period, large populations from neighboring Rwanda and Burundi were migrated into the Kivu regions to provide manual labor in the settlers' plantations through the colonial program called *Mission d'Immigration des Banyarwanda*.⁷⁷ Thus, at independence these populations largely consisting of Hutus and Tutsis found themselves living outside their country's boundaries, a number that increased after the 1959-1961 social revolution in Rwanda when Tutsis refugees fled into the Kivu region. Other largely forgotten populations of Kinyarwanda origin are descendants of pre-colonial migrants or those who lived in areas that became Belgian Congo after the Scramble for Africa.⁷⁸ The refugee population expanded further during the Rwandan civil war initiated by the Rwandan Patriotic Force and the subsequent Rwandan genocide of 1994.

Since the conflict intensified at the onset of the first Congo War in 1996 many Native Congolese see the above stated groups as foreigners in native clothes or the Trojan horse of the Rwandan regime.⁷⁹ But according to the community all Tutsi in the South and North Kivu have a right to

⁷⁶ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo September 1997*, report submitted to the General assembly of the Council for the Development of Social Research in Africa (CODESRIA), Dakar, Senegal, 14-18 December 1998: (Centre for African Studies University of Cape Town, 20 November 1998)

⁷⁷ The Belgian colonial government established this law to bring entire populations (Hutu and Tutsi) from neighboring Rwanda to North Kivu, so as to provide the large plantations with manual labor.

⁷⁸ Maria, Lange. "Refugee Return and root causes of conflict." *Forced Migration Review* 36 (2010): 48.

⁷⁹ Rene Lemarchand., *The Dynamics of Violence in Central Africa* University of Pennsylvania Press, 2012. P 66.

claim indigeneity⁸⁰ These population movements have consequently changed the political and social landscape of the Kivus, leading to protracted localized power struggle and violent conflict amongst ethnic communities.⁸¹

The first elections in the DRC took place in 1960 a few months before the country gained independence from the Belgians. Like in most African states, the fight for independence was exemplified by nationalistic qualities. The urbanized natives and rural peasantry formed militant forces mergers in order to defeat the colonial powers , the former developing racial consciousness while the latter fought the non-customary ethnically charged Native Authority/chiefdom ships. The peaceful participation by the Kinyarwanda population in the 1960 elections should have been followed by a process of national consolidation albeit different ethnic groups. But the post-colonial government did not do much to change the colonial status of the rural population (both the natives and the non-natives) this resulted to the *La Guerre du Kinyarwanda* and the *Mulelist Rebellion*⁸². Indigenous ethnic groups like the Babembe, the Bafulira, the Bavira and the non-natives sided either with the state army or the rebellion. The Kinyarwanda's main issue was in the difficulty of accessing land for both cattle and subsistence farming; they had no representation within the Native Authority system therefore no customary rights. The only other way they could acquire land was through the markets, buying land up for sales which was further consolidated by the acquisition of local and national political positions more importantly positions within the state security apparatus.⁸³ In response the indigenous

⁸⁰ Rene Lemarchand, *The Dynamics of Violence in Central Africa* (Philadelphia: University of Pennsylvania Press, 2009), 66.

⁸¹ Maria, Lange. "Refugee return and root causes of conflict." *Forced Migration Review* 36 (2010): 48.

⁸² Le Guerre Du Kinyarwanda was an uprising of the Kinyarwanda speaking population against chiefly abuse while the Mulelist Rebellion split the whole region along ethnic lines a characteristic that has become a norm in the current ongoing conflict.

⁸³ Aaron Tsado Gana, Samuel G. Egwu., *Federalism In Africa: The Imperative Of Democratic Development*, Volume 2, African Centre for Democratic Governance Africa World Press, 2003

Congolese disregarded the non-indigenous Kinyarwanda speaking minority right to civic citizenship and ethnic citizenship.

2.3 National Citizenship Laws Impact on the Kinyarwanda-speaking population

During the Mobutu regime three key national citizenship laws were enacted, semi-implemented and at times outright ignored thus sealing the future fate of the non-natives. Creation of laws that were followed by: accumulation and maintenance of power, engagement in extra-legal agenda, expansion of political space, clientelism and appropriation of natural resources. All the above was and has been at one time or another been used as a basis to either consent or deny the Kinyarwanda population citizenship recognition and local legal legitimacy. Ethnic groups in the Kivus have been instrumentally used for opportunistic goals and political aspirations by those in power in the Congo and by its neighbors in Central Africa. The Kivus have at a given time been divided and occupied by different militia groups including refugee communities who have been used in combat situations.

The 1972 Citizenship Decree was an all-encompassing citizenship policy which extended citizenship status to those who had arrived in the Kivus as refugees (largely Tutsi) during Rwanda's Social Revolution of 1959- 1963.⁸⁴ For the Mobutu regime its main goal was to quell the sense of insecurity experienced by the Banyarwanda minority (the Banyamulenge Tutsis) who had supported the regime during the Mulelist Rebellion. The indigenous majority believed the policy would serve as an open invitation to Rwandans and Burundians refugees escaping from their conflict ridden homelands. Furthermore Hutus in the North Kivu who had lived in

⁸⁴ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo September 1997*, report submitted to the General assembly of the Council for the Development of Social Research in Africa (CODESRIA), Dakar, Senegal, 14-18 December 1998: (Centre for African Studies University of Cape Town, 20 November 1998)

relative peace with the natives feared a return to the pre-independence Tutsi rule. With the Kinyarwanda speaking community now split into two camps, Hutu and Tutsi, the native majority only demand to the Mobutu regime was total removal of all Tutsi in the Kivu region.⁸⁵

With the appointment of more non-natives in the state's security apparatus and Mobutu's governing party and the implementation of the General Property Law of 1977⁸⁶, the indigenous majority sought a counter-strategy through the ballot box. Being the majority, the indigenous population made sure that elected positions including those in parliament would go to the natives, a strategy that worked well against the few appointed positions that were offered to the non-natives by the self-serving Mobutu regime. It is this majority in Congolese Parliament that came up with the new 1981 Citizenship Law that required all citizens to prove their ancestral connection to the populations residing in the territory during the Demarcation of Congo in 1885.⁸⁷ This would surely leave out refugees who had migrated into the region during the 1959-1963 crisis in Rwanda and all other groups who had fled Rwanda and Burundi into the Congo. Implementation of this law served as an impediment to this native strategy so during the 1985 provincial assembly elections the Kinyarwanda population was allowed to vote but not to stand for any elective office in the Kivu region.⁸⁸

The Sovereign National Conference and the Resolution on Citizenship (1991-92) occurred at a time when the non-native minority's citizenship status fate was unknown and the conglomerating

⁸⁵ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo* September 1997, report submitted to the General assembly of the Council for the Development of Social Research in Africa (CODESRIA), Dakar, Senegal, 14-18 December 1998: (Centre for African Studies University of Cape Town, 20 November 1998)

⁸⁶ The General Property Law of 1973 nationalized all land including land under the Native Authorities. Although the government was not in full control of the rural land it enabled the Kinyarwanda speaking population to gain property by purchasing large plantations in the Kivus since they were bona fide citizens who were part of the ruling elite. Most of this land was former settler-controlled land.

⁸⁷ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo*

⁸⁸ Mahmood Mamdani. *When victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* Princeton University Press 2014 pp 234-247

of all Kinyarwanda speakers as one compounding the crisis further. When Tutsi youth from south Kivu started joining the Rwandan Patriotic Front group in Uganda and supporting the group's quest for Tutsi freedom in Rwanda, Mobutu's opportunistic tendencies guided his decision of carrying out a *Mission d'identification de Zairois au Kivu*.⁸⁹

The CNS marked the onset of democratic political processes denoted by the transitioning from a single party-state system to a multiparty democratic system. For most Congolese people it was the beginning of the end of the Mobutu regime that was characterized by excessive totalitarian state machinery. The CNS in the Kivu region was used as a strategy by the native majority population to garner representative positions in order to 'protect' themselves from the one-party state that had in the past supported and 'rewarded' the non-indigenous minority. It is through this representation that the 1981 citizenship Law was adopted and supported by the *Haute Conseile du Republique (HRC)*.⁹⁰

With the resolution on citizenship in place and Congo's democratic transition in its early stages the raging conflict beginning with the borders of neighboring Rwanda would spill over and mark the beginning of a protracted conflict. It would not only pit different ethnic groups against each other but also cause a rapid increase of non-native populations in form of refugees and consequently refugee warriors.

2.4 The Banyarwanda speaking population in the Kivu region

The Banyarwanda speaking population of Congo is spread within the Kivus (north and south) each with a distinct historical account of arrival. It is important to note that whereas Uganda and

⁸⁹The Mobutu government implemented the *Mission d'Identification de Zairois au Kivu* to identify non-Zairian Banyarwanda, using the end of the Berlin Conference as the division point. Many Banyarwanda whose families had come as colonial laborers were classified as aliens, resulting in yet more youth joining the RPF

⁹⁰ The HRC was Congo's interim 153 member legislature for the transition period between the 1991 National conference and the Legislative and presidential elections of 1992. Heade by Prime Minister Andre Milongo it was entrusted with the preparation for the local, parliamentary and presidential elections. John F. Clark and Samuel Decalo. Historical dictionary of the Republic of the Congo 2012.

Congo's colonial Native authorities were ethnically defined; Rwanda's Native Authority was territorial based, a local authority that was not based on ethnic identity. Group identity in the Rwanda was racialized with the Tutsi denoted as Hamites and the Hutu as Bantus.

As earlier stated prior to the colonial demarcation of the Congo territory, the Banyarwanda lived in the region. This group was defined as native and even had a Native Authority thus ethnic recognition long before the colonial period and the events following independence, the Rwandan civil war and the genocide. Migrant groups crossing the borders during the colonial period either voluntary or under compulsion by the colonial government were termed as racially Africans (like the native Congolese by the Belgians) but when it came to ethnicity they were non-indigenous to Congo, thus no right to claim to any Native Authority.⁹¹ The last group was refugees who became significant in the post-independence era. After the 1994 Rwandan genocide the influx of refugees created a situation in which the pre-colonial and migrant groups were largely outnumbered by the refugees creating a problem for the two former groups and altering the natives' definition of the Banyarwanda population they had co-existed with for ages.

The Kinyarwanda-speaking population in the Kivu consists of three territorial groups. The Banyarutshuru and Banyamasisi of the North and the Banyamulenge of the South.⁹² The former two are predominantly of Hutu origin which the Banyamulenge are of Tutsi origin. The Hutu of Rutshuru are believed to be native due to their presence in the region in the late 1880s before the Scramble for Africa occurred. The two other groups' indigenous status has been contested severally which is further influenced by their political and social interactions with the Rwanda regime over the last three decades.⁹³

⁹¹ Mahmood Mamdani, Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo

⁹² Mahmood Mamdani, Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo

⁹³ Mahmood Mamdani, Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo

The Banyamasisi consists of both nationals (pre-colonial) and colonial migrants. The colonial migrants can further be divided into labor migrants and transplants based on the period they arrived in the Congo plantations. Transplantation was employed by the Belgian colonialists when they experienced resistance from the Native Bahunde group who fled their native lands in order to flee the 1917 Colonial Authority Ordinance which required them to engage in agricultural activities and stop their cultural custom of hunting and foraging.⁹⁴ With overpopulation and famine in Rwanda, transplant migrations consisted of the entire family unit leaving behind their homeland for good and start a new life in the Masisi area of the Kivu. When the colonial government granted the Banyamasisi their own Native Authority tensions rose between the local Bahunde population and the ever increasing migrant population. But in 1957, three years before independence, the *Collectivite Gishari* in Masisi was disassembled leaving the Banyamasisi population without administrative ethnic representation. Over the years their citizenship status would change for and against the group depending on the decisions the Mobutu regime made influenced by the formulation of the citizenship law provisions in 1972, 1981 and 1991.

Unlike the Banyamasisi, the Banyamulenge population in South Kivu is linked to migration groups from Burundi and Rwanda. The first were migrants trying to escape the high taxes imposed by *Mwami* Rwabugiri of the Kingdom of Rwanda in the 19th century. The second group was fleeing the violent warfare of succession that erupted after the demise of Rwabugiri in 1895.⁹⁵ Their civic and ethnic citizenship crisis was largely influenced by the 1991 decision to implement the 1981 citizenship Bill. While the Bill largely granted them civic citizenship, their customary/ethnic citizenship was and has been denied by the natives. Before then indigeneity

M. Mamdani., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. (Princeton, NJ: Princeton University Press. 2001). pp 234-260

⁹⁵ M. Mamdani., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. (Princeton, NJ: Princeton University Press 2001).pp247-260

was more an exception than the rule when it came to defining group relations. Although ethnic lines existed, the Banyamulenge had in the past tried to distance themselves from the Tutsi population in Rwanda and Burundi especially after such events like the 1972 genocidal killings of Hutus in Burundi. Since the colonial era was signified by the intertwining of political and ethnic identity the Banyamulenge (Congolese Tutsi) sought political identity based on their claim to territorial residence hence the use of the name Banyamulenge meaning those from Mulenge⁹⁶ This notwithstanding, the local native groups like the Babemba, Bavira and Bafuliro have termed them as non-indigenous imposters especially after the 1991 CNS endorsement and the Banyamulenge tendency to name themselves after areas of settlements seen as an obscure and sinister strategy of claiming native land and Congolese citizenship albeit a person's time of arrival in the Kivu region. This claim together with the citizenship law crisis during the Mobutu regime and the influx of refugees in 1994 has led the natives to define all non-indigenous (Kinyarwanda speaking residents of Congo) collectively as the Banyamulenge people.⁹⁷

Native Authority is made up of three tiers. The lowest level is the chief of the locality rule is a position reserved for the non-indigenous population and carries minimum power and is answerable to the two higher authorities. The second level chief known as the *chef de Groupement* and the first level chief, Mwami of the *Collectivite* are reserved for the indigenous population. These two levels signify customary power enabling the chiefs to validate ethnic recognition, issue of identification documents, execute administrative powers, allocation of customary land and in charge of customary justice. The Mwami is also legally in control of the

⁹⁶ Gerard Prunier (2008) *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (Oxford University Press) p 52

⁹⁷ Mamdani, Mahmud., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*

natural resources, tax collection in the local marketplaces, cross-border movement and export of minerals.⁹⁸

A major example of the problem posed by the numerous Native Authorities is the rivalry between the Bafuliro and the Barundi. The former consider themselves bona fide indigenous Congolese while the later are perceived as non-native of Burundian origin. The Barundi declare their lawful recognition as natives based on the fact that their Native authority has existed since colonial times its prime location being the Ruzizi Plain. This tension has in the past resulted to violent conflict.

2.5 Institutional Failure: The Democratic Republic of Congo's Achilles' heel.

The modern system of government is composed of three arms namely the legislative arm, the executive arm and the judicial arm. In most cases when a major disconnect exists amongst all three or one arm is not allowed to independently carry out its duties the state's capacity to effectively serve its citizens is compromised. In the Congo, the executive does not have absolute power over parts of Kivu region where militia groups enforce their law most times with support from local native authorities and political elites. This is further worsened when the army and the police (state-sanctioned security machinery) meant to neutrally serve the population create splinter group rivalries either within or outside joining armed militia factions leaving a vulnerable population at the mercy of these illegal groups.

This civic and customary dichotomy crisis is generally manifested between ethnic communities who consider themselves as 'indigenous' versus those perceived as 'foreign'. Other terms that have been used are natives versus non-natives or autochthonous versus allochthonous. The Congolese government is without exception a major political manipulator and contributor to the

⁹⁸ Mamdani, Mahmoud., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*

conflict as has been exemplified by the activities carried out by the Mobutu regime. Thomas Jefferson stated:

"The dignity and stability of government in all its branches, the morals of the people and every blessing of society depend so much upon an upright and skillful administration of justice that the judicial power ought to be distinct from both the legislative and executive and independent upon both" (Jefferson, 1776)

It is only through an independent robust judiciary system that the DRC will be able to effectively function as a state that first recognizes its unique population composition and enact a citizenship law that is inclusive and caters for both civic and customary rights of its populace.

Mamdani describes two solutions to the present problem. Proposed by the Rwandan government following the overthrow of Mobutu and ascend to power of Laurent Kabila; a separate Native Authority should be created to govern the non-indigenous most specifically the Banyamulenge in South Kivu. The natives were firmly opposed to this because it meant that land would have to be conferred to this Native Authority, for a people perceived to be non-natives. A much bolder proposal is to overhaul this "colonial nature" of administering power through one individual within the rural areas. Exemplified and practiced by Uganda's National Commission of Inquiry into Local Government the chief position is administratively defined and he is held accountable by an executive committee elected by the community whether native or non-native. Customary rights are thus given based on locality and not one's ethnic identity. This solution shall not work without the inclusive involvement of the national and local government and a comprehensive civic education for the natives and those perceived to be "non-natives"⁹⁹

⁹⁹ Mahmood Mamdani. "Preliminary Thoughts on the Congo Crisis." *Social Text* 17, no. 3 (1999): 53-62. <https://muse.jhu.edu/> (accessed June 23, 2016).

The period 1990-1994 was marked by a steep influx of refugee communities into the Kivu region and as will be explained in the next chapter ethnic identity is a major factor in the violent conflict across the Kivu region. Whether explained through instrumentalism and/or constructivism theories of ethnicity, the civic/ethnic dichotomy has consequently guided some of the decisions made by the various ethnic groups involved in the conflict after the Rwandan genocide occurred. The political and ethnic decisions the Banyamulenge population have made to engage in conflict is influenced by the egotistical citizenship laws instituted by the Mobutu regime while the local indigenous communities have taken up arms to fight those they perceive as non-natives having a strong connection to the Rwandan government. Prolonged exile, political agency and ethnicity play a significant role in the conventional perception of the nature of a refugee specifically in the Kivu Region where the struggle to find a sense of belonging has become a daily narrative. A predicament arises for humanitarian agencies and the international community on how to classify refugee communities who embody and conspicuously exercise political and economic rights through violent means. Engagement of refugee communities in combat situations is not a new occurrence but the concept and study of refugee warrior communities¹⁰⁰ first presented by Zolberg, Suhrke and Aguayo is a fairly new body of literature and subject that needs further research and global discussion.

