

PUBLIC POLICIES FOR HUMAN RIGHTS DEFENDERS?

A CASE STUDY OF LOCAL EDICTS IN THE
DEMOCRATIC REPUBLIC OF THE CONGO

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Introduction

Human rights defenders (HRDs or defenders) play an essential role in creating a better and more just society. They draw attention to structural changes that are needed, and it is often after pressure created through civil society organisations that governments take action for change (Gready & Robins, 2017).

In many countries worldwide, however, defending human rights is extremely perilous. HRDs often fall victim to attacks in the form of smear campaigns, arbitrary arrest, threats or killings (OMCT, n.d.; UNGA, 2021). Even when these attacks are isolated, they have a lasting effect on the work of defenders and severely limit their capacity to carry out their activities (UNOCHR, 2014).

Protecting defenders against these attacks is complicated. An important reason is that most perpetrators of these attacks are State authorities (International Land Coalition, 2020; UNOCHR, 2014) who may attack human rights defenders directly but may also resort to non-State actors such as armed groups to conduct the attacks for them (UNOCHR, 2014). Private economic interests are often the driving factors behind these attacks (UNOCHR, 2014). As a result, States not only fail in their responsibility to protecting defenders (as stipulated in the UN Declaration on Human Rights Defenders in 1998), they are also major instigators of insecurity.

Many international non-governmental organisations (such as Protection International, Protect Defenders, Frontline Defenders, Amnesty International) are involved in the protection of defenders. There are also many local organisations and coalitions working for the protection of defenders that contribute to this body of knowledge in Africa (such as Tanzanian Coalition for Human Rights Defenders, SUWE, Coalition des Volontaires pour la Paix et le Développement). Often, local and international organisations work together on gathering information about HRDs, and exchange knowledge in the form of conferences or roundtables. Many NGOs working on the subject of HRDs have published studies analysing the protection policies in place, providing key recommendations and listing good practices for the protection of defenders (Protection International, 2018; ISHR, 2021; Justiça Global, 2021; Defensoría del

Pueblo Perú, 2022). In most cases, these studies include the analysis of protection policies, pointing out strengths and weaknesses.

However, there have been few systematic studies that cover in depth the perspective of the defenders themselves: the analyses provided by these organisations start from the assumption that public policies should be one of the leading strategies for the protection of defenders. There is no detailed examination of whether defenders confirm the value of this approach in their activities, and there is a lack of studies that evaluate clearly whether or not protection policies serve defenders. Nevertheless, those policies continue to dominate the debate and implementation around the world (Protection International, 2022).

In the academic field, scholars interested in the role of public policies for the protection of defenders often adopt a relatively pragmatic approach to the question, generally in the form of policy and practice analysis (Amir, 2013), political and historical background analysis, legal analysis, empirical research (Neto, 2018), or bottom-up public policy analysis (Eguren, 2017). Few academic researchers in the field of human rights engage in more theoretical discussions. For example, the usefulness of public policies has not yet been extensively studied in discussions of social movement outcomes or social movement theory (Koopman, 2005; McVeigh et al., 2006; Stekelenburg et al., 2013).

This study will address this research gap through an in-depth case study of policies for the protection of defenders in the Democratic Republic of the Congo (DRC). Although there is no national law for the protection of defenders in the DRC, two local edicts for the protection of defenders have been introduced and adopted by provincial authorities. The first, which was introduced in the province of South Kivu in 2016, is [Edict No. 001/2016](#) on the protection of human rights defenders and journalists. The second, which was introduced in the province of North Kivu in 2019, is [Edict No. 001/2019](#), again on the protection of human rights defenders.

The timing of this study is fortunate for several reasons. First of all, there are ongoing discussions about a national protection policy for defenders in the DRC: a draft bill was adopted by the National Assembly on 12 December 2022 and is now pending at the Senate. At this pivotal moment, it is crucial to examine the impact of policies in practice. More precisely, it is

essential to examine the impact of these policies on the people they apply to: human rights defenders. Such an analysis will be extremely valuable in identifying good practices and lessons learned for the effective implementation of future policies such as the pending national law. Secondly, the Democratic Republic of the Congo is in the middle of a transitional justice process, all in the context of combating ongoing violence and attacks. Transitional justice processes are generally underpinned by four main elements: truth, accountability, reconciliation and reparation (Weitekamp et al., 2006). In the element of reparation and non-recurrence, the UN has identified the protection of human rights defenders in the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UNGA, 2006). These principles set a minimum standard for the consideration of, and reparation for, victims of war crimes, one of the main pillars of transitional and restorative justice (Weitekamp et al., 2006). Indeed, studies have identified human rights defenders as key in addressing grievances and structural points of improvement in political and social systems (Simić & Volčič, 2013; López & Taylor, 2021). Moreover, many civil society movements address transitional justice processes explicitly in their mandate (Simić & Volčič, 2013). The protection of defenders is therefore an important element to address in transitional justice processes.

As a Member State of the UN since 1960, the Democratic Republic of the Congo has accepted its obligations under the UN Charter and officially complies with the UN Declaration on Human Rights. These documents recognise the fundamental freedoms that apply to human rights work and the right to defend human rights (or RDHR) such as freedom of assembly, freedom of expression, the right to non-discrimination and the right to participation. Indeed, the DRC has been urged by many international mechanisms like the UPR review or Special Rapporteur to effectively address its human rights situation. The current president of the DRC, Felix Tshisekedi, expressed a willingness to addressing human rights violations, and initiated a transitional justice process. He opened his term of office with a 100-day emergency plan in which he promised the release of persons detained for “crimes of opinion, especially in the context of the political

protests before the elections”¹. He has made no promises, however, about the current and future protection of defenders (Tshisekedi, 2019).

Given the societal and academic relevance of this subject, this study will present an analysis of the local edicts in North and South Kivu (two provinces in the East of the DRC) and their impact on the work of defenders from a social movement perspective. To analyse these policies, this study will draw on the user perspective framework proposed by Desmet (2014) that argues for a bottom-up approach to studying rights and policies. From the perspective of defenders themselves, this study will observe the role and use of these policies in the work and agency of defenders in North and South Kivu. Although these edicts appear to target the protection of defenders in North and South Kivu, they do not appear to do so effectively as yet: on the contrary, attacks on defenders have continued since the adoption of the edicts. This study therefore looks at the impact of these policies by speaking to those directly concerned: the defenders themselves.

The final aim of this study is to analyse how the edicts impact defenders’ agency and ability to do their human rights work in North and South Kivu in line with their experiences and vision. The goal is to provide a practice-based insight into the situation of defenders on the ground and to reflect the views of defenders towards these policies and their use of these edicts in practice. The objective is not to provide a precise analysis of the effectiveness of these policies, but rather to establish a picture of the views of defenders in North and South Kivu about how the edicts enable and shape their human rights work. Through a qualitative approach and in-depth interviews with defenders working in North and South Kivu, this study will contribute to social movement theory, and in particular to the discussion about which elements contribute to the success or failure of certain social movements. It will contribute to the question of how public policies contribute to the success of social movements through the in-depth case study of the two edicts for the protection of human rights defenders in North and South Kivu. It is hoped that this will provide a sound basis for recommendations about the effective

¹ “En même temps, je vais instruire le Ministre de la Justice de prendre dans le même délai susdit toutes les mesures nécessaires, dans les conditions prévues par la loi, pour une libération conditionnelle de toutes les personnes détenues pour les **délits d’opinion**, notamment dans le cadre des manifestations politiques d’avant les élections.” (*Lancement du Programme d’Actions pour les 100 premiers jours*, p. 4)

implementation of protection policies for defenders. The very specific focus of this study means that there is no attempt to draw any generalising conclusion about the contribution of public policies to social movement outcomes. However, the in-depth and bottom-up approach will reveal certain patterns that are not identified in broader studies and that can be seen in alternative settings as well.

Research questions

This study will concentrate on the following research question:

How, and to what extent, do Edicts No. 001/2016 and 001/2019 in North and South Kivu (DRC) influence the agency of human rights defenders from a social movement perspective?

The following sub-questions were studied:

1. To what extent are human rights defenders in the provinces of North and South Kivu aware of the existence of Edicts No. 001/2016 and 001/2019?
2. What are the views and interpretations of human rights defenders with respect to Edicts No. 001/2016 and 001/2019 in North and South Kivu?
3. How, and to what extent, do human rights defenders use Edicts No. 001/2016 and 001/2019 to protect and exercise their right to defend human rights?
4. What limitations exist in the use of Edicts No. 001/2016 and 001/2019 by human rights defenders to protect and exercise their right to defend human rights?

Structure

This study is organised into three main chapters. The first chapter will discuss the historical and current context of the DRC, as well as the context of human rights defenders and their work in North and South Kivu. The second chapter will explain the theoretical framework and methodological approaches that underpin and shape the analysis of this study. The third chapter will present the main results of this study, starting off with an analysis of the social network of defenders and then following the structure of the sub-questions formulated above. This piece will conclude with a conclusion and discussion, in which strengths, limitations and suggestions for future research will be discussed.

Chapter 1: Sketching the context of the Democratic Republic of the Congo

First, it is important to understand the context in which this case study takes place. This chapter constitutes an essential component of this study because it identifies the context in which human rights defenders and social movements operate in the DRC and in which the policies for their protection were introduced.

The Democratic Republic of the Congo (DRC) is the eleventh largest country in the world and the second largest country on the African continent. Situated at the centre of the continent, it has a rich and diverse population: 108.4 million inhabitants (BBC, 2023) include around 250 different ethnic groups, speaking up to 500 languages and dialects, with five languages being spoken across the country (Minority Rights Group, 2020).

1.1 The historical context of the DRC

Throughout its history, the DRC has faced many human rights violations and systematic challenges. From the violent colonisation of the DRC by King Leopold from 1885 to 1960 (Clay, 2020), to the fight for its independence (Covington-Ward, 2012; Nzongola-Ntalaja, 1979), followed by two extremely violent conflicts at the end of the 20th century and a succession of several oppressive political regimes (Nzongola-Ntalaja, 2004), the DRC has witnessed many challenges linked to violence, instability and oppression.²

The Congo Wars were triggered by a complicated interaction between ethnic tensions, international influence and intervention, and spillover effects from conflicts in surrounding countries (Reyntjens, 1999). The armed violence is usually seen as consisting of two major conflicts: the first Congo War in 1996-1997, followed by the second Congo War from 1998-2003.

The most prominent factor leading to the Congo wars mentioned in academic literature is the spillover effect from the ethnic tensions between Hutus and Tutsis in Rwanda (Mararo, 1997; Pottier, 2009; Pottier, 2002; Reyntjens, 1999). These ethnic tensions were carried over from Rwanda to the Eastern part of the DRC (or Zaire) resulting in an outbreak of violence in Zaire

² For more information regarding the history of the DRC, the reader is kindly referred to Congo, een geschiedenis by David van Reybrouck.

that led to the first Congo War. That war ended in 1997, but a second wave of violence began in 1998, and led to a civil war lasting almost five years. Over the course of these events, many surrounding countries became involved in order to safeguard their own political and economic interests (Reyntjens, 1999; Pottier, 2002).

The first democratically elected president of the DRC, Joseph Kabila, negotiated the peace agreement for the second Congo war (VOA, 2018), but was unable to establish lasting peace. The security situation in the country remained out of control (Vlassenroot et al, 2013) and several attempts at peace instead resulted in the formation of more armed groups and violent uprisings. One of these groups is the M23 rebel group (ACLEDD, 2023; Jones & Smith, 2012), who quickly became the most active non-state armed group in the country (ACLEDD, 2023) and who continue to be a serious threat to security (BBC, 2022; Amnesty Participant 18, North Kivu; Participant 6, North Kivu).

1.2 Current challenges: priorities for human rights defenders

Although the war has officially been considered to be over since the peace agreement in December 2002 and foreign troops have now left Congolese territory (Scott, 2008), violence continues (Human Rights Watch, n.d.). In the Kivu region especially, armed groups remain very active and foreign influence persists (from Rwanda in particular) (Bentrovato, 2014; Human Rights Watch, 2023). In many ways, the provinces of North and South Kivu (the Kivus) are considered to be exceptionally dangerous territory: it is the region where the highest number of armed groups are located (Human Rights Watch, 2020), where the destruction of land and villages by extractive industries is extreme (Cirhigiri, 2023), where most natural resources are to be found (Vlassenroot et al., 2013) and where tensions with Rwanda have the most direct impact on stability and the political situation.

The present chapter includes a discussion of a few important aspects of challenges currently at the forefront of the political landscape of the DRC. They include the current political situation of the DRC, the presence of armed groups and current debates about natural resources in the country. The challenges faced by defenders will not yet be discussed, but it will cover key issues in the DRC (and more precisely North and South Kivu) that were described by participants of this study as part of their context and the context of their human rights work.

1.2.1 Political situation

The election of Tshisekedi in 2019 presented an opportunity for change, particularly as the new president promised to make efforts in the domain of transitional justice (Cirhigiri, 2023; Human Rights Watch, 2019; Tshisekedi, 2019). In his speech announcing his 100-day plan at the beginning of his presidency, he expressed an intention to affront armed groups in different regions (Tshisekedi, 2019) in order to make the Great Lakes region a “haven of safety” (UN, 2019). Turning to natural resources, Tshisekedi announced his intention to “sanitise the business climate by vulgarizing the new mining code and by signing win-win mining contracts” (Tshisekedi, 2019). He also stated his intention to build new infrastructure, hospitals and schools, and social housing, as well as to provide clean drinking water to the provinces (Tshisekedi, 2019). These promises led to hope in the international human rights community (UN, 2019).

Unfortunately, the situation in the DRC has not fundamentally changed since Tshisekedi’s presidency began. Violence, oppression, impunity, human rights violations and the destruction of nature due to the extraction of natural resources persist (Amnesty International, 2020; Cirhigiri, 2023). Foreign interference and tensions with neighbouring countries contribute to an unstable political situation (Nagar & Nganje, 2016). Action by the international community has not only failed to produce results, but also continued to add to the tensions. The international community continues to have a major influence on (profit from of) DRC’s natural resources (Cirhighiri, 2023) and it is also continuing to play an important role through foreign political and military intervention (Schmidt, 2018).

In May 2021, the government declared a state of emergency in the provinces of Ituri and North Kivu (Amnesty, 2022) under which the military and police preside over political and administrative functions. The courts are also subject to military rule (Amnesty, 2022). The president’s avowed aim with the state of emergency is to control insecurity caused by armed groups in the regions. However, no improvement in the security situation has been observed (Amnesty, 2022). Rather, the national army and police appear to be inflicting more violence upon citizens and reports indicate that they have been using their extended powers to suppress criticism and protests (Amnesty, 2022). Many participants in our study reported increased oppression under the state of emergency and misuse of power by the army and the police.

1.2.2 Armed groups

The government has not managed to control the situation with respect to armed groups. As of October 2020, there were 195 different armed groups active in the DRC, most of which are concentrated in the eastern provinces, and more specifically in North and South Kivu (Human Rights Watch, n.d.). They frequently attack different villages and acquire power by taking control over natural resources or exploiting financial instability in villages by recruiting young people and gaining support in this way (Participant 21, March 15, 2023).

Since November 2022, M23 has been advancing towards Goma. In March 2023, M23 rebels were situated some ten kilometres away from Goma and they declared their intention to take over the city (Participant P, March 2023). They have been attacking numerous villages on the way, apparently taking advantage of the limited presence of government authorities in more remote areas (Participant P, March 2023). In some areas, other forces have repelled the M23 (US News, 2023).

Other armed groups involved in attacks in 2023 include the *Mayi-Mayi*, which is a “generic label for armed groups drawing on discourses of (community) self-defense and autochtony” (Hoffman & Verweijen, 2018), and other groups such as the CODECO-URDPC, the ADF, UPDF, RDF (Human Rights Watch, n.d.).

The large number of armed groups results in a chaotic landscape marked by different ideologies, alliances and clashes, not only between the different armed groups themselves but also with the national armed forces (Human Rights Watch, n.d.). Vlassenroot et al. (2013) even argue that armed groups have become engrained in national and regional politics and are instrumentalised by both national and international actors. Other studies argue that armed groups have become a type of government in rural areas, where they control different territories not only through direct violence but also through cultural practices, spiritual leadership, and protection (Hoffmann & Verweijen, 2018). Driven by economic interests, armed groups tend to take control of territories where they can exploit natural resources (Agenzia Fides, 2023).

Armed groups also severely disrupt social structure and cohesion, especially in rural areas. Armed groups often exploit the lack of prospects for young people in order to convince or force them to join them. Most of all, interventions by armed groups cause many people to flee their villages. As of February 2023, 6.2 million people, the majority in North Kivu, South Kivu and Ituri, have been displaced (UNHCR, 2023).

1.2.3 Natural resources

The DRC is one of the countries in the world that is richest in natural resources, making it a target of international interest and exploitation since the Stanley mission at the end of the 19th century (Van Reijbrouck, 2014). This is still the case today (Cirhigiri, 2023). Several parties show, or have shown, interest in DRC's reserves of gold, cobalt, and many other resources. Old deals that were made during the Congo wars mean that the country's natural reserves are still controlled by foreign interests. During the war, this situation even led to foreign mining companies sponsoring specific armed groups in order to secure their countries' economic or political interests (Pottier, 2002).

At present, one of the largest foreign actors in the mining industry is China (Cirhigiri, 2023). Chinese companies own and run numerous mines in the country, and they have committed numerous human rights violations. These human rights violations include "environmentally harmful mining techniques, exploiting the local workforce, and engaging in corruption" as well as "underpaying and offering substandard work in communities" (Cirhigiri, 2023). China is not the only actor involved, however. One of the main factors driving this violent exploitation and destruction of the DRC's natural reserves is the growing demand for these resources from the Global North. The DRC possesses most of world's cobalt, for example. This is an essential material for the production of batteries, phones and computers by giant companies like Dell, Apple and Microsoft (Minority Rights Group, 2020).

There are frequent uprisings involving local communities and defenders. It is far from unusual for these uprisings to lead to violence, oppression, or even fatalities (Cirhigiri, 2023). The impact of the international fighting over DRC's natural resources, with extensive corruption and impunity, has still not been addressed effectively, despite receiving extensive national and international media attention (Cirhigiri, 2023).

1.2.4 DRC and human rights

As a Member State of the UN since 1960, the Democratic Republic of the Congo has accepted its obligations under the UN Charter and it officially complies with the UN Declaration on Human Rights. These documents recognise the fundamental freedoms that apply to human rights work and the right to defend human rights such as freedom of assembly, freedom of expression, the right to non-discrimination and the right to participation.

