University of Antwerp

**Thesis submitted to fulfill the requirements
for the degree of Doctor in Social Sciences: Political Science.**

CONCEPTUALISING 'CAPACITY DEVELOPMENT' IN DEVELOPMENT POLICY: A CASE STUDY OF THE DRC-UNICEF 'VILLAGE ASSAINI' PROGRAMME IN KONGO CENTRAL, DRC

Pascal SUNDI MBAMBI

Promoter: **Prof. Dr. Gert VERSCHRAEGEN, Faculty of Social Sciences**

Co-Promoter: **Prof. Dr. Koen DE FEYTER, Law Faculty**

Members of the Jury: **Prof. Dr. Dirk De BIÈVRE, Faculty of Social Sciences (University of Antwerp)**
Prof. Dr. Ellen DESMET, Faculty of Law and Criminology (Ghent University)
Prof. Dr. Fons Coomans, Faculty of Law (Maastricht University)
Prof. Dr. Sylvie Ayimpan, Aix-Marseille Université
Prof. Dr. Wouter Vandenhole, Law Faculty (University of Antwerp)

Faculty of Social Sciences, Department of Political Science

Antwerp, September 2020

"Human Rights and Development in the New Millennium will be of great interest to students and scholars of human rights, development studies, political science and economics."

- *Paul GREADY & Wouter VANDENHOLE*

To Lisa and Anwel KAMBALA, you departed so early, I will forever remember both of you. I dedicate this thesis to your memory!

To my boys Ivan LUZOLO MBAMBI and Fred-Nelson MADIBA MBAMBI, my inspiration and the reason why I aim to do better!

TABLE OF CONTENT

LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AERA	American Educational Research Association
AS	Aire de santé
AU	African Union
BDOM	Bureau Diocésain des Œuvres Médicales
BELSPO	Belgian Science Policy Office
CAMEBO	Dépôt Central d'approvisionnement en Médicaments Essentiels
CARG	Conseil Agricole Rurale de Gestion
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBOs	Community-based Organizations
CCPR	Committee on Civil and Political Rights
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEHAT	Centre for Enquiry into Health and Allied Themes
CEPAS	Centre d'Etudes pour l'Action Sociale
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Congo Free State
CLD	Comité Local de Développement
CLEP	Commission on Legal Empowerment of the Poor
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CNAEA	Comité National d'Actions de l'Eau et de l'Assainissement
COVID-19	Coronavirus Disease 2019
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
DANIDA	Danish International Development Agency
DEH	Département de l'eau et de l'hydrologie

DFID	Department for International Development
DRC	Democratic Republic of the Congo
ECOSOC	UN Economic and Social Council
ECRIS	Enquête Collective Rapide d'Identification des Conflits et des Groupes Stratégiques.
EVA	Programme 'Ecole et Village Assainis'
FAO	Food and Agriculture Organization of the United Nations
FP	Force Publique
HIV/AIDS	Human immunodeficiency virus/Acquired immunodeficiency syndrome
HRBA	Human rights-based approach
HRBAD	Human Rights-Based Approach to Development
IAP-HRI	Interuniversity Attraction Poles – Human Rights Integration
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internal Displaced Persons
IMF	International Monetary Fund
INGOs	International Non Governmental Organisations
IT	Infirmier Titulaire
IWRM	Integrated Water Resources Management
JICA	Japan International Cooperation Agency
LHR	Localizing Human Rights
MDGs	Millennium Development Goals
MECNT	Ministère de l'Environnement, de la Conservation de la Nature et du Tourisme
METTELSAT	Agence Nationale de Météorologie et de Télédétection par Satellite
MICS	Multiple Indicators Cluster Survey
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governemental Organisations
ODI	Overseas Development Institute
OECD DAC	Organisation for Economic Co-operation and Development's Development Assistance Committee
OECD	Organisation for Economic Co-operation and Development
OPHI	Oxford Poverty and Human Development Initiative

PESS	Projet d'Equipement de la Structure de Santé
PNA	Programme National d'Assainissement
PNLP	Programme National de Lutte contre le Paludisme
PNLS	Programme National de Lutte contre le VIH/SIDA et les Infections sexuellement transmissibles
PPPs	Public-Private Partnerships
PRIA	Participatory Research in Asia
RDC	République Démocratique du Congo
REGIDESO	Régie de distribution des eaux
RVF	Régie des Voies Fluviales
RVM	Régie des Voies Maritimes
SAPs	Structural Adjustment Programmes
SCAM	Société d'industries et de Cultures Agronomiques au Mayombe
SDGs	Sustainable Development Goals
SNHR	Service National d'Hydraulique Rurale
SNL	Société Nationale d'Electricité
UDHR	Universal Declaration of Human Rights
UN DESA	United Nations Department of Economic and Social Affairs
UN OHCHR	United Nations, Office of the High Commissioner for Human Rights
UNOPS	United Nations Office for Project Services
UN	United Nations
UNEP	UN Environment Program
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
VA	Village Assaini
VIH/SIDA	Virus de l'immunodéficience humaine - syndrome d'immunodéficience acquise
WaSH	Water, Sanitation and Hygiene
WHO	World Health Organisation
ZS	Zone de santé

ACKNOWLEDGEMENTS

Daniel Matthew, Dr Sidharth Dahiya (Assistant Registrar), as well as Prof Dr. Maheshwar Singh. I will always recall these powerful touching words from Professor Amita Punj during my two months extended stay in Delhi due to COVID-19 lockdown: *"…I hope you are settled in the guesthouse. Please, make yourself comfortable…You are our guest and in the Indian tradition, a guest is to be treated like God."* The moral and material support of the NLU leadership and the attention received from all of these good people made me survive from loneliness and depression. I was really treated like a god, especially during the harsh times of the coronavirus pandemic.

I cannot forget the support received from the Law and Development Research Group at the University of Antwerp. The guidance of Prof Wouter Vandenhole and Dr. Liliana Lizarazo was also crucial, when we met in Delhi; it helped me broaden my perspectives on issues I discuss in this thesis. My gratitude goes to Prof Tine Destrooper, from Ghent University, for her contribution and collaboration in the LHR research project in the DRC; and to Dr Daniel Ogunniyi, former colleague at the Law and Development Research Group and currently postdoc fellow at the University of Nottingham.

To Dr. Rachel Hammonds, I owe a special thanks. You've been so supportive from the very first moment we met in Antwerp. Thank you to your family too; the meals and time shared with Rick, Leah and Sabine made me feel part of your family during my research stays in Belgium. Your attention, your sense of 'bumuùtu' or 'ubuntu' (human dignity) — to speak like South Africans — made me believe in the idea of human rights. These are not empty words; they are 'something' we have to fight for, especially for those who are denied or deprived of their rights.

I want to extend my gratefulness to many of my friends for their respective contributions to this thesis: Tony Maniema, Jimmy Maniema and their families for hosting me in Geneva during my Summer School at the Geneva Academy of International Humanitarian Law and Human Rights. To Herman Luzolo and his family in Lyon, and my friends in Brussels, Christian Levo, Ruffin Vangu Latete, and Albert Malekera for the time we shared together. To Don Valéry Mushagalusa, for hosting me more than once in Lanciano, Italy; to Don Giulio Kienga for having given me the opportunity to take a break in Germany. To Lispine Duchessee Mabulu and her family, you were my faithful neighbors in Antwerp; I cannot forget the Congolese dishes shared together. And to Guy Desfeste and Jean Celestin Ngoma, I say thank you. I am so thankful to my brother, Fils Mbambi, and his family in Johannesburg; my friends, Madam Catherine Mutamba, Polydor Lokombe Sungu and Francois Butedi, in South Africa.

To all of you who have assisted to improve the quality of my dissertation by your editing, but also your criticism. My gratitude goes to Olga Gladkikh in Nova Scotia (Canada); Dr. Stanislas Bigirimana from Mutare University in Zimbabwe; Juliette Lampoh-Agroh in Ghana; Ndawona Dennis Mwafulirwa, and Susan Agobia in Canada; Mimi Vuna in the United States; Luke Wasonga in Johannesburg; and David Mukwela from the Centre d'Etudes pour l'Action Sociale (CEPAS) in Kinshasa.

Last but not least, to all my friends and family, my mother Augustine Mavinga, my sister Henriette Ntoto, my brother Innocent Mbikila; to Efinette Beya, A. Kumba Mayika, Jean-Paulin Mbambi, Honoré Mabiala, Simon Madeko, Jean Zenga and Chris Nguidi, thank you for your moral support and your continuous presence all along my hard, stressful and yet joyful journey.

SUMMARY: ENGLISH AND DUTCH

Introduction

Despite tremendous progress in science, technology and innovation, and great improvements in living standards globally, poor countries continue to be a concern for international development cooperation. In developing countries, especially in Africa, various national strategies for poverty eradication have not led to a significant transformation of the countries concerned. Strategies supported by bilateral and multilateral donors, and by international financial institutions such as the World Bank and the IMF (International Monetary Fund), have not always been able to bring about real social change in these countries. Through this thesis, we commit to explore, inter alia, the following questions: can an HRBAD, which is nurtured by capacity development, be consistent enough to support a self-enforcing state-building model? How can the HRBAD initiate and support a development model that emerges from within and that is sustainable and equitable?

Methodoloy

The methodology used for this thesis is two-fold: first, a literature review focusing on key conceptual frameworks, including the HRBAD framework; and secondly, a case study involving fieldwork on the 'village assaini' programme in the Democratic Republic of Congo, informed by the localising human rights conceptual framework (De Feyter, 2011; Oré-Aguilar, 2011).

Through the 'village assaini' programme's case study we intend to rethink the concept of 'capacity development' in development policy in the context of a human rights-based approach. The 'village assaini' programme is 'supposedly' based on this approach from which we draw an analysis of the local understanding of human rights (more specifically the right to water) in rural areas of the Kongo Central Province in the Democratic Republic of Congo (DRC).

Findings

Findings from our field research allowed us to highlight two insights about the rights-based approach to development on which we rely to try to reconstruct the concept of 'capacity development.' The first insight questions the concepts of 'duty-bearers' and 'rights-holders' in the understanding of the rights-based approach; the second is about the principles of the rights-based approach.

Human rights theory holds that the state has the obligation to (i) respect, (ii) protect and (iii) fulfill the rights of its citizens. Our analysis, based on field research, offers a possibility of starting to consider other entities as 'duty-bearers.' This is the case of private companies, development agencies such as UNICEF or NGOs and INGOs. On the other hand, to obtain more consistency with the concept of 'rights-holders,' we try to acknowledge the importance of developing what Pantazidou (2011) terms "right consciousness" (amongst rights-holders), which is meaningful, transformative and empowering for marginalized people. Taking rights seriously must involve taking human suffering seriously (Baxi).

The second insight arises from the principles of the rights-based approach. Human rights theory generally recognises some principles of human rights. Depending on the school of thought, these

include participation, accountability, non-discrimination, empowerment, and normativity (Vandenhole). Focusing mainly on the principles of participation, accountability and empowerment, we explore avenues to engage with a reconstruction of the concept of 'capacity development,' whereby 'duty-bearers' and 'rights-holders' play a major role. The question which arises at this stage is how to make the capacity development approach more encompassing (not only technically focused) by revisiting the notions of 'duty-bearer' and 'rights-holder.' In other words, is there any added value in making certain development actors understand they have certain duties and obligations (be they legal or moral) to those who are excluded, deprived and marginalized in order to lift them out of poverty and underdevelopment?

Additionally, how can we make these populations (individually and collectively) more aware of their rights to demand more decent living conditions (such as access to safe drinking water and a healthy environment) from various stakeholders, which may include the State (which may not have the necessary means, especially in a 'failed state'), but also other actors who play a prominent role in international development?

These fundamental questions allowed us to initiate a discussion around these three principles of human rights (participation, accountability, and empowerment) as an attempt to reconstruct another narrative around the concept of 'capacity development.' Without being prescriptive, the idea is not to conclude that a reinterpretation of the concept of capacity development must lead to a change in the results of the development work; we rather make an attempt to show that such a way of approaching capacity development could have the potential to engage development actors at grassroots levels in a common search for solutions to the problems of poverty and underdevelopment which undermine them. What is at stake is the need for empowerment of the poor.

Conclusion

All in all, we draw conclusions that identify practical ways to strengthen the design and implementation of the HRBAD in practice — actions that states, donors, NGOs – could take, if they have the political will to put words into action, and citizens, if they have the knowledge and capacity to use their agency, to make a sustainable difference in improving people's lived lives, especially the most disadvantaged. Capacity development is essential to operationalize the HRBAD, though this remains a challenging process given the resources, time and expertise it might involve.

0. GENERAL INTRODUCTION

Despite some significant achievements in international development cooperation, effective and sustainable capacity development[1] has remained an elusive goal (Fukuda-Parr et al, 2002). In 1993, in a pioneering role, the UNDP initiated an evaluation[2] of technical cooperation, with the main aim of assessing why technical cooperation sometimes succeeds and sometimes — or too often — does not. This process led the UN agency to rethink, inter alia, the concept of 'capacity building' in development policy.

Almost ten years later, a similar exercise was undertaken by the Human Development Directorate and the Development Policy Bureau at UNDP headquarters, with the support of practitioners of technical cooperation.[3] Within these years of historic change, marked by the end of the Cold War and the onset of globalisation, new challenges have emerged; and yet, the challenges of capacity development to address development issues in developing countries have persisted. The question was then, how to promote a new paradigm of capacity development to make developing countries meet the expectations of their development.

We would like to take the challenge by bringing the question to the development practice level, where we can analyse the issue of capacity development from, particularly, the perspective of development 'recipients.' Thus, this study aims to explore the pivotal role of capacity development in promoting sustainable development through the rights-based approach to development in the context of the DRC-UNICEF 'Village Assaini' (sanitised village) Programme,[4] in the Kongo Central Province of the DRC.

0.1. THESIS BACKGROUND AND RATIONALE

With an estimated 52 percent of Africa's surface water reserves (rivers, lakes and wetlands), the DRC is the most water-rich country in Africa (UNEP, 2011). Despite the abundance of surface waters, the vast majority of the DRC's population is dependent on groundwater and springs as sources of safe drinking water. Groundwater is estimated to comprise almost 47 percent (421km³/year) of the DRC's internal renewable water resources (UNEP, 2011: 16). Groundwater generally has an acidic pH

---

[1] We provide a comprehensive understanding of both capacity development and capacity building in chapter 2 on conceptual frameworks.

[2] UNDP, *Rethinking Technical Cooperation: Reforms for Capacity-Building in Africa*. 1993

[3] Sakiko Fukuda-Parr, Carlos Lopes & Khalid Malik (eds.), *Capacity for Development: New Solutions to Old Problems*. Earthscan Publications Ltd, UNDP, London. 2002

[4] The 'village assaini' programme is a programme by the DRC government that seeks to improve rights-holders' access to clean water and sanitation through small cost-efficient changes and is managed by UNICEF DRC's WaSH Division. In chapters 2 and 3, we provide a broad picture of the programme.

requiring equilibrium treatment. Springs comprise the main source of drinking water, estimated to supply up to 90 percent of DRC's rural population (UNEP, 2011: 16).

The 2011 UNEP report on Water Issues in the DRC states that "up to date and accurate information on water use in the DRC is not available" (UNEP, 2011: 18); however, per capita water availability, estimated at 19,967 m³ in 2008, is well above the internationally recognized water sufficiency benchmark of 1,700 m³. Water abundance sharply contrasts with effective supply, estimated in 2000 at only 7 m³ per capita per year.

Map 1. The Congo River basin and its drainage network
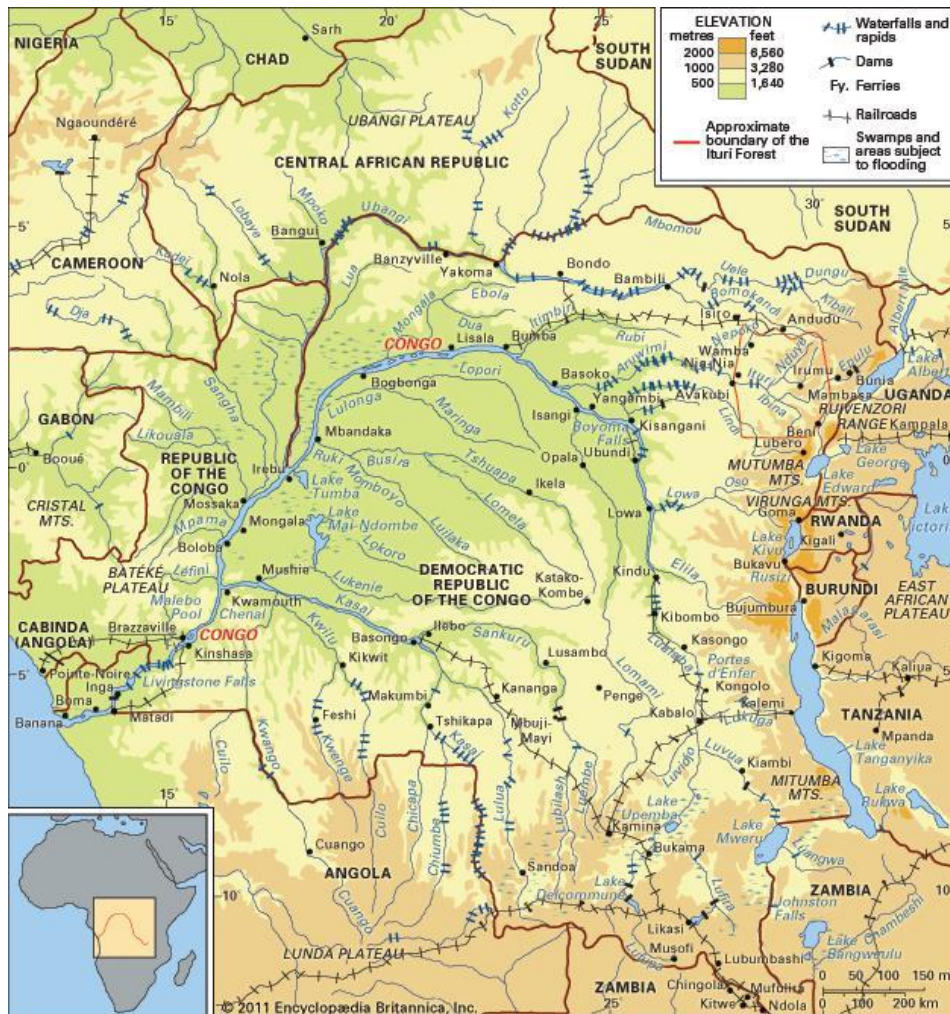
Source: Encyclopaedia Britannica, Inc.

In connection with water and sanitation, statistics indicate that only 47 percent of the DRC population has access to clean drinking water, and 14 percent to adequate sanitation (UNICEF, WaSH Program 2007-2012). Disparities between urban and rural areas with regards to both drinking water and sanitation are striking. Only 31 percent of the rural population has access to drinking water, compared to 83 percent of urban residents. In rural areas, 4 percent of household members

use adequate toilets; in urban areas it is 36 percent (MICS[5] report 2010: 15). The same report mentions that less than 60 percent of the Congolese populations wash their hands before eating, while less than 35 percent do so after using a toilet. Poor access to drinking water and the lack of education in hygiene and sanitation for the majority of Congolese are among the factors responsible for the high rates of morbidity and mortality from water related diseases, especially among children of less than 5 years. A WHO report (2008) mentions that 17 percent of infantile deaths are due to diarrhea, 17 percent to malaria, and 7 percent to cholera (UNICEF, WaSH Program 2007-2012). Globally, the DRC has the third highest number of childhood deaths from diarrhea each year.

The DRC 2006 Strategic Paper on Growth and Poverty Reduction highlights a few challenges in the area of drinking water. Populations in various remote areas walk about 6 km to 22 km to find drinking water; in other parts of the country, people just drink water from rainfall or stagnant water (DSCRP-RDC, 2006: 40).

The DRC government has acceded to seven (7) out of the nine (9) core international human rights instrumens,[6] including the International Covenant on Economic, Social and Cultural Rights (ICESCR), which, through Article 12 on the right to health, enshrines access to drinking water and sanitation as international human rights obligations.[7] In addition to these obligations, the Congolese Constitution highlights access to drinking water and sanitation as a constitutional entitlement for Congolese citizens (DRC Const., art.48). The legal framework will be further discussed in detail in Chapter 3. One way in which the DRC government has attempted to fulfill its legal obligations in relation to access to drinking water and sanitation is through the *Villages Assaini* (VA) programme, launched in 2006 and implemented by the *Ministère de la santé publique,* with financial and technical support from UNICEF and other development partners.[8]

---

[5]   MICS stands for 'Multiple Indicators Cluster Survey' (Enquête par grappes à indicateurs multiples); it is an international households Survey programme, developed by UNICEF.

[6]   These include the International Covenant on Economic, Social and Cultural Rights - ICESCR (with the CESCR as Monitoring body, acceded to in 1976), the International Covenant on Civil and Political Rights - ICCPR (CCPR, acceded to in 1976), the International Convention on the Elimination of Racial Discrimination – ICERD (CERD, acceded to in 1976), the Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (CEDAW, acceded to in 1986), the Convention on the Rights of the Child - CRC (CRC, acceded to in 1990), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – CAT (CAT, acceded to in 1996), and the Convention on the Rights of Persons with Disabilities – CRPD (CRPD, acceded to in 2015). The DRC has not ratified so far the Convention for the Protection of All Persons from Enforced Disappearance – CED (of Dec 2006), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – CMW (of Dec 1990).
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=48&Lang=EN;
https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

[7]   We elaborate in more detail on the CESCR General Comment 15 in Chapter 3.

[8]   In 2008 the VA Programme expanded to become the *Ecole et Village Assainis (EVA) Programme*, with the *Ecole Assainie* Programme component being implemented by the Ministry of Education. While the current national UNICEF Programme is known as *Ecole et Village Assainis (EVA) Programme*, we only refer to the *Village Assaini (VA)* Programme component in this study.

An expanded version of VA, the EVA[9] Programme, emerged in 2008 as both a DRC government response to the challenges of increasing access to drinking water, and a way to meet government commitments towards the MDGs, e.g. by lowering child and infant mortality.[10] If one looks closer at the origins of the EVA Programme, it is clearly inspired by a USAID-supported initiative of the *Santé Rurale* (SANRU) aimed at improving "access to drinking water, hygiene and sanitation" launched in the early 1990s.

To date, quantitative data on the VA Programme has been collected by UNICEF and other actors. In addition, a 2015 case study by Destrooper, that was also part of the Localising Human Rights series, examined how the VA Programme implemented the human rights-based approach (HRBA) to development as articulated by UNICEF. Her research shows that UNICEF implemented the VA Programme using what she terms HRBAD in the form of a *community participatory approach*. This means the programme only emphasized selected dimensions of the rights-based approach, such as non-discrimination, inclusion and participation, instead of applying it fully. Destrooper's (2015) report shows the shortcomings of the HRBAD as applied in this programme focusing on the lack of attention given to various human rights dimensions, including accountability and empowerment. Even though the VA Programme has arguably brought some kind of optimism and satisfaction,[11] as well as significant change within communities and households,[12] as the results of this research will show, many challenges[13] remain. Evaluation research[14] undertaken at the end of the first phase of the VA Programme clearly emphasized a preliminary socio-political analysis was needed in any village joining the VA Programme. Such an analysis had to consider three key dimensions which were

---

[9]   EVA is the acronym for 'Ecole et Village assainis' (see note 8).

[10]   Five of the eight Millennium Development Goals were concerned with health and education signalling the importance of access to drinking water and sanitation.

[11]   An official of the provincial WaSH office (*Bureau* 9) stated during an interview: "For instance, there has recently been a cholera epidemic in Moanda. All the villages that were in the VA Program did not experience it. Unfortunately, this is not documented" (**Interview, TAO1, Matadi, October 2014**). **N.B.** It is worth noting that we have developed a quoting referencing way of our interviews that need some explanations. To preserve the anonymity of our respondents, we use references which allow us to identify each author of the quotes referred to. The letter 'V' followed by a number refers to each village visited in a chronological order. For example: V1 = 1st village. Then, we also retained sometimes the first or the first two, even the first three letters of the name of each village to which we associate a number (the number indicates the order of interviewees in that village). Ex. V1, T01 = 1st village, 1st person to be interviewed. To distinguish interviews of villagers from those of local authorities and implementing agents, we also introduce another code: AO, meaning if I am at village 1, I will have: V1, TAO01 = 1st village, local authority no.1. The different letters associated with each village are: T for V1, Ki for V2, Kai for V3, Kim for V4 and Tui for V5. At the end of the reference, we add the month and the year. References for Focus Group Discussions almost follow the same logic, but in less complicated way.

[12]   In focus group discussions, almost in all the villages, participants have shown their satisfaction affirming that there is a clear difference between the period before and after the programme implementation. They agree that 'before we start this programme (VA), our kids regularly suffered from diarrhoea and vomiting; today it's different' (**Focus Group Discussions, V5, August 2016**).

[13]   The same WaSH Officer remarked, "As we (the VA Programme) cannot go everywhere (because of the logistical and financial constraints), what matters to us is that the other villages have to adapt, i.e. they have to follow what the other villages in the programme are doing to improve their sanitary conditions and at least boil the water they drink" (**Interview, TAO1, Matadi, October 2014**).

[14]   See WaSH DRC-UNICEF's division for Water, Sanitation and Hygiene in the Democratic Republic of the Congo, *Rapport final de l'enquête ECRIS réalisée dans le cadre du Programme Ecole et Village Assainis en République Démocratique du Congo*, Kinshasa, WaSH DRC, 2013.

left out in the first phase of the programme, and which should allow for the integration of existing social dynamics in a fundamental way. These dimensions included the economic, sociological and political contexts of the village (ECRIS Report, 2013). By doing so, it was expected to facilitate a more bottom-up form of the community participatory approach based on local beliefs and practices, and aimed at enhancing local adherence to and ownership of the core values of the VA Programme. Also building on Destrooper's research,[15] we chose to focus our case study on further exploring these local conceptions (or beliefs) with regards to the right to drinking water in selected villages that are enrolled in the VA Programme in the Kongo Central Province of the DRC.

Of the more than 9,000 villages in the province, 1,023 have joined the VA Programme since 2006, with almost 813 of them being certified[16] to date and another 216 in the process. In the first phase of the programme, only 24 *zones de santé*[17] of the total of 31 participated. In the second phase – officially launched on 20 March 2015 in Kinshasa[18] – the number of participating *zones de santé* increased.[19] Our research focused on the District of Bas-Fleuve and the coastal territory of Moanda, where interactions with actors from the private sector, such as Perenco (an oil company based in Moanda) helped to shed light on a number of dynamics. With over 200 certified villages spread across nine *zones de santé rurales*, including Lukula, Inga, Seke Banza, Vaku, Tshela, Kinkonzi, Kizu, Kuimba and Kangu, the District of Bas-Fleuve has participated in the programme since its pilot phase in 2006. The *zone de santé* of Kangu joined the programme in its second phase in 2015. In Chapter 2, which focuses on the research methodology, we provide the justification for our choice of this region.

---

[15] The 'Localising Human Rights' project in the DRC had a double focus; on one hand, we examined how transnational norms are interpreted by rights-holders and duty-bearers and how this interpretation feeds into the national or international human rights system. On the other hand, Destrooper analysed whether and how local understandings of human rights shape human rights norms at the transnational level, looking specifically at how international actors engaged in the contextualisation and localisation of human rights, as well as stakeholders' input on their strategic needs as the basis for further development of human rights norms (see Destrooper, *An Analysis of the Human Rights-Based Approach to Development: UNICEF's Role in the Villages Assainis Program in the Bas-Congo*, Working Paper, LHR Series, University of Antwerp, 2015).

[16] The '*pas-à-pas* structure" of the VA Programme's community-based approach shows all steps of the programme and specifies what the role of the community is for each step. This role goes from making an initial request to join the programme, to analysing their own situation and needs, to proposing solutions and actions, to carrying out these actions with the support of an implementing agent (Destrooper, 2015: 101). The final step of the process is that of the certification, whereby the village is recognized as a '*village assaini*' which complies with standards of access to safe drinking water and adequate sanitation.

[17] The *Bureaux des zones de santé* are government actors managing the programme on the ground. They are presided over by a *Médecin-chef de zone*, and operationally divided into different *aires de santé*. However, they are not the ones implementing the programme, as this is considered to be the task of the rights-holders themselves, with the assistance of implementing agents. Their role is a facilitating one. They are dependent on the provincial and national authorities in financial and logistical terms (see Destrooper, 2015: 115).

[18] See Le Kwango, «'village assaini ', un concept d'espoir mais sans impact réel dans le Kwango », in *LeKwango*, 22 mars 2015, http://www.lekwango.com/2015/03/22/village-assaini-un-concept-despoir-mais-sans-impact-reel-dans-le-kwango/

[19] In a June 2017 follow-up conversation with the Focal Point of the VA Programme at the Provincial Division of Health in Kongo Central, it was brought to our attention that seven *zones de santé* are not included in the programme in the Kongo Central Province — Nselo, Kibunzi, Mangembo, Nzanza, Matadi, Boma, and Kitona; the last three being in urban settings.

This research was motivated by the question, why is DRC (my home country) still struggling to get on its feet after more than half a century of independence, with hundreds of thousands of university graduates in various disciplines, and vast potential in natural resources and mineral wealth?[20] At the time of independence, the argument of insufficient capacities (both in terms of human resources and institutional capacity) was relevant. Today, we could ask whether this is still relevant, sixty years post-independence.

By raising this issue in the context of capacity development and its interface with the rights-based approach to development in this thesis, we want to make a contention that it is important to not only consider the technical aspects of capacity development, but rather an encompassing notion that revisits the concepts of 'duty-bearer' and 'rights-holder,' and reframes capacity development through the lens of the core principles of the rights-based approach, including the principles of participation, accountability, and empowerment. The question is thus, is there any added value in making certain development actors understand they have certain duties and obligations (be they legal or moral) to those who are excluded, deprived and marginalized in order to lift them out of poverty and underdevelopment? At the same time, how can we make these vulnerable people (individually and collectively) more aware of their rights to demand more decent living conditions (including access to drinking water and a healthy environment) from various stakeholders, who may include the State (which may not have the necessary means to provide services, especially in a 'failed state'), but also other actors who play a prominent role in international development?

The research underpinning this thesis is reported in two main parts. The first part presents the conceptual frameworks in the literature review (Chapter 1), the methodological process (Chapter 2), and the historical and legal context of the DRC (Chapter 3). This part lays the theoretical foundation of the thesis, i.e. the analytical approach undertaken, the key concepts used, and the materials used to build our analysis in the second part. The second part examines the fieldwork findings. In Chapter 4, we intend to explore the local understanding of human rights, i.e. the right to water. Our analysis seeks to understand how villagers (rights-holders) frame their discourse on human rights, if any, and how relevant such a discourse is in their daily lives. Chapter 5 is a more contextualized analysis of the local understanding of 'duty-bearer.' Using our fieldwork findings, this chapter is an attempt to contribute to the debate on legal accountability by highlighting the support for a broader understanding of duty-bearers on the side of disenfranchised rights-holders (villagers). Our last chapter (Chapter 6) is an attempt to more critically and analytically link key concepts in the local understanding of human rights, including duty-bearers and rights-holders, to the notion of capacity development as a way to, not only reframe it within development policy discourse, but also to give more consistency in the implementation of donors' rights-based interventions. In Annexes, we include a French article published in *Congo-Afrique,* a peer-reviewed Congolese Jesuit Journal, as a way of providing feedback about the research to all VA Programme stakeholders. The article integrates a discussion on the 'Localizing human rights' theory and a synthesis of insights from Chapters 4 and 5 of this thesis.

---

[20] On its country profile, the World Bank describes the DRC as a country endowed with vast natural resources, with nearly 80 million hectares of arable land and over 1,100 listed minerals and precious metals; the potential to become one of the richest economies on the continent and a driver of African growth (https://www.worldbank.org/en/country/drc/overview).

0.2. RESEARCH QUESTIONS AND OBJECTIVES

Working under the assumption that capacity development as currently applied in development policy has not achieved much in many contexts, especially in Africa, this thesis aims to analyse what it means for community members to be empowered or capacitated in the context of the DRC-UNICEF 'Village Assaini' Programme. To achieve this, we attempt to explore the potential of capacity development for both rights-holders and duty-bearers within the HRBAD discourse. In other words, how can the empowerment of rights users be a vehicle towards transformative social change and social justice?

In the process, we expect to achieve the following objectives:

(i) Provide some conceptual frameworks in the literature review conducive to informing our analysis;

(ii) Build a methodological approach for data collection and analysis;

(iii) Discuss the legal context of the right to water in the DRC and the historical perspective of the DRC engagement in human rights;

(iv) Identify and analyse how local interpretations of human rights (if any) have emerged or not from the VA Programme;

(v) Discuss the extension of the notion of duty-bearers, as part of an empowerment process for local rights-holders;

(vi) Discuss the potential of a capacity development strategy within the discourse and practice of the rights-based approach, from both rights-holders and duty-bearers' perspectives.

Overall, to articulate our fieldwork results and our assumptions on capacity development, empowerment and social change, we focus on the notions of rights-holders and duty-bearers, and how we can reinterpret the approach to capacity development in a way that gives it more potential to achieve effective and sustainable social change.

PART I: CONCEPTUAL FRAMEWORKS AND METHODOLOGY

CHAPTER 1. CONCEPTUAL FRAMEWORKS

Conceptual frameworks form the basis of our literature review for this thesis. At the outset, any conceptualisation process faces the problem of defining terms. This is necessary if language as we know it is to be used to achieve inter-subjective communication. The ordinary core meanings of key words often overlap to some extent. This chapter is an attempt to start at the "beginning" by questioning the meaning of the key concepts we are referring to and developing a clear set of terms for understanding each of them so that, at a later stage, we can apply this understanding to our empirical materials for a more consolidated analysis.

First of all, we start with a brief understanding of the concept of the state, as all the issues we discuss are inherently grounded in the state. For this purpose, we will be highly dependent on Arjun Chowdhury's (2018) theorisation of the state, as it helps to grasp the correlations of the postcolonial weak state paradigm, and its incapacity to deliver development. Secondly, we approach the complexity of the notion of development from a historical perspective. Thirdly, we focus on the rights-based approach to development and connect it to the 'Localising human rights' conceptual framework, which informed our fieldwork. Lastly, we try to shed light on the concept of 'capacity development' — how it emerged, how it evolved up to now, and most importantly what it entails. In doing so, we intend to start with the broad field and issues of development, then present the rights-based approach, before narrowing down to our initial concern about capacity development.

Even though these frameworks may seem prescriptive, and in a way paternalistic by portraying a sense of development sustained by 'outside assistance,' we contend the choice of approach – the rights-based approach to development – that informs our analysis may help to challenge such views, and revisit the issue of development by questioning the roles and responsibilities of its key actors.

1.1. Understanding state's failure of development

Why has development failed in Africa? Is it not the appropriate question at this stage? Asking the question helps to go deeper and reflect on the meaning of the state and its role in development, as the state remains the basic unit of analysis in international relations (Chowdhury). Development has often been analysed in terms of macroeconomic indicators such as the Gross Domestic Product (GDP), economic growth, the availability of infrastructure, goods and services, or technological advancement. In Africa, for instance, Rwanda has been recently hailed in terms of its socio-economic performance, i.e. availability of information and communication technologies, road infrastructure, etc. However, in many developing countries there seems to be a discrepancy between macroeconomic indicators and the quality of life of the population. This is the paradox in countries, such as India, South Africa, and even Nigeria which is actually the biggest African economy in regard to its GDP. While, for instance, India and South Africa can be considered amongst the fastest

growing or emerging economies of this decade, a significant portion of their populations is still living in dire poverty.

The most recent World Bank report on poverty[21] showed the percentage of the world's population living in extreme poverty (on less than $1.90 US a day) declined to 10 percent in 2015, down from 16 percent in 2010, and 36 percent in 1990. This shows a real improvement in terms of efforts made at the international level. Unfortunately, the report also shows that 368 million of the world's 736 million extreme poor — almost half of the total — live in just five countries, including in descending order India, Nigeria, the Democratic Republic of Congo (DRC), Ethiopia, and Bangladesh. They also happen to be the most populous countries of South Asia and Sub-Saharan Africa, the two regions that together account for 85 percent (629 million) of the world's poor. The Bank believes that, in order to make significant continued progress towards the global target of reducing extreme poverty to less than 3 percent by 2030, large reductions in poverty in these five countries will be crucial. This shows that the challenges of achieving the United Nations Sustainable Development Goals (SDGs), although they need global attention, are also first and foremost context-specific and vary from one country to another.

Figure 1. Half of the world's poor live in just five countries (World Bank, 2015)

Share of poor people in the world by region or country, 2015

Europe & Central Asia (0.97)
Rest of the World (0.99)
Middle East & North Africa (2.53)
Latin America & Caribbean (3.5)
East Asia and Pacific (6.42)
Sub-Saharan Africa (other) (33.25)
South Asia (other) (2.21)
India (23.88)
Bangladesh (3.32)
Nigeria (11.76)
Congo, Dem. Rep. (7.49)
Ethiopia (3.67)

Source: PovcalNet • Embed this chart
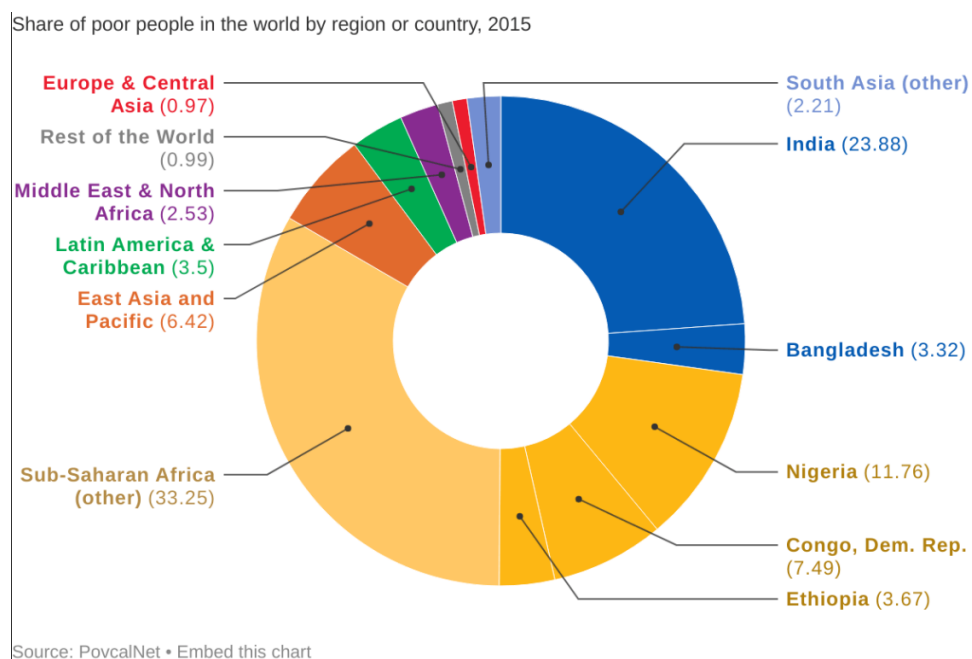
In the context of the DRC, despite multiple efforts at development cooperation to develop capacities for inclusive sustainable development, the outcomes of such processes remain insignificant.

Chowdhury's theorisation of the state, the European/Western state, and then the postcolonial state may help to better understand the linkages between development in Africa, its major actors, the

---

[21] See World Bank Annual Report 2019, *Ending Poverty: Investing in Opportunity*; the Sustainable Development Goals Report 2019 (https://unstats.un.org/sdgs/report/2019/); and UN Department of Economic & Social Affairs (DESA), *Monthly Briefing on the World Economic Situation and Prospects*, no.131, 1 October 2019 (https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/Monthly_Briefing_131.pdf)

state, and the population. In his book, *The Myth of International Order*, Chowdhury constructs a provocative theory of state-building premised on the experience of war-making. Two related questions at the origin of his theory are: "Why has the modern state been consistently incapable of fulfilling its fundamental tasks? Why, despite this incapacity, does the state, and not alternative institutions, remain the central unit of world politics?"

First, Chowdhury identifies two fundamental tasks that modern states have to fulfill: the monopolization of organized violence in a given territory, and the provision of basic services to citizens. He then argues, based on the Failed State Index, that currently worldwide the majority of states are incapable of fulfilling their fundamental tasks — making them weak states[22] — due to the continuing gap between what he terms the 'demand for services' (popular demand for protection and public goods), and the 'supply of the state' (popular willingness to supply the resources necessary to fund public services and support the institutions that would deliver them). Why the gap? A historical analysis supported by a sociological understanding of the European model of the formation of the state, shows that violence is central to the formation of a strong state. The empirical state, to expand and survive, has to make war. The costs of war are high and demand more sacrifices from the people. Citizens have to choose to either support a war-prone state, provided it can still live up to its fundamental tasks and remain the basic unit of world politics, or find an alternative. Chowdhury (2018) states,

> As state-building through war proves too costly and not replicable, political actors and movements articulate alternatives to the state that would prevent rather than prosecute war.

As citizens accept 'lower' sacrifice by paying taxes, the state has to provide new services (to replace war), which are development and welfare.

Unfortunately,

> alternatives widen the gap between the demand for services and the supply of the state; and the state cannot close this gap without provoking popular discontent and the articulation of more alternatives (Chowdhury, 2018).

This logic helps to understand why contemporary weak states are not deviations from the normal course of state development; they are rather the product of state formation. From this perspective, development implies a gap between the demand for services and the population's ability to support state institutions that would deliver it.

Using the Western state-building model to understand the postcolonial state and its developmental orientation, Chowdhury argues that postcolonial states are 'artificial' — not in the sense, as many scholars have argued, because their borders were arbitrarily drawn by colonial powers with little regard for preexisting group boundaries, making them fundamentally weak at inception. They are artitificial, he states, because their popular support is tenuous. Eliminating the 'racialist' thinking of a

---

[22] Rotberg (200 4) establishes a distinction between failing states and weak states ; weak states are those that have difficulty delivering services to citizens, owing to lack of resources, corruption, poor infrastructure, and so forth. This includes the most basic service, which is security. Failing states are sub-category of weak states, in which there is armed opposition to the government.

state premised on war and empire building, leaders of the postcolonial state laid the ground for a different 'good' to deliver to the population — development. Unfortunately, in the absence of popular sacrifice, development was conceptualised differently, mainly as a "*top-down process involving planning, foreign aid, and coercion, for which a centralized state was necessary*" (Chowdhury, 2018). As he puts it, "*The postcolonial state should be understood as a gamble that the population could be developed using colonial-style coercion and foreign assistance*" (Chowdhury, 2018). Postcolonial leaders represented their populations as passive objects to be acted upon, not as subjects acting for themselves. And yet, their populations had clearly participated in anti-colonial movements, so they could hardly be said to be incapable. Unfortunately, in the absence of war, the population was likely unwilling to sacrifice more than they already have for the colonial state, even if development meant more services. Thus, the challenge of the postcolonial state became how to deliver economic development to an impoverished population, incapable of contributing to the process? To compensate for the inability or unwillingness of citizens to contribute, the postcolonial state resorted to a series of decisions in which the population was unable to participate, and which required a centralized power structure to deliver development to the "backward" population. To this end, the postcolonial state would lead in economic planning and development programming (and restricting trade); but it would also reach out to foreign powers and multilateral agencies for material and epistemic resources (Chowdhury, 2018: 19). To emphasise the 'outside dependecy' characteristic of the postcolonial development state — which did not require popular cooperation or an exchange — Chowdhury refers to this Nkrumah quote,

> The leaders of the New Africa have no alternative but to look for outside assistance (Chowdhury, 2018: 20).

To sum up, unlike the European model of state-making, the postcolonial state has never been self-enforcing, as it remained from its inception dependent on foreign resources, which reduced the need to tax the population and bargain with them. Unfortunately, economic development supported by foreign aid (later by debt) was a one-sided gamble that could not deliver services.

Looking at Chowdhury's theorization of the state, especially the postcolonial state, it is interesting to recall other postcolonial state's theories that have emerged within the African scholarship, just as a way to not overlook one theory to the benefit of another; and try to draw a balanced view on the issue. In his paper of September 1986, *The Post-colonial State: Crisis and Reconstrution*, Björn Beckman suggests three approaches to explaining the crisis of the African state feature predominantly in debates that time: first, the *neo-patrimonial theory* placing the blame on the capacity of the African state primarily on personal rule and tribalism; secondly, the *monopolistic theory* which emphasizes the monopolistic position of the bureaucracy and the political class in the economy; and thirdly, the *comprador theory* which focuses on the distorsion of the state caused by the imperialist domination.