The next chapter will be on the relationship that refugee warrior communities have with the Congolese state (civic power), the native inhabitants (customary power) and the power bestowed upon them by the United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. How do these three legal instruments/entities

¹⁰⁰ Aristide R. Zolberg, Astri Suhrke and Sergio Aguayo. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989). p xiv

affected/influenced the lives and the choices made by the diverse refugee population in relation to the Kinyarwanda-speaking inhabitants of Eastern Congo and the local indigenous population?

Can all three instruments coexist without contradiction of purpose and goals? Does the Congolese government in consultation with other major players need to reevaluate the role each has played in fueling or supporting the emergence of refugee warrior communities?

CHAPTER 3: EMERGENCE OF REFUGEE WARRIOR COMMUNITIES

3.0 Introduction

Since the Cold War ended, cases of large refugee migrations have increased in spite of the existence of the United Nations (UN). The UN framed at the conclusion of World War 2 replaced the ineffective League of Nations. The League of Nations whose main mission was to maintain world peace failed to halt the beginning of the Second World War (1919 to 1945) Europe experienced a large refugee flows. From the 1917 period of the Russian Revolution, the Armenian Genocide, the 1933 rise of Nazism and the less documented expulsions of German populations between 1944 to 1950.¹⁰¹

The international community has not lacked in the creation of organizations to deal with the ever-present refugee crisis. During the League of Nations tenure there was the establishment of the Commission for Refugees (abolished in 1930) that dealt with the provision of both material and legal and political protection to refugees. The Nansen International Office for Refugees authorized by the League of Nations opened its doors in 1931. The former Commission had catered for the needs of Russian and Armenian refugees.¹⁰²

3.1 Emergence of refugee warrior communities in the Kivu region

What has largely been disowned is the significant role that political and social dynamics play in large scale refugee migrations. Refugee migrations like in the Kivus have sometimes led to

¹⁰¹ Wikipedia contributors, "Refugee," *Wikipedia, The Free Encyclopedia*, <https://en.wikipedia.org/w/index.php?title=Refugee&oldid=742635285> (accessed 30 August, 2016).

¹⁰² From *Nobel Lectures, Peace 1926-1950*, Editor Frederick W. Haberman, Elsevier Publishing Company, Amsterdam, 1972. http://www.nobelprize.org/nobel_prizes/peace/laureates/1938/nansen-history.html (accessed on 30 August 2016)

political violence spanning over two decades, cross border attacks, selfish involvement by regional governments and a grim state crisis for the core country the DRC.

Refugee communities engaging in conflict is not new. After the Arab states were defeated by the newly formed state of Israel in the 1967 Six Day War, Palestinian refugees from both the West Bank and the Gaza region transitioned into refugee warriors in order to regain back their homeland. Palestinian refugee warriors were recruited and supported the Palestine Liberation Organization in Jordan during the Black September conflict of 1970 and fought in the Israeli-Lebanese conflict of 1978.¹⁰³ In both conflicts the main goal for the Palestinian refugee warriors was to return back to their homeland but this was not realized and this has not been fully realized to this day. It is from this example the following characteristics of refugee warrior communities are drawn: refugees or immediate parents and grandparents of refugees were involved in the conflict, they had fled the territory (Mandatory Palestine) over which they were fighting for, fought from bases in neighboring states that is Jordan and Lebanon, they were recruited mostly from bases refugee camps and used violence to try and regain their homeland. In the present the Palestinian refugees may be described as the children and grandchildren of citizens who live in refugee camps or designated zones on the borders of their native territory.¹⁰⁴

Adelman argues that although the initial root causes of large scale refugee migrations is important the protracted nature of conflicts involving refugee warrior communities is most times as a result of systematic failures (at times deliberate) of conflict management and in the management of the plight of refugees themselves by the international community, regional states,

¹⁰³ Wikipedia contributors, "Palestinian refugees," *Wikipedia, The Free Encyclopedia*,

https://en.wikipedia.org/w/index.php?title=Palestinian_refugees&oldid=739686830 (accessed October 6, 2016).

¹⁰⁴ H. Adelman. *The Use and Abuse of Refugees in Zaire.* In *Refugee Manipulation: War, Politics and the Abuse of Human Suffering*, ed. Stephen John Stedman and Fred Tanner. Washington, D.C.: Brookings Institution Press, 2003.

the receiving state and the sending state. The initial management of Palestinian refugees and refugee camps in the Kivus, DRC has some similarities.¹⁰⁵

The UNRWA created in 1950 tried to implement an integration process of the refugees into the Arab states of Egypt, Lebanon and Jordan. Without the support of these sovereign independent states, UNRWA was not able to resolve the more important questions of political status, national identity defined by sovereign territory and membership in a state that would provide legal protection from persecution.¹⁰⁶ Arab states instead continued indirectly to sow ideological seeds of return to the Palestine homeland (the newly formed 1948 state of Israel) after being defeated in the six Day War of 1967. But with subsequent defeats in major conflicts like Black September of 1970 and the Israel invasion of 1982, return to a legal, internationally recognized and defined territory has become a remote quest made more unattainably by the Israeli occupied territories in the West Bank and Gaza up until the first decade of the 21st century. The Palestinian refugee warriors' fight has become more complex with the rise of the Intifada against Israeli rule. A mid 20th century international unresolved conflict of political and territorial status has resulted to a present day fragile peace and sporadic episodes of conflict that has aggrieved innocent victims not to mention recurrent displacement of persons and groups of generational refugees. The complex issue of dividing this middle-east territory between two nations includes the final status of refugees, border security, settlements and the critical City of Jerusalem.

As stated in chapter two the Banyarwanda populations are not only located in Rwanda and Burundi but also live in DRC, Uganda and Tanzania. Although they do share similarities in their culture, religion and language, the division arises from their ethnic identity. Tutsi, Hutu and

¹⁰⁵ Wikipedia contributors, "Palestinian refugees,"

¹⁰⁶ Wikipedia contributors, "Palestinian refugees,"

Batwa. The Batwa identity the minority although largely marginalized have also experienced the consequences of the conflicts in the Kivu region. Hutu-Tutsi relations significantly turned violent following the 1959 rebellion against the Tutsi ruling class in Rwanda. This not only preceded a Hutu post-independence regime but produced a group of Tutsi refugee warrior communities who would on subsequent occasions launch border attacks into Rwanda from their bases in Burundi and Uganda. The most momentous attack was initiated by the Rwandan Patriotic Front. These were refugee warriors who were not able to achieve significant political status in the neighboring states more so in Uganda. Although the Museveni regime enacted laws that enabled Banyarwanda migrants and Tutsi refugees to attain legal citizenship, popular perceptions by the Ugandan population towards both groups were prejudicial and there was constant public opposition towards these laws in the 1980s.

Like their Palestinian refugee counterparts when regional states and international community failed to resolve the political and social status of Tutsi refugees, the largely Tutsi refugees in the neighboring states took on the refugee status setting the stage for the beginning of the 1990 Rwandan War, the 1994 Rwandan genocide and subsequent mass refugee flows from Rwanda into neighboring countries primarily the DRC. The Kivu region was the primary location of refugee camps which were effectively controlled by ex-FAR (*Forces Armées Rwandaises*) and the largely Hutu Interahamwe militia group.¹⁰⁷

In retrospect the decision by Mobutu's regime to enact the 1981 Citizenship law which revoked the national citizenship of the Banyarwanda population specifically Banyamulenge Tutsi origin was now used by these Hutu refugee warriors to garner up support from the Zairian army units to

¹⁰⁷ Wikipedia contributors, "Palestinian refugees,"

undertake an ethnic cleansing of the perceived 'non-natives' in the Masisi region of Zaire in 1996.¹⁰⁸

The Banyamulenge sought and found an ally in the new Rwandan government of the victorious Rwandan Patriotic Front who helped them defeat the Hutu refugee warrior threat from spreading into the Bukavu and Uvira regions in South Kivu and consequently took part in the removal from power of the Mobutu regime.¹⁰⁹

With refugee camps set up along a porous border housing more than half a million refugees it would only seem noble for humanitarian agencies to take up their responsibility to provide food, shelter and medical supplies. Though efforts to separate the refugee warriors from the vulnerable refugee population were initiated (even the presence of Zairian soldiers to guard camps) without adequate regional and international community support, the Kivu region became and still is a territory where numerous armed militia groups have sprouted.

Emerging refugee warrior communities have a significant political leadership organization and a military section engaged in combat. The protracted situation has been exacerbated by the incapability of the Congolese government to exercise its legitimate power of sovereignty in the Kivus. The Mobutu regime abused its power by using Hutu refugee warriors in 1996 in the Masisi region to engage in ethnic cleansing of Tutsi Banyamulenge. The perceived geopolitical propaganda that was spread by the Hutu refugee warriors was that history was about to repeat itself: the New Tutsi government main goal was to initiate a Tutsi revolution similar to the Hutu

¹⁰⁸ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo September 1997*, report submitted to the General assembly of the Council for the Development of Social Research in Africa (CODESRIA), Dakar, Senegal, 14-18 December 1998: (Centre for African Studies University of Cape Town, 20 November 1998)

¹⁰⁹ Mahmood Mamdani, *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo September 1997*

revolution in 1959. The refugee flows in 1994 not only altered the ethnic demographic scales but also exemplifying the significance of levels of political solidity of a refugee group prior and at the onset of a crisis.

Lischer identifies three classifications of refugees based on their causes of flight. This categorization also supports her argument why very few refugee situations have actually resulted to large scale violence and in this case study of a protracted nature.¹¹⁰

Situational refugees have little cohesion and flee to avoid danger and most significant do not get involved in political or military activities nor support any party of the conflict. Persecuted refugees targeted for ethnic cleansing, genocide or religious persecution are more likely to cultivate political cohesion leading to militarization. They are more susceptible to manipulation and require political guarantees of their security and rights in order to return home.¹¹¹

The state-in-exile refugee category has the highest probability to engage in organized military conflict. A major difference between this group and the former two is the significant pre-existence of a robust political and military structure prior to fleeing their country of origin. Although legitimate non violent refugees may not be willing to engage in violent conflict, leaders of these state-in-exile refugees or refugee warrior communities who command control over information and at times distribution of humanitarian aid can convince refugees through propaganda of perceived threats to their families' security, calls of nationalism and the importance of mobilization.¹¹² A significant example is the refugees (mostly Hutus) who fled to

¹¹⁰ Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

¹¹¹ Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

¹¹² Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

Eastern Congo following the end of the 1994 Rwandan genocide. The refugee population included a large number of radical Hutu leaders who had been part of the political elite in the former government of Juvénal Habyarimana who exercised their political power to carry out the genocide.

In control of major refugee camps, these former political elites and their followers used the 'Hutu Victimhood' slogan to foster support and recruit refugee warriors who would eventually participate in cross border attacks into Rwanda and consequently be used by the Mobutu and Kabila regimes in the first and second Congo wars. It is important to state how these same refugee warriors also garnered support from the local Hutu Banyarwanda population who were persuaded to engage in the conflict because of the assumed threat of a 'Tutsi Uprising' in Rwanda that could spill over in the Kivu region and also based on the fact that Mobutu had a pre-existing cordial relationship with the Tutsi Banyamulenge population. Mobutu's opportunistic nature came into play when these refugee warriors allied themselves with his government and together with sections of the Zairian army began to carry massacres of Congolese Tutsis in the North Kivus.¹¹³

Once again the Congo's state crisis of civic/native citizenship legitimacy, ethnic identity and civic /customary law was used to convince refugees and locals to mobilize and this continues to be a major influence on the prolonged conflict in the DRC. The Citizenship Law of 1981 only afforded the Tutsi Banyamulenge civic citizenship not ethnic citizenship. Since most of the native communities believed that a large number of the Banyamulenge were immigrants (non-

¹¹³ Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*.

indigenous) including those who had fled Rwanda and Burundi as refugees in the 1960s and 1970s, in the Kivu region they were denied representation in the second tier of the Native Authority structure, a chief's position with the power to control the distribution of land. The term 'Banyamulenge' does not refer to an ethnic group but those who settled and reside in the Mulenge region of the Kivus. The mainly Tutsi-speaking group employed this name in order to distance themselves from their Tutsi Rwandan population and thus be accepted as 'natives' of the Congo and not immigrants or refugees from Rwanda and Burundi.¹¹⁴

Refugees who fled to Pakistan in 1978-1979 when the new communist regime took power are another example of a state-in-exile refugee group. Being well funded by external supporters, Afghan rebel groups were able to continuously recruit fighters from new refugee arrivals and organized cross border attacks into Afghanistan. In fact the Afghan mujahedin were trained and carried out their military operations from their own bases while their families lived in the refugee camps set up by the UNHCR.¹¹⁵

The above typologies of refugee groups has been widely used to explain refugee situations but some scholars have argue that in most conflicts refugee flows consist of all three types. In some cases refugees may change their category especially in protracted conflicts. Like earlier said, if persecuted refugees are not given political and social guarantees of their safety and rights by their country of origin, their protracted stay in the host country may be an avenue for a robust political and military leadership to emerge in exile that calls for violent means to right perceived

¹¹⁴Mahmood Mamdani. "The Invention of the Indigène." *London Review of Books* 33 no. 2 (2011): 31-33, <http://www.lrb.co.uk/v33/n02/mahmood-mamdani/the-invention-of-the-indigene>.

¹¹⁵ Mahmood Mamdani., *Citizen and subject: contemporary Africa and the legacy of late colonialism*, Princeton University Press (1996). P 18

or real injustices. Organized militant groups like the Palestinian Liberation Organization and the Palestinian National Liberation Movement (Fatah) were born out of refugee groups who had fled the Mandatory Palestine.¹¹⁶

Doar and Kraus have argued that a large number of refugee flows fall into the situational category. In the early days of the 2011 Syrian War most of the refugees who fled into Turkey, Lebanon, Jordan, Egypt and Iraq were situational refugees fleeing for safety and requiring humanitarian assistance.¹¹⁷ As the war has advanced and protracted into its sixth year, the Islamic State of Iraq and the Levant (ISIL) combatants have targeted the Yazidis minority group in Northern Iraq because of their religious beliefs and some have fled into Turkey not only as situational refugees but also persecuted refugees.

Adelman stresses the importance of distinguishing between refugee and refugee warriors versus internally displaced groups and internal militia groups who may emerge from this latter group. For example in the Kivus the Mai Mai militia refers to a broad range of armed groups formed on the bases of self-protection and preservation of the native communities and their land. With the protracted nature of the Kivu conflict local native warlords, tribal leaders and politically motivated fighters have taken up names like Kivu Resistance and Defense Force and the Movement against The Aggression of Zaire to protect the local population.¹¹⁸

¹¹⁶ Doar and Krauss Return to Fatahland? Syria's refugees in Lebanon's Conflict, *The Institute for Middle East Studies, The Elliot School of International Affairs, The George Washington University* 2013)

¹¹⁷ Doar and Krauss Return to Fatahland? Syria's refugees in Lebanon's Conflict

¹¹⁸ Adelman Howard. Why Refugee Warriors are Threats. *Journal of Conflict Studies*, [S.l.], jul.1998.ISSN1715-5673.Available at (<http://journals.hil.unb.ca/index.php/JCS/article/view/11672/12401>>. Date accessed: 12 Mar. 2015.

Zolberg agrees that refugee warriors must be differentiated from both intra-state insurrectional groups and legitimate refugees.¹¹⁹ The difference is defined in the International Law of Refugees and the role of international aid agencies tasked with the responsibility of the well-being of refugees including humanitarian and development aid. Whereas the Refugee International Law categorically states that a refugee cannot engage in military activities¹²⁰ it gives no solid mechanisms on how refugees-turned militants should be dealt with including the use of refugee camps as sources of human power and money.¹²¹

The 1951 convention relating to the Status of Refugees and the 1967 Protocol which UNHCR operations are guided by define a refugee as:

“a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable to, owing to such fear, is unwilling to return to it.” (UNHCR, Convention and Protocol)

Thus refugees are to be passive with no involvement in any political agency. In the 1951 Convention, the exclusion clause¹²² does not give refugee status to persons who have been

¹¹⁹ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989). p xiv

¹²⁰ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989). p xiv

¹²¹ Adelman Howard. Why Refugee Warriors are Threats. *Journal of Conflict Studies*, [S.l.], jul.1998.ISSN1715-5673. Available at (<http://journals.hil.unb.ca/index.php/JCS/article/view/11672/12401>). Date accessed: 12 Mar. 2015.

¹²² The international refugee instruments governing refugee law lay out criteria for the recognition of refugees. They also establish criteria by which individuals may be excluded from international protection. Article 1F of the 1951 Convention of the Status of Refugees.

involved in crime or the violation of human rights. Zolberg et al who coined the word Refugee Warrior communities define the concept as:

“Highly conscious refugee communities with a political leadership structure and armed sections engaged in warfare for a political objective, be it to recapture the homeland, change the regime or secure a separate state”¹²³ (Zolberg et al, 1989: ix)

These two definitions, the former legally endorsed while the latter based on practical experience describes the refugee communities in the Kivu regions. Militia groups that emerged from the Kivu refugee camps following the aftermath of the Rwandan genocide posed several operational and ethical challenges for international aid agencies. The next chapter will further analyze the role of actors in the Kivu region. The above two definitions nonetheless pose a challenge for the state and the defined group.