The 1998 *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* – also known as the UN Declaration on Human Rights Defenders – specifically recognises the right to promote and protect human rights³. It underlines the freedom of assembly, the freedom of information, freedom of expression and the right to participation, and specifically recognises the work of defenders. Most importantly, the UN Declaration on HRDs asserts that the State has the prime responsibility to safeguard these rights and freedoms:

“Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.” (United Nations, 1998, Article 2(1))

DRC’s human rights obligations are monitored through several mechanisms at the international level. First, the DRC is monitored by the UN Special Mechanisms, covering topics of different human rights treaties through country visits and communications by assigned Special Rapporteurs. Secondly, the DRC is monitored through the Universal Periodic Review (UPR) every four years: they are required to submit a national report on their efforts to implement these rights before receiving recommendations from other Member States that are used as working points for the next four years.

³ “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.” (Article 1, Declaration on HRDs)

However, these mechanisms have led to little change in the human rights situation in the DRC. The number of human rights violations has remained extremely high. For example, between January 2017 and October 2018, the UN reported “hundreds of extrajudicial killings”, “cases of torture” and “sexual violence” against civilians (OHCHR, 2018).

1.3 The context of human rights defenders

In this political context of instable governance marked by violence and foreign interference (Nagar & Nganje, 2016), Congolese defenders and national human rights organisations address violations through reporting, advocacy or by providing services that the State fails to provide (Koko, 2016; Rauch, 2011). Indeed, studies have shown that Congolese civil society has made major efforts to address post-conflict dynamics and social change (Aembe & Jordhus-Lier, 2017; Koko, 2016; Rauch, 2011). This corresponds to a *double manifest failure situation*, in which both the national and international community fail to assume their human rights responsibilities in a given context, and humanitarian actors (in this case human rights defenders) take over (Labonte, 2015). It could even be argued that defenders fill the gaps left by the shortcomings of the international community: defenders protest not only against the State but also against failed international peacebuilding missions like MONUSCO (Nagar & Nganje, 2016; Princewill, 2022). While the UN denies responsibility for the DRC’s security situation (Princewill, 2022), protests have been met with violence by the Congolese State, both under Kabila’s presidency (Amnesty International, 2015; Amnesty International, 2017; ISHR, 2019) and Tshisekedi’s (Human Rights Watch, 2021).

1.3.1 Legal framework

i. The international legal framework

The UN mechanisms place a strong emphasis on defenders through the UN Special Mechanism on Human Rights Defenders. Implementation is led by the UN Special Rapporteur on Human Rights Defenders, who drafts thematic reports, visits countries and publishes reports. Her last country visit to the DRC was in 2010⁴, with reports being published on cases of defenders whose rights were violated⁵.

⁴ <https://undocs.org/A/HRC/13/22/Add.2>

⁵ <https://spcommreports.ohchr.org/TmSearch/Mandates?m=30>

Secondly, defenders are a specific topic covered by the Universal Periodic Review (UPR). Often, UPR sessions include recommendations on “human rights defenders” or on related topics like the “right to participation” or “right to peaceful assembly”. The last UPR in the DRC was in 2019, and it resulted in 24 recommendations on defenders. The State accepted all the recommendations, officially committing to working on these points in the next four years. In practice, however, these recommendations are not legally binding and actual action may not necessarily be taken.

During these UPR sessions, the international community often suggests the development of public policies for the protection of defenders. For example, many of the UPR recommendations⁶ in 2019 urged the DRC to adopt a national law on defenders. In 2019, a draft law⁷ on the protection of human rights defenders was pending at the national level but this process was abandoned because the government authorities and civil society actors failed to arrive at an agreement about the content (Protection International, n.d.), primarily because numerous restrictions were inserted in the final version, resulting in a risk of the law actually being used against HRDs (ISHR, n.d.).

ii. The national legal framework

On the national level, a draft law for the protection of human rights defenders was developed by civil society in collaboration with government authorities in 2022. In 2023, the National Assembly passed the bill, which is now awaiting consideration by the Senate (Protection International, 2023c). Although many actors are rushing to push this bill for adoption, the most recent version contains several restrictive articles that contradict the UN Declaration on HRDs or even the Universal Declaration on Human Rights⁸ (ISHR, 2023). Indeed, this process includes many similarities with the failed process in 2016, and risks failing for similar reasons.

In addition to this draft law, many participants referred to the Congolese Constitution as a basis for their work. The Constitution includes a large number of fundamental rights and freedoms: the right to equality before the law, freedom of expression and thought, the right to protest, freedom of association, and others. In theory, it guarantees the RDHR. However, in practice,

⁶ Download the recommendations here: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session33/CD/UPR33_DRC_ThematicListofRecommendations_E.docx

⁷ Download the draft law here: <https://www.focus-obs.org/documents/democratic-republic-of-the-congo-proposal-for-a-law-on-the-protection-and-responsibilities-of-human-rights-defenders/>

⁸ This version has been studied by the author but has not yet been published.

many articles of the Constitution are being violated. This study describes this reality by looking at local dynamics and individual cases described by the defenders we interviewed.

Other legal instruments at the national level may have an impact on defenders such as a law for the protection of, and reparations for, victims of sexual violence⁹ or an ethical code for journalists¹⁰. However, these laws fall outside the scope of this study.

iii. The local edicts

The governance structure in the DRC is decentralised: the territory of the DRC consists of 25 provinces. Although actions and laws cannot contradict national laws, provincial authorities have significant liberty and responsibility for the governance of their own territories (Gaynor, 2013; World Bank & European Commission, 2008).

The provinces of North and South Kivu are a good example of such autonomous governance. Of the 25 provinces in the DRC, they are the only provinces to date¹¹ that have adopted specific provincial laws (edicts) for the protection of defenders. South Kivu was the first in 2016¹² (Protection International, 2022a), followed by North Kivu in 2019¹³ (Protection International, 2022b). The provinces of Sud-Ubangi¹⁴, Ituri and Maniema are discussing the adoption of such policies (Protection International, n.d.).

The South Kivu edict recognises many fundamental rights, including the freedom of assembly, freedom of expression, freedom of information and the right to peaceful protest. Article 6 recognises the right to speak up about political positions of public authorities that risk violating the promotion and protection of human rights. The provisions include the right to appeal to legal officials, to denounce the actions of political authorities, to communicate freely with provincial authorities and to receive resources (Article 7-10). The edict recognises the provincial

⁹ *Loi n°22/065 du 26 décembre 2022 fixant les principes fondamentaux relatifs à la protection et à la réparation des victimes de violences sexuelles liées aux conflits et des victimes des crimes contre la paix et la sécurité de l'humanité*, available on <https://www.leganet.cd/Legislation/Droit%20Public/DH/Loi.022.65.26.12.2022.html>

¹⁰ LE CODE DE DÉONTOLOGIE ET D'ÉTHIQUE DU JOURNALISTE CONGOLAIS.

<https://liberteactu.com/index.php/2022/05/27/le-code-de-deontologie-et-dethique-du-journaliste-congolais/>

¹¹ Last updated on 28 June 2023

¹² Download here: https://www.focus-obs.org/?jet_download=7014

¹³ Download here: https://www.focus-obs.org/?jet_download=7007

¹⁴ Download the draft law of Sud Ubangi here: https://www.focus-obs.org/?jet_download=7500. The other provinces have not yet published any draft law.

government as the body with prime responsibility in this area, and it also acknowledges the State's obligation to undertake the necessary measures to protect journalists and HRDs against any form of violence, threat, retaliation, discrimination or pressure during their work (Article 14). Nonetheless, the edict contains an important limitation on the definition of human rights defenders: according to Article 2, a defender must be a member of a legally formed organisation. This excludes individual defenders, and risks excluding defenders whose organisation is not recognised by the authorities. Another risk is that the State may select and exclude specific organisations. Given the hostile attitude of the States towards many defenders, this represents a serious concern in South Kivu.

The North Kivu edict differs its South Kivu counterpart in several ways. First, the definition of HRDs is broader and it includes defenders who act individually for the promotion of human rights. The rights in the edict are, however, more specific and more limited. The section on the obligations of HRDs is more extensive, and includes ambiguous provisions such as the obligation to act impartially, independently, neutrally, on a voluntary basis, with respect for the rights of others, public order and of public morality (Article 7). Nevertheless, the obligations incumbent on the State are also extensive and they require local authorities to safeguard the respect of fundamental rights and freedoms stipulated in national and international statutory instruments ratified by the DRC.

The provincial authorities responsible for implementing these edicts are appointed by the National Assembly. They are responsible for implementing the edicts, receiving complaints and handling court cases at the provincial level. It appears that there are few, if any, mechanisms in place at the national level to ensure that local authorities fulfil their duties under the edicts. In practice, cases handled by the provinces do not seem to reach national authorities.

1.4 Conclusion

To conclude, defenders in the DRC have to navigate a complicated context. First of all, they address violations that are linked to a complex intersection of historical factors, governance weaknesses, post-conflict dynamics and foreign interests. In this context, civil society tends to either point out its human rights obligations to the State, or to provide services for the population that the State fails to provide (Koko, 2016; Rauch, 2011). Moreover, they encounter

hostility from State actors, who respond to protests with violence. In this dynamic, the State plays an ambivalent role: on the one hand, it engages with the international human rights community and makes promises and engages in specific initiatives for improving the human rights situation in the DRC. On the other hand, it attacks defenders with strong oppression and violence. The local edicts are a perfect example of the ambivalence of the State: although there is a stated intent to protect defenders, the edicts include several elements that actually risk undermining this goal.

Chapter 2. Theoretical framework and methodology

This study will analyse the impact of the local edicts on the work and agency of defenders. It will describe the theoretical field to which this study will contribute, as well as the methods used for the collection and analysis of data that allowed for the formulation of an answer to the research questions. It will also describe the key concepts and their application to our case study.

2.1 Theoretical framework: a grassroots contribution to social movement theory

The study of social movements as a form of collective behaviour emerged in the late nineteenth century with the study of crowds (Le Bon, 1895). Crowds – *aka* the popular classes – were considered to engage in a type of deviant behaviour and it was assumed that collective behaviour was irrational and emotional (Ormrod, 2014; Stekelenburg & Klandermans, 2009). In 1962, Smelser published *Theory of Collective Behaviour*, in which he proposed strain theory, which theorises how the discrepancy between societal goals and the means available to achieve them creates a momentum for social movements. This led to *new social movement theory*, which was inspired in particular by the civil rights movements of the 1960s (Ormrod, 2014). New social movement theory studies social movements not just as a form of radical behaviour but also as a phenomenon linked to identity struggles and social relations, composed of individuals with rational goals (Saunders, 2013; Ormrod, 2014).

Social movement theory studies which social movements develop in certain contexts, why and how (Peterson, 1989). Different strands of social movement studies have concentrated on different aspects of social movements: social movement outcomes (Bosi & Uba, 2009), collective identity (Rucht, 2023), the organisation of social movements, and the emergence and successes of social movements (Ormrod, 2014). In this study, we will focus on the last of these aspects and discuss why certain social movements succeed and others do not.

Scholars debating the successes and failures of social movements do so on the basis of several different concepts. Some analyse specific movements, studying their evolution over time and the factors that contribute to their outcomes (Piven & Cloward, 1977; McVeigh, 1995). Others attempt to identify elements – such as resourcefulness or heterogeneity – that contribute to the limitations or successes of social movements more generally and globally (Koopman, 2005;

McVeigh et al., 2006). Scholars have argued for theories of *resource mobilisation*, in which the development of social movements depends on their access to resources (Stekelenburg et al., 2013), or theories involving *political opportunity structures* that concentrate on ‘dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success and failure’ (Tarrow, 1994). No theory provides a definitive explanation of why some social movements succeed rather than others (Stekelenburg et al., 2013).

This study contributes to this body of literature by focusing on public policies in the domain of the protection of defenders. It discusses the role played by public policies for the protection of defenders in the work of defenders in the context of local, national and global social rights movements.

Many international human rights organisations – examples being the UN, or international NGOs like Protection International, Frontline Defenders or ProtectDefenders and International Service of Human Rights (ISHR) – push for the adoption of public policies on the assumption that they contribute positively to the success of defenders. Success here is not seen as defenders achieving their goals but rather as them being able to do their work without restrictions and, in particular, without being attacked (Protection International, 2022). However, little is known about the impact that public policies have on the work of defenders in practice.

The point of departure for this study is the role of human rights defenders as individuals in social movements. The impact of the edicts on the agency of defenders in North and South Kivu will not be studied through a comparative analysis of defenders’ agency with and without the policies. This is simply because there is no information available about the situation before the adoption of the local edicts. The discussion focuses not on defenders’ respective areas of action or political goals but on their wish to support social movements and defend human rights in that context. Although defenders are part of a global human rights movement and therefore operate in a multi-layered structure composed of local, national and international networks (Keck and Sikkink, 1998), this study will focus on the extent to which policies influence the capacity of defenders to do their work at a local level. The success of defenders is not understood as them achieving the ultimate goal of their work (achieving gender equality, for

example) but rather as the ability to engage freely in activities associated with the social movements in which they operate.

This 'possibility of doing their work' can be seen as a form of 'agency', or the limits to what an individual can do in a certain context. This study will refer to the definition of agency by McClean (1999): that which 'becomes socially established in any particular historical period as the natural limits of social reality and thence of social practice'. In the case of social movements, this concept is referred to as 'social movement agency' (Ford, 2003), the socially established limits of collective behaviour by social movements.

Social limits are often created through tactics of 'framing' or 'labelling'. Framing is a concept that is often used in social movement theory, which is defined as the process of "making sense of any social fact (or action) by offering a context, i.e., a frame, for a particular perspective and interpretation" (Rucht, 2023). Although framing can be used both against and by social movements, labelling refers to tactics often used to restrict social movement agency (Buyse, 2018). For example, defenders may be framed as catalysts of social progress but labelled by authorities as "enemies of the State". When common frames or labels are applied by different actors, we refer to this as 'frame resonance' (Noakes & Johnston, 2005; Williams, 2004). By increasing "the appeal of a frame by making it appear natural and familiar" (Gamson, 1992), frame resonance usually increases opportunities for collaboration and opportunity for common discussions, improving *discursive opportunity structures* (Koopmans and Statham, 1999).

This study will look at the influence of public policies on the agency of defenders in their human rights work. Although the concept of agency will be studied on the basis of individual testimonies, it should be pointed out that this study will not include a general analysis of defenders' agency as individuals. This means that their daily activities and private lives will not be considered in the analysis of their agency. The scope of the discussion here is restricted to the agency of defenders in relation to their human rights work. Furthermore, this study will examine the impact of policies on that agency. It will do so through a case study of the two local edicts for the protection of human rights defenders in North and South Kivu.

The ‘user perspective’, as theorised by Desmet (2014), will guide our analysis and methodological approach. This includes emphasising the realisation of a specific right from the point of view of ‘human rights users’, whom she defines as ‘any individual or composite entity who engages with (uses) human rights’. Desmet argues that all users take their own road towards the realisation of a particular right (referred to as the *human rights trajectory*), and a user perspective allows for the different steps in this trajectory to be taken into consideration. Examining the implementation of a human right from a user perspective is a way to create a context-based understanding of human rights that considers individual interpretations of human rights, as well as social dynamics that influence how they are implemented and understood (Desmet, 2014).

Desmet (ibid.) proposes four different ways of using human rights: invoking, giving effect, supporting and imposing human rights. She also distinguishes between the direct and indirect use of human rights, and identifies two main groups of human rights users: rights claimants and realisers of human rights.

This study will link Desmet’s framework to social movement theory by looking at how these policies impact human rights defenders’ agency. From a user perspective, it will look at how human rights defenders use the edicts in North and South Kivu in their work, thus examining how these edicts shape their work. The ‘human rights trajectory’ defined by Desmet provides a good concept for the analysis of this intermediary phase: not the outcome of human rights work, nor its origin, but rather its attempted practice. A social-constructivist approach is at the basis of this analysis: “viewing human rights as shaped and realised (or not) through their use – as socially and culturally constructed” (Desmet, 2014). This study will focus on how users shape and interpret human rights work to establish specific limits to social movement agency (Desmet, 2014; Ford, 2003). Framing and creating frame resonance is an example of how human rights defenders shape their work (Gamson, 1992; Noakes & Johnston, 2005; Williams, 2004).

This study therefore provides a narrowly focused analysis of the impact of two local edicts on social movements in North and South Kivu by studying the use and perception of these edicts by defenders working in these provinces. It will concentrate on different aspects of this use that correspond to the four sub-questions defined in the introduction to this thesis:

First, this study will examine the social context of human rights defenders, and the main actors that impact their work and agency. Second, it will discuss how acquainted human rights defenders are with the local edicts under consideration here, and in particular the extent to which the edicts are disseminated and reach human rights defenders as a first step of the human rights trajectory of defenders towards their rights. The discussion will subsequently turn to how human rights defenders perceive these edicts: do defenders view the edicts as valuable contributions to their work? What possibilities do the edicts present for defenders? The concrete use of the edicts by human rights defenders will then be addressed. This includes studying how defenders use the edicts in their work, both for seeking protection and through alternative uses. The final part of the results will include the structural limitations to the impact of the edicts on the agency of human rights defenders.

Taken in conjunction, these aspects will lead to the formulation of an answer to the central question of this study through an analysis of the impact of the edicts on the work of human rights defenders and, more importantly, their agency. The analysis of the different uses of the edicts by defenders in North and South Kivu will contribute to social movement theory, and in particular to the discussion about which elements contribute to social movement outcomes (Bosi & Uba, 2009). In particular, the analysis here will address the question of how public policies contribute to the social movement agency (Ford, 2003), and social movement outcomes through an in-depth case study of two edicts for the protection of human rights defenders in North and South Kivu. Desmet's framework provides a bottom-up and practice-based approach to this question and allows this study to start from the point of view of defenders as individuals in social movements.

2.2 Methodology

2.2.1 Finding the subject

A combination of different factors led to the researchers' interest in the subject of this study. First, research projects on public policies for the protection of human rights defenders at Protection International in Brussels intensified an existing interest in defenders and the challenges they face. Subsequently, an introduction to, and collaboration with, Protection International's team based in the DRC and with the regional team based in Kenya allowed the

researcher to learn more about the situation of defenders in the DRC. Moreover, several processes in the public policy arena were already ongoing in the DRC: draft laws for the protection of human rights defenders were introduced at the provincial level and at the national level. This raised questions about how the policies currently in place in the country were working, and about their role in the security and in the work of Congolese defenders. After many fruitful exchanges with the PI team in Brussels and in Goma, it became clear that this was a meaningful and fascinating research area. Initial sources of information were exchanges with human rights professionals in Goma, academic literature and publications by Protection International and other organisations working on the same subject.