I will mainly focus on the neo-patrimonial theory as it has particularly cristalysed the debate in the post-colonial state in Africa, in the 1990s and early 2000s, especially in the French literature.[23] Theorists of this approach claim that states are governed by a pervasive *patrimonial logic*, which encourages clientelism, corruption, and economic stagnation. In this sense, patrimonialism is often used as a synonym for corruption within the government and administration; and neo-patrimonialism focus tends to be on the autocratic personal rule at the top of the political system and the patronage relation through the administrative apparatus (Médard).

Despite their explanatory coherence in understanding the postcolonial state, these theories which seem to be inspired by the Weberian conception of patrimonialism[24]fall short in grasping all the richness of this concept. Pitchner et al (2009) believe that many of the usages of patrimonialism and neo-patrimonialism misinterpret weberian theory. Contrary to contemporary conceptions, they argue, Weber's patrimonialism is rather a specific form of authority derived from the traditional sources of legitimacy and based on a mutual understanding of responsibilities between the ruler and the ruled. Far from being a weak, dictatorial type, Weber's patrimonialism recognized that leaders could and should be accountable and that they must abide by certain norms in order to sustain the willingness of their subjects to obey. Pitcher et al invite us to go beyond these notions of patrimonialism and neo-patrimonialism to better analyse the character of African states without falling back on the notion of African exceptionalism.

Moving away from the patrimonial/neopatrimonial theory, Badie's *Imported State* (2000) opposes a culturalist approach to the construct of the postcolonial state. Badie shows various logics of importation led non-western cultures to invent their own practices of the states, therefore transforming the original exported model, leading to the dependency phenomenon. From this perspective, recent scholarship has emerged attempting to analyse the African state construction from the challenges of instability, armed conflicts, internal mismanagement and inequalities. Bueya (2017) argues that the African nation-state's reconstruction and stability do not primarily rest upon the restoration of the rule of law,[25] but rather have to be thought in terms of rethinking the social contract in a context of a participative democracy whereby power of decisions-making flows across all spheres of society. Kavwahirehi (2018) looks at the grassroots' social movements across Africa as contesting forces or sites of resistance (*foyers de resistance*) capable to bring about social and political change.

---

[23] See for instance, Jean-Francois Médard, "L'État patrimonialisé", in *Politique Africaine*, n°39, sept 1990, p. 25-36 ; Jean-Francois Bayart et al, *La politique par le bas en Afrique noire : contributions à une problématique de la démocratie*, Karthala.

[24] Kiser and Sacks (2011: 130) note that Weber understands patrimonialism as a broad concept referring to several different types of administrative forms of usually associated with traditional authority, including the use of kin, slaves, patronage, feudalism, prebendalism, local notables, sale of offices, and tax farming (see Weber, 1968: 228-234, 1028-1064); its core features are administration based on personal ties to or dependence on rules (kin, slaves, patronage), privatization of offices (sale of offices and tax farming), and extreme forms of decentralization (local notables, feudalism, and prebendalism).

[25] Bueya argues that the legitimacy of the state authority in the westphalian form is actually what is at stake, leading to patrimonialism as a vector of inequalities and wars; and therefore it is not possible to resolve the crisis by its very core issue.

As I have pointed out above and depite the interesting contributions from other various theories of the postcolonial state, I would like to remain dependent on Chowdhury's theorization as it clearly articulates the correlations of the state and the failure of development. So, even though Chowdhury argues the majority of states, including Western states, are weak (I would say 'by nature'), we must admit that all countries do not experience the challenge of delivering services to their populations in the same way. To put it simply, what we learn from Chowdhury's state theory is that the incapacity of the state to deliver development is a function of the degree of disempowerment of its population. With a population incapable of supplying the resources necessary to fund public services, a state cannot dream of delivering development. Verschraegen (2011) pinpoints this relationship between the nature/role of the state and its capacity to work towards people's welfare or development, as he argues,

> It hardly needs mentioning that the majority of human rights violations occur in weak or failed states, largely incapable of delivering effective remedies for the protection of citizens.

Quoting Marcelo Neves (2001), Verschraegen writes that in weak or failed states the ruling elite uses the Constitution in merely symbolic ways so only a minority of "over-integrated individuals has access to the products and benefits of social systems, without being simultaneously dependent on their constraints and rules," while the majority is 'under-integrated' and largely excluded from access to political power, the labour market, judicial protection, education, medical care, and so forth (Verschraegen, 2011: 225). Englehart (2009) points out that we must take state failure seriously when thinking about the causes of – and remedies for – human rights abuse. Indeed, if it is universally accepted that states are responsible for human rights conditions within their territories, it is important to bear in mind that this responsibility has two dimensions that may conflict with one another: normatively, it is widely accepted that states ought to ensure that the rights of their citizens are protected; and yet, empirically, it is possible that states may be unable to discharge this normative responsibility. Englehart remarks, even if well-intentioned, weak states may not be able to prevent abuses by powerful private actors (Englehart, 2009: 163) as states with corrupt, poorly paid police, judges, and civil servants may be unable to control their own agents. Building his argument on the principal-agent theory, with the government being the principal and the administrative body the agent, Englehart can justify the practical inability of the state to police territory and control its agents. However, such an argument does not stand strong to justify the practical inability of the state to protect human rights, especially when the state can be seen as a *predatory* state, as described above in the African context of patrimonialism or neo-patrimonialism. If state can protect its institutions, it is absolutely right to ensure at least the goodwill in protecting human rights against any abuse.

Although states remain among the critical building blocks of world politics/society, many weak states never succeed in establishing effective control over violence on their territory and are basically unregulated. As a result, political membership (citizenship) corresponds to strikingly different prospects for the security, well-being and agency of individuals (Verschraegen, 2011: 223).

To speak about the state's capacity to control the means of violence and enforce rules, Börzel and Risse (2010) resort to the notion of limited statehood. They argue,

> The ability to enforce rules or to control the means of violence can be restricted along various dimensions: territorially; sectorally (i.e. with regard to specific policy areas); socially (i.e. with regard to specific parts of the population); and temporarily (Börzel & Risse, 2010: 118).

They state that areas of limited statehood are prevalent in the international system nowadays and have been prevalent in the past. Limited statehood is not confined to failing and failed states that have all but lost the ability to govern and to control their territory. Failing and failed states comprise only a small percentage of the world's areas of limited statehood. Börzel and Risse are of the view that "most of the world's current states contain areas of limited statehood in the sense that central authorities do not control the entire territory, do not fully possess the monopoly over the means of violence, and/or have limited capacities to enforce and implement decisions, at least in some policy areas or with regard to large parts of the population. The concept does not refer to "states of limited statehood," but to areas of limited statehood, meaning the territorial, functional spaces within functioning states that have lost their ability to govern. Mexico, for example, enjoys mostly consolidated statehood, but the central authorities are too weak to enforce human rights and the rule of law.

What is important to mention here, after this brief discussion on the role of the state in delivering development, is that development (understood, in a simplistic way at this stage, as people's welfare) requires a stable and effective state, capable of taxing and upholding the rule of law (Verschraegen, 2011) for its implementation. And where state experiences areas of limited statehood, be it because of some structural dysfunctioning, it is important to think of alternative ways to articulate citizens' development and welfare.

1.2. Trajectory of development theories: From development to inclusive sustainable development

Larrain notes,

> The concept of development appears (…) in close connection with the emergence of capitalism and the critique of feudal society. This is because, before the arrival of capitalism, there existed mainly agricultural societies whose productive forces — limited by feudal property relations — changed very slowly over the years and whose economic output was consequently relatively stagnant. It was capitalism that for the first time allowed productive forces to make a spectacular advance, thus making it possible for the idea of material progress and development to arise.[26]

Although from its very beginning the concept of development was very much economically oriented, today development is approached by scholars and practitioners from multiple perspectives.

In the research undertaken for this PhD thesis, I considered a concept of development that goes beyond the enhancement of economic performance or growth,[27] to incorporate its human

---

[26] Jorge Larrain, *Theories of Development: Capitalism, Colonialism and Dependency*, Polity Press, Cambridge, 1989.

[27] More and more scholars are urging a move away from growth fetishism (because of GDP information failure), and rather seek to better realise human welfare. They speak of 'de-growth' which goes hand-in-hand with social sustainability. Central to their proposal is the concept of (re-)distribution to be understood as "a more equal distribution of income and investment in public services that make a difference in the quality of life, can have greater welfare effects than generalised growth" (See Vandenhole, 2020).

dimensions (Sen, 1999), and to a large extent, the challenges of global justice today when it comes to issues of sustainable development (Elliott, 2006). Development as a theoretical concept does not have a unique accepted defined meaning; there are many definitions and conceptualisations of development. Various development theories have stressed different indicators such as *economic growth*, *values* and *human development* to mention a few. As Barnet notes, development can be defined in many different ways depending on which characteristics of people's lives or societies you consider important (Barnet, 1988). For example, one can use Gross National Product (GNP), which is the overall productivity of the entire society, as the main feature of a developed society.

In what follows, I will review the concept of development in various development theories from an historical perspective covering the end of the Second World War to today, although there is no strict historical sequence of development theories (Vandenhole, 2008:3). In other words, even though we consider chronologically these shifts in thinking regarding the meaning and purpose of development (ideologies) and in development practice in the field (strategies of development), in reality, existing theories are rarely totally replaced; rather, new ones find relative favour and contestation over the prescriptions for development flowing from them continue (Elliott, 2006). Again, another point to raise is that development is often discussed in relation to developing countries; and yet, development is a concept which relates to all parts of the world, at every level, from the individual to global transformations (Potter et al, 2004). However, the study of development has a relatively short history, really dating back only as far as the end of Second World War (Elliot, 2006: 15).

Development theory emerged in the 1950s to deal with how the economies of the colonies of Western powers might be transformed and made more productive as decolonisation approached (Leys, 1996; Elliott, 2006). Early development theorists focused on *economic growth*. The goal of development was growth, the agent of development was the state and the means of development were macroeconomic policy instruments (Leys, 1996:7; see also Hulme& Turner, 1990). In other words, the state's role involved creating a conducive environment for the market to operate optimally. As Lee and Williams similarly note, early development theorists thought the best way for poor countries to develop was to emulate the market institutions of advanced industrial countries with the state playing a facilitating role, which it was assumed would lead to successful economic growth, decreased poverty, and improved living conditions. In short, the 'global development problem' was conceived as one in which less developed nations needed to 'catch up' with the West and enter the modern age of capitalism and liberal democracy (Elliott, 2006). By the end of the 1950s, optimism about this approach began to vanish due to dissatisfaction with the results of policies based on economic growth, particularly in Latin America and India (Leys, 1996).

Modernisation Theory arose to answer the question, what was it about these societies (the Third World) that made them unresponsive to the economic growth approach? Modernisation theorists did not contest the economic growth approach, but rather focused on the role of norms, values and cultural patterns in determining economic and social change (Marcus Power, 2018). They draw a distinction between traditional and modern societies and argue that modern values associated with development should be diffused through education and technology transfer to the elites of the periphery. Thus modernisation referred to the process of transition from traditional to modern principles of social organisation (Leys, 1996). Some of these modern values associated with development were *merit as opposed to ascription, autonomy, belief in social mobility, objectivity and universalism as opposed to particularism* (Hulme & Turner, 1990: 41, Leys, 1996).

Underdevelopment was seen as an initial stage through which Western nations had progressed and the gaps in development that existed could be gradually overcome through an 'imitative process' (Hettne, 2002: 7), significantly, through a sharing of Western experience in terms of capital and know-how (Elliott, 2006: 15). In short, development was seen as modernisation and, in turn, modernisation was equated with westernisation (and an associated faith in the rationality of science and technology) during this period. By the end of the 1960s, it was becoming apparent modernisation was not working as developing countries continued to be plagued by poverty, debt, political repression, social unrest, and stagnating economies. Modernisation could not explain what was happening in the Third World and how development could be achieved (Hulme & Turner, 1990).

From the failure of modernisation theory, *Dependency Theory* arose as an alternative in developing countries to understand their development challenges and how they could overcome them. The 1970s became the era of dependency theorists who identified the system of international trade as the troublemaker. They argued the relationship between the core and periphery or, in other words, between advanced industrialised countries and the Third World, hindered development. They suggested the centre and periphery are closely linked economically in trade and investment, but that these links prevent true development from taking place in the periphery because the periphery is designed to benefit the centre (Hulme & Turner, 1990). A key proponent of dependency theory, the German-American sociologist and economic historian Andre Gunder FRANK,[28] proposed that capitalism is a global system of exchange that is both monopolistic and exploitative, and is therefore responsible for the development of underdevelopment.

Figure 2. The Frank model of underdevelopment
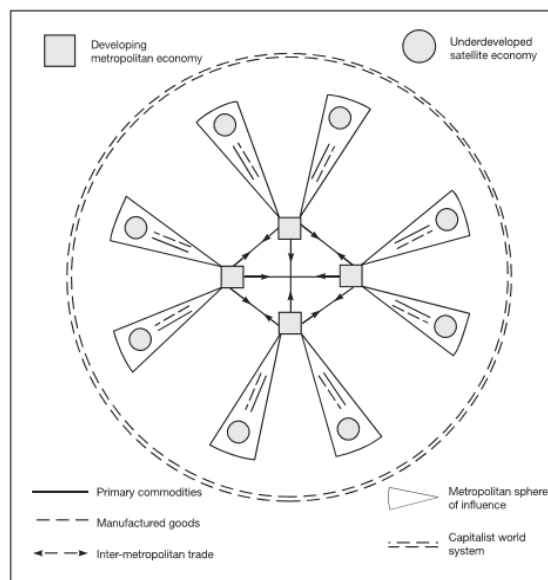
Source: Corbridge (1987).

---

[28] See: *Capitalism and Underdevelopment in Latin America*, New York, 1967; *Development Accumulation and Underdevelopment*, New York, 1978.

Fundamentally, the assertion in dependency theory was that underdevelopment was not the result of any inadequacies in economic, social or environmental conditions within Third World countries themselves, but the direct outcome of development elsewhere and the manner in which those countries were incorporated into the operations of the international capitalist system, i.e. the structural disadvantages of these countries and regions. Rather than seeing the US and Europe as the sources of a cure for the ills of the developing world, dependency theorists saw them as the source of those ills, i.e. in actively creating the problems of underdevelopment. To use Frank's terminology, development and underdevelopment were two sides of the same coin (Elliott, 2006: 18). How does this work? The metropolis (in the developed West) exploits and appropriates surplus from the satellites (in the Third World) that are impoverished by this exploitative relationship and reduced to dependency (Hulme & Turner, 1990). For dependency theorists, the solution lay in reducing links with the metropolis and bringing about 'autocentric' national growth (Leys, 1996: 12). Thus, some of the strategies to break this inequitable relationship included import substitution, industrialization, high tariff protection, and more state involvement.

By the 1980s, as the dependency approach was failing to deliver on its promised development, *neoliberalism* began to gain momentum. Neoliberals believed none of the things advanced by their predecessors were blocking development in the Third World, but rather it was the idea of state intervention in bringing about development that was retarding it (Leys, 1996). They firmly believed the 'invisible hand' of the market was all that was needed to stir economic growth and development. Therefore, neoliberals offered an intellectual justification for a new wave of market-oriented intervention by the World Bank, the International Monetary Fund, and developed countries which translated into policy advice for Third World countries (Preston, 1996; Leys, 1996). Through policies such as Structural Adjustment Programmes (SAP), third World countries had to remove any regulation of the market, avoid any interventions in the market such as subsidies and tariffs. They also had to ensure the state's role in the economy would be avoided to make way for private enterprise (Preston, 1996:255). Rostow (1960) remains one of the prominent figures of this development thinking, with his model of the linear stages of economic development.

Figure 3. The Stage of economic development as modelled by Rostow
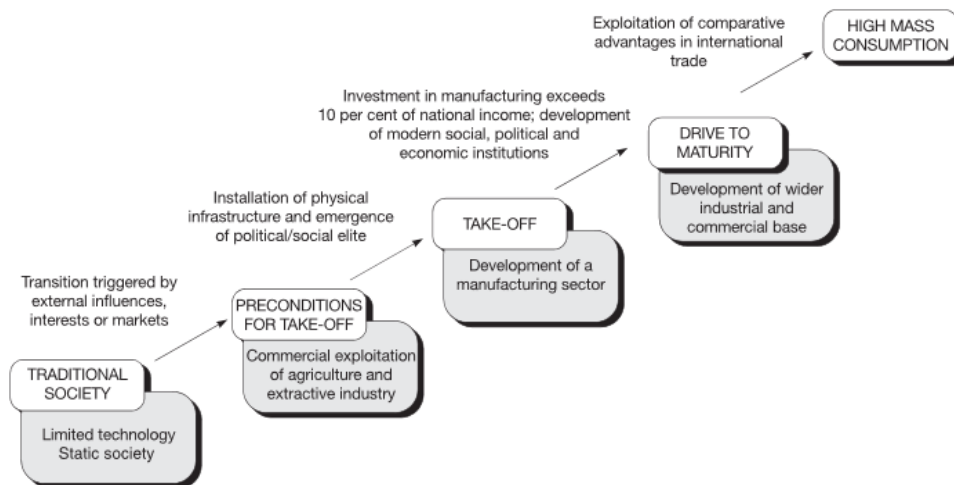
Source: Rostow (1960).

During the 1980s in African countries and post-1989 in the former Eastern Bloc countries, rapid marketisation through the adoption of neoliberal policies produced unemployment, reduction in general welfare and extensive debt burdens, amongst other things (Preston, 1996). In essence, the intractable problems of these countries continued and deepened. As Lee and Williams note, the ultimate failure of structural adjustment in the 1980s and 1990s and the resurgence of poverty alleviation as a top priority led to a sea change in development thinking that recognized economic growth was necessary, but not a sufficient condition for development.

As a whole, proponents of 'another' or *alternative development* do less theorising about social change and are more concerned with how development should occur (Thomas, 2000). Phrases such as 'growth with equity' or 'redistribution with growth' emerged in the 1970s and encapsulated the recognition that economic growth remains a fundamental ingredient within development thinking and action, but that it was critical to ensure the benefits do not fall solely to a minority of the population (Elliott, 2006). Similarly, the International Labor Organisation World Employment Conference in 1976 is considered to have been particularly important in raising issues of employment generation and the redistribution of wealth over and above economic growth. By the 1980s, development was seen as a multidimensional concept encapsulating widespread improvements in the social, as well as the material well-being of all in society (Elliott, 2006).

During this period, scholars began focusing on the human dimensions of, and the conditions for economic growth; thus their lens can be said to have shifted from economic growth to human development. One of the new generation of theories that take this approach is the *basic needs approach* which stresses relief of absolute poverty through direct assistance and meeting basic needs such as food, clean drinking water, shelter as well as social needs including education, human rights and participation (Webster, 1984). Webster adds at the heart of this approach lies a desire for social justice and welfare based on a concern that resources of a society should be distributed evenly, including public goods and capital for investment (Webster, 1984: 35). It was recognised there was no single model for achieving development; certainly it required investment in all sectors, including agriculture as well as industry. Rural-based strategies of development were particularly important amongst those promoting 'development from below' such as Stohr and Taylor (1981). Rather than a single, 'top-down' (and linear) model, it was asserted that development needs to be closely related to the specific local, historical, sociocultural and institutional conditions, focused on mobilising internal natural and human resources, appropriate technologies, and give priority to basic needs (Elliott, 2006). In remarkable contrast to the theories of development up to that time, development was to be more inclusive, with individual and cooperative actions and enterprises becoming the central means for (or 'agents' of) development.

Sen's *capability approach*[29] has also emerged as a leading alternative to standard economic frameworks for thinking about poverty, inequality and human development generally (Clark, 2005). In his inspiring book, *Development as Freedom*, Sen states an adequate conception of development must, without ignoring the importance of economic growth, go much beyond the accumulation of wealth and the growth of GNP and other income related variables (Sen, 1999: 14). For Sen,

---

[29] Amartya Sen, *Development as Freedom*, New York, Alfred A. Knopf, 1999

development is the process of expanding the real freedoms that people enjoy. He identifies five distinct types of freedom, which include political freedoms, economic facilities, social opportunities, transparency guarantees and protective security — each of which help to advance the general capability of a person.

Some of Sen's commentators understand his *capability approach* not as a theory that can explain poverty, inequality, well-being or social arrangement, but as an analytical tool or framework with which to conceptualise and evaluate these phenomena or to formulate social critiques.[30] In an analysis of Sen's capability approach, Robeyns points out that to better understand this approach, it is important to grasp what it entails in Sen's understanding. Sen understands capacities as what individuals are really able to do and to be; in other words, it is their possession of the range of effective opportunities to do the activities they want to do, and be who they want to be. These specific 'beings' and 'doings' which Sen calls *functionings*, can include such things as working, resting, having good social relations or networks (sociologists speak of 'social capital'), being literate, being healthy, being part of a community, being respected in the community, etc. For Sen, these *functionings* constitute the substance of a valuable life. Thus, while *capabilities* refer to real *opportunities*, *functionings* refer to specific outcomes in terms of actual beings and doings (Robeyns, 2010: 237).

Sen's capability approach emphasises the difference between the means and ends in improving well-being and development. The ends have intrinsic significance, whereas means are instrumental to reach the goal of increased well-being, justice and development. It is not always obvious, however, to establish the difference between the ends and the means. For instance, the capability of being in good health is an end in itself, but is also a means (a prerequisite) to the capability to work. Sen notes the freedoms he refers to are not only the primary ends of development, but are also among their principal means (Sen, 1999:10). Therefore, Sen's *capability approach* applied to politics and development requires a democratic and participatory process. Thus, he considers democracy, markets, education and healthcare as some of the elements that foster development.

Robeyns (2010) suggests the capability approach fits better in practice to evaluate policies and social changes according to their impact on people's *functionings* and *capabilities*. Using the capability approach for policy assessment could have strong potential to detect discriminatory factors, such as nepotism, clientelism, or tribalism, which could have a negative impact and prevent public policies from being effective.

Taking it a step further, Nussbaum agrees with Sen that people should not be compelled to act in particular ways, but be given ample opportunities to choose the types of functionings they consider as valuable; she uses the idea of the capability approach in "*a more exigent way, as a foundation for basic political principles that should underwrite constitutional guarantees*" (Nussbaum, 2000: 71). She argues it is not enough to only choose the space of capabilities to evaluate how well people's

---

[30] Ingrid Robeyns, "How Can the Capability Approach be Used to serve Marginalised Communities at the Grassroots Level?", in Frédérique Apffel-Marglin et al (eds.), *Interrogating Development: Insights from the Margins*, New Delhi: Oxford University Press, 2010, p.237.

lives are going, it is also important to democratically deliberate a definite but 'open' list of central capabilities that will serve as benchmarks for this evaluation.

Drawing inspiration from Aristotle and Marx's conception of 'truly human functioning' and focusing on the central notion of what it means to live a life with human dignity, Nussbaum suggests a set of entitlements that every society should strive to guarantee to its members. The list includes capabilities such as living a long life and avoiding premature death, having good health and adequate nourishment; freedom of movement, freedom from assault, freedom of choice regarding sexual matters; the ability and the opportunity to use one's senses, imagination, thinking and practical reason; and the ability to engage in various forms of familial, social and political relationships (Nussbaum, 2000: 78-80). By doing so, Nussbaum provides a more definite normative content to the capability approach, as well as more consistency (in the approach) in playing a crucial role in evaluating the quality of people's lives, when looking at their capabilities.

Another counter-critique of the neoclassical paradigm is based on the East Asian development experience, and has come to be called the *Developmental State Theory.* According to Onis (1991), we can classify this theory broadly as institutionalist. Its main argument is that the phenomenon of "late development" experienced by Taiwan, South Korea, Hong Kong, and Singapore should be understood as a process in which states played a strategic role in taming domestic and international market forces and harnessing them to national ends. Therefore instead of proposing market-oriented and state-led development as alternatives, the *developmental state* perspective is concerned with finding the appropriate mixture of market orientation and government intervention consistent with rapid and efficient industrialisation (Onis, 1991:110). One of the elements of this model is the existence of a small, elite state bureaucracy staffed with the best managerial talent available and whose duties include identifying the industries to be developed, and choosing the best means of rapidly developing the chosen industries to guarantee, for instance, economic health and effectiveness (Johnson, 1999: 38). Another important element is a political system in which the bureaucracy is given sufficient space to take initiatives and operate effectively (see Onis, 1991: 114-115; Johnson, 1999: 38). Basically, the state performs a key role in the promotion of cooperative labour-management relations and undertakes a leading role in the creation of comparative advantage; the state is supposed to be directly involved in the process of building economic infrastructure through education, training, and research (Onis, 1991: 124).

This initial conception of the *developmental state* paid no attention to the nature of the political regime as some East Asian developmental states were undemocratic. Scholars, however, have added the importance of participatory democracy to sustain and safeguard the progress made by developmental states. Therefore, in recognition of the limitations of the dominant conception of the developmental state, Robinson & White (1998) came up with the notion of the *democratic developmental state* which retains the autonomous institutional attributes of the developmental state, but moves beyond it to emphasise an inclusive approach to public policy-making (Edigheji, 2005:14). In a similar vein, Peter Evans has also called for a capability approach drawing from Amartya Sen to be incorporated into the developmental state thesis. Evans (2007) argues development should be a product of people — rather than something delivered by "uninterested" state technocrats — and is instead propelled by a situation in which the state and citizens co-produce common goods, services and values of mutual benefit to all. Evans (2007:57) points out both modern economic theory and historical experience tell us that human capabilities (and the

institutions that give them effective expression) are what propel economic growth and improved well-being. However, since the divergence between social and private rates of return lead private markets to chronically under-invest in human capabilities, the developmental state must play the leading role through increased public investment in capability-expanding services, of which health and education are the most obvious examples (Evans, 2007). The focus on human capabilities has political implications because the co-production of capability-expanding, growth-enhancing services requires deliberative processes as the only basis on which the modern developmental state can secure the information it must have to efficiently allocate the public resources for which it is responsible (Evans, 2007:60-61). The democratic developmental state therefore stresses the importance of participatory democracy in development.

With the growing challenges of globalisation in the early 1990s, however, the changing position of the nation state and national governments across economic, social and political spheres started shifting the focus in development theory and practice towards what can be termed as sustainable development (Elliott, 2006). Sustainable development is thought today in terms of reconciling development and the environmental resources on which society depends (Elliott, 2006:44). In an increasingly globalised world, with new challenges and new opportunities — including continuing global population growth and urbanisation, and increasing realisation of the severity and urgency of climate change threats — new actors (such as transnational corporations and civil society organisations) and even new technologies are shaping outcomes in resources development and management to a much greater extent than previously, ensuring the processes of globalisation operate to reach the needs of the poor, rather than to further marginalise particular groups and places (Elliott, 2006). In this regard, development calls for global justice, and understands sustainable development as an alternative to maintain development over time (present and future), by looking at three different pillars — environmental, economic and social.

Figure 4. The objectives of (inclusive) sustainable development
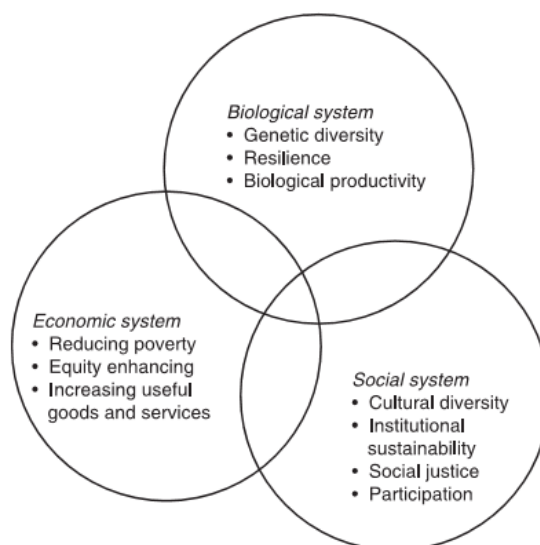
Source: compiled from Barbier (1987).

In light of the above debates, it is clear traditional approaches of development that only focus on economic growth, maximisation of welfare or distribution of basic resources are inadequate. There is a need to consider other approaches, such as the capability approach advocated by Sen and the current trend of inclusive sustainable development, that offer a framework to think about what social and global justice is, and integrate the human, social and environmental dimensions in development. In this vein, development actors as well as human rights actors have come together to experiment what has been termed *human rights-based approaches to development* (HRBAD), as an approach to rethink development from both top-down and bottom-up perspectives, allowing voices from those who experience suffering and hardship from the ground (Upendra Baxi) to be heard. Acknowledging inclusive sustainable development as a long-standing feature of HRBAs, Karin Arts notes addressing both the manifestations and structural causes of inequalities has resulted in a more tangible emphasis on combating discrimination and violence (Arts, 2017: 60). Therefore, human rights-based policy approaches offer a way of addressing the new threats and challenges in a manner consistent with respect for the integrity, dignity and rights of individuals and peoples.[31]

1.3. (Human) rights-based approaches to development and the localising human rights conceptual framework

A few decades ago the *basic needs approach* dominated development work.[32] The approach is based on identifying the basic requirements of human development, and advocating within societies in favour of their fulfilment (Gabel, 2016). Although human rights are need-based claims, the HRBAD brings a big shift in development from meeting vital needs to claiming and protecting rights (Miller & Redhead, 2019). Samuel Moyn (2018) states,

> The rise of the basic needs paradigm in development thinking, along with its intersection with the concurrent human rights revolution, starkly reveals how visions of sufficient distribution supplanted any notion of material equality from an early date…

While the basic needs approach does not necessarily identify or imply responsibility for the need being met, in a HRBA a right is assigned to individuals (rights-holders) who claim their rights from duty-bearers (the state). Rights entail obligations, while needs do not (Gabel, 2016). In a needs-based approach, needs are often satisfied through benevolent or charitable actions. This move from charity to claims brings a huge difference in conceptualising the HRBA, as it puts a focus on responsibility and mechanisms of accountability (Cornwall& Nyamu-Musembi, 2004).

---

[31] Bertrand G. Ramcharan, *The Law, Policy and Politics of the UN Human Rights Council*. (Leiden/Boston: Brill Nijhoff), Vol.2, 2015, p.45

[32] Samuel Moyn (2018: 129) remarks that researchers in the 1970s often traced the roots of the needs approach to the American psychologist, Abraham Maslow, who propounded an abstract hierarchy of human needs in 1943.

It is not uncommon to find different rights-based expressions, forms or understandings. For instance, when commentators or actors refer to human rights-based or rights-based approaches, do they mean the same thing or not? Miller's findings[33] on the issue suggest,

> For some, emphasis of the 'human' suggests an eminence of the legal implications and normative quality of human rights as defined within international law, whilst 'rights-based approaches' can imply a certain distance from the international human rights system, with an increased association with citizen rights. For others, the label 'rights-based approaches' represents shorthand for [both] 'human rights-based approaches' [and rights-based approaches]… (Miller, 2010: 915, 931).

Like many others, I will use interchangeably the terms human rights-based approach and rights-based approach. However, before I proceed I would like to give a short background on when, how and why the HRBAD emerged.

Miller and Redhead (2019: 700) remark that there is a little consensus today over exactly when the precise concept of RBAs emerged. However, first explicit talk of an integration of rights within development practice can be traced back in the early 1990s, when two previously distinct strands of foreign assistance and global policy – 'human rights' and 'development' – began to merge, combining the principles of internationally recognised human rights with those of poverty reduction (Kindornay et al, 2012: 476). The 2006 UNDP Capacity Development Resource document indicates that human rights were explicitly acknowledged as the ground rules for development programming for the first time during the world conference on human rights in Vienna in 1993, with momentum building around the 1995 Copenhagen Summit on Social Development. The increased interest in what human rights meant for the mandate of many specialised UN agencies was triggered by the UN Declaration on the Right to Development in 1986, which took these agencies to embed their work more explicitly in the human rights discourse (Destrooper, 2015: 45). From the mid-1990s onwards, a whole host of development actors started to adopt and promote HRBAs, ranging from UN agencies, major donors, INGOs, as well as local grassroots NGOs and social movements.

In the wake of this growing attention for the link between human rights and development, UN Secretary-General, Kofi Annan, upon taking office in 1997, outlined his vision and proposals for UN reform. During his inaugural lecture, he called for an emphasis on human rights and the need to integrate human rights into all principal UN interventions and programmes. His address advocated the move towards a HRBAD by various UN agencies and programmes. The rationale for such a move was to make development cooperation more effective and acknowledge the co-constitutiveness of human rights and development (Destrooper, 2015: 46). Integrating development and human rights meant that development would come to be seen as a state obligation, and no longer as charity or as something relying on the goodwill of a third party. In this light, building state capacity, strengthening social cohesion and anchoring change in a framework of law and institutions came to be seen as crucial elements for fostering sustained and sustainable results and democratic gouvernance. As Kindornay et al (2012: 475) remark many commentators and researchers view this new trend with excitement – while a few remained sceptical – highlighting the normative and practical value of injecting human rights principles into standards of development thinking and practice; and hoping

---

[33] Hannah Miller, "From 'Rights-Based' to 'Rights-Framed' Approaches: A Social Constructionist View of Human Rights Practice", in *International Journal of Human Rights* 14, no.6, 2010.

that RBAs will empower marginalised groups and communities by focusing attention on social and economic inequality, and boosting both state and donor accountability.

Miller and Redhead (2019: 701) map the evolution of research focus on the RBAs into three phases: the first phase, from mid-1990s to early 2000s, sought to document the approaches' growth and popularity, whilst also focusing on the different 'rights-based' understanding, forms and expressions. The second phase, fom mid-2000s to mid-2010s, concentrated on establishing in-depth analyses of rights-based practices. Research foci at this stage sought to establish what best practice might look like, and in doing so, questioned what the 'added value', 'potentials' and 'successes' were to this new wave of development practice. Further to this, was the desire to understand the various pitfalls, failures and liabilities of the RBAs (Miller and Redhead, 2019). The third phase, from mid/late-2010s to the present day, has seen a steady resurgence in research that seeks to establish how RBAs are being implemented after more than two decades of practice. Miller and Readhead show that, at this stage, key studies are starting to re-analyse the extent to which there have been actual systematic changes in practice, by constrast to mere rhetorical incorporation, and what this may mean for those actually claiming their rights.

1.3.1. Defining Human Rights-based Approaches (HRBAs) to Development (HRBAD)

As Gready & Vandenhole (2014) point out,

> The relationship between human rights and development has been framed in multiple ways. From a legal perspective, there are three major conceptualisations: the right to development; transnational human rights obligations; and human rights-based approaches to development (HRBADs).

The authors go on to state the last two conceptualisations signify a fundamental overhaul of human rights thinking, as they introduce new substantive rights and corresponding obligations, and even new duty-bearers. What is important here is the transformative potential of human rights law in society, as we try to reflect on how human rights can support development efforts in poor countries. In this section, we will essentially focus on the rights-based approach to development.

Early attempts to finetune this approach go back to the early 1990s when the United Nations Development Programme (UNDP) began seeing development more and more as sustainable human development, addressing the human being in relation to both resource management and participation (Hamm, 2001: 1010). If development is to be understood as a "*process of enlarging the range of people's choices — increasing their opportunities for education, healthcare, income and employment, and covering the full range of human choices from a sound physical environment to economic and political freedoms*" (UNDP, 1992), such a holistic vision of development is consistent with human rights standards since they also refer to the whole human being (Hamm, 2001). We can thus understand the interest such a vision has generated within the development community to incorporate human rights as both a conceptual framework for the process of human development, as well as the content of development policy (Hamm, 2001; Vandenhole, 2008:11) that is

"*normatively based on international human rights standards and operationally directed to promoting and protecting human rights*."[34] Whereas HRBADs are operationally directed to promote and protect human rights as envisaged outcomes, their normative grounding in human rights standards also draws attention to the process through which the outcomes are achieved.[35] This is to say HRBADs claim to change the way development work is done (process), and also put forward full human rights realisation as the goal of development work (outcomes).[36] Although the HRBAD applies to all human rights (i.e. civil and political rights, as well as ESC rights), Reyntjens considers the approach to be particularly relevant for the realisation of ESC rights and collective rights, as they are directly linked with the satisfaction of basic needs and the respect for a minimum threshold for each right.[37]

In 2003, the UN Development Group adopted the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming, also known as the *Common Understanding*. The purpose of the Common Understanding was to provide a consistent and coherent definition of the Human Rights-Based Approach to Development (HRBAD) across all UN agencies, funds and programmes. The Common Understanding guides processes and outcomes with respect to human rights mainstreaming, and in doing so, provides practitioners with operational guidance in applying a HRBAD in their work. The Common Understanding defines the approach in three steps:[38]

(i)   All programmes of development cooperation, policies, and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
(ii)   Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
(iii)   Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

We discuss the terms of duty-bearers and rights-holders in more detail in the following chapters. At this stage, we can provide a minimal definition of each concept. The term duty-bearer is most commonly used to refer to state actors and official authorities at all levels; the state is the ultimate duty-bearer as it ratifies international conventions (UNICEF-Finland, 2015). The term rights-holder is used to refer to individuals or social groups that have particular entitlements in relation to specific rights. For example, children are rights-holders and their parents are considered first-line duty-bearers according to the Convention on the Rights of the Child; hence, parents have obligations and responsibilities to respect, protect and fulfil the rights of the children (UNICEF-Finland, 2015: 8). In a

---

[34]   UNICEF-FINLAND, *Introduction to the HRBAD: A Guide for Finnish NGOs and their Partners*, 2015, p.8

[35]   OHCHR, *Frequently Asked Questions on a Human-Rights Based Approach to Development Cooperation* (New York and Geneva, OHCHR, 2006), 15, available at https://www.ohchr.org/Documents/Publications/FAQen.pdf (accessed 28 Feb 2020)

[36]   Gready & Vandenhole, 2014: 293.

[37]   F. Reyntjens, 'The Growing Role of Human Rights in Development Cooperation', in D. Van Den Bulcke (ed.), *Recent Trends in International Development*, (Antwerp: College for Developing Countries), 1988, pp. 143–63.

[38]   UN Development Group, *UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming*, 2003.

sense, we can say there are aspects of the HRBAD that target duty-bearers by raising moral pressure, and other aspects that target rights-holders by instilling the dignity and self-respect necessary for political, social, and legal mobilisation — both can arguably reduce poverty and inequality at global and national levels; meaning that the HRBAD works on both the supply and demand sides of development (Gauri & Gloppen, 2012: 486).

Gauri & Gloppen (2012: 486), focusing on human rights-based approaches (HRBAs) only, suggest to understand them "as principles that justify demands against privileged actors made by the poor or those speaking on their behalf, for using national and international resources and rules to protect the crucial human interests of the globally or locally disadvantaged." Although restrictive in the sense their view does not encompass the full range of the HRBAD, or respond to those who defend the intellectual property of firms and other privileged actors, as well as the libertarian discourse they espouse, this definition suggests to focus on the poor or those speaking on their behalf to address human rights-based claims against privileged actors and protect their crucial human interests (Gauri & Gloppen, 2012: 494).

So, implicit in the narrative of the HRBAD is the assumption of change. In other words, the HRBAD claims its potential from law to bring about justice; it emphasises the role of law and legal institutions in pursuing transformative social change or, to be more explicit, social justice. Although a straightforward causal relationship between the HRBAD and the envisaged social change is often presumed, in particular within result-based paradigms (Gready & Vandenhole, 2014: 292), there is not enough empirical evidence to confirm such an assumption. What is important here is to explore the potential of law and legal institutions to trigger social change[39] in development policy through the HRBAD. In our context, change is to be understood as progress, which bears a qualitative character and demonstrates qualitative transformation. Lundberg et al (1934) refer to social change as "any modification in established patterns of human relationships and standards of conduct."

1.3.2. Approaches to change

How do legislation and social change interact? Wherever attention has been given to the HRBAD in development work, the use of law in terms of legal reform or litigation represents a major shift. Law can be approached in different ways. It can be described as an "authoritative canon of values laid down by the force of politically organized society" (Roscoe Pound). Law can also be understood as a hegemonic process of codification of social values which may lead to exclusion or, else, may become a process of resistance.[40] Gready & Vandenhole (2014) acknowledge two basic positions with regard

---

[39] Gready & Vandenhole consider five "key entry points to change; these include, (i) the state; (ii) the law; (iii) transnational and international collaboration; (iv) localism and bottom-up approaches; and (v) multiple and complex methods" (see P. Gready & W. Vandenhole, "What are we Trying to Change? Theories of Change in Development and Human Rights", in Paul Gready & Wouter Vandenhole (eds.), *Human Rights and Development in the New Millennium: Towards a Theory of Change*, Routledge, 2014, 3).

[40] Rukmini Sen, "Securing Gender Justice amidst Cultural and Religious Pluralism: Indian Experience," Lecture, Winter School on Law, Justice and Sustainable Development, National Law University, Delhi, January 2020.

to the role of law in social change. For some, law follows change;[41] for others, law may lead change (De Feyter et al, 2011). For those in the first category, the law plays a merely normative consolidating role (Vandenhole, 2019), as a catalyst of social change in that it reinforces conformity and social cohesion. For those in the second category, the law is used as a tool for social change, in that it has a more active role in bringing about social justice. This is why law is considered as a site of resistance or means for struggle.

Viewing law as a vehicle for social change has exacerbated a strong tendency towards legal instrumentalism and social engineering through law, leading to the risk of legalistic solutions to social issues. Thus, using the law in development raises questions about the instrumentalisation of law by political power (Gready & Vandenhole, 2014), as well its effectiveness, as there is so far little evidence that the law brings about the intended effects (Gready & Vandenhole, 2014). More radical criticism, however, has pointed out the liberal ideological nature of the law, reflected in the understanding of empowerment as putting citizens in a position to "make political demands that lead to better service provision and to the sort of situation where citizens can provide services for themselves."[42] Even so, human rights law is generally believed to have transformative potential because of its check on power and its focus on accountability; likewise, human rights litigation has been assigned transformative potential under certain preconditions, and in close interaction with policy and legislation (Gready & Vandenhole, 2014: 296).

Now I would like to discuss Gready and Vandenhole's second entry point to change (see footnote 34), useful in this thesis: the role of accountability, participation and empowerment in bottom-up and localised approaches. I will focus more broadly on the localising approach towards the end of this section. What is key in bottom-up and localised approaches, is the way human rights are primarily seen as struggle, rather than preconceived legal rules. This shows that human rights are not exclusively in the domain of the law (Gready& Vandenhole, 2014). These approaches introduce three differences in the way of approaching human rights:

(i)   Different starting point: it is no longer the international standards, but rather the local struggle (the local situation of human rights' users);
(ii)   Different prioritisation: process, rather outcomes; and
(iii) Different end-goal: change in power relations rather than the implementation of international standards.[43]

These differences show the opposite ways in which development actors attempt to bring about social change, for instance by drawing on pre-conceived norms or on local struggles. Gready and Vandenhole (2014: 297) suggest the key difference in their approach to change between human rights and development actors is that they use different 'legitimising anchors' —human rights actors

---

[41]   Y. Ghai, "The Role of Law in the Transition of Societies: The African Experience", 35 *Journal of African Law*, No. 1– 2 (1991).

[42]   J.E. Oestreich, *Power and Principle.Human Rights Programming in International Organizations*. (Georgetown University Press: Washington, DC), 2007, p. 58.

[43]   See Gready & Vandenhole, 2014.

tend to use (legal) norms as their legitimising anchor (norm-based); development actors seek it through empirical observation (evidence-based). Table 2 below tries to summarise these differences.

Table 1. Main archetypical differences in human rights and development approaches

Distinguishing factors	Human rights approach	Development approach
Legitimising anchor	Norm-based	Evidence-based
Views on the role of and relationship with the state	• neutral on political system • own role: advocacy • adversarial relationship	• role of state is political issue • own role: service delivery • partnership
Views on the role of law	transformative potential thanks to accountability/check on power	legal instrumentalism - engineering through law
Views on the role of human rights litigation	potentially effective in interaction with policies/legislation	

Source: adapted from Gready & Vandenhole, 2014:297.

Amongst the bottom-up approaches, the access to justice[44] and legal empowerment[45] approaches have gained momentum. Ensuring access to justice and establishing the rule of law through institutional reform and the removal of legal and administrative barriers are central to legal empowerment. Laws are ineffective if citizens cannot use the justice system to realise their rights, or if the institutions enforcing the law are ineffective, corrupt or captured by elites (Clep, 2008). Women, youth and other socially excluded groups are particularly likely to face barriers accessing justice institutions (Bakrania & Haider, 2016). These groups can be excluded because institutions are remote and unaffordable, and they lack the time and resources to access them. They may also be unaware of their rights. In other cases, the institutions themselves may be discriminatory. In many countries, women's access to justice is obstructed by statutory and customary law that is biased against women, or is not gender-sensitive (Bakrania & Haider, 2016). Young people also have specific needs related to their age and vulnerability.