Adelman describes a refugee warrior community as citizens of one state who have crossed their native border and live in the host state often in camps along the borders. It is from these camps or within the location where refugees reside that refugee warriors are recruited from and leaders plan and exert power in order to launch attacks against those in power in the sending state. As seen in the Kivu region, refugee warrior communities have not only pose a threat to their native state Rwanda but have also destabilized and compromised the peace and security in the host state and neighboring states.¹²⁴ The refugee warriors in the Eastern Congo conflict compose of different groups with contrasting histories and political interests. The Banyamulenge Tutsi

¹²³ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989. p xiv

¹²⁴ Adelman Howard. Why Refugee Warriors are Threats. *Journal of Conflict Studies*, [S.l.], jul.1998.ISSN1715-5673.Available at (<http://journals.hil.unb.ca/index.php/JCS/article/view/11672/12401>>. Date accessed: 12 Mar. 2015.

refugees of the 1960s were part of the RCD óGoma which fought in the Second Congo War (1998-2003) and believed to be supported by the Kagame-led government. The post-1994 Hutu Refugees who formed FDLR in 2000 are a mixture of the perpetrators of the Rwandan genocide, Hutu Refugees, Ex-Rwandan army officers also participated in the 2nd Congo War, other groups like Mai-Mai and M23 militia groups have also been involved in the conflict.¹²⁵

Lischer also expounds on the different types of Refugee órelated violence. Conflict can exist between the sending state and the refugee community example being the FDLR and the Rwandan government.¹²⁶ During the first Congo war (1996-1997) the Rwandan Government supported by Uganda together with the Alliance of Democratic Forces for the Liberation of Congo Zaire (AFDL) invaded Eastern Congo, one of its main purposes being to flush out the Hutu extremists or the refugee warriors who had previously launched attacks on Rwanda and also overthrow the Mobutu Sese Seko government which had shown no political will to deal with the Hutu extremists. Significantly, the Banyamulenge- Tutsi Congolese were also enlisted by the Rwandan government to fight with them.

Another scenario is attacks between the receiving state and refugee warriors exemplified by the ongoing conflict between the incumbent DRC government and the FDLR who have refused to disarm and control parts of the Kivu area. Ethnic or factional related violence among refugees is also evident as in the case of South Sudanese refugees at the Kakuma Refugee Camp in Kenya;

¹²⁵ Adelman Howard. Why Refugee Warriors are Threats. *Journal of Conflict Studies*, [S.l.], jul.1998.ISSN1715-5673.Available at (<http://journals.hil.unb.ca/index.php/JCS/article/view/11672/12401>>. Date accessed: 12 Mar. 2015.

¹²⁶ Sarah Kenyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

sporadic violence has broken out between the Nuer and Dinka which has led to disruption of services within the camp.¹²⁷

Conflict can also exist when an unstable ethnic balance is created by the rise in numbers of a refugee community in the receiving state. A prime example is the large number of Hutu refugees who fled to Kivu region after the genocide. There was an increase in persecution of Zairian Tutsis by Zairian Hutus and other ethnic groups.¹²⁸

It is in the DRC (the core of the conflict) where the state crisis is characterized by the complex and dynamic civilian/refugee nature of a group that has been interchangeable defined by state/civic power, native/customary power and the power bestowed upon them by International Law of Refugees.

3.2 Nature of refugee communities in the Kivu region

As stated earlier one of the major issues at the core of the protracted conflict in the Kivus is the blatant use of ethnic identity polarization to endorse political legitimacy by both the local and national government. Although the rest of the country maybe seemingly peaceful and secure, nevertheless the Kivu conflict poses a threat to both national and regional peace and security. It is within this region that both the 1st and 2nd Congo wars were launched, and over the last three decades it has been home to millions of refugees and internally displaced persons.

Conflict in the Kivu region is defined by local struggles over power and customary rule. Chapter two discussed the issue of autochthony and allochthony. Who is indigenous and who is non-indigenous? Which ethnic group has the right to rule over a specific territory and resources

¹²⁷ Sarah Kenyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*.

¹²⁸ Sarah Kenyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

(population and land)?¹²⁹ Political elites and former regimes have in the past used their sovereign power to enact laws that have led to some indigenous ethnic groups to undertake violent measure against those they perceive to be non-indigenous, foreign or immigrants. The emergence of refugee warrior communities has been largely influenced by age-old unresolved inter and intra communal tensions over territory, authority and resources. The state's security apparatus has not also been able to resolve the refugee problem specifically the emergence of militarization of refugee communities and the power these militia groups exercise over operations of the refugee camps.¹³⁰

Nevertheless, Adelman stresses the fact that the emergence of refugee warrior communities should not only be explained by the causes that led these groups to become refugees but also how the regional and international systems have dealt with the refugee warrior communities situation. Has the international system failed in its numerous attempts of solving the refugee problem in the Kivu region, the Israeli-Palestinian conflict, the Afghan conflict and the on-going Syrian war where refugee warrior communities have emerged?

How does the international community find a permanent solution in the Kivu region when refugee warriors who participated in the 1st and 2nd Congo wars were facilitated with arms and support by regional and foreign states to serve self-interests? And finally with documented evidence of misuse of humanitarian aid in the months following the mass refugee flows into the Kivu regions, what policies and mechanisms should the national, regional and international community chose (if at all they acknowledge the dynamism of the refugee nature) to employ to deal with emerging refugee warrior communities that act in impunity an contrary to the civilian

¹²⁹ K. Vlassenroot et al., *Contesting Authority : Armed Rebellion and Military Fragmentation in Walikale and Kalehe , North and South Kivu*, Rift Valley Institute, Usalama Project (2016) p 11.

¹³⁰ K. Vlassenroot et al., *Contesting Authority : Armed Rebellion and Military Fragmentation in Walikale and Kalehe , North and South Kivu*

humanitarian non-political character of refugeeness? The dichotomy keywords being: -refugee/warrior, -victim/agent, -passive/active and -humanitarian /political.¹³¹

3.3 The Banyamulenge ‘people from the hill of Mulenge’

Although highly contentious, legitimacy of citizenship for the Banyarwanda speaking population in the DRC has severally been based on the date of arrival in the Kivus. Located in Eastern part of the DRC, the Kivu region borders Rwanda, Burundi, Uganda and Tanzania. With a population of over 8 million people the region is occupied by the Nande, Hunde, Nyanga, Hauw, Shi, Rega, Fuleru, Vira, Bembe , Hutu and Tutsi ethnic groups. It is worth noting that the Hutu are the second largest ethnic group in the Kivu region while the Tutsi are a significant minority.¹³²

As stated earlier legitimacy of citizenship is related to ethnic identity which further defines access to customary power and territorial rights. Colonial powers established native authorities which emphasized ethnicity as the basis for securing power of leadership, security and resource ownership.¹³³ Post-independence regimes have further magnified the problem by enacting national citizenship laws and decrees with significant focus being on the Kinyarwanda speaking groups mainly the Hutu and Tutsi ethnic groups. Although periods of arrival are in contention, Mamdani and other scholars have stated that in the mid-19th century just prior to colonialism there were groups of Rwandan ólanguage speakers residing in the region that would

¹³¹ P. Nyers., *Rethinking Refugees: Beyond States of Emergency.* (Routledge, Taylor and Francis Group. New York, USA, and London UK. 2006) p xviii

¹³² International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement , Land and Identity in North Kivu, Democratic Republic of Congo," *Citizenship and Forced Migration in the Great Lakes Region: Working Paper 3*, 2010.(March 2010) pp14-19

¹³³ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement , Land and Identity in North Kivu, Democratic Republic of Congo,"

subsequently become the Belgian ruled colony.¹³⁴ In the sixteenth century Banyarwandese migration was already a reality when the then King or *Mwami* of Rwanda attempted to extent his ruling region into the North Kivu area already inhabited by the Banyabwisha, indigenous Hutu Banyarwanda. When the boundaries were drawn by the colonialists, Belgian Congo incorporated territories adjacent to Rwanda around Rutshuru in the North Kivu province which was largely inhabited by the Hutu Banyabwisha.¹³⁵

The Banyamulenge refers predominantly to those Tutsis who fled the Rwandan Kingdom wars as refugees in the 19th Century and settled in South Kivu. Another group due to the border drawn up by colonialists during the Scramble for Africa, found themselves in Rutshuru in North Kivu with a Tutsi population also settling in Masisi, North Kivu. With the implementation of the colonial *transplantation policy* more ethnic Rwandans during the colonial period were forcefully migrated into the Kivu region.¹³⁶ It is during this period that seeds of suspicion were sown between native ethnic groups like the Nande and Hunde and the *non-native* immigrants begun. The colonialists seized their ancestral lands and had the *migrants* live and cultivate the fertile lands for them.¹³⁷

The Rwandese Revolution of 1959-1961 once again prompted Tutsi refugee to flee from Rwanda when ethnic violence between the Hutu and the Tutsi broke out and resulted to the transition of the Belgian colony with a Tutsi ruling monarchy to an independent Hutu-dominated republic. It is important to note the significant role played by Germany and Belgium during the early 20th

¹³⁴ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement , Land and Identity in North Kivu, Democratic Republic of Congo,

¹³⁵ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement , Land and Identity in North Kivu, Democratic Republic of Congo,

¹³⁶ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement , Land and Identity in North Kivu, Democratic Republic of Congo,

¹³⁷ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement , Land and Identity in North Kivu, Democratic Republic of Congo,

century in this particular colony. Both colonial governments used the ruling Tutsi Kings to rule over the native and over time supported and made acceptable Tutsi policies to rule over all including the Hutu population. But when it came to independence with the Hutu ethnic group having had the majority of numbers called for a transfer of power from the Tutsi Kingdom to Hutu elites and this was reinforced by the Belgians and the Roman Catholic Church.

The independence periods for both Burundi and Rwanda were marked with ethnic tensions occasioning more refugee flows into the Kivu region (including neighboring countries) which ignited further tensions between the local indigenous ethnic groups and those labeled as immigrants, the Banyarwanda speaking people. The 1964 Kinyarwanda war between the Banyarwanda Tutsi and indigenous Bahunde ethnic group was sparked off when the Provincial Governor cancelled the winning results of a local Banyarwanda representative in Masisi. Mobutu Sese Seko at the beginning of his rule used The Tutsi Banyarwanda population to expand his power base. Although the Tutsi Banyamulenge had initially supported the Simba Rebellion¹³⁸ of 1964 when their livelihoods came under attack from fleeing rebels and mercenaries, they ended up supporting and fighting for Mobutu together with the army which resulted to the end of the rebellion and victory for Mobutu's regime. This association further activated tensions between the native Bembe people who had supported the Simba rebellion and the Tutsi Banyamulenge who were rewarded by Mobutu with high political positions in Bukavu, South Kivu.¹³⁹

It is important to state that tensions in the Kivu region have largely been between the Banyarwanda of Tutsi origin and the native population. The Banyabwisha who are largely of Hutu origin are more accepted as indigenous by the native population. Prior to independence in

¹³⁸ H. Adelman and A. Suhrke. *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire*. (New Brunswick, N.J: Transaction Publishers, 2000.) pp53-56

¹³⁹ H. Adelman and A. Suhrke *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire*

areas like Masisi where a large group of Tutsi Banyamulenge reside, the colonial government allowed the creation of native authorities for the Kinyarwanda speaking immigrants which often created tensions with the native communities since it meant sharing of land and natural resources with a population perceived to be foreign.

The Laws on Congolese Nationality in reference to Congolese of Rwandan origin has been changed severally since independence which has influenced the recurrence of tensions and conflicts between the natives and those perceived to be non-natives. At independence the first Congolese Constitution of 1964 deprived Congolese nationality to nationals of Rwandan origin who had been brought to Congo by the Colonialists through the Transplantation policy between 1930 and 1954.¹⁴⁰ But a year later in 1964 a new Decree allowed the descendants of the transplanted people to decide whether they wanted to become Congolese nationals or not. The 1971 Order law of Citizenship granted Kinyarwanda speakers nationality status since the legal arrival time in the country was moved from the original 1908 to 1960-1965 thus particularly giving citizenship to Tutsi refugees who had fled persecution during the Rwandan Revolution and independence period in Rwanda and Burundi. The native ethnic groups perceived this move as the continuation of Tutsi infiltration in the upper echelons of power. Mobutu's government would amend this again in 1972's Law No. 72/002 which denied Nationality rights to Banyarwanda speakers who arrived in the DRC after 1st January 1950.¹⁴¹ Fortunes turned against a large section of the Banyarwanda population with the 1981 Law No. 81/002 that reverted back to the initial law provided in the 1964 constitution stating that any person with an ancestor who

¹⁴⁰ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo," *Citizenship and Forced Migration in the Great Lakes Region: Working Paper 3*, 2010.(March 2010) pp14-19

¹⁴¹ International Refugee Rights Initiative, "Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo,"

was a member of a tribe that was established within the country's borders, as defined on 18th October 1908, was a national of Zaire.¹⁴² A large portion of Tutsi immigrants and refugees were tasked to prove (for some impossible) their blood relationship to the Congolese population as far back as 1885.¹⁴³ This state engineered crisis of providing evidence that one was a native in Zaire as of August 1885 when the Congo Free State was established was a strategy that played right into the hands of the native communities in the Kivu region. First the native communities chose to bungle all Banyarwanda people together as one including the descendants of refugee families of the mid-19 century, immigrants of colonial transplantation, Tutsi political refugees of the Rwandan revolution and those of subsequent conflicts prior to the Rwandan genocide. Where would descendants of a people who had called Congo home since the 19th century begin in order to prove beyond any doubt that their claim to Congolese nationality and ancestral land was legitimate? The reality in the Kivu region was only a small number of Banyarwanda could be declared as legitimate citizens of the Congo. The law targeted Kinyarwanda-speaking Congolese in Masisi, Rutshuru and Goma areas in North Kivu and The Kalehe, Uvira and Baraka areas in South Kivu.¹⁴⁴

Although the 1981 decree was not fully implemented the indigenous majority once again used their native authorities to deprive the non-native population ethnic rights. Once again the colonial structure of native authorities came in handy setting the stage for a situation that would blow up in the future when the genocide occurred. The indigenous majority appeased themselves by only allowing the non-natives to vote but not stand for elections during the 1982 Zairian

¹⁴² Constitution of Congo (Leopoldville) Zaire Article 25 (1964).

¹⁴³ IRB - Immigration and Refugee Board of Canada: Procedure and conditions for Congolese nationals of Rwandan origin to reinstate their nationality (January 2006) [COD100961.FE], 24 January 2006 (available at [ecoi.net](http://www.ecoi.net)) http://www.ecoi.net/local_link/44569/49407_en.html (accessed 01 October 2016)

¹⁴⁴ IRB - Immigration and Refugee Board of Canada: Procedure and conditions for Congolese nationals of Rwandan origin to reinstate their nationality

parliamentary elections. The powers of the native authorities was used to suppress the ethnic/native rights that Mobutu had opportunistically previously accorded to his initial allies.

In the 1980s there existed one common Banyarwanda organization called *Umoja* that was formed after the 1981 Citizenship decree was made into law which required all Banyarwanda to prove an ancestral connection to the populations living in the territory demarcated as Congo in 1885. Both Hutu and Tutsi Banyarwanda from Ruchuru, Masisi and Goma were represented in this organization to reinforce their belief that they were as much Congolese as the natives. But by 1988 *Umoja* had split and two separate Hutu and Tutsi organizations had been formed. With financial provision from Habyarimana and political support of Mobutu Hutu from Masisi and Ruchuru formed the *Maghrivi (Mutualite des Agriculture du Vironga)*. The Hutu Congolese being more in numbers it was Mobutu's electoral strategy to identify all indigenous Congolese Hutus and grant them citizenship regardless of the 1981 decree. *Maghrivi* main goal was to spread the notion that the Congo did not have any 'indigenous' Tutsi supported by the fact that in Masisi the Hutu were catered for under the Ruchuru Native Authority while in Masisi only the Hunde Native Authority existed. The Tutsi formed the *Sydicat D'Initiative Pour le Developpement de la Zone de Ruchuru (SIDER)*¹⁴⁵

Even before the Rwandan civil war begun in October 1990, North Kivu was experiencing a conflict between the native Hunde and Nyanga ethnic communities and the Banyarwanda residing in the area. The Banyarwanda (with no Native Authority to represent them in the 2nd Tier) regarded the requirement of paying land taxes to local chiefs as unjust while tensions concerning use of land arose between the native crop farmers and the non-native livestock

¹⁴⁵ M. Mamdani., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. (Princeton, NJ: [Princeton University Press](#). 2001). pp 234-260

farmers.¹⁴⁶ Mobutu autocratic rule that was synonymous with systematic corruption played out in North Kivu. While he claimed in public to find a quick solutions to the increasing violence, his government through the military actually provided weapons to both groups and took part in looting. Mobutu maintained his influence of power through coercion and co-option and establishing an exclusive patronage network that had control over significant economic resources. The quest for citizenship became more difficult for the Banyarwanda in 1992 when the National Sovereign Conference excluded the group from having representation in a process that was supposed to create democratic processes bringing the government, opposition and civil society together to discuss amongst other issues multipartism in Zaire.¹⁴⁷ The natives governed under definite native authorities who were constantly pronouncing anti-Mobutu sentiments had a chance to exclude the Banyarwanda who Mobutu had favored in the past but they had noted with concern the sympathy that Banyarwanda Tutsi had shown the RPF in 1990 when the latter invaded Rwanda. The problem wasn't so much the Banyarwanda of Hutu origin, but the Tutsi who had identified with Rwanda and the growing sentiment was: Zairian citizenship should not be given to 'foreigners' or 'non-natives'¹⁴⁸

A refugee warrior community was taking shape in the form of Tutsi Banyamulenge fundamentally because of the Mobutu regime's negative use of politics of geography and origins to institute citizenship laws, outright failure (at times intentional) of the state's security apparatus to protect its citizens and a state crisis originating from the continuous use of the colonial

¹⁴⁶M. Mamdani., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*

¹⁴⁷ International Refugee Rights Initiative (IRRI), *Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo* , March 2010, Citizenship and Displacement in the Great Lakes Region - Working Paper 3, available at: <http://www.refworld.org/docid/53b3ddcca.html> [accessed 10 September 2016]. (Cited from S. Jackson 2007)

¹⁴⁸ J.Pottier. *Re-imagining Rwanda, conflict , Survival and Disinformation in the Late Twentieth Century*. Cambridge University Press 2002. P28

political structure that required citizens to acquire a form of double citizenship: civic and ethnic citizenship. While civic citizenship gave an individual membership to a state thus acquiring civic rights this would not be enough for groups like the Tutsi Banyamulenge who without ethnic citizenship endorsed by a Native Authority would have no access to social and economic rights such as ownership of land or ethnic representation in the local community. The 1981 Decree of Nationality not only stripped the Tutsi Banyamulenge of their civic power but availed an easy avenue (on legal grounds) for the local indigenous ethnic groups to repossess the non-native lands, revoke their right to run for elections and stripped their right of representation in the local Kivu administration structures.