2.2.2 Data collection

This study primarily involved the use of qualitative methods for data collection with the aim of providing as much depth and nuance as possible. This is important given the aim of reflecting and analysing the views of human rights defenders (Bijleveld, 2019). Bijleveld provides a good description of the reasons to opt for qualitative data collection:

“Qualitative researchers work from the premise that behaviour cannot be understood in isolation or from the outside, but that we need to know the meaning that events and behaviour have, the perspective that people employ, the context in which their behaviour takes place, their frame of reference, to be able to understand why people behave as they do.” (Bijleveld, 2019, 195)

The interviewing style used for this study was closest to formal interviewing. The interviews followed a pre-determined line of questioning, and therefore qualified as topical semi-structured interviews, “the criterion being that the interview situation has been standardised, but the respondent is still free to answer any way s/he sees fit.” (Bijleveld, 2019, p.73) where “the researcher has a list of items that explicitly need to be covered, the ‘topics’, within the interview session” (Bijleveld, 2019, p.66). The line of questioning remained open, however, to the possibility of modifying or adding questions during the course of the interview when the situation (or the participant) justified it. The aim was to reflect the unique experience of each participant, although many participants also spoke on behalf of other defenders in their environment (either in the form of concrete examples or more generally). The aim of this semi-

structured qualitative methodology was also to adopt a holistic approach by immersing the researcher as much and as naturally as possible in the world of the participants (Bijleveld, 2019). It also allowed for follow-up or probing questions, allowing the researcher to dig deeper into new or relevant elements of the participants' stories (Faria & Dodge, 2023).

Nevertheless, departing from the strict application of the requirements for formal interviewing has an effect on the generalisability (or external validity) of the results (Bijleveld, 2019). Doing so was a deliberate decision for this study in order to prioritise the acquisition of detailed information above generalisability given our conviction that more detail and context provide a stronger basis for the interpretation of data. This also created more opportunities to acquire unique insights and ideas regarding the use and innovation of public policies and their impact on social movements.

Although this study did not reach a complete saturation of data (Copes et al., 2020; Bijleveld, 2019) (each participant shared a unique point of view that could have been explored even more), a pattern emerged from our interviews and certain elements were repeated by many, if not all, participants. It was therefore possible, despite the limited generalisability of the data, to identify some principal patterns in the stories of our participants.

2.2.3 Literature review

Scholars have developed a few case studies on the challenges faced by defenders (Amir, 2013; van der Vet & Lyytikäinen, 2015) as well as a general discussions on the protection of human rights defenders (Bennet et al, 2015). An exception is Eguren (2017), who has dedicated many papers to the study of protection policies for human rights defenders. In 2015, Eguren and Patel published a study on the conceptual limitations of the term 'human rights defender' to support discussions about their protection. Other academics, such as Neto (2018), have focused on specific protection programmes for defenders. The approach generally adopted is one of policy and practice analysis (Amir, 2013), political and historical background analysis, legal analysis, empirical research (Neto, 2018), or bottom-up public policy analysis (Eguren, 2017). Few academic pieces written on public policies and defenders engage in a discussion of social movement theory. Instead, such studies appear to focus on a more practical approach rather than a theoretical one.

On the other hand, there have been many scholars working on a body of literature linked to social movement theories, discussing the structure, development and outcome of social movements worldwide (McVeigh, 1995; Ormrod, 2014; Piven & Cloward, 1977; Saunders, 2013; Stekelenburg & Klandermans, 2009). A few studies focus on social movements in the DRC specifically (Aembe & Jordhus-Lier, 2017; Koko, 2016). The aim of this study is to contribute to these discussions. Please refer our theoretical framework for more details on social movement studies.

For the contextual analysis of the DRC and specifically the provinces of North and South Kivu, a combination of academic and non-academic literature was consulted. This included historical analyses of the historical context of the DRC (Clay, 2020; Covington-Ward, 2012; Nzongola-Ntalaja, 1979), as well as more political or sociological analyses of the context in the DRC and its challenges today (Cirhigiri, 2023; Fierens, 2016; Pottier, 2002; Reyntjens, 1999; Vlassenroot et al., 2013). Other sources included literary works (Van Reybrouck, 2014; Mukwege, 2021) that sketch a more subjective picture of the Congolese context. Moreover, publications by human rights organisations were useful for collecting more specific and recent updates on the DRC (Human Rights Watch, n.d; Amnesty International, 2017; ISHR, 2019). Finally, the participants in this study shared many documents published by their organisations in the context of their work that were useful in terms of background information about the context. These documents included reports on activities and contextual details. They were therefore included as a complementary source of data, and particularly as a source of additional information about the views of participants.

2.2.4 Sample collection

The participants were recruited from a population of human rights defenders in North and South Kivu (Flinton, 2020). Several efforts were made to increase the representativeness of the sample for the population (Bijleveld, 2019; Faria & Dodge, 2023). First of all, we aimed for an equal representation of gender, for example, by selecting men, women and non-binary

participants for interviewing¹⁵. An ideal representation of different groups of defenders was drawn up in an ideal sampling frame (Flinton, 2020), and then shared with professionals from Protection International DRC in Goma so they could suggest defenders in their network. Furthermore, during the sampling process, many efforts were made to broaden this sample as much as possible by writing to numerous experts and defenders (Faria & Dodge, 2023). Some participants identified for this study were not contacted because their inclusion would have led to the over-representation of certain groups (Bijleveld, 2019).

The initial list of participants was first collected from internet searches and professionals working for Protection International. Each participant who was contacted was then also asked for suggestions for other participants, sometimes with specific criteria such as women defenders, defenders working on LGBTQ+ issues, etc. These efforts were made in order to enhance the representativeness of the sample and to increase the chance of saturation of our results (Saunders et al., 2018).

These efforts resulted in a combination of purposive sampling (collecting participants who met certain criteria) and snowball sampling (collecting participants via other participants), resulting in a *non-probability sample* (Bijleveld, 2019). This means that, despite efforts to collect a diverse sample of participants, representativeness is not ensured in the sample of this study (Bijleveld, 2019, 36).

2.2.5 Interviewing

For the interviewing part of this study, an ethics template was sent to the Ethics Board of the VU-University of Amsterdam. This ethics template considered factors such as risks of deception, risks linked to confidentiality and risks of the secondary victimisation of participants (Bijleveld, 2019). Generally, it was concluded that most participants within the reach of the researcher were already known publicly or by other defenders. Nevertheless, it was decided to observe confidentiality in this study. The ethics template was approved and the study proposal was considered not to have any significant risk for participants.

¹⁵ Although the lack of knowledge and tolerance with respect to topics related to LGBTQI+ persons prevented the researchers from explicitly asking for the inclusion of non-binary persons in the sample, they attempted to mitigate this limitation by looking for defenders working on LGBTQI+ rights. This was successful since it resulted in the inclusion of participants outside the gender binary.

Following the approval of the study proposal by the Ethics Board, two interviews were conducted as pilot interviews with established contacts from Protection International. Feedback was requested after the interviews but most feedback was provided in the course of the interview in the form of direct responses to the questions. Some questions were adapted, and some were dropped because they did not lead to relevant results for this study. As the changes made to the line of questioning were very minimal and did not affect the responses of participants, these pilot interviews were included in our data analysis and context analysis.

All participants were sent an informed consent form (Annex 3) before the interviews, with details about the purpose of the study and how the data would be used. Most participants signed and returned the informed consent form via email. Where this was not the case, they were asked to provide verbal informed consent at the start of the interview after a re-explanation of the content and purpose of the informed consent form. This form included a description of the steps taken to ensure participants' security during the interviews as well as the option of withdrawing their consent or refraining from answering questions they considered to be too sensitive.

The first pilot interview took place on 3 February 2023 and the final interview was completed in June 2023. In total, 23 interviews were conducted, including the pilot interviews, each lasting an average of one and a half to two hours. The interviews were exclusively online because of limited resources and the security situation in the DRC. There was one exception: a defender who visited Brussels and was interviewed on that occasion. This resulted in a sample bias (Bijleveld, 2019; Faria & Dodge, 2023; Flinton, 2020) since only participants with a good internet connection and access to a computer could participate. However, it also allowed us to broaden the population sample because we could interview defenders from many different locations that we could not have met even on a visit to the country because of security and time constraints (Faria & Dodge, 2023). Zoom was mainly used to interview participants, with certain exceptions when WhatsApp was more convenient. Recordings were made using Zoom but saved directly on the computer rather than in the Cloud. Recordings of WhatsApp conversations were made directly on the computer. All recordings were then stored on both a

personal computer (offline) and a two-step secured online platform provided by Protection International.

Participant	Province	Medium	Gender	Topic
Participant 1	SK	video call	M	Environment
Participant 2	NK	video call	M	Environment
Participant 3	SK	video call	M	Psychosocial support
Participant 4	SK	video call	M	Journalism
Participant 5	NK	video call	F	Journalism
Participant 6	NK	video call	M	Environment
Participant 7	SK	video call	M	LGBTQI+
Participant 9	SK	video call	NB	LGBTQI+
Participant 10	SK	video call	F	LGBTQI+
Participant 11	NK	video call	F	Journalism
Participant 12	NK	video call	M	HRDs
Participant 13	NK	video call	F	Women's rights & peacebuilding
Participant 14	SK	video call	F	Women's rights & peacebuilding
Participant 15	NK	video call	M	HRDs
Participant 17	SK	written response	F	Women's rights

Table 1: Table of participants (anonymous), province, platform used for interviewing, gender and topic of expertise

2.2.6 Data analysis

After all the interviews had been conducted, more detailed notes were taken on the basis of the recordings. The interviews were transcribed with an offline coding program that complied with our security requirements. This was an important choice in this study, as the data contained sensitive information that could endanger the security of participants if publicised. Non-verbal expressions were not included in the notes and transcriptions because participants' cameras were often turned off due to weak internet connections (Bijleveld, 2019).

Time restrictions meant that it was possible to transcribe and code only fifteen interviews for this study. The selection was guided by the wish to obtain a balance in gender, province and topics of expertise. The other interviews were naturally taken into account for background and context, but they were not analysed in detail.

Coding was done using the Atlas.ti. It began with open coding or *first level coding*, which included simply inserting descriptive codes in our data (Bijleveld, 2019). This coding was done while reading through the interviews for the second time, following the structure of the

interview questions. During this phase, elements linked to context, activities, knowledge of edicts, views on the edicts, use of the edicts and limitations impacting the use of the edicts were coded. Acronyms for gender, province and topic of focus were included in the titles of the documents in order to link these codes to specific groups. According to the patterns emerging from the data, these codes were grouped into categories and joint codes, also known as *charting* (Williams & Cutler, 2020) or *second level coding* (Bijleveld, 2019). During this phase, the researcher made use of a *constant comparative method*, returning to other documents when new patterns emerged during the coding of later documents. Atlas.ti allows for codes to be stored, regrouped and renamed during the process (Bijleveld, 2019).

Towards the end of the coding process, the main results were analysed by scrutinising quotes included in the coding categories and identifying patterns to include in the Results chapter. In this phase, the different categories were considered and, with Atlas.ti, patterns were linked to specific sub-groups of participants. Codes that did not lead to clear, conclusive results, or that were not covered by the scope of the research questions were disregarded.

Chapter 3: Results

This chapter will describe the main findings of this study. The first section discusses the main actors that influence the work of defenders. This is an important part of the analysis since those actors have an important impact on the agency of defenders in general and on how the edicts impact their agency and their work. The rest of the chapter focuses specifically on the edicts and follows the order of our sub-questions as defined in the introduction to the present study.

The second section focuses on the extent to which defenders are aware of the edicts in North and South Kivu, including the successes and limitations of the dissemination of the edicts. This provides an answer to our first sub-question **(1) To what extent are human rights defenders in the provinces of North and South Kivu aware of the existence of Edicts No. 001/2016 and 001/2019?**

The third section of this chapter looks at defenders' views and expectations with respect to the edicts, providing an answer to sub-question **(2) What are the views and interpretations of human rights defenders with respect to Edicts No. 001/2016 and 001/2019 in North and South Kivu?**

The fourth section describes on the different ways defenders use the edicts in North and South Kivu, providing an answer to sub-question **(3) How, and to what extent, do human rights defenders use Edicts No. 001/2016 and 001/2019 to protect and exercise their right to defend human rights?**

The final section focuses on the limitations of the edicts, including on use in practice and the exclusion of specific groups, providing an answer to sub-question **(4) What structural limitations exist in the use of Edicts No. 001/2016 and 001/2019 by human rights defenders to protect and exercise their right to defend human rights?**

Taken in conjunction, the consideration of these aspects will allow for a formulation of an answer to our main research question: **How, and to what extent, do Edicts No. 001/2016 and 001/2019 in North and South Kivu (DRC) influence the agency of human rights defenders from a social movement perspective?**

Our sample did not allow conclusions to be drawn about any significant differences between the edicts of North and South Kivu. This chapter will therefore generally discuss both edicts together. Unless mentioned otherwise, readers can assume that the results are applicable to both North and South Kivu.

3.1 Human rights defenders and their social context: fighting for agency

Chapter 1.3 briefly touched upon the role of defenders in addressing human rights violations in the DRC. It did not yet provide a clear idea of which actors defenders interact with, or which groups generally influence their work. In social movement studies, it is essential to take into account “the crucial role of the public sphere in which interaction takes place” (Rucht, 2023). This first section will, from the perspective of HRDs, examine the social context and the main actors that impact their work and agency. In the interviews conducted for this study, the main groups mentioned were: the authorities, armed groups, the local community and civil society.

3.1.1 Authorities

The authorities include many different actors from the Congolese governance structure: local authorities like the governor or administrative authorities, judicial authorities (local judicial authorities were mentioned most by our respondents), police, and military authorities (especially in North Kivu due to the state of emergency). Most authorities play a direct role in the protection of defenders, both in the formal implementation of the edicts and protection and in the broader acceptance of their work and mission. Some form of positive support by authorities is essential for the success of social movements (Rucht, 2023), and a common discourse and a frame resonance between social movements and authorities has been identified as a key element for positive social movement outcomes (Koopmans & Statham, 1999; Noakes & Johnston, 2005; Williams, 2004).

Testimonies of defenders appear to demonstrate little frame resonance, however. Defenders refer to the UN Declaration for HRDs, which assigns authorities the primary duty to defend human rights. In practice, however, authorities participate in attacks.

"HRDs really are targets, both of the administrative authorities, and of armed groups and military authorities, and police authorities, and why not also security authorities."
(Participant 3, South Kivu) [10]

Participants refer to the ANR (*Agence Nationale de Renseignement*, the national intelligence agency) as a particularly hostile actor. Officials of the ANR participate in many arbitrary arrests and detain defenders for long interrogations.

"First of all, you need to know that the ANR is there. [...] if you really want to be a humanitarian worker or HRD, you have to bear in mind that they are there and they are not there to help you, they are there to stop you from working." (Participant 9, South Kivu) [11]

The participants describe different ways in which these authorities sabotage their work as defenders. According to participants' stories, the authorities attempt to limit defenders' agency by attacking their reputation or their feeling of security. Methods adopted by authorities to this include threats (to silence defenders), or different forms of labelling (Buyse, 2018). This tactic is seen in more public contexts, where authorities use their platform and reach to spread misinformation about defenders.

"Now they had started to corrupt even the members of our organisation, of our community, so that people could really hate me and say that I'm anti-development, that they want to bring us development and that I'm getting in the way. [...] it created some very serious problems." (Participant 2, North Kivu) [71]

"They call us criminal associations. They say we're preparing rebellions. It's all nonsense really." (Participant 10, South Kivu) [14]

The authorities even assimilate defenders to armed groups and use this labelling to restrict their activities through arbitrary arrests:

"the local military or police authorities have already given them the names of the rebels and so they arrest you, even you defenders, on the pretext that you are collaborating

with these rebels, the population arrested on the pretext and under the names of the rebels." (Participant 11, North Kivu) [20]

Although attacks through labelling do not necessarily include concrete restrictions or physical violence, they have an important impact on the agency of defenders by attacking their support network and undermining the capacity of a defender to strengthen support for their social movement (Buyse, 2018), affecting social movement agency of defenders in general (Ford, 2003).

Authorities also issue threats, which are a more direct way of restricting social movement agency (Ford, 2003) by imposing concrete limits to specific projects. Participants often mention threats by authorities in stories where the authorities are personally implicated in human rights violations and they are often very direct, often involving phone calls or personal visits. These calls come either from the authorities themselves or from their staff:

"I produced a report, and first of all I had several attempts with the governor's council on mining affairs at the time, his council, while at the same time he was the legal counsel for this same company. He threatened me, saying that if I produced the report, I would have to flee the province of South Kivu." (Participant 1, South Kivu) [12]

"And I remember, personally, we reported these human rights violations and the governor [...] who is still in office, [...] his support and his collaborators started to threaten us on the phone." (Participant 4, South Kivu) [13]

Finally, the authorities – and particularly the national army (FARDC) – restrict defenders' physical movements around the province. In the Kivus, there are many roadblocks where travellers are asked for money to pass through. Although there is a general perception that these roadblocks are mainly set up by armed groups, an evaluation in North Kivu by ASSODIP ASBL in December 2022 points out that 70% of the observed roadblocks were set up or controlled by the FARDC, with armed groups accounting for 6% only (ASSODIP, 2022). Participants confirm that this puts certain activities (especially in more remote areas) off limits.

These different elements mean that many defenders are often restricted in their activities by authorities. Furthermore, participants express very little confidence in the authorities or their willingness to provide protection. Trust is an essential element in the subject of this study: several stories demonstrate that a lack of trust between authorities and defenders impedes collaboration and prevents defenders from seeking help or communicate with authorities, confirming the important role of trust in the development of well-functioning institutions (Uslaner, 2003). The lack of trust increased and demonstrated in the testimonies above clearly makes it complicated for defenders to work with the authorities, and causes some defenders to steer away from activities that necessitate their collaboration.