---

[44] Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. There is no access to justice where citizens (especially marginalised groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system. Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight. Access to justice supports sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes (see https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice).

[45] Legal empowerment is designed to give people the power to know and use the law, and is one of the most effective and responsive methods for achieving access to justice. When legally empowered, even poor and marginalised people are able to make the law work in their own interests, achieving meaningful solutions to concrete injustices. It emphasises a people-centred approach to justice by highlighting the priorities of individuals and communities in using the law to advance and protect their interests. Often this involves a combination of lawyers and paralegals, formal and informal justice systems, information sharing and community-driven participation (see OECD, "Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All", *Issues Brief*, 2016).

Legal empowerment is a key demand-side response to addressing deficits in the rule of law. It entails extending legal provisions to the marginalised, and encouraging them to be more proactive in claiming their rights (Roseveare, 2013). Legal empowerment initiatives enable citizens to actively use the law and shape it to their needs. According to Maru (2010: 84-85), five key principles define legal empowerment:

(i) *Concrete solutions to instances of injustice*: legal empowerment seeks to solve people's daily problems of injustice, including intra-community disputes and rights abuses that arise from traditional authorities, state institutions and private firms.

(ii) *A combination of litigation and high-level advocacy:* with more flexible grassroots tools, including community education, organising local advocacy and mediation, along with the use of litigation and high-level advocacy.

(iii) *A pragmatic approach to plural legal systems*: engaging with a range of providers, building linkages between then and advocating for their evolution.

(iv) *Empowerment*: cultivating the agency and power of the people.

(v) *A balance between rights and responsibilities*: ensuring self-sufficiency by supporting community and self-help organisations and by advocating for the fulfilment of citizen obligations. Legal empowerment interventions include the provision of legal aid and community paralegals,[46] capacity development and awareness-raising for both citizens and providers (UN, 2011a), and public interest litigation.

The right to legal aid in criminal cases is enshrined in many human rights treaties. In fragile and conflict-affected contexts, formal legal aid schemes are often established, but are limited by the lack of lawyers in the country. Other civil society initiatives, such as reliance on community paralegals, can provide awareness-raising, advice and mediation (Maru, 2010b).

These approaches are consistent with a development strategy that focuses on the realisation of human rights and the fundamental freedoms of both individuals and communities. While both are more inclined to use the law and legal systems through adjudication, arbitration and mediation (Domingo & O'neil, 2014) to ensure legal accountability and social justice, localising human rights theory aims to penetrate the architecture of the elaboration and/or future development of international human rights norms, taking into account the needs and the experiences of local people (De Feyter), the "people from below." We focus on the localised approach in section 1.3.5, as it has been developed or theorised by De Feyter & Oré-Aguilar (2011), knowimg that this is an approach that informs our fieldwork and is part of our analysis. However before we get there, let us start by briefly discussing the core principles and the operating modalities of the HRBAD.

---

[46] Paralegals are 'community activists who not only have substantial training in legal principles, but also familiarity with local community norms and practices and an ability to offer advice and advocacy services that go beyond narrow legal advice' (Clep, 2008, p. 92).

1.3.3. *Discussing core principles of the HRBAD*

There are five key human rights principles that underpin the rights-based approach to development. They are known as PANEL: Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality. Vandenhole refers to them as PANEN, adding Normativity at the end, as it seems more encompassing, taking into account the rule of law and any normative framework, especially in the context of sustainable development.[47]

As we progress in the thesis, we will refer from time to time to these principles; however, we would like to take a closer look at three of these five principles, as they are so crucial to our topic and for our analysis. These include the principles of accountability, participation and empowerment.

1.3.3.1. Accountability

The literature on accountability contains a wide range of perspectives, definitions, and views on the appropriate scope of the principle. Accountability can be conceived from a legal, social or political (democratic) perspective. Olsen (2013: 449), in trying to find the institutional settings within which accountability processes take place, understands democratic accountability as "a way of thinking about political order and a principle for organising the relations between governed and governors," ruled and rulers. In simplistic terms, accountability is about "being answerable to somebody else, being obliged to explain and justify (in)action, how mandates and contracts have been dealt with, how authority and resources have been applied, and with what results" (Olsen, 2013: 449-450).

In order to focus on functional explanations of accountability, we refer to the *principal-agent model framework*. Kersschot at al (2020) acknowledge the framework provides tools to analyse hierarchical relationships between several actors, and is particulary relevant to systematically map elements that affect control in a situation of delegation. Amongst the core assumptions of the principal-agent model are the following two: the unit of analysis is the individual who is a self-interested, autonomous actor calculating the costs and benefits of alternative actions; and the identity of principals and agents is often based on formal legal institutions and normative theories of sovereignty, superiority and subordination, prescribing chains of delegation/authorisation and representation/accountability (Olsen, 2013). Within this framework, the principal's interest is given normative priority. The task is to explain the agent's behaviour and how different opportunities and incentive structures induce the agent to act in the principal's interest, and to help detect and sanction deviations from pre-determined arragements or agreements. Information plays a key role

---

[47] Wouter Vandenhole, *Human rights-based approach to development: Potential and Challenges*, Lecture at the Delhi Winter School: Law, Justice and Sustainable Development, National Law Development, Delhi, Jan 2020. While we expand below in more detail on accountability, empowerment and participation, we suggest here a short explanation on other principles: (i) *Non-discrimination and equality* – all individuals are entitled to their rights without discrimination of any kind. All types of discrimination should be prohibited, prevented and eliminated. (ii) *Legality* – approaches should be in line with the legal rights set out in domestic and international laws.

in holding power wielders (agents) to account (Keohane & Nye, 2003:389); information is a strategic resource, with an asymmetry to the advantage of agents (Olsen, 2013; Kersschot at al, 2020).

Thus, if we understand accountability as the fact that ''… some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of those standards, and to impose sanctions if they determine that those responsibilities have not been met''(Grant & Keohane, 2005: 29), then it is important this relationship of accountability is institutionalised when the principal's right to receive reports and to sanction is recognised and accepted by the agent (Keohane, 2003:139). Sanction may be based on the failure to give an account or for the content of the account given. Equally important is the accountability holder's capacity to sanction (Keohane, 2006: 5). Power asymmetries between accountability holders and power wielders can disrupt the sanctioning process when the former is too weak, in either absolute or relative terms, to sanction the latter effectively (Rubenstein, 2007: 617). This makes accountability fundamentally a power relationship. The ability to avoid being held to account is a form of power (Keohane, 2003: 142), as by implication, is the right to hold to account. How then do we develop accountability mechanisms that limit abuses of power?

Grant & Keohane (2005), in examining how accountability can be problematic at the global level, focus on two models of accountability: by delegation and by participation. Accountability by delegation entrusts people with power to examine the performance of power-wielders; while in accountability by participation those who are affected by the exercise of power undertake this evaluation. Grant & Keohane use their vertical conceptualisation of power to categorise a variety of accountability mechanisms. Mechanisms to ensure democratic accountability in modern states include imposing penalties (including removal from office), elections, authorising and controlling political decisions (Goodhart, 2011). The standard to which power wielders and their decisions are held to account in this model of democratic accountability depends on the will of the people, which is best expressed in the consideration of their rights, welfare and interests (Goodhart, 2011: 50).

Accountability mechanisms, when understood largely in terms of obligations and sanctions, underscore the need to curtail the abuse of power in vertical lines of authority. Vertical lines of accountability can run up (from those affected by power) and/or down (from those who have delegated power).

Treating sanctions as the core of accountability mechanisms, however, is insufficient for the complex and overlapping accountability relationships that govern relationships of mutual accountability (Halle et al, 2012: 10). A focus on preventing the abuse of power fails to examine the considerable non-punitive element of accountability that is of central importance to understanding how accountability works. More and more, global governance is moving away from sanctions toward a conception of mutual accountability, which occurs along horizontal lines where conceptions of power are quite different from the sanction-heavy account found in Grant & Keohane. In their view, accountability obligations take a hierarchical or vertical form and compliance with accountability expectations are typically enforced by the threat of punishment (Halle et al, 2012). When lines of power run horizontally, as they are increasingly likely to do, the motivation for keeping accountability obligations is based on mutual respect and dependence for keeping accountability commitments. The mechanisms designed to reinforce accountability inevitably take different forms when accountability relationships are horizontal. A sense of obligation is paramount, and is

reinforced by concerns over maintaining important working relationships and the reputation of the organisation (Halle et al, 2012).

1.3.3.2. Empowerment

Empowerment can be approached from an individualistic perspective, where the focus is on facilitating the expansion of an individual's capacities[48] to achieve emancipation on his/her own (Sen, Nussbaum). Empowerment, however, can equally be understood as a multi-dimensional process that necessarily entails social relations among individuals, groups of people or institutions. In that way, the focus shifts to the way power structures relationships within and between different institutional levels. Power becomes, thus, central to understanding what empowerment entails (Ibrahim & Alkire, 2007; Galiè & Farnworth, 2019) from an institutional perspective. The institutional environment offers people the opportunity to exert agency fruitfully.

Viewing empowerment from a bottom-up perspective, Chambers (1993) describes it as a process that gives the poor control over their lives, and ownership of productive assets to secure a better livelihood. The UNDP Human Development Report (1995) focuses on an intervening process that generates an increase in empowerment, arguing that to be empowered people need to fully participate in decisions and processes that shape their lives. One of the most widely used definitions of empowerment, however, can be found in the World Development Report (2000/2001), which states empowerment is a process of "enhancing the capacity of poor people to influence the state institutions that affect their lives, by strengthening their participation in political process and local decision-making; it means removing the barriers – political, legal and social – that work against particular groups, and building the assets of poor people to enable them to engage effectively in markets." To this broad definition, Narayan's understanding of empowerment brings some additional variables. He sees empowerment as "the expression of assets and capabilities of poor people to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives" (Narayan, 2002: vi).

Narayan stresses four essential elements of empowerment: access to information, inclusion and participation, accountability, and local organisational capacity (Narayan, 2002: vi-vii). From this point of view, it appears that empowerment builds on agency, which is influenced by people's individual (material, human, social, psychological) and collective (voice, organisation, representation, identity) assets and capabilities (Narayan, 2005: 5-6). People's agency can be constrained by the 'opportunity structure', i.e. the institutional climate (information, inclusion/participation, accountability, local

---

[48] Various definitions of empowerment have been associated with the expansion of 'agency', the ability to act on behalf of what you value and have reason to value (Ibrahim & Alkire, 2007). This perspective has led to an analysis of 'agency' in relation to 'control' and 'power.' Rowlands (1997: 13) uses four categorisations of power: power over (ability to resist manipulation); power to (creating new possibilities); power with (acting in a group); and power from within (enhancing self-respect and self-acceptance). Gatiè and Farnworth (2019: 16) have also introduced a new concept, 'power through,' which they define as "a dimension of empowerment that highlights how empowerment of an individual is not bound to that individual only, but resides also in others around her, and is mediated by communities and their values."

organisational capacity), and the social and political structures (openness, competition and conflict) in which people live and work (Ibrahim & Alkire, 2007). Empowerment, therefore, refers to actors' capacities to seek to change the balance of power, using both formal (i.e. official mandates, including the administrative, legal and political authority and resources assigned to carry them out), and informal (often well hidden from outsiders) power resources available to them (Fox, 2004).

Eva Sørensen (1997) looks at 'democratic empowerment' through the lens of two predominant theories of democracy represented by Paul Hirst in his book *Associative Democracy* (1994), and by Danny Burns et al, in *The Politics of Decentralisation* (1994). She assumes both books share the idea of combining the development of governance institutions with empowering citizens in the process of societal governance. While Hirst's predominantly aggregative thinking focuses on individual freedom and equal influence for all citizens, the predominantly integrative theory of democracy developed by Burns et al puts the emphasis on the ability of institutions to produce democratic citizens. Therefore, from a predominantly aggregative theory of democracy, empowerment means equal influence and equal autonomy; that is, ensuring individuals have an equal share of influence in the processes of collective decision-making and maintain the largest possible sphere of individual autonomy (Sørensen, 1997). Consequently, institution building must guarantee all citizens equal influence on and control over processes of collective governance.

In a predominantly integrative theory of democracy, empowerment means transforming individuals into citizens; that is, increasing the ability of each individual to internalise a holistic perspective on societal governance and to develop their social and intellectual capacities. The key word that best serves this view is *participation*. Thus, a democratic empowerment strategy must (i) propose democratic institutions which ensure that individuals have an equal access to channels of influence and a sphere of individual autonomy; and (ii) promote procedures which contribute to the production of democratic citzens.

Sørensen suggests two tools (strategies) of empowerment: the strategies of *exit* and *voice*, as used by Hirschman (1970). She argues that citizens in the political realm have two means of empowerment available to them when they are dissatisfied with the outcome of a process of collective action: they can exit or they can voice (Sørensen, 1997). The exit option means you can choose an alternative product or outcome. The voice option is all about voicing grievances, naming, blaming and claiming (Felstiner et al, 1980).

1.3.3.3.   Participation

Participation more generally is the process of engagement in governance (Quick & Bryson, 2016). Public participation or citizen participation is often assumed to be a major tenet of decentralisation; citizens are presumed to be important stakeholders in that they are able to participate either directly or indirectly through elected representatives in the formation, adoption and implementation of the laws and policies that affect them (Quick & Bryson, 2016). Theories of participatory democracy, deliberative democracy or social capital assert that citizen engagement has positive effects on democracy, as it contributes to the inclusion of individual citizens in the policy process (De Graaf, 2013; Michels & De Graaf, 2017). Literature focusing on citizen participation and change

acknowledges that citizen participation expands public spaces, enhances the relationship between society and government, gives greater legitimacy to democratically elected authorities, promotes respect for citizenship rights, enhances the quality of politics, and strengthens solidarity and cooperation (PRIA, 2013; Michels & De Graaf, 2017). Other contributions to democratic participation have focused mostly on accountability, transparency, efficiency and innovation.

Examining citizens' involvement in local policy-making processes, Michels & De Graaf (2017) note that citizen participation in democracy is not first of all about having real power; aspects of citizenship appear to be much more important, as citizen participation enhances people's feelings of responsibility for public matters and increases public engagement. They also highlight factors that play a key role in participatory processes; these include education and political interest. According to them, citizens who tend to get involved in participatory initiatives are relatively highly educated, have some kind of previous participatory involvement experiences, those who are 'politically' knowledgeable, and those who are more politically active (Michels & De Graaf, 2017: 877).

John Gaventa (2002), focusing on forms of citizen participation in East Africa, states that participation happens either as *indirect participation* (election of local representatives; mechanisms for representation on local councils of marginalised groups such as women, youth, the elderly, and persons with disability, many of whom may be marginalised socially or economically, etc.), or as *direct participation* (village meetings, budget conferences that allow citizens to directly participate in the budgeting process, and citizens' initiatives in 'bottom-up' forms of development planning). In some instances, *joint actions*, which refer to invited spaces, are another form of citizen participation whereby citizens and civil society groups interact with local government in policy-making, including consultation and joint projects.

Gaventa (2002) also points out some of the limitations of participation in local governance in the context of East Africa; these include, insufficient devolution of power to local levels of government, insufficient or conditional finances, lack of accountability or corruption of elected representatives and civil servants, as well as the marginalisation of disadvantaged groups.

In fact, one of the tensions regarding public participation centers on inclusion in and exclusion from governance. More often, inclusion and exclusion are understood in reference to the ethnic, racial, gender or socioeconomic diversity of the people taking part in public participation. Speaking of citizenship, Verschraegen (2011) remarks that what he terms 'birthright lottery' has been set in most Constitutions as the baseline to distinguish the included from the excluded. Citizens are those who have the 'right to the chapter.' A key challenge in participation is ensuring an appropriate range of interests is engaged in the process, including those excluded from decision-making by institutionalised inequities (Quick & Bryson, 2016). Quick & Bryson suggest a stakeholder analysis and active management of power conflicts to ensure under-represented and marginalised groups are at least considered, and may have a place around the table where decisions are made. In more reconceptualised terms, inclusion can also be seen as practices of engaging a diversity of perspectives to discover new understandings of problems, resources and options (Quick & Feldman, 2011).

To conclude this section, it is important to highlight another dimension of participation that our case study addresses; this is the participation in development projects. Miller and Redhead (2019) remark

that in development participatory approaches, such as the HRBAD, build on the active involvement and advocacy of poor and excluded peoples, with the aim to influence decision-makers at all levels to seek to form and guide political, cultural and social processes and decisions towards improved living conditions of these disadvantaged groups (see note 212).

1.3.4. Operating modalities of HRBAs

Gauri and Gloppen (2012: 487) distinguish four modalities under which HRBAs operate: (i) "global compliance approaches," rooted in pressuring for compliance with international and regional treaties; (ii) "programming approaches," focused on the policies and principles of donors and executive agencies; (iii) "rights talk approaches," looking at the transformation of normative beliefs and rights consciousness; and (iv) "legal mobilisation approaches," centering on constitutional rights, litigation, and other forms of mobilisation. After a short overview of these four modalities, I will mostly focus on 'rights talk approaches' for the purpose of the analysis in this thesis.

1.3.4.1. Global compliance approaches

These approaches suggest pressuring the governments of states or countries to ratify regional and international instruments,[49] and to use that ratification to hold states accountable for the delivery of increased and higher quality development assistance. This can take legal or political forms, and operate in both developed and developing countries. Today, scholars call for a 'domestic politics theory of treaty compliance' (Simmons, 2009), whereby compliance requires domestic pressure on government. This pressure may take the form of NGO and civil society initiated mobilisation on behalf of treaty goals, the judicial application of treaties and the human rights norms embedded in them to domestic settings, or the empowerment of elements of the executive whose goals are consistent with treaty objectives (Gauri & Gloppen, 2012: 490). Gauri & Gloppen (2012) write that treaty-based, global compliance HRBAs are more likely to achieve "enforcement" or "compliance" at the national level through domestic political mechanisms, such as civil society organisations (CSOs),

---

[49] The UN Office for the Commission on Human Rights names nine core international human rights treaties: the *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965; the *International Covenant on Civil and Political Rights*, 1965; the *International Covenant on Economic, Social and Cultural Rights*, 1966; the *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979; the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984; the *Convention on the Rights of the Child*, 1989; the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990; the *International Convention for the Protection of All Persons from Enforced Disappearance*, 2006; and *the Convention on the Rights of Persons with Disabilities*, 2006. There are also several Optional Protocols attached to these treaties, and several regional treaties with human rights components (along with their amendments), such as the *European Social Charter*, 1961; the *American Convention on Human Rights*, 1978; and *the African Charter on Human and Peoples' Rights*, 1981. It is often said these various instruments are grounded, for purposes of interpretation and inspiration, in the *Universal Declaration of Human Rights*, 1948 (Gauri & Gloppen, 2012).

courts, and bureaucratic entrepreneurs, than at the international or regional levels through quasi-juridical enforcement.

1.3.4.2. Programming approaches

These approaches focus on the policies and principles of donors and executive agencies. A number of international and bilateral development agencies, including UN agencies, have endorsed a human rights orientation in their development programming and interventions, with a view to engage in local and international advocacy efforts to promote the rights of vulnerable groups (see Kindornay et al, 2012: 476-477).

Their focus has been on donor policies such as making development assistance conditional on human rights performance, working with excluded populations, and policy dialogues on human rights conducted by development agencies, to name a few.

1.3.4.3. Legal mobilisation approaches

In the process of creating social change, there is an increasing tendency to use the courts to litigate for human rights. At this stage, we will focus on litigation before domestic courts as one of the forms of Constitution-based legal mobilisation for social and economic rights. Court cases on social and economic rights have increased in frequency and scope worldwide over the last three decades (India, South Africa, Canada, etc.). Scholars and activists use court litigation as an avenue to bring social and economic rights to bear in national politics. Gauri & Gloppen (2012: 497) acknowledge that "in a situation ... where democratic institutions are often weak or unresponsive to the needs of the poor, social rights litigation represents an alternative 'decentralized' means for holding decision makers at different levels to account for their constitutional rights obligations as they set priorities and distribute resources in legislation, policies, and administrative decisions."

Litigation may be used by groups or individuals to address their specific needs, while social and economic rights litigation is often a strategy pursued by actors and organisations on behalf of others, usually disadvantaged groups in society, as a means to achieve policy change (Gauri & Gloppen). Important to bear in mind, litigation is a diverse phenomenon, both in substance and form. Some countries and courts designate a broader range of social and economic rights as justiciable.[50]

---

[50] The Cape Breton, Nova Scotia, Supreme Court in Canada adopted the following definition of "Justiciability": it may be defined as "a set of judge-made rules, norms and principles delineating the scope of judicial intervention in social, political and economic life." In short, if a subject-matter is held to be suitable for judicial determination, it is said to be justiciable; if a subject-matter is held not to be suitable for judicial determination, it is said to be non-justiciable. The criteria used to make this determination pertain to three factors: (i) the capacities and legitimacy of the judicial process, (2) the constitutional separation of powers and (3) the nature of the dispute before the court."

1.3.4.4.   Rights talk approaches

In rights talk approaches, the marginalised and excluded, or those speaking on their behalf, address human rights-based claims against privileged actors to protect their crucial human interests. Rights-based approaches to development do not always take the form of formal institutions and mechanisms; they also constitute "politics from below" or processes of "social accountability" (Peruzzotti and Smulovitz, 2006) in which activists, non-governmental organisations, and social movements engage. Merry notes, "rights talk remains a dominant framework for contemporary social justice movements."[51] More generally, Dembour[52] observes it is hardly possible to open a newspaper without coming across a reference to human rights.

The main mechanisms of rights talk approaches are the formation of a *rights consciousness* (Pantazidou, 2011) on the part of those whose rights are violated. Rights consciousness is mainly associated with claims about rights (Li, 2010). Scholars have defined rights consciousness as the awareness of existing rights, the willingness to assert rights, and the understanding of social relations in terms of rights.[53] Rights consciousness should be clearly distinguished from legal consciousness which has been broadly construed as "the ways people understand and use the law" (Merry, 1990: 5), and "participation in the process of constructing legality" (Ewick & Silbey, 1998: 35). Legal consciousness encompasses perceptions of lawmaking bodies, the court system, law enforcement, sources of authority, and cultural practices that are commonly recognised as legal (Fritsvold, 2009). For Silbey (2005), the socio-legal conception of legal consciousness should serve as a critical lens through which one can explore the hegemonic force of law and how the law reproduces existing power hierarchies. Thus, legal consciousness can best be applied to understand issues of ideology and inequality. While legal consciousness may be needed for a legal empowerment approach, our focus is on rights consciousness in the context of the rights talk approach.

Human rights norms have encouraged the formation and probably promoted the efficiency of CSOs in both developing and rich countries; CSOs have, in turn, both pressured governments and provided direct services to poor people (Gauri & Gloppen, 2012: 496, note 38). In fact, HRBAs may also directly raise the expectations of citizens regarding their entitlements, in the sense that they provide a potential to make ordinary people aware of their rights and act upon them as rights-holders vis-à-vis a duty-bearer. In various contexts, HRBAs have provided an opportunity for increased public

---

[51] Sally E. Merry, "Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence," in *Human Rights Quarterly* 25 (2003): 343-381

[52] Marie-Benedicte Dembour, "Human Rights Talk and Anthropological Ambivalence," in Olivia Harris (ed.), *Inside and Outside the Law: Anthropological Studies of Authority and Ambiguity*, (New York: Routledge), 1996, 19-40; Sally E. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*. (Chicago: University of Chicago Press), 2006.

[53] For definitions of rights consciousness, see Stephen L. Wasby, "History of the Court: Rights Consciousness in Contemporary Society", in Kermit L. Hall, James W. Ely, Jr., Joel B. Grossman and William M. Wiecek (eds), *The Oxford Companion to the Supreme Court of the United States,* (Oxford: Oxford University Press, 1992), p. 398; Austin Sarat, "Studying American Legal Culture: An Assessment of Survey Evidence", *Law and Society Review*, Vol. 11, No. 3 (September 1977), p. 450; James L. Gibson, Raymond M. duch and Kent L. tedin, "Democratic Values and the Transformation of the Soviet Union", *Journal of Politics,* Vol. 54, No. 2 (May 1992), p. 343.

awareness on human rights and responsibilities which has in some cases empowered people to demand their entitlements and hold leaders into account in fulfilling their obligation in promoting and sustaining human rights. Gauri & Gloppen suggest "although HRBAs typically focus on the rights-holders, they can also affect duty-bearers by activating their moral obligations. They might directly influence developing country officials and politicians when they formulate and implement government policies on topics such as school fees, child labor, taxation, and social assistance. They might also influence governments in rich countries to increase development assistance, or to change rules that govern the cross-national flows of goods, services, capital, and people. Human rights norms might also change the practices of multinational firms and donors, making them more responsive to the needs of poor people in developing countries." Rights talk and rights consciousness is a long-term driver of societal change. The question is then, how is this rights consciousness formed?

Norms associated with human rights have shaped historical developments; typical examples include the United States civil rights movement, the French Revolution, the emergence of international norms of multilateralism and human rights, and the suppression of the slave trade and decolonization. In light of the transnational human rights discourse, many scholars have been interested in understanding how human rights travel across borders and cultures.[54] Merry has paid great attention to understand the conditions and limitations of *legal transplants* and the processes of *vernacularisation*[55] and of *interlegality*,[56] whereby global norms are appropriated and transformed by local actors in different social and political contexts (De SousaSantos, 1987; Garavito & De Sousa Santos, 2005; Merry, 2006). A growing scholarship has begun to uncover and clarify the ways in which transnational activists engage in rights talk with local actors around the globe, exchanging ideas, rhetorical tools, and advocacy strategies, joining forces in campaigns and around litigation efforts. Gauri and Gloppen (2012) remark that rights talk HRBAs are not just the free flow of rights talk, but also the conscious attempt to generate rights talk in places where it is absent or weak. In this sense, human rights talk in a human rights-based approach to (or a strategy for) development has moved towards the role of transnational activism by linking global and local activists.

In this thesis, the link between local and global human rights-based activism is crucial, as we attempt to draw some conclusions as to how transnational human rights discourse can nurture local narratives of human dignity, and vice-versa.

---

[54] César A. Rodríguez Garavito and Boaventura De Sousa Santos, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press), 2005.

[55] We further discuss this concept in the next section.

[56] De Santos (1987: 287) outlines how there are different levels or scales of law from local to nation state to world law and that each form of law creates different legal objects on the same social objects; he labels the phenomen as "interlegality" (1987: 288), which takes its starting point more from the perspective of the individual confronted with multiple normartive orders, and deals with how the individual engages with these.

1.3.5. The localising human rights framework

Since 1948, when the Universal Declaration of Human Rights was adopted, the work of ensuring that human rights are truly universal remains a global challenge. As we embark on the Sustainable Development Goals era, a political agenda that advances global objectives, it is important to recall that the debate around the universalism of human rights (Cranston, 1973; Donnelly, 2013) and the so-called cultural relativism continues to figure in academia to the present day. Proponents of the universalism of human rights premise their argument upon the view that human rights are universal moral rights, rooted in human dignity, which all people everywhere at all times ought to have and of which none can be deprived without grave affront to justice (Cranston, 1973: 68). For Jack Donnelly (2013:10), "human rights are literally the rights that one has simply because one is a human being." Others argue that human rights should be conceived of as natural rights, in the sense that all human beings, by virtue of their humanity, should equally enjoy them, regardless of time and place, without any distinction on such grounds as race, sex, religion or national origin, and whether or not those moral and political entitlements have been recognized by existing law (Zwart, 2012: 551; An-Na'im, 2012: 100).

These kinds of generalisations regarding human nature, however, have been criticised by different fields of academia including lawyers and social scientists. In fact there is a lack of agreement on what human rights are, as the concept still may appear ambiguous and controversial. To better understand my approach of human rights, I would like to borrow from Dembour's analysis of how human rights are conceived by scholars from the different disciplines who engage with this topic. Based on an analysis of human rights' academic literature, Dembour (2010) identifies four schools of thought on human rights. The first school is the *natural school*, with scholars conceiving human rights as *given*, meaning that human rights are entitlements that are absolute and based on nature (God, the Universe, the reason or any other transcendatal source); therefore, making their universality derive from their natural character. Thus, natural scholars believe that human rights exist indepently of social recognition, and they welcome the inscription of human rights in positive law (Dembour, 2010: 3).

The *deliberative school* considers human rights as *agreed upon*. Scholars of this school look at human rights as political values that liberal societies choose to adopt, they come into existence through a process of discussions and societal agreement. This school tends to reject the natural element on which the traditional orthodoxy bases human rights; it stresses the limits of human rights, which are regarded as fit to govern exclusively the polity and not being relevant to the whole of moral and social human life. For this school, there are no human rights beyond human rights law; it often holds constitutional law as one of the prime ways to express the human rights values that have been agreed upon (Dembour).

The *protest school* conceptualizes human rights as *fought for*. This school is concerned first with redressing injustice. As Dembour puts it, for scholars of this school, human rights articulate rightfully claims made by or on behalf of the poor, the unpriviledged, the oppressed, the marginalized; human rights are thus seen as claims and aspirations that allow the status quo to be contested in favor of the oppressed (2010: 4). Human rights are thus grounded in social struggles. Protest scholars are not particularly interested in the premise that human rights are entitlements, though they do not reject

it (Dembour, 2010). They accept that the ultimate source of human rights lies on transcendental plan but most of them are more concerned with the concrete source of human rights in social struggles. They fear the law, they worry it may be hijacked by the elite.

The fourth school of thought is the *discourse school*, which conceives human rights as talked about, and is characterized by its lack of reference towards human rights (Dembour, 2010). As a matter of fact, discourse scholars are convinced neither that human rights are given nor that they constitute the right answer to the troubles of the world, but they recognize that the language surrounding human rights has become a powerful language with which to express political claims (Dembour, 2010). Proponents of this school basically fear the imperialism of human rights imposition, and stress the limitations of an ethic based on individualistic standards.

This shows that the language of human rights is neither unanimuous nor uniform. As Dembour puts it, different people hold different concepts of human rights. There is, thus, a need for interdisciplinarity[57] in the understanding of the concept and the debates around it, including the old debate between universalism Vs cultural relativism.

While universalists tend to understand human rights on the ground of the 'universality' of the human nature, supporters of cultural relativism assert there are crucial differences in the political cultures of different societies. In this regard, what some assert to be the universal standards of human rights observance need to be tempered and conditioned by taking into account the local cultural situation that prevails in distinct regions of the world (Ghai, 1998/9; Oloka-Onyango, 2000).

As Ghai (1998/9) has pointed out, the debate between 'universalists' and 'relativists' seems unproductive because, on the one hand, "the universalists have transformed human rights discourse into an intellectual battering ram, chanting the mantra of universalism even when deference to the local norms will produce a solution that is more enduring and ultimately enhances the protection of human rights in that community" (Oloka-Onyango, 2000: 6). On the other hand, the relativists erect culture as a barrier to criticism or to the challenge of practices that clearly violate fundamental human rights. As Oloka-Onyango (2000) points out, the universalist approach seems insensitive to the reality of genuine cultural nuances that exists on the ground, and negates some of the most fundamental premises which ground a truly universalist human: inclusion and dialogue. In the meantime, relativists, mostly represented by politicians in the South whose human rights practices

---

[57] Interdisciplinarity is a synthesis of two or more disciplines, establishing a new level of discourse and integration of knowldegde; unlike interdisciplinarity, multidisciplinarity juxtaposes disciplines but does not integrate them (see MacNaughton and McGill, 1019). Many commentators believe that human rights are an interdisciplinary concept par excellence (Freeman, 2014). While human rights were dominated by philosophers and lawyers in the decades after the establishment of the UN in 1945, scholars in many other fields, including in legal anthropology, social sciences, development economics, etc. have become involved in human rights, since the 1990, to address inter alia the role of – and conflict between – international human rights norms in local processes of social change. For instance, Development Economists engage with human rights to provide practical guidance for development policies that would comply with international human rights legal obligations. This increasing diversity of disciplinary interest in human rights has been remarkable in the last three decades, making human rights at the core of research by historians, theologians, literacy critics; political scientists, sociologists, as well as scholars in interdciplinary fiels, such as women's studies, labor studies, public health, and critical theory (see MacNaughton and McGill, 2019).

are at a minimum questionable, often remain rigid in the face of changing cultural practices (see Rao, 1995).

Berger (1977: 62) posits that "all societies, be they modern or traditional, manifest some notion of human rights in that certain arguably essential values or rights are upheld"; however, importantly, the manners in which these values are conceptualised differ. In short, culture and context matter. Arguably this offers a challenge to universalists because, as Legesse argues,

> in many regards the Universal Declaration of Human Rights is universal in intent but not in derivation (Legesse, 1980: 123).

One can view the emergence of localising human rights theory as a cross-fertilising framework which calls both universalists and relativists to engage in a dialogue. It is about creating and promoting a "third way" that escapes circular debates and aims to overcome the tension between the desire to maintain the richness of cultural diversity, and the drive to promote a common understanding of rights universally. This endeavor was successfully achieved by Sally E. Merry in her book on human rights and gender violence (2006). As Zwart notes, she

> rejects the portrayal of the global-local divide as the opposition between rights and culture.

In advancing her vernacularisation of the human rights approach, she aims to diffuse the tensions between the universalist and relativist positions, arguing they should be understood as part of the continuous process of negotiating ever-changing and interrelated global and local norms (Merry, 2006: 131-33).

Both sides of the universalism Vs cultural relativism debate acknowledge the dominant standard-setting model remains one in which states negotiate and conclude binding treaties at the international level, which are then supposed to be ratified and implemented on the ground. Compliance with the fulfilment of these obligations on the ground is most often assessed at the international level, predominantly in Geneva, by international treaty monitoring bodies that provide an authoritative interpretation of whether or not international human rights law has been complied with. This approach can be characterised as state-centric, international law-driven, and an essentially unidirectional conversation with the global speaking, or dictating, to the local. Much less attention, however, has been paid to local efforts to connect local voices and experiences with the development of global human rights norms. If one agrees with Mutua's claim that "only by locating the basis for the cultural legitimacy of certain human rights and mobilising social forces on that score can respect for universal standards be forged" (Mutua, 2002: 81), then this deficit clearly needs to be addressed.

Based on their research and experience, scholars (Merry, 2006; Levitt and Merry, 2009; De Feyter, 2007; 2011) have increasingly come to understand the importance of switching the focus to the local level. Merry's vernacularisation of human rights implies a process of translating international human rights norms into local terms; it is about situating them within local contexts of power and

meaning.[58] This process of vernacularisation may result in a continuum, a replication, or even the hybridisation of human rights. Merry's localising human rights perspective remains *unidirectional* and more top-down, while De Feyter sees it as *bidirectional* (both top-down and bottom-up). For him, the localisation of human rights requires local infusion into global human rights norms. Localising human rights is all about "taking the human rights needs as formulated by local people … as the starting point both for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from the domestic to the global" (De Feyter, 2007: 68). It is this understanding and approach that ground the research and analysis in this case study. Such an approach requires taking account of context and the voices of local people. Further, it includes examining and valuing their diverse experiences in claiming their rights, and thus increasing understanding of how they interact with international norms, or not. By necessity, such research needs to be interdisciplinary, as international human rights lawyers are often not trained in social science research methods, nor are many lawyers trained to conduct field research.

An initial impetus for developing the localising approach was the lacunae in human rights-based analysis and responses to the impact of economic globalisation on the human rights of people. Increasingly, the usefulness of this approach for addressing failures to respect, protect and fulfill human rights arising from issues and processes that extend beyond economic globalisation has become real. As such, the approach is now recognised as relevant for analysis and action that addresses violations and omissions ranging from the local to the global level.

Importantly for human rights researchers, a localising human rights approach takes the local as the starting point of the enquiry, while acknowledging the importance of the international human rights framework. De Feyter has suggested two approaches to increasing the relevance of human rights obligations for people — first, through interpreting human rights norms with reference to local context; and secondly, by ensuring further development of international human rights norms takes greater account of different local contexts (De Feyter, 2011: 36). For this local infusion into international human rights to take place requires greater understanding of local conceptions, one of the goals of this research.

Our case study draws on Oré-Augilar's work on the conceptualisation and operationalisation of the localisation process which comprises five interrelated tracks for analysis as outlined in the diagram below (Oré-Aguilar, 2011).

---

[58] See Levitt and Merry, 'Making Women's Human Rights in the Vernacular'; Levitt and Merry, 'Vernacularization on the Ground'; Goodale and Merry, 'The Practice of Human Rights'.

Figure 5. The Localizing Human Rights Process
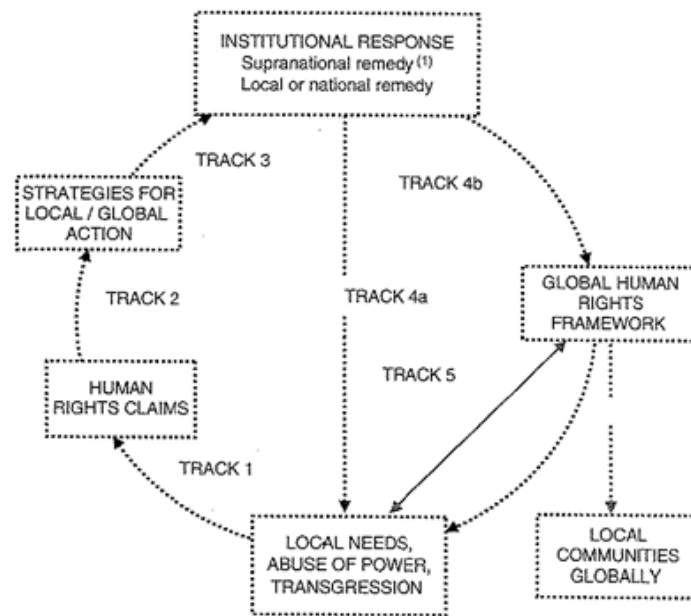
Figure 1   The process of localising human rights
[1] Regional court, UN monitoring body, decisions by international organisations, universal jurisdiction judgments.

Track 1, the focus of our case study, explores why and how people articulate claims on the basis of the international human rights framework. For the purposes of this case study, a local claim qualifies as a 'human rights claim' when it satisfies three criteria (De Feyter 2011: 20): (i) the claim uses human rights language (although there could be a fusion of local concepts of justice for example); (ii) it identifies a duty-bearer (the state or another agent); and (iii) it insists on accountability from the duty-bearer. Our effort aimed to identify how and where local conceptions of the right to drinking water and sanitation satisfy these criteria.

Track 2 of the localisation process focuses on the translation of these claims into human rights actions. In Track 3, strategies are aimed at responses from administrative policy making or judicial actors at local, national and/or international levels. Track 4 examines (i) the impact of these responses on the local community, and (ii) the consequences for international or regional human rights norms, practices and institutions. Finally, Track 5 analyses "whether and how global human rights norms enhanced by local experiences have the power to transform similar realities of human rights transgression or deprivation" (Oré-Aguilar, 2011: 139).

We do not intend to analyse or to use each one of these five tracks in our analysis; however, we will refer to this localising circle as it might be useful in understanding how human rights can be an empowering tool for the capacity development of rights-holders, as well as how accountability can play a key role in changing the behaviours of duty-bearers. More importantly, by using this mutual cross-fertilization process, how can a rights consciousness be formed through the capacity development of citizens for more engagement in social change?

1.4. Capacity development in development policy

Development policy must be understood in the context of concerted efforts in Europe to improve the conditions of disadvantaged sectors in society in the 19th century.[59] Such efforts eventually led, inter alia, to legislation and the establishment of government departments concerned with improving or protecting health and social welfare. Development, as a major government activity and field of endeavour extending beyond national borders, however, emerged only after the Second World War, as a result of the need to rebuild war-torn countries in Europe. European, US, and international organisations involved in European reconstruction then turned their attention to the problems faced by countries in Africa, Asia, and Latin America as they gained independence, and as people and governments recognised they faced both obligations and opportunities in raising economic activities and living standards in their former colonies. Development rapidly became mixed up with the Cold War, as international development assistance or cooperation was seen as an extension of foreign policy, and the capitalist West (US, Canada, Europe, and Australasia) competed with the socialist East (Soviet Union, Eastern Europe, and China) to attract and keep Asian, African, and Latin American countries within their spheres of influence and trade.[60]

Since then, international development policy has been influenced by the development policies of governments in developed and developing countries, by international or multilateral development agencies (such as the World Bank and different UN agencies), and by INGOs. These actors are influenced by dominant development theories and support their development by funding research and practice in line with dominant theory. The notion of capacity development should be understood in this context. To better understand what it means when we speak of capacity development, we will start by establishing the difference between capacity development and capacity building.

1.4.1. Capacity building Vs capacity development

In recent decades 'building capacity' has come to be seen as one of the main roles of development assistance (Venner, 2015). However, many authors have noted the difficulties in defining and applying the concepts adequately. Both concepts have been and are still used interchangeably in the development jargon. Both terms emerged in the realm of what was initially known as "technical

---

[59] After the horrors of World War II human rights gained prominence at a global level as an instrument of transformation and justice. Parallel to the growing importance of human rights, the processes of decolonisation unfolded. And particularly in Asia and Africa, development assistance became an important aspect of north-south relations. Even though human rights and development assistance each came to play a prominent role in the post-war years, in the early decades after World War II the two were only occasionally linked in operational development work (Broberg & Sano, 2018).

[60] See Samuel Moyn (2018), *chap 5: Basic needs and human rights*.

assistance," and later by "technical cooperation."[61] Before elaborating on each of them, first, it is important to understand what capacity is. Horton at al (2003:18) define capacity as "(the) potential to perform." Lafond & Brown (2003:7) acknowledge that "capacity represents the potential for using resources effectively and maintain gains in performance with gradually reduced levels of external support." Fukuda-Parr et al (2002: 8) state "capacity is the ability to perform functions, solve problems, set and achieve objectives."

Within the multiple perspectives and ways to define the term capacity, we have come to adopt Ubels' definition, as it reflects broader insights from the discussions inside and outside the development community. Thus, "capacity is the ability of a human system to perform, sustain itself and self-renew" (Ubels et al, 2010: 25). This definition, which is not prescriptive and less reductionist, makes it clear capacity is not a static state or quality. It is about creating some form of added value for individual members of society and the outside world (perform); it is about staying alive and active (sustain, with a sense of agency); it is about adjusting and developing over time (self-renew) on the basis of external pressures and internal drivers.[62] The concept emphasises the organisational, human, financial and other resources which enable actions to be taken (…) to improve a situation and, thus, reduce inequalities (Aluttis et al, 2013) in a given organisation or society.

Each society has capacities that correspond to its own functions and objectives. Non-industrial societies, for example, have few formal institutions, but they have highly developed skills and complex webs of social and cultural relationships that are often difficult for outsiders to comprehend. Modern post-industrial societies have their own set of capacities, although they seem very different. They too have complex social structures, but tend to have more diverse and specialist activities, and rely on extensively codified knowledge bases, numerous organisations, and an excess of specialist skills, many of which can only be acquired over years of education and training.

As countries and societies transform themselves, they have to develop different capacities. It is important to acknowledge, however, they do not do so simply as an aggregate of individuals. National capacity is not just the sum total of individual capacities. It is a much richer and more complex concept that weaves individual strengths into a stronger and more resilient fabric (Fukuda-Parr et al, 2002: 19). If countries and societies want to develop capacities, they must do more than expand individual human skills, although this is of paramount importance. They also have to create the opportunities and incentives for people to use and extend those skills. Capacity development

---

[61] Fukuda-Parr et al (2002: 3) remark, "*for a few decades, aid as a whole was termed "development assistance," and that part of it concerned with the transfer of skills and systems was called "technical assistance." But development practitioners worried that "assistance" implied - and indeed reflected - inequality and dependency rather than a positive spirit of partnership. After a couple of decades, therefore, they started to refer to international aid as "development cooperation," and many correspondingly referred to knowledge transfer as "technical cooperation," although others, including the World Bank, still refer to this as "technical assistance" when it accompanies capital investment. It would also have been useful to find a substitute for the word "technical," which suggests an emphasis on science and technology — wrongly, for most cooperation has been, and is increasingly, in non-technological areas such as education, governance and judicial reform.*"

[62] Jan Ubels, Naa-Aku Acquaye-Baddoo & Alan Fowler, *Capacity Development in Practice*, (London: Earthscan Publications), 2010, p.25

thus takes place not just in individuals, but also between them, in the institutions and the networks they create, i.e. through what has been termed the "social capital" that holds societies together and sets the terms of these relationships.