Although the Decree was aimed at all Congolese Rwandan speaking people and initially Hutu and Tutsi in parts of North Kivu did fight as group against the violence of native communities the ongoing Rwandan civil war created tensions between these two ethnic groups. With historical tensions between native ethnic communities and Tutsi Banyamulenge already in play due to favoritism by the Mobutu regime, Tutsi Banyamulenge were the major targets of native inflicted violence.

An often forgotten event is the 1993 assassination of Burundian Hutu President Melchior Ndadaye sparking off a civil war that led to thousands of Burundian refugees into South Kivu region.¹⁴⁹ With calls for the Tutsi Banyamulenge to permanently leave Zaire, the Rwandan genocide occurred and once again a repeat of the events of the 1960 Rwandan revolution the only significant difference being: the predominantly Tutsi Rwandan Patriotic Front overthrew the Hutu extremist government in Rwanda. Refugee communities (including Tutsi

¹⁴⁹. Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: Untangling the Gordian knot of Insecurity Project 2013 p9

Banyamulenge from the Kivu) who had lived in the neighboring Uganda and Burundi emerged as refugee warriors to invade their country of origin after having lived in exile since independence while others had fled during the frequent pro-Hutu sentiments preached by the former Habyarimana government. Having succeeded in their goal of taking the reign of power in their hands, the RPF formed the next government of Rwanda. As large numbers of refugees (mostly Hutu Rwandans) fled into the neighboring countries of Tanzania, Uganda and Burundi most fled into the already populated and conflict ridden Kivu region. For Tutsi Banyamulenge the major conflict against their existence was about to begin as amongst the genuine refugees were the perpetrators of the genocide, the Interahamwe and EX FAR soldiers. The scales of ethnic balance tipped to favor the Hutu militiamen. Tutsi Banyamulenge having endured the 1992-1193 inter-ethnic conflicts were now faced with the initial onslaught by Hutu extremists turned refugee warriors who had access to humanitarian aid resources and in control of a major refugee population where they could freely recruit combatants. They also could propagate -Hutu victimhoodø propaganda to the already apprehensive Congolese Hutu communities who were aware of the fact that Rwanda was now under the power of a Tutsi government. Tutsi Banyamulenge would continue in their role as refugee warriors and play a significant role in the 1st and 2nd Congo wars.

With the unresolved Citizenship legitimacy crisis, Mobutu's inability to exercise full sovereign power in the Kivu region and the local ongoing ethnic conflicts, the Kivu region was ripe for the inevitable emergence of a refugee warrior community who would initiate attacks from the refugee camp bases along the Congo- Rwanda border into Rwanda. Just like the RPF refugee warriors initiated a war from their bases in the receiving states and the Tutsi Banyamulenge refugee warriors were fighting for their rights as citizens in a region they had lived in for

decades, a refugee warrior community comprising of EX-FAR soldiers, Interahamwe and the genocide financiers would emerge.

3.4 The Emergence of the Rwandan Hutu refugee warriors

Since 1994 the Kivu region has been bombarded by the emergence of a dozen or more militia groups that have been at one time or another involved in the 1st Congo war (1996-1997), 2nd Congo war (1998-2003) and the subsequent transition period (2003-2006) before the election of 2006.¹⁵⁰ When the RPF overthrew the Hutu extremist government in 1994, the influx of thousands of Rwandan refugees into the Kivu region was unprecedented and unexpected by the international community. As genuine refugees flowed into camps in Goma, North Kivu and Bukavu and Uvira both in South Kivu, Rwandan Hutu ex-FAR units, members of the *Interahamwe* and alleged *genocidaires* entered the camps with them. Due to the rapid influx of refugees in less than one week, initial screening of incoming refugees was not systematically carried out. International Humanitarian Law categorically states that no refuge should be offered to persons believed to have committed crimes against humanity or genocide. The OAU's report (2000) that investigated the 1994 Genocide in Rwanda states that a Refugee Warrior is a morally ambiguous concept and based on both International law and the then OAU Law a refugee is not to engage in violence and neither can those who have previously been engaged in crimes against humanity be considered as refugees.¹⁵¹

The international community having not acknowledged the Rwandan genocide of 1994 at its initial stages did not give the attention needed to the humanitarian crisis caused by the mass exit

¹⁵⁰Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: Untangling the Gordian knot of Insecurity Project 2013 , p15

¹⁵¹ IPEP/OAU, (2000). *Rwanda: The Preventable Genocide*. (OAU, Addis Ababa, Ethiopia.) p.218

of mainly Hutu refugees fleeing the new Tutsi government. Building camps along the porous border of Rwanda gave the refugee warriors in the camps easier access to Rwanda for counterattacks after reassembling and rearming their supporters. The French government allowed the RAF, *Interahamwe* militia, *Impuzamugambi* and the *genocidaires* were allowed to flee accompanied with their weapons across the borders during the Operation Turquoise.¹⁵² Refugee camps were mostly run by armed Hutu rebels guided by the genocide perpetrators. These former government authorities and army elements systematically organized the refugees based on Rwandan administrative structures: *prefecture*, *commune* and *secteur* were used to control the refugee population. In 1994 a de-facto state-in-exile emerged in Bukavu led by former Prime Minister Jean Kambanda whose main goal was to invade Rwanda and overthrow the incumbent Tutsi government and restore Hutu power and control in Rwanda again.¹⁵³

The refugee population was a form of shield for these refugee warriors who in the absence of the huge refugee population, humanitarian aid and in this case close proximity to Rwanda would not have been able to readily and quickly reorganize and rearm to launch their first attack at Cyangugu in October 1994.¹⁵⁴ Humanitarian aid was used for rearmament and legitimate refugees as shields to prevent arrest and disarmament exercises. Several major humanitarian agencies like Oxfam *Medecins San Frontier* (MSF), Save the Children and International Rescue Committee withdrew their support of camp operations leaving the United Nations High Commissioner for Refugees (UNHCR) with a handful of support.¹⁵⁵

¹⁵² IPEP/OAU, (2000). *Rwanda: The Preventable Genocide*

¹⁵³ M. Rafti. *Rwandan Hutu Rebels in Congo/Zaire, 1994-2006: An Extra-Territorial Civil War in a Weak State?*, Antwerp, April 2006.

¹⁵⁴ M. Rafti. *Rwandan Hutu Rebels in Congo/Zaire, 1994-2006: An Extra-Territorial Civil War in a Weak State?*.

¹⁵⁵ S Perera. *Becoming and Unbecoming Refugee: The Case of the Warrior Refugee in the Kivus*, BISA/ESRC Workshop, June 2011 p1.

With no immediate forthcoming solution from the international community, Rwanda's new government under the leadership of Paul Kagame led a military retaliation into the refugee camps to flush out the interahamwe and EX FAR soldiers and dismantle the *genocidaire* networks that were militarizing and exerting robust population control over the camps especially those in the Goma region. This resulted into thousands of refugees returning back to Rwanda but some fled further into the densely forested Kivu region including the Hutu refugee warriors who had been involved in border attacks.

When Mobutu and his government did not show any signs of halting the violence against Banyamulenge Tutsi in the Kivu region being perpetrated by Hutu rebel groups and bringing stability to Eastern Zaire, Rwanda supported the creation of the *Alliance des Forces Democratiques pour la Liberation du Congo/Zaire* (AFDL) led by Laurent-Desire Kabila. The first Congo war involved regional states: AFDL was supported by Uganda, Rwanda, Angola and Banyamulenge Tutsi refugee warriors. For Mobutu his support was derived from FAZ forces, Angolan rebel group UNITA led by Jonas Savimbi, the newly formed Army for the Liberation of Rwanda (ALIR)¹⁵⁶ and Hutu refugee warriors. Other external actors who played minor roles were Burundi (being ruled by a Tutsi leader) who supported Rwanda and Uganda while Zambia and Zimbabwe offered limited military support to the AFDL. Eritrea, Ethiopia and the South Sudanese rebel army (SPLA) gave financial support to the anti-Mobutu rebel group.¹⁵⁷ Mobutu not only received aid from Sudan but also employed mercenaries which ultimately did not stop the AFDL from advancing to Kinshasa. With the overthrow of the Mobutu regime in a war that

¹⁵⁶ S Perera. Becoming and Unbecoming Refugee: The Case of the Warrior Refugee in the Kivus, p 1.

¹⁵⁷ Wikipedia contributors, "Second Congo War," *Wikipedia, The Free Encyclopedia*, https://en.wikipedia.org/w/index.php?title=Second_Congo_War&oldid=743842770 (accessed October 11, 2016).

lasted for 6 months (October 1996-May 1997) Laurent-Desire Kabila became the country's president renaming the country to Democratic Republic of the Congo. Friendly ties and peace for the new nation was short lived and Kabila decided to part ways with Rwanda and Uganda accusing both countries of the exploitation of DRC's minerals marking the beginning of the second Congo war (1998-2003).¹⁵⁸ Once again Rwandan-aligned militias who fought against the Kabila government were: Congolese Rally for Democracy (RCD), Banyamulenge Tutsi refugee warriors and aided by foreign states including Uganda and Burundi. Kabila formed alliances with Namibia, Angola, Chad and various anti-Rwandan militias like the newly formed FDLR composing of remnants of Rwandan Hutu refugee warriors. The war lasted for over 4 years with agreements like the Sun City Agreement of April 2002 not halting the conflict. The Pretoria Accord between Rwanda and the DRC did manage to foster an agreement that would see Rwanda withdrawn its troops and support of any of its allied-militias within the country while the DRC committed to the full disarmament of the Hutu Interahamwe and ex-FAR refugee warrior communities. A transitional government of the DRC was established with President Joseph Kabila and Prime Minister Jean-Pierre Bemba and the deployment of the United Nations Mission in the Democratic Republic of Congo (MONUC). MONUC was established by the United Nations Security Council in resolutions 1279 (1999) and 1291 (2000) to monitor the peace process after the Second Congo War.¹⁵⁹

¹⁵⁸ S Perera. *Becoming and Unbecoming Refugee: The Case of the Warrior Refugee in the Kivus*, p.1.

¹⁵⁹ United Nations Security Council Resolutions 1279 (1999) and 1291 (2000).

3.5 Current state of Refugee Warrior Communities in Kivu Region

The former Rwanda Armed Forces and Interahamwe have changed their name severally in order to disassociate themselves from the 1994 genocide atrocities. Originally known as the Rwanda Democratic Rally (RDR) they changed their title to Army for the Liberation of Rwanda (ALiR). This title changed once the American government listed the group on its watch list of terrorist organization. The current name members of the refugee warrior group go by is the Forces Democratiques de Liberation du Rwanda (FDLR). According to the United Nations Security Council (UNSC) the presence of FDLR in the Kivu region is an impediment to peace and security in the DRC and the region. The UNSC adopted Resolution 2293 (2016) on 23 June 2016 reiterated the strategic importance of the implementation of the Peace, Security and Cooperation (PSC) Framework for the DRC and the region and further called all signatories to undertake their commitments aptly in order to put a stop to the repeated periods of violence.¹⁶⁰ The same resolution was adamant that no states within the region should offer support whether financial, logistical or military to any armed groups and condemned any external support to any armed militia.¹⁶¹ Although the report mentions armed groups like the Allied Democratic Forces (ADF) and the Lord's Resistance Army (LRA), it categorically mentions the FDLR and states:

that the durable neutralization of the FDLR remains essential in bringing stability to and protecting civilians of the DRC and the Great Lakes region of which members include perpetrators of the 1994 genocide against Tutsi in Rwanda, during which Hutu and others who opposed the genocide were also killed, and have continued to promote and commit

¹⁶⁰ The United Nations Security Council Resolution 2293 (2016).

¹⁶¹ The United Nations Security Council Resolution 2293 (2016).

ethnically based and other killings in Rwanda and in the DRC (The United Nations Security Council Resolution 2293, 2016)

In November 2013 the Peace, Security and Cooperation (PSC) Framework for the DRC and Great Lakes Region was signed by Presidents and representatives of the DRC, Angola, Burundi, the Central African Republic, the Republic of Congo, Rwanda, South Africa, South Sudan, Tanzania, Uganda and Zambia.¹⁶² The UN Secretary General, the Chairperson of the Commission, and the Chairpersons of the International Conference on the Great Lakes Region (ICGLR) and Southern African Development Community (SADC) served as witnesses and guarantors to the framework.¹⁶³ January 2nd 2015 was the deadline given to FDLR by ICGLR and SADC for voluntary disarmament but according to the report of the UNSC of January 8th 2015 the FDLR had failed to fully surrender and demobilize but had instead continued to recruit new fighters including child soldiers into its group. The most that the FDLR did was surrender a minimal number of 300 members in 2014 who comprised of mainly old and non-essential combatants.¹⁶⁴ After the UN Force Intervention Brigade in conjunction with the FARDC defeated the M23 rebel group in mid-2013, it was expected that an offensive against and defeat of the FDLR would follow but this has not been the case.¹⁶⁵ In 2015 disagreements arose between Kabila's government and the UN Stabilization Mission in the DRC (MONUSCO) when the government was accused of appointing two Congolese generals who were alleged of human

¹⁶² J. K. Mbugua An Assessment of Peace, Security and Cooperation Framework of the DRC and the Great Lakes Region. Occasional Paper Series 5, No. 1, International Peace support Training Centre 2014. p18 (Accessed from http://www.ipstc.org/media/documents/IPSTC_OP_No1.pdf)

¹⁶³ J. K. Mbugua An Assessment of Peace, Security and Cooperation Framework of the DRC and the Great Lakes Region. Occasional Paper Series 5, No. 1.

¹⁶⁴ United Nations Statement by the President of the Security Council 8 January 2015 [s/prst/20151](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2015/1) http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2015/1 (accessed on 30 September 2016),

¹⁶⁵ United Nations Statement by the President of the Security Council 8 January 2015 [s/prst/20151](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2015/1) http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2015/1 (accessed on 30 September 2016),

rights violations. The presence of active FDLR militia provides its neighbor Rwanda with a valid reason to carry out preventive measures in order to maintain security and peace for its citizens especially those who reside along the Kivu region borders.¹⁶⁶

The Banyamulenge Tutsi refugee warriors aided the AFDL during the First Congo War to overthrow President Mobutu and were further linked to the RCD in the Second Congo War. There was no military victory of the 2nd Congo war but a stalemate ensued which led to the fractioning of the RCD in form of the RCD-Kisangani and RCD-Goma supported by Uganda and Rwanda respectively. When the war ended in 2003 the RCD transformed into a political party and were part of the parties composing the Transitional National Assembly of the Democratic Republic of the Congo including the Kabila's government, Movement for the Liberation of Congo, RCD-Kisangani, RCD-National, the civil society and others. Since the pasts of the FDLR and Banyamulenge Tutsi leading up to the beginning of the 1990 Rwandan civil war until the end of the second Congo war in 2003 are categorically different, the solution to disarm the FDLR whether through military or non-military means must take a different route. First FDLR refugee warriors' initial goal was to overthrow the Kagame-led Government and install back a Hutu government. This has since failed and the Kagame's government has insisted that any returning FDLR combatants suspected to have committed the crime of genocide must be prosecuted and if found guilty punished as provided in the law.¹⁶⁷

¹⁶⁶ Peace and Security Council Report, Kinshasa government attacks FDLR rebels without the UN, *Institute for Security Studies*. 3rd March 2015 (retrieved from issafrica.org/pscreport/situation-analysis/kinshasa-government-attacks-fdlr-rebels-without-the-un on 15 September 2016)

¹⁶⁷ Article 10 and 29 of the revised Rwandan Constitution of 2015 states that the Rwandan state is committed to preventing and punishing the crime of genocide, crimes against humanity and war crimes and all three are not subject to statute of limitations. The Constitution Of The Republic Of Rwanda Of 2003 Revised In 2015, Official Gazette n° Special of 24/12/2015

Before the DRC could hold its first multi-party elections in 2006 it was crucial that the issue of acquisition of nationality and ethnic identity at the local levels be resolved. The transitional government overviewed three important legislation documents that would provide a comprehensive framework for the 2006 elections. The Law No. 04/009 Organization, Attribution and Operation of the Independent Electoral Commission June 2004, the Law No. 04/024 Congolese Nationality November 2004 and Law No. 04/028 Identification and Enrolment of Voters in the Democratic Republic of Congo December 2004.¹⁶⁸

The Law No. 04/024 of 12th November 2004 on Congolese Nationality aimed to address the negative criticism that previous citizenship laws had received and to enact a law that was all inclusive. This Citizenship law that is currently in use states that "any person belonging to an ethnic group or nationality whose people and land were part of the territory that became Congo (now Democratic Republic of Congo) upon independence on 30th June 1960 is of Congolese origin."¹⁶⁹ This legally grants all ethnic groups in the DRC's territory at independence including those who were transplanted during the colonial period the right to Congolese nationality.¹⁷⁰ These provisions were included in the proposed constitution which after a 2005 referendum overwhelmingly received an 84 % approval.

But with the previous analysis the major problem especially in the Kivu region lies in the fundamental suspicion between Congolese national of Rwandan origin (mostly towards the Banyamulenge Tutsi) and other native ethnic groups. Since 1996 the Kivu region has been a conflict zone and most times this has been aggravated by ethnic tensions arising from the

¹⁶⁸Electoral Institute for Sustainable Democracy in Africa, Overview of the Legislation for the National Elections in the DRC https://www.eisa.org.za/pdf/drc_elect_law_en.pdf

¹⁶⁹ Law No. 04/024 of 12 November 2004 on Congolese Nationality

¹⁷⁰Law No. 04/024 of 12 November 2004 on Congolese Nationality

politicization of citizenship and ethnic identity. As long as Congolese citizenship qualification is based on ethnic identity and historical interpretation of time of arrival, ethnic polarization will feature in the future through the formulation of ethnically-aligned militia groups.¹⁷¹

We return back to Mamdani's argument of the wedge that ethnic 'belonging' has created between civic/national citizenship and ethnic/native/customary citizenship. Two spheres of power that offer different forms of legitimacy, one at the state level the other at the significant local level. Instead of both being applied concurrently with each other local power bases are repeatedly influenced by partisan and ethnically-aligned customs.¹⁷² Even if Congolese Tutsi have the right to acquire Congolese nationality, perceptions by some of the native ethnic groups will be influenced by the past relationship that the former have with post-conflict Rwanda.