At the same time, there are defenders who, despite acknowledging such limitations, value collaboration with the authorities. They organise joint discussions and roundtables, reconciliation initiatives and awareness raising. These activities are framed as an essential tool for obtaining results:

"We do everything we can to keep in touch with human rights defenders, but we are also obliged to collaborate. The relationship with the authorities is just one of partnership. [...] when you're there to defend others, you shouldn't create an enemy camp against the authorities." (Participant 11, North Kivu) [15]

The participants give examples of effective collaboration:

"Because with all the fuss, the national minister for mines had come [...] and I took the courage again, I explained to this minister and said, here we are, people are suffering. [...] He told me that I was going to get involved, and then the governor took the decision to suspend these companies. (Participant 1, South Kivu) [16]

In very rare and specific situations, HRDs have specific allies in the government who work with them on their mission or provide them with information that is essential to their work. However, even defenders who benefit from these relationships describe them as the exception rather than the rule:

"It's the authorities, for example, who give us these documents, because all documents are secret. [...] By the way, it's true that society is rotten, but there will always be people

somewhere who have some sense that things should work. (Participant 4, South Kivu) [17]

Overall, however, HRDs do not generally see the authorities as allies and they rarely interact with them in that way. Nearly all participants have had difficulties with, or suffered attacks from, the authorities, and interactions between authorities and defenders are often marked by hostility. According to reports published by local human rights organisations, this lack of trust appears mutual (CVPD, 2021; CVPD, 2022): authorities do not trust defenders as allies either and rather conceive them as enemies or ‘troublemakers’. Before analysing the impact of the edicts on this relationship, the role of other actors in the context and work of defenders in North and South Kivu will be discussed.

3.1.2 Armed groups

Armed groups are active in the provinces of North and South Kivu, and particularly in places where the state is more absent, mostly in rural areas. As mentioned elsewhere here, they act as the local government, especially in South Kivu: several participants describe how armed groups have taken over. Indeed, this can be confirmed by other studies on ‘rebel rule’ that underline the governing role of armed groups (Hoffmann & Verweijen, 2018, Fortin, 2021):

"These armed groups commit serious human rights violations. Since there is almost no state presence where they operate, they are the ones who make the law over there. They can do whatever they like. (Participant 3, South Kivu) [18]

Defenders speak up about human rights violations committed by these groups, taking over the government’s responsibility to protect civilians against these groups, confirming *a double manifest failure situation* (Labonte, 2015). Contrary to the official stance of the government, participants from North Kivu suggest that the government at times supports armed groups and that this collaboration represents an increased threat to their security:

"the risks are very high here, especially with the M23 war here, the armed groups who have also become partners of the government, in the past years it has been terrible" (Participant 6, North Kivu) [19]

As defenders resist or speak up against armed groups, they are directly exposed to a high risk of losing their freedom or their life. Participants confirm that this is a particular problem for defenders because the latter are the first to speak up against attacks. Armed groups may also intervene with human rights work by censoring journalists reporting human rights abuses (CPI, 2023). In late 2022, M23 published a list with the names of defenders on social media, raising concern that the defenders would face execution if the rebel group found them:

"At the moment, there are many HRDs who have fled the areas occupied by the M23 rebels because they were receiving messages [...] they [the M23 rebels] have already published a list that includes me: [...] they [the HRDs] have to look for a place to go, otherwise they will be summarily executed." (Participant 12, North Kivu) [21]

M23 issued similar threats during their last siege of Goma in 2012, and defenders fled as a result. Rebels also issue death threats by phone, text or by showing up at defenders' homes (Amnesty International, 2021).

According to participants, defenders stand alone in facing violence of armed groups: the State is not mentioned once in their accounts as an actor that intervenes to protect defenders. Although this could be explained in part by the inaccessibility of remote areas where armed groups operate, this does not explain the absence of any response in well-connected areas: even in Goma, the State did not mount any effective response to the M23 attack on HRDs. Another explanation suggested by participants is that authorities collaborate with armed groups. This claim, however, has yet to be explored further. Meanwhile, the armed groups continue to pose a serious threat to human rights work and social movements.

3.1.3 Local community

The local community – family, friends and religious communities – is an essential actor in the context of human rights defenders. Many participants flagged their positive contribution to their work. Especially when formal support is lacking, community members play a key role in support for defenders:

"The first thing is support from friends [...]. Because in fact, friends, families, especially the community, also support us in everything we do." (Participant 3, North Kivu) [22]

"The community advocacy group is about getting women not only to go together in certain advocacy actions, but at the same time how they can rely on each other to protect themselves." (Participant 14, South Kivu) [23]

However, this community support is limited by social norms. The work of defenders is not appreciated everywhere, and there is opposition from many actors, ranging from the family level to the community culture. This opposition is strongest when the traditional values of defenders' communities are challenged: indeed, community opposition provide a form of social boundaries within which defenders are forced to operate, contributing to certain "natural limits of social reality" (McClellan, 1999). In the stories shared by the participants, opposition by community members takes the form of censure, daily stigmatisation or even formal opposition by going to the police. There are also allies, however. The following account demonstrates how local actors without any formal authority or involvement in human rights work can make or break an organisation of defenders, just through alternative individual norms:

"I can say that we are lucky because our landlord, so the owner of the house [...] is a very open woman. She's a very tolerant woman, a woman who accepts us. Because there were [...] neighbours from our office who went to tell the owners of the house to kick us out, that we are a homosexual organisation, but the owner of the house said: I don't have any problems with them". (Participant 10, South Kivu)

This confirms that local communities play a key role in defining limits to what social norms can be broken, and defining which human rights work is accepted or not. This strongly influences the construction of social movement agency and the limits of social change (Ford, 2003; McClellan, 1999). Restrictions to human rights work are specifically directed at stigmatised groups or defenders working on topics that defy cultural norms, also defined as counter-hegemonic social movements (Zawawi, Richard & King, 2021). Questions relating to gender and queerness generate particularly strong opposition from the local community. This goes hand in hand with the daily stigmatisation of the queer community: members of the LGBTQI+ community are refused the right to work, they are often rejected by their family, and they face violence daily. Through social stigma and exclusion and by resisting change on certain topics, the community has a crucial impact on defenders' agency, imposing social boundaries that are not formally established but actioned through social pressure and

stigmatisation (McClellan, 1999). When boundaries are crossed (for example by challenging gender norms or religion), the community may resort to *labelling* tactics such as those used by the authorities (Buyse, 2018).

3.1.4 Civil society and protection networks

In both North and South Kivu, defenders establish close connections and support networks with other human rights organisations. This study has identified protection networks that resemble 'environmental pressure groups' (Rawcliffe, 1998) or 'movement organizations' (Rootes, 2007). Many participants in this study are members of networks of defenders or human rights organisations in which the other members work together to support defenders in need. Many organisations have regular meetings with others to monitor the situation of defenders in their province. These networks represent an alternative space in which social norms correspond more closely to human rights values, establishing a position of human rights organisations with respect to local and global hegemony (Maclean, 1999). This is a powerful way for human rights organisation to strengthen their collective identity and increase their social movement agency (Ford, 2003; Rucht, 2023).

When a member of a network needs assistance, an alert system is activated to inform large numbers of organisations by phone. Defenders who receive these alerts then take collective action, either by directly contacting and pressuring the relevant authorities or by working out a security plan together for the defender.

"The X system where they can alert us either by SMS or Whatsapp and as soon as we get that alert there, we have to immediately call an emergency meeting. At a network office level we call an emergency meeting which we call the protection case handling meeting." (Participant 3, South Kivu) [25]

This often proves to be an effective approach: it raises the visibility of attacks and therefore pressure on the authorities in question. One participant describes the direct impact of this alert network in the case of an arbitrary arrest:

"They wanted to take me to the prison, but others were reluctant because they were already receiving phone calls, but I was taken to a place where I would say I was alone. They wanted to ask me to take off my shoes, others said "no, it's a lady and people are calling, be careful, they're calling right now". But I understood that their intention was to take me far away" (Participant 11, North Kivu) [26]

Such networks are therefore an important opportunity for defenders to increase their agency, strengthening both their collective identity (Rucht, 2023) and their personal safety. However, networks continue to exclude certain defenders, either for practical reasons (accessibility), or through the reproduction of discriminatory social norms (Maclean, 1999). This means that some defenders have access to stronger networks than others, creating a certain hierarchy amongst human rights defenders. Nevertheless, all the defenders in our study had some kind of network: there are networks of women organisations, and groups of LGBTQI+ organisations that continuously work together and keep the other members informed about each other's work.

3.1.5 Conclusion

This first section of this chapter demonstrates the key influence of authorities, armed groups, community members and civil society on the agency of defenders. This social context has a strong impact on the development and collective identity of social movements (Melucci, 1988; Rucht, 2023) as well as their security situation (Buyse, 2018). Authorities limit the agency of defenders through physical attacks, threats and labelling (Buyse, 2018), resulting in a relationship with defenders marked by mistrust and hostility. Armed groups also have a drastic impact on defenders' agency, especially in the area of physical safety, and the social and political structure of their community (Hoffmann & Verweijen, 2018, Fortin, 2021). Communities play an essential role in defining social movement agency from a cultural perspective by imposing social norms on defenders in North and South Kivu and tolerating only certain forms of activism (Ford, 2003; Kjaran & Naeimi, 2022; McClean, 1999). Finally, the participants in this study discussed 'human rights networks' that generally contribute very positively, although social stigma might seep through in these networks as well. Overall, this means that human rights defenders have to navigate many challenges, and that certain groups of well-connected, less stigmatised defenders have a head start.

We will now move on to a consideration of the sub-questions of this study from a user perspective (Desmet, 2014).

3.2 Knowledge and awareness of the edicts in North and South Kivu

This part of the study will examine the level of awareness of the edicts amongst defenders. This is the first step in the *human rights trajectory* (Desmet, 2014) of human rights defenders towards the right to defend human rights. The awareness of defenders and authorities of these edicts is crucial to their implementation and to the creation of a common understanding of rights and duties of defenders and authorities (or frame resonance (Noakes & Johnston, 2005; Williams, 2004)).

The results of our sample suggest that defenders are well informed about the edicts: all the participants of our sample are familiar with the existence of the edicts in their respective provinces. Some participants in this study were even involved in the drafting of the edicts, which was a process led by civil society and government authorities. However, this aspect of the edicts was not covered in the interviews, and will therefore not be addressed in detail in this study. Although participants know about the edicts themselves, many claim that there is a lack of awareness about the edicts - both amongst defenders and the authorities.

“There are even human rights defenders who do not know that the edicts on the protection of human rights defenders exist. So there have been shortcomings in awareness raising and popularisation.” (Participant 6, North Kivu) [27]

“First of all, we established a year ago, more than a year ago, that authorities were not even aware of this edict. [...] Authorities were often worrying the defenders, because they weren't aware.” (Participant 11, North Kivu) [28]

As seen above, this lack of knowledge is cited by several participants as an explanation for authorities' behaviour towards defenders. Some participants report that the authorities express surprise when they hear that there is a law in place and immediately regret their actions:

"And the head of the public prosecutor's office ... himself said at a meeting that if I knew there was such a legal framework protecting human rights defenders, I wouldn't do the stupid thing of transferring XX activists to Goma. (Participant 4, South Kivu) [29]

Other participants have their doubts about the actual knowledge gap, however, and state that the authorities deliberately maintain the knowledge gap. Rather than a lack of knowledge, they point to a lack of political will:

"In fact, the government doesn't want the edict to be publicised. It's up to organisations to disseminate it, particularly amongst authorities. Because if it's not publicised, it actually helps to limit a lot of the damage, particularly to those who violate citizens' rights or the rights of HRDs." (Participant 4, South Kivu) [30]

Such behaviour by authorities would appear to indicate an active avoidance of their responsibility to (1) protect defenders, and (2) to disseminate the edicts. This is often witnessed in the international human rights field, and especially in repressive states (Schimmel, 2019). As a result, this activity is usually taken on by defenders themselves. Again, this aspect would therefore seem to reflect *a double manifest failure situation* (Labonte, 2015). The large majority of defenders interviewed for this study engage in awareness raising and the dissemination of the edicts, informing both actors in civil society and the authorities about these laws, their meaning, and their implementation. The impact of the public policies (*aka* the edicts) on social movement agency in North and South Kivu therefore depends critically upon the role played by the grassroots defenders.

In more remote areas, however, dissemination encounters several obstacles, especially for defenders with less resources. Many HRDs in remote areas do not have access to the internet and they therefore have to rely on printed materials. Some human rights organisations working on the dissemination of the edicts distribute printed copies but their ability to reach remote areas is limited because of resources and restricted circulation.

Furthermore, not everyone is able to read the edicts, either because they do not speak French (the language in which the edicts are written) or because they are illiterate. Although many

participants referred to this limitation for defenders, one participant also said that this limitation applies to the authorities as well:

"Sometimes there are police officers who have never been to school. They don't know how to read or write, so they've never really had access to this edict. So they don't know anything about it". (Participant 4, South Kivu) [31]

Several defenders emphasise the need to translate this document into local languages such as Swahili. Although this could improve the dissemination of the document, it is clear that, without active efforts to make the edicts accessible to everyone, some groups will not be reached. For example, defenders of LGBTQI+ rights (or LGBTQI+ defenders) have often had less access to formal education as a result of being ostracised from their community. Levels of awareness in this group are therefore lower. An LGBTQI+ defender testified:

"We try to popularise the law, but it's a bit difficult because we only popularise it in French and our members are mostly people who haven't studied." (Participant 9, South Kivu) [32]

Another participant claims that awareness-raising activities tend to include only a certain group of defenders, and that other groups (like youth defenders) are not targeted enough. Moreover, these activities are mainly in urban areas, whereas defenders in rural areas tend to be more exposed to risks:

"There is also awareness-raising beyond the big towns, beyond Bukavu for example. We need to go inland, to the territories. In the territories, we have seen the most serious human rights violations. That's true in the cities, but in the territories, that's where the most serious human rights violations take place. [...] I have the impression that it's not being done in the deepest part of the country. (Participant 4, South Kivu) [33]

All in all, the authorities would appear to make only limited efforts to disseminate the edicts actively and evenly to all defenders and authorities, ignoring their responsibility that is therefore taken up by defenders themselves, confirming the concept of *double manifest failure situation* (Labonte, 2015). This means that the first step in their human rights trajectory is highly

dependent on efforts by grassroots defenders. Many human rights organisations are small entities with few resources that also face risks in their human rights work. Their capacity to fulfil this role is therefore limited, resulting in the uneven implementation of the edicts: marginalised defenders or working in more remote areas are left in the dark. This implies a first strong limitation to the impact of the edicts that, again, affects more marginalised HRDs in particular.

3.2 Defenders' views and expectations with regard to the local edicts

Appreciation for the edicts varies among the participants. Generally, participants see the edicts as a positive basis for their work, despite the many limitations to implementation. Many said that the edicts provide a source of legitimacy and respect for defenders in general, as well as a legal basis for their work:

"... the promulgation of the edict, it at least gave a value of respect towards HRDs. We're saying that the HRDs are there, that they must be respected as such because there is a text that recognises them as such. (Participant 1, South Kivu) [34]

Our participants find the edicts to be reassuring, almost independently of whether the authorities actually know about them or respect them:

"Even if the justice operators may not take it into account [...] we already know that it is a document that protects us" (Participant 3, South Kivu) [36]

The interviews in this study support the idea that this recognition is more than just legal. By comparison with other case studies on the psychological impact of legal recognition, this study appears to indicate an exceptionally high impact (Drabble et al., 2021) that usually appears to be linked to the social recognition of their work, therefore formalising support for defenders' activities.

This positive role of the edicts in the personal recognition of defenders might be attributable to the fact that the edicts do not simply recognise a right (e.g. Drabble et al., 2021), but also

the collective identity of defenders. The simple existence of the edicts is therefore a source of hope and energy for some defenders.

In the last part of the interviews, participants were asked to select words that they associated with the edicts in their respective provinces. The words that were selected most were **essential**, **important**, **advocacy**, **security** and **protection**. More negative words like 'limited' or 'inefficient' were not selected, despite many limitations being flagged during the interviews - including some participants who stated that the edicts had little impact on their work and safety. These results appear to reflect a tendency to view the edicts, or at least their existence as legal documents, in a relatively positive way. The data in this study therefore suggest that edicts might contribute to the strengthening of a collective identity for defenders (Rucht, 2023), which in turn has a beneficial impact on their agency as a social movement (Ford, 2003).

3.3 The use and appropriation of edicts by human rights defenders in North and South Kivu

According to the participants, the use and implementation of edicts for defenders depend most on defenders themselves. As has often been made clear here, impact therefore depends on grassroots involvement in dissemination and, where possible, implementation. Although the edicts give the State the primary responsibility for the introduction of measures to protect defenders and their right to defend human rights, no participants at all mentioned an initiative by a state authority to either raise awareness of the edicts or to ensure their implementation. In many ways, the impact of the edicts on the agency of defenders depends heavily on the extent to which defenders assume this responsibility (Koko, 2016; Labonte, 2015; Rauch, 2011), and on their use of the edicts themselves.

The application of Desmet's user perspective (2014) revealed a rich and creative interaction of defenders with the edicts. Instead of considering the edicts as purely legal documents, many defenders demonstrated exceptional resourcefulness in their use of the edicts, applying them to many different aspects of their work. Although it is unclear whether this creative approach to protection was stimulated by the edicts or already there before, resourcefulness is identified as a positive factor that often contributes to more positive social movement outcomes (McVeigh et al., 2006).

On the basis of the interviews, the following forms of use¹⁶ could be identified (from most mentioned to least mentioned): **awareness raising, seeking protection & asserting rights, standard-setting** and **improving collaboration**.

3.3.1 Awareness raising

Awareness raising includes all activities to inform actors (including defenders, authorities and other stakeholders) about the fundamental rights of defenders. Defenders use the edicts to raise the visibility of their activities and rights, mostly in dealings with the authorities. In such activities, the edicts are used to create frame resonance (Noakes & Johnston, 2005; Williams, 2004) and positively influence social movement outcomes (Bosi & Uba, 2009). They invoke the edicts during roundtables, meetings, or other group activities to explain their work and the rights related to their work as human rights defenders in general, and draw the attention of the authorities to their responsibility to protect these rights:

"I remember reading just one article, I told them: "What we are doing is not against the authorities or the population. But in fact, it's our right, it's our role as defenders of human rights, as human beings, to enjoy certain rights. And among these rights is the right to security, to protection, because it is you who have the role or the responsibility to protect us". (Participant 14, South Kivu) [37]

In this sense, the edicts provide a clear starting point for advocacy and raising awareness in dealings with the authorities. Instead of referring to international frameworks or human rights standards, defenders can now refer directly to their rights as covered by the edicts.