The Food and Agriculture Organisation of the UN (FAO) differentiates two types of capacities: technical and functional (FAO, 2018). Put simply, technical capacities refer to expertise needed to deal with strategic objectives of an organisation, while functional capacities include capacities that lead to uptake and sustain changes in various sectors and activities. These include capacities relevant to individual and organisational efficiency, but also soft skills (networking, communication skills, advocacy, etc.). These skills are perceived to be a necessary complement to capacity development interventions as they empower the actors to effectively apply the new knowledge/skills and upscale the results of the intervention (FAO). FAO identifies four critical areas of functional capacities, including:

(i)   *Policy and Normative*: the capacity to formulate and implement policies and to lead policy and legislative reforms;

(ii)   *Knowledge*: the capacity to create, access and exchange information and knowledge;

(iii)   *Partnering*: the capacity to initiate and sustain networks, alliances and partnerships;

(iv)   *Implementation*: the capacity to manage (planning, implementing, monitoring; and evaluating) projects and programmes efficiently and effectively.

Figure 6. Design of capacity development interventions

Source: FAO, http://www.fao.org/capacity-development/resources/practical-tools/design-capacity-development/en/
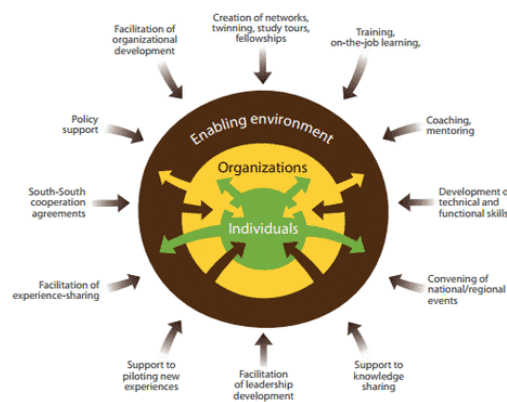
The term 'capacity building' emerged in the 1950s as a key concept of development policy (European Parliament Brief, April 2017) in the Marshall Plan, following the reconstruction of Europe and Japan after the Second World War. In the United States, it was used in the 1970s in reference to the need to improve the ability of state and local governments to implement fiscal decentralisation policies (Venner, 2014; Venner, 2015). The term gained increased interest in the 1990s. The adverse economic conditions that many developing, particularly African countries, experienced in that period highlighted the lack of efficiency and effectiveness of development efforts. They had failed to produce sutainable change and to strengthen the capacity of the recipient countries' institutions to take responsibility for development (European Parliament Brief, April 2017). The technical

cooperation provided during the previous decades by international donors had often not made a lasting impact, failing to lead to self-reliance.

In this context, capacity building was understood as a development approach to compensate for perceived shortcomings in the development assistance and technical cooperation provided by major international donors. These shortcomings included lack of ownership by recipients, incapacity to effect sustainable change, lack of inter-sectorial coordination, and insufficient tailor-made approaches. In 1998, the UNDP developed a framework[63] of guidelines for capacity building that identified three levels at which it should take place, namely, the individual, the organisation and the broader environment. Since the mid-1990s, all major multilateral and bilateral development agencies and non-governmental development organisations have adopted capacity building as a core element of their policies, and produced documents and handbooks on the subject.

The 1996 OECD report[64] marked a defining moment with its new development paradigm based on local ownership and partnership between donors and recipients. This was also underscored by a shift to the concept of 'capacity development,' which became the preferred choice of the development community. These new trends were inspired by some major turning points in development policy, such as the adoption in 2000 of the UN Millennium Development Goals and the 2005 Paris Declaration on Aid Effectiveness. The latter highlights that capacity development is one of the essential preconditions for aid effectiveness,

> The capacity to plan, manage, implement, and account for results of policies and programmes is critical for achieving development objectives – from analysis and dialogue through implementation, monitoring and evaluation.[65]

Thus, capacity development emphasises the responsibility of partner countries, while donors play a supporting role. The declaration also draws attention to the importance of the wider social, economic and political context. The 2008 Accra Agenda for Action adopted by developing and donor countries, as well as multilateral and bilateral development institutions, reiterated this approach, recommending developing countries "*systematically identify areas where there is a need to strengthen the capacity,*" that donor support "*be demand-driven and designed to support country ownership,*" and that technical cooperation be provided by local and regional resources, including South-South cooperation.[66] The importance of local institutions was acknowledged as a basic principle of aid provision: "*Donors agree to use country systems as the first option for aid programmes.*"[67]

After years of discussion about development policy, the document that best expressed the emerging consensus on the concept was a paper by the 2006 OECD DAC (Development Assistance

---

[63] UNDP, *Capacity Assessment and Development In a Systems and Strategic Management Context*, 1998.

[64] OECD, *Shaping the 21st Century: The Contribution of Development Co-operation*, 1996.

[65] *Paris Declaration on Aid Effectiveness*, 2005.

[66] *Accra Agenda for Action*, 2008.

[67] Ibid.

Committee).[68] The definitions therein of capacity and capacity development are the most widely accepted and used.[69] In clarifying the difference between capacity building and capacity development, the document expresses a clear preference for the latter. Capacity building does not recognise existing capacity and operates with a pre-imposed design, while capacity development suggests an endogenous process of change or transformation. Thus, capacity building refers only to the initial stages of building or creating capacities, and hints at the assumption there are no existing capacities to start from. As such, it is less comprehensive than capacity development.[70] In other words, capacity building has an external orientation of "we will build their capacity," and capacity development has more of a partner orientation of "we shall support their processes that develop the capacity to achieve their goals." Capacity development tends to be, therefore, an endogenous and continuous, even a spontaneous process (Ubels et al, 2010: 25).

1.4.2. *Understanding capacity development*

Although the concept of capacity building is still widely used by various stakeholders in development policy, the term capacity development attempts to better encapsulate the new approach to development policy. Capacity development has become an indispensable part of the activity of all development organisations today, even if in practice the results of efforts to develop capacity have not always been satisfactory.[71] Ubels et al (2010: 22) remark that through technical assistance alone, the aid system allocates annually over a quarter of its finances – USD 25 billion or more – to capacity development. Acknowledging the centrality of the approach for development work, UNDP states that capacity development is the *'engine of human development*.'[72]

Capacity development is a broad and complex undertaking, implying change at multiple levels. The notion of change is central to many documents framing the concept of capacity development. It borrows from sociological ideas about the complex ways in which organisations are transformed, the multiplicity of factors affecting change, the fluid and dynamic character of the process, and the importance of ownership and leadership by affected individuals and organisations. Despite this acknowledged complexity and fluidity of the required transformative processes, donor reports on capacity development attempt to provide technical step-by-step guidance, trying to capture the essence of transformative processes and how they can be affected and influenced. Some donors also attempt to provide measurable results indicators. Despite the variations in the understanding of capacity development, there are certain common features of all conceptual frameworks. These include:

(i) **Local ownership** of all interventions is considered crucial, and is one of the main elements distinguishing the new approach from traditional views on technical

---

[68] OECD DAC, *The Challenge of Capacity Development – WorkingTowards Good Practice*, 2006.
[69] We provide a synopsis of definitions in a table below.
[70] UNDP, *Capacity Development: Empowering People and Institutions*, Annual Report, 2008.
[71] As acknowledged in the past by the OECD and the World Bank (Capacity Development Results Framework, p. 1).
[72] UNDP, *Capacity Development: A UNDP Primer*, 2009.

cooperation. Stakeholders in developing countries have to decide on the needs and targets of capacity development; furthermore, they have to design the processes of change and assume leadership for them. According to the UNDP, an essential component of capacity development is "transformation that is generated and sustained over time from within" (UNDP, 2009).

(ii) **The need for partnerships between donors and local stakeholders** follows directly from the importance of local ownership.

(iii) **Action is required at multiple levels to achieve sustainable results** because capacity development operates within an understanding of institutions as relying on individuals' skills and motivations, on one hand, and, on the other, as embedded in a broader social and political context that shapes any transformative process.

(iv) **The change achieved has to be sustainable over time**. According to the UNDP, capacity development starts from "the principle that people are best empowered to realise their full potential when the means of development are sustainable – home-grown, long-term, and generated and managed collectively by those who stand to benefit" (UNDP, 2009).

(v) **Political and governance factors** play an important role, given the influence they have on the functioning of institutions and on the possibility for reform.

(vi) It is important to **engage civil society and the private sector** in capacity development, both as drivers and as targets of capacity development.

Table 2. – Definitions of capacity and capacity development by major aid donors (direct quotes)[73]

Organisation	Definition of capacity	Definition of capacity development
UNDP	The ability of individuals, institutions and societies to perform functions, solve problems, and set and achieve objectives in a sustainable manner.	The process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time. A process that supports only the initial stages of building or creating capacities and assumes that there are no existing capacities to start from (UNDP, 2009).
OECD DAC	'Capacity' is understood as the ability of people, organisations and society as a whole to manage their affairs successfully. The definition is deliberately simple. It avoids any judgment on the objectives that people choose to pursue, or what should count as success in the management of their collective efforts.	Capacity development is understood as the process whereby people, organisations and society as a whole unleash, strengthen, create, adapt and maintain capacity over time.[74] The phrase capacity development is used advisedly in preference to traditional capacity building. The 'building' metaphor suggests a process starting with a plain surface and involving the step-by-step erection of a new structure, based on a preconceived design. Experience sugges capacity is not successfully enhanced in this way.
World Bank	Capacity for development is the availability of resources and the efficiency and effectiveness with which societies deploy those resources to identify and pursue	Capacity development (or capacity building) is a locally driven process of learning by leaders, coalitions and other agents of change that brings about changes in socio-political, policy-related, and organisational

---

[73] See European Parliament Brief, *Understanding capacity-building/capacity development: A core concept of development policy*, April 2017

[74] Definition also adopted by several other international development agencies (FAO, 2010).

		their development goals on a sustainable basis (World Bank, 2009).[75]	factors to enhance local ownership for and the effectiveness and efficiency of efforts to achieve a development goal (World Bank, 2009).
UNECA		Capacity development is the process through which individuals, groups, organisations, and societies deploy, adapt, strengthen, and maintain the capabilities to define, plan and achieve their own development objectives on an inclusive, participatory, and sustainable basis (https://www.uneca.org/our-work/capacity-development).
USAID		Human and Institutional Capacity Development (HICD) is a USAID model of structured and integrated processes designed to identify the root causes of performance gaps in host country partner institutions, address those gaps through a wide array of performance solutions in the context of all human performance factors, and enable cyclical processes of continuous performance improvement through the establishment of performance monitoring systems (USAID, October 2010).[76]
FAO	Adopts the OECD definition (FAO, 2010).[77]	Adopts the OECD definition (FAO, 2010).
African Union – NEPAD		A process of enabling individuals, groups, organisations, institutions and societies to sustainably define, articulate, engage and actualise their vision or developmental goals building on their own resources and learning in the context of a pan-African paradigm (AU-NEPAD Capacity Development Strategic Framework -CDSF, 2010).[78]
Asian Development Bank		Capacity development is a 'change process internal to organisations and people'; hence, one cannot 'do' or impose capacity development on an organisation or an individual – it has to be internally driven and the capacity development (CD) must be desired by the entity undergoing development for it to be successful (2011:1).
DFID		A complex notion – it involves individual and organisational learning which builds social capital and trust, develops knowledge, skills and attitudes, and when successful, creates an organisational culture which enables organisations to set objectives, achieve results, solve problems and create adaptive procedures which enable it to survive in the long term (2008: 3).
EU	The European Commission uses the OECD definition.	The European Commission uses the OECD definition.

Despite the multifaceted perspectives demonstrated in the definitions, in their various policy documents emphasis is put on three similar aspects: (a) capacity development as the catalyst and

---

[75] Samuel Otoo et al, *The Capacity Development Results Framework: A strategic and results-oriented approach to learning for capacity development*, World Bank, June 2009

[76] USAID, *Human and Institutional Capacity Development Handbook: A USAID Model for Sustainable Performance Improvement*, October 2010.

[77] FAO, *Enhancing FAO's Practices For Supporting Capacity Development Of Member Countries*, 2010.

[78] https://www.nepad.org/publication/africas-capacity-development-strategic-framework

constant engine for a process of change, (b) the importance of building institutional capacity, and (c) the involvement of a wide range of different groups and stakeholders in society. They therefore recognise three levels at which capacity development operates: societal, institutional and individual. The UNDP describes these three levels in these terms:

    (i)   **The societal level (enabling environment)**: is the broad social system within which people and organisations function. It includes all the rules, laws, policies, power relations and social norms that govern civic engagement. It is the enabling environment that sets the overall scope for capacity development. An example of capacity development is creating the kinds of opportunities, whether in the public or private sector, that enables people to use and expand their capacities to the fullest. Without such opportunities, people will find their skills rapidly erode, or become obsolete. And if they find no opportunities locally, trained people will join the brain drain and take their skills overseas.

    (ii)   **The organisational/institutional level**: refers to the internal structure, policies and procedures that determine an organisation's effectiveness. It is here that the benefits of the enabling environment are put into action and a collection of individuals come together. The better resourced and aligned these elements are, the greater the potential for growing capacity. This involves building on existing capacities. Rather than trying to construct new institutions, such as agricultural research centres or legal aid centres, on the basis of foreign blueprints, governments and donors instead need to seek existing initiatives, however nascent, and encourage these to grow.

    (iii)   **The individual level:** this involves enabling individuals to embark on a continuous process of learning — building on existing knowledge and skills, and extending these in new directions as fresh opportunities appear. Some knowledge, skills and experiences that enable each person to perform can be acquired formally through education and training, while others are acquired more informally, through doing and observing.

All of these layers of capacity are mutually interdependent. If one or the other is pursued on its own, development becomes skewed and inefficient. Thus, access to resources and experiences that can develop individual capacity are largely shaped by the organisational and environmental factors described above, which in turn, are influenced by the degree of capacity development in each individual. Most technical cooperation projects, however, stop at individual skills and institution-building; they do not consider the societal level (Fukuda-Parr et al, 2002: 19).

In many instances, capacity development has been confused with human resource development. Capacity development is a larger concept. It refers not merely to the acquisition of skills, but also to the capability to use them. This in turn is not only about employment structures, but also about social capital and the different reasons why people start engaging in civic action (Fukuda-Parr et al, 2002: 19).

Despite the broad consensus about the centrality of capacity development within the development community, it is worth emphasising that capacity development "must be owned by those who develop their capacity." Therefore external partners cannot design and implement it, only support it. The beneficiaries of capacity development must themselves assess their needs, design the process of change, and manage it (EU Parliament Brief, April 2017). This is why Ubels et al (2010) consider

capacity development as inherently *relational*, *transformative,* and even *political*. As Venner (2015: 90) remarks, capacity development is not a politically or culturally neutral activity; it must address power relations, mindset and behaviour change, institutional change, leadership, empowerment and public participation, and grasp 'windows of opportunity for change' which arise from change in leadership and shifts in priorities and resources. Table below shows the new paradigm of capacity development as developed by Fuduka-Parr et al (2002).

Table 3. A new paradigm for capacity development

	Current paradigm	New paradigm
Nature of development	Improvements in economic and social conditions	Societal transformation, including building of "right capacities"
Conditions for effective Development cooperation	Good policies that can be externally prescribed	Good policies that have to be home-grown
The asymmetric donor recipient relationship	Should be countered generally through a spirit of partnership and mutual respect	Should be specifically addressed as a problem by taking countervailing measures
Capacity development	Human resource development, combined with stronger institutions	Three cross-linked layers of capacity: individual, institutional and societal
Acquisition of knowledge	Knowledge can be transferred	Knowledge has to be acquired
Most important forms of knowledge	Knowledge developed in the North for export to the South	Local knowledge combined with knowledge acquired from other countries—in the South or the North

Source: Fuduka-Parr et al, 2002.

Rather than looking at the content of capacity development (be it in terms of knowledge, skills, work processes, systems, authority patterns, or management style, etc.), we are interested in the process (the tools) and the actors, and in understanding what impact the process has on individuals or communities — be they on the supply or the demand side — as they are ultimately the authors of change in society.Thus, capacity development may need to address issues of class structure, political stability and government legitimacy, strengthen citizen demands and consider structures of power and influence, facilitate popular participation and promote community empowerment, and generate an engaged society that holds the government accountable (Venner, 2015). In this perspective, capacity development is ultimately to be linked with the capacity approach (Sen, Nussbaum), as developed in section 1.2 above.

1.4.3. Capacity development and the rights-based approach to development

From this background, it is important to link both capacity development and the (human) rights-based approach to development. A rights-based approach is meant to be an empowering tool for community development. According to Chapman et al (2009),

> Rights-based approaches integrate the political side of development and change efforts with the organising, capacity building, and creative dimensions. The political aspect focuses on ensuring that legal frameworks support and advance the rights of the poor and excluded. The organising dimension

builds people's organisations, leadership, and synergy for collective struggle. The practical and creative side supports education and innovations that give meaning to rights and lay the basis for challenging oppressive practices and paradigms.[79]

The research undertaken for this PhD thesis revisits the concept of capacity development within the broad framework of development policy by focusing on the (human) rights-based approach to development, which is supposed to inform the whole philosophy of the DRC-UNICEF 'Village Assaini' (sanitised village) Programme. We have discussed above the potential for the rights-based approach to development to work towards social change; this potential can be enhanced using capacity development as a strategy that particularly focuses on empowering the poor (rights-holders) by building a rights consciousness which is transformative and effective (Pantazidou, 2011). This linkage also offers an opportunity to assess the extent to which the notion of duty-bearers can be extended, and can eventually contribute more significantly to the transformative process of the marginalised.

---

[79] J. Chapman et al, "Rights-based Development: The Challenge of Change and Power for Development NGOs," in Samuel Hickey & Diana Mitlin (eds.), *Rights-based Approaches to Development: Exploring the Potential and Pitfalls*, Kumarian Press, 2009, p.165.

CHAPTER 2. RESEARCH PROCESS AND METHODOLOGICAL APPROACH

2.1. Overview of the research process

The analysis and outcomes presented in this study are based on anthropological fieldwork carried out in the Bas-Fleuve district[80] of the Kongo Central province[81] of the DRC between October 2014 and August 2016.

In September 2014, a draft research plan was prepared, discussed and refined with the LHR research team of the Law and Development Research Group, University of Antwerp. Between September and October 2014, I carried out an initial field visit to the region to select the villages for the study, and to make first contact with village leaders and other local officials involved in the VA Programme. Following this initial visit, the research plan was slightly modified and finalised. Once the final research plan was adopted in early October 2014, fieldwork started. In each of the five selected villages, I was expected to spend at least one month conducting semi-structured interviews with key informants, organising focus group discussions, as well as engaging in participant observation.

According to Burawoyetal (1991), participant observation involves joining respondents for extended periods of time[82] in different places (family settings, work activities, community meetings, etc.). Further details on the data collection process, techniques and strategies are explored in the next section.

From the onset, it should be clearly indicated the research targeted two groups of participants, all operating in village settings. These included villagers and local authorities. A total of 116 interviews and focus groups were conducted during this time. All of the interviews were transcribed and analysed using an empirically grounded method of critical discourse analysis (Billig, 2000; Bloomaert, 2001: 143).

To trace the origins of certain understandings, we compared findings across villages; assessed mechanisms for sharing information; and mapped the presence, strategies and discourses of various actors, including international, government and non-governmental actors, who had been active in the villages and had assessed the evolution of local understandings over time (see chapter 5).

The initial research findings were discussed at an international conference hosted by Ghent University in Belgium, from 9 to 12 December 2015. I presented a paper on the theme, *The local*

---

[80] Before February 2015, the Bas-Congo Province was divided into three districts, including Bas-Fleuve, the Cataractes and the Lukaya. See note 15.

[81] The Kongo Central Province is one of the current 26 provinces of the DRC, and is the nearest province – with the Province of Kwango – to the capital city of the DRC, Kinshasa. With a surface area of 53,920 square kilometres (representing 2.3% of the national territory), and an estimated population of 4.4 million inhabitants (almost 6% of the national population), the province seems to be the most accessible in terms of road infrastructure. This is an important detail, as it is not easy without considerable means to access some areas in the country, due to either poor road networks or nonexistent means of transportation.

[82] Angrosino (2007: 15) states 'the exact time may vary from several weeks to a year or more.'

conceptions of human rights: what relevance for disenfranchised communities within the UNICEF Village Assaini Programme in Kongo Central, DRC? This presentation led to a follow-up fieldwork, from July to August 2016 in order to address issues raised at the conference that required further investigation. These included, for instance, the local conception of power or authority, and the existence, or not, of accountability mechanisms at the local level.

2.2. Research methodology

2.2.1. *Justification of the case study: The Village Assaini Programme in the DRC*

After researching the different methodologies appropriate for answering specific research questions, we found the justification for qualitative research advanced by Berg (1995) was the most aligned with our research objectives. Thus our study adopted a qualitative approach. Berg (1995:7) suggests adopting qualitative research techniques allows the researcher to share in the understandings and perceptions of others, and to explore how people structure and give meaning to their daily lives. Similarly, our research objective and related research questions that framed this investigation sought to explore the local interpretation of human rights by villagers in the rural Bas-Fleuve district of the Kongo Central Province in the DRC. We were not seeking answers to simple yes and no questions, but exploring in-depth meaning with regard to the understanding and perceptions of the villages' residents.

We chose to conduct a case study because it is a well-recognised research method that employs data collection and a subsequent analysis of empirical evidence (Yin, 2003). Yin gives a more concise definition of a case study as an

> empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident (Yin, 2003: 13).

As a research strategy, the case study is not a data collection tactic or a design feature alone, but an encompassing research method covering the logic of design, data collection techniques, and specific methods of data analysis (Yin, 2003). For this research, we opted for a single case study (focusing on actors involved in the VA Programme), as opposed to a multiple case study scenario. One difference between a single and a multiple case study is that, in the latter, the researcher studies multiple cases to understand the differences and similarities between them (Baxter & Jack, 2008). Another difference is that the researcher is able to analyse the data both within each situation and across situations (Yin, 2003). Multiple case studies can be used to either seek contrasting results for expected reasons, or similar results in the studies (Yin, 2003).

Using a single case study allows for a more in-depth understanding of the phenomenon under study, with the conclusion aimed at being either illustrative or confirmable. In a case study the focus is especially based on a unit of analysis (Gustafsson, 2017). Our unit of analysis in this case study is the individual, such as a village resident, the programme implementing agent, or the village's leader. The case study provides us with a lens or a vignette of how these particular rights-holders understand

their human rights, and what they consider to be of significant importance to their right to drinking water and sanitation in particular.

The decision to pursue this particular case study was mostly motivated by a number of contextual and access factors. These included the partnership between the Law and Development Research Group of the University of Antwerp and the *Université Kongo* in Kongo Central, DRC; the presence of a large number of international development actors in the geographical area of the study; and thirdly, the presence of the UNICEF managed VA Programme, which purports to employ a HRBAD in its work. Owing to these last two factors, our research hypothesis is grounded in the assumption that people in villages enrolled in the UNICEF VA Programme would have had more exposure to human rights discourse than their counterparts in other villages (see chapter 5).

The focus on the right to drinking water and sanitation can then be explained by the fact the VA Programme focuses on improving access to drinking water and sanitary conditions in villages and semi-urban areas.[83] What makes the case more interesting for us is that UNICEF — as many other UN agencies — officially adheres to a HRBAD. UNICEF's Executive Directive (1998-2004) stipulates that all of UNICEF's interventions, and those of the partners it supports, should be grounded in human rights.[84] In theory, this would mean interventions in the context of the VA Programme should follow the principles of a HRBAD, as set out in the United Nations Common Understanding.[85] As discussed above, a HRBAD includes, inter alia, framing interventions in the language of human rights, seeking rights-holders' input, and participation throughout all steps of the process, prioritising accountability and combining bottom-up and top-down strategies.

2.2.2. Selection of villages

Confining our field research to the villages of the VA Programme, rather than randomly selected ones, seemed justifiable in the context of this thesis, given our initial assumption that rights-holders in these villages would have a basic understanding of the rights discourse.[86] It soon became clear from our first contacts with stakeholders of the VA Programme, however, that engagement with a HRBAD on the ground was minimal, and that none of the villages or local implementing actors (at the level of the *zone de santé* and UNICEF's partner NGOs) had any exposure to the rights discourse

---

[83] As noted above, the *Village Assaini* Programme started in 2006 under the Ministère de la santé publique. With the objective to increase children's involvement in sanitation issues and enhance behavioural change at early stage; the Programme expanded into the *Ecole Assainie* component in 2008. Today, the Programme is known as the *Ecole et Village Assainis* (EVA) Programme, under both the *Ministère de la santé publique* and the *Ministère de l'Enseignement Primaire, Secondaire et Technique*.

[84] UNICEF, *Guidelines for Human Rights-Based Programming. Executive Directive* 1998-04 (1998).

[85] UN, *The Human Rights–Based Approach to Development Cooperation. Towards a Common Understanding among UN Agencies*.Interagency Workshop on a Human Rights–Based Approach (2003).

[86] As we note in our conclusions, conducting a similar study in non-VA Programme villages would provide an interesting basis for comparison.

in the context of this programme (Destrooper, 2016).[87] We nevertheless decided to maintain our initial case selection because the unexpected added value of the voices of these rights-holders reflects a genuinely local understanding which has developed in relative isolation from transnational discourses on human rights.

Though the VA Programme focuses on the issue of access to portable water and sanitation, a UNICEF action research has shown rights-holders are more concerned about access to drinking water (ECRIS Report, 2013), a tendency that confirms our fieldwork. For this reason, both our research and analysis focus more on the right to drinking water per se, rather than on the right to water and sanitation, although both dimensions are interrelated.

The selection of the five villages was made on the basis of the criteria defined in section 2.5. below. Additionally, the database and the guidance of the WaSH provincial Office (*Bureau 9*) in Matadi helped with identifying villages that met the inclusion criteria for the VA Programme, and then for this study.

2.2.3. *Data collection methods*

In order to gain a deeper and firmer understanding of the topic under investigation, we used several qualitative data collection methods. For our field research, these included semi-structured interviews, focus group discussions and participant observation. As Kitzinger notes, a key advantage of these methods is they do not discriminate against people who cannot read or write, and they can encourage participation from people reluctant to be interviewed on their own or who feel they have nothing to say (Kitzinger, 1995). We also conducted documentary analysis of the development context, historical context and legal framework to get a deeper understanding of the local context of the region of our fieldwork. Having multiple data sources was crucial for the validity of our analysis as it allowed us to triangulate our data source techniques. As Berg notes, triangulation allows the researcher to counteract the threats to validity identified in each method (Berg, 1995:5). The challenges encountered during data collection in the case study are addressed below.

2.2.3.1. Semi-structured interviews

WEISS (1994) suggests interviewing is necessary when trying to develop descriptions and learning how events or realities are interpreted. Semi-structured in-depth interviews allowed me to capture the meaning of human rights from the perspective of villagers in the context of access to drinking water and adequate sanitation in the Bas-Fleuve district.

---

[87] In fact, as Gready and Vandenhole (2014: 295) remark, for international organisations such as UNICEF, the adoption of an HRBAD has meant that it moved beyond service delivery to also 'shifting great responsibility on to governments.' Unfortunately, the paradigm of the VA programme seemed to remain service delivery-oriented.

Initially, we intended to carry out 10 to 15 interviews with villagers, and five to seven interviews with local authorities and project implementing partners in each of the five villages. By the end of the research phase, we had conducted a total of 116 interviews in the five settings, with 69 interviews (16 in village V1, 10 in V2, 12 in V3, 14 in V4 and 17 in V5) with villagers and 47 with local authorities and implementing partners (13 in V1, 9 in V2, 12 V3, 7 in V4 and 6 in V5).

Table 4. Sociological profiles of respondents (villagers)

Village	Total interviewees	Gender		Education			Marital status		Elderly persons	Persons with disabilities
		M	F	0	P	S	M	S		
V1	16	11	5	3	9	4	13	3	2	1
V2	10	7	3	1	5	4	5	5	1	0
V3	12	10	2	0	7	5	9	3	2	0
V4	14	8	6	0	10	4	11	3	0	0
V5	17	11	6	0	11	6	15	2	0	0
Total	69	47	22	4	42	23	53	16	5	1

M =Male
F = Female
0= No Education
P= Primary Education
S = Secondary Education
T = Tertiary Education
M =Married
S = Single

Table 5. Sociological profiles of respondents (local authorities and implementing agents)

Village	Total interviewees	Gender		Education			Marital status		Elderly persons	Persons with disabilities
		M	F	P	S	T	M	S		
V1	13	11	2	1	5	7	13	0	0	0
V2	9	8	1	2	2	5	9	0	0	0
V3	12	10	2	2	4	6	11	1	0	0
V4	7	4	3	2	3	2	6	1	0	0
V5	6	5	1	1	2	3	6	0	0	0
Total	47	38	9	8	16	23	45	2	0	0

We developed several guiding materials to assist with the interview process: an interview questionnaire, an information sheet (although this was not handed over to the interviewee due to concerns regarding literacy, but was rather explained verbally to get verbal consent to proceed with the interview), and an observation sheet which captured basic information of the interview (age, gender, occupation, level of education, etc.). We also took observational notes related to the context. Information on the observation sheet was completed immediately after conducting the interview to ensure it was as accurate as possible.

The interviewees were selected using a multi-step approach which, when necessary, had to be adapted to take account of the particular circumstances. First, with the assistance of *gatekeepers*[88] I

---

[88] Gatekeepers are the people who benefit from a kind of 'prestige' in their communities, owing to their social 'position' and, in our specific context, the fact they have, at a minimum, a certain amount of formal education. These include people who, in most cases, have French language skills. In village V1, for instance, two primary

identified potential genuine informants.[89] A second step consisted of approaching each interviewee individually for an interview. In situations in which I encountered resistance or reluctance, I had the option of involving a gatekeeper to negotiate the individual's participation in the interview.

What presented a particular challenge during our fieldwork was ensuring the participation of women in our interviews.[90] In most of the villages, women were more often reluctant to participate. One factor explaining this is that they were very busy. Our role as an observer of daily life also allowed me to offer some other explanations for their reluctance. First, they seemed uncomfortable to be 'isolated' with a 'male stranger' for a couple of minutes; and secondly, for most of the time, they seemed to lack self-confidence.[91] This is the reason why only 25% of the interviewees were female. To fill this gap, I decided to employ focus group discussions with the aim of getting more women in the group and, hopefully, enhancing their self-confidence.

2.2.3.2.   Focus group discussions

To partially counter the gender limitations of the interviews, as discussed above, we also organised focus group discussions. Focus group discussions are a form of group interview that capitalise on communication between research participants to generate data (Kitzinger, 1995). Group interactions are key in this method; instead of the researcher asking each person to respond to a question in turn, people are encouraged to talk to one another: asking questions, exchanging opinions and commenting on each other's experiences and points of view (Kitzinger, 1994). The method is particularly useful for enhancing the researcher's understanding of people's knowledge and experiences. As Kitzinger notes, its richness lies in the fact it can be used to examine and shed light not only on what people think, but how they think and why they think that way. Also, as with interviews, focus groups help overcome any literacy related barriers and can help to temper community, or cultural, dynamics by encouraging the participation of people reluctant to be interviewed on their own (in this case women), or who feel they have nothing to say (Kitzinger, 1995). I turned to this method to particularly encourage female participation so they would feel supported by each other's presence. I could have thought of having women only groups for more homogeneity as this may have created greater willingness to communicate with each other, less conflict, and greater cooperation (Femdal & Solbjor, 2018), however, I was of the view that

---

school teachers acted as gatekeepers. As teachers, they are connected to both the children and their parents; they are listened to and benefit from the respect of village members. Their French language skills allow them to be at the forefront when welcoming visitors (especially those from the city where 'people usually speak only French'). In addition, they act as intermediaries or brokers to connect visitors and community members. In most instances, they were the ones that introduced me to the members of the VA Programme Committee in the village.

[89] By genuine informants, I refer to those who are supposed to be knowledgeable about the VA Programme; they are people who regularly attend programme meetings, and are committed to participating in the entire process, as opposed to those who know nothing about the VA Programme.

[90] All of the interviews were conducted by Pascal Sundi, a male Congolese researcher.

[91] When I approached a (married) woman for an interview, the first thing she said to me was: "Go and talk with my husband. He's more knowledgeable on those things." This suggests women might feel like they don't have the authority to provide information.

heterogeneous groups were more effective due to differences in gender sensitivity, skills, perspectives and knowledge (Paulus & Nijstad, 2003). Thus, I made sure the composition of the group was female-dominated. For instance, if the group comprised seven participants, I would ensure that four women were part of the group; if the group comprised nine people, I ensured that five females would be present.

The size of each focus group varied between seven and 12 people; one focus group was organised in each village. In addition to the gender distribution aspect, the composition of each focus group also took into account age and participants' familiarity with issues related to the implementation of the VA Programme. Thus, in the focus group, we encouraged the presence of at least a member of the VA Programme, someone representing youth, and any marginalised group (if any), for example senior persons.[92] Unfortunately, even then, the voices of male participants remained dominant and women would spontaneously prefer to sit behind men when we tried to make a circle.[93] As a man researching a topic such as WaSH that is largely in the "female" domain, I was conscious that despite my efforts this remained a genuine challenge in the research process.

2.2.3.3. Participant observation

To explore how human rights are understood and inform practices and actions of rights-holders on the ground requires, to some extent, that the researcher "gets in the shoes" of community members and other stakeholders involved, in this case, in the VA Programme. This is why this study took a participant/ethnographic observation approach to gaining a deeper understanding of the human rights discourse or practices embedded in the social and cultural perspectives and norms of the people of the Bas-Fleuve district. Ethnography helps to describe a culture and understand another way of life from the native point of view (Berg, 1995:86; Neumann, 1994: 333); it places the researcher in the midst of whatever it is s/he studies, to examine various phenomena as perceived by participants, and to represent these observations as accounts (BERG, 1996). Through participant observation, ethnography breaks down the barriers between observer and participant and insists that the researcher shares a common world with those he/she studies (Burawoyetal, 1991). Participant observation places the researcher in the midst of the community he or she is studying and implies a balance of the objective collection of data with the subjective insights that result from an ongoing association with the people whose lives they seek to understand (Angrosino, 2007: xv & 2). Thus the participant/ethnographic observation approach adopted was a collaborative enterprise of 'participant' and 'observer' (Burawoyetal, 1991). In Angrosino (2007: 6) terms, the position is

---

[92] At first glance, senior or older persons are not marginalised; but the fact they are not seen more often in community meetings (because they cannot easily move around due to their age) leads to their voices being excluded from community discussions and decisions. However, if older persons are seen as the 'notable' (those always consulted behind closed doors by the chief), then they do have an impact. Two of the five villages (V1 and V5) had notable older people.

[93] In their article, Lyndsay Mclean and Anny T. Modi (2016) refer to the stigma and exclusion from several social spaces suffered by young women in Kinshasa as part of social limitations to their empowerment (see L. Mclean & A.T. Modi, "'Empowerment' of adolescent girls and young women in Kinshasa: research about girls, by girls," in *Gender & Development*, 24, 2016, p.475-491.

referred to as 'participant-as-observer', where the researcher is immersed in the community, but is known to be conducting research and has permission to do so.

For this research, I spent a total of 20 weeks in the five selected villages, almost a month in each village. I concede this may not be the required duration for 'professional' anthropologists for a reliable ethnography. However, using methods rooted in anthropology and sociology I sought to recover and systematise these communities' experiences of their rights to water and sanitation, within the constraints of the allocated time and resources.

In my role as a participant observer, I participated in meetings, community work, and paid attention to narratives around different topics. Due to the objectives of the research, I paid particular attention to conversations that referenced how community members considered the VA Programme, including their expectations or frustrations, and so forth. Participating (actively and passively) in informal conversations — another important ethnographic tool — was also part of this process. Cohen & Crabtree (2006) point out that informal interviewing is typically done as part of the process of observation and is best used in the early stages of the development of an area of inquiry, where there is little literature describing the setting, experience, culture or issue of interest. It involves the interviewer talking with people in the field informally, without the use of a structured interview guide. The researcher will try to remember the conversations with informants using jottings or brief notes taken in the field to help in the recall and writing of notes. For me, the benefit of this informal process was that it fostered low pressure interactions that allowed respondents to see it as just a conversation. Consequently, respondents were more likely to speak more freely and openly. Participant observation was thus helpful in my building rapport with the respondents and in gaining their trust for future interactions (Cohen & Crabtree, 2006).

2.2.3.4. Document analysis

Although the bulk of the data was collected during fieldwork, we also engaged in desk research, specifically document analysis. Document analysis allowed us to gain a deeper understanding of the development context, legal framework and historical context of the region in which the lead researcher conducted fieldwork.

First, we consulted country and provincial economic and other relevant reports from international development agencies (e.g. World Bank, UNICEF) including those related to the implementation of the VA Programme.[94] In addition, we consulted documents available through the VA Programme website to inform and complement our analysis of the field data.

Second, we used documentary analysis to develop our understanding of the legal framework, focusing on national and international human rights commitments related to the right to drinking water and sanitation. Attention was also paid to the current national legislation on water, especially how this informs, or not, practices on the ground.

---

[94]   For further details, please consult the bibliography.

Finally, we reviewed texts that provided historical background and analysis of present day DRC. We undertook this historical review to provide an introduction to the national historical context that has shaped the local reality and views of the people that were interviewed for this research. Our historical review starts from post-contact with Europeans, i.e. the late 19th century. We chose to start at this point as the integration of the present day DRC into the global economy and international political structures, arguably, dates from this time. We hypothesised that our analysis of the interaction of the villages in the VA Programme and their conception of human rights required a minimal understanding of the recent history of the present day DRC, and the roles of various national and international actors in this history.

2.2.4. Limitations

This thesis is limited in scope. First, it is not an assessment of the development policies of various actors in development assistance, nor is it a legal study which would require in-depth discussions and explorations of legal concepts, such as 'right', 'law', 'entitlements', etc. Again, the study does not address the issue of the right to development, nor do we have the pretension to suggest solutions to issues of access to water and sanitation, poverty, social inequalities, or injustice. By focusing on development approaches, including the HRBAD, this thesis attempts to explore possible shortcomings through a case study in the implementation of the HRBAD. It suggests how this could best be approached and improved, at least theoretically. If it does not bring solutions to issues of access to water or poverty and inequalities (in general), it does offer different way(s) of thinking about poverty and rights' access.

As previously indicated, our focus is on capacity development in development policy. This is a broad area of study that may need more interdisciplinary research, which would require more resources and time. To narrow our focus, we decided to explore the potential of capacity development through a case study of a UNICEF-based intervention, supposedly implemented under the rights-based approach to development. Much emphasis will rest upon contextual factors, including political, social, and to some extent, local factors. As such, we have no pretension to speak from a wide perspective. Therefore, we are cautious to avoid any generalisation of our findings or conclusions, as we reflect from a specific perspective. Rather, we present our findings as points of departure for further investigations in the fields of development, international human rights law, or social sciences.

Finally, we are concerned about some alternative thoughts about social change; however it is important to note we do not engage in any theory of change in this thesis. Our purpose is not to be prescriptive by suggesting ways of achieving social change, for instance, in promoting the principles of the rule of law, accountability or respect of rights, particularly for the most vulnerable, through the HRBAD. Rather, this is an attempt to explore ways of consolidating the HRBAD through its very important component of capacity development.

2.3. Key features of the research 'ecology'

In this section, we present the results of our research that address the identification of local structures that engage with the right to drinking water and sanitation in Kongo Central, including the provincial and territorial administrative entities, the *zones de santé,* and the UNICEF supported VA Programme.

2.3.1. Key administrative features of the research environment: Public institutions engaged with ensuring access to drinking water

Kongo Central is one of the more prosperous regions in the country. It is worth recalling in Kongo Central the percentage of households without access to drinking water is on average 68.5%, of which 52% are in urban areas and 85% in rural areas, the focus of our case study.[95] At an administrative level, the responsibility for engaging with drinking water and sanitation is a complex web of overlapping institutions, including the *9ème bureau provincial de l'hygiène publique* (*Bureau 9*), the *zones de santé* and for those villages in the VA Programme, UNICEF. Below we outline the key features of the administrative territories and the *zones de santé* in which the five villages we studied are found.

2.3.1.1. The relationship between the territories and the *zones de santé*

Our fieldwork was carried out within the former administrative district of Bas-Fleuve which comprises the territories of Tshela, Lukula and Seke Banza. Until recently, the province was divided into three districts and ten territories (see Map2 below). In recent legislation on decentralisation, districts are no longer legal administrative entities, the implications of which we expand on below.

---

[95] Jacques Mbadu N'situ*, Discours de politique générale devant l'Assemblée provinciale en vue de l'investiture des ministres du gouvernement provincial*, Matadi 13 avril 2013.

Map 2. Kongo Central Province administrative map

The villages in which we carried out our fieldwork were spread throughout five *zones de santé*, including Kangu, Kinkonzi, Lukula, Seke Banza, and Vaku. A *zone de santé* is defined[96] as an operational unit that supports 100,000 to 150,000 inhabitants and is delimited, taking into account the geographical, cultural and economic accessibility of the population. It is a well-defined geographical space within the boundaries of a territory or an administrative municipality comprising a population of about 50,000 to 100,000 people in rural areas, and 100,000 to 250,000 people in urban areas. The mandatory sanitary facilities of the *zone de santé* are the *centres de santé* (CS) and the *Hôpital Général de Référence* (HGR). However, to meet the geographical accessibility requirements of health services, in some *zones de santé* there are also the *centres de santé de référence* (CSR) and the *aires de santé* (AS).[97] We provide below a short description of each of the five *zones de santé,* including a map, where we carried out our fieldwork.

The current local administrative struture in the DRC (in effect from 2013) includes territories (*territoires*), subdivided into sectors (*secteurs*), then sectors into chiefdoms (*groupements*, in French), and finally chiefdoms into villages (see Fig. 4).[98] At the sector level, there are many services or departments, such as the hygiene department, which are directly in connection with the

---

[96] RDC-Ministère de la Santé Publique, *Recueil des normes de la zone de santé*, Août 2006 (cf. https://www.who.int/hac/techguidance/training/analysing_health_systems/5_normes_de_la_zone_de_sante_06.pdf).

[97] See RDC – Ministère de la Santé Publique, *Préparation de la décentralisation dans le secteur de la santé*, Rapport final de l'atelier sur l'élaboration des Mesures transitoires, Mars 2008.

[98] In cities, the 'Territoire' is called 'Commune'. To make a clear distinction between what is now called 'rural Commune' (in the new legislation), we name the 'Commune' in cities as an 'urban Commune.' 'Rural Communes' are agglomerations in rural areas which have developed, given their demography and infrastructure (housing, electricity, water, commercial activities, etc.)

grassroots population. With the new legislation on decentralisation,[99] the sectors have become decentralised administrative entities. Law No. 13/001 of 23 February 2013 acknowledges the power of these sectors to levy certain taxes. These taxes should be an integral part of their operating budgets. Unfortunately, up to now and at the time we concluded our fieldwork in August 2016, the sectors have not yet taken advantage of the relevant provisions of this law, making these institutions lose substantial means (including financial and material) to operate at their optimal capacity. As a result, as the basic state administrative units, the sectors remain ineffective and unresponsive to address or respond to demands from the local populations. If the administrative structure functioned as provided under the 2013 law, the sectors would be the local unit with tax raising authority to generate the finanical resources to respond to issues of access to drinking water and sanitation. At present, this authority is de jure not de facto.