The spillover of the Rwandan conflict into Kivu that included massive flows of largely Hutu refugees exposed the different roles and responses major internal and external actors undertook either to exacerbate or reduce the state crisis, violent conflict and the unprecedented refugee crisis.

¹⁷¹ International Refugee Rights Initiative (IRRI), *Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo*, March 2010, Citizenship and Displacement in the Great Lakes Region - Working Paper 3, available at: <http://www.refworld.org/docid/53b3ddcca.html> [accessed 10 September 2016]. (Cited from S. Jackson 2007)

¹⁷² International Refugee Rights Initiative (IRRI), *Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo*,

CHAPTER FOUR: RESPONSES TO THE DRC REFUGEE CRISIS

4.0 Introduction

According to the UNHCR the world hosts a total of 21.3 million refugees a figure that is bound to increase with the ongoing Syrian war and fragile peace experienced in countries like Burundi and South Sudan. The world faces a major refugee and displacement crisis not only in numbers but also a crisis of solidarity.¹⁷³ The refugee crisis is becoming increasingly problematic when refugees fleeing from conflict end up in unsafe or conflict-ridden situations. When armed conflicts compromise regional security mechanisms the fate of refugees is unknown despite actors taking up their responsibilities of ensuring provisions of basic and medical needs, security and adequate provisions of durable solutions like integration, voluntary return or third country resettlement. Major issues that continue to affect refugees are protracted displacement, exploitation and security threats. Based on UNHCR statistics in 2015 children formed 51% of refugees most of them travelling with siblings or were detached from their parents. 86% of refugees under UNHCR's obligations are from low- and middle-income countries that are experiencing a conflict. Refugees tend to flee to locations where they will find ethnic kin populations.¹⁷⁴ All refugees in the world are under the obligation of the UNHCR with the exception of Palestinian refugees who fled Mandatory Palestine between 1947 to 1949 who are catered for under UNRWA. Palestinian Arabs who have fled the West Bank and Gaza after 1949 are under the mandate of the UNHCR. The UNHCR whose main responsibility is to protect and support

¹⁷³ UNHCR Global Trends 2015 Report, UNHCR 2016 (Retrieved from <http://www.unhcr.org/statistics> on 20 September 2016)

¹⁷⁴ S. Ruegger and H. Bohnet. "The Ethnicity of Refugees (ER): A new dataset for understanding flight patterns." *Conflict Management and Peace Science* (November 2015): 0738894215611865.

refugees at the request of a state government or UN derives its operational principles from the 1951 Convention Relating to the Status of refugees and its 1967 Protocol.¹⁷⁵

4.1 Responses to the DRC refugee crisis by internal and external actors.

The refugee crisis in the DRC involves internally displaced persons, refugees and immigrants. According to UNHCR the DRC is home to refugees from Rwanda, Central African Republic, Burundi, South Sudan, Congo (Brazzaville), Angola, Uganda and others. Most of these refugees reside in North Kivu, Equateur and South Kivu.¹⁷⁶ A major failure that amplified the humanitarian crisis was the absence of a comprehensive separation process of Rwandan refugees from combatants following the massive influx of approximately two million refugees who were settled in camps at the border of the DRC and Rwanda. Attempts to demilitarize the camps failed until the Rwandan government formed an alliance with the Kabila-led AFDL and destroyed the refugee camps leading to significant number of refugees returning to Rwanda while other fled further into the DRC.

4.1.1 The Congolese government's response

Since 1994 DRC has continuously faced a major security challenge in the Kivu region worsened by the emergence and presence of various armed groups. While some of these militia like the RCD, CNDP and the M23 have been dealt with, but Kivu inhabitants still bear the brunt of armed groups like the FDLR, the Mai Mai militia and the LRA. The Congolese government have apprehended and handed over to the International Criminal Court militia leaders Germain

¹⁷⁵ Wikipedia contributors, "Refugee," *Wikipedia, The Free Encyclopedia*, <https://en.wikipedia.org/w/index.php?title=Refugee&oldid=746844889> (accessed October 29, 2016).

¹⁷⁶ UNHCR, DRC Regional Refugee Response, UNHCR 2016 (retrieved from <http://data.unhcr.org/drc/country/php> on 25 September 2016)

Katanga , Mathieu Ngudjolo chui and Thomas Lubanga Dyilo. In 2007 the Ugandan and DRC governments signed an Agreement to enhance cooperation towards the removal of the LRA from the Congo. When Ooi Makasi a high ranking LRA member surrendered to MONUC he was handed over to the Congolese authorities who handed him over to Ugandan authorities.¹⁷⁷

The Rwandan and Congolese governments have cooperated and carried out joint military operations namely *Umoja Wetu* that saw the defeat of CNDP and the temporary retreat of the FDLR in 2008. The success of this operation allowed some refugees to return back to Rwanda in early 2009 while Rwanda kept their promise and pulled out its army out of their bases in the Kivu region. Operation *Kimia II* and *Amani Leo* which were carried out in conjunction with MONUC main goals were to protect the civilian population, end the threat of the FDLR and assist in reestablishing the sovereign authority of the Congolese state especially in the Kivu region.¹⁷⁸

From 1996-2003 the employment of refugee warriors by incumbent governments was evident. As noted earlier the Mobutu regime chose to opportunistically use the presence of Banyamulenge Tutsi refugees to widen and strengthen his political networks. The manipulation of Citizenship laws also was based on his greed for political power which led to a state crisis that worsened once the ethnic balances tipped in favor of the Hutu ethnic group in the Kivu region in the aftermath of the Rwandan genocide. He again would enlist the support of the Hutu refugee warriors who would take control of the densely populated refugee camps in 1994 only to be stopped when he was overthrown in 1997. Laurent Kabila on the other hand would use the anti-

¹⁷⁷ T. Dagne.,The Democratic Republic of Congo: Background and Current Developments, *Congressional Research Service, Report for Congress* (September 2011)

¹⁷⁸T. Dagne.,The Democratic Republic of Congo: Background and Current Developments,

Mobutu sentiments of the Banyamulenge Tutsi refugee warriors to enlist their aid in supporting him during the First Congo War.

President Joseph Kabila on his part had originally wanted to negotiate a settlement between him and the Rwandan Hutu refugee warriors whereby the refugees would be repatriated back to Rwanda, their security was assured and they would be treated fairly by the Rwandan Government once they arrived in Rwanda. Rwanda opposed this settlement but instead chose to stick to the agreement arrived at the US-sponsored Tripartite Commission which emphasized on diplomatic and security matters and joint military operations composed of the MONUC and FARDC to disarm the FDLR militia.

Lischer considers the host country's capabilities and will to secure its borders and demilitarize all refugees before they enter refugee camps as a key element in whether refugee communities will become agents of violent conflict. In 1994 the Mobutu government was already experiencing economic deterioration, political unrest and ethnic-based conflicts in the Kivu region. In the absence of a state machinery to implement law and order refugee camps fell under the control of Hutu rebels and thus led to the easy recruitment of refugees for military purposes.¹⁷⁹ The DRC government did not have the will to impose its sovereign political power to prevent the Hutu refugee warriors from preaching pro-Hutu sentiments and establishing strong ties with the native Congolese Hutu groups so as to have a larger support system to carry out military activities.

¹⁷⁹ Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

Lischer prime example is in the 1980s when Afghan refugees built ties with their Pakistan hosts and thus able to easily recruit refugee for military activities.¹⁸⁰

But what must have explicitly augmented the state crisis is the backing by the Mobutu regime of ethnic cleansing of Congolese Tutsi or Banyamulenge Tutsi of Masisi and the alarming silent the international community accorded the whole tragedy. Thus as the Zaire government hosted refugees they also served as the military backers and diplomatic supporters of the Hutu refugee warriors. Mobutu used this violence and the local native ethnic antipathy towards the Congolese Tutsi as reelection strategy while the military on the ground drew economic gains.¹⁸¹

A stark contrast is observed with the overly successful manner in which Tanzania dealt with its refugee crisis when by early 1995 it was hosting approximately 600,000 Rwandan refugees. First Tanzania had a stable government in control of all its territory and even within the camps security forces were deployed in order to ensure the protection of refugees and surrounding communities.¹⁸² The Tanzania government also believed that they refugee camps were temporary and awaited for the conditions in Rwanda to improve in order to initialize a voluntary repatriation program. With influx of refugees having started in 1990 at the onset of the Rwandan civil war and having accepted refugees from both Burundi and DRC the issue at the fore was how political and security dynamics within the region would influence refugee protection decisions made. During the Cold war, integration and third country settlement was favored over repatriation but after it ended and refugee flows increased the former two were less supported by

¹⁸⁰ Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*.

¹⁸¹ H. Adelman. The Use and Abuse of Refugees in Zaire.ö In *Refugee Manipulation: War, Politics and the Abuse of Human Suffering*, ed. Stephen John Stedman and Fred Tanner. Washington, D.C.: Brookings Institution Press, 2003.

¹⁸² B. E. Whitaker., *Changing Priorities in Refugee protection: The Rwandan Repatriation from Tanzania*, New Issues in Refugee Research Working Paper No. 53, Department of Political Science, George Washington University(February 2002

the international community. Tanzania with full support from UNHCR carried out a repatriation process for the Rwandan refugees in 1996. Although some organizations described it as involuntary for some refugees, the Tanzanian government supported its decision by stating that with the improved security situation in Rwanda it was important for refugees to return back to Rwanda and remove any significant security threats at its borders. Declining funding levels also played a role as the international community shifted most of its resources to humanitarian emergencies in places in Bosnia. Whether or not Tanzania's decision to repatriation a large group of refugees back to Rwanda was fair or not, unlike the DRC there were no signs of conflict outbreak in the country. The repatriation process did in part avert Tanzania's involvement in the broader regional conflicts.¹⁸³

4.1.2 The armed forces Of the Democratic Republic of the Congo

The DRC national army has played a substantial role in the emergence of armed groups in Eastern Congo. One of its publicly stated goals is the elimination of all armed groups in the country and to carry out its mandate of securing peace and security especially in the Kivu region. This has not worked key reasons being: mismanagement of the DRC by the political leadership, fusion of military integration processes with politics, weak control and culpability of the army and poor provisions of services faced by rank- and file soldiers.¹⁸⁴

When Mobutu seized power in 1965 through a coup, he took over a fragmented and weak administration that included the national army. For fear of being overthrown Mobutu employed

¹⁸³ B. E. Whitaker., Changing Priorities in Refugee protection: The Rwandan Repatriation from Tanzania, New Issues in Refugee Research Working Paper No. 53, Department of Political Science, George Washington University(February 2002

¹⁸⁴ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: Untangling the Gordian knot of Insecurity Project 2013 pp 39-57

divide and rule techniques that kept the army overly out of politics. He kept a small circle of army loyalists whose appointments were based on loyalty and patronage which was maintained by huge payoffs. The creation of several competing and parallel security services fostered internal divisions within the police, military, paramilitary and intelligence agencies. For example the mandate of the *Gendarmerie Nationale* and *Garde Civile* overlapped and there was constant competition over which agency was supposed to carry out the function of a national police force. Like in the colonial period whereby armed forces carried out both national and external security function, the Zairian Armed Forces (FAZ) also carried out policing tasks when commanded by Mobutu.¹⁸⁵

The army was no less different. Several elite brigades carried out autonomous operations with no regard to army hierarchy of command. Mobutu had a personal elite unit presidential guard, the Special Presidential Division whose members were derived from his ethnic group receiving preferential treatment from the rest of the army. There was also the usage of non-nationals who took leadership roles in army units example being the 31st Airborne Brigade was led by a French colonel while Belgian officers trained and took up advisory roles within the 21st Infantry Brigade. With the Cold War rivalry in play in the 1980s , Mobutu received millions in training and equipment for the country's security apparatus including financial, technical and educational aid from allies like the US and Belgium.¹⁸⁶

This fragmentation of the country's security apparatus is vital in order to understand why security reforms have been a challenge for the government after 2003. When Laurent Kabila fell out with his Rwandan and Ugandan allies factions arose from within the Congolese Armed

¹⁸⁵ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

¹⁸⁶ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

Forces. Joseph Kabila in his early years as President used militia proxies in the form of Mai-Mai groups and other militia groups to counter any attacked by perceive enemies¹⁸⁷ The FARDC was formed when the transitional government in 2003 took over power. Positions within the army were shared out based on the power-sharing deal that had been agreed on, these largely included belligerents of the second Congo War and like in the Mobutu era appointments were largely based on loyal connections. For example the government faction held the position of the Chief of the General Staff, air force leadership and three of the eleven regional commands. The RCD faction held positions of the Ministry of Defense, the Chief of the land forces and two regional commanders. The *Mouvement de Liberation du Congo* (MLC) led by Jean-Pierre Bemba commanded the navy and two regional commanders. For checks and balances the high ranking commanders were each given deputies from different factions but this did not stop the political polarization of the FARDC¹⁸⁸. Similar to Mobutu, Kabila maintained a robust presidential guard, the Special Presidential Security Group (GSSP) fully under his control. He also had a tendency of issuing orders to different elite Brigades units by bypassing direct commanders.¹⁸⁹ In an environment that functions through the political and military fragmentation, Kabila's government has not been able to fully control the country's security apparatus, this is due to first top military are strongly fixed in the culture of engaging political and economic networks. Patronage networks are the order of the day. Patron-client relations flourish in an environment of loyalty, support and the provision of definite services in exchange of resources and protection. Secondly, with numerous factions being integrated into the FARDC the country's security

¹⁸⁷ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: Untangling the Gordian knot of Insecurity Project 2013 pp 39-57

¹⁸⁸ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

¹⁸⁹ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

apparatus continues to exist in a fragmented environment. Lastly since 2003, the power sharing deal has not prevented various factions from withdrawing or deserting their units on grounds of dissatisfaction and lack of commitment by the government to motivate its own soldiers.¹⁹⁰

Integrations processes have often been carried out within initial assessment of the composition of newly formed units. When in 2009 former combatants from CNDP, PARECO and various armed groups were assimilated into FARDC no attention was paid to the structure of the new brigades that led to the creation of units with up to 75% of former armed group members. This lack of proper integration processes has contributed to the weak control the government has over the Kivu region. Some Integration processes have also exposed the highlighted existing ethnic tensions with the army.¹⁹¹ Ex mai-mai and exFAZ integrated troops perceive that Kinyarwanda speaking troops who have been integrated are more favored when it comes to the distribution of positions.¹⁹²

The UNSC has accused elements of FARDC of carrying out human rights violations mostly in parts of Eastern Congo namely Orientale, North Kivu, South Kivu and North Katanga against the local populations and within refugee camps while carrying out security military operations against armed groups.¹⁹³ A 2010 report by the UN Joint Human Rights Office in its findings found unofficial links between the FARDC and armed groups were in existence in the Walikale territory making it easy for armed militia to launch attacks and exposing a weak state authority in the territory. The involvement of FARDC elements in the mining industry diverted the army

¹⁹⁰ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

¹⁹¹ Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

¹⁹² Rift Valley Institute, Usalama J. Stearns , J. Verweijen, M. Eriksson Baaz. The National Army and Armed groups in the Eastern Congo: pp 39-57.

¹⁹³ United Nations General Assembly. Report on situation of human rights and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo, a/hrc/30/32. 27 July 2015.

from carrying out their main obligation of protecting and defending the Congolese people. It is situations like these that have fueled mistrust sentiments of the local population in the FARDC.¹⁹⁴

On 23 June 2016 the UNSC adopted Resolution 2293 (2016) that renewed the DRC sanctions regime and the obligations of the Group of Experts.¹⁹⁵ The resolution condemning the association between elements of FARDC and armed groups and the fact that individual officers of the FARDC have continued to feature in the fueling of insecurity in parts of the Kivu region including involvement in illegitimate mineral and other illegal activities.¹⁹⁶ Other units of the government security apparatus mentioned who have been involved in human rights violations are the National Intelligence Agency, the Republican Guard and the Congolese National Police.¹⁹⁷

During the two Congo wars government security forces used armed militia groups as force multipliers while non-state actors like wealthy businessmen and elite politicians have used the army to intimidate the electorate. The lack of systematic integration processes that address the root cause of local conflicts has made the fight to weaken or destroy armed groups structures intermittent and counterproductive. Judicial pressure leading to arrests and prosecutions of erratic FARDC personnel has been minimal including top army officials who have deserted the national army ranks and joined or created a faction.

¹⁹⁴ United Nations Joint Human Rights Office, Final Report of the fact-finding missions of the UNJHRO into the mass rapes and other Human Rights violations committed by a coalition of armed groups along the Kibua-Mpofi Axis in Walikale Territory, North Kivu from 30 July to 2 August 2010. July 2011.