The edicts are also used for capacity building. The interviewees use them as a basis for making defenders aware of their rights and obligations and stated that the edicts make their position clear and neutralise doubts about, and restrictions on, their rights. This appropriation of the edicts by participants is notable in the sense that it does not depend on actions by authorities or on whether the edicts are directly respected or not:

¹⁶ These categories are not strictly separate, and some codes are in several categories. They were developed to break down the different ways in which the edicts are used and create some clarity within the data.

"With the edict, it's true that at a certain level for us, an organisation promoting HR in civil society, it's changed our approach a bit. Because in almost all our activities, whether awareness-raising, advocacy or mobilisation, we always say that there's an edict protecting our rights. Even in training and capacity-building activities, we cite this as a source of rights that we have at provincial level. (Participant 1, South Kivu) [38]

This element confirms the social-constructivist approach of Desmet's user perspective. Accordingly, the use of the edicts by defenders acquires an important role not only in defending their rights, but in shaping their work and apply their interpretation of the right to defend human rights. This is also used to create a common discourse throughout their interaction with different stakeholders and creating common understanding and frame resonance (Noakes & Johnston, 2005; Williams, 2004) between different defenders, authorities and other stakeholders.

3.3.2 Setting standards

This influence of the edicts on the social-constructivist role of defenders (Desmet, 2014) is also demonstrated by the fact that they are used to set standards and shape these standards to their understanding of human rights work. The participants used the definitions in the edicts both in dealings with the authorities and for themselves: for the former, they use the definitions for the purposes of raising awareness and advocacy, as demonstrated above; for themselves, they draw on the edicts as a guideline.

"But also, this edict says what the rights and duties of HRDs are. [...] When we try to work with HRDs, we ask: has a HRD acted peacefully, for example? And this is where even when we deal with cases of HRDs who are threatened, the first thing we say is: did the HRD act peacefully? Did they not commit acts that are considered criminal?" (Participant 1, South Kivu) [39]

Defenders refer to the third chapter of the edicts, which sets out the 'duties' of defenders. This component of the edicts is often criticised by the international community because it opens the door to the criminalisation of defenders by making rights conditional upon the fulfilment of duties rather than presenting these rights as unconditional and universal. Such definitions risk affecting the definition of human rights work and therefore social movement agency (Ford,

2003). This was not the target of as much criticism from participants, however. Some even referred to it as a positive aspect of the edicts:

"In the hundred actions that we take, we try to recognise that there is an edict that HRDs must work according to this line of conduct of the edict that protects us. (Participant 1, South Kivu) [40]

"Secondly, because it's not just rights, it also includes obligations and sometimes obligations are important." (Participant 4, South Kivu) [41]

In this way, the edicts push defenders to engage in a discussion that covers not only the definition of human rights work but also the definition of ethical standards for their work. The discussions sparked by the edicts contribute to a discussion about norms, morals and ethics, specifically for defenders. Indeed, participants stated very different interpretations of what it means to defend human rights. Those who wanted to accentuate the obligations and limits of defenders used the edicts as a basis to evaluate whether someone is covered by the scope of the edicts or not. One participant shared the following story:

"One man denounced, but his way of denouncing, when we did the analysis, he used a bit, he created some quarrel, so he didn't stay peaceful. Until they went a few hundred metres away with these soldiers in their arguments, and the soldier shot him and then he went to the military prosecutor's office. So we have a lot of work to do to discuss this edict here, to show that a human rights defender really has to be peaceful." (Participant 13, North Kivu) [42]

This story demonstrates the strong impact that definitions have on the protection of defenders. Although there appears to be a consensus amongst participants to define the limits of social movement agency on the basis of the use of violence, an overly conservative interpretation of these obligations involves a risk. In the situation described above, it is not clear exactly what is meant by 'peaceful', and a narrow interpretation of defenders' mandate may exclude certain defenders from their right to protection. Another participant focused on the obligations provisions as well, stating that they were necessary to restrict defenders who tended to

'overstep' their duties. For this participant, human rights defenders should not set themselves up in positions of authority:

"Many HRDs thought they had no duties. So you go and see a HRD in a village who behaves like an authority. People can lodge complaints with him, so he takes the place of the authorities in the community. The edict also reframes the HRDs by saying: you have rights, but you also have duties." (Participant 15, North Kivu) [43]

This case is a very clear example of how the edicts may result in the restriction of social movement agency (Ford, 2003). Given that civil society often compensates for the shortcomings of the State (Koko, 2016; Rauch, 2011), excluding defenders in this way can soon exclude them unjustly from protection. Furthermore, there are even clearer cases of these definitions being used against defenders. One participant stated that authorities already deliberately use the edicts to this end:

"when it also talks about the obligations of defenders, it tries to limit [...] the work of defenders. And it's always this article, articles like this that authorities mention to tell you that here you are not above the law, and here you are even if you are protecting, but here you are yourself, you can't cross here." (Participant 11, North Kivu) [44]

When applied to LGBTQI+ defenders, the interpretation of the edicts becomes particularly narrow. The final part of this chapter on limitations will look at the exclusion of this group in more depth.

Overall, this section demonstrates the important role of edicts in shaping the definition and work of defenders. This confirms the value of a social-constructivist approach to human rights as proposed by Desmet (2014). The different interpretations proposed by defenders, however, especially when they are narrow, involve a risk of the edicts of being used to restrict the agency of defenders.

Moreover, the interviewees hardly mentioned similar in-depth interpretations of the obligations incumbent on the State. Although both edicts stipulate that the State has a duty to

introduce the measures required to protect the right to defend human rights, participants focus on the edicts' definition of defenders work. In this sense, the edicts would appear to affect defenders' agency more negatively than positively.

3.3.3 Improving collaboration

A consensus definition and understanding of what defenders are and which responsibilities are incumbent on the State may result in greater clarity and awareness. The edicts provide a common definition, and therefore may contribute to consensus between authorities and defenders, creating a discursive opportunity structure (Koopmans & Statham, 1999) and frame resonance (Noakes & Johnston, 2005; Williams, 2004). In our sample, some participants indeed resorted to the edicts to facilitate discussion and collaboration between defenders and authorities:

"So the tool has become a tool not only for advocacy in favour of the protection of human rights defenders, but also a support for us to be able to defend this collaboration that must prevail and also to be able to spread awareness on the duties that the authorities have." (Participant 11, North Kivu) [45]

Such collaboration and forms of common understanding are considered key by some participants and it is a strategy that has been adopted by several defenders to enhance their personal protection and the protection of defenders in general. Human rights organisations use the edicts as an instrument for bringing all stakeholders together and to facilitate communication:

"We organised nine workshops across the province with 50 participants per workshop, including civil society players and HRDs, including democracy activists. The judicial authorities, the political and administrative authorities, the security services, i.e. ANR, police, FARDC, young people. In any case, these were workshops where there was interactive dialogue between different actors." (Participant 12, North Kivu) [46]

During these workshops, the edicts are often discussed and a space is created for defenders to share their concerns with respect to their implementation (Amir, 2013; Eguren, 2017; Neto,

2018). Some participants also organise reconciliation sessions with authorities and defenders where there are opportunities to discuss conflicts and prejudices with the parties concerned and to establish a shared understanding with respect to implementation and all parties' responsibilities. Certain participants even report that the edicts allow them to interact with local authorities:

"But this edict also showed us that we must carry out our activities without hindrance, which reassures us. For example, our organisation is more or less well known. Every time I go to the town hall, I introduce myself to the commanders, even of the FARDC, we are received and we present our problems... we talk and exchange ideas with them. The edict really helps us in this respect." (Participant 13, North Kivu) [47]

One participant even said that using the edicts resulted in enduring professional alliances and effective partnership between authorities and defenders:

"Oh yes, and especially with these authorities from the state of siege, and the military authorities of course, they came to disturb us, and wanted to show us that our rights were limited during the state of siege, and that they shouldn't receive us, given that we don't really have the freedom to defend people. The military authorities even wanted to take away our phones and we showed them the edict (which we also had in our bag) and that helped us [...] from then on, he was our collaborator. He always calls us when he has women coming from the bush, hostages who have been rescued by the army, he always calls us so that we can go and document their stories because the person, the military authority has understood that we are partners." (Participant 11, North Kivu) [48]

These scenarios are ideal, and excellent examples of how edicts can establish political will and collaboration. Moreover, such cases confirm the theory on *discursive opportunity structure* by Koopmans and Statham (1999), in the sense that common definitions and terms presented by the edicts lead to improved communication and collaboration between authorities and defenders. This contributes positively to social movement agency by increasing frame resonance (Gamson, 1992; Noakes & Johnston, 2005; Williams, 2004). However, such stories

are far from representative for the experience of other defenders. For certain groups of defenders, collaboration of this kind is inconceivable. Although the participants who collaborate successfully attribute this to the edicts, other participants' attempts to establish similar relationships using the edicts failed. This mainly concerns more marginalised, and especially counter-hegemonic social movements (Zawawi, Richard & King, 2021).

3.3.4 Seeking protection & asserting rights

Finally, the participants also described ways they use the edicts to seek protection and assert their fundamental rights. Although this tactic has many limitations, participants cited quite a number of cases in which the edicts successfully afforded them protection: the edicts served to directly increase and assert their agency by protecting them against arbitrary arrest or censure. Given the likelihood of threats and similar incidents, the edicts are often part of defenders' preventive security measures:

"I've always said to my colleagues, never forget to put an example of this edict in your bag, because you never know when you're going to refer to it." (Participant 14, South Kivu) [49]

The defenders we interviewed said that they invoked the edicts at different stages when threatened. For example, they can be a key tool for the release of HRDs from arbitrary arrest or as support when authorities threaten defenders. Many successful uses of the edicts were seen in cases of arbitrary arrest. One participant described how she directly cited the edicts herself, and how this helped her to put pressure on the authorities who arrested her:

"I used that. In fact, it was thanks to my own intervention that they didn't want to put me in prison twice because they understood that I was equipped. And even though they had just deprived me of communication, they understood that I was equipped. What's more, I had cited several articles, saying that we were partners and that I hadn't committed any offence. I used that, or at least I used it myself and it helped me a lot. Because it's a little book that I've really kept, even if I don't know how to say such and such an article, I cite it. And I always carry it with me, they even found it in my bag" (Participant 11, North Kivu) [50]

Indeed, in this case, using the edicts served as a direct defence. The fact that she carries a copy with her also seemed to give her confidence to define the boundaries of her work. HRDs and lawyers may also resort to the edicts to by using the edicts in a court case. One participant describes successfully using the edict in such a situation.

“We used the edict in front of the authorities when one of our women HRDs was prosecuted by the Tribunal authorities. We had to show that she was doing her job as a HRD" (Participant 17, South Kivu) [51]

The edicts have also proven effective for certain defenders claiming more specific rights included in the edicts. The participants say they have used the edicts to access certain pieces of information, to access detention facilities, and to protect their sources. These rights are stipulated in the North Kivu edict only and they have been successfully claimed by defenders working there.

Despite these successes, the responsibility remains with the defenders. In this sense, the edicts have only a limited influence on defenders' agency: not only have they got their own work, they also take on the responsibility of protecting others. Again, the impact of the edicts on the outcomes of social movements depends on defenders taking over state responsibilities (Koko, 2016; Labonte, 2015; Rauch, 2011).

Moreover, many participants do not use the edicts in situations of this kind. More often than not, the edicts alone do not suffice in emergencies. In most instances, the edicts lead to successful protection when combined with a collective effort through alert networks, as was also demonstrated in Chapter 3.1 (iv). This confirms the importance of collective networks in social movements (Rootes, 2007).

3.3.5 Conclusion

Overall, the edicts seem to have the potential to increase the agency of many defenders with whom we talked. Their use of the edicts confirms the social-constructivist approach proposed by Desmet (2014), with some positive, but also more negative, implications for the right to

defend human rights. For some defenders, the edicts may serve to improve collaboration by creating a *discursive opportunity structure* (Koopmans & Statham, 1999), although this does not apply to all defenders. Finally, the edicts are used by defenders to assert and defend their rights, with varying success. All participants, however, confirmed that the edicts increasingly place the responsibility for protecting the right to defend human rights on the defenders themselves. Defenders therefore take over the responsibilities of the State (Koko, 2016; Rauch, 2011). Indeed, the implementation of the edicts appears to depend almost entirely on defenders themselves, leading only rarely to the active and lasting improvement of their agency. The final part of this chapter will describe the limitations on the use of the edicts and introduce a broader perspective.

3.4 Limitations on the use of the edicts

Underlying these uses are many structural limitations that impede the impact of the edicts. During their trajectory towards the right to defend human rights, defenders are often blocked, despite attempts to use the edicts to their advantage. This chapter will discuss these limitations and discuss the factors involved. Most limitations seem to be linked to political will and a lack of consistent application, resulting in the uneven implementation of the edicts depending on the context, actors and topics involved.

3.4.1 Governance: political will & corruption

Many participants describe limitations that are related to governance. Participants confirm structural shortcomings in governance in the DRC that contribute to the uneven implementation of the edicts by authorities and to a limited impact on their agency. Indeed, participants highlighted many limitations that have been identified as key struggles for the DRC as a 'fragile state'. Miner & Trauschweizer, 2014 identified three main elements on which a state tends to fail in order to be qualified as 'fragile': capacity, authority and legitimacy. Many governance issues mentioned by participants do indeed fall within these categories. The concept of 'fragile states' is focused on practice, however, and largely disregards the cultural aspect of oppressive authorities. Although the literature fits in with this practical approach by linking governance issues in the DRC to the continuous violence of armed groups (Okarah et al., 2016; Neethling, 2014), participants mainly associate the lack of support with a lack of political will. Overall, participants state that the uneven implementation is mainly due to the

(lack of) efforts and attitudes of individual authorities. In this sense, issues linked to governance and political impact the agency of defenders in a practical way, but also, and indeed above all, reaffirm the systematic disapprobation of defenders by the authorities.

Shortcomings linked to practical issues can be linked to three main elements of the 'fragile state': capacity, authority and legitimacy (Miner & Trauschweizer, 2014). Mostly, however, the discussion here demonstrates why these limitations surpass practical limitations and affirm the imposition of 'natural limits of social reality and social practice' by authorities (Ford, 2003; McClean, 1999), as well as a lack of frame resonance (Noakes & Johnston, 2005; Williams, 2004). between authorities and defenders.

Because of the qualitative method adopted in this study, elements linked to state capacity (mostly financial) (Miner & Trauschweizer, 2014) were difficult to identify. Although many participants struggled with insufficient resources, and many authorities probably do as well, this study did not focus on the financial situation of these actors.

Participants did flag many instances of corruption. Corruption is often identified as a key indicator of 'fragile states', that has a particular effect on the legitimacy of the State (Miner & Trauschweizer, 2014). The majority of participants said they had been asked to pay for their protection or the liberation of fellow defenders. An LGBTQI+ defender facing unfounded charges described how the authorities were aware of his innocence but still asked for money in exchange for dropping the charges:

"The lawyer pleaded, pleaded, but the magistrate was firm. The magistrate said '[...]on top of that they have funding. If they also give me money, I'll close the case with no further action. [...] So he will give me \$5,000.'" "5,000 dollars, why? What did he do?" "I know he didn't do anything, but a whole neighbourhood came to make a complaint, so he has to pay a lot of money". (Participant 7, South Kivu) [56]

In some cases, participants describe mass arbitrary arrest by the authorities, followed by demands for money in exchange for their release. In these cases, monetary gain is apparently the goal. Although the frequency of events of this kind is not part of the scope of this study,

many participants share such stories. As a result, defenders conclude that access to protection by authorities depends on resources. The participants say that people with no money to offer are unlikely to be protected:

"If he is friendly with you and if you have something in your pocket, he can use the edict to help you. And if you have nothing in your pocket, he can't use it to help you. And that's what happens with the law in general in the Congo." (Participant 9, South Kivu) [57]

"On the other hand, we've seen a lot of cases of people who are, for example, in prison for the smallest things or waiting for long trials. We have a form of justice that, in inverted commas, isn't really very fair because it's a question of 'those who have more get justice'. (Participant 14, South Kivu) [55]

These instances of corruption may indicate broader governance issues that are not exclusively linked to human rights defenders but rather to the DRC as a 'fragile state' (Kaiser & Wolters, 2012). However, it also establishes a psychological barrier for defenders by undermining trust in authorities. The possibility of corruption means that defenders with fewer resources will not seek help because they risk losing too much money in the process. Instead, they resort to individual protection measures:

"We already know that in our country, if you get involved in a legal system, you don't know when it starts and when it's going to end. And you don't know what resources you're going to have to use. So we really prefer to develop more strategies at a personal level, at a community level that make attempts within a system that is so locked down, in a system that is so corrupt." (Participant 14, South Kivu) [58]

There are also issues linked to control, as flagged in the contextual chapter: authorities appear to have difficulty exerting their authority in remote areas, especially when armed groups are involved. The lack of knowledge of authorities of their responsibility under the edict (see the first part of this chapter) may also be an example of fragile governance.

Nevertheless, accounts from several interviewees indicate that the authorities make structural attempts to limit civil society. Participants describe active efforts by authorities to not only avoid, but act contrary to their responsibility. Some authorities refuse to help certain defenders by excluding them from their definition of HRDs; others say that the local edicts have no real legislative power. Authorities sometimes simply refuse to provide assistance without any clear reason. The following defender attempted to collaborate with the local authorities, without success:

"Three days ago, I was at the local authorities to explain to them how we can protect ourselves. Their concern is to intimidate us and see us flee. We can't run away either. We're really here to campaign for change. So we even tried to invoke the articles of this edict, but the government doesn't care" (Participant 2, North Kivu) [54]

Although issues linked to weak governance structure do not help, they certainly fail explain the unremitting hostility of authorities towards defenders. Rucht (2023) states that, when social movements challenge authorities, it automatically leads to a power struggle between the two. Our data indeed suggest that authorities are not restricted by any lack of capacity or governance structure, but that they make active efforts (requiring time and resources) to restrict the agency of defenders. In North Kivu, the state of emergency introduced by authorities with the ostensible aim of controlling armed groups is a case in point. Several defenders report that violence from the authorities has worsened in this context. Although the state of emergency should, in theory, continue to protect fundamental rights like freedom of expression (Cabinet du Président de la République, 2021), the authorities frequently invoke the “exceptional situation” to justify a crackdown on defenders and journalists:

"And today, with the state of siege, the context has become worse, really worse, darker than before, because the state of siege is an extraordinary, special situation in which freedoms are restricted. They even want to restrict freedoms that are protected by the Constitution, whatever the situation. And we see journalists being arrested every day because their only sin is that they went to cover a demonstration by activists rather of, for example, pressure groups, young people." (Participant 11, North Kivu) [5]

Several international organisations have called upon the Congolese government to lift the state of emergency because of the impact on citizens in general and defenders in particular (Amnesty International, 2022). However, the state of emergency is still in place. The authorities appear to be using it to further undermine the agency of defenders. This fits in with the global tendency towards the criminalisation of social movements and the restriction of civic space identified by Buyse (2018).