Chart 1. DRC territorial administration division chart[100]

---
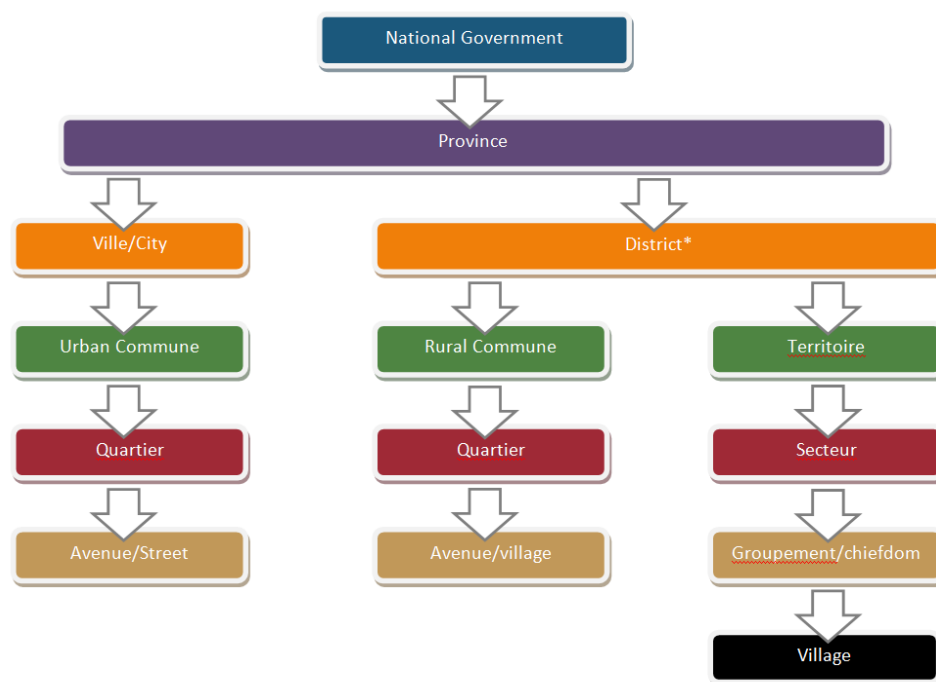
[99] These include (i) la loi de programmation n° 15/04 du 28 février 2015 déterminant les modalités d'installation de nouvelles provinces; (ii) la loi n° 08/012 du 31 juillet 2008 portant principes fondamentaux relatifs à la libre administration des provinces.

[100] Adapted from : RDC-Ministère du Plan & Révolution de la Modernité, *Annuaire statistique 2014*, Institut National de la Statistique, 2015, p.30. The VA Programme spreads across the three levels of government (central/national level, provincial level and local level). Here, the local level is basically constituted by the *secteur/cité*, the *groupement/quartier* and the *village/avenue*. These are the entities where authorities should get involved in a concrete manner in the VA Programme. Constitutionally, the *chef de secteur* is elected by a council of elected representatives from the *groupement*s; while the *chef de groupement* and *chef de village* are traditional leaders and appointees on the basis of local customs, and whose powers are also determined by customs and recognised by public authorities. A law enactedin August 2015 on the Statutes of Traditional Leaders establishes that traditional leaders enjoy consideration and respect, "decent" pay, immunity from arrest except if caught in the act of a crime, and other considerations. In turn, the traditional leader is required to be apolitical, not to take part in anti-government activities, and to be involved in resolving conflicts through conciliation, mediation, and arbitration (DRC Legislation on the statutes of traditional leaders of the 25 August 2015).

The implementation of the VA Programme is carried out by the *Ministère de la santé publique*, through the *zone de santé rurale* at the local level. The *zone de santé* is a technical unit of the *Ministère de la santé publique*; it is involved in the implementation of various public health programmes of the Ministry, but does not have tax raising authority. Thus, the *zone de santé* is not perceived by local rights-holders as a competent political-administrative authority. Its interventions are therefore limited to public health issues.

It is important to acknowlgede a *zone de santé rurale* can be geographically spread across different *secteurs*. Under the VA Programme, however, there has been no real collaborative relationship between the *zone de santé* and the *secteur* in general (or its hygiene department in particular). Our fieldwork has shown that relations between *zones de santé* and the *secteurs* have remained at the rhetorical level. For instance, most *chefs de secteurs* interviewed knew about the existence of the VA Programme within their entity because they had been invited to participate in village certification ceremonies on several occassions. While they also conveyed their role in raising the awareness of rights-holders about the VA Programme, in actual fact this role remains marginal and rhetorical because they do not have the necessary financial means to do so.

Another important issue to highlight is the role assigned to the *infirmier titulaire* (IT). Each *zone de santé* is subdivided into *aires de santé*. The *aire de santé* is the smallest unit within the health structure, which regroups from 10 up to 30 villages, and from where the *zone de santé* ensures good implementation of its programmes and better monitoring and evaluation processes. The IT is the one in charge of an *aire de santé*. In the first phase of the VA Programme, the IT was almost ignored. Due to his/her proximity to the villages, the IT was assigned a more active role in the second phase of the programme ensuring continuous follow-up in villages with the assistance of the *relais communautaires*, community members whose direct mission is to inform the community and to report back on any health issue. It is also important to indicate in some *zones de santé*, we can also find a *centre de santé de référence* or a *hôpital général de référence*. The role of actors in such health units seems marginal to the VA Programme.

Map 3. Map of the *zones de santé rurale* in Kongo Central Province
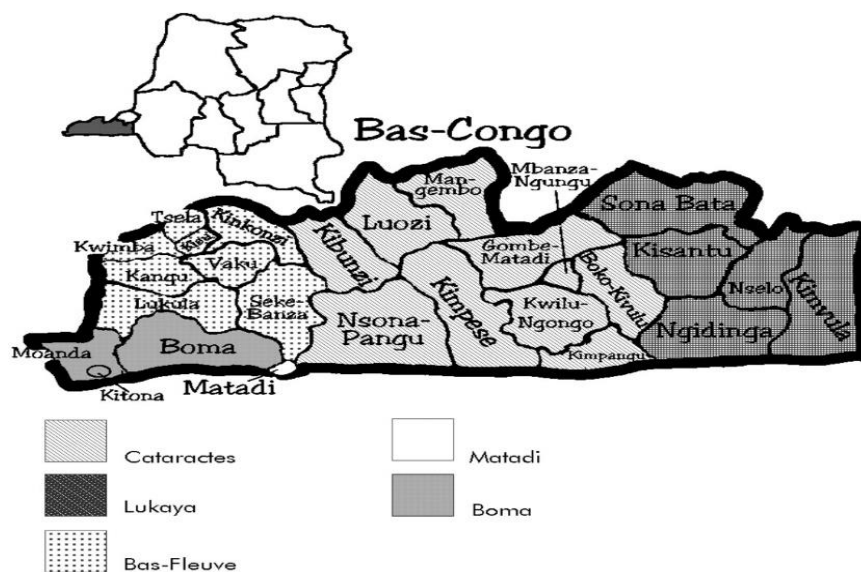
2.3.1.2. Socio-political structure of the *yombe* ethnic group

It is important to briefly introduce the socio-political structure that operates in the villages we studied as it had an impact on both the conduct of our research and on the research results. The socio-political organisation of the dominant *bayombe* ethnic group in the Bas-Fleuve region is structured around three pillars, namely the lineage or *dikanda*, the village or *buala,* and the chieftaincy (Muila-Mavinga).

(i)   **The lineage** (*dikanda*) is the basic unit and refers to the set of descendants of the same origin, as well as their allies (wives, husbands, strangers, slaves and their children). It is constituted of *Bapfumu* (descendants)[101] and all those who depend on them, given their permanent presence in the village. The lineage is led by a leader, the Elder of *dikanda*, appointed by special mandate from the founding ancestors of the clan segment. Within this leader, political, judicial and religious powers are concentrated. The legislative power exclusively belongs to the founding ancestors. They have enacted once and for all the code of laws and customs transmitted by word of mouth, from generation to generation. The violation of these laws and customs entails severe penalties that could involve serious calamities, such as infertility, all kinds of diseases, deaths and ecological distress (Muila-Mavinga, 1985: 28). The maternal uncle, *n'gwa khazi*, has real power over his nieces and nephews; while the father exercises his authority over his biological family, and looks after the education of his children.

(ii)   **The village** (*bwala*) is a grouping of people and a "land" that defines its geographical boundaries, determines the extent and prestige of the chief's power, and ensures his daily subsistence (Muila-Mavinga, 1985: 30); it includes from one to four lineages. The village is under the leadership of somebody from the first lineage which occupied the land, in collaboration with other lineage leaders. In the village, each lineage is autonomous in its internal functioning (Muila-Mavinga, 1985: 30). Each lineage has a portion of the village land and cannot infringe upon the domain of other lineages without explicit permission. The village leader is the custodian of the village land.

(iii)   **The chieftaincy** is "a set of clan segments speaking the same dialect, claiming a common ancestral origin, real or supposed. The chieftaincy and the clan segment resemble what the Europeans called *Groupement* and kingdom. The usual prestigious title of the group lineages' leader is *pfumu makanda*, (Muila-Mavinga, 1985: 30). The *Groupement* is the set of "several villages rarely exceeding the number of 10, and strictly asserting their parental ties by their belonging to a known common origin, with a few exceptions. The authority of the *pfumu makanda* usually belongs to the leader of the first village, which occupied the land of the *Groupement* (Muila-Mavinga, 1985: 31).

At all levels of the Yombe socio-political structure, which is precolonial, kinship is the foundation and the articulation of fundamental social relations; it institutes power. The hold of power over the

---

[101] The word *pfumu* (plural *bapfumu*) can literally be translated by chief as opposed to *mvika/bamvika* (slaves) or *mwizila* (strangers).

groups and the land is loosened and weakened as it moves away from lineage and village (Muila-Mavinga, 1985: 32). At first glance, the village seems to be at the foundation of the socio-political structure; in fact, it is found at the second level after the lineage, the foundation of the existence of a village (Muila-Mavinga, 1985: 32). Muila-Mavingaasserts that,

> The conditions of evolution of Yombe clans have fostered neither their cohesion nor the emergence of a centralizing power to institute a more integrated social ensemble. The attempt would perhaps have been possible since from the 16th century, the Kongo kingdom was in decadence under the pressure of the Portuguese conquest and the invasion of the Yaka, the different provinces taking one after the other their independence. The effect of slavery and Belgian colonization could not contribute in any way. Each group continued to operate in a vacuum to protect and ensure its survival. Like power, these isolated relationships gradually loosened from the base (lineage) to the top (chieftaincy) where they virtually lost all real meaning (Muila-Mavinga, 1985: 32).

2.3.2. Key features of the territories and the zones de santé

2.3.2.1. The Territory of Tshela

The territory of Tshela was established under Ordinance No. 21430 of 23 October 1937 as amended by No. 21384 of 10 December 1953. Tshela is bordered in the north by the Republic of Congo and the enclave of Cabinda (Angola); in the south by the territory of Lukula; in the east by the territory of Seke-Banza; and in the west by the enclave of Cabinda.

Map 4. Administrative map of the Territory of Tshela
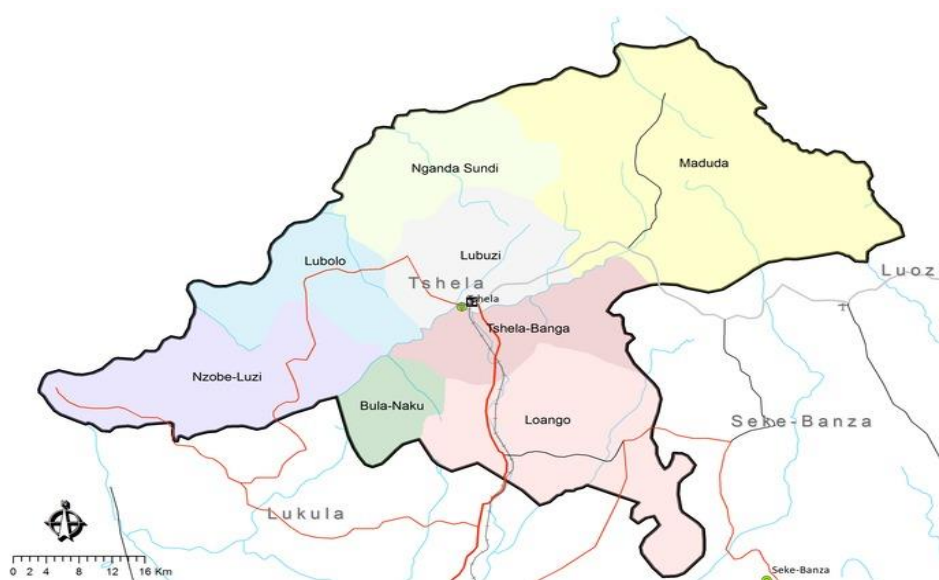
Source:*https://www.caid.cd/index.php/donnees-par-province-administrative/province-de-kongo-central/territoire-de-tshela/?secteur=fiche*

The territory consists of a single tribe, the Yombe. The main lineages (clans) of this tribe are the *Makaba*, the *Makhuku*, the *Manianga*, the *Mbenza*, the *Nanga-Kongo*, the *Ngimbi*, the *Phudi*

Nzinga, and the *Tsundi.* Their dominant activity is agriculture, which is often coupled with subsistence farming. The filiation is matrilineal.

The most important rivers of the region include Lubuzi, Ngomamba, Mbavu, Lombe, Lubolo, Lubimvu, Lupandji, Lubunga, and Lumbu. The Tshiloango River forms a natural boundary to separate the territory of Tshela with the Republic of Congo and the enclave of Cabinda (Angola).

With a population estimated to be 426 310 inhabitants, the territory comprises 1,226 villages, 76 chiefdoms (*groupements*), and eight *secteurs*.

From an economic perspective, the *Société d'industries et des cultures agronomiques au Mayombe* (SCAM), established since the colonial era around 1913, is now owned by the E. Blattner Group. It seems to be the only large company still operating in the territory. Its activities include the exploitation of rubber plantations for the extraction of latex, the exploitation of cocoa, and the production of palm oil. The palm oil and coffee sectors, which were once the main activities of the company have been abandoned for nearly two decades; resulting in job losses and a loss of dynamism throughout the economic sphere of the territory.

From a health perspective, the territory has five *zones de santé*, including Tshela, Vaku, Kinkonzi, Kizu, and Kuimba. Each of these zones has a *hôpital général de référence*, some *centres de santé de référence,* and other *centres de santé*. Generally, all the hospitals are relatively well maintained, although the infrastructure of the hospital in Panji (a city in Tshela) and in Kinkonzi both require rehabilitation.

Hospitals provide only general healthcare due to a lack of specialist doctors and appropriate equipment. Services provided include internal medicine, pediatrics, gynecology, obstetrics, radiology, surgery, echography, laboratory, pharmacy, as well as HIV testing center. The average distance to reach a medical structure varies between eight and 12 km, but owing to the poor quality of roads infrastructure, accessing hospitals and health centers is often difficult and time consuming. The supply of medicines is provided by the *Dépôt Central d'approvisionnement en Médicaments Essentiels* (CAMEBO) located in the provincial capital city of Matadi. They are mainly medicines for treating recurrent diseases in the territory, including malaria, acute respiratory infections, typhoid fever, HIV / AIDS, high blood pressure, and malnutrition.

Under the *Programme National de Lutte contre le Paludisme* (PNLP) and the *Programme National de Lutte contre le VIH/SIDA et les Infections sexuellement transmissibles* (PNLS), the Global Fund to Fight AIDS, Tuberculosis and Malaria, the *Bureau Diocésain des Oeuvres Médicales* (BDOM) supplies medical centers with antimalarials, antiretrovirals and medicines to treat opportunistic diseases with HIV.

2.3.2.1.1. The zone de santé of Kinkonzi

With an estimated population of 73,089 inhabitants, 362 villages, and 10 *aires de santé*, eight of which have already joined the VA Programme, the *zone de santé* of Kinkonzi counts 57 villages in the VA Programme among which 30 are certified, eight are in post-certification, and others are still in the process.[102]

Map 5. Map of the *zone de santé* of Kinkonzi

Source: Bureau de la zone de santé rurale de Kinkonzi.

This *zone de santé* shares borders with Cabinda, Angola and the Republic of Congo. The VA Programme started in 2006 in this *zone de santé* which faces huge difficulties to access remote villages where health issues are urgent, as stated by this interviewee,

> Yes, we have enormous difficulties. We have problems; we have specific problems in our *zone de santé*. The central office is eccentric. Even to get to Maduda, you will have problems. In the rainy season it is difficult to reach Maduda. Yet the entire population of the *zone de santé* of Kinkonzi is on that side. This is where there are big villages that have water problems but they are inaccessible. It is difficult to reach Kiphuma, Kitsaku, Tsanga Ngoma, Kivala Tadi. And it is there that there are outbreaks of epidemics like the Borelli ulcer; there are epidemics, diarrhea ... This is the biggest challenge of our *zone de santé*: roads are broken; we do not have vehicles. Motorcycles? Only one in good condition, yet the *médecin-chef de zone de santé* or her supervisor has to go on the field. There are other actors, such as the *animateur communautaire*, who also have to go for field visits with a motorbike or two, but the second motorcycle is unusable. It has to be maintained; this is a cost. We do not have money. So it's difficult (**Interview, V3, KaiAO02, June 2015**).

---

[102] Data collected from the office of the *Zone de Santé* in Kinkonzi, July 2015.

2.3.2.1.2. The zone de santé of Vaku

The *zone de santé* of Vaku covers an area of 2,265 km,² with a density of 33 inhabitants per km.² In 2017, the total population was estimated to be 78,513 inhabitants, spread across 342 villages and 10 *aires de santé*, including Khesa, Kikadulu, Kikuembo, Kiolo, Khele, Khami, Loango Bendo, Loango Centre, Mbala, and Bula Naku.[103] The central office of the *zone de santé* is located in the city of Loango, and works on several programmes, including the VA Programme. Up to February 2017, 27 villages were in the process of certification and/or post-certification, while another 35 villages were certified, making it a total of 62 villages in the VA Programme.

The *zone de santé* of Vaku is within three sectors in the territory of Tshela, including Loango, Bula Naku, and Mbanga.

Map 6. Map of the *zone de santé* of Vaku
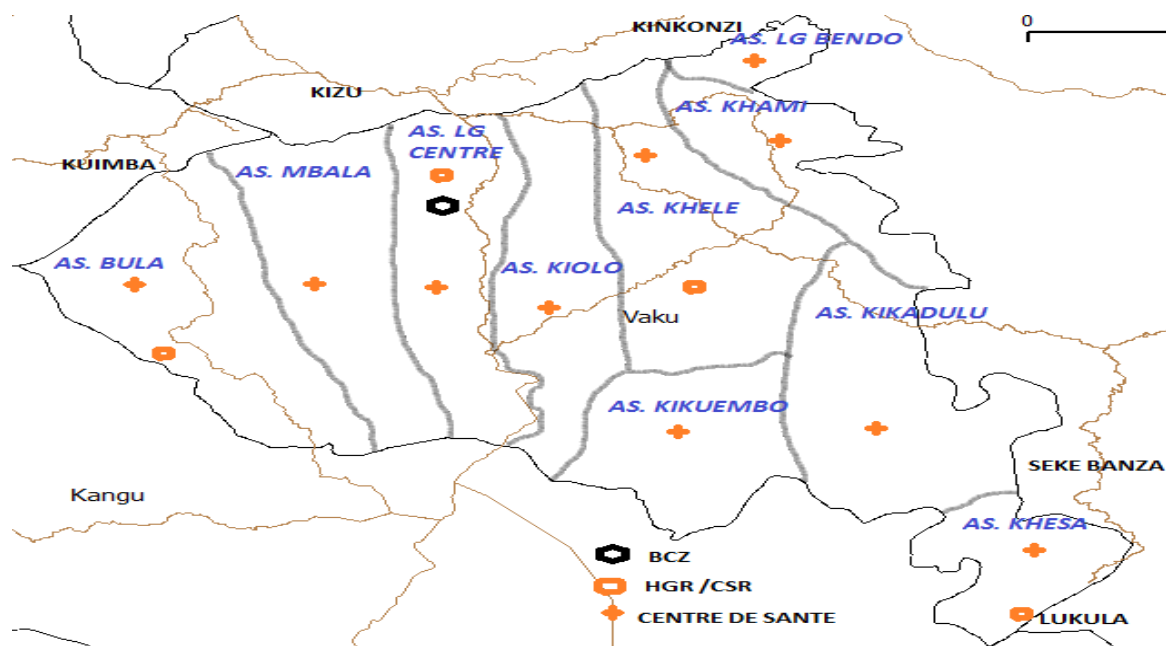
Source : Bureau de la zone de santé rurale

The hydrography of this *zone de santé* consists of the Fubu, Lombe, Lubuzi, Lukula and Mbavu Rivers.

---

[103] Data collected from the *Bureau de zone de santé* of Vaku, Loango Centre, July 2016.

2.3.2.2. The territory of Lukula

Lukula is a city in, and a territory of Kongo Central province, in the former Bas-Fleuve District. It lies on the road to and along the disused Mayumbe railway line between Boma to the south, and Tshela to the north, on the southern bank of the Lukula River. With an estimated population of 253,646 inhabitants spread across three cities and 899 villages, the territory of Lukula comprises five *secteurs* (Fubu, Kakongo, Patu, Tsanga-Sud, and Tsundi-Sud) and 60 chiefdoms or *groupements*. Economic activity evolves around agribusiness, small trade, public transportation, and commercial logging. Important rivers of this territory include Lukula, Mbavu and Fubu.

Map 7. Administrative map of the Territory of Lukula
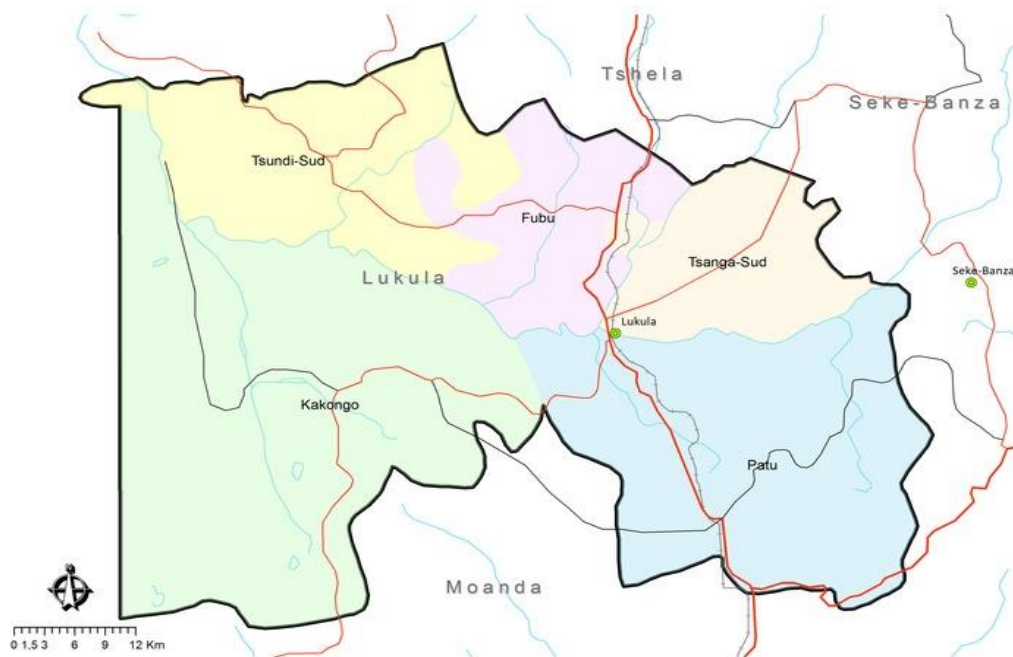
Source: https://www.caid.cd/index.php/donnees-par-province-administrative/province-de-kongo-central/territoire-de-lukula/?secteur=fiche

The territory of Lukula has two *zones de santé*: Lukula and Kangu. Each *zone de santé* has a *Hôpital général de référence*. In addition, the territory has 21 public *centres de santé de reference*, 31 private medical centres and *64 aires de santé*, 27 of which are public and 37 belong to the private sector. Medications are available both in hospitals and pharmacies. The average distance between households and health facilities is 5km.

The most common recurring diseases in this territory are malaria, respiratory infections, typhoid fever, and diarrhea which all have links to water and sanitation.

2.3.2.2.1. The zone de santé of Lukula

The *zone de santé* of Lukula is located in the territory of Lukula; it consists of 16 *aires de santé* with a population estimated at 183,696 inhabitants.

Map 8. Map of the zone de santé of Lukula
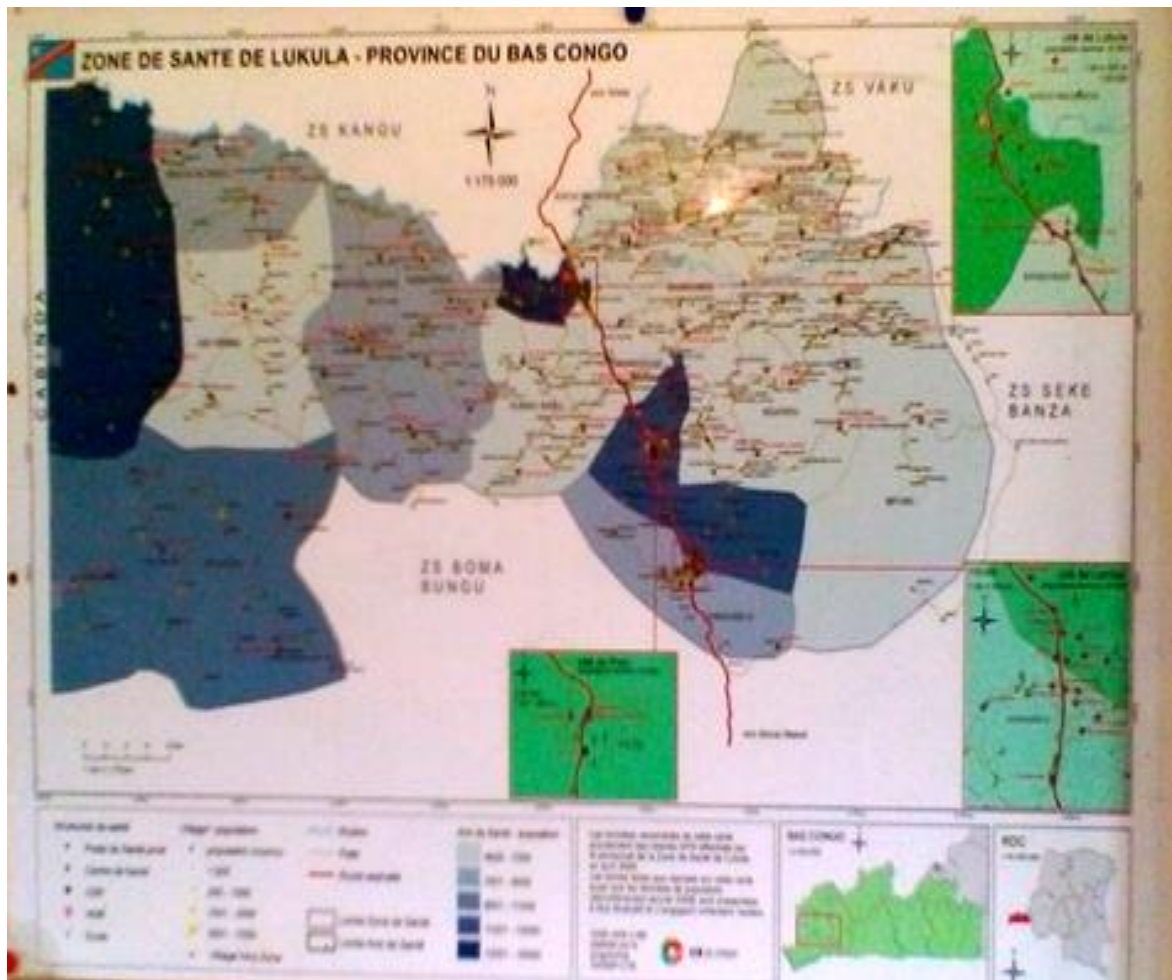
Source: Office of the *zone de santé* of Lukula

Data collected from the *zone de santé* reveals that almost 40% of the populations have access to potable water, given that many of them live in semi-urban settings. For instance, two-thirds of the almost 25,000 inhabitants of the city of Lukala have access to potable water, supplied by the state-owned company Regideso. The city of Lemba, however, faces enormous problems with its almost 30,000 inhabitants to access potable water because Regideso is not present there — although efforts have been made to improve the situation. Patu, another city of this size, has a serious water problem. Major works carried out in Patu could not, unfortunately, solve the problem. The most serious water problem remains in the Kakongo region, where populations face serious difficulties to access potable water because the region does not have enough water sources. Currently, 51 villages in this *zone de santé* are in the VA Programme.

2.3.2.2.2. The zone de santé of Kangu

The *zone de santé* of Kangu was the last of all the *zones de santé rurale* in the health district of Bas-Fleuve to join the VA Programme, joining in early 2013, in the second phase of the programme. Before joining the VA Programme, training sessions for the *médecin-chef de zone de santé* and his team, including the WaSH Supervisor and the communications officer of the *zone de santé,* were organised.

The *zone de santé* of Kangu has about 465 villages. From the outset, 29 villages joined the VA Programme in two *aires de santé*, including 23 villages in the Yenzi *aire de santé* and six villages in the Nganda Tsundi *aire de santé*. Today, the *zone de santé* has 44 villages in the VA Programme.

Map 9. Map of the *zone de santé* of Kangu

Source: Office of the *zone de santé* of Kangu

The issue of access to drinking water and sanitation is a serious one throughout the entire *zone de santé*, although the scale here too may differ between semi-urban and rural areas. Important financial and technical resources are needed to meet the challenges, according to representatives of the *zone de santé*.

2.3.2.3. The territory of Seke Banza

The territory of Seke Banza has a population of 274,418 inhabitants, divided into five sectors: Bundi, Lufu, Isangila, Mbavu, and Sumbi. The territory has two *zones de santé*: Seke-Banza and Inga. The *zone de santé* of Seke Banza consists of 16 *aires de santé*, 5 *centres de santé de référence,* and one

hôpital général de référence. The *zone de santé* of Inga has nine *aires de santé* and four *centres de santé de référence*. Sanitary conditions seem very poor due to the poor living conditions of the population.

Map 10. Administrative map of the Territory of Seke Banza
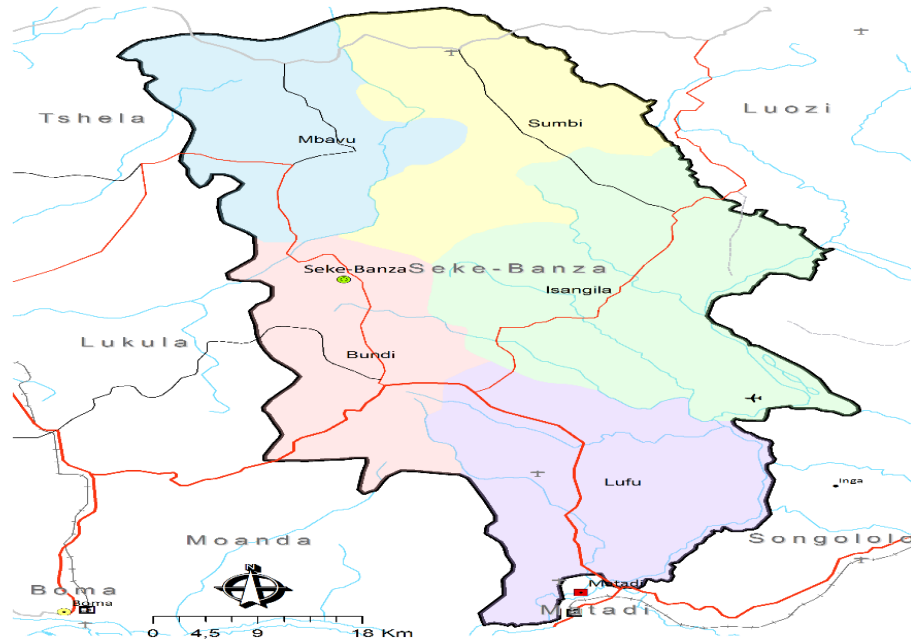
The territory of Seke-Banza has important rivers, such as the Lukula, Mbavu, Mpangi, Tsamvi, Lulu, Ntombe, Bundi, Nkodia, Loango, Lufu, Mbondozi, Lukimba, Mbesi, and Lubuzi. The common characteristic of these rivers is that they are not navigable because of several waterfalls. These rivers do not contain many fish, but can mostly be exploited for the production of electricity. The Inga hydroelectric dam, one of the most important dams in Africa, is located in this territory.

2.3.2.3.1. The zone de santé of Seke Banza

The *'zone de santé'*of Seke-Banza has a population of 147,584 inhabitants. The most common diseases in the area are malaria, acute respiratory infections, typhoid fever, diarrhea, and HIV/AIDS.

Amongst the two *zones de santé* in the territory of Seke Banza, only the *zone de santé* of Seke Banza has one *Hôpital Général de Référence*. Unfortunately, its capacity is low due to inadequate premises and equipment. The *zone de santé* also has 16 *centres de santé*, 5 *centres de santé de référence*, 20 medical doctors and 144 nurses.

Overall, sanitation conditions are characterised by poorly cleaned latrines and old buildings without any maintenance where different services operate, including laboratory, pharmacy, internal medicine, surgery, and maternity.

Map 11. Map of the *zone de santé* of Seke Banza

Source: Office of the *zone de santé* of Seke Banza

The distribution of medicines is effective because the government has provided the territory with medicines, materials, and equipment through the *Projet d'Equipement de la Structure de Santé* (PESS). It should also be acknowledged the World Fund has provided Seke-Banza with medicines. 53 villages are now part of the VA Programme in this *zone de santé*.

2.3.3. Key features of the UNICEF and Village Assaini Programme

The DRC-UNICEF VA Programme is a DRC government programme that seeks to improve rural and semi-urban rights-holders' access to clean water and sanitary installations through small, cost-efficient changes. It aims to reduce the high rate of morbidity and mortality due to water-related diseases, especially among children of less than five years. The VA Programme is heavily funded by UNICEF mostly through contributions from international bilateral agencies (USAID, DFID, JICA, and UNICEF),[104] and de facto managed by UNICEF DRC's WaSH Division, in partnership with the *Ministère*

---

[104] In 2010, the DRC government's contribution to a total budget of 18,720,050 USD was only of 1%. See the VA Programme website: http://www.ecole-village-assainis.cd/ and also Destrooper 2015: 101.

de la santé publique (for the Village Assaini or VA component), and the *Ministère de l'enseignement primaire, secondaire et professionnel* (for the *Ecole Assainie* component).

Launched in 2006, the VA Programme is implemented by the *Bureau de zone de santé rurale*, which is the local unit of the *Ministère de la santé publique* (see Chart 2 below). In 2008, the VA Programme was extended to primary schools, and became known as the *Ecole Assainie* Programme, with the purpose of preparing children to be actors of change, and to educate them on hygiene and sanitation. The *Ecole Assainie* Programme component is under the oversight of the Ministry of Primary, Secondary and Professional Education. Since 2013, wherever there is a sanitised village, there is a sanitised school (of course if the village has a school).[105]

Within the *Ministère de la santé publique*, three levels of intervention are involved in the coordination and implementation of the VA Programme. These include,

(i) the *Direction nationale de l'hygiène* (D9) for the coordination of the VA Programme at the national level;

(ii) the *9ème bureau provincial de l'hygiène publique* (*Bureau 9*) for the coordination of the VA Programme at the provincial level; and

(iii) the *zone de santé rurale*, as the operational unit of the VA Programme.[106]

Chart 2. Levels of intervention within the Ministry of Public Health
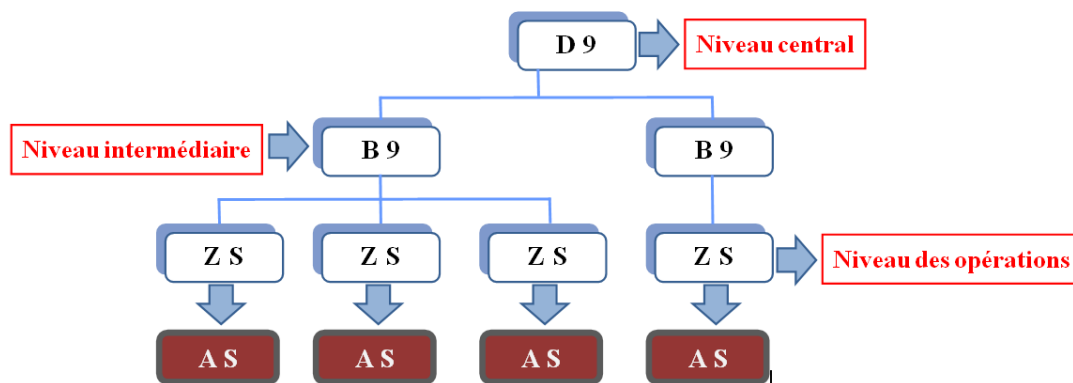
Source: Presentation at the 'Localizing Human Rights' conference with students of the Université Kongo, Mbanza Ngungu, 14 January 2015.

---

[105] Interview with the Focal Point at the *Bureau 9*, May 2017, Matadi.

[106] In terms of their functioning, the *zones de santé* (ZS) are subdivided into the *aires de santé* (AS). In the first phase of the programme (2008-2012), these units closest to the local populations were almost forgotten in the implementation process. That's why they are highlighted in red in the graph. It is true that in the second phase, the *infirmiers titulaires* (ITs), those responsible for the *aires de santé*, are more directly involved in the facilitation teams; but so far this integration does not seem to take concrete form. Details relating to this are still being discussed, such as their incentives and their equipment in terms of means of travel. The idea is to give them more responsibility in the monitoring process of the programme by leading the facilitation teams in which there are the *relais communautaires*, i.e. community members who act as intermediaries between the community and the implementation units of the programme.

UNICEF's leadership of and partnership in the programme, in 2006, helped to entirely restructure or reconceptualise the original water and sanitation plans to reflect UNICEF's adherence to community-based approaches, both in terms of strategies and operations (Destrooper, 2015: 102). For instance, interventions only take place upon explicit request of a community/village, and it is the community's responsibility to move from one step to the next, so as to ensure that the process is supported, managed and implemented in a manner that secures local ownership. This *pas-à-pas* process depicts all the steps of the programme, and specifies the role of the community at each stage (see note 16). This role goes from making the initial request to join the programme to analyzing the community's own situation and needs, as well as from proposing solutions and actions to carrying out these actions with the support of an implementing agent/partner.

Figure 6. The *pas-à-pas* process cycle

Source: MinSanté, Inf'eau Congo, no.02 (juillet 2011), p.18

The *pas-à-pas* cycle ends with the community/village 'certification', which is the recognition stage for the village reaching the state of a *village assaini* (sanitised village), meaning that the village can now access potable drinking water, adhere to the principles of good public health and enjoy a clean environment. Monitoring and Evaluation mechanisms are in place to ensure that villages, that fail to adhere to aspects of the whole programme philosophy, lose their status of a 'certified' *village assaini*, and in which case they have to restart the overall *pas-à-pas* process for a 're-certification'.

The prominent role of UNICEF in this VA Programme is crucial, because UNICEF's Executive Directive 1998-2004 stipulates all UNICEF's interventions and those of its partners should be grounded in human rights. The programme documents related to this specific VA Programme also systematically mention the HRBA as the organising principle.

As noted above, the decision to include only villages in the VA Programme in this case study was inspired by the assumption that people in these villages would have had more exposure to a human rights discourse than their counterparts in other villages. Destrooper (2015) recalls that the VA

Programme aims to prioritise community participation through the *pas-à-pas* process (step-by-step process). Evaluation of the first implementation phase, concluded in 2012, has shown some satisfactory results. For instance, the morbidity rate due to diarrhea has been reduced at an average of 77% in all certified *villages assainis* and schools in 2013. In 2014, however, 98% of the *villages assainis* had lost their status, thus leading the WaSH section of UNICEF to question the methodologies used in community mobilization, and to take into account key factors to ensure the consolidation of the results, and the implementation of a 'progressive' certification process. It is from this experience and reflections that a second phase (2013-2018) was launched.

In the second phase of the VA Programme, the DRC government committed to reaching 8,633 villages and 2,250 schools all over the country by the end of 2017. If this goal was achieved the VA Programme would reach almost 5,827,275 beneficiaries in sanitised villages, and 850,000 school children in sanitised schools.

The programme was of particular significance as it intended to show the DRC government's commitment, in partnership with development agencies — including UNICEF through its WaSH (Water, Sanitation and Hygiene) Programme — to deliver results in terms of the United Nations Millennium Development Goals (MDGs). For example, the government was committed to achieving target 7C which addressed the proportion of the population without sustainable access to safe drinking water and sanitation.[107]

Picture 1. Poster of the VA Programme

Source: UNICEF poster in a *village assaini*, with the following message: "*All Congolese, like all human beings in this world, have a right to drinking water and to adequate toilets and to live in a clean environment. The right to water and sanitation is a fundamental human right.*"

---

[107] Since September 2015, the UN General Assembly has adopted the post-2015 development agenda under the theme: "Transforming our world, the 2030 Agenda for Sustainable Development." This document, which in part, incorporates some of the unfinished business of the MDGs, sets out new development goals (the SDGs) and targets which are of relevance to this study. In particular Goal 6 speaks of 'ensuring availability and sustainable management of water and sanitation for all,' and Goal 11 aims to 'make cities and human settlements inclusive, safe, resilient and sustainable.'

The preamble of the agreement between a village joining the VA Programme and the DRC government lists a series of underlying rationales that motivated the Congolese State to set up the VA Programme. It reads,

> Pour répondre à la crise du secteur de l'eau, de l'hygiène et de l'assainissement et pour faire valoir les droits fondamentaux y afférents, le gouvernement congolais a mis sur pied le programme national 'Ecole et Village Assainis'.[108]

Today, water and sanitation are at the very core of the Sustainable Development Goals (SDGs), critical to the survival of people and the planet. The targets found in SDG 6[109] not only addresses issues relating to water, sanitation and hygiene, but also the quality and the sustainability of water sources. To achieve this goal and targets, the focus should be on participation of all stakeholders, especially the participation of local communities. On paper, this is the approach that has been taken by the VA Programme. However as Destrooper's 2015 report makes clear, the inclusion of local communities is not yet systematically integrated into the VA Programme.

2.3.4. Selection and description of selected villages for fieldwork

As discussed in the methodology section above, the fieldwork for this case study took place from October 2014 until May 2015, with a follow-up phase in July-August 2016. In addition, I carried out exploratory visits to villages during the initial stage of the research (September 2014). During these initial visits, stakeholder interviews were conducted with members of UNICEF's Division for Water, Sanitation and Hygiene (WaSH) in the provincial capital, Matadi, as well as with the provincial Officer (Bureau 9) in charge of water, sanitation and public hygiene with the *Ministère de la santé publique*. Following these interviews and visits, I selected, with the assistance of the Antwerp team, five villages from the *Bureau 9* database. I then spent five months conducting fieldwork, with an additional follow-up month doing anthropological fieldwork to learn about, among other things, rights-holders' understanding of rights and awareness of the right to water and sanitation.

These five villages were selected on the basis of the following criteria:

° The village was declared a *village assaini (VA)* in Phase 1, but *de facto* did not comply any longer with the criteria, and was incorporated again (post-certification village) in the programme in Phase 2 (2013 – 2017). This is the case for Village 1 (V1) and Village 5 (V5);

° The village was declared a VA in Phase 1 of the project implementation (2008 – 2012) and still complies with the criteria. This criterium applies to Village 2 (V2);

° A village in which a private actor is present, but not actively engaged with the community, as in Village 3 in the process of 'certification' (V3);

° A village starting Phase 2 of the VA Programme (as Village 4 did in early 2015).

---

[108] "*In order to respond to the crisis in the WaSH sector and to meet the legal obligations related to this sector, the Congolese government has started the national EVA Programme.*" (Translation is ours).

[109] SGD 6 speaks of "ensuring availability and sustainable management of water and sanitation for all" by 2030.

It should be acknowledged that despite the existence of specific criteria and procedures[110] to qualify for the VA Programme, some villages made an exception to this. According to the general procedures to qualify for the VA Programme, the village committee should address its request to the *zone de santé*, through the *Médecin-chef de zone de santé*. After assessment of the community's real needs, the *zone de santé* can accept the request — depending on the availability of resources — or keep it on a waiting list.

The so-called 'first-generation' villages, i.e. those who joined the VA Programme during its pilot stage in 2006, did not follow these procedures. Village 2 (V2) falls into this category. Then, there are the so-called 'second-generation' villages, i.e. those who qualified at the express request of their committees. However, for some villages in this category, some *Médecins-chefs de zone de santé* made critical remarks highlighting the influence of certain high profile officials, including the *Gouverneur* of the province, in the selection of their home villages (**Interview, V1, TAO06, October 2014**). This is the case of village 1 (V1). Even though water and sanitation needs were real in this village, they failed to go through the official procedures because they had the support of the *Gouverneur*, a son of the village. This might have undermined, according to a respondent from the *zone de santé*, the whole community's motivation, participation and commitment towards the programme, and as well as local ownership from the start. The assumption is that going through the whole procedure will create a sense of entitlement and responsibility for rights-holders, with the objective to develop the knowledge, skills and motivation needed for a genuine long-term appropriation of health issues within the community. Overall, the fundamental criteria remained the availability of funds and geographical accessibility. The latter aspect meant in many *zones de santé* that the most advantaged villages are those that are closer to the 'headquarters' of the *zones de santé*, while the more remote ones are often disqualified or ignored (even when the needs are the most urgent) under the pretext of insufficient resources at the level of the *zone de santé* to access them.