¹⁹⁵ United Nations Security Council. S/RES/2293 (2016) Security Council Resolution 2293 (2016) http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2293.pdf

¹⁹⁶ United Nations Security Council. S/RES/2293 (2016) Security Council Resolution 2293 (2016)

¹⁹⁷ United Nations Security Council. S/RES/2293 (2016) Security Council Resolution 2293 (2016)

The Congolese government must be committed to the crucial transformation of a national army that embodies the basic principles of loyalty, discipline, integrity among others in order to carry out its mandate of defending the national territory and protection of all citizens thus the need to be apolitical. But transformation must begin from the top commanding positions to the rank-file soldiers on the ground. The government must also improve the conditions of all officers within the armed forces in order to reduce the wealth gap between ordinary troops and privileged top commanders.¹⁹⁸

4.1.3 Humanitarian agencies and the United Nations

The post-cold war era has been characterized by protracted violent conflicts that have compromised the safety, security and livelihoods of millions of innocent civilians. An Agenda for Peace was a 1992 report compiled by former Secretary General Boutros Boutros-Ghali in response to a statement made by the Security Council requesting the S.G. to give an analysis and recommendations on preventive diplomacy, peacemaking and peace keeping.¹⁹⁹ This was a significant period because the Cold War had just ended. He states in the report that since the creation of the UN in 1945 the world had experienced over 100 major conflicts and approximately 20 million people had lost their lives²⁰⁰

Anderson explicitly states:

“Although aid agencies often seek to be neutral or non-partisan toward the winners and losers of a war, the impact of their aid is not neutral – when given in conflict settings, aid can reinforce, exacerbate, and prolong the conflict; it can also help to reduce the tensions

¹⁹⁸ J. Stearns et al. The National Army and Armed Groups in the Eastern Congo: Untangling the Gordian Knot of Insecurity .The Usalama Project Rift Valley Institute 2013

¹⁹⁹ Boutros Boutros-Ghali, an Agenda for Peace

²⁰⁰ Boutros Boutros-Ghali, an Agenda for Peace

and strengthen people's capacities to disengage from fighting and find peaceful options for solving problems. Often, an aid program does some of both. But in all cases aid given during conflict cannot remain separate from that conflictö (Anderson, 1999:1)

The main international body mandated to deal with issue of Refugees is the United Nations High Commission of Refugees. Together with providing protection of refugees its mandated has expanded to include it offering humanitarian aid to internally-displaced persons. Humanitarian Aid core principles are humanity, humanitarian imperative, impartiality, independence and neutrality.

Lischer argues that the responses of external actors like international humanitarian aid organizations and foreign states have an impact on the receiving states and are crucial in how refugees may react , either remaining passive or being political agents. While humanitarian aid is essentially supposed to alleviated the suffering of victims of natural disasters or refugees fleeing from a war zones, several examples like in the Kivus have proven the fact that aid has exacerbated conflict when it has been used to assist militia groups, their supporters and dependents and also contributed to the emergence of a war economy.²⁰¹ The Humanitarian community was not readily prepared for 1994 mass influx of refugees from Rwanda into the Kivu region. Although neighboring countries like Burundi and Tanzania did receive a formidable number of refugees the Kivu region was the core. In retrospect one of the major failures by the international community was its non-acknowledgement of the ongoing genocide from April 1994 in Rwanda. The warning signs were present and calls to action were made but due to the failure of the Security Council to pass a credible resolution first to define the crisis under international

²⁰¹ Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

law as a genocide which would have require action by members of the Genocide Convention and secondly states (specifically France and US) blocked the UN from acting by sending more peacekeeping troops to add on to the peacekeeping mission already present to oversee the implementation of Arusha Accords. At the very least (and a late call) the Security Council endorsed the deployment of French Troops on a humanitarian mission under the name Operation Turquoise.

The sad result was the genocide of 800,000 men, women and children. Even as the refugee crisis worsened, the neither the DRC government nor the international community made a decisive decision to separate militants from genuine refugees an exercise that should have been carried out before the refugees were allowed into the camps instead some aid agencies withdrew their assistance leaving the UNHCR being supported by a handful of aid organizations. Hutu refugee warriors used the camps as shelter from detection thus the refugee population accorded them legitimacy and initially the perception was that thousands of people were in need of humanitarian aid. Lischer explains that humanitarian aid alone cannot increase the likelihood of militarization within camps but the commitment of the receiving state and its capability to maintain security and avert the emergence of militia groups and also the levels of political cohesion that existed within the refugee community before the conflict. ²⁰²

Debate on the role of humanitarian assistance in the 21st century continues to provoke mixed sentiments especially when in cases like the Congo no conclusive measures have succeeded in halting the emergence of refugee warrior communities or dealing with the persisting problem of refugees and internally displaced persons.

²⁰² Sarah K.Lischer, . *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*. (Ithaca, NY: Cornell UP, 2005)

The UN military response was the establishment of MONUC through its Resolution 1279 of 30 November 1999. At the start its mandate included planning for observation of the ceasefire as per the Lusaka Ceasefire Agreement July 1999, disengagement of forces and sustaining cooperation with all parties to the Ceasefire Agreement, the UNSC expanded this mandate to include the supervision of the implementation of the Agreement.²⁰³ Through a series of additional resolutions MONUC were further assigned to carry out political, military and capacity-building tasks including joint operations with the Congolese armed force to resolve on-going conflicts within the DRC.²⁰⁴ The establishment of Resolution 1925 on 1 July 2010 renamed MONUC to United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). The new mission's mandate was to use all necessary means towards the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Congolese government in its stabilization and peace consolidation processes.²⁰⁵

The UN mission has taken a more reactive style on its military operations and only providing its assistance in offensive operations in the company of the FARDC and aiding in emergencies. When Congo and Rwanda discussed on the best possible way to handle the armed militia groups, the UN mission was not party to the negotiation and could only agree to the final decision of military integration of based on controversial military resolutions. The *Umoja Wetu* joint military operations in 2008 was carried out by the governments of Rwanda and Congo which saw the full defeat of the CNDP forces and those willing to integrated with the national army

²⁰³ United Nations Security Council Resolution 1279 (1999) establishment of the United Nations Mission in the Democratic Republic of the Congo

²⁰⁴ United Nations Security Council Resolution 1279 (1999) establishment of the United Nations Mission in the Democratic Republic of the Congo

²⁰⁵ United National Security Council Resolution 1925 (2010) establishment of the United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO)

were allowed.²⁰⁶ MONUC and FARDC carried out a joint operation named *Operation Kimia II* one of the major goals being to defeat and dismantle FDLR with MONUC providing logistical support, medical evacuations, fuel and rations. Operation Amani Leo launched in 2010 was also a joint operation whose objectives were to protect civilians, dismantle non-state military installments from within the general population and restore state authority in areas under the command of various militia groups.²⁰⁷ Whereas both FARDC and militia groups have been accused of targeting noncombatants, MONUC and its successor MONUSCO have been accused of not carrying out their mandate of protection of civilians effectively. But the UN has repeatedly reminded the Congolese government that one of their primary responsibilities is the protection and security of its citizens. The UN peacekeeping mission has also suffered casualties when armed militia in *Ituri* region killed Bangladeshi peacekeepers in 2005. The UN then increased peacekeeping troops to further aid in achieving stability and security in the Kivu and *Ituri* regions.²⁰⁸ In its commitment of ensuring security for civilian the UN established the United Nations Force Intervention Brigade through UNSC Resolution 2098 which has the authority to engage in offensive operations and neutralize militia groups that pose a threat to state authority and civilian security with or without the FARDC.²⁰⁹

MONUC has assisted in bringing justice and peace in Ituri through aiding in arrest of senior commanders of armed groups that were targeting the local population. The UN peacekeeping mission assisted civilians in Bukavu in 2004 when conflict broke out through transporting to locations that were safe. In conjunction with the Swiss NGO *Fondation Hironnelle* MONUC

²⁰⁶ T. Dagne.,The Democratic Republic of Congo: Background and Current Developments, Congressional Research Service, Report for Congress (September 2011)

²⁰⁷ . Dagne.,The Democratic Republic of Congo: Background and Current Developments,

²⁰⁸ . Dagne.,The Democratic Republic of Congo: Background and Current Developments,

²⁰⁹ United Nation Security Council establishes the United Nations Force Intervention Brigade through UNSC Resolution 2098.

helped create Radio Okapi, a radio network that disseminated information to the general public on MONUC's efforts playing an important role of civic education and promoting peace and democracy.²¹⁰

In March 2016 for the first time the United Nations Security Council adopted Resolution 2272 that reiterates "that sexual exploitation and abuse by UN peacekeepers undermines the implementation of peacekeeping mandates as well as the credibility of UN peacekeeping missions."²¹¹ The resolution provides for sanctions mechanisms against individuals and contributing countries as part of the UN's efforts to combat and prevent sexual exploitation and abuses by peacekeeping forces. MONUC is not the first peacekeeping mission to have accusations of sexual exploitation and abuse of women and children brought up against it. Prime accusations that garnered public attention were the allegations brought up against the 1993 UN peacekeeping force in Cambodia and the DynCorp scandal on the UN operation in Bosnia-Herzegovina in the 1990s.²¹² The UN has opened several investigations on peacekeepers that have been alleged to have engaged in sexual misconduct in Bunia area and other parts of DRC. One of the efforts that member states have undertaken and has been conducted for the MONUSCO is conducting pre-deployment training for peacekeeping units.²¹³

²¹⁰ Human Rights Watch MONUC : A case or Peacekeeping Reform , Testimony of Anneke Van Woudenberg before the US, House Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations 1 March 2004 (Retrieved from <https://www.hrw.org/news/2005/02/28/monuc-case-peacekeeping-reform> on 30 August 2016)

²¹¹ K. Neudorfer, "UNSC Resolution 2272: Progress against Sexual Abuse in UN Peacekeeping?" *E-International Relations*. 21 April 2016 (Retrieved from <http://www.e-ir.info/2016/04/21/unsc-resolution-2272-progress-against-sexual-abuse-in-un-peacekeeping/> on August 2016)

²¹³ UN News Centre. Security Council endorse steps to combat sexual exploitation by UN peacekeepers, 11 March 2016 (Retrieved from http://www.un.org/apps/news/story.asp?NewsID=53426#.V_KZ7TYVi1s on 30 August 2016)

4.1.4 External state actors

From the Mobutu era to the period of the two Congo wars, the conflicts that befallen the DRC are multi-layered with the involvement of key external state actors. A lot of literature has revolved around the root causes of the recurrent conflicts being the economic aspect of the raw minerals economy, the blatant exploitation of its mineral resources to fund the conflicts and enrich a small clique of elite politicians and businessmen. One cannot ignore that the conflict has been influenced as much so by spill-over of the Hutu-Tutsi conflict in Rwanda. The issue of Banyamulenge Tutsi ethnic citizenship legitimacy and their otherwise forced alliances with the Kagame-led government has led to the unspoken perceptions that Tutsi rule has been imported in the Kivu region and remains and remained a key driver of factional strife in the two Congo wars.

The Rwanda government in itself has been adamant of the threat posed by Hutu refugee warriors operating in the Kivus and has on numerous occasions accused the DRC government of being complacent and non-committal to dismantle and permanently disarm the combatants. But Rwanda has been accused of being double faced and actually benefitting from the continued existence of Hutu combatants in the Kivus.²¹⁴ During the second Congo war Rwanda and its neighbor Uganda were accused of engaging in the war economy of natural resources and Rwandan Hutu refugee warriors did not pose the same threat they had in the 1996 justified Rwandan invasion. It has been suggested that with the strong buffer zone that Rwandan troops had formed in the Kivus in 1998 would have enabled them to dismantle the remaining Hutu combatants but this would never be realized. According to a 2002 report the UN Panel of Experts on the illegal Exploitation of Natural Resources and other forms of Wealth, DRC and Rwandan

²¹⁴ M. Rafti. *Rwandan Hutu Rebels in Congo/Zaire, 1994-2006: An Extra-Territorial Civil War in a Weak State?*, Antwerp, April 2006.

army units were reports to be mining alongside Hutu rebels instead of disarming them.²¹⁵ While the exploitation of natural resources is a problem, the FDLR issue must be addressed in order to relieve a large population of constant fear of sporadic attacks and human rights abuses and violations. Rwanda has been inconsistent in its approach of dealing with the FDLR. While at times it insists it is a Congolese problem other times it is adamant on using a military solution to disband the FDLR.²¹⁶

Rwanda has over the years insisted on a disarmament and repatriation process that includes the prosecution of all those involved in the Rwandan genocide. In 2005 the FDLR in talks with DRC government in Rome (Rwanda was not party to the agreement as they and refused to engage with a genocidal military organization) agreed to a voluntary disarmament and a political process which would result their transformation into a legitimate political party. Even though they condemned the 1994 Rwandan genocide and called for a full Disarmament and repatriation process for all Hutu refugees, the Rwandan government was adamant that it would never support or recognize the FDLR transformation into a political party.²¹⁷ Rwanda through the Rwandan National Unit and Reconciliation Commission (NURC) upon repatriation of Rwandan rebel combatants including other Rwandan refugees are taken through the *Ingando* process. This is a process that eradicated divisive historical/ethnic beliefs while instilling an ideology of Rwandan Identity but it has been claimed it seeks to recondition Rwandans to an RPF ideology to contain any opposition to the Kagame-led government.²¹⁸

²¹⁵ M. Rafti. Rwandan Hutu Rebels in Congo/Zaire, 1994-2006: An Extra-Territorial Civil War in a Weak State?,

²¹⁶ M. Rafti. Rwandan Hutu Rebels in Congo/Zaire, 1994-2006: An Extra-Territorial Civil War in a Weak State?,

²¹⁷ I. Salehyan,. *Rebels without Borders: Transnational Insurgencies in World Politics*. Cornell University Press, Ithaca & London, 2011

²¹⁸ ., M Rafti,. *Rwandan Hutu Rebels in Congo/Zaire, 1994-2006: An Extra-territorial Civil War in a Weak State?* L'Afrique des Grands Lacs. Annuaire 2005-2006. Antwerp 2006

Rwandan army units during the Congo wars were accused of committing deliberate extrajudicial killings and human rights abuses such as torture and recruitment of child soldiers.²¹⁹

Rwanda continues to play a pivotal role in the Kivus whether directly or through proxies, the country's input is requirement especially on the issue of voluntary repatriation for potential returnees and the issue of the FDLR. With the current political temperatures in DRC over presidential elections on the increase, Rwanda may have to make a decisive decision on how to deal with the Kivu conflict and FDLR as Kinshasa national politics will likely be played out within the local networks of native authorities and patron linkages in the Kivus and with the existence of FDLR strongholds their political and social power must be reckoned with. We must also not forget that as the Mobutu regime supported the Hutu refugee warriors, the Rwandan government played a prime role as the political and military backers of the Banyamulenge Tutsi population especially after the ethnic cleansing of Congolese Tutsi in the Masisi region.²²⁰

From April 1994 to the beginning of the first Congo war in 1996, no international state actor made a decisive decision of military involvement whether it was to stop the genocide from escalating or to rid the refugee camps in the Kivu region of ex-FAR members, Interahamwe or the genocidaire financiers. Belgium on its part was constantly reminded of the cold blooded murders of Belgium peacekeepers in Rwanda a few days into the genocide period.

But even so before the beginning of the genocide several reports had been sent to the UN and Permanent Security Council members that gave substantial evidence of what would occur if effective action was not taken. The International Federation for human Rights (FIDH) had presented reports of human rights abuses way back to January 1993, more than one year before

²¹⁹ International Crisis Group. The Kivus: The Forgotten Crucible of the Congo Conflict ICG Africa Report N°56, 24 January 2003. Nairobi/ Brussels

²²⁰ H. Adelman. The Use and Abuse of Refugees in Zaire. In Refugee Manipulation: War, Politics and the Abuse of Human Suffering, ed. Stephen John Stedman and Fred Tanner. Washington, D.C.: Brookings Institution Press, 2003.

the genocide. Eric Gillet and Andre Jadoul two Belgians lawyers produced a report on the Bagogwe massacre in early 1991, in which they stated that the murders could be described as genocide.²²¹ The UNAMIR (United Nations Assistance Mission for Rwanda) Force Commander Major- General Romeo Dallaire sent a cable on 11th January 1994 to the UN HQs office stating that through a viable informant there was evidence of Interahamwe training camps, locations of arms caches and plans to kill Belgian peacekeeping soldiers (which happened on 7 April as they protected Prime Minister Agathe Uwilingiyimana who was also killed). The UN Head Office in response questioned the validity of the information and directed Dallaire to inform the ambassadors of the US and Belgium embassies who promised to inform their respective governments.²²² Belgium, France and the US could not claim that the alarm was not raised to avert a tragedy that could be compared to the Armenian or Cambodian genocide not so much because of the number of casualties but the short period (7 April to 15 July 1994) it took to kill approximately over half a million people.

Belgium being the former colonizers continues to foster cordial relations with the DRC government but President Kabila has several times been forced to defend the sovereign and independent power of the DRC warning Belgium that the relationship must not be on a master-slave basis like in the colonial period.²²³

France on the other hand prior to the Rwandan civil war had diplomatic relations with Habyarimana's government in terms of financial aid and trade. But still through various official documents and diplomatic correspondence from Kigali to Paris the French government had knowledge of an ethnic crisis about to flare up. The plane crash that killed Habyarimana and his

²²¹ Daniela Krosiak, *The Role of France in the Rwandan Genocide*, Hurst & company , London 2007, Pg 89.

²²² Daniela Krosiak, *The Role of France in the Rwandan Genocide*, Hurst & company, London 2007, Pg 93-94.

²²³ Congo News Agency. *Tense Relations Between the DRC and Belgium* , Congo Palnet 25 April 2008 (Retrieved from <http://www.congoplanet.com/article.jsp?id=45261195> on 20 September 2016)

counterpart was the breaking point and with the Hutu extremists in power the genocide begun.²²⁴ France had also continued to be a strong ally of the Mobutu regime after the Cold war ended when other countries like the US and Belgium had become reserved due to Zaire's poor record of observing human rights. France's own self-interest motives were based on the need to maintain its influence in Africa and not have former allies be induced by the so called Anglophone countries of the US and Great Britain. But any initiative that included France participation in the refugee crisis was adamantly rejected by Rwanda. France had provided arms and logistics support to the Habyarimana government during the Rwandan civil war and did not relinquish ties with the former Rwandan President Theodore Sindikubwabo who was in office during the Rwandan genocide. When French troops were deployed to Rwanda under the UN Resolution 929 (1994)²²⁵ to set up a protected zone for the protection of IDPs and refugees some of the soldiers and Interahamwe militia who had participated in the genocide killings were allowed into the demilitarized zones and continued with these killings in the camps. The Zone Turquoise within the Cyangugu-Kibuye-Gikongoro triangle was a vast region approximately a fifth of Rwanda. Rwanda believes that Operation Turquoise aided the perpetrators of the genocide to safely flee into Kivu region once the RPF announced its victory and thus had indirectly allowed Hutu refugee warriors to rearm within the Kivu refugee camps. Rwanda would not allow the French to manage another military offense against the Hutu militia presence in Eastern Zaire.²²⁶

For the US it was a case of once bitten twice shy. Following the 1993 Battle of Mogadishu where subsequent combat led to the deaths of US soldiers and more casualties, the US in 1994

²²⁴ Daniela Krosiak, *The Role of France in the Rwandan Genocide*, Hurst & company, London 2007, Pg 93-94.