Participants often find their use of the edicts restricted when their goals conflict with those of authorities. Conflicts of interest are frequently mentioned as a factor here. This is particularly the case when defenders work on natural resources and environmental protection. The participants point out that politicians have financial interests in mining projects and therefore support projects and ignore human rights violations linked to these projects. Indeed, human rights violations in the mining sector of the DRC are often followed by impunity and a lack of accountability of authorities (Cirhighiri, 2023). In such cases, the presence of public policies in the form of the edicts is disregarded, and has little power to prevent environmental movements from failing in their mission.

One participant was offered money and a job by the national government when protesting against a mining project. When the participant refused, he received more calls pushing him to accept the money and abandon his human rights work:

"So when they found out about this, ah! the MPs called me to tell me how you had refused this money? You're not the one who's going to change our country!" (XXX¹⁷)
[60]

In these cases, edicts and the right of defenders are simply ignored, which means that they have a very limited impact on the agency of defenders working on topics linked to the

¹⁷ Anonymised further to avoid any risk of identification

environment or natural resources. When financial interests of authorities are involved, the impact of the edicts on the agency is extremely limited.¹⁸

Overall, the pattern to emerge from the stories of the participants is one of selective implementation. Our data demonstrate that conflicts of interests, especially those linked to the mining sector, impose severe limitations on the use of the edicts by defenders. Our data demonstrate that not only practical governance issues limit the impact of public policies, but that authorities engage in active efforts to restrict the agency of social movements, reaffirming the 'natural limits of social reality' and social practice (Ford, 2003; McClean, 1999). They also appear to act from ulterior motives, including financial incentive or reputational gain. In these cases, the edicts would seem to be virtually a dead letter.

3.4.2 Exclusion, stigmatisation & marginalisation

In addition to the limitations listed above, there are also limitations on specific groups, who are excluded from protection as a result of power dynamics and stigmatisation. These are generally on agency imposed by cultural norms (Kjaran & Naeimi, 2022) and 'limits of social reality' (Ford, 2003; McClean, 1999). Both the authorities and the defenders' communities contribute to these social norms. This means that groups working on certain topics soon run up against the limits of the impact of the edicts on their agency. These are often groups that are targets more broadly of the stigmatisation and marginalisation that also characterise their encounters with the authorities: youth defenders, environmental defenders, women defenders and LGBTQI+ defenders. The attacks on environmentalists seem to be linked more to financial interests; cisgender women¹⁹, youth and LGBTQI+ defenders face exclusion and stigma from their community through the limits of cultural norms (McClean, 1999). Women human rights defenders' movements and LGBTQI+ movements appear to correspond to the definition of counter-hegemonic social movements, and indeed encounter many obstacles due to social stigma (Zawawi, Richard & King, 2021).

¹⁸ International mining companies most certainly play a part here and they are known to be involved in grave human rights abuses in several provinces in the DRC (Amnesty International, 2016; Cirhigiri, 2023). In such cases, authorities tend to abandon their human rights obligations and follow personal financial interests instead (Amnesty International, 2016; Cirhigiri, 2023). The details of this involvement, however, are outside the scope of this study. See Cirhigiri (2023) for more details on extractive industries and community resistance.

¹⁹ I choose to separate cisgender women from transwomen in this context because they encounter very distinct forms of stigmatisation in the Congolese context.

Our data about the stigmatisation of youth defenders are too limited as a basis for conclusions. One participant said that youth defenders are not included enough in defender networks, decision-making and awareness raising. A more in-depth study of the systematic nature of this exclusion is required.

Contrary to our expectations, the participants did not describe the systematic exclusion of cisgender women HRDs (WHRDs) from protection under the edicts. On the contrary, female participants in this study told important success stories about effective collaboration with authorities, and they did not describe any particular gender-associated difficulties in this process. However, our sample did say that more limits were imposed on WHRDs in their daily lives and in their work. These impediments to their work were mostly community-based, resulting from peer pressure and normalised gender roles. For example, participants said that WHRDs are regularly seen as “troublemakers” and shamed for not conforming to communities’ expectations. In cases of attacks, social pressure caused the expectations on WHRDs as women in their community to trump their role as defenders. As a result, some (or many) women abandon their activities when their work becomes too dangerous:

"These women, their husbands were already starting to threaten them, saying, 'If you don't go back, we'll take other women, and your work there as a defender, what does it get you? You've left the family'. So we really had to look at how they could get back into their communities. But now they're back, but they're not doing what they used to do because, quite simply, personal security is what counts above all." (Participant 14, South Kivu) [61]

In these cases, the edicts have a very limited impact on agency: restrictions are not caused by formal restrictions or attacks by authorities, but by social pressure.

These social limits are further demonstrated by the case of LGBTQI+ defenders. In their community, LGBTQI+ defenders face strong stigmatisation and violence, which goes hand-in-hand with the severe stigmatisation of the entire queer community. LGBTQI+ persons are most

often rejected by their community and family, and perceived as wrongdoers in their community:

"There is also this incitement to hatred against trans people by the community. Often in South Kivu province, there is homophobic preaching, especially by pastors of churches who preach in the churches that if you have a trans person in the house, you have to chase them out because they are antichrists, they are sorcerers." (Participant 10, South Kivu) [62]

LGBTQI+ defenders in this study told us that they were insulted on a daily basis, that they were targets of regular physical violence and regular rape attacks, including collective rape and corrective rape²⁰. This violence is instigated by the entire community, including their family, their community, the church and the authorities.

"I've already been the victim of corrective rapes and also threats over the phone. It's a daily occurrence. Public insults, insults in the street. It's a daily occurrence. Personally, I'm often the victim of these acts. So it's really something that happens all the time." (Participant 10, South Kivu) [63]

Although this stigmatisation affects the queer community as whole, LGBTQI+ defenders are on the forefront of these attacks as they are publicly associated with their cause. It also has an important impact on their work. Furthermore, the restriction of their agency through social stigma is not only enacted by the direct community but also clearly adopted in official government structures and more formal attacks. LGBTQI+ defenders are criminalised by the authorities through labelling and criminalisation (Buyse, 2018): the most frequently mentioned tactic is to blame them for "attacking morality"²¹ or "promoting sexuality". Provisions like Article 7 of the North Kivu edict are used directly against defenders in cases such as these, possibly resulting in arbitrary arrest when they go outside. Several participants have reported that such

²⁰ Corrective rape, or *viols correctifs*, are a type of rape where perpetrators aim to punish victims. LGBTQI+ defenders report that many young people in their community engage in this type of rape, and that it is a particular form of violence to which their community is regularly exposed.

²¹ In French, *attaque aux bonnes mœurs*.

labelling is also enacted by neighbours filing complaints against them. In such cases, a direct use of the edicts becomes impossible:

"So when you tell a policeman that you're defending LGBTQ rights, he immediately accuses you of promoting homosexuality. (Participant 7, South Kivu) [64]

Several LGBTQI+ defenders attempt to counter this labelling by framing their work through a global and more inclusive human rights discourse. However, their interpretation of their mission does not correspond to that of other defenders. In meetings with other defenders, they actually encounter a lot of homophobia and transphobia, and they are regularly stigmatised by other defenders:

"I can say that one day I mentioned that edict, I remember [...] and I just gave my views on human rights defenders. But one great human rights defender [...] stood up. He said: no, it was for human rights activists, not for gay rights activists. I asked the question: aren't gay people human beings? He said: No, they're not human beings, they're animals. [he laughs]" (Participant 7, South Kivu) [65]

Indeed, in practice, LGBTQI+ defenders are often excluded entirely from the definition of defenders. This is another example of a restrictive use of the edicts by other defenders who, by adhering to a narrow definition of human rights, exclude LGBTQI+ defenders. In this way, the social-constructivist use of the edicts affects LGBTQI+ defenders negatively: in the absence of clear wording, restrictive interpretations of human rights work influenced by social norms limit agency. A participant said that defenders were refused help by an organisation working on the protection of defenders:

"You see, you go to someone's office to explain the problem of the community, of the people who have been arrested, he starts preaching to you: 'Why are you doing this? You have to leave it alone, it's a sin, all that. [...] I can't really defend a homosexual, ever.'" (Participant 7, South Kivu) (Participant 7, South Kivu) [66]

Even in our small sample of participants, this attitude was expressed by other (non-LGBTQI+) defenders. Homophobia is seen in defenders themselves and some participants believe there is a hierarchy of different defenders. An environmental defender stated his indignation about being refused help when LGBTQI+ people were helped:

"And what's worse [...] I remember, they even helped homosexuals, but we were rejected!" (Participant 2, North Kivu) [67]

Such comments by other defenders appear to create a hierarchy in which LGBTQI+ defenders and their mission are placed at the bottom of priorities. Although not all defenders are outspoken in this respect, some say that LGBTQI+ rights are a notoriously controversial topic that organisations prefer to avoid:

"And so, they themselves [LGBTQI+ people], people like that, find it hard to come out. They are rare, although it's true that we see them, in Bukavu, but they are very rare. Many live in hiding. Even when an organisation supports this category of people, it is singled out. So you get the impression that society is very segregated when it comes to this category of people." (Participant 14, South Kivu) [68]

Our sample included several examples of organisations that exclude LGBTQI+ defenders from their mandate, even when their organisations support defenders in general. If the subject is not an explicit part of their mandate, organisations exclude it:

"Sincerely, in our mandate, in our charter, it's not really mentioned explicitly that we offer assistance to homosexuals. But if this case happens to us, what we do is refer to other colleagues who have this package of care." (Participant 3, South Kivu) [69]

Some defenders do support LGBTQI+ defenders, but choose to not do so publicly for fear of retaliation.

"There may be other organisations working on LGBTQ rights - we are working on it, but we can't even put it on our website, we can't even put it on public platforms. We'll never

say it, although those who know me know that I do that, but other organisations like that obviously work informally." (Participant 4, South Kivu) [70]

These different forms of exclusion demonstrate that social norms are reflected in labelling practices (Buyse, 2018) which are resorted to not only by authorities, but by other defenders and community members. All of these actors impose limits on the agency of defenders when it comes to cultural norms (Kjaran & Naeimi, 2022), and therefore severe restrictions on social movement agency (McClellan, 1999; Ford, 2003). According to our sample, the most severe impact is women human rights defenders and (to an even greater extent) LGBTQI+ defenders. This demonstrates that topics linked to gender are soon seen as controversial and not only opposed by the authorities, but also by communities and even other defenders. In such cases, the edicts have only a limited positive impact on the agency of defenders, and may even be used to officially exclude these groups, especially when they contain a mention of public morality (Article 7 of the North Kivu Edict).

3.4.3 Conclusion

To conclude, this final part of the analysis demonstrates that there are several elements that systematically restrict the impact of the edicts on the agency of defenders. Put in more general terms, public policies have a limited, and sometimes negative, impact on the outcomes of the human rights movement. First of all, participants flag governance issues: authorities make active efforts to restrict the agency of social movements. Such behaviour might be linked to practical limits or personal motives, often financial. Furthermore, social norms imposed by defenders' communities as a whole, restrict social practice and social movement agency. In such cases, communities and even other defenders may contribute to attacking or restricting defenders' agency, especially when counter-hegemonic social movements (in this case women and LGBTQI+ defenders) are concerned. Such restrictions linked to governance, political will and social norms can be found in all instances where defenders use the edicts, severely offsetting any positive impact on their agency.

Chapter 4: Conclusion & Discussion

4.1 Conclusion

This study analysed the impact of two edicts on the protection of human rights defenders in North and South Kivu. It aimed to answer the following research question:

How, and to what extent, do Edicts No. 001/2016 and 001/2019 in North and South Kivu (DRC) influence the agency of human rights defenders from a social movement perspective?

The following sub-questions were studied:

1. To what extent are human rights defenders in the provinces of North and South Kivu aware of the existence of Edicts No. 001/2016 and 001/2019?
2. What are the views and interpretations of human rights defenders with respect to Edicts No. 001/2016 and 001/2019 in North and South Kivu?
3. How, and to what extent, do human rights defenders use Edicts No. 001/2016 and 001/2019 to protect and exercise their right to defend human rights?
4. What limitations exist in the use of Edicts No. 001/2016 and 001/2019 by human rights defenders to protect and exercise their right to defend human rights?

4.1.1 General results

The social context of defenders and their interaction with different actors is an essential part of the analysis of their organisation (Rucht, 2023). Participants identified four main groups: authorities, armed groups, the local community and civil society (other human rights defenders). Although the participants mentioned some instances of successful cooperation with the authorities, the latter are generally hostile towards defenders and their relationship with defenders was marked by a strong lack of trust. Armed groups are an important threat and challenge to the work and agency of defenders, in particular threatening their physical safety and attacking the social structure of their community. The local community also has an important impact on the agency of defenders: although they are important support systems for defenders, they also impose social limits on the agency of defenders through social pressure and stigmatisation (McClean, 1999). Finally, other defenders have an important positive impact on the agency of many defenders through the creation of protection networks. These different

actors are essential for the development and collective identity of social movements (Melucci, 1988; Rucht, 2023), as well as their security situation (Buyse, 2018).

Concerning **sub-question (1)**, the defenders in our sample are well informed about the edicts, both in North and South Kivu. The same defenders, however, almost universally state that they are the 'lucky few' and that there is still a widespread lack of awareness of the edicts. As the authorities make only limited efforts to disseminate the edicts actively and evenly to all defenders and authorities, this responsibility is therefore taken up by defenders themselves (Labonte, 2015). This results in the uneven implementation of the edicts where defenders with fewer resources or working in more remote areas are left in the dark.

In answer to **sub-question (2)**, this study found that defenders are quite positive about the edicts, especially as legal documents: many participants see them as a legal basis for their work and as a source of legitimacy, both individually and for all defenders.

Turning to the use of the edicts by defenders (**sub-question (3)**), the user perspective proposed by Desmet (2014) allows for a description of their impact from a social-constructivist perspective. HRDs use the edicts to shape the definition and interpretation of their work, with the potential for the edicts to benefit defender agency. In practice, however, the edicts risk being used to support the narrow interpretations of defenders' mandate, with the associated potential to restrict their agency.

The participants mainly see the edicts as a tool that shapes defenders' work and their right to claim their rights. However, they focus less on the obligations the edicts impose on the State. Furthermore, contrary to our expectations, defenders do not believe that the provisions of the edicts that set out obligations impose too many limits on their activities. Nevertheless, the participants in our sample did give some examples of the limited interpretation of the obligations that the edicts impose, and that restrict social movement agency (Ford, 2003).

The participants also use the edicts to improve collaboration with authorities by resorting to the edicts as a source of common wordings and definitions. Successful cases confirm the theory of *discursive opportunity structure* by Koopmans and Statham (1999), and identify the edicts as

important tools to create this discursive opportunity structure. However, not all defenders are able to use the edicts in this way, and so this use appears to affect the agency of some defenders and not others.

Finally, the edicts are used by defenders to assert and defend their rights with varying success. What remains clear, however, is that for defenders' rights to be effectively protected, the first step has to be taken by defenders themselves. Even when it comes to protecting and promoting their own rights, they take over the State's responsibilities (Koko, 2016; Rauch, 2011). The primary impact of the edicts is therefore restricted to the agency of defenders who actively resort to them, and even then in limited ways.

As an answer to **sub-question (4)**, participants identified several structural limitations to the impact of the edicts on their agency: governance issues linked to DRC's status as a 'fragile state' (Miner & Trauschweizer, 2014) and the active efforts of authorities to restrict civic space (Buyse, 2018). Our data demonstrates that conflicts of interest, especially those linked to the mining sector, impose a hard limit to the use of the edicts by defenders. All these elements in combination impose severe limitations on the potentially beneficial effects of the edicts on human rights. Furthermore, our sample suggested that, in the case of some social norms, communities and other defenders participate in limiting the agency of defenders (McClean, 1999). This was seen particularly in the case of counter-hegemonic social movements (women and LGBTQI+ defenders) (Zawawi et al., 2021), who face simultaneous formal and informal restrictions on their agency.

4.1.2 Concluding words

Given our findings, it is fair to conclude that, although the edicts may prove useful in some areas, implementation and interpretation are strongly limited by structural governance issues and social stigma. Social movement agency in the DRC is hampered by the wide variety of social factors that were discussed in this study. These structural limitations strongly influence how, and whether, the edicts are used and how they impact the agency of defenders in North and South Kivu.

Despite these limitations, the application of Desmet's user perspective (2014) revealed rich and creative forms of agency, as demonstrated by the interaction of defenders with the edicts. However, this helped only the defenders who already had a certain level of agency: they use the edicts as a tool in their work, and to create frame resonance with key stakeholders and thereby improve relations with authorities (Noakes & Johnston, 2005; Williams, 2004). However, the restrictive interpretations of defenders and social norms continue to exclude certain groups from this beneficial use of the edicts. Indeed, the edicts have a very limited impact in terms of influencing social norms, or the 'natural limits of society and social behaviour' (McClean, 1999). Some defenders (possibly unintentionally) therefore reproduce discriminatory social norms by failing to include social change in their definition of human rights work (Maclean, 1999). Authorities intentionally exploit this opportunity for interpretation to justify their hostility towards certain groups of defenders.

This mechanism mostly impacts groups of defenders who have already have limited agency: marginalised groups remain excluded because social stigma causes the edicts to be used against them, or to simply not be adapted to them. This applies to women defenders to some degree, particularly because the edicts do not effectively address the social pressure that interferes with their work. However, most impact is seen in severely stigmatised groups, in the case of our sample LGBTQI+ defenders.

This means that, although an impact of the edicts on the agency of human rights defenders can be identified, the lack of efforts to overcome practical and cultural barriers cause them to be useful only to an already relatively accepted and well-connected group of defenders. If these structural issues are not addressed, the edicts will continue to be used by a select group of

defenders, and will prove less useful for defenders who work from a more isolated position. The edicts may therefore lead to slight improvements in the situation of defenders who are relatively well accepted by authorities and other defenders, but will fail to effectively protect the right to defend rights for everyone, particularly those who need it the most.

4.2 Discussion

This study is an exploratory study of the use of edicts by defenders and provides a broad overview of the ways in which the edicts affects the agency defenders, through the application of a user approach (Desmet, 2014) to the local edicts in North and South Kivu. The study contributes to a broader discussion on the impact of public policies on social movements and provides an initial reflection on the role of policies in influencing the organisation and collective identity in social movements (Ormrod, 2014; Rucht, 2023).