Table 6. Number of villages per zone and which village in the study falls in which zone

Zone de santé	Number of aires de santé	Number of villages	Number of villages in the VA Programme	Village selected	Ethnic group	Number of households	Starting year in the VA Programme	Year of certification
Kangu	2	465	44	V4	Mostly Yombe	90	2015	2016
Kinkonzi	10	362	57	V3	Yombe	90	2007	2015
Lukula	16	613	51	V1	Mostly Kwakongo	178	2012	2013
Seke Banza	6	595	53	V2	Mostly Yombe	13	2006	2008
Vaku	10	342	62	V5	Yombe	100	2009	2013

In the second phase of the VA Programme, UNICEF established a threshold of a minimum number of 50 households for a village to join the VA Programme.

This is the situation we encountered in the *zone de santé* of Kangu,

---

[110] Destrooper (2015: 102) describes these procedures as depicted in the *pas-à-pas* process (step by step process), from the explicit request of a community to join the programme to analyzing their own situation and needs, and from proposing solutions and actions to carrying out these actions with the support of an implementing partner.

> Now, UNICEF imposes on us a requirement... we need to have 50 households per village. The villages that are near the central office usually are small villages with perhaps only 20 to 30 households. That is why we chose the two 'aires de santé' which are far away from our office because that is where we find villages with more than 50 households. That was like the criterion? (**Interview, V4, KimA001, July 2015**).

Villages that have less than 50 households are regrouped to facilitate operations in the field.

2.3.4.1. Village 1 (V1)

Village 1 was certified in August 2013. The village is among those that lost their status as a 'sanitised village' in the *zone de santé* of Lukula. Since then, it has been integrated as post-certification village, which has to restart the whole process of certification.

Situated in the *secteur* of Kai Vemba near the Atlantic coast, this village consists of nearly 1,000 inhabitants, mainly from the Kwakongo ethnic group. The main language is the Tsikwakongo (a language that is both close to Kiyombe and Kiwoyo).

With only one village leader, the village has been divided into two, as part of the VA Programme, for operational reasons, without deconstructing its 'socio-political' organisation (see discussion in 4.3). This division was motivated by the number of households, which were estimated roughly at 178.

The programme's implementation rules require that when a village goes beyond 100 households, it has to be divided into two or more "groups." This village had the advantage of benefitting from two wells, which help to meet the needs of the entire population, and even neighboring villages who come from time to time to get drinking water. As a result, the village has two VA committees, but often hold their meetings together.

Before becoming part of the VA Programme, residents faced a very serious problem of access to drinking water. They had to either walk miles to find some kind of drinking water, or wait for many hours to collect water from a small source near the village. During this period, children were more often exposed to water-related infections, including diarrhea.[111]

---

[111] Informal conversation with the IT of the *aire de santé*, November 2014.

V1: Picture of Village 1

V1: Water source before the VA Programme

V1: A well installed by the VA Programme

2.3.4.2. Village 2 (V2)

This village is located in the territory of Seke Banza, some 30 minutes away from the city of Kinzau-Mvuete where the *zone de santé rurale* of Seke Banza is based, and in the *aire de santé* of Kizulu Sanzi. The village is nearly 1km away from the N1 Highway (Nationale No.1) between Kinzau Mvuete and the City of Boma. The small village is made up of 13 households, with a total population ranging between 75 and 80 inhabitants, divided into two main clans or *m'vila*, namely the *Makhuku* and the *Nanga*, from the Yombe ethnic group. Power distribution between the two *m'vila* seems equitable, and allows more stability and fewer conflicts.

Despite the size of the village and its small population, there are strong interactions between the village and its neighborhood.

V2: View of the village

V2: Villagers extracting palm oil

V2: A hand washing stand
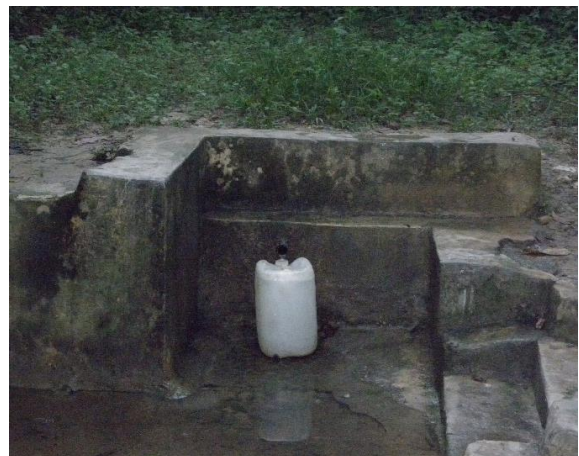
V2: An improved water source.

2.3.4.3.   Village 3 (V3)

Village 3 consists of about 90 households, with an average population of 350 inhabitants. It is located on the N12, between Tshela and Luozi. This village belongs to the *groupement* of Maduda, in the *secteur* of Maduda. It is essentially composed of two clans: the *Nanga* and the *Makhuku*, from the Yombe ethnic group. This may explain the presence of two village leaders, making it not a single village, but two different villages with different leadership.

The village currently suffers from rather difficult access, especially in rainy periods, due to lack of adequate road infrastructure. To remedy this deficit, many people and their goods are transported by motorcycles whose prices have been made affordable in recent years by the Chinese business of motorcycles, which made my interlocutor say,

> In the past, we needed 2,500 to 3,000 USD to have a Japanese motorcycle; but currently with 800 USD you can have a good Chinese brand motorcycle. Some even buy second hand motorcycles at 100 USD. That is why, if I am asked today to make a choice between the Belgians and the Chinese, I prefer the presence of the Chinese in our country. They help us a lot (**Informal conversation, V3, June 2015**).

The mention of Belgians and Chinese in this specific context refers to how these actors are perceived in terms of their support to local initiatives, or to local agency for better living conditions. It is important to acknowledge the emergence of a sort of collective consciousness[112] at the village level, which holds villagers together to carry out certain community initiatives. Such initiatives vary from agricultural or farming projects,[113] to the production of electricity. In terms of water, the region is very rich in streams; unfortunately, it is often polluted water and not suitable for consumption.

---

[112] A conscious of togetherness and of a commonsense understanding of the world (Merry 1990).

[113] In harvest periods, people usually come together to rent a truck, which allows them to transport their products to Kinshasa with the expectation to sell them at a reasonable price. Most of time, the selling prices of these products at the local level are so unpredictable they seem very disproportionate to the efforts made to produce them.

V3: A view of the village

V3: An access road

V3: A view of the village landscape

V3: A water stream

2.3.4.4. Village 4 (V4)

Situated in the *secteur* of Tsundi Sud (Mbata Mbengi), the *groupement* of Kipondo, the *aire de santé* of Nganda Tsundi and the *zone de santé* of Kangu, this village joined the VA Programme at its second phase. The village is actually a combination of two villages, whose leadership is assumed by one village. Both communities share basic decision-making structures, especially on issues affecting them directly, such as water and sanitation.

V4 : The village landscape

V4: The old water source

V4: An improved covered water source

2.3.4.5. Village 5 (V5)

This village is also a combination of two villages with two separate leaders, but has only one VA committee. With a population of about 426 inhabitants,[114] and an average of 100 households, these two villages have undoubtedly been grouped to meet the requirements of the VA Programme, namely to divide the village only when it reaches more than 100 households. These villages are situated in the *aire de santé* de Kikuembo; they joined the VA Programme in 2009 and became certified in 2013.

This village hosts a health facility that is part of the *aire de santé* of Kikuembi, located some 9km away. This health facility supports an average of 978 inhabitants from 4 villages. According to the nurse in charge of the health facility,

> In past years, children frequently suffered from diarrhea, but since the toilets and pumps of water have been built in the villages, kids are getting less and less sick. I now receive only two or three patients per month, on average.

V5: A view of the village

V5: A SanPlat slab toilet

V5: An improved water source

V5: An improved covered water source

---

[114] Data from the *Bureau de zone de santé* of Vaku, Loango Centre, July 2016.

2.3.5. Fieldwork process and challenges

2.3.5.1. Characteristics of the research participants

Two main stakeholder groups were involved in our research: first, community members from selected villages; and second, local authorities. For local authorities, we included local political and administrative leaders such as the *chef du village*, the *chef de groupement*, the *chef de secteur*, and other officials at the territory level. Other participants included staff of the *zone de santé*, more specifically the *médecin-chef de zone de santé* and the *zone de santé* WaSH supervisor. Representatives of UNICEF's partner NGOs were also approached in the process.

Kikongo is the dominant language in the Bas-Fleuve region of Kongo Central. For the field research, fluency in this language was necessary as most groups speak a dialect of this language which can deviate strongly from the standard Kikongo. Below we explain the challenges faced in accessing the field.

2.3.5.2. Access to the field and related challenges

As a field researcher, it is always a bit anxiety provoking when one visits a place for the first time, especially when it comes to a rural area where the basic sanitary infrastructures are generally deficient. One wonders under what conditions one will be accommodated, how one will be fed, under what hygienic conditions; in short, questions about the smallest details of everyday life are raised because the change of environment implies adaptation.

Initially, as discussed with the research team, we planned to carry out this study throughout the province of Kongo Central, through its three districts (Bas-Fleuve, Cataractes and Lukaya). Then, very quickly, we realised there were still some language barriers that prevented me from easily interacting with the local populations in the Cataracts and the Lukaya districts. Certain variants of the Kikongo spoken in the Cataractes and the Lukaya (the case of Kindibu or Kintandu) were not always 100% understandable to me. Even though we could understand them at 60 or 70%, communication would still remain limited. Probably, we could have turned to the use of Lingala, which is one of the national languages in the DRC and spoken in other provinces and the capital city, Kinshasa, as a way to sort this issue out. However, this linguistic detour would create an absolute limit in a study which sought to be ethnographic in essence.

With the approval of the director of the research project and the entire LHR research team, we took the option of moving the project to our former home district, the Bas-Fleuve district.

At first, we had in mind the district offered a sort of homogeneity in terms of population (ethnicity), language and culture. The Bas-Fleuve district is composed of three territories: Tshela, Lukula and Seke Banza. We had sufficient knowledge of each of its three territories. Tshela is my home territory where I was born and did a lot of my primary education. Lukula was home to my high school. As for Seke Banza, not only did I do another part of my primary school there, I also visited the territory regularly for one reason or another (notably for internships during training at the Major Seminary of Boma).

The first shock we got came during our first visit to one of the VA villages selected for study. In fact, we were familiar with none of them. When we arrived at the village in the territory of Lukula, our first challenge was my inability to properly communicate with my interlocutors who spoke in a language that I could only understand about 50% of what was said. We did not know that in this part of the Bas-Fleuve district, bordering the enclave of Cabinda, the populations are closer to the Woyo ethnic group, living alongside the Atlantic coast and in Angola.

Fortunately, this linguistic barrier was quickly overcome since the majority of the inhabitants of this village could speak both their local language, Tsikwakongo (a variant of the Kiwoyo), and Kiyombe (which is my mother tongue and which was retained as a language of exchange with our potential interlocutors in the Bas-Fleuve district, mostly constituted by the Bayombes).

In this first village, the living conditions were quite favorable. For accommodation, I found an outside room in the house of the *chef du village*. Far from any comfort, the room was sufficient to accommodate a bed and a chair to put a bag. It is in this simple and ascetic setting that we were able to start our research fieldwork, by becoming part of this host family, sharing their meals on a daily basis during the more or less 30 days of the research stay.

When we arrived in the village, our attitude was that of someone who wants to learn from the community, from each of our interlocutors. We adopted an attitude of simplicity and listening to allow more proximity with everyone.

Unfortunately, this was not the perception of the community members. For many, we were viewed as someone with a "certain education," who came from an *important milieu*, the city. So at first, we were not considered one of them. Two attitudes prevailed: for some, we had to be treated with a little reverence, while for others "we were not one of them," and therefore had to be kept a bit distant from them. This made it difficult, at times, to keep fair, simple and open contacts and relationships with villagers.

On the other hand, members of the community had their expectations (individually as well as collectively). We could explain to them we were not a government or state agent, let alone a UNICEF agent, however, as soon as we started a conversation about the VA Programme, one would assume we were the best interlocutor through whom they could convey or channel their aspirations and expectations to other institutional bodies capable of "assisting" them.

Another important element that played a role in the process of the research is the *ordre de mission*, a document signed and delivered by the *Université Kongo*. Since our interactions also involved meeting with civil society actors and local authorities, this document often made it easier for us to gain access and acceptance wherever we had to go. This document helped to build relationships of trust with local officials, particularly.

Overall, two principles guided the approach to our research: flexibility and adaptability. By flexibility, we mean the ability to revisit our assumptions in order to immediately merge into the reality of the present. Adaptability meant the ability to adapt, to change and to integrate oneself in each and every single context.

2.3.5.3. The interview process: challenges and ethical considerations

2.3.5.3.1. Cross-cultural and cross-language research

Apart from interviews with local authorities and other experts which were carried out in French, all interviews with villagers and focus group discussions were recorded in the local language, Kiyombe (a variant of the Kikongo language). Translation and transcription of the interviews were done into French by a student from the Law Faculty of the *Université Kongo*, a local partner on the research project. The student was a native of the Bas-Fleuve district; this ensured the transcriptions remained embedded in the context of the interview. Data analysis was carried out in English from the French transcriptions.

Translation, however, presents various challenges. It should be acknowledged the task of moving from one language to another without loss of meaning is difficult. A certain degree of meaning loss is unavoidable since languages differ from one another and, as a result, translation is an interpretative act.

Van Nes et al (2010) discuss the challenges of language differences in qualitative research, especially when participants and the main researcher have the same non-English native language, and the non-English data leads to an English publication. They point out that,

> Translation between languages involves interpretation as well. The message communicated in the source language has to be interpreted by the translator (often the researcher him or herself) and transferred into the target language in such a way that the receiver of the message understands what was meant. Challenges in the interpretation and representation of meaning may be experienced in any communicative action, but are more complicated when cultural contexts differ and interlingual translation is required. Because interpretation and understanding meanings are central in qualitative research and text is the 'vehicle' with which meaning is ultimately transferred to the reader, language differences generate additional challenges that might hinder the transfer of meaning and might result in loss of meaning and thus loss of the validity of the qualitative study (Van Nes et al. 2010: 314).

In the following example, the interpretation of the expression *l'Etat, Nzambi tsi,* which has been translated in French as *l'Etat, Dieu sur terre,* and in English as *the state, God on earth,* may not cover the full meaning if we miss linking it to another similar expression, *bambuta, ba nzambi zi ts*i (*parents as gods on earth*). In the last expression, parents are those beings who have to provide for their kids and deserve respect and obedience. In order to get a better understanding of the expression in the context of our fieldwork, it is important to keep in mind this positive aspect of *God on earth,* and what might be considered as the negative aspect of *God on earth*, including its virtual distance from the people.

To minimize the risk, or to potentially reduce the loss of meaning and thereby enhance the validity of cross-language research, more critical thinking was needed in the analysis.

Finally, vernacular languages often do not offer clear-cut equivalents for the relatively new language of human rights. The non-existence of certain concepts, such as *human rights* or *accountability* in Kikongo, and the existence of notions that are untranslatable, raises a host of issues about how to interpret local understandings (see chapter 5). To deal with this aspect, we paid attention to how rights subjectivities develop on the ground by trying to find, for instance, which actors are seen as *accountable* or *responsible* on the ground by concerned rights-holders.

2.3.5.3.2. *Ethical considerations*

Ethical issues always arise when relating to other human beings. Angrosino (2007: xvi) suggests,

> Field researchers must always be aware of the delicate balance inherent in being both engaged participants in community activities and objective observers of those activities. Ways of dealing with questions of informed consent and confidentiality should be taken into account when conducting research in real-life communities (as opposed to laboratories).

Taking into account these aspects, necessary precautionary measures were taken before carrying out our fieldwork. In October 2014, we submitted a request for advice to the University of Antwerp's Ethics Committee for the Social Sciences and Humanities regarding research proposals with possible ethical repercussions. Our submission included an application form with a research information sheet, a consent form for participants, and an interview guide (see copies of interview guides in Annexes 2 and 3). In December 2014, the Ethics Committee provided us with an 'ethical clearance' to undertake our research (see copy in Annex 5). In designing the research protocol included in this application, we strove to ensure the study would not bring any harm to participants involved in interviews or in participant observation, and that oral informed consent was to be obtained from community members after providing the participant with all necessary information on the purpose and nature of the study.

We also strove to ensure we would not raise false expectations of assistance from our interviewees, and that confidentiality throughout the research process was guaranteed to all participants through the use of pseudonyms or codes (if necessary). The names of villages where fieldwork was to be carried out also had to be altered to avoid any traceability of interviewees.

Throughout our fieldwork, we ensured we adhered to the principles of the Ethics Committee, including to guarantee the confidentiality of the data and the privacy of the participants, as well as to avoid any psychological or physical harm to participants. Therefore, all research data was kept only for the purpose of the broader IAP-HRI[115] research project and this thesis. Access to the data was only available to researchers involved in the LHR research project with the Law and Development Research Group, University of Antwerp. It was agreed with the Ethics Committee that data was to be destroyed upon completion of both the LHR project and this PhD thesis.

---

[115] The IAP-HRI was a Belgian interuniversity project with funding from the BELSPO on the human rights integration.

CHAPTER 3. HISTORICAL AND LEGAL CONTEXT

The aim of this chapter is to set the stage for the analysis of local conceptions of human rights in Chapter 4. As in most countries, the long shadow of history continues to exert an influence on how people view their government and its human rights obligations.

3.1. A brief history of the DRC

As Jasanoff puts it, for many the Congo has remained what the Polish-British novelist, Joseph Conrad, called the "Heart of Darkness" (1899). And yet, beyond this portrait there is the beauty of a rich biodiverse landscape; there are human faces and events; there is a history and the journey of a nation.

Since 1884, external interest in the rich natural resources of the DRC has fueled internal conflicts and constituted a major reason why the DRC is frequently on the international political agenda (Nzongola-Ntalaja, 2002: 20). Despite this wealth of natural resources, a recent World Bank study notes the DRC

> is among the five poorest countries in the world, whether measured by poverty rate or number of poor. Political instability and rapid demographic growth — the second highest in Africa — have driven an increase in the total number of poor that puts extreme pressure on the country's derelict infrastructure (World Bank, 2017).

The decimation of the Congolese population following contact with Europeans is undisputed. Historians and other scholars continue to debate the number of people who died, largely from disease, hunger, and brutal treatment, including executions (Vansina, 1994, 2010). Although we shall never know how many million people died between the 1880s and 1910 (Louis and Stengers, 1968: 252–70), estimates range from one to 15 million, however, a consensus estimate appears to be 10 million people (Al-Zahran, 2013; Hochschild, 1999: 233; Nzongola-Ntalaja, 2002:22).[116] The following historical discussion outlines how the underlying causes and consequences of this massive loss of life reverberated through the following century to the present day. An understanding of this history helps to lay the groundwork for analysing the current challenges to realising human rights and development in the DRC.

The story of what is known today as the DRC starts in 1885 in the aftermath of the Berlin West Africa Conference (Conference of Berlin),[117] when this piece of land became the private property of the King of Belgium, Leopold II. Under the terms of the general act of the Berlin Conference, King

---

[116] For example, Salam Al-Zahran states, "from 1885 to 1908, it is estimated that the Congolese native population decreased as a primary statistic by 10 million people" (Al-Zahran, 2013).

[117] The Encylopedia Britannica states, "The Berlin West Africa Conference, a series of negotiations (Nov. 15, 1884–Feb. 26, 1885) at Berlin, in which the major European nations met to decide all questions connected with the Congo River basin in Central Africa."

Leopold II pledged to suppress the East African slave trade, promote humanitarian policies, guarantee free trade within the colony, impose no import duties for twenty years, and encourage philanthropic and scientific enterprises (Al-Zahran, 2013).

Having acquired this vast and resource rich real estate, over 80 times the size of his Belgian kingdom, King Leopold II resolved to make it a profitable enterprise. Belgian historian, Jean Stengers, states *"Leopold owned the Congo just as John Rockefeller owned Standard Oil."*[118] As a result, the King had to judge the success of his colonial enterprise in strictly business terms, i.e. in terms of whether or not it was profitable (Nzongola-Ntalaja, 2002: 20).

Professor Georges Nzongola-Ntalaja argues that, given the low level of development of productive forces in what was then called the Congo, the King and his agents had to resort to primitive accumulation. This meant the use of torture, murder and other inhumane methods to compel the Congolese to abandon their way of life to produce or do whatever the colonial state required of them (Nzongola-Ntalaja, 2002: 20). Contrary to his pledge in Berlin, beginning in the mid-1880s Leopold II issued a series of decrees that eventually violated these conditions, by reducing the rights of the Congolese people to their land, to native villages and farms. Further, he decreed that merchants limit their commercial operation in rubber to bartering with the natives. Nzongola-Ntalaja recounts that King Leopold established the *Force Publique* (FP) in order to campaign against the Arab trade in the upper Congo, to protect his economic interests, and suppress uprisings which were common within the Congo Free State (CFS). The FP officer corps included only white-Belgian regular soldiers and mercenaries from other countries. In the CFS, other officers recruited men from Zanzibar and West Africa, and eventually from Congo itself (Ewans, 2002). More than the ivory, it was the collection of wild rubber that resulted in the depopulation of entire villages and the perpetration of heinous crimes against humanity in the Congo (Antsey, 1966: 262).

Al-Zahran and others argue that during the 1880s, the FP's primary role was to exploit the natives as laborers so as to promote the growth of the rubber trade. From reading both historical accounts and analysing the political, economic and social developments in the DRC since independence in 1960, it appears as if the DRC has never recovered from the impact of Leopold II and his agents, turning the Congo Free State into a massive labor camp, and making a fortune for themselves from the harvest of its wild rubber. Al-Zahan argues that:

> Due to the 'legalized robbery enforced by violence' as the King's reign was described at that time, the Congo has remained more or less the template by which Congo's rulers have governed ever since. Under this phrase, the Congo's soldiers have never moved away from the role allocated to them by Leopold II as a force to coerce, torment and rape an unarmed civilian population. Through this, Leopold II unleashed new horrors on the African continent (Al-Zahan, 2013: 2).

Historical accounts document that village residents who were unwilling or unable to meet the assigned daily quotas for rubber production were subject to rape, arson, bodily mutilation, and murder. This ongoing violence resulted in the estimated death of 10 million people. Drawing on different sources, historian Adam Hochschild has documented this death toll was caused by three

---

[118] Jean Stengers, "La place de Léopold II dans l'histoire de la colonisation," in La Nouvelle Clio, IX, 1950: 527, quoted by G. Nzongola-Ntalaja, p.20.

inter-related causes, including (i) murder; (ii) starvation, exhaustion and exposure; and (iii) disease and plummeting birth rates, especially in areas ravaged by the rubber campaign (Hochschild, 1999: 225-234).

When Belgium took over the running of the Belgian Congo in 1908, the Belgian government continued to largely operate on the basis of what had already been established economically and administratively by King Leopold II. Anstey remarks,

> There was no major departure from the broad lines of the original Belgian comportment in the Congo which the legacy had done so much to determine, though certainly there was refinement of that comportment (Anstey, 1966: 262).

Thus, as a colony, the Belgian Congo was strongly marked by the Leopoldian legacy, a system characterised by economic exploitation, political repression, and cultural oppression (Nzongola-Ntalaja, 2002: 26). Here was an entity where the people were not citizens with democratic rights, but enslaved subjects of a sovereign they never saw.

After gaining independence from Belgium in 1960, a brief civil war — followed by a transitional government — gave way in 1965 to the Presidency of Mobutu Sese Seko. In 1971, Mobutu changed the name of the country to Zaire. Mobutu's rule, which extended over a period of 32 years, is described by Nzongola-Ntalaja as a system of institutionalised theft, unbridled corruption, and state decay and collapse (Nzongola-Ntalaja, 2002: 152). It is within the context of this 32 year dictatorship and its role in the decay and collapse of the DRC state, accentuated by certain factors such as the alienation of the state from ordinary people and its class base, that one should analyse recent political developments. Other factors include invasion, civil war, and never-ending insecurity and political instability, both in the country and within the region — all of which followed the 1994 genocide in Rwanda. When the violence of the Rwandan genocide spilled over the border into Eastern DRC, two wars subsequently engulfed the whole country. The first began in 1996 and ended with the overthrow of President Mobutu by Laurent Laurent-Désiré Kabila in May 1997 (Human Rights First).

The second war broke out in 1998 and only ended with a peace agreement in December 2002 (Human Rights First). Taking advantage of DRC's weakness and of ethnic divisions, neighboring states and a variety of militias and national rebel groups fostered instability in the country. At least seven foreign armies, including those of Uganda, Rwanda, Burundi and Angola, and a variety of armed groups operated within DRC as the national government lost control of large areas of the country. These forces consistently sought to exploit DRC's rich natural resources, including gold, diamonds and coltan (used to make the chips in cellphones), encouraging inter-ethnic conflicts and violence in order to promote their economic interests either directly or through proxies (Human Rights First). In October 2003, a special panel established by the UN Security Council to look into the plunder of DRC's natural resources issued its final report, concluding that illegal exploitation remained one of the main sources of money for groups involved in the conflict and was inextricably linked with the perpetuation of the conflict (UN Security Council, 2003).

Throughout this long, seemingly endless armed conflict, widespread human rights abuses and violence have been consistently committed.[119] Among the worst violations documented by human rights groups and United Nations bodies include the killing of civilians, forced recruitment of child soldiers, destruction of villages, internal displacement, cannibalism, sexual violence (including rape), and torture.[120]

In 2001, President Laurent-Désiré Kabila was assassinated and his son, Joseph Kabila assumed power. In 2006, the first free general democratic elections in the DRC were held under President Joseph Kabila, seeing him returned to power. [121] Following the 2006 elections, the human rights situation did not improve that much with unrest, insecurity and widespread human rights violations occurring in many regions, including in Kongo Central.[122] In 2011, the country held what were widely regarded as chaotic and rigged elections and again, Kabila was returned to power. [123] Constitutionally, Kabila's second term was to end in December 2016, and he could not run for a third term. Unfortunately, his unwillingness to relinquish power, and his lack of clear political willingness to hold elections, has brought the country to the brink of another civil war and continued instability with mass violations of human rights, including freedom of expression. A recent report of Human Rights Watch states,[124]

> … Kabila and his coterie have blocked the organization of elections as the deadline for when he needs to step down keeps getting extended. Senior US officials and other diplomats delivered similar messages to Kabila in the lead-up to December 19, 2016, the end of Kabila's two-term limit. When that deadline passed with no progress toward elections, the UN Security Council and others pressed Kabila to organize elections by the end of 2017, in accordance with a Catholic Church-mediated power

---

[119] Different UN High Commission for Human Rights reports have highlighted, not only the killings throughout this period, but also the reduction of public space. In its 2009 annual report, the UN High Commissioner for Human Rights notes: "*While international attention has focused on the conflict in eastern Congo, the public space for protests and criticism in the rest of the country has diminished considerably, with the authorities often repressing those critical of their policies. Mainly as a result of inadequate wages, police and army officers commonly use their position to extract payment from civilians, often through the use of arbitrary arrests and physical force. The judiciary faces enormous challenges, ranging from a profound lack of resources to widespread corruption and political and military interference. The lack of independent judiciary deprives citizens of an effective legal framework through which to lodge complaints and seek redress*" (Human Fights Council Annual report of the UN High Commissioner on the situation of human rights and the activities of her Office in the DRC, April 2009, p. 2).

[120] Numerous studies document the extent and impact of sexual violence, including rape, in the DRC: C. Brown, "Rape as a weapon of war in the Democratic Republic of the Congo", in *Torture* 22(1), 2012:24-37; Human Rights Watch, *Seeking Justice: The Prosecution of Sexual Violence in the Congo War*, New York, 2005.
http://www.hrw.org/en/reports/2005/03/06/seeking-justice-0

[121] According to the 2011 Carter Center's report on the elections in the DRC, the 2006 and 2011 national elections are rightly regarded to be the most free and inclusive since Belgian colonialism collapsed in 1960 (see The Carter Center, *Presidential and Legislative Elections in the DRC*, Final report, November 2011), https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/drc-112811-elections-final-rpt.pdf

[122] For example, see the work of the Congo Research Group http://cic.nyu.edu/programs/congo-research-group and Human Rights Watch https://www.hrw.org/africa/democratic-republic-congo and the UK Border Agency, 2008 Country of Origin Information Report Democratic Republic of Congo, UK Home Office, https://www.ecoi.net/file_upload/1329_1215089636_1229-1211959679-drcongo-210508.pdf

[123] See Ole Tangen, Where is the DR Congo after a decade of democracy? http://www.dw.com/en/where-is-the-dr-congo-after-a-decade-of-democracy/a-36529716

[124] See Ida Sawyer, "New DR Congo Electoral Calendar Faces Skepticism Amid More Protests, Repression", *Human Rights Watch*, 6 November 2017, https://www.hrw.org/blog-feed/democratic-republic-congo-crisis

sharing arrangement signed on December 31, 2016, known as the New Year's Eve agreement. Kabila and his ruling coalition then disregarded the main terms of the agreement, as Kabila entrenched his hold on power through corruption, large-scale violence, and brutal repression against the opposition, activists, journalists, and peaceful protesters. Security force officers went so far as to implement an apparently deliberate 'strategy of chaos' and orchestrated violence, especially in the southern Kasai region, where up to 5,000 people have been killed since August 2016.

According to Kate Hodal (2017), violence and ethnic and political unrest in the DRC have propelled the country to the same level of crisis as Iraq, Syria and Yemen. The combination of the worst cholera outbreak in DRC's history, ongoing ethnic clashes and the presence of increasing numbers of militias have had a devastating impact on the provinces of Tanganyika, North and South Kivu, and Kasai.[125] The ongoing public health emergency, human rights violations, internal displacements and an outflux of refugees all contribute to the political fragility of 2017 DRC.

Throughout this history, from King Leopold II, to colonial exploitation, to the dictatorship of Mobutu, to the current ongoing civil war and political instability, Nzongola-Ntalaja describes the quest for freedom and prosperity as the *fil rouge* of the whole political struggle movement in the DRC. He states,

> The democracy movement in the Congo is a struggle for political freedom and economic prosperity. That these two go hand in hand has never been in doubt there, given the character of Belgian rule as a colonial trinity of the state, the Catholic Church and large companies, as well as the continuation of economic exploitation and political repression after independence. Thus, the independence struggle of the 1950s, the popular insurrections for a 'second independence' in the 1960s, the fight against Mobutu's one-party dictatorship, and the current struggle against new forms of dictatorship and external oppression have, as a common denominator, the demand for expanded rights politically and for a better life economically. (Nzongola-Ntalaja, 2002: 3).

Historian Eric Hobsbawn sees the scramble for the Congo as "primarily economic"; he argues that the Congo of Leopold II was an extractive space, rather than a political one. (Hobsbawm, 1989)[126] In his article, *Une nation congolaise à venir*, Patience Kabamba uses this lens to explain the inability of the Congo, through its successive post-colonial leadership, to commit itself to a path of genuine and sustainable development. He argues under King Leopold II the Congolese space was organised to facilitate the extraction of raw materials,

> Roads and railways networks were built to serve the evacuation of raw materials needed to fuel the industrial conglomerates of Europe and America.[127]

---

[125] K. Hodal, "Congo crisis on a par with Iraq, Syria and Yemen – and getting worse by the day: UN warns that conflict, cholera and internal tumult have forced 4 million people and counting from their homes, with aid increasingly hard to deliver", *The Guardian*, 16 November 2017, https://www.theguardian.com/global-development/2017/nov/16/congo-crisis-iraq-syria-yemen-cholera-aid

[126] For Eric Hobsbawm, the search for affordable raw material was the primary motive of the colonial adventure between 1880 and 1914.

[127] "Le réseau des routes et des chemins de fer, le système de santé et d'enseignement, l'administration métropolitaine de la colonie répondaient tous à la logique prédatrice du projet léopoldien, qu'Adam Hochschild a caractérisé, à juste titre, d'entreprise de pillage barbare" (See Patience KABAMBA, 'Une nation congolaise à venir', in *Congo-Afrique*, no.492, Février 2015, p.119.

He terms this the so-called "gospel of enterprise." During this period, raw materials including copper, tin, gold, diamonds, and rubber from the plantations filled the coffers of Leopold II. Much of the wealth came at a shocking humanitarian cost: the taking of hostages, floggings to the point of death, rape, and child labor. Even social services, including health and education, were well organised so as to ensure raw material extraction could continue, as opposed to educating and ensuring the health of the Congolese people. As Achberger notes, it was important to keep the labor force healthy enough and give them minimum education to understand instructions from the colonial master. That is why the Colonial Congo was one of the few places in sub-Saharan Africa to have an organised health system with good infrastructure to keep people healthy enough to work. The suffering of the people was addressed through the charity or *philanthropism* of the King and the colonial master. Today, the very same colonial mindset is still prevalent in Congolese leadership and society. Leaders own everything in the Congo and are not accountable to the people; and citizens expect charity from their leaders.[128]

The resistance to state violence has taken many forms throughout DRC's history. Nzongola-Ntalaja provides a useful historical analysis of the Congolese resistance movement through four distinct periods: the resistance to colonial rule; the resistance to neocolonialism; the resistance to Mobutu's dictatorship and reign of terror and the resistance to foreign aggression and new forms of dictatorship internally (Nzongola-Ntalaja, 2002:4). Speaking of the last, most recent, resistance movement, he states,

> With political parties unable to function legally and incapable of working clandestinely, much of the fight against both external aggression and internal dictatorship has been led by civil society organizations, which have campaigned against war; they denounced the violations of human rights by the invading forces and their allies, as well as by the Kabila regime; and kept the flame of the *Conférence Nationale Souveraine* alive.

At least nine types of organisations were involved in these actions: Human rights and civic education NGOs; development NGOs; humanitarian and relief organisations; women's organisations; religious organisations; youth organisations; labor unions; professional organisations; and press and cultural associations (Nzongola-Ntalaja, 2002:244).

Such resistance has contributed to an increasing awareness of human rights issues within communities, in particular political and civil rights,[129] although, arguably, much more is needed to

---

[128] It is not uncommon to hear from the media, ordinary citizens begging their leaders to give some attention to specific issues in their communities. The most common phrase, known in Kinshasa, the capital city, is '*Bakonzi batalela biso likambo oyo*' ('the government should take into consideration this specific people's concern'). This is symptomatic of a paternalistic and a 'wait-and-see' attitude vis-à-vis the state, where the head of state is called in Lingala *Mokonzi ya mboka* (i.e. the father to whom kids do not demand any accountability because there is no explicit consciousness of 'a contractual relationship'), and not *Nkumu* (leader).

[129] Today, the historical divide between the 'political and civil rights' and the ESCRs is more and more being bridged, at least theoretically, by ensuring that all human rights are indivisible, interdependent and mutually reinforcing. Besides, there is an expanding ESCR jurisprudence in some parts of the world (e.g. Europe, India.) wherein courts have played a role in supervising positive obligations, particularly where government action has been woefully inadequate, when the state fails to implement existing programmes, or when legislation, policies and programmes have been discriminatory. According to Dr. Muralidhar of the Supreme Court of India, "*This expanding of ESCR jurisprudence has manifested in two ways. First, civil and political rights have been shown to*

broaden such awareness with respect to economic, social and cultural (ESC) rights. In their article, De Feyter & Lumbika Nlandu (2014) present a critical analysis of shortcomings of the DRC national government to fulfil its obligation to guarantee a wide range of ESC rights (including education, the provision of drinking water, access to justice, and health services). They highlight the virtual substitution of the state by donor agencies, and the lack of accountability mechanisms for rights-holders to claim their rights from the government or the donor when discrimination occurs, or when acts or omissions cause violations. The research presented in this case study complements their analysis by exploring how local understanding of ESC rights do and do not contribute to an understanding of the role of the state and the evolution of the concept of state accountability.

We now turn to examining the legal basis for the Congolese state's human rights obligations, focusing on water rights.

3.2.   The legal context

3.2.1.   International and regional legal commitments

The DRC is a state party to numerous international[130] and regional[131] human rights treaties, several of which give rise to obligations pertaining to the human right to drinking water and sanitation. Some of these obligations arise from the recognition of access to drinking water and sanitation as derivative of rights found in the International Covenant on Economic, Social and Cultural Rights (ICESCR). In later conventions, specific references have been made to water including in Article 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which explicitly references both water and sanitation,[132] Articles 24 and 27(3) of the Convention on the

---

possess socio-economic dimensions. These more traditional rights have been employed in a fashion to extend the right to non-discrimination and equality into the social-economic arena (e.g. exclusion of minorities from social programmes or education, etc.). In other cases, ESCRs themselves have been directly derived from civil and political rights (e.g. the right to life implies the right to water and food)." See Shivani Verma, *Justiciability of Economic Social and Cultural Rights Relevant Case Law*, working paper, International Council on Human Rights Policy, 2005.

[130] The International Covenant on Economic, Social and Cultural Rights (acceded to 1976); the International Covenant on Civil and Political Rights (acceded to 1976); the International Convention on the Elimination of Racial Discrimination (acceded to 1978); the Convention on the Elimination of All Forms of Discrimination against Women (acceded to 1986); the Convention on the Rights of the Child (acceded to 1990); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (acceded to 1996); and the Convention on the Rights of Persons with Disabilities (acceded to 2015).

[131] The African Charter on Human and Peoples' Rights (ACHPR, ratified in 1987).

[132] Article 14.2(h) provides: "*States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right … (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.*"

Rights of the Child (CRC),[133] and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).[134] An understanding of the legal nature and scope of these obligations is necessary for this study because, as these treaties are legally binding, the DRC has committed to fulfilling the obligations found in these treaties, and, importantly, the citizens of the DRC (who were interviewed for this study) are rights-holders under international law.[135]

As part of its obligations under the ICESCR, like other states, the DRC is obliged to submit a periodic report to the Committee on Economic, Social and Cultural Rights (the Committee) detailing its progress in implementing its obligations at the national and local level. The Committee's most recent concluding observations, dating from 2009, noted the DRC had not submitted a report for 21 years, thereby failing to fulfill its commitment to a five-year reporting cycles. Since no report has been submitted to the Committee since 2009, there was limited data to review.

The concluding observations did not reference drinking water and sanitation directly, which is in part explained by an absence of statistics in the original report submitted by the DRC. The Committee response to the DRC report highlighted that the state failed to provide the necessary statistics to assess its progress stating,

> The Committee regrets that the report of the State party and its written replies to the list of issues transmitted to it do not contain detailed factual information or statistics that would enable it to assess how far the rights set out in the Covenant are respected in the State party. The Committee considers such data to be essential for monitoring implementation of the Covenant (CESCR, 2009: 2).

In addition to being necessary for reporting obligations, this absence of data makes it hard for DRC state bodies to develop policies that are evidence-based and respond to human rights obligations.

Importantly, with respect to realising the right to drinking water and sanitation, the Committee issued a blanket recommendation related to how the state should be spending national resources and international development assistance so as to comply with its ICESSCR obligations. We reproduce in full the Committee's comment,

> The Committee draws the attention of the State party to its statement entitled "An evaluation of the obligation to take steps to the 'maximum of its available resources' under an optional protocol to the Covenant" (E/C.12/2007/1), and recommends that the State party which is currently voting the

---

[133] Article 24(2) states: "*States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution; … (e) to ensure that all segments of society, in particular, parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents*."

[134] Article 28(2) provides. "*States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:*
(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs."

[135] This case study does not explore the national, regional and international mechanisms that can be used by DRC citizens to claim rights enshrined in regional and international treaties.

annual 2010 budget substantially increase its national spending on social services and assistance such as housing, food, health and education, so as to achieve, in accordance with article 2, paragraph 1, the progressive realization of the economic, social and cultural rights provided for in the Covenant. The Committee also urges the State party to use a human rights-based approach in the elaboration of the State budget and the utilization of international development aid with clear strategic budgetary lines for the most disadvantaged and marginalized groups and provinces. It further encourages the State party to foster transparency and accountability to improve effectiveness in the implementation of development programmes funded by international donors. (CESCR 2009: 7).

The above recommendation by the Committee demonstrates the scale of the universalising human rights challenge in the DRC.

It is important to emphasise that the right to drinking water and sanitation for all is not enshrined in any binding international human rights treaty. However, as noted above, it is included in later conventions that address marginalised groups, including women, children and persons with disabilities. In Section 3.2.2 below we shall highlight important recent international efforts to advance the right to drinking water and sanitation as an independent right.

3.2.2.   *Moving towards universal recognition of the human right to safe drinking water and sanitation*

As Meier et al argue, the human right to safe drinking water and sanitation has developed dramatically under international human rights law over the past 40 years. This can be attributed to both political and legal pressure with international political declarations, such as the Millennium Development Goals (MDGs), contributing to specific state commitments (Meier et al, 2018,) and to the work of UN treaty bodies, including the United Nations Committee on Economic, Social and Cultural Rights (the Committee).[136]

Meier et al (2018) identify the significance of framing safe drinking water and sanitation as human rights as follows,

> Human rights offer a universal framework to advance justice in water and sanitation policy. Rather than viewing safe drinking water and adequate sanitation as only basic needs, human rights implicate specific responsibilities to realize water and sanitation as legal entitlements. Examining deficiencies in water and sanitation as 'rights violations' offers international standards by which to frame government obligations and evaluate public policies, shifting social justice debates from political aspiration to legal accountability (Steiner et al, 2008). With a state duty-bearer accepting resource dependent obligations to 'progressively realize' rights, the government is pressed to implement national structures, processes, and outcomes 'to the maximum of its available resources, with a view to achieving progressively the full realization of the rights' (ICESCR, Article 2, 1966).

---

[136] The United Nations Treaty body mandated to monitor implementation of the ICESCR and to issue authoritative interpretations of commitments under the ICESCR, General Comments.

Since 2000, significant progress has been made at the international level on, initially, clarifying the scope and legal status of the right to water.[137] In 2002, following several years of analysis, the Committee adopted General Comment 15 on the right to water which defined the scope and content of this 'newly identified human right', proclaiming that

> the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights (UN CESCR, 2002).

General Comment 15 grounds this derivative right in two articles of the ICESCR: Article 11(1), the right to an adequate standard of living; and Article 12, the right to the highest attainable standard of health. The Committee affirmed access to water was a condition for the enjoyment of the right to an adequate standard of living (Article 11), that it is inextricably related to the right to the highest attainable standard of health (Article 12), and therefore it is a human right (UN CESCR, 2002). Additionally, the General Comment clearly outlines the obligations of states parties relating to the right and defines what actions would constitute as a violation which is explored below. The Committee specified that, as with other economic, social and cultural rights under the ICESCR[138] (and from which it derives the right to water), the right to water imposes three overarching obligations on state parties, such as the DRC. These obligations encompass: the obligation *to respect* (requiring states to refrain from interfering directly or indirectly with the enjoyment of the right to water); the obligation *to protect* (requiring the state prevent third parties from interfering in any way with the enjoyment of the right to water); and the obligation *to fulfil* (requiring that the state *facilitate*, *promote* and *provide* access to water) (UN CESCR 2002: paragraphs 20-29).

Paragraph 10 of General Comment 15 (UN CESCR, 2002) specifies the right to water contains both freedoms and entitlements. These freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, including arbitrary disconnection from the water supply, or contamination of water supply. The relevant water-related entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. Paragraph 11 of General Comment 15 notes compliance with state obligations would be assessed on the basis of the availability, accessibility, acceptability, affordability, and quality of water, examining both the systems and services by which states, such as the DRC, guarantee water for personal and domestic use (UN CESCR, 2002).

It is worth recalling the ICESCR provides for progressive realisation of rights, and acknowledges the existence of constraints due to limited available resources, including financial and technical. It also imposes on States Parties, such as the DRC, core obligations (UN CESCR 2002: paragraph 37) which are of immediate effect. In relation to realising the right to water, these include the obligation to take steps (Article 2, para.1 of the ICESCR)[139] towards the full realisation of Articles 11 and 12. Further, such steps must be deliberate, concrete and targeted towards achieving the full realisation

---

[137] In 2007 the Office of the High Commissioner for Human Rights (OHCHR) linked safe drinking water and sanitation proclaiming, "it is now time to consider access to safe drinking water and sanitation as a human right" (UN OHCHR, 2007).