²²⁵ UN Security Council , Resolution 929 (1994) Adopted by the SC at its 3392nd meeting on 22 June 1994, 22 June 1994, S/RE/929 (1994) (Retrieved from <http://www.refworld.org/docid/3b00f15c50.html> on 30 September 2016)

²²⁶ H. Adelman. *The Use and Abuse of Refugees in Zaire.* In *Refugee Manipulation: War, Politics and the Abuse of Human Suffering*, ed. Stephen John Stedman and Fred Tanner. Washington, D.C.: Brookings Institution Press, 2003

instituted the Presidential Decision Directive 25(PDD-25) that allowed the involvement of the US in peacekeeping operations only on case by case basis, the mission should reflect America's best interests and should garner popular domestic support.²²⁷ This is one of the reasons why the US was wrongly hesitant to take any action prior to the genocide and likewise took up no direct military initiative through the UNSC to rid the Kivu region refugee camps of Hutu refugee warriors.

It is said that history is bound to repeat itself. When it comes to situations of conflict involving abuse of human rights, genocide and crimes against humanity the common adage is "never again". That phrase was commonly uttered by world leaders and the likes once the world acknowledged the genocide that had taken place in Rwanda. What has been and is taking place in the Kivu region currently has history holding all the above actors at ransom since no concrete resolution has been found: the crisis the DRC government faces of reconciling civic and ethnic citizenship especially in the Kivu region has not been resolved exemplified by the continuous emergence of ethnic-based factions that remain embodied within the populations causing periodical displacement, refugee flows and imposing their negative perceptions on the populous they command. Permanent solutions are needed to halt the emergence of these ethnic-based factions, disarmament and possible repatriation for the FDLR and resolve the problem of IDPs and the ongoing refugee crisis. The DRC regime must be committed and willing to work with the regional countries including Rwanda and Uganda and international state and non-state actors towards alleviating this two decade suffering of innocent people.

The next chapter will focus on the recommendations and policies that have been suggested and used to bring peace and stability to the Great Lakes region.

²²⁷ US Government, Presidential Decision Directive 25 (PDD-25) (Retrieved from <http://nsarchive.gwu.edu/NSAEBB/NSAEBB53/rw050394.pdf> on 4th September 2016)

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

The African Union Policy on Post-Conflict Reconstruction and Development offers comprehensive policies and strategies that can be employed to consolidate peace and promote sustainable socio-economic development. Though the policy document acknowledges that each conflict is atypical in nature, it is mostly in the earlier stages of the changeover from conflict to peace that peace processes are delicate and the probabilities of returning to violence are great.²²⁸

The Policy outlines four major objectives: consolidation of peace and prevention of violence relapses, address root causes of conflict, adequate preparation and execution of reconstruction activities, improve coordination amongst various actors involved in PCRDR processes.²²⁹

The African Union replaced the OAU in the year 2001 with the establishment and adoption of the Constitutive Act of the African Union based on the doctrine of responsibility to Protect. The AU further enacted the Protocol establishing the Peace and Security Council of the AU (2004). Peace and security can only be achieved through dealing with root causes of conflict and must be based on democratic governance, respect for human rights and law and poverty reduction.²³⁰ While the AU member states has made strides to conceptualize and implement projects and programs to address conflicts it is the renewal of conflicts in areas that just emerged from

²²⁸ African Union. Policy on Post-Conflict Reconstruction and Development (PCRDR) Adopted in Banjul, The Gambia, July 2006. Conflict Management Division, Peace and Security Department, Commission of the African Union Addis Ababa, Ethiopia, 2006.

²²⁹ African Union. Policy on Post-Conflict Reconstruction and Development

²³⁰ Africa Union ., Managing Peace Processes: Process related questions. A Handbook for AU Practitioners, Volume 1, African Union and the Centre for Humanitarian Dialogue 2013.

conflict that is worrying. Since 2010 the African continent has witnessed recurrence of violence in Mali, CAR, DRC and most recently South Sudan.²³¹

5.1 Understanding the DRC state crisis

The DRC with all the engaged actors is a complex issue and of importance is an understanding of the major elements that have characterize the conflict in order to formulate policies that will effectively bring cessation to the conflict and adequate long term measures implemented so that the crisis of civic and ethnic citizenship will not recur and any post-conflict peace building is sustained for tangible socio-economic development.

Although most would like to forget the colonial era, colonialism deprived the African continent the right to self-govern, thus losing their capacity to preserve, and generate positive peace. The divide-rule policy and despotic indirect rule used by the colonialists not only delegitimized the pre-existing political traditional structures it also politicized ethnicity. In the DRC the native people were governed through their ethnic native authorities, this would later become a problem for the post-colonial independent government whereby tensions would arise between the native and the non-native. State citizenship is a sensitive subject because it gives a person the identifier of legitimate belonging and with citizenship an individual can exercise and enjoy their civic rights. The post-independence DRC government did not seek to harmonize the differentiated structures of the civic citizenship and native authorities that existed. Without a doubt ethnicity has been a major element in the structuring of the various militia groups that are emerging.

²³¹ African Union. Policy on Post-Conflict Reconstruction and Development (PCRD) Adopted in Banjul, The Gambia, July 2006. Conflict Management Division, Peace and Security Department, Commission of the African Union Addis Ababa, Ethiopia, 2006.

Along with the colonial political structure, colonialists instilled an ideological perception in Rwanda that would be the root cause of post-independence sporadic conflicts and the core element that would turn neighbor against their fellow neighbor in the Rwandan genocide. The colonialists applied the Hamitic Hypothesis in both the Rwandan and Burundian societies pitting the Hutus against the Tutsis. This Hutu/Tutsi conflict played out tragically during the genocide and has been a root cause of conflict within the Kivu region. This identity based conflict repels the development of an all-encompassing identity and citizenship in the DRC. This perception has been criticized and has been explained as a method used by colonialists to assert colonial paternalism.²³²

The third component of artificiality of state borders is an issue if reviewed would not comprehensively promote peace and security considering the fact that colonial governments demarcated borders with total disregard of the social environments or kingdom frontiers. Thus for the Kivu region when the border was fixed it integrated different groups from Rwanda, Burundi and the DRC. The people of Rwandan descent were distributed into different colonial territories therefore integration in the postcolonial states has been difficult leading to identity based insecurity whenever the question of the nationality arises both at the local and national levels of administration.²³³

The DRC political system has been marred by bad leadership and governance that resulted to mismanagement of state resources, formation of patron--client alliances, rampant corruption, nepotism, ethnic exclusion, injustices and unequal distribution of national resources. These indicators of governance have led to state weaknesses, wealth gaps, lack of social cohesion

²³² A. Shyaka. Understanding the Conflicts in the Great Lakes Region: An Overview, *Journal of African Conflicts and Peace Studies*, Vol1 Iss. 1, (2008) pp5-12

²³³ A. Shyaka. Understanding the Conflicts in the Great Lakes Region: An Overview

which has resulted to periods of violent conflicts in cases like the Kivu region, the conflict has been protracted laden with human suffering.

There has also been failure in managing periods of critical transitions in the DRC resulting from inadequate political systems and the militarization of politics. For democracy to effectively work, political parties should be modeled based on ideologies that are issue-based. In the DRC during transition periods, ideologies of political parties have been based on ethnicity, patronage and regional cleavages. This has led to systematic exclusions of minorities groups whose rights have been held at ransom to cater for a handful of political and economic elites. Immediately after independence, Zaire experienced a period of internal turmoil, sections of the Congolese army mutinied and areas like Katanga and South Kasai seceded. The Cold war being at its peak, proxy wars were played out resulting to nationalists like Patrice Lumumba being assassinated and the Belgium and US governments being accused of indirect involvement. Within the first five years of independence Zaire had not prepared adequate mechanism to deal with critical issues of federalism and ethnicity this would consequently result to Mobutu mounting a coup d'état in 1965 and his dictatorial rule would last for a further 32 years until call for democracy space in 1997.

Currently since 2015 the DRC has been experiencing violent political tensions that have led to clashes between protesters and security forces and a number of deaths. With Kabila's constitutionally-supported second term officially ending in December, elections are supposed to take place in November. But since January 2015 opposition parties have accused the government of creating artificial roadblocks with the intention to have Kabila run for third term which would be unconstitutional. The DRC Electoral Commission has since proposed that presidential,

legislative and provincial polls be postponed until 2018 in order to pave way for National Dialogue and to update the Electoral Commission list of voters.

Preceding the contested re-election of Burundian President Pierre Nkurunziza in July 2015, there was a coup attempt by a section of the Burundi Army which was later flouted by Army loyalists. These political tensions have led to internally displaced persons and refugee flows into neighboring countries. Adequate democratic political systems during critical transitions have lacked resulting to reigniting of past conflicts which in the DRC have been based on ethnicity, the Hutu-Tutsi divide playing a major role in the Kivu region.

Although the two Congo wars have since ended their legacy continue to negatively affect the Kivu region. The aftermath of Rwandan genocide of mass refugee flows and subsequent emergence of refugee warrior communities in the Kivu region has not been solved, while the issue of fragmented armed groups is not being adequately addressed. This further point to the high degree of the internationalization of the Great lakes conflict system. Economic profits by foreign actors, identity-based proximities and geopolitical competition by foreign power and states are just some of the factors that influenced the crisis in the DRC. State actors like France were involved directly or indirectly in the Rwandan and the two Congo civil wars. This has further affected the effectiveness of post-conflict peace building mechanisms within the region.²³⁴

The international community failed to prevent the genocide and did not take up its decisive responsibility to protect when it came to the DRC refugee crisis nor the prevalent destruction cause by the Congo wars and now its legacy exemplified by the protracted Kivu conflict and the

²³⁴ A. Shyaka. Understanding the Conflicts in the Great Lakes Region: An Overview

resurgence of ethnic-based armed groups sometimes composed of ex-state army personnel or ex-combatants who have gone through the Disarmament, demobilization and reintegration process.

With the AU PSC and the African Peace and Security Architecture, state members should prioritize the Kivu region conflict and implement the policies included in the PCRDR. All state and regional projects and programs should be followed up with monitoring and evaluation exercises both at the national and regional levels.²³⁵ Additional resource mobilization should be put in implementation of the Continental Early Warning System (CEWS) mechanism by state members and their respective Regional Economic Communities (RECs).

5.2 Recommendations to the DRC government

The primary element of the state crisis is a lack of effective confluence or synergy of the civic and ethnic citizenship laws. The Law No. 04/024 of 12th November 2004 on Congolese Nationality legally grants nationality to all ethnic groups in the DRC's territory at independence including those who were transplanted during the colonial period. But in order to understand and resolve the question of citizenship (civic and ethnic) the DRC must from the national government to the local administration employ effective democratic state mechanisms that clearly define a Citizen of the Congo without reference to ethnicity. While ethnicity is an aspect of diversity, civic education should be carried out from the grassroots level to educate the general public on the rights of every citizen including the various aspects of acquiring Congolese citizenship. Reforms should be implemented at both the central and local government institutions for fluidity of enacted laws and services offered for the people. Customary law on its part should

²³⁵ A. Noyes and J. Yarwood., Progress toward the African Union Continental Early Warning System, *International Peacekeeping*, 20:3, November 2013.

be reconstituted based on territory and not ethnicity thus allowing the free flow of people from part of the country to the other.²³⁶

A precondition to the above internal reforms is full departure of foreign forces from the DRC territory so that the country controls and retains its territorial integrity and sovereignty. This will also give the citizens of DRC an avenue to negotiate and redefine sovereignty without external influence or coercion.²³⁷

Both the DRC and Rwanda government should pursue diplomatic relations considering the fact that the Kivu region lies along a porous border.²³⁸ Cross-border development programs should be established within the framework of RECs that will promote peace, ethnic diversity and social economic development. The conceptualization of The International Conference on the Great Lakes Region (ICGLR) is progress made that the continent is aware of its shortcomings and the utilization of its policies should seek to foster reconciliation between the Rwandan and Congolese government and peoples. A comprehensive analysis should be conducted in order to formulate the best suited strategies in which the Congolese government, Rwanda, MONUSCO, AU Peace and Security Council and other international actors can disarm the FDLR and other emerging armed groups. This may include the establishment of protected areas and the effective control of major roads to ensure the safety of civilians.

The sensitive issue of refugees and internally displaced persons is one which needs a multi-agency strategy. The creation of the AU CEWS was criticized the underlining issues being:

²³⁶ M. Mamdani. *Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo, September, 1997*. Vol. 1. African Books Collective, 2001.

²³⁷ M. Mamdani. "Preliminary Thoughts on the Congo Crisis." *Social Text*, no. 60 (1999): 53-62.
<http://www.jstor.org/stable/466862>.

²³⁸ G. Atim. The Impact of Refugees on Conflicts in Africa, *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Volume 14, Issue 2 (July-August 2013). Pp 4-9.

resource mobilization, operational and technical expertise and the political and structural impediments that programs related to Early Warning Systems may encounter. The CEWS was established in 2002 under Article 12 of the Protocol that created the AU's Peace and Security Council. Its primary function was to avert, manage and resolve African conflicts through timely identification of conflict situations on the continent.²³⁹ A Situation Room at the AU was established to be the central monitoring and observation unit where all RECs collected information would be consolidated and acted upon. At a PSC open session in 2015, Vasu Gounden, Executive Director of the African Centre for the Constructive Resolution of Disputes (ACCORD) said that although the AU has made concrete progress in the last 20 years, conflicts have become more complicated and what will be more effective is turning the information that CEWS receives from early warning into early response.²⁴⁰ A comprehensive strategy must be developed to put into practice the mechanisms that are already in place in the various RECs. As these early warning measures are put to curb the increase of IDPs and refugees, DRC and its neighbors should seek to have effective immigration and custom posts at specific border stations and form military brigades at refugee camps posts (working hand in hand with aid agencies) in order to check on the influx of refugees and have an effective systematic mechanism of refugee registration to halt any combatants entering refugee camps. CEWS should also be utilized for gathering and sharing of information on the status of border lines. Dissemination of information to refugees of their obligations under international and national law should be enhanced and

²³⁹ The Continental Early Warning System (CEWS) is one of the five pillars of the African Peace and Security architecture (APSA). The CEWS is responsible for data collection and analysis and is mandated to collaborate with the UN, its agencies, other relevant international organizations, research centres, academic institutions and NGOs with its information to be used by the Chairperson of the Commission to advise the Peace and Security Council (PSC), on potential conflicts and threats to peace and security in Africa and recommend the best course of action. - See more at: <http://www.peaceau.org/en/page/28-continental-early-warning#sthash.ola802E6.dpuf>

²⁴⁰ Peace and Security Council Report., An early warning on Africa's early warning system Institute For Security Studies. (Retrieved from <https://issafrica.org/pscreport/addis-insights/an-early-warning-on-africas-early-warning-system> on 4 August 2016)

warnings of consequences issued.²⁴¹ Concerning tensions within refugee camps, DRC, the UNHCR should establish mechanisms for resolution of disputes between individuals and seek to build an environment where by refugee populations may be able to express their cultural and social traditions.²⁴² Relations between refugee populations and host communities in the case of the Kivu region has been hostile due to ethnic tensions, thus it is the government's responsibility not only to protect its citizens from any aggression but also ensure that refugees are safe within their borders and are not targets of violence or camps are not used as recruitment pools for militia groups like the FDLR. Setting up of UN refugee camps under the protection of MONUSCO should be considered as this would allow collection of adequate information of the genuine refugees residing in the camps. These camps would also have to be situated at a safe distance from the Rwandan borders and Kivu region in order to prevent camp penetration and militarization by FDLR and any armed groups.²⁴³ Any UNHCR transit sites should be protected and their locations known to refugees. Repatriation programs then would be easily done from these camps in a systematic mode.

The bottom line to the actualization of the above is having visionary leadership in place, both at the national and local levels of administration. This should transcend in regional organizations from the AU, the RECs and other African institutions that are concerned with peace and security on the African continent. DRC should work towards having effective institutions that support the

²⁴¹ G. Atim. The Impact of Refugees on Conflicts in Africa, IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 14, Issue 2 (July-August 2013). Pp 4-9.

²⁴² G. Atim. The Impact of Refugees on Conflicts in Africa,

²⁴³ G. Atim. The Impact of Refugees on Conflicts in Africa,

rule of law and cultivate a rule-based society from the local, national, regional and international levels.

5.3 The FDLR and emergence of ethnic based armed groups.

Due to the fact that the DRC is a sovereign state with demarcated recognized international boundaries, any initial strategy to be undertaken should begin with the retraining of FARDC brigades. Employing the expertise of local civilian specialists in military planning and facilitation of civil-military cooperation programs aimed at building confidence between the local populations and Congolese security forces whose mandate is to protect civilians.²⁴⁴ Thus far any joint military operations of MONUSCO and the Congolese security forces against FDLR has resulted to more civilians deaths thus pursuing a non-military solution should be considered. In the case of Hutu refugees who seek to return back home, Rwanda should formulate effective security plans giving assurance of security and non-prosecution guarantees for those FDLR combatants who are not accused of crime of genocide or crimes against humanity.