4.2.1 Strengths & limitations

This study interviewed a limited number of participants, focusing on in-depth individual stories and experience. The qualitative approach allowed for a more in-depth conversation, and gave participants the opportunity to express themselves and share many stories about their work. It generated a large amount of background information that improved the interpretation of our results and allowed us to establish a nuanced and intimate picture of the reality of defenders. Although this affected the generalisability of the study to the broader dynamics of social movements, this study provided in-depth information that, despite the restricted focus on two provincial edicts contributes through the detailed analysis of the impact of these edicts to ideas for further research in the field of social movement outcomes (Bosi & Uba, 2009).

Although this is an exploratory study, it succeed in addressing an existing knowledge gap relating to HRDs and protection policies. In particular, the views of defenders and their alternative use of public policies, as well as a more detailed overview of the exclusion of LGBTQI+ defenders, are elements that have received scarce attention in academic publications. A strength of our study was the one-on-one approach in combination with the secure online space: this allowed all participants to speak freely without peer pressure. Although this means that the number of participants was more limited and, as pointed out here, a certain selection bias was present, the risk of a social desirability bias (Bijleveld, 2019) was significantly reduced.

In the methodology chapter, several sample biases were discussed that affect the representativeness of the sample population and the generalisability of the results (Bijleveld, 2019; Faria & Dodge, 2023). The practical restrictions on the selection of respondents tended to exclude defenders with fewer resources, fewer connections and a smaller platform. It is therefore to be expected that some groups in more vulnerable positions were not represented

in our sample, and that subsequent research should address these groups wherever possible. Although this assumption of sample bias is based on statements from participants that cannot be directly confirmed, those statements suggest that other defenders face more challenges in terms of access to and the use of these edicts, as well as additional risks to their security or restrictions on doing their work in public.

The interviews and the citations here raise many questions that set out the lines for further research on this topic. For example, our data do not explain the hostility of the authorities or the reasons for their refusals to help defenders since the point of view of the authorities was excluded from this study entirely. However, they do provide a more in-depth view of how defenders perceive that hostility and how it may influence the ‘power struggle’ between authorities and defenders (Rucht, 2023). The importance of trust was reflected by our participants and it could be explored in more depth in the field of social movement studies, developing the assumption of human rights organisations that trust and public attitudes are key elements in an enabling environment for civil society (Mendelson, 2015). Another potential direction for research is the application of Desmet’s user perspective to authorities to study their perceptions and protection practices with respect to defenders.

4.2.2 Reflections

This study underlines the fact that the impact of top-down public policies is problematic in the sense that the policies do not lead directly to the protection of defenders. Indeed, the implementation of those policies requires careful planning for their dissemination and implementation, as well as the development of monitoring mechanisms if the aim is to ensure the protection of all defenders. In order to identify key phases for the effective integration of these elements, there should be more research into the actors involved in policy development, and how discussions should be organised in the course of policy development. Although the generalisability of the results of this study is limited, the in-depth approach has identified certain patterns that can serve to guide further research.

Interestingly, other groups outside the context of the defence of human rights have mentioned challenges similar to those mentioned by defenders. An example is the Pygmy minority in the DRC, which we were unable to include in our sample, primarily due to the practical difficulties of access to these groups, who often reside in remote areas with no internet access. Minorities

face many forms of exclusion and stigmatisation (EurAc, 2023; IUCN, 2022). Furthermore, like the LGBTQI+ community, they are therefore less likely to benefit from the edicts. It is striking that a law similar to the HRD protection law was developed for Pygmy minorities²² and that the challenges to the use of this law closely echoed those we found for the edicts in North and South Kivu. For example, speakers at a conference on the rights of Pygmy minorities in the DRC said that limited efforts were made to disseminate the law (which was published online in French, even though Pygmy minorities live mostly in forests and generally speak little French), that the authorities were not aware of the existence of the law, and that the implementation of the law was impeded by continuous stigmatisation and prejudice (EurAc, 2023).

A comparative study of these protection laws may identify additional patterns and confirm common elements in the limitations on implementation and political will. Indeed, parallels may serve to confirm the hypothesis that the challenges to the implementation of the edicts extend beyond the protection of defenders, possibly reflecting structural shortfalls in implementation and shortcomings in political will, giving rise to the question of why such laws continue to be developed, and what the aims of the authorities are. Statutory initiatives are applauded by the international community, seemingly without a critical assessment of their impact in practice. If results are not monitored, there is a risk that authorities may be encouraged to indulge in what one may call *edictwashing*, without feeling the need to actually implement legislation or make any active and lasting efforts to improve human rights.

A top-down approach, as exemplified by the edicts we have considered here, therefore runs the risk of resulting in public policies that fail to address the fundamental issues underpinning the restrictions faced by defenders. The case of LGBTQI+ defenders in this study demonstrates that the edicts have not been effective in tackling grassroots discrimination. Policies must be accompanied by a thorough review process and an analysis of human rights movements on the ground. However, that process is unlikely to be successful if political will to change is lacking. In that context, public policies alone cannot change the status quo in any fundamental way. Nevertheless, reconciliation initiatives and widespread advocacy activities that involve a wide range of human rights movements could be a strong instrument in establishing recognition for human rights, and the diversity those rights imply.

²² <https://www.leganet.cd/Legislation/Droit%20Public/DH/Loi%202022.030%20du%2015%20juillet%202022.html>

This analysis may appear pessimistic in many ways. It is crucial to note, however, that many participants did mention the successful use of the edicts and successful collaboration with authorities, and expressed positive views about the edicts. Despite the limitations, public policies continue to be an essential step towards the effective protection of defenders. Even internationally, they create an opportunity for discussion, analysis and even hope. Most of all, public policies underline the crucial role of national and local authorities to protect the right to defend human rights. Let us hope that, with the right monitoring arrangements and awareness raising, public policies can serve as a first step towards a more just future for human rights defenders.

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Annex 1: Citations in original language (French)

1. “Avec Kabila, le premier ministre president élu, on a pensé que ça allait changer les choses. Mais malheureusement, ça n’a rien changé. Du point de vue de la gouvernance, la vie de la population ne s’est pas amélioré. [...] Nous nous sommes rendu compte que nous étions en train de tourner en rond.” (Participant 1, South Kivu)
2. « les autorités toujours ils disent que nous sommes dans le période de l’état de siège et des fois, ils peuvent arrêter, faire des perquisitions, des bouclages mais juste après il y a beaucoup de lamentations, beaucoup de violations des droits humains. Maintenant, lorsqu’aussi les DDH cherchent à revendiquer, on les arrête tout simplement. » (Participant 13, North Kivu).
3. « Même les forces de sécurité, que ce soit la police, que ce soit le FARDC, que ce soit les services telles que l’ANR, dans les zones non accessible ils se comportent même plus que les groupes armées. » (Participant 1, South Kivu)
4. « Pendant qu’on est dans des périodes électorales, les DDH sont de plus en plus menacé.e.s. » (Participant 1, South Kivu)
5. “Ces groupes armées qui s’adonnent à des violations graves des droits humains. Puisque là où ils opèrent, il y a presque l’absence de l’état, c’est eux qui font la loi là-bas. Ils se permettent de faire tout ce qu’ils veulent. » (Participant 3, South Kivu)
8. “Groupes armées ... attaquent et détruisent l’environnement” (Participant 2, North Kivu)
9. « Au parc national de Virunga, les grands exploitants sont les groupes armées comme le FDLR et d’autres officiers militaires. » (Participant 19, North Kivu)
10. “Donc c’est vraiment un contexte très compliqué, parce que les DDH sont vraiment des cibles, et des autorités politico-administratives, et des groupes armées et des autorités militaires, et des autorités policières, et pourquoi pas aussi des autorités sécuritaires (donc les agences de renseignement et ainsi).” (Participant 3, South Kivu)
11. “D’abord il faut savoir que l’ANR est là. [...] si vous voulez vraiment être un agent humanitaire ou bien DDH, vous devez mettre en tête qu’ils sont là et ils ne sont pas là pour vous aider, ils sont là pour vous stopper de travailler.” (Participant 9, South Kivu)
12. “J’ai produit un rapport, et d’abord j’ai eu plusieurs tentatives avec le conseil du gouverneur à l’époque des mines, son conseil mines, en même temps il était le conseil juridique de cette même entreprise. Il m’a menacé pour dire voilà, si je produisais le rapport, je devais fuir la province du Sud Kivu.” (Participant 1, South Kivu)
13. “Et je me souviens, personnellement, nous avons rapporté ces violations des droits humains et le gouverneur [...] d’ailleurs qui est encore en fonction, [...] c’est d’abord son soutien et ses collaborateurs ont commencé à nous dire pour nous menacer au téléphone. Ils ont commencé les menaces au telephone.[...]” (Participant 4, South Kivu)
14. “Ils nous appellent comme une association de malfaiteurs. Ils disent que nous sommes en train de préparer des rébellions. C’est du n’importe quoi en fait.” (Participant 10, South Kivu)
15. “Bon, nous faisons tout pour être en contact vers le défenseurs des droits humains, mais aussi nous sommes obligés de collaborer. La relation avec les autorités c’est juste une relation de partenariat. [...] lorsqu’on est là pour défendre les autres, on ne doit pas se créer un camp d’ennemi contre les autorités.” (Participant 11, North Kivu)

16. “Parce qu’avec le bruit, le ministre X était venu [...] et moi j’ai pris le courage encore, j’ai expliqué à ce ministre et dit voilà, les gens sont en train de souffrir. [...] Il m’a dit que voilà, je vais m’impliquer dans ça, et après le gouverneur a pris la mesure de suspendre ces entreprises là.” (Participant 1, South Kivu)
17. “ce sont les autorités par exemple qui nous donnent ces documents, parce que tous les documents sont secrets. [...] Au fait, c’est vrai, la société est pourrie mais on trouvera toujours des gens quelque part qui ont quand même un certain sens que ça doit marcher.” (Participant 4, South Kivu)
18. “Ces groupes armés qui s’adonnent à des violations graves des droits humains. Puisque là où ils opèrent, il y a presque l’absence de l’état, c’est eux qui font la loi là-bas. Ils se permettent de faire tout ce qu’ils veulent.” (Participant 3, South Kivu)
19. “les risques sont très élevés ici chez nous, surtout avec la guerre ici de M23, les groupes armés qui se sont aussi transformés en partenaires du gouvernement mais dans les années passées c’était terrible.” (Participant 6, North Kivu)
20. “les autorités locales militaires ou policières leur ont déjà collé les noms des rebelles et donc on vous arrête même vous défenseurs, sous prétexte que vous êtes collaborateur de ces rebelles, la population arrêtée sous prétexte et sous les noms des rebelles.” (Participant 11, North Kivu)
21. “Actuellement, il y a beaucoup de DHH qui ont fui les zones occupées par les rebelles de M23 parce qu’ils recevaient les messages [...] ils [les rebelles M23] ont déjà publié une liste à laquelle je figure: [...] ils [les DDH] doivent chercher où aller, sinon c’est l’exécution sommaire.” (Participant 12, North Kivu)
22. “La première chose c’est le soutien des amis [...]. Parce qu’en fait, les amis, les familles, surtout la communauté, aussi nous soutiennent en tout ce que nous faisons.” (Participant 3, North Kivu)
23. “Le groupe de plaidoyer communautaire, c’est pour amener les femmes non seulement à aller ensemble dans certaines actions de plaidoyer, mais en même temps comment elles peuvent compter les unes sur les autres pour se protéger.” (Participant 14, South Kivu)
24. “Je peux dire que nous avons de la chance parce que notre bailleur, donc le propriétaire de la maison [...] est une femme très ouverte. C’est une femme très tolérante, c’est une femme qui nous accepte. Parce qu’il y a eu [...] des voisins de notre bureau qui sont partis à dire aux propriétaires de la maison de nous chasser, que nous sommes une organisation des homosexuels, mais la propriétaire de la maison a dit moi, je n’ai pas des problèmes avec eux.” (Participant 10, South Kivu)
25. “Le système X où ils peuvent nous alerter soit par SMS, soit par Whatsapp et dès que nous avons cette alerte là-bas, nous devons immédiatement convoquer une réunion d’urgence. Au niveau d’un bureau du réseau nous convoquons une réunion d’urgence que nous appelons la réunion de traitement de cas de protection.” (Participant 3, South Kivu)
26. “ils voulaient m’amener dans la prison mais d’autres hésitaient parce qu’ils recevaient déjà des téléphones, mais j’étais amenée dans un endroit où je dirais, dans un endroit seul. Ils voulaient d’ailleurs me demander d’ôter les souliers, d’autres disaient « non c’est une dame et puis les gens sont en train d’appeler, attention ils sont en train d’appeler là ». Mais j’avais compris que leur intention était de m’amener loin” (Participant 11, North Kivu)

27. "There are even human rights defenders who do not know that the edicts on the protection of human rights defenders exist. So there have been shortcomings in awareness raising and popularisation." (Participant 6, North Kivu)
28. "Nous avons constaté tout d'abord qu'il y a une année, il y a plus d'une année, que les autorités n'étaient même pas informées de cet édit. [...] Parce que les autorités étaient souvent en train d'inquiéter les défenseurs, parce qu'il n'était pas aussi au courant." (Participant 11, North Kivu)
29. "Et le chef du parquet ... lui-même avait déclaré séance donnant que si je savais qu'il y a un tel cadre légal qui protège le défenseur des droits de l'homme, je n'allais pas commettre la bêtise de transférer les militants XX à Goma." (Participant 4, South Kivu)
30. "En fait le gouvernement n'a pas envie que l'édit soit vulgarisé. Ce sont les organisations qui doivent avoir l'obligation de le vulgariser auprès notamment de ces autorités. Parce que si on le vulgarise [pas], ça aide effectivement à limiter beaucoup les dégâts notamment sur ceux qui violent les droits des citoyens ou les droits des DDH." (Participant 4, South Kivu)
31. "parfois il y a des policiers qui eux jamais ont été à l'école. Qui ne savent lire ni écrire donc ils n'ont jamais carrément eu accès à cet édit quoi. Donc ils ne connaissent rien de tout ça." (Participant 4, South Kivu)
32. "On essaie de vulgariser la loi, mais c'est un peu difficile parce qu'on vulgarise seulement en français et nos membres sont en majorité des gens qui n'ont pas étudié." (Participant 9, South Kivu)
33. "Il y a également la sensibilisation au-delà des grandes villes, au-delà de Bukavu par exemple. Il faut aller à l'intérieur, dans les territoires. Dans les territoires, on a constaté effectivement qu'il y a les plus graves violations de droits de l'homme. C'est vrai en ville, ça existe, mais dans les territoires c'est là où il y a les plus graves violations des droits humains. [...] j'ai l'impression que ce n'est pas fait dans le fin fond." (participant 4, South Kivu)
34. "... avec la promulgation de l'édit, ça donnait au moins une valeur du respect envers les DDH. On dit quand même que les DDH sont là, qu'ils doivent être respectés comme tel parce qu'il y a quand même un texte qui les reconnaît comme tels." (Participant 1, South Kivu)
35. "Bon, au fait, lorsqu'on fait référence à cet édit-là, les gens comprennent que vous êtes renseigné, vous êtes au courant. C'est ça, c'est l'aspect positif parce que dans des grandes réunions, lorsqu'on fait référence, c'est un point positif. Ils comprennent que vous êtes quand même renseigné, qu'on ne doit pas vous faire si bien n'importe quoi. Ça, c'est un aspect qui est vraiment positif par rapport à cet édit-là." (Participant 14, South Kivu)
36. "Même si les opérateurs de justice peuvent ne pas en tenir compte [...] nous déjà nous savons que c'est un document qui nous protège" (Participant 3, South Kivu)
37. "Moi je me rappelle que j'avais lu juste un article, je leur ai dit : « Ce que nous faisons, ce n'est pas contre ni les autorités ni la population. Mais en fait, c'est notre droit, c'est notre rôle de défenseur de droits humains, en tant qu'être humain, de jouir de certains droits. Et parmi ces droits, il y a le droit à une sécurité, à une protection, parce que c'est vous qui avez les rôles ou la responsabilité de nous protéger. »" (Participant 14, South Kivu)
38. "Avec l'édit, c'est vrai qu'à un certain niveau nous, organisation de promotion des DH dans la société civile, ça a changé un peu d'approche. Parce que dans presque toutes

les activités, que ce soit la sensibilisation, les activités de plaider, de mobilisation que nous faisons, nous disons toujours qu'il y a un édit qui nous protège nous les droits. Même dans les activités de formation, renforcement des capacités, on cite ça comme une source de droits que nous avons au niveau de la province qui essaie un peu de réglementer notre travail." (Participant 1, South Kivu)

39. "Mais aussi, cet édit dit quels sont les droits et les devoirs des DDH. [...] Quand on essaie un peu de travailler avec les DDH, nous demandons: est-ce qu'un DDH a agi de manière pacifique par exemple ? Et c'est là où même quand nous traitons des cas des DDH qui sont menacés, la première des choses qu'on dit c'est: est-ce que le DDH a agi de manière pacifique ? Est-ce qu'il n'a pas posé des actes qui sont considérés comme des actes infractionnels ?" (Participant 1, South Kivu)
40. "dans le cent actions que nous faisons, nous essayons un peu de reconnaître qu'il y a un édit qui est là que les DDH doivent travailler selon cette ligne de conduite de l'édit qui nous protège." (Participant 1, South Kivu)
41. "Ensuite, parce que ce n'est pas seulement les droits, cela comprend aussi des obligations et parfois les obligations sont importantes."
42. "Un monsieur a dénoncé, mais sa façon de dénoncer, lorsque nous avons fait l'analyse, il a utilisé un peu, il a fait des disputes, donc il n'est pas resté pacifique. Jusqu'à ce qu'ils sont partis à quelques cent mètres avec ces militaires dans leurs disputes-là, et le militaire a tiré sur lui et puis il s'est amené au parquet militaire. Donc nous avons un grand travail d'échanger sur cet édit ici pour montrer qu'un défenseur de droits humains vraiment il doit être pacifique." (Participant 13, North Kivu)
43. "C'est également de montrer aux DDH leur devoir. Beaucoup de DDH pensaient qu'ils n'avaient pas de devoirs. Donc tu vas voir dans un village un DDH qui se comporte comme une autorité. Les gens peuvent déposer des plaintes chez lui, ainsi il se substitue aux autorités dans la communauté. L'édit vient aussi recadrer les DDH en disant: vous avez des droits, mais aussi des devoirs." (Participant 15, North Kivu)
44. "lorsque ça parle aussi des obligations des défenseurs, ça essaie de limiter, de limiter le travail, l'exercice, le travail des défenseurs. Et c'est toujours cet article, de tels articles qui brandissent les autorités, à disant voilà vous n'êtes pas au-dessus de la loi, et voilà même si justement vous protégez, mais voilà que vous-même, vous ne pouvez pas franchir ici." (Participant 11, North Kivu)
45. "Donc l'outil est devenu un outil non seulement de plaider en faveur de la protection des défenseurs des droits humains, mais aussi un support pour nous de pouvoir défendre même cette collaboration qui doit régner et de pouvoir vulgariser aussi les devoirs qu'ont les autorités." (Participant 11, North Kivu)
46. "On a organisé à travers la province neufs ateliers qui réunissaient 50 participants par atelier, parmi qui les acteurs de la société civile et DDH, y compris les militants pour la démocratie. Les autorités judiciaires, les autorités politico-administratives, les services de sécurité, c'est-à-dire ANR, police, FARDC, des jeunes. En tout cas, c'étaient des ateliers où d'ailleurs il y avait un dialogue interactif entre les acteurs." (Participant 12, North Kivu)
47. "Mais aussi cet édit nous a montré que nous devons mener nos activités sans entrave, ce qui nous rassure. Par exemple, moi-même, notre organisation, elle est plus ou moins connue. Les fois que je me présente à la mairie, je me présente, près des commandants, même de FARDC, on est reçus et on présente les problèmes... on parle et on échange avec eux ça. L'édit nous aide vraiment dans ce sens-là." (Participant 13, North Kivu)