[138] We recall that the right to water is not enshrined in the ICESCR.

[139] See Aoife Nolan and Mira Dutschke, "Article 2(1) ICESCR and States Parties' Obligations: Whither the Budget?", in *European Human Rights Law Review*, Vol. 3, 2010.

of the right to water. State parties must "ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent diseases," and "to take measures to prevent, treat, and control diseases linked to water, in particular ensuring access to adequate sanitation" (UN CESCR, 2002: paragraph 37). Paragraph 38 repeats the language found in the ICESCR (Article 2, para.1) stating,

> For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfill their core obligations indicated in paragraph 37 above (UN CESCR, 2002).

Arguably, the international community, (including those states in a position to assist), has an obligation to assist the DRC in realising these obligations.

As accountability is a vital element of the human rights framework, the Committee stressed the importance of developing right to water indicators to facilitate accountability for implementation and monitoring of the progressive realisation of the right to water (UN CESCR, 2002: paragraphs 47-54). It stressed the importance of developing national water strategies or plans of action that respect the principles of non-discrimination and participation (UN CESCR, 2002: paragraphs 47 & 48). Further, it emphasised right to water indicators should be designed to monitor, at national and international levels, the state's obligations … [and] should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), which should be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State Party's territorial jurisdiction or under their control (UN CESCR, 2002: paragraph 53).

Following from this significant achievement, the United Nations Human Rights Council (HRC) engaged with the dynamism surrounding international human rights standard setting activity seeking clarification on the broader set of human rights obligations related to access to drinking water and sanitation (UN HRC 2006). This culminated in a report from the Office of the High Commissioner for Human Rights (OHCHR) proclaiming: "It is now time to consider access to safe drinking water and sanitation as a human right" (UN OHCHR, 2007).

The momentum was maintained as the Human Rights Council created the position of Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (UN HRC, 2008).[140] In 2010, the UN General Assembly (UNGA) built on the above outlined standard setting within the UN human rights system, adopting the 2010 Resolution on the Human Right to Water and Sanitation[141] which,

(i) Recognises the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights; [and]

---

[140] In March 2011, the Human Rights Council, extended the independent expert's mandate on water and sanitation, and changed the title to Special Rapporteur on the human right to safe drinking water and sanitation (UN HRC 2011).

[141] UNGA Resolution 64/292 was adopted by a vote of 122–0, with 41 abstentions.

(ii) Calls upon States and international organisations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all (UNGA, 2010).

Meier et al. (2013) argue this 2010 UNGA Resolution solidified political support for the legal reasoning of General Comment 15, memorialising international consensus on the scope and content of a distinct human right to water and sanitation. Although it is not legally binding, the international political significance of the UN process that led to the 2010 UNGA Resolution is evident in the 2015 UN Agenda on Sustainable Development Goals (SDGs). Goal 6, "Ensure access to water and sanitation for all," does not refer to water and sanitation in rights terms. However paragraph 7 of the Preamble states,

> In these goals and targets, we are setting out a supremely ambitious and transformational vision. We envisage a world free of poverty, hunger, disease and want, where all life can thrive. We envisage a world free of fear and violence. A world with universal literacy, a world with equitable and universal access to quality education at all levels, to healthcare and social protection, where physical, mental and social wellbeing are assured. A world where we reaffirm our commitments regarding the **human right to safe drinking water and sanitation**,[142] and where there is improved hygiene; and where food is sufficient, safe, affordable and nutritious. A world where human habitats are safe, resilient and sustainable and where there is universal access to affordable, reliable and sustainable energy (UNGA, 2015b).

3.2.3. National legislation

With respect to social, economic and environmental rights, the DRC Constitution of February 2006[143] entrenches the right of access to drinking water, the right to health and food security, as well as the right to a clean environment. Article 48 states,

> The rights to decent housing, the right of access to drinking water and to electric energy are guaranteed. The law establishes the conditions for the exercise of these rights.[144]

Articles 47 and 53 read respectively,

> The right to health and food security is guaranteed…[145] All persons have the right to a healthy environment that is favorable to their development. They have the duty to defend it. The State ensures the protection of the environment and the health of the population.[146]

---

[142] Emphasis is ours.

[143] République Démocratique du Congo, *Constitution de la République Démocratique du Congo*, du 18 Février 2006, telle que modifiée par la loi no. 11/002 du 20 janvier 2011 portant révision de certains articles.

[144] "*Le droit à un logement décent, le droit d'accès à l'eau potable et à l'énergie électrique sont garantis. La loi fixe les modalités d'exercice de ces droits.*"

[145] "*Le droit à la santé et à la sécurité alimentaire est garanti.*"

[146] "*Toute personne a droit à un environnement sain et propice à son épanouissement intégral. L'Etat garantit la protection de l'environnement et la santé de ses citoyens.*"

Further, Article 42 of the Constitution emphasises the obligation for public authorities to protect the youth against any attack on their health, education or integral development.[147]

More recently, the DRC has enacted legislation on water resources.[148] In its preamble, this legislation acknowledges water, not only as an economic resource, but mostly as a social good, given that one of its fundamental roles remains the preservation of life. This piece of legislation is informed by Articles 9[149] and 48 of the Constitution, and also includes provisions of articles 203, §16 and 204, §26 of the Constitution with regard to the concurrent constitutional competences and those exclusively devoted to provinces. Important innovations of this law include, inter alia, the coverage of water needs for all categories of consumers and the decentralisation of water supply services.

The current legislation on water sets out the principle of Integrated Water Resources Management (IWRM);[150] it also ensures the decentralisation of the decision-making process by transferring water supply services to provincial and local governments. It also removes the state's monopoly over the water supply sub-sector and allows the engagement of community-based organisations in this area. At the same time, it paves the way for private sector investments through public-private partnerships (PPPs).

A 2006 World Bank report on the economic situation of the Kongo Central Province acknowledges that,

> The resources of the Kongo Central province are important; the province has important hydrographic resources capable of promoting the production and supply of electricity to all of Africa and drinking water for the province and the region. However, the production and distribution of electricity and drinking water is still an area of quasi-monopoly under the management of the central government which has not favored an increase in the supply of these services (World Bank Group, 2006: 8). [151]

---

[147] "*Les pouvoirs publics ont l'obligation de protéger la jeunesse contre toute atteinte à sa santé, à son éducation et à son développement*."

[148] Loi n° 15/026 du 31 décembre 2015 relative à l'eau.

[149] Article 9 states: "*The State exercises permanent sovereignty over the Congolese soil, subsoil, water resources and woods, air space, rivers, lakes and maritime space as well as over the Congolese territorial sea and the continental shelf. The conditions for the management and the granting of concessions with regard to the State domain referred to in the preceding paragraph are determined by law*."

[150] Integrated Water Resources Management (IWRM) is an approach that has now been accepted internationally as the way forward for efficient, equitable and sustainable development and management of the world's limited water resources and for coping with conflicting demands. The rationale underpinning this approach is that water is a key driver of economic and social development, while it also has a basic function in maintaining the integrity of the natural environment. However water is only one of a number of vital natural resources and it is imperative that water issues are not considered in isolation. Managers, whether in the government or private sectors, have to make difficult decisions on water allocation. More and more they have to apportion diminishing supplies between ever-increasing demands. Drivers such as demographic and climatic changes further increase the stress on water resources. SDG 6, paragraph 5 states: "*By 2030, implement integrated water resources management at all levels, including through trans-border cooperation as appropriate*."
For more information, see: http://www.un.org/waterforlifedecade/iwrm.shtml

[151] RDC, *Rapport sur la situation économique récente dans la province du Kongo Central: Enjeux de la modernisation d'une province à fort potentiel énergétique face à la qualité de vie de sa population*, Groupe de la Banque Mondiale, Juin 2006, p.8

This case study assesses the situation prior to the 2006 Constitution and the new water legislation which provides that the production and distribution of electricity and water is the responsibility of the provincial government. However, despite the existence of a legislative framework that engages the provinces in water management, up to now the two public services for the production and distribution of water and electricity are managed by two commercial companies still enjoying a quasi-monopoly, and totally under the control of the central government, namely the *Société Nationale d'Electricité* (SNEL) and the *Régie de distribution des eaux* (REGIDESO). At the same time, in the absence of a contractual framework on the distribution of sectoral capabilities adapted to the requirements of the Constitution and the current Water Legislation, the provincial authorities do not yet play specific roles (e.g. technical supervision, sectoral regulation, water resource management, water quality, management of infrastructure investments, works, management of the public service, etc.). These authorities intervene to alleviate some difficulties by financing certain social connections to the drinking water network for the vulnerable population (World Bank Group, 2006: 26).

This situation has not often allowed rights-holders, especially in rural areas, to identify the entity responsible for drinking water supply. As one of our interviewees remarked,

> In rural areas, it is difficult for us to identify the responsible for this issue; in urban areas, it is clearer: when there is no water, one knows who to approach, complain to or address his/her claim. That is REGIDESO. But in the village, one does not know who to go to. Fortunately, since the *zone de santé* is involved in this *village assaini* project, we can at least now say we have an interlocutor on this drinking water issue (**Interview, V2, Ki04, February 2015**).

In the water sector the legacy of political instability and weakness is clear. A 2011 World Bank study examining the supply and financing of water and sanitation in the DRC identifies both the long political crisis (through the 1990s and early 2000s) and institutional weakness as key obstacles to the implementation of water-related projects. The authors argue that,

> Even as more finance is becoming available, the sector struggles to absorb it efficiently, hindered by weak institutions, outdated sector policies, a lack of qualified technicians and managers, remaining insecurity, and a lack of support infrastructure such as roads and electricity.

A separate study examining the DRC Forest Code and Pygmy rights notes,

> Clearly, the invisibility of state institutions influenced the requesters in their decision to target the World Bank ... No doubt a lack of confidence in the ability and willingness of the DRC judiciary to safeguard the interests of the local population vis-a-vis powerful external actors, and the relatively low threshold of the Bank's accountability procedure, also played a role (De Feyter et al, 2011: 23).

One of the challenges on this issue is that the water management has so far been dealt with by a variety of state institutions and structures with poor coordination, and which often have very little visibility, especially in disadvantaged rural areas. In fact, it should be acknowledged that, until 2015, the DRC did not have a clear articulated policy on drinking water and sanitation since its independence in 1960. The 2015 legislation on water is the first legal instrument or policy mechanism that tries to regulate and coordinate the sector of water management, including drinking water.

In fact, the issue of potable water supply seems to be addressed inequitably. While the state-owned REGIDESO Company is in charge of supplying drinking water in urban settings, the rural areas are more often left on their own. The *Service National d'Hydraulique Rurale* (SNHR), operating under the

Ministry of Rural Development, is supposed to ensure the supply of drinking water in rural areas, but it is in a precarious situation, without the necessary human capacity, material and financial resources, capable of ensuring its operational activities (UNEP Report, 2011: 22).

Even though there have been some efforts on paper at least — with the new legislation — to improve the coordination of all the institutions and structures dealing with water, up to now the management of the water sector is divided between seven ministries and several structures. The areas of responsibility between them are not always clearly defined. In the next paragraphs, we shall attempt to provide an overview of the different actors.

Two of the seven key ministries include *the Ministère de l'Environnement, de la Conservation de la Nature et du Tourisme* (MECNT), and the *Ministère de l'Energie*. The management of water as a natural resource is the responsibility of the *Direction des Ressources d'eau* of the MECNT. Under the *Programme National d'Assainissement* (PNA), the MECNT has a managerial responsibility for urban sanitation services, including wastewater treatment and solid waste management. At the level of the Ministry of Energy, the *Département de l'eau et de l'hydraulogie* (DEH) ensures oversight over the REGIDESO, a parastatal providing urban water supply services. Other key ministries include the Ministry of Rural Development, which operates the SNHR that is responsible for the development of rural and semi-urban drinking water services. Since 2006, the *Ministère de la santé publique* and, in 2008, the *Ministère de l'Enseignement Primaie, Secondaire et Professionnel* have been involved in the water sector thanks to the national UNICEF-supported Programme of *Ecole et Village Assainis* (EVA) to develop improved sources of drinking water, as well as hygienic conditions, particularly in remote villages. The Ministry of Transport through its *Agence Nationale de Météorologie et de Télédétection par Satellite* (METTELSAT) and its *Services de transport fluvial et maritime*, including the *Régie des Voies Fluviales* (RVF) and the *Régie des Voies Maritimes* (RVM), as well as the Ministry of Agriculture, are part of the water management sector. The Ministry of Agriculture is responsible for fisheries and small-scale irrigation schemes.

The *Comité National d'Actions de l'Eau et de l'Assainissement* (CNAEA), established in 1981 and operating under the Ministry of Planning, was tasked to serve as an interministerial coordination mechanism and act as the entry point for development partners in the sector of water and sanitation. The CNAEA focuses on the programming and monitoring of the drinking water supply and sanitation sub-sectors, but does not follow an integrated approach to water resources management. Operating at the political and strategic level, the CNAEA establishes the planning objectives and is in charge of resource mobilisation and facilitation with donors (UNEP report 2011: 25). Hampered by the need to operate with limited resources, reports suggest the CNAEA operates mostly in a disorganised manner and has not been able to effectively coordinate the sector, while its activities are limited at the national (central) level, as most provincial committees are not operational (UNEP report 2011: 25). Since November 2007, the CNAEA has been granted legal status and accredited as an autonomous authority from an administrative and financial point of view.

Figure 7. DRC Institutional embedding of water and sanitation programmes
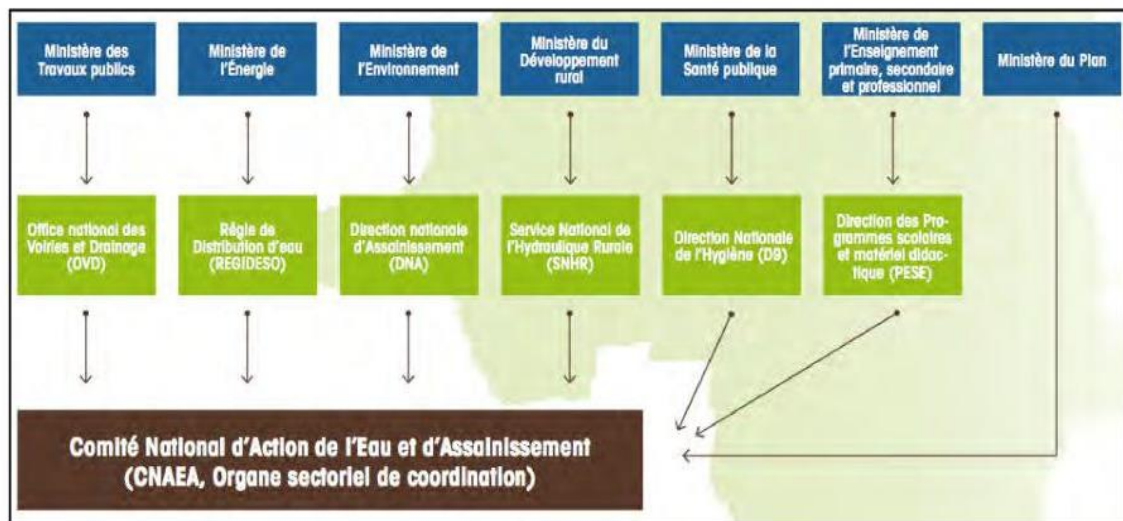
Source: MinSanté, Inf'eau Congo, no.03 (2011).

3.3. Water and sanitation rights, the VA programme and the international agenda

The UNICEF administered VA Programme in the DRC links the rights to drinking water and sanitation. Above, we discussed global policies that link water and sanitation. From a purely pragmatic perspective, it is logical to link water and sanitation because adequate sanitation is clearly an impossible goal without access to safe, clean water. In addition, as discussed above, other human rights, such as the right to an adequate standard of living and the right to health, are underpinned by the right to water and sanitation, and depend on water and sanitation for their achievement. Reflecting this, numerous efforts around the world to improve public health through hygiene and disease prevention (e.g. the water related targets found in the MDGs[152] and the 2015 SDGs) also combine water and sanitation. Goal 6, "Ensure access to water and sanitation for all" advances both water and sanitation through several targets reflective of international human rights norms:

6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all;

6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations;

6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally;

6.4 By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity (UNGA, 2015b).

When UN agencies, or any other entity, engage in human rights issues, water and sanitation are generally treated as a single imperative, part of a wider societal and public health agenda which, if not addressed, has the potential to harm their operations. Issues that might deserve examination include environmental hygiene, access to sanitation facilities, and wider community concerns that are relevant to them. Thus, in this thesis, when we refer to the right to water, it should be understood as the broader right to water and sanitation. The emphasis on the right to water in our thesis stems from our focus on the local rights-holders' perspectives — they have a more immediate interest in water, rather than sanitation. We shall report on the limited data related to sanitation rights in the discussion that follows.

---

[152] MDG Goal 7 on Environmental Sustainability contains the following Target (7.C): "Halve by 2015 the proportion of the population without sustainable access to safe drinking water and basic sanitation". UN Millennium Development Goals. At: http://www.un.org/millenniumgoals/environ.shtml

PART II: FINDINGS OF FIELDWORK

Part II of this thesis comprises three chapters which present the main findings of the fieldwork, including interviews carried out and focus group discussions. Chapter 4 presents the local understanding of human rights, while Chapter 5 constitutes a published article focusing on a contextualised understanding of the notion of duty-bearer; and Chapter 6 discusses a reconstruction of the notion of capacity development by revisiting two key concepts and principles of the rights-based approach to development.

CHAPTER 4.   THE LOCAL CONCEPTIONS OF HUMAN RIGHTS

This chapter presents our research findings with regard to the local understanding of human rights in the former Bas-Fleuve district of the DRC with respect to our objective 4. We structure our findings around six sets of values we have identified as relevant to local expressions of human rights, unpacking them and explaining their meaning using the voices of the people in the different villages. This local interpretation of human rights is undertaken in the context of the right to water and sanitation. In this presentation, from time to time, there will be an overlap between the understanding of human rights in general, and the understanding of the right to water and sanitation as a human right, in particular.

As we attempt to assess the users' perspectives of human rights (Desmet, 2014) in our case study, we have focused on villagers in five selected villages in the District of Bas-Fleuve of the Kongo Central province as (potential) rights claimants on one hand; on the other hand, we also zoomed in on local government leaders or authorities as rights realisers or duty-bearers. Desmet (2014: 125) sees a user of human rights as "any individual or composite entity who engages with (uses) human rights." One can be identified as a human rights' user from the moment there is an explicit interaction or engagement with human rights. She distinguishes four empirical categories of users of human rights. *Rights claimants* (those who may invoke human rights) and *rights realisers* (those who give effect to human rights) are considered as direct users of human rights; indirect users of human rights are either *supportive users* (e.g. NGOs, national human rights institutions, UN treaty-based bodies), or *judicial users* (who impose the implementation of human rights, i.e. courts or tribunals).[153]

Local authorities or local *rights realisers* are the substantive potential guarantors of the international law of human rights, because they stand closer to citizens (or *rights claimants*) than other public institutions (Papiscazo, 2011: 85). However, it should be acknowledged that local authorities can also be seen as *claimants* vis-à-vis the national authorities and even international organisations and human rights bodies, e.g. claiming resources to be able to realise their own human rights obligations

---

[153]   DESMET, 2014: 129-31

(Destrooper, 2015: 44). In Chapter 6, we discuss this dimension further. The position of local authorities should be a nuanced one, given that they can be seen as *rights realisers* (duty-bearers), but also as *claimants* vis-à-vis institutions at higher levels. This is the case of local authorities who have participated in this research.

The other category of rights users who have participated in this research includes community-based organisations (CBOs) and local and international NGOs. In this case study, CBOs are defined as actors who work towards improving drinking water quality and sanitation conditions through the VA Programme. NGOs are services providers contracted by UNICEF for specific assignments in the framework of the VA Programme. Both actors can be considered as potential *supportive users* of human rights as, in theory, they contribute through their work to improve living and sanitary conditions within the communities.

4.1. Conceptions of human rights in Kongo Central

4.1.1. Human right as freedom and democracy

The most prevailing perception of human rights on the ground is that of 'freedom,' with more emphasis on 'freedom of expression,' 'freedom of choice,' 'freedom of movement,' or in a broader sense, with democracy.[154] As put by this respondent,

> For me, human rights mean that every person is free to express everything he or she wants to speak of; every person is free to undertake any activity of his or her choice. We are no longer slaves who have to live with fear … I feel free to travel to Boma without fearing anything. That's human rights for me. This freedom has different faces: freedom of expression, freedom of action and freedom of movement.[155]

The local expression associated with this perception is *kiphuanza.[156]* What is important to highlight here is the predominance of a fairly modern discourse of human rights in this environment which defines human rights first of all as *freedom*. Such a perception can be connected to the fact modern discourses on human rights in the country were translated (Merry) mainly by human rights NGOs, who were more concerned with political and civil rights in the context of both dictatorship in the early 1990s (under the Mobutu regime) and civil war,[157] when these rights were violated on a large scale. The tendency to equate human rights to political and civil rights has not, however, changed

---

[154] In V5, a respondent defined human rights as democracy, meaning the way or the possibility to claim his rights, be it individually or collectively (**Tui13, V5, August, 2016**).

[155] Interview, **October 2014, V1, T01**.

[156] This concept is absent from Karl Laman's dictionary. However, we still can find in Laman's dictionary the word *mpwanza,* which means *freedom, state of independence.*

[157] Almost all recent reports of the United Nations High Commissioner for Human Rights, particularly the July 2015 report, emphasise the restrictions on the political space and violations of the rights to freedom of expression, association, etc., as well as the increasing human rights violations and abuses in the eastern part of the country affected by armed conflicts.

significantly even if the discourse today seems to be more inclusive by integrating the economic, social and cultural rights, especially of civil society, in the rights discourse.

From this perspective, it can be argued this conception of human rights as 'freedom' arises from the experience of oppression, and negation of liberty. When the experience of oppression is common, so is the drive for freedom; the meaning of freedom remains clear as long as it is thought of as the redress of oppression, as the removal of this or that specific constraint.[158] This has been well analysed in the *Wretched of the Earth* (*Les Damnés de la Terre*) by Frantz Fanon (1961), who stressed the dehumanising effects of colonisation upon the individual, and the nation, from which derive the broader social, cultural, and political implications inherent to establishing a social movement for the decolonisation of a person and of the people.

In this way, by defining human rights as 'freedom' the focus is first and foremost on the resistance, the affirmation of the 'self' against state oppression, domination, exploitation, or manipulation. The subject of rights finds himself or herself as a genuine human being (with human dignity) as long as he or she can affirm his/her liberty, that nobody — be it the state or especially abusive authority — can oppose, infringe or deny. Thus, it becomes easy to relate human rights with freedom, as human rights are seen as an 'ideology of resistance or of struggle' (Shivji, 1989) of the masses in Africa to free themselves from the long and painful frustrations of colonialism and neo-colonialism, under its current forms of globalisation and armed conflicts.

In fact, our fieldwork showed that in each village we visited there was always a segment of people who resisted the VA Programme based on their will to enjoy their freedom of choice. For instance, when we wanted to know why some village members refused or were reluctant to use the SanPlat latrine slab, a respondent replied,

> I think they have a choice and it is a way of showing their freedom; I guess, there is no convincing reason for them to use those slabs. Actually, there is no way… you cannot use these slabs on mixed materials. Wood mixed with soil? How long do you expect such infrastructure to last? This is rubbish. Wood is the biggest enemy of soil (**Informal conversation, V2, Feb 2015**).

That is probably why we have encountered, in our fieldwork, some views in local authorities' interpretations[159] on human rights that seem to challenge this conception of human rights as freedom. In responding to the question about what his understanding of human rights was, a *chef de secteur* remarked,

> This thing of human rights is what alienates the moral of our population, our society today. Today, when you tell someone, you have to go to 'salongo'[160], he/she will answer you: 'I'm not going, this is democracy; I'm free, and so forth.' Finally, what do human rights mean? Human rights… it is also all about knowing the limits of your power… above all, there is someone else, the state… (**Interview, V1, November 2014, TAO12**).

---

[158] S.A. Thameemul Ansari, "Freedom and Postcolonial Reality: A Critical Reading of the Writings of H.B. Stowe and Toni Morrison", in *International Journal of English Language and Humanities* (Ijellh), Vol. II, Issue I, April 2014.

[159] Another Deputy Administrator was of the opinion there was so much confusion within the population and human rights activists about the way people understand human rights. For him, we cannot have rights without duties, and all in all duties take precedence over rights and freedoms.

[160] A sort of compulsory public work during the Mobutu regime.

From this understanding, human rights are seen as subversive mechanisms to the state's authority. As a result, there is a constant antagonistic relationship between local authorities and civil society activists working in the area of human rights. Local authorities are constantly suspicious of the activities of these actors, as they are perceived to incite the population to protest behavior (**Interview, V1, November 2014, TAO12**).

4.1.2. *Human rights as an institution*

The majority of interviewees in the different villages had already been exposed to the concept of human rights through many ways.[161] From the less educated to the most educated, each has an idea of what human rights entail, more often connected to their individual experience and context. For example, this participant with a university degree perceives human rights as follows,

> Human rights, it's an NGO… it is precisely an association that is there to defend certain interests of the population ... of disadvantaged populations or who do not have access to justice. This association is there to try to see the problems of these populations who do not know what to do to defend their rights, etc. That's what I understand by human rights (**Interview, V4, KimAO01, July, 2015**).

Here, human rights are identified with an association, an NGO that defends the rights of the most vulnerable. Human rights are thus, for some, perceived as an institution, "... those who must defend the interests of the people ..." (**Interview, KimAO02, July 2015**), those who are concerned about defending the weakest, the most vulnerable against all kind of injustices. The institution plays the role of watchdog to ensure social justice, an instrument of counter-power which gets its notoriety through its work to guarantee social balance and the protection of the most disadvantaged.

As a way to explain human rights, it is also not uncommon to hear someone mention the name of a human rights activist or a person who enjoys great respect within the community due to his/her actions and commitment to others' causes. Another respondent speaks of human rights as "a wise *man* in a village who knows what is happening in the community: if someone has problems, he is ready to take his defense" (**Interview, V4, Kim02, July 2015**).

This kind of 'personification' or this metaphor of human rights speaks to the core value that human rights stand for, that is human dignity. It means that human rights exist for human beings, but it goes further to put emphasis on the weakest, the most vulnerable. This is to say, human rights care for all human beings, but particular attention should be given to those whose humanity has collapsed, has lost in a sense its meaning. Human rights are thus the institution that restores humanity in the most vulnerable.

---

[161] In a focus group discussion, a participant had this description of human rights: "Every time I go to N'sioni I meet these guys, the human rights; but I don't know what it means, neither what they do. Somebody told me they are called human rights, because they are very educated people, they studied a lot" (Focus group discussions, V5, August 2016).

4.1.3. Human right as a right to life

For many interviewees, the right to drinking water was understood as a 'right to life.' In many instances, water was considered as the source of life.[162] In Village 4, one respondent put it this way,

> Well, water is my right. In French, we often say *l'eau c'est la vie* (water is life); it is a right to have access to water. (…) For me, water is useful. It serves us to satisfy many needs. So without water, one is uncomfortable; it's like there is no life (**Kim14, V4, July 2015).**

In the very same village, another respondent had this to say,

> Water is life. Unsafe water has health implications (**Kim02, V4, July 2015**).

The same understanding was echoed by an interviewee in V1, when stressing the importance of water in her life,

> Water is very important. Before you even start cooking, taking bath, etc. the first thing you touch is water. When you wake up to start doing any domestic work, if there is no water there is nothing you can do. Water is really life (**V1, T11, November 2014**).

It is interesting to see how local rights-holders link their right to water and their right to life. These local rights-holders are not aware of how the right to water is articulated in national legislation or in international instruments, but they are able to assume their right to water is intrinsically linked to their right to life.

In fact, for most countries the lack of explicit reference to a right to water in national legislation necessitates creativity in enforcing the right through the courts. In many such countries, cases have been brought under environmental, public health legislation or courts have interpreted the right to water under other constitutional rights, such as the right to life or a healthy environment. This is the case in India, for instance, where the right to water is not enshrined as a fundamental right in the national Constitution, and yet courts at both state and federal levels have interpreted Article 21 of the Constitution, the right to life, as encompassing the right to safe and sufficient water and sanitation.[163]

On the other hand, while acknowledging the importance of water for the community, this WaSH supervisor of the *zone de santé* believes that in terms of hierarchy, sanitation should be prioritized, especially in the context of the VA Programme. He argues,

> Water is a natural need; it is also a right. We all have the right to life, to water. Water is life! Water is a right that gives us life; but I think that sanitation, in general, is very important because you can have water from a river that you can boil for drinking water. However, sanitation in general is the key element. In sanitation, there is the question of hygienic toilets, that of peri-and intra-domiciliary

---

[162] Many respondents referred to the REGIDESO's motto '*l'eau, c'est la vie*' as their expression of the importance of water in their lives. In local language, the expression sounded more interesting as it established a clear equivalence between water and life: '*nlangu/maza, wa/mau luzingu*' ('*water, that is life*').

[163] See 1949 Constitution of India, article 21. Protection of life and personal liberty, quoted by M. Belén Olmos Giupponi and Martha C. Paz, "The Implementation of the Human Right to Water in Argentina and Colombia," in **Anuario Mexicano de Derecho Internacional,** Volume 15, Issue 1, 2015, p. 329.

sanitation, there is the question of washing of hands … This is the key element that we must insist on, rather than access to drinking water. However, our people are so naïve that if you do not combine the two elements, it is difficult to get the message across (**Interview, V3, KaiA02, June 2015**).

This respondent's' thinking reflects how the whole philosophy of the VA Programme has been thought of, and how the programme is being implemented, namely emphasising behavioral and attitude change towards hygiene and sanitation. And yet, what our research showed in the different villages is that the first priority for rights-holders is access to drinking water. Focusing first on sanitation might have a counter-productive effect in implementing the programme.

Many other expressions of human rights were suggested by local rights-holders, but these were more a direct or a word-for-word version of the concept in local language,[164] suggesting the newness of the reality of human rights in this context as more or less defined in international treaties.

4.1.4.   Human right as a need ('M'funu', 'n'kinza')

Our field observation also allowed us to capture a few local expressions of the concept of rights, especially in relation to the right to water. These included concepts such as *luve*[165], *n'swa*[166] or *n'siku*.[167] When examining these notions, they are mostly understood as a need ('*m'funu*' or *n'kinza*') or a necessity, rather than as an *entitlement* or something that one could claim from the state. For instance, when asked how he understands his right to water, one respondent stated,

> It means that water is a fundamental need, essential to the daily life of a human being; you cannot survive without water.[168]

Another respondent replied,

> I need water every time for bathing, washing up, cooking, drinking; it's a necessity.[169]

Although the connotation of power in the word *n'swa* gives a first insight into how people in this case think about rights as defined by power dynamics and, despite the variations in the articulation, this understanding was similar across the villages. A right here is perceived more as something of a

---

[164] *Zi tsatu zi mutu (*human's needs*); Luve lu mutu lusadila mo kazodidi (*right of a person to do whatever he or she wants*); Mutu nsua kuandi kadi mu tuba dioso kuandi diambu* (every person has a right to express his or her a thought).

[165] Meaning 'permission, right, tendency, envy or will' (Laman, *Dictionnaire kikongo-français avec une étude phonétique décrivant les dialectes les plus importants de la langue dite kikongo* [1964]). The Kikongo translation of the Universal Declaration of Human Rights I found in the region of my fieldwork uses this expression (and sometimes 'n'swa') to refer to 'right': "*zi luve zi batu mu nza yi mvimba*" or "*minswa mi batu mu nza yi mvimba*" (rights of people worldwide).

[166] Meaning 'approbation, permission, sanction, right, power' (Ibid.).

[167] Meaning, according to Kotanyi (2015), 'prohibition, taboo'.

[168] Interview, V2, February 2015, Ki01.

[169] Interview, V3, June, 2015, Kai02.

need that has to be satisfied, rather than an *entitlement*, i.e. something you have ownership of or you have title to; something you can claim.

With such an interpretation of the right to water, one could not expect any practice or any case of claim when drinking water ran out. On the contrary, our observation allowed us to note that, even in the villages which had not yet been part of the VA Programme, initiatives for access to drinking water were generally individual or community-driven/sponsored initiatives. The state's involvement or local authorities' engagement was merely absent.

4.1.5. *Human rights as respect of human dignity*[170]

Even though the concept of human rights seemed new as the perceptions of local rights-holders emerged in our conversations, the reality of respect for others was something embedded in their cultural and social practices. Thus, one finds local cultural idioms that refer to this very same respect for others and respect for others' property.[171]

Other notions that were used to refer to the same respect for human dignity included *luma*,[172] *luvalu*,[173] and *lukinzu*,[174] which all speak of integrity and mutual respect. These notions call for more interconnectedness among members sharing the same humanity, and do not explicitly refer to a right as an *entitlement* (see chapter 5). All are used to refer to the responsibility one has towards the 'other' and the community; and which, in the culture, tend to have normative connotations, rather than legal ones.

While some respondents in some villages habitually invoked some of these terms rather than others, there was a significant degree of consistency in the extent to which rights were discussed as something *relational*: who was considered *responsible* (in a moral sense) depended on the position and power of that actor in the community (see chapter 5). The legal notion of human rights *obligations* did not feature in our discussions regarding the state. The same holds true for the notion of accountability. While there is no simple translation of the concept of accountability, the words *mvutu* (petition, request, demand), *mvutukidi* (give back as much as one has received), and *mvutulu* (react to a demand) are the most closely related to it, but were never used when talking about the state. If accountability is conceptualised as the legally binding obligations of the state vis-à-vis its citizens, then this concept is largely absent in the minds of local rights-holders who, for both material and customary reasons, do not think of their relationship with the state in terms of a contract" (see chapter 5).

---

[170] Luvalu, lukinzu, luma, etc.

[171] The expression '*kiaku kiaku, ki ngana ki ngana*' (what is yours is yours, what is for others is for others) shows the existence of a culture of respect within the communities visited.

[172] Meaning 'honesty, courtesy' (Ibid.).

[173] This concept is absent from Laman's dictionary, but it means 'value, dignity'. It is probably derived from the verb '*vala*' that we find in Laman's dictionary and which means '**p**olish, refine' (Ibid.).

[174] Meaning 'respect' (Ibid.).

4.1.6.   Human rights as bu-mùutu[175]

Bu-muùtu is a generic word that can be found with variations in many Bantu languages, including in Lingala (*bomoto*), spoken in the northwestern part of the DRC, as well as in Kinshasa, and the South African Nguni or Xhosa (*ubuntu*). The word refers to solidarity, humanity, justice, kindness or generosity.

This is how a respondent defines it,

> Well, in my culture there is a clear difference between *bu-mùutu* and *ki-mùutu*… you know, we are both human beings. We can live in the same community, but the way we act, we speak, we behave, we relate to others can make us be appreciated differently from other members of the community. Thus, people will see you as a human being and praise you because of your *bu-mùutu*, because of your simplicity, your generosity, your care, etc. In contrast, they won't see any humanity in me because of my *ki-mùutu*, my arrogance, my indifference and so forth. So, I think this concept of *bu-mùutu* should be the foundation of human rights in our culture (**Interview, V1, TAO07, October 2014**).

The concept seems to be an encompassing word that covers important features of human rights in the local context, even those already discussed above: communality, simplicity, generosity, interconnectedness, and empathy, as opposed to arrogance, indifference or selfishness.[176]

The word bears individual and collective attributes. In many African settings, an abusive person is seen, on a rhetorical level, as if he/she is or has become an animal. An individual is not a *mu-ùutu* (a human being) and loses his/her humanness if he/she abuses or mistreats fellow community members. A human being affirms one's humanity by recognising the humanity of others and, on that basis, she/he establishes humane relations with them. *Bu-mùutu* is therefore the way of being genuinely human (humanness); it's about a humane, respectful and polite attitude towards others (Ndondo, 2014).

Just like human rights, the idea of *bu-mùutu* has accompanying duties and obligations; in both concepts there is a need for the consideration of one's fellow being. In African traditional societies, an individual was defined in reference to the community in which they lived. An individual's life can only have meaning in the context of the group, on the other hand, violations of human rights even of one person should be a matter of concern for the entire community (Ndondo, 2014). This is why it can be assumed human rights and the African idea of *bu-mùutu* or *ubuntu* are not separate entities; in fact, they are a means to the same end (Ndondo, 2014).

If human rights should be understood within the cultural framework of a society's norms, values or ethics, then the concept of *bu-mùutu* offers an opportunity to rethink human rights in this context in terms not only of moral entitlements,[177] but also in terms of obligations, both "embedded in a

---

[175] Meaning 'humanity, justice, kindness/generosity/goodness, and goodwill/indulgence' (Ibid.).

[176] In the South African Nguni, the meaning of *ubuntu* is captured in this expression "*umuntu ngumuntu ngabantu*" (*You are because I am, and I am because you are*).

[177] In his comments on a question about the moral Vs legal entitlement of *bu-mùutu* raised by Professor Obiora C. Okafor of York University, Toronto, Canada, during the Localising Human Rights Conference held in Antwerp,

framework of interconnected rights and duties" (Zwart, 2012: 555). As Cobbah (1987) points out, in the African[178] context individual rights must always be balanced against the requirements of the group. Rights and freedoms of each individual must be exercised with due regard to the rights of others (Mutua, 1995). If in some cultures, for instance, it is up to the state to assist the infirm and the vulnerable through social welfare; within the African context, such assistance is deemed a family matter (Cobbah, 1987). Therefore, duties are not owed to a distant and anonymous state entity, but to relatives who are close, and whose support one depends upon in order to survive (Zwart, 2012). This means an individual human person cannot develop and achieve the fullness of his/her potential without the concrete act of relating to other individual persons; it also means that being human entails humaneness to other people.

This thinking emphasises the importance of community to individual identity and hence to human dignity (Metz, 2007 & 2011). Dignity and identity are inseparably linked as one's sense of self-worth is defined by one's identity. To identify with each other is largely for people to think of themselves as members of the same group — that is, to conceive of themselves as 'we' — as well as for them to engage in joint projects, coordinating their behavior to realise common ends (Metz, 2011: 26). Identity is thus a matter of people sharing a way of life; to exhibit solidarity with one another is for people to care about each other's quality of live in two senses. First, it means they engage in mutual aid, acting in ways that are expected to benefit each other; second, caring is a matter of people's attitudes such as emotions and motives being positively oriented toward others (Metz, 2011).

This is the meaning that carries the concept of *ubuntu* or *bu-mùutu*,[179] which emphasises communality, the inter-dependence of the members of a community, and that every individual is an extension of the other. The concept depicts the reality of co-existence of the individual and society, and also the reality of the co-existence of rights and duties of the individual on the one hand, and the collective of communitarian rights and duties of society on the other. In fact, this co-existence means the rights and duties of the individual are limited by the rights and duties of society, and vice-versa. *Bu-mùutu* envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, and calls for a balance of the interests of society against those of the individual. In this sense, the concept suggests a different way of not only

---

from 19 to 20 September 2017, Dr Sam Adelman of Warwick University emphasised that *bu-mùutu* or *ubuntu* is conceived primarily in terms of relationship. Thus, ontologically the concept has a moral connotation, rather than a legal one. It defines what constitutes a right in relation to a dignified life. Similarly, Onazi (2015) argues the quality of human life is dependent on interactions or exchanges with others in community. The way we can be genuine human beings, i.e. our 'interactive ethic' or our 'ontic orientation' according to Cornell's expression (2005), has always been shaped in our interactions with each other.

[178] As Thaddeus Metz (2011) remarks, "*To use a geographical term to connote a certain idea should be taken to suggest neither that everyone in that locale accepts the idea, nor that no one outside of that locale does. Instead, it means simply that the idea is present in that locale to a noticeable extent, relative to other places on the globe.*" Thus, we use the term 'African' to designate ideas that are salient in the normative thought of those on the continent; more specifically, by 'African' or 'sub-Saharan,' we refer to views recurrently espoused by pre-colonial black peoples below the Sahara desert and those substantially influenced by them in contemporary discourses (Metz, 2011).

[179] See Thaddeus Metz, "Ubuntu as a moral theory and human rights in South Africa,' in **African Human Rights Law Journal**, 2, 2011; Benjamin Elias Winks, "A covenant of compassion: African humanism and the rights of solidarity in the African Charter on Human and Peoples' Rights," in **African Human Rights Law Journal**, 2, 2011.

approaching human rights, but also rethinking the approach to the interpretation of accountability of duty-bearers within the broad framework of human rights.

4.2. Overcoming challenges to localising human rights in the DRC

The localising human rights methodology offers a framework for analying the full life cycle of human rights interventions, from the emergence of a human rights claim to an assessment of the results that were achieved. It allows researchers to understand the relevance and accessibility of the international dimension for local communities. As such, it engages with the perspective of rights-holders, recognising their importance as the primary authors of human rights claims (Baxi, 2002). It requires studying the process of rights realisation on the ground along with an identification of and assessment of the different actors and factors that influence this process. Ultimately, it seeks to use the lessons from local research to update and add texture to the global approach to human rights protection by "infusing the global with the local." This section identifies where the results fall on the localising human rights cycle.

The case study used in this thesis was the second case study, as indicated above, in the LHR Series that focuses on the Kongo Central (formerly Bas-Congo) Province of the DRC. So, when read together, a clearer picture of the local to global situation emerges. Yet, as we shall explore below, gaps still remain. The first study, An *Analysis of the Human Rights-Based Approach to Development: UNICEF's Role in the Villages Assainis Program in the Bas-Congo,* by Tine Destrooper, focused on the manner in which UNICEF understood and implemented the human rights-based approach to development in the Bas-Congo's (Kongo Central) Village Assaini Programme. The study identified the disconnect between the HBRAD and the reality of the VA Programme. With respect to the impact of the VA Programme on localising rights, her analysis found that, "*Our assessment of how likely localization of human rights is in the current 'Villages Assainis' case is dim*" (Destrooper, 2015: 201). As noted above, this case study contributes to our further understanding of where gaps lie in the realisation of a HRBAD, through largely ethnographic field research into the first part of the localising human rights Circle (the Circle) focused on exploring local conceptions of human rights. It is worth briefly revisiting Ore-Augilar's (2011) work on the conceptualisation and operationalisation of the localisation process. Her methodology comprises five interrelated tracks for analysis (see Figure 5).

Focusing on Tracks 1 and 2, it helps to explore both why and how (Track 1) local communities articulate claims on the basis of the international human rights framework. In Track 2, we examine the translation of these claims into human rights actions. Our research findings fall more into Track 1 identifying local conceptions of human rights, and in particular, in relation to the right to water and sanitation in Kongo Central. As noted in the presentation of findings, we identified six sets of understandings that are found in local expressions of human rights. We review each one to see whether or not it can be considered a human rights claim. For the purposes of our analysis, a local claim qualifies as a human rights claim when it satisfies three criteria (De Feyter, 2011: 20):

(i) the claim uses human rights language (although there could be a fusion of local concepts of justice);

(ii) it identifies a duty holder (the state or another agent); and

(iii) it insists on accountability from the duty holder.

We use these three criteria to guide our analysis.

4.2.1. Human rights as democracy and freedom

This common understanding also uses human rights language, but the link to claiming the right to drinking water and sanitation is absent.

4.2.2. Human rights as an institution

This understanding springs from exposure to non-governmental organisations that "defend the interest of the people" (**Interview, KimAO02, July 2015**). This understanding includes the idea of a claim and concepts of justice, but arguably this does not rise to the articulation of a claim. In essence, human rights are viewed as embedded in institutions that are entitled to defend the most vulnerable, or speak on their behalf.

4.2.3. Human rights as a right to life

Respondents identified the right to water with the right to life; many of them referred to the REGIDESCO motto, *l'eau c'est la vie'*. Arguably this suggests a claim that uses human rights language also resonates at the international level. However, the idea that this right can be claimed was not expressed by respondents.

4.2.4. Human rights as a need ('m'funu', 'n'kinza')

Although this understanding included the concept of drinking water, it remains in the language of need as opposed to an entitlement.

4.2.5. Human rights as respect of human dignity (luvalu, lukinzu, luma)

This understanding of rights is linked to an idea of dignity and respect within a community. It is essentially a relational understanding of who (any entity, individual, institution) is capable of guaranteeing this right to the community.

4.2.6. Human rights as bu-mùutu

This understanding of rights is most similar to the idea of human rights enshrining an idea of dignity and the linking of obligations and consequences for not treating others with respect.