DRC and MONUSCO should work to apprehend and publicly indict FDLR hard-liners more specifically the top leadership in order to break down structures of command and allow combatants who may want to defect or surrender to do so without fear of apprehension. The Congolese government should take action against those Congolese army forces who have been accused of collaborating with the FDLR, violations of human rights against citizens, open investigations and prosecute in the event of guilt. Judicial actions against both FDLR and rogue

²⁴⁴ International Crisis Group. Congo : Comprehensive Strategy to Disarm the FDLR, Crisis Group Africa Report No. 151, 9 July 2009

army officers should be implemented with the input of organizations like the ICGLR, ICC and the UN especially in cases of crimes against humanity.²⁴⁵

While sensitive in its application another non-military action would be third country resettlement of FDLR combatants who have not been indicted of war crimes this would encourage defections especially for those who fear persecution once repatriated to Rwanda. But this would require the involvement of the DRC government, Rwanda, Uganda, AU, MONUSCO, UN and the countries of resettlement.²⁴⁶ Implementation of strategies to eliminate the economic life lines of the FDLR and all other armed groups with local Congolese networks and sometimes the national army should take precedence that the government of DRC must undertake with the help of MONUSCO and the UNSC. One lucrative economic venture the FDLR have undertaken is charcoal production.²⁴⁷

Due to the retaliation against civilians that FDLR have constantly engaged in, any military option should prioritize first on taking measures to offer adequate protection to civilians. Any intelligence on FDLR operations should be accurate in order to carry out offensive operations that will hurt the core centre of the organization. And lead to the apprehension of top commanders and officials. MONUSCO, DRC and Rwanda must co-operate through the provision of lucrative information about FDLR locations and current structure.²⁴⁸ Another strategic element is the enactment of national laws that limits the ability of FDLR and other

²⁴⁵ Enough Team., How to Dismantle a Deadly Militia-Seven Non-military Tactics to Help End the FDLR Threat in Congo, November 2014 (www.enoughproject.org)

²⁴⁶ Enough Team., How to Dismantle a Deadly Militia-Seven Non-military Tactics to Help End the FDLR Threat in Congo, November 2014 (www.enoughproject.org)

²⁴⁷ Enough Team., How to Dismantle a Deadly Militia-Seven Non-military Tactics to Help End the FDLR Threat in Congo, November 2014 (www.enoughproject.org)

²⁴⁸ Conflict Prevention and Peace Forum. FDLR: Past, Present and Policies, DRC Affinity Group. (New York: SSRIC: Conflict Prevention and Peace Forum March 2014.

armed groups to access the technical and financial support from external political leadership or Diaspora supporters. In conjunction with member states of the UN measures amounting to freezing of assets, arms embargo and sanctions should be imposed on culpable individuals and organizations who aid in war crimes and crimes against humanity and arms trafficking within the DRC.²⁴⁹

5.4 Disarmament, Demobilization and Reintegration Process (Ddr)

The most multifaceted components of post conflict peace building periods are the DDR processes that seek to bring security and stability in a post-conflict environment. In situations where the state has lost its military power it is important that legitimate governments have sovereign power over its territory in initial stages so as to assure peace processes are effective and sustainable. Former combatants who were members of militia groups and armed opposition groups must be identified for both internal security and stability and for a successful DDR process.²⁵⁰

Postóconflict peace building consists of various processes that seek to establish sustainable peace and prevent the recurrence of violent conflicts. Processes include: the structural dimension-addressing the root causes of the conflict including political structures, land distribution among others. Relational dimension which includes the justice and reconciliation process, trust building that deals with the triggers that lead to hostilities and violent conflict. Personal Dimension deals

²⁴⁹ International Crisis Group. Congo : Comprehensive Strategy to Disarm the FDLR, Crisis Group Africa Report No. 151, 9 July 2009

²⁵⁰ African Development Bank Group. The Role of Disarmament, Demobilization and Reintegration programs in Post-Conflict Reconstruction: Some lessons Learnt, Fragile States u/nit. September 2011.

with issues relating to the psychological and emotion states of individuals, who have been involved in conflict, victims who have undergone trauma and physical violence.²⁵¹

The success of any DDR process is anchored on the effectiveness and success of the peacemaking and peacekeeping periods. Going into a DDR process whilst conflict is taking place may become counter-productive as seen in the Kivu, Ituri and Katanga conflicts. Former ex-combatants from the FDLR and other armed groups have been re-recruited by armed militia groups after having been through the DDR process.

Looking at the present conflicts plaguing the world: Syrian war, conflicts in the Kivus, CAR, South Sudan, and Israel-Palestine conflict, the UN and other actors have had to change the organizational approach towards the scale and complexity of DDR programs. Coordination and planning among peacekeeping operations, agencies, funds, policies formulation and implementation is paramount for sustainable lasting peace and social and economic growth for those who participate in the DDR programs. The success of each subsequent component of the DDR process is important since each component cannot be done void of the other. Although each component has its own characteristic, strategies and goals the inter-relation between all three and other sub-components must be realized in order to have a lucid transition from one stage to the other.

5.4.1 Disarmament Phase

This phase is marked by the collection, documentation, control and disposal of small arms, ammunition explosives and light and heavy weapons of combatants.²⁵² It may also include the

²⁵¹ Lederach, John Paul. "Conflict Transformation." **Beyond Intractability**. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: October 2003
<<http://www.beyondintractability.org/essay/transformation>>.

²⁵² Disarmament, Demobilization and Reintegration United Nations Peacekeeping,
<http://www.un.org/en/peacekeeping/issues/ddr.shtml> Retrieved on 15th November 2015.

disarmament of the civilian population.²⁵³ This phase is both essential and intricate since implementers must identify the primary target group that is armed groups who were either in support or against a legitimate government and also children and women who were combatants and not merely associated with the armed groups like family members.

Before the beginning of this phase a thorough investigation of the political and socio-economic undercurrents of the conflict must be carried out. Challenges that may be encountered in the subsequent phases must be recognized and mitigation strategies set in place. Since the ultimate goal of the DDR process is to avert a reoccurrence of violent conflict, to achieve sustainable reintegration for former combatants and a peaceful coexistence within the post conflict society, the disarmament process must be done meticulously and involvement of all concerned actors especially in conflicts involving government forces and a number of militia groups.²⁵⁴

MONUSC) established by the UN Resolution 1925 in 2010 was mandated in unison with the DRC government to implement DDR process for Congolese armed groups.²⁵⁵ More complex to implement was the DDR/RR (Disarmament, Demobilization, Repatriation/Reintegration and Resettlement) process for illegal foreign armed groups that have continuously initiated violent conflict for example: FDLR, ADF, LRA, and the National Front for Liberation-Burundi (FNL).²⁵⁶ Although the disarmament process has been successful and most regions within the DRC have stabilized since the end of the Second Congo War, the Eastern part of the country more specifically the Kivu region has experienced a recurrent cycle of violence characterize by

²⁵³ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping, <http://www.un.org/en/peacekeeping/issues/ddr.shtml> Retrieved on 15th November 2015.

²⁵⁴ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping, <http://www.un.org/en/peacekeeping/issues/ddr.shtml> Retrieved on 15th November 2015.

²⁵⁵ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping.

²⁵⁶ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping

government structure vacuums, illegitimate exploitation of natural resources, human rights violations and continuous presence of both Congolese and foreign militia groups. Based on this fact the UN further added a mandate for MONUSCO and established an 'Intervention Brigade' to strengthen the peacekeeping operations. One of its main responsibilities is to diminish the threats posed by armed groups to state authority and civilian safety. As noted above, the political and socio-economic dynamics of conflicts must be analyzed before the DDR process begins.

The protracted conflict in Eastern Congo is a hard learned lesson on the importance of critically analyzing each conflict since fundamental characteristics differ.

Disarmament also involves the correct identification of combatants in order to disarm genuine militia and armed group members. The identification process must be transparent and it is in this phase that both government and other implementers of peace processes must describe the full DDR process and what it will consist of clearly to the combatants especially the exact benefits they will receive in the future and what is expected of them in return.²⁵⁷

5.4.2 Demobilization Phase

The demobilization phase consists of the discharge of active combatants from the armed forces, militia and armed groups.²⁵⁸ Before discharge (formal transition from military to civilian life) a screening process that includes registration, documentation, health screening and pre-discharge orientation must occur. Discharge documents are significant in that they are evidence that individuals who were initially involved in military activities have been disarmed, demobilized and are now ready for reinsertion and reintegration.²⁵⁹

²⁵⁷ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping

²⁵⁸ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping

²⁵⁹ Disarmament, Demobilization and Reintegration, United Nations Peacekeeping

Reinsertion is a sub-component that takes place before reintegration. It is a short term process whereby former combatants are given either or both material and financial assistance before the longer term process of reintegration takes place. Reinsertion involves both social and economic activities and thus documentation that was taken during the demobilization phase is used to attain full profiles of ex-combatants. This includes an assessment of the areas of resettlement and the available employment and service opportunities. Community based mechanisms are important so that the receiving community becomes involved and this quells any form of resentment from arising.

5.4.3 Reintegration Phase

This phase is the most time consuming, complex and long term. For its effectiveness and sustainability it must include community-building programs that seek to provide understanding to post-conflict communities on why ex-combatants return back into communities they may have committed crimes or back into communities where family members have been victims of conflict. Ex-combatants acquire civilian status and include implementation of programs that give them employment opportunities and income. It engages all three drivers of the society: political, social and economic.²⁶⁰

For some ex-combatants within the FLDR may require to undergo a repatriation process that would be undertaken before the reintegration and once in back in Rwanda or the third country the reintegration and resettlement process would be carried out.

5.4.4 Success story: El Salvador's DDR Process

The Salvadoran civil war (1980-1992) ended when the government and the Farabundo Marti National Liberation Front (FMLN) guerilla army signed the Chapultepec Peace Accords in 1992.

²⁶⁰ United Nations Disarmament, Demobilization and reintegration Resource Center: Introduction to integrated DDR standards (2006), Retrieved from <http://www.undrr.org/iddrs> on 15th November 2015.

During the war an estimated 75,000 citizens died through massacres, landmines and summary executions²⁶¹. The country's DDR process although successful was characterized by challenges. First and foremost although both actors had reached a hurting stalemate in the war, FMLN's condition of political incorporation into the political system had to be implemented for the whole process to be a success. Commitment from the UN and USAID had to be maintained ensuring the ceasefire and peace agreement were observed and implemented and finances were available for the demobilization and reintegration phases.²⁶²

The leadership of the FMLN also played a crucial role throughout the demobilization and political reincorporation process by maintaining control over ex-combatants so that unity within FMLN was galvanized and no splinter groups emerged to spoil the peace process. Another important factor is the ex-combatants who fought for the government. During the DDR process, there was discontent marked by periods of unrests initiated by these ex-combatants. Their argument was that they felt that FMLN ex-combatants were being favored and receiving better benefits. As earlier said, all armed groups must be considered and the benefits to be aware must be understood by all at the onset of the DDR process.²⁶³

5.5 Security Sector Reforms (SSRs)

A country's or region's security mechanisms are affected in various ways by violent conflicts or wars. With heightened levels of lawlessness at times legitimate governments are unable to effectively exercise the rule of law even for innocent citizens who become victims of crimes against humanity, genocide and human rights violations. It is vital all actors in the DDR process

²⁶¹ The Salvadoran Civil War. https://en.wikipedia.org/wiki/Salvadoran_Civil_War. Retrieved on 15th November 2015

²⁶² The Salvadoran Civil War.

²⁶³ Alexander Segovia. Transitional Justice and DDR: The Case of El Salvador. Research Unit, International Centre for Transitional Justice. June 2009. Retrieved from <https://www.ictj.org/sites/default/files/ICTJ-DDR-ElSalvador-CaseStudy-2009-English.pdf> on 15th November 2015.

acknowledge that for effective and sustainable peace and development, the country/region security sector must be functioning at levels that citizens feel secure and have confidence in their government. The UN Security Sector Reform Standards consider security structures, institutions and personnel of importance during the post conflict peace building period. The state must analyze: its defense structure, law enforcement, intelligence services, border management and judicial services.²⁶⁴

The UN Department of Peacekeeping Operations has a SSR Unit and through several of its UN Missions have been part of reform in policing services offering strategic and technical resources to national governments. The United Nations Mission in Liberia (UNMIL) established in September 2003 mandate has over the years been adjusted in order to be more effective as the country develops and its security environment changes. The UNSC Resolution 2215 of 2015 reasserted UNMIL commitment to assisting Liberia's government in creating and implementing an effective strategy on SSR taking note Liberia was one of the West African countries worst hit by the Ebola outbreak. One of the activities to assist implementation is carrying out capacity-building and training of security personnel throughout the country. Other regional components like the United Nations Office for West Africa (UNOWA) has been mandated by the UN to ensure sustainable peace and security is experienced and further address issues of cross border threats to peace and security.²⁶⁵

Although the commitment, planning and implementation of any DDR process rest upon the existence of a legitimate functioning government, other actors are also significant. An example is the numerous armed groups to have emerged from the Eastern Congo conflict. Identification and

²⁶⁴ The United Nations SSR Perspective, United Nations Department of Peacekeeping Operations Office of Rule of Law and security institution, security Sector Reform Unit. May 2012

²⁶⁵ The United Nations SSR Perspective, United Nations Department of Peacekeeping Operations Office of Rule of Law ad security institution, security Sector Reform Unit. May 2012.

commitment of all armed groups starts with top commanders of such groups who are better placed to identify genuine group members and also persuade members to disarm and point out those who must be demobilized and those who will be go through integrated into the national army.

Civil society organizations (CSOs) can be involved in the creation and implementation of programs within the DDR process especially when it comes to mobilizing grassroots communities. The national media also has an opportunity to disseminate information to the general public about the DDR process and further makes the reintegration process more understood and goals achievable.²⁶⁶In Albania local women groups with support from UNDP and UNIFEM used public awareness events and capacity building workshops to address the importance of disarmament pointing our concerns that illegal weapons within the community poses more risks to women. Rallies and campaigns with slogans like "Stop Guns" were organized in order to maximize on an effective disarmament process.

International actors that offer both technical and financial support to DDR processes are significant since post-conflict periods are largely marked by poor political and governance structures, lack of basic human needs and damaged physical infrastructure, economic losses and an emotive society. The UN peacekeeping missions have continued to largely be synonymous with DDR processes all over the world. Bilateral partners, the World Bank, regional banks NGOs and research policy centers all play different and significant roles during the post conflict peace building period. Transparency and accountability of each actor is one of the determinants of a successful DDR process especially the reintegration phase.²⁶⁷

²⁶⁶ T. Nezam and A. Marc. Disarmament, demobilization and reintegration, *Social Development Department. Conflict, Crime and Violence, No. 119/February 2009*

²⁶⁷ T. Nezam and A. Marc. Disarmament, demobilization and reintegration

Country Specific research on experiences in post conflict peace building and reintegration needs to be done since other causes of violence like terrorism and violent extremisms are occurring more frequently. Underlying root causes of conflicts must be addressed simultaneously with DDR processes so that conflict does not reoccur.

MONUSCO and the DRC government must maintain and reinforce the UN DDRRR process especially on the dissemination of information to combatants who may seek to undergo the process and either settle in DRC or return back to Rwanda. FDLR propaganda must be countered targeting especially rank and file combatants for voluntary disarmament.

5.6 Conclusion

Presently the national state of affairs in the DRC is one of political tensions which have led to violence protests with security forces engaging civilians. The opposition has accused the government of Joseph Kabila of wanting to stay in power although his official term ends in December 2016. All elections both at the national and local levels that were to be held in November have been postponed with the Electoral Commission giving a tentative date of 2018.

This has led the opposition to boycott several National Dialogue forums and have given an ultimatum that Kabila should resign and uphold the current constitution that allows a president to rule for a maximum of two terms. In 2015 the incumbent Burundian President Pierre Nkurunziza Vied and won with a landslide an election that the opposition boycotted and that was contentious due to the fact, according to the opposition his two term tenure was over. The President insisted that his first term in office didn't count because he was elected by Parliament and not the people. The country has experienced sporadic violence and a coup d'état since 2015.

The objectives of the study have been realized. First through the explanation and examples given to demonstrate how the nature of the colonial government political structure. Their primary

strategy was to divide and rule the native population. After independence the case study the DRC did not reform its governance structure at the local level which was based on ethnicity. Belonging to an ethnic group that was governed by a Native Authority gave an individual access to the scarce commodity of land.

The Mobutu regime did not take preventive measures or precautions when the issue of nationality of the Banyarwanda arose instead corruption and abuse of power led to several laws that would ignite further tensions between the natives and non-natives. This can be explained through instrumentalism whereby Mobutu guided by his opportunistic nature viewed ethnicity as a means to an end, bribing his way into the hearts of his countrymen in order to achieve his political and economic goals. At different times of his presidency he supported the Banyamulenge Tutsi refugee warriors then the Rwandan Hutu all for economic interests, retention of power based upon skewed political ideologies. On the other hand the ties made between the Banyamulenge Tutsi and the Rwandan government may be explained through social constructivism. The Banyamulenge Tutsi had severally been rejected as national citizens of the Congo and were also been persecuted thus with the changing environment that was the influx of mainly Hutu refugees their strategy was to team up with the Rwandan government although they risked more rejection from the native population.

The international community failed to acknowledge the genocide which would further lead to a poor analysis of the political capabilities that the Hutu refugees warriors had brought across the border to the Kivu region and the fact that from the beginning they were going to use this political cohesion to launch attacks the border to Rwanda and the ability of the groups to garner supporter from Hutu Congolese. Ethnic identity theories are still relevant in the 21st century as part of the analysis of mostly intra-based conflicts the world is experiencing. More

comprehensive studies need to be undertaken on the subject of refugee warrior communities. From the Syrian war, the Israel-Palestine conflict and to the Kivu region, it is becoming evident that in some of these cases, political agency cannot be separated from a refugee perhaps because politics is based on belief systems and ideologies whether individually or in a group setting.

Our final objective has been answered by the sheer fact that some of the military offensive missions that have been employed have been counter-productive and it's civilians who suffer most from attacks by militia groups including the FDLR. The state needs to reform some of its institutions namely: national and local administration, judicial systems and the security forces in order to have policies and institution that will work with fluidity once they country enter a post-conflict peace-building period which can only be realized when all refugee warriors and other militia groups have been disarmed.

As academic ventures are explored it is vital that international organizations like the UN, aid agencies and member states are involved through intellectual, financial and publication support. The same should be done for any international law touching on issues refugees and the emerging group of political conscious refugees. Zolberg et al puts it well in saying:

“The new Palestinians-like the original Palestinians- are not merely a passive group of dependent refugees but represent highly conscious refugee communities with a political leadership structure and armed sections engaged in warfare for a political objective, be it to recapture the homeland, change the regime, or secure a separate state”²⁶⁸ (Zolberg et al, 1989:275)

²⁶⁸ Aristide R. Zolberg, Astri Suhrke and Sergio Aguyao. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New york: Oxford University Press, 1989. p 275

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