48. "Ah oui, et surtout avec ces autorités de l'état des sièges, et les autorités militaires bien sûr, qui venaient de nous inquiéter, et voulaient nous montrer que nos droits se limitaient en période de l'état de siège, et qu'ils ne doivent pas nous recevoir, étant donné que nous n'avons pas vraiment de liberté de défendre les gens. Les autorités militaires voulaient même nous ravir nos téléphones et nous avons montré l'édit (que nous avons d'ailleurs dans notre sac) et ça nous a aidé [...] dès lors, il a été notre collaborateur. Il nous appelle toujours quand il a des femmes qui viennent de la brousse, des otages qui ont été sauvés par l'armée, il nous appelle toujours pour que nous puissions aller documenter leurs histoires parce que la personne, l'autorité militaire avait compris que nous sommes partenaires." (Participant 11, North Kivu)
49. "moi, j'ai toujours dit à mes collègues, n'oubliez jamais de mettre un exemple de cette édit-là dans votre sac, parce qu'on ne sait jamais à quel moment vous allez faire référence à ça." (Participant 14, South Kivu)
50. "je me servais de cela. C'est d'ailleurs grâce à l'intervention que je faisais moi-même, qu'ils ne voulaient pas me jeter deux fois en prison parce qu'ils comprenaient que je suis outillée. Et même s'ils venaient de me priver de la communication, ils avaient compris que je suis outillée. Et d'ailleurs, j'avais cité vraiment plusieurs articles que nous sommes des partenaires et que moi je n'ai pas commis aucune infraction. Je me servais de ça, en tout cas moi-même je me servais de ça et ça m'avait beaucoup aidé. Parce que c'est un petit bouquin-là que j'ai retenu vraiment même si je ne sais pas dire tel article, je dis ceci. Et toujours je me déplace avec l'édit, ils avaient même retrouvé ça dans mon sac" (Participant 11, North Kivu)
51. "Nous avons utilisé l'Édit devant les autorités quand une de femme DDH était poursuivie par les autorités du Tribunal. Il nous a fallu démontrer qu'elle faisait son travail de DDH." (Participant 17, South Kivu)
52. "Parce que finalement quand vous avez cet édit et les acteurs commencent à dénoncer, trop souvent ce sont des coups de fils qui viennent de par ci et là pour dire libérez tel ou laissez tel, qu'est-ce qui se passe ? Et ça nous permet de respirer un tout petit peu. Donc au-delà du cadre légal, vous avez aussi ce côté de synergie, de coups de pression qui vous permet d'obtenir des résultats." (Participant 4, South Kivu)
53. "ici il y a trois jours, j'étais là au gouvernement pour leur expliquer comment on peut voir comment nous protéger. Leur souci, c'est de nous intimider et nous voir fuir. Nous aussi, nous ne pouvons pas fuir. Nous sommes là vraiment pour militer pour le changement. Alors on a essayé même d'invoquer les articles de cet édit, mais le gouvernement s'en fout" (Participant 2, North Kivu)
54. "Et aujourd'hui, avec l'état de siège, le contexte est devenu pire, pire vraiment, plus sombre qu'avant, parce que l'état de siège étant une situation extraordinaire, spéciale où les libertés sont restreintes. Ils veulent aller même toucher les libertés qui sont protégées pourtant par la Constitution, quelle que soit la situation qu'on vit. Et nous voyons des journalistes être arrêtés chaque jour parce que leur péché c'est seulement, ils sont partis couvrir la manifestation des activistes plutôt de, par exemple, des groupes de pression, des jeunes." (Participant 11, North Kivu)
55. "Par contre, nous avons vu beaucoup des cas, des personnes qui voilà, qui sont par exemple en prison pour les moindres choses ou qui attendent des longs procès. On a une justice qui voilà entre guillemets, qui n'est pas vraiment très juste parce qu'il y a la question de "celui qui a plus qui obtient justice"." (Participant 14, South Kivu)

56. "L'avocat a plaidé, a plaidé, mais le magistrat était ferme. Le magistrat a dit « [...] en plus ils ont des financements. S'ils me donnent aussi un peu de – s'ils me donnent aussi de l'argent, moi je vais classer les dossiers sans suite. [...] Donc il me donne 5 000 dollars. » « Ah ! Il donne 5 000 dollars, pourquoi ? Il a fait quoi ? » « Je sais qu'il n'a rien fait mais comme c'est tout un quartier qui est venu déposer une plainte, donc il doit payer beaucoup d'argent. »" (Participant 7, South Kivu)
57. "S'il est amicale à vous et si vous avez quelque chose dans la poche, il peut utiliser les édits pour vous aider. Et si vous n'avez rien dans votre poche, il ne peut pas utiliser ça pour vous aider. Et ça, c'est ce qui se passe concernant la loi en général au Congo." (Participant 9, South Kivu)
58. "On sait déjà que chez nous, si vous engagez dans un système judiciaire, vous ne savez pas quand ça commence et quand ça va finir. Et vous ne savez pas les moyens que vous allez engager. Alors on préfère vraiment développer plus de stratégies au niveau personnel, au niveau communautaire qui essaie de s'y lancer dans un système qui est tellement verrouillé, dans un système qui est tellement corrompu." (Participant 14, South Kivu)
59. "Il m'a menacé pour dire voilà, si je produisais le rapport, je devais fuir la province du Sud Kivu." (Participant 1, South Kivu)
60. "Alors, lorsqu'ils avaient appris ça, Ah ! Les députés m'avaient appelé pour me dire comment vous avez refusé cet argent ? C'est pas toi qui va changer notre pays !"
61. "Ces femmes-là, leurs maris commençaient déjà à les menacer en disant : « si vous rentrez pas, on va prendre d'autres femmes, et votre travail là de defenseures, ça vous apporte quoi ? Vous avez quitté la famille ». Et donc il fallait vraiment chercher comment elles pouvaient rentrer dans leur milieu. Mais maintenant elles sont rentrées mais elles ne font plus ce qu'elles faisaient parce que tout simplement il y a d'abord la sécurité individuelle qui compte avant tout." (Participant 14, South Kivu)
62. "il y a aussi cette incitation de la communauté à la haine contre les personnes trans. Souvent dans la province du Sud Kivu, il y a de prédications homophobes, surtout les auteurs sont souvent des pasteurs des églises dérivées qui prêchent dans les églises que si vous avez une personne trans dans la maison, il faut le chasser parce que ce sont des antichrists, ce sont des sorciers." (Participant 10, South Kivu)
63. "J'ai déjà été victime des violations de mes droits plusieurs fois. J'ai déjà été victime des viols correctifs et aussi les menaces par téléphone, c'est au quotidien. Ça c'est au quotidien des injures publiques, des injures dans la rue. Ça c'est au quotidien en fait. Moi personnellement, je suis souvent victime de ces actes-là. Donc c'est vraiment des choses qui arrivent à tout moment." (Participant 10, South Kivu)
64. "Donc quand tu parles devant un policier que tu défends les droits de LGBTQ, directement il passe directement à la promotion de l'homosexualité." (Participant 7, South Kivu)
65. "Je peux dire qu'un jour j'avais évoqué cet édit-là, je me rappelle. J'avais évoqué cet édit-là [...] et moi j'ai donné juste mes interventions par rapport aux défenseurs de droits humains. Mais il y a un grand défenseur de droits humains [...] qui s'est levé. Il a dit: non c'était pour les défenseurs de droits humains, ce n'est pas pour les défenseurs de droits des personnes homosexuelles. Moi je posais la question, est-ce que les homos ne sont pas des êtres humains? Il a dit: Non, ce ne sont pas des êtres humains, ce sont des animaux. [il rit]" (Participant 7, South Kivu)

66. "Tu vois, tu vas au bureau de quelqu'un pour lui expliquer le problème de la communauté, des gens qui ont été arrêtés, il commence à te prêcher : « Pourquoi vous faites ça? Il faut laisser ça, c'est du péché, tout ça. [...] Moi, je ne peux pas vraiment défendre quelqu'un, un homosexuel, jamais." (Participant 7, South Kivu)
67. "Et ce qui est grave [...] je me rappelle, on avait aidé les homosexuels, mais nous on nous a rejeté !" (Participant 2, North Kivu)
68. "Et donc, elles-mêmes [les personnes LGBTQI+], les personnes comme ça, elles ont des difficultés à s'annoncer. Elles sont rares, on les voit, c'est vrai à Bukavu, mais elles sont très rares. Beaucoup vivent dans la clandestinité. Déjà lorsqu'une organisation soutient cette catégorie de personnes, cette organisation elle est pointée du doigt. Donc on a l'impression que c'est une société qui est très tranchée par rapport à cette catégorie de personnes." (Participant 14, South Kivu)
69. "Sincèrement, dans notre mandat, dans notre charte il n'est pas vraiment mentionné explicitement que nous offrons une assistance aux personnes homosexuelles. Mais si ce cas nous arrive, nous ce que nous faisons c'est de référer à d'autres collègues qui ont ce paquet de prise en charge." (Participant 3, South Kivu)
70. "Il y a peut-être d'autres, notamment les organisations travaillant sur les droits de LGBTQ – nous on y travaille, mais on ne peut même pas le mettre sur notre site, on ne peut même pas le mettre publiquement. On ne le dira jamais, bon ceux qui me connaissent savent que je fais ça, mais d'autres organisations comme celles-là travaillent évidemment dans l'informel." (Participant 4, South Kivu)
71. "Alors ça avait créé des dégâts: c'est maintenant qu'ils avaient commencé à corrompre même les membres de notre organisation, de notre communauté pour que les gens puissent vraiment me haïr que moi je suis anti-développement, qu'ils veulent nous amener le développement et que moi je suis en train de mettre les bâtons dans les roues. Donc que je suis mauvais. En tout cas ça avait créé des problèmes vraiment très sérieux." (Participant 2, North Kivu)

Annex 2: Topic List and Questionnaire

*** CONSENTEMENT ÉCLAIRÉ ***

1. Introduction

- Pouvez-vous vous présenter brièvement et décrire votre parcours ?
- Quelles sont vos activités en matière de droits humains, de justice sociale ou autres ? Où travaillez-vous?
- À quoi ressemblerait une journée typique pour vous?

2. Connaissance des édits

- Comment décririez-vous la situation et l'environnement de travail des défenseur.e.s des droits humains au Nord-Kivu ou au Sud-Kivu (ou les deux) ?
- En tant que défenseur.e des droits humains en République démocratique du Congo, vous pouvez être confronté.e à des risques et/ou à des problèmes de protection. Selon vous, qu'est-ce qui est à votre disposition (ressources, acteur.rice.s, législation) dans votre environnement pour vous permettre de continuer vos activités en tant que défenseur.e ?
- Il existe un édit pour la protection des défenseur.e.s au ... Pourriez-vous nous décrire comment fonctionne cette loi?
- Dans quelle mesure pensez-vous que les défenseur.e.s dans votre entourage sont conscient.e.s de l'existence de l'édit en vigueur au Nord / Sud Kivu ?

3. Évaluer l'utilité des édits

- Dans quelle mesure trouvez-vous que les édits en place au Nord/Sud-Kivu remplissent leur fonction de protection?
- Comment l'existence de l'édit affecte-t-elle votre travail en tant que défenseur.e des droits humains?
- Avez-vous eu recours à cette législation pour vous protéger ou protéger vos activités **devant les autorités locales**?
- Avez-vous, ou d'autres personnes que vous connaissez, utilisé cet édit **d'une autre manière** ? (Cela comprendrait l'utilisation de l'édit à des fins de plaidoyer, à des fins éducatives ou à d'autres manières créatives d'utiliser ce document juridique comme support).

4. Améliorer les édits

- Qu'est-ce que vous évaluez comme étant le point le plus fort et le point le plus faible des édits? Comment pourraient-ils être améliorés, selon vous?

Part 2

1. Pouvez-vous raconter une histoire où vous avez été confronté·e à une menace pour votre sécurité dans le cadre de vos activités en tant que défenseur.e des droits humains?
2. Pouvez-vous décrire comment vous avez réagi à cette situation ? Avez-vous utilisé / fait recours à l'édit ?
3. (Si vous n'avez pas eu recours à l'édit) Pensez-vous que l'invocation ou le recours à l'édit aurait été une possibilité réaliste d'accroître votre protection ? Comment auriez-vous utilisé l'édit à cette fin ?
4. Quels mots associez-vous à l'édit de protection des défenseur·e·s des droits humains ?
 - Protection
 - Sécurité
 - Autonomisation
 - Plaidoyer
 - Efficace
 - Inadéquat
 - Important
 - Environnement favorable
 - Essentiel
 - Contre-productif
 - Absent
 - Inefficace
 - Autres ...

Annex 3 : Informed Consent Form

Cher.e participant.e,

Votre participation dans cet entretien contribue à une étude effectuée par Megan Thomas pour le Vrije Universiteit à Amsterdam et pour Protection International à la République Démocratique du Congo et à Bruxelles.

Cette étude a pour objectif de comprendre vos connaissances, interprétation et utilisation de l'Édit 001/2016 au Sud Kivu ou l'Édit 001/2019 au Nord Kivu, deux législations locales en place pour la protection des défenseur.e.s des droits humains.

Bien que nous ayons l'espoir de contribuer à l'amélioration de ces mécanismes en formulant des recommandations clés basées sur vos réponses dans cette étude, nous ne pouvons pas promettre quelconque changement ou amélioration dans votre protection personnelle ou dans celle de vos pairs.

Avec votre consentement éclairé, nous voudrions partager vos réponses dans cette recherche en les citant ou en les reformulant. Elles nous permettront d'illustrer comment vous et vos pairs percevez les édits locaux au Nord et Sud Kivu, et nous aideront à formuler des recommandations pratiques à la fin de notre publication. Nous ne partagerons pas votre nom dans les réponses pour des raisons de confidentialité, sauf si vous nous demandez explicitement de le faire.

Votre consentement éclairé consistera à remplir le *Formulaire de consentement éclairé* ci-joint, ensemble avec votre reconnaissance verbale de ce formulaire et les questions qu'il contient. **Vous pouvez arrêter ou annuler votre consentement à tout moment. On vous prie de vous sentir libre de faire cela, quelque soit la raison.** Sachez que vous n'êtes jamais obligé.e de justifier l'annulation de votre consentement éclairé aux personnes participant.e.s dans cette recherche.

Je conserverai ces formulaires de consentement et j'enregistrerai votre consentement verbal ou écrit. Je stockerai les données sur mon ordinateur privé et sur une plateforme protégée utilisée uniquement par les employés de Protection International. Aucune date n'a été fixée pour l'élimination de ces données, mais veuillez indiquer si vous souhaitez que les données soient supprimées de la base de données de Protection International après une certaine période. Pour des raisons de sécurité, nous conserverons les informations relatives au consentement (qui comportent des données d'identification) séparément de vos réponses.

Merci de votre participation, bien cordialement,

Megan Thomas

Meganthomas97@hotmail.com

+31648735230

Formulaire de consentement éclairé

Je, soussigné.e, confirme que (veuillez écrire oui / non après chaque phrase selon le cas):

1. J'ai lu et compris les informations sur le projet et les détails fournis dans le formulaire de consentement éclairé.
2. J'ai eu la possibilité de poser des questions sur le projet et ma participation.
3. J'accepte volontairement de participer au projet et de partager mes réponses avec les chercheur.se.s pour qu'il.elle.s les utilisent dans le cadre de leur recherche.
4. Je comprends que je peux retirer ma participation à tout moment, sans donner de raisons, et que je ne serai pas pénalisé.e pour ce retrait ni interrogé.e sur les raisons de mon retrait.
5. Les procédures relatives à la confidentialité m'ont été clairement expliquées.
6. L'utilisation des données dans les publications de recherche, leur partage et leur archivage m'ont été expliqués.
7. Je comprends que d'autres chercheur.se.s auront accès à ces données uniquement s'il.elle.s acceptent de préserver la confidentialité des données et s'il.elle.s acceptent les conditions que j'ai spécifiées dans ce formulaire.
8. Sélectionnez l'une des options suivantes :
 - o Je ne souhaite pas que mon nom soit utilisé dans le cadre de ce projet.
 - o Je souhaite que mon nom soit utilisé et je comprends que ce que j'ai dit ou écrit dans le cadre de cette étude sera utilisé dans des rapports, des publications et d'autres résultats de recherche afin que tout ce que j'ai contribué à ce projet puisse être reconnu.
9. J'accepte, avec les chercheur.se.s, de signer et de dater ce formulaire de consentement éclairé.
10. Je souhaite que mes informations soient conservées dans la base de données de Protection International pendant un maximum de ____ ans. (Ne remplir que si c'est pertinent)

Lu et signé le ____ à ____ par ____ .

Signature :

Annex 4: Acknowledgements

I would like to take this opportunity to express my heartfelt gratitude to all those who have supported and encouraged me throughout this journey of completing my Master's thesis. Their unwavering support has been invaluable to me, and I am sincerely thankful for their contributions.

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