Table 7. Review of local claims of human rights

	INSTANCES OF EXPRESSION			
C O N C E P T		The claim uses human rights language	Claim includes the right to drinking water and sanitation	The claim identifies a duty-bearer	There is a notion of accountability
	Human rights as democracy and freedom	Yes	No	Maybe	No
	Human rights as institution	Yes	No	Maybe	No
	Human rights as a right to life	Yes	Yes	Maybe	No
	Human rights as a need (m'funu, n'kinza)	No	No	No	No
	Human rights as respect of human dignity (luvalu, lukinzu, luma)	Yes	Yes	Yes	Maybe
	Human rights as bu-mùutu	Yes	Yes	Yes	Yes

As discussed above, our research identified multiple instances in which the human right concepts of local communities overlap with international human rights concepts, including their concepts of dignity, democracy, freedom, and the right to life. Some of these also related to drinking water. Despite the existence of multiple local conceptions of rights relating to the right to drinking water, however, none of them looked to hold the traditional (in international human rights law) duty-bearer, the DRC state, accountable for failings. None of them attempted to claim their water related rights from local or national authorities or from UNICEF. Our research shows they do not locate their rights within a rights-based framework. As such, they have not completed Track 1 of the Circle because they have not translated their right into a claim. To echo the language of Frankovits (1996), they have not shifted from being beggars to human rights claimants. This raises the question as to why, after several years of participation in the UNICEF VA Programme, the human rights-based sense of entitlement was not expressed by those we interviewed. We turn to examining this disconnect in the next section.

4.3. Discussing findings

The findings from this study revealed that there is an existing awareness of human rights discourse and practices in the Bas-Fleuve region of the Kongo Central Province, DRC; however the extent to which such an awareness has emerged from the VA Programme and has contributed to more widespread culture or practices of human rights seems marginal. Destrooper's assessment of the HRBAD in the VA Programme suggests the explicit use of or reference to human rights discourse is virtually absent, making it difficult to assert the prevailing local awareness of human rights is the result of the VA Programme. It should be also acknowledged the impact or the effectiveness of human rights in terms of social transformation — the empowerment of community members through the VA Programme — is another aspect that is difficult to confirm since neither the VA Programme's implementing partners, nor the rights-holders, have been systematically exposed to the rights-based approach across the VA Programme.[180]

This discussion focuses on two points, first we try to unpack the relevance of our findings from the LHR perspective, and secondly we discuss three issues that are directly related to the VA Programme in order to improve and strengthen its procedures and mechanisms for much better results. These issues include, ownership and sustainability of the programme, as well as the accountability dimension in relation to rights-holders' ability to claim their rights with an emphasis on the relationship between rights-holders and duty-bearers. By doing so, we expect to explore the relevance of LHR theory in the context of the VA Programme.

4.3.1. The relevance of local conceptions of human rights within the LHR perspective

Our fieldwork has revealed that, in many instances, local populations do not expect much from the state's capacity to live up to its obligations to respect, protect and fulfill ESC human rights. Although some of our respondents still identify the state or the government as a duty-bearer[181] with regards to human rights in general, or to the right to water and sanitation specifically, there is a widespread perception of the same state as a failed one,[182] or a fragile one that is resourceless and virtually absent from the daily lives of communities.[183]

---

[180] Almost all respondents acknowledge never having been exposed to the rights-based approach.

[181] Even though there was a recognition of state obligations (particularly in the provision of potable water) because the state had more resources to provide for potable water (**cf. interview, V2, Ki02, February 2015**), de facto this recognition does not seem to emerge everywhere due to the fact there are widespread perceptions the state does not have the necessary resources to respond to people's issues and, in the meantime, is perceived as a far away, almighty entity and people don't know where to catch him or how to challenge him (**cf. interview, Chair of the village committee, V4, July 2015**).

[182] In V2, during a community meeting with the *secteur*'s *animateur agricole*, most of the community members shared the view that the role of the state has been taken over by NGOs, which are considered as 'creations' of state officials for their own accumulation of wealth, and whose capacities are very limited. Because of these

Even where state presence could still be seen as relevant, especially when it comes to the arbitration of conflicts, many respondents expressed deep concerns. Speaking about the judiciary system, for instance, a village leader in V2 expressed his disappointment with the modern justice system,[184] as well as his concern about the elimination of traditional/customary courts at the local level. According to him, the modern justice system seems expensive and makes it, therefore, difficult for the impoverished rural population to claim their rights and seek redress. He went on advocating for the restoration of the traditional courts, which tend to play a more reconciling role between parties[185] and which are closer to people's perceptions of justice[186] and people's accessibility. A UNICEF staff member interviewed corroborated this view by arguing that people do not have confidence in the judicial system; and this lack of trust in the judiciary compromises the whole legal dimension of claiming their rights.[187]

At the level of local authorities, the prevailing perception is that the state is a remote entity with little relevance in their own day-to-day activities. As one Deputy Administrator (*Administrateur chef de Territoire Adjoint*) in charge of Development, Economic Affairs and Finance mentioned,

---

limitations, community members expressed expectations to see the establishment of more private businesses capable of creating jobs and helping people to improve their living conditions, both of which constitute the most challenging economic issues in the area.

[183] In a remote area I found a police station. I was interested to know how many complaints the police filed on a monthly average. The response of the policeman was that if they are lucky enough, they can receive two cases a month; otherwise, community members prefer to amicably sort their issues out; in part, because they don't trust the police and also the process seems so bureaucratic and costly.

[184] Which is, according to him, more evidence-oriented and more costly, but less efficient.

[185] In an interesting piece, Arlette LEBIGRE evokes both the role, composition and functioning of customary justice, especially in the area of family law, in the Batsangi community of Congo-Brazzaville, a people with whom the Bakongo of the Kongo Central Province of the DRC share many similarities. She remarks, "… *ce n'est pas l'individu qui agit juridiquement, mais la famille qui assure son propre équilibre à travers les règles coutumières et dénoue des conflits concernant (…) beaucoup plus sa propre cohésion que le destin individuel de tel ou tel de ses membres. (…) Elle remplit d'ailleurs cette charge à plusieurs niveaux : celui de la parenté proprement dite, celui du village, avec lequel elle tend à se confondre et celui de ses notables qu'elle a reconnus pour être ses juges. Son intervention n'a rien de spontané ni d'arbitraire ; elle s'exerce dans un cadre précis et selon des formes rigoureuses, parmi lesquelles l'expression chantée tient une grande place…*" (Arlette Lebigre, « Le juge, la famille et le village : quelques exemples de droit coutumier en République Populaire du Congo », in **Journal of African Law**, 17, 1973, p.242. it is through song and before the whole community that the complaining party presents his grievances; the judge — chosen from among the other notables who surround him — does not "judge" anything in reality, but merely arbitrates the palaber (talking) until a compromise is reached by the parties (see p. 243-244 for a good description of this process). LEBIGRE describes this traditional justice, in the context of a divorce, as "…*un excellent psychodrame collectif, réglé par la coutume, dans lequel les deux individus en cause et leur famille sont pris en charge, pour leurs griefs intimes et leurs relations patrimoniales, par une communauté qui ne permet pas aux problèmes personnels de perturber l'harmonie du village*" (p.244).

[186] The word 'justice' is well understood in the expression *taba n'kanu* (*taba* meaning 'to cut off, to judge, to decide; and *n'kanu* meaning an issue or problem) which means 'to decide between' (two parties) for the purpose of equity. In local understanding, the expression echoes the sense of justice as a reintegration mechanism of both the victim and the perpetrator; rather than a punishment mechanism. Speaking of traditional justice, Nzuzi Bibaki acknowledges that "*la palabre africaine est prise comme moyen de règlement des conflits, de résorption des crises, de rétablissement et de régénération du tissu social et de thérapie sociale*" (Nzuzi Bibaki, *Culture noire-africaine et réflexes unculturateurs*, Baobab, Kinshasa, 1999, p.13-15).

[187] Interview in Matadi, October 2015.

> About two years ago, we used to receive from the Province one and a half million Congolese Francs (almost 1,630 USD) per month to cover administrative and infrastructural expenses. This was quite meagre, considering the huge needs on the ground. However, today we don't even receive a cent from them.[188]

When asked whether he felt concerned about his obligations as a government official in relation to the right to water of his population, a *Médecin-chef de zone de santé* replied,

> As government, we are concerned because… in fact, we are at the lowest level of the scale/hierarchy… the most beautiful girl can only give what she has. (…) today the government is intervening in the sanitation programme, but it is basically in terms of salary and incentive payments, and so forth. We will have to maybe develop more advocacy strategies to ensure that the government considers providing us with budgets that can deal with water provision in rural areas.[189]

This helps to explain why individual rights-holders and, in many cases, local officials do not usually turn to the national or local government to seek support, but rather turn to other actors more accessible to them (including local and international NGOs, community or family members themselves).[190] In most communities, there was a sense that the role of the state has been taken over either by the private sector or NGOs, and even by the communities themselves.[191] In the area of access to water, for instance, different initiatives in rural areas are being implemented by local NGOs, with the support of bilateral cooperation, international NGOs or international development agencies, and even the support of politicians (i.e. Members of Parliament from these communities).[192] As a result, notions of accountability and/or of duty-bearer do not have the same resonance in this context as they do in international human rights law. Within this local context, those diverse non-state actors are often considered as the primary duty-bearers because they seem to be more visible and easily accessible, and of course more effective.

Civil society activists share the same views. A development and human rights' activist in V3 thinks the government is virtually absent from the lives of the people who work very hard for their survival; this population receives virtually no support from the government to improve its living conditions (**Interview, V3, KaiA012 June 2015**). The respondent considers that, at the basis of this attitude toward government, there is a social belief that is constructed by a 'culture' which sees in the state or the authority a person to avoid or to be away from, in order to avoid any mistreatment, be it in terms of arrest or punishment. This is what he calls the *fear of the state*: when one is before a state official, nothing should be said to him, nothing to claim, otherwise you will be taken straight to prison.

---

[188] Interview March 2015, quoted from chapter 5.

[189] Cf. interview, V1, TAO06, October 2014.

[190] In V3, it was brought to my attention that the local authority (*chef de secteur*) was pressurizing the parish priest in his entity to fix roads, as he assumed the priest was more in contact with external donors.

[191] Below we are referring to the sense of agency we witnessed during our fieldwork with regards to access to water.

[192] In terms of water provision in villages, the VA Programme is not the first experience in this area. Different initiatives are implemented or were implemented in some villages by either local actors (such as the *Bureau Diocésain de Développement* with funding from bilateral agencies or by international NGOs, such as Oxfam). The specificity of the DRC-UNICEF VA Programme is that it is more encompassing covering a wide range of issues (especially water and sanitation), and has more ambition to reach the entire country.

A more in-depth explanation rooted in the local understanding of the state as the 'God on Earth' (*l'Etat, nzambi tsi*)[193] can enlighten us as to why rights-holders in rural settings often do not see the state as a duty-bearer, thus putting people in a position that prevents them from making demands or taking legal action against the state.

Several respondents, when discussing unjust state interventions, argued reluctantly that it was necessary to accept the state's injunctions because 'the God has spoken.' With regards to the right to water, the idea that the state was almighty and could not be held accountable in some cases went so far as to grant the state the right to take negative actions against its citizens with regard to access to water. In the context of our case study, for example, if villagers did not manage to maintain the water installation, this, according to several interviewees, gave the state the right to take away these pumps in future. This was most clearly illustrated by the reply of one of our respondents in V1. When asked whether he thought it was important to know that water is a right he replied,

> As a matter of fact, it's really important to know, because, if the people of the VA project tell me you don't follow my instructions and rules for the maintenance of these facilities, therefore I take them back, they can do that, and I shouldn't complain because if water is a right, they can do this. It is their right. It is the right of the state and the state is the *Nzambi tsi* (God on earth). So I have no right to complain about these facilities even if I am not satisfied with something. The state has the right to sue me if I act contrary to the rules and instructions of the state.[194]

This view is strongly supported across all interviewees in the different villages in which fieldwork was carried out. In V4, a respondent made the point that the state is so strong and almighty that an individual or a community cannot challenge 'him', i.e. in terms of taking legal action against 'him.'

From this point of view, the understanding of the right to water and sanitation does not generate expectations vis-à-vis the state. On the contrary, it nourishes a belief amongst the villagers, the rights-holders, that the duty-bearer, the DRC state will take action, perhaps sue them, if the water and sanitation infrastructure is not properly maintained (see chapter 5). This suggests an understanding of human rights that only identifies the state as a duty-bearer may be counter-productive in this case, and that it has little or no potential to empower rights-holders. Our interviews showed that despite participation in the VA Programme our interviewees had not been empowered to claim rights. This may be attributable to the fact that with respect to the VA Programme, neither UNICEF nor its implementing partners paid attention to the rights discourse on the ground. In other words, the traditional understanding of the notion of duty-bearer did not contribute to the LHR process in this context as there was little, if any, attempt to turn rights-holders into rights claimants. If the idea and power of human rights is to resonate at the local level, local actors need to be empowered to claim them.

As the technical and financial partner of the DRC government on this programme, the UNICEF-WaSH Division has the responsibility for designing and implementing the VA Programme in consultation with all stakeholders. If the VA Programme were to be truly inspired by a LHR approach, it would need to pay attention to people's perceptions of human rights at the local level. From both our field

---

[193] This can be literally translated in French as "l'Etat, Dieu sur terre"

[194] Interview October 10, 2014, quoted from chapter 5.

observations and interviews, it appeared that UNICEF never took any initiative to probe the local conceptions of human rights.[195] This suggests that the UNICEF-DRC office is not only lacking information about what the local understanding of human rights are, specifically with respect to the right to water, but also about how these conceptions stand in relation to the interpretation proposed by human rights norms-setters. In the meantime, UNICEF has not so far engaged in the translation of abstract human rights discourse to the local realities (Destrooper, 2015). As one of my respondents from the *zone de santé* replied when asked whether or not a component dealing with human rights was included in their general training for VA Programme implementing agents,

> Unless this has been recently introduced; but during the first phase, that was not the case. Now, as I said, since there have been many innovations in the new phase, I cannot give any opinion because I am no longer in the programme (**Interview, November 2014, TAO11, V1**).

Another interviewee from a UNICEF partner NGO stressed that UNICEF provides trainings on a broad range of issues, but these training programmes do not specifically focus on human rights issues. He said,

> Training programmes that are provided are manifold, especially training on the technical implementation of the project; other trainings focus on the sensitisation techniques and the financial management of resources. But there is almost no attention paid to issues of human rights (**interview, February 2015, KiAO01, V2**).

Destrooper (2015) points out that the capacitation process in the VA Programme has been limited to the transfer of knowledge and fostering of practical skills. While attention was rightly directed to some structural or technical issues if they were grounded in human rights, training should also have addressed alternatives that local rights-holders have or identified accountability options should the DRC State not live up to its obligations under national or international law.

Several *Médecins-Chef de zone de santé* were of the opinion that virtually all messages communicated to community members emphasise the duties and responsibilities of villagers, rather than their rights and entitlements, and none explicitly mentions the obligations of the government under national or international law. As one local health officer remarked,

> How can we talk about rights? If we start to do so, we will be flooded with demands and complaints. Villagers will start claiming their rights, and unfortunately we don't have the means to respond to these claims.[196]

This shows, first of all, that among implementers, there is an understanding the state has obligations towards rights-holders, but that those who represent the state do not have the necessary resources to comply with them; on the other hand, there is no clear and articulated rights discourse within the VA Programme that enables rights-holders to become more aware of their rights and become able to claim them. Although a participatory community-based approach has been used as the core approach of the VA Programme, and which most implementing agents easily assimilate with the rights-based approach, in concrete terms, the approach is described as a 'mechanical participation,'

---

[195] This view is also shared by Destrooper (2015: 192) who asserts that even her interviews at the UNICEF country office confirm this is the case.

[196] Interview, October, 2014, quoted from chapter 5.

limited to material contribution/input of the community in the construction of water pumps and toilet facilities.[197] Importantly, it fails to fully involve rights-holders, particularly in listening to their voices, and taking into account their points of view. On the ground, community members appear as mere implementers of strategies and decisions taken without their input.

For instance, some of my interlocutors mentioned they expressed concerns about their resistance or hesitation to use the SanPlat[198] latrine slabs (see V5), but unfortunately their voices were ignored. This example suggests the local population appears to be simply implementers of processes and strategies already defined elsewhere, and not people capable of engaging with other actors involved in the VA Programme. Participation, as implemented in the VA Programme, seems to be a kind of top-down process, wherein rights-holders are not engaged in discussions around issues affecting them, nor given the opportunity to negotiate their views with those of the implementing agents. In fact, such a form of participation, which can be understood as participation generated through a top-down process of planning and organisation (Chambers, 1995) is less empowering for local rights-holders.

Destrooper's (2015: 193) report mentions the lack of interest on UNICEF's side to listen to voices from below, as well as a purposive omission of any references to state responsibility. It is suggested this can be partially explained by UNICEF's difficult position as both a partner of the DRC government and an implementer. As a result, references to the responsibility of the DRC government are thus absent in the discourse of VA Programme officers and in the VA Programme villages. As noted above, our interviews confirm this absence. Even when people think they have a right to water, they do not generally mention the idea that the right to water also entails a dimension of government responsibility, or refer to the possibility to claim that right if it was not realised to their satisfaction. Destrooper suggests this is the consequence of a programme which does not clearly engage with the idea that someone should guarantee the right to water for rights-holders (Destrooper, 2015: 192). There is thus an overlap in how the rights-holders (villagers) and implementing agents understand the notion of duty-bearers. There is also no clear articulation of rights as *entitlements* which would allow local communities to use their rights to further their own local development agendas.

From a LHR perspective, a pre-implementation survey of the local understanding of human rights by UNICEF should have been the first step in order to ensure a genuine upstreaming of human rights concepts. This understanding could have formed the basis of an empowering dialogue and process. Such an approach could have had the potential to ensure planning interventions that are more locally sensitive and relevant for local rights-holders. From this point of view, contextualisation and adaption to local realities and upstreaming are two crucial components that should have been taken into consideration when designing a programme seeking to embed its interventions in rights-holders' local realities. And yet, our research suggests there have been no efforts so far by UNICEF to understand local conceptions of human rights, especially the right to water and sanitation, and no

---

[197] DEstrooper (2015: 209) notes "Participation of rights-holders is *de facto* only required regarding practical-matters and rights-holders are not consulted by the country office before the start of the programme to learn about their strategic needs or human rights understandings".

[198] Sanitation Platform

effort to systemically contextualise or adapt the rights discourse into local realities. As Destrooper (2015:209) argues,

> A pre-design consultation of rights-holders, to gauge their priorities and concerns, would be expected from a program which claims to adhere to a rights-based approach, with a focus on bottom-up dynamics and locally owned process. The fact that this consultation has not taken place — neither at the outset of the program nor during the mid-term evaluation — also means that there is no scope for planning interventions on the basis of the input of local rights-holders.

When analysing local perceptions of rights amongst the targeted populations in the former Bas-Fleuve District, the notion of right, perceived as an entitlement, and that of duty-bearers implicit in the rights-holders discourse, do not carry the same meaning as in the traditional human rights discourse, in which these notions are understood respectively as a legal contract,[199] and as referring to the state. Local rights-holders emphasised rather an understanding of rights that is part of a framework of interconnected rights and duties entrusted upon individuals through the community (Motala, 1989). This reciprocal relationship of rights and duties (Cabbah, 1987; Motala, 1989) is reflective of the African communal spirit, which stresses the obligation to care for family members as a vital and fundamental value that lies at the heart of the African social system (Oloka-Onyango, 2000). Paragraph 4 of the Preamble to the African Charter, for instance, urges parties to pay heed to 'the virtues of (the African) historical tradition and the values of African civilization,' and Chapter 2 provides an inventory of the duties that individuals owe their families and society. Article 29 (1), in particular, states that each person is obliged to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his/her parents at all times, to maintain them in case of need (Oloka-Onyango, 2000).

This shows that in Africa individual rights are not absolute; they must always be balanced against the requirements of the group (Cobbah, 1987: 321). The duty is based on the presumption that the full development of the individual is only possible when individuals care about how their actions would impact others. In this vein, the notion of entitlement carries a more moral connotation, and in the meantime, that is why the notion of duty-bearer is understood far beyond the state. The fieldwork uncovered many instances of rights-holders referring to external actors as duty-bearers. An interesting example was the initiatives taken by parents in two of the villages in which the fieldwork was carried out. These parents did not wait for state interventions for their children's education. As they have a duty to ensure a bright future for their kids, they built classes with their limited resources. While parents have the obligation to educate their children, children in turn have duties to assist their parents and old persons in the village (for instance, getting water, firewood, etc.).[200]

---

[199] As Zwart (2012) argues, the obligations of states in the area of human rights are legal commitments resulting from the treaties they have ratified, rather than moral ones. Thus, human rights law provides legal guarantees which protect individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity (OHCHR, 2006:1). The notion of 'entitlement' implies a legal contractual relationship between the state and individual rights-holders, committing each party to full respect of its obligations. In this regard, the state has legal obligations to guarantee, protect and fulfill individuals' human rights that are fundamental to human dignity.

[200] Sudarkasa (1986) and Cobbah (1987) regroup the complexity of rights and duties in four underlying principles, namely *respect* (based on age seniority or hierarchy); *restraint* (which *implies* the balancing of individual rights

In such a conception, everybody in society or a community is a rights-holder and a duty-bearer simultaneously. Applied in a more structural manner, this conception would help to build more accountability and transparency within society or community as it reduces tensions between rights-holders and state duty-bearers who might look at each other with more suspicion, within the narrow legalistic perspective of human rights.

Such an understanding of rights has the potential to bring both rights-holders and duty-bearers closer to the profound meaning of rights within the African context, which is not only the 'full enjoyment of individual rights,' but also looks at how my rights raise the level of care owed to neighbors and the community.[201] One cannot separate rights from duties; everything is intertwined and balanced. In contrast, in the context of the VA Programme, there is almost a total disregard of the rights of community members and an over-emphasis on their duties. This lack of balance makes it difficult for implementing agents to see where efforts could be made for a better localisation of human rights. In this case, it would be interesting to imagine how to 'contextualise' the notion of duty-bearer beyond the state realm. This would imply engaging key actors within the community, including churches, private businesses and other organised entities to take up their responsibilities vis-à-vis the community members.

Of course, the danger of extending the notion of duty-bearers to other actors (in the case of the VA Programme) is to exacerbate the divide between rights-holders and a state already perceived as autocratic ('God on earth') and unresponsive, thus allowing the state to remain unaccountable in terms of its legal obligations. In fact, broadening the interpretation of duty-bearers to other actors should be seen as an *extension of obligations*, rather than a *shift in responsibility* that allows for further disengagement of the state (see chapter 5). Further, if one would take the latter approach it makes it more likely that rights-holders view new duty-bearers as alternatives to the state, rather than as complements to state responsibility.

In exploring this approach in chapter 5, we suggest the VA Programme can offer the opportunity to rethink the notion of duty-bearers as a multi-faceted concept. Such a multi-faceted understanding of duty-bearers not only provides people with a degree of agency, but also opens rights-holders to opportunities. Where, for instance, the state cannot be efficient enough, an NGO or a corporate entity can fill the gap, or simply the community itself — as an organised entity —can come to the rescue of its members. This gives an opportunity, as Gready (2008) suggests, to re-imagining or re-inventing new human rights, such as the right to solidarity,[202] which take into account people's own history, context and specific experiences.

It also opens an opportunity for community members to challenge themselves to become genuine duty-bearers for one another. The example of V4 from our fieldwork is illustrative of this approach.

---

with the requirements of the community or the group); *responsibility* (which requires commitment to work and help others in return for security); and *reciprocity* (through which generous acts are returned).

[201] See article 2, para 2 of the African Charter: "*The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest*."

[202] According to Winks (2011), right to solidarity represent a theory of reciprocity, a reconciliation of rights and duties, with equal emphasis on liberty and equality.

Before the inauguration of the VA Programme, the village tried to gather its own financial and technical resources to address the issue of potable water thus highlighting how rights-holders can demonstrate a sense of agency without the presence of a development institution. After having the water tested by the *zone de santé*, the villagers agreed to build another source of drinking water because the water they were taking was inappropriate for consumption (according to the results of the test). Due to a lack of qualified expertise, efforts to build another water source did not bring the expected results because unexpected flooding led to the destruction of the new facility.

What this example suggests is that community members, with their strong sense of agency, can genuinely play the role of duty-bearers if they are sufficiently equipped and empowered to play such a role. Thus, from a localising human rights perspective, there is here an opportunity for UNICEF to make human rights discourse more locally relevant. Empowering rights-holders to better guarantee and protect their interests or strategic needs, as well as their rights by becoming effective agents of their own development and not just beneficiaries of any aid or charity, is a very significant step in the localising process.

As we have indicated above, interpretations of duty-bearers for villagers are not based on the legal duty to respect, protect or fulfill a right, but on the local discourse on rights, which results in a more grounded assessment of responsibility and accountability (chapter 5). From this interpretation, duty-bearers are those that have what is perceived to be more of a moral duty to guarantee, protect and fulfill a right, rather than a legal obligation to do so. Here is another opportunity for the VA Programme implementing agents and UNICEF to rethink how to integrate this normative perception into their rights discourse, if any, by giving concrete meaning to concepts, such as '*bu-mùutu*' (togetherness, interconnectedness, solidarity, cohesion, shared responsibility) and '*African humanism*,' and more precisely, by taking this moral understanding and transforming it into a discussion about legal obligations (see chapter 5).

In addition, in terms of localising human rights, UNICEF would benefit from integrating a consolidated civic education programme on human rights into the VA Programme so as to integrate aspects of *bu-mùutu* and *African humanism* as building blocks to help give local resonance to human rights discourse. Using these building blocks, which are rooted in a profound understanding of shared responsibility, would help to enhance the chances for greater ownership of the VA Programme, thus enhancing its sustainability.

Finally, had a genuine localising process been implemented by UNICEF, it would have had the potential to lay some of the foundation necessary for building a culture of participation, as people would have had the opportunity to learn to bring their input and to get their voices heard. This may have contributed to increasing the consciousness of rights-holders and their potential role in their own development. This consciousness raising could have a wider impact in society in general, especially in terms of public participation in the management of local entities. During our fieldwork, we came to realise that people are reluctant to participate in public affairs because, first of all, the state does nothing for them, or seems too distant from them. Secondly, their reluctance comes from the way they perceive the authorities, as separate from them, which creates a huge divide that keeps them at the periphery, far from the center of decision-making. The more people feel genuinely involved in local politics — when they realise that their voices are being heard and taken into consideration — the more chance there will be to foster a culture of citizen engagement, and

thus, of accountability. As a result, this might improve governance mechanisms at the local level, starting within the VA Programme and with local political and administrative authorities. The accountability requirement is of paramount importance as it allows for the opportunity to challenge the power imbalances between rights-holders and duty-bearers; without that, rights-holders will be left with the impression that the discourse on human rights is a mere manipulation by those who have the resources and power to control the have-nots.

4.3.2. Strengthening human rights in the VA programme

This section focuses on three dimensions of the HRBAD which could, in concrete terms, help to improve the VA Programme by responding appropriately to the setbacks observed on the ground during the course of fieldwork.

4.3.2.1. Ownership and Sustainability

Destrooper's report (2015: 151-156) critically assesses how the VA Programme aimed to facilitate local ownership through locally-owned processes. She points out ownership was first designed through the eight stages (*processus pas-à-pas*) of the first VA Programme. Whereas the second phase of the VA Programme aimed to guarantee people will continue to manage the project after they have gone through the entire VA cycle and have become certified. One of the points raised by DESTROOPER in zooming in on rights-holders' ownership was "the inability of villages to purchase the expensive materials which are needed to repair pumps and water points…" (Destrooper, 2015: 152).

The experience of our follow-up fieldwork in V1 supports and reinforces this observation. Indeed, when we arrived in this village in July 2016 the situation was such that this village, which had initially benefited from two pumps, was left with only one functioning pump. A few days before my fieldwork ended, this pump was also out of service. When trying to understand what solutions the population had employed beforehand to deal with the situation, I observed that the spontaneous move was to return to old habits: water was taken from the same water point as before, and the water was not boiled in order to make it potable. This return to old habits led to questioning the whole discourse, or philosophy, around the change of behaviors, attitudes and practices on sanitation and hygiene as the pillar for the ownership and the sustainability of the VA Programme.

Indeed, one of the strategies used in the VA Programme to ensure ownership was the creation of a fund that was to be financed by contributions from community members. Yet, in all the villages we went for fieldwork, this fund was almost nonexistent, or when it existed there was no money

available. Rights-holders had various explanations for this, including the fact this was not seen as their duty and they had other priorities.[203]

Even though the rights-holders were prepared to contribute for possible repairs of the pumps (in the event of a breakage, for example), an interlocutor from V2 still believed that — in the event of difficulties in accessing drinking water — they would prefer to turn to some donors (such as UNICEF) to obtain support because in the village they do not have the means for such expensive projects (**Interview, Ki02, V2, Feb 2015**). Even where the situation may seem more optimistic as in V3, in reality the real impact of this fund is simply insignificant.

This clearly shows this fundamental pillar of the ownership strategy does not work and does not serve to shift ownership or responsibility for the success of the VA Programme to villagers. It can be argued the inability of the VA Programme to generate a sense of ownership serves to either keep rights-holders "in a continuous relation of dependency vis-à-vis donors and the state" (Destrooper, 2015 : 152), or results in them returning to old practices in terms of access to water, specifically. Rights-holders are not trained to think strategically in the event of obstacles, such as a temporary pump breakage, and fail to respond to such situations in a way that shows they have internalised VA Programme instructions.

We would suggest this is largely the result of a programme that is still very top-down oriented with strategies being developed and suggested from above, on the one hand; and, on the other hand, a programme that has put so much pressure on rights-holders by overemphasising their responsibility, while paying less attention to the role of the state and local authorities as duty-bearers.

This is perceptible in what this officer from the *Bureau 9* stressed,

> We insist on the responsibility of the community to avoid a wait-and-see attitude. Yet, as you know, our people want everything from the outside, everything from heaven; it is not easy to guarantee ownership that way. That is why it is important to call people to take responsibility... Hence, the idea of encouraging people to make contributions to address some urgent problems, such as repairs. If they run short of money, they can report back to the *zone de santé* to say, 'Here, we are limited ... can you support us?' The *zone de santé* will inform us, and in turn we will inform UNICEF who is our partner and together we can find funding to repair pumps, for example, when they break down. Otherwise, all in all, it is up to the community to support itself ... (**TAO01, Interview October 2014**).

This complementary approach seems to be taking shape at three different levels (village, *zone de santé*; *zone de santé*, *Bureau* 9; and *Bureau* 9, UNICEF) which are not clearly perceived by the population in this way. At the same time, however, it does not provide any guarantee of sustainability because once UNICEF withdraws or stops the VA Programme, neither the *zone de santé* nor *Bureau* 9 can find ways to meet the needs of the population. Again, it is interesting to note how the thinking of implementing agents, as expressed in the quote above, meet very opposed

---

[203] Amongst the reasons mentioned, the people in charge don't collect the money due to other personal occupations; the reluctance of the people to contribute because they suspect the person in charge is misusing the money (i.e. buying alcohol). Where there was some money available the amount seemed so insignificant and was not collected regularly. In other villages, it was argued the money was used to host their visitors, including UNICEF-WaSH staff visiting the villages.

views on the side of rights-holders as a consequence of not taking into account their strategic concerns.

Hence the difficulty often experienced by rights-holders in knowing who really has the responsibility for water and sanitation provision at their level, and the weakness, or lack of clear relationships, between these duty-bearers and rights-holders, thus making the ability of rights-holders to claim their rights virtually impossible. As Destrooper (2015: 191) remarks, in general even where people think they have a right to water, they do not generally mention the idea that the right to water also entails a dimension of state responsibility, nor do they refer to the possibility of claiming it.

The very minimal or almost non-existent role of local WaSH services (at sector level) would place the *zone de santé,* which does not have the administrative, logistical and financial capacity, in a situation where it is unable to respond to the demands of the rights-holders if the VA Programme were to end. It must be recognised the *zone de santé* plays an *ad hoc* role on the issue of water and sanitation. This means at the end of VA Programme, the *zone de santé* will end up being the interface between the government and the villagers in this matter. The concrete involvement of these recognised local WaSH services in local governance of water and sanitation would contribute to increasing the level of ownership of the VA Programme by increasing its operational capacities in local governance of water and sanitation. This implies the availability of resources (infrastructure, finance and staff) to enable them to be operational and efficient. This would become the best way to establish a clear relationship between rights-holders and duty-bearers, and to allow everyone to stay in and fully play his/her role. The current legal framework which allows the decentralisation of water management could speed up such a process. The whole question is to rethink, in practical terms, how to enable the *service d'hygiène* at the sector level or the *service d'hydraulique rurale* to fully get on board in the VA Programme.

In addition, the *village assaini* committees were also thought of as one of the strategies or mechanisms of ownership, and even as a way of ensuring the sustainability of the VA Programme. In most cases, these committees were often effective at the beginning. Then, as the project evolved, people lost enthusiasm and commitment, especially as the work was done on a voluntary basis. Ultimately, these committees became very inefficient, limited to a few routine activities, but without any overall vision for the long term, since meetings were either rare or non-existent for most villages.

In fact, the VA Programme is based on the assumption of voluntary and unpaid participation of rights-holders, i.e. the different community members. However, in many cases, the 2012 Action Research found this voluntary participation in the VA Programme interfered with the everyday needs of actors related to their making a livelihood. For example, time spent on the maintenance or installation of the WaSH infrastructure is time that could not be spent on making a living (Destrooper, 2015). The UNICEF-WaSH section's Action Research suggests the assumption of voluntary participation is one of the most important reasons for low efficiency and appropriation, and therefore participation in the VA Programme should be remunerated. This suggests the need for community consultations on the conditions that govern access to potable water. For example, communities need to decide if access should be universal and free (given their understanding that participation in maintenance has a cost), and if all able-bodied community members have to participate in maintenance with or without remuneration. Destrooper (2015) examined the dilemma

that one would be placed in if one wants to remunerate the members of the committee, on the one hand, and on the other to seek payment for access to potable water for more efficiency and effectiveness. She remarks, "framing access to water as a paying service raises questions about inclusivity and about the fundamentals of HRBAD" (2015: 137), including important questions about equality and non-discrimination.

Beyond the voluntary aspect, the ineffectiveness of these committees can also be explained by a number of factors, including the fact that members do not have incentives; there are no resources to get their work done (e.g. repair); they cannot afford to share their precious time between the demands of the VA Programme and their own needs; and also they have very little interaction with the *zone de santé*.

Yet the functioning of certain other committees we have identified in some villages, such as the *Comité Local de Développement* (CLD),[204] may well inspire a rethink of the restructuring of village committees in order to give them both the means and the capacity to play an effective role in the village's ownership and sustainability of the VA Programme. Such restructuring may focus on the following elements: formal legal recognition, ongoing training of members on issues related to the strategic needs of communities/villages, etc. In this committee, as one of my interviewees indicated, a WaSH subcommittee may be set up to deal with water, sanitation and hygiene.

In conclusion, our findings and analysis suggest that if the VA Programme was based on a human rights-based approach, it would require strengthening the capacity of the local WaSH structures and services to enable them to meet the needs of the rights-holders. Indeed, "the actual responsibility for guaranteeing access to water is discursively placed with the rights-holders themselves, who should do what they can to guarantee their own access to clean water" (DESTROOPER, 2015: 116-117). It is therefore important to establish a more empowering relationship between local duty-bearers and rights-holders that might contribute to foster ownership and sustainability, through genuine accountability mechanisms, training or information sharing sessions on HRBAD.

---

[204] In 2004, the Belgian non-governmental organization, WWF started a project to protect and conserve the Luki biosphere reserve in Kongo Central province; the project was funded by the Belgian Cooperation Agency and the European Union. For its implementation strategy, WWF decided to draw on the UNOPS' experience on the CLDs to test its participative management strategy of the biosphere reserve. Therefore, a strategy plan of consultation with local actors aimed to achieve the two main objectives of the project, namely (i) the preservation of biodiversity and (ii) the fight against climate change. The CLD is a basic structure evolving at the village level and is considered as an agency for reflection, advice and management for village development. It constitutes a link between communities and other institutions such as local authorities and other development projects. Made up of 13 members with a one-year mandate, the CLD makes each of its members responsible for a particular development theme or representative of a given interest group. In the context of the WWF project, the CLDs are mainly responsible for monitoring and evaluating activities to combat deforestation, the reduction of biodiversity, the reduction of the impact of threats, the preservation of food security and community rights. To carry out their activities successfully, the CLDs benefit at regular basis from the necessary thematic training in order to better equip them and build their capacity (see Nina Raghunathan, Françoise Ansay & Laurent Nsenga, *Gestion participative des ressources naturelles dans les réserves de biosphère: l'expérience du WWF dans les réserves de Luki, Yangambi (RDC) et Dimonika (République du Congo)*, WWF, Guide Technique, 2013, p.9).

4.3.2.2.   Accountability

Gready (2008) argues human rights mean nothing without human rights provisions that can provide useful means through which citizens can seek to render the state accountable. Government accountability and the potential of rights-holders to claim their rights vis-a-vis duty-bearers are key ingredients to programme ownership and sustainability. The UN Common Understanding (UN 2003) emphasises the capacity of rights-holders to claim their rights and duty-bearers to fulfill their obligations, as key dimensions of a HRBAD. It reads,

> States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

This raises the question of power asymmetry in the principal-agent model of accountability. When the agent, the state, is not answerable to rights-holders, as in the context of our fieldwork, what is needed to curtail the abuse of power from the agent? How can we put rights-holders in a position to demand accountability from the state? These questions take us to the very core of the issue of state-building in Africa and its role in development (Chowdhury). Accountability will not make sense, in the context of an unresponsive state, without reconsidering how the state positions itself with regard to its citizens, and how the devolution of power to citizens makes them play their role of principal. Thus, empowering rights-holders by making them able to control and even to sanction duty-bearers can generate adherence to accountability mechanisms or standards.

This starts by educating rights-holders to become more aware of their rights and empowering them to exert more influence and control of public institutions. This is a transformative process in which the HRBAD engages rights-holders by rendering the law real in their own political and social situation, and thus reforging fewer unbalanced power relationships between rights-holders and duty-bearers. As Gready argues, "if certain individuals or groups are empowered to identify their priorities and find solutions, then the power of others is challenged and diminished; broader-based participation subverts the decision-making monopolies" (Gready, 2008: 742). Such a process leads to the (re)-politicisation of development, which means "taking sides, challenging vested interests and asymmetries of power" (Gready, 2008: 773). Re-politicising participation in development stresses the linkage between agency and empowerment, leading to transformation through accountability.

In the context of the VA Pogramme, we should distinguish internal accountability from external accountability. Internal accountability refers to adherence to internal procedures and mechanisms set for the implementation of the VA Programme, i.e. how the HRBAD is implemented, what the mechanisms are for complaining in the event of problems, what obligations UNICEF has to follow up on this complaint, and the willingness to compensate if a complaint is justified. External accountability, on the other hand, basically refers to government accountability, i.e. how UNICEF contributes to building a culture of accountability within government structures, how UNICEF helps improve leadership and prepares government interlocutors for taking up their responsibility (Destrooper, 2015: 144).

Within external accountability, three other types of accountability can be identified, including institutional accountability, contractual accountability, and mutual accountability. Institutional

accountability refers to UNICEF's work inside of government, where it seeks to implement systems for internal auditing, for monitoring, for creating a culture of results-based performance assessment, for recruiting people on the basis of their competencies, for combatting corruption and misuse of funds, for ensuring that people fulfill their function, for promoting transparency in recruitment… (Destrooper, 2015: 145). Contractual accountability refers to the systems of conditionality which UNICEF sets up to link funding to the results of the actors, e.g. by paying only part of the amount for the execution of the project to the implementing partners, and making the payment of the last installment dependent upon the signature of the village committee president who affirms the work has been carried out. Finally, mutual accountability refers to the idea of balanced power structures between the village, the government and implementing partner so that, in the case of breakdown, there is a relation of mutual accountability which allows people to present claims and to discuss problems as equal partners (Destrooper, 2015: 145-146). The following discussion will focus on this last type of accountability, namely mutual accountability, as it allows us to elaborate or discuss further the relationship between rights-holders and duty-bearers in the context of the program.

With reference to accountability, the UN Common Understanding (UN, 2003) states,

> In a HRBA, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies *rights-holders* (and their entitlements) and corresponding *duty-bearers* (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations (UN, 2003).

The reluctance of UNICEF to politicise development in the VA Programme, and its failure to help rights-holders become capable of holding the government to account, are one of the key factors that both impedes programme ownership and prevents rights-holders from playing a more active role in demanding more efficient services in local governance.

Unfortunately, not only is rights-holders' awareness of government responsibility markedly low in the VA Programme — with most interviews showing no understanding of the notion of duty-bearer and some identifying other actors such as UNICEF as duty-bearers — but also the capacity of these rights-holders to hold their local leaders accountable is simply non-existent. This is explained by a number of factors, including the reluctance to emphasise government responsibility, as well as the clear willingness to shift responsibility to rights-holders themselves, as was expressed by a respondent at the *Bureau 9* Office,

> You know, this training component on rights ... is not so much our goal; what is important for us is to get people to acknowledge that they also have responsibility. As part of the programme, we do not insist on that aspect: 'these are your rights, et cetera ... you have to claim them.' We aim much more to get them involved by telling them that they have responsibilities (**Interview, V1, TAO01, October 2014**).

The reaction of villagers, the local rights-holders, to this training displays several common factors, including fear of authorities, which, arguably, keeps them from claiming their rights. This is how a respondent from V3 describes it,

> ... People here are so afraid; usually the Bakongo people are fearful, they are afraid to even claim their own right ... a great number of the population is absolutely unable to claim their rights; they live in a blind fear (**Interview, V3, Kai02, July 2015**).

Another respondent has this comment,

> A Congolese is a fearful person; he is silent even when he feels that things are not going well. He accepts everything. This is our biggest weakness (**Interview, V3, Kai10, July 2015**).

With reference to accountability the same respondent remarks,

> Right now, the *chef de secteur* is building a house. I thought it was on his own. We have heard that they have received funding; but nobody can ask him where the money he is using to build his house comes from. The population is afraid, and the *chef* does whatever he wants. No one can control him (**Interview, V3,Kai10, July 2015**).[205]

These quotes from interviewees show how rights-holders are not empowered or are ill-equipped to claim their rights and demand accountability from local leaders. On the other hand, it shows how local authorities and implementing partners do not find accountability to be a pressing issue to deal with because keeping the situation as it is prevents them from having to respond to pressure from the rights-holders, and offers them an opportunity to work in an environment where nobody controls the *chef*. This asymmetry of power does not lay the ground for a culture of accountability. This results more often in very weak state structures or entities, which provides an opportunity for corrupt individual officials to efficiently and successfully manage their own businesses.

During interviews with rights-holders the issue of corruption emerged. Villagers suspected certain *Médecins-chef de zone de santé* of 'stealing' — in complicity with implementing partners — materials intended to build toilet facility, pumps and water points.[206]

This issue was highlighted in particular with regard to toilet facilities. Some rights-holders even consider the motivation for the *zone de santé* to call for the use of local material rather than cement for laying toilet slabs is an example of "pure *mafia*," i.e. corruption. This is how a village leader commented on the issue,

> It's a pity; even the people who visit us as part of the evaluation of the project ask us why we cannot put these 'tiles' on cement. We tell them that the *zone de santé* has no means; their needs are enormous and they have no money to make toilets with cement for everyone. But when you look at the toilets made by WWF, at my deputy for example who benefits from the WWF project, it is very different. Everything is made of cement. And when you show that to those people, they are surprised. So, even the one who gives the money and who knows that everything should be done with cement,

---

[205] This is how a *chef de secteur* responds to the allegation: "Well in my sector the *notables* are aware of my management; every three months they are here to request feedback on how the sector is managed. That is their right. I am accountable to them. Any *notable* of this sector knows perfectly the management of this sector, there is no secret. Even if you ask them privately, I guarantee that they will confirm what I am saying "(**Interview, KaiA011, July 2015**).

[206] One of our interlocutors pointed out that SAnPlat slabs seem to be one of the great innovations of the VA Programme. Paradoxically, they also seem to be the biggest failure. He remarked, "It is unacceptable that toilets could be proposed to the villagers without giving them a 'model' (a format) that could inspire their creative imagination. In many villages, these slabs (often built in excess) have often been left outside without people using them. The biggest obstacle to this is the fact that people do not see how they are going to put cement on wood or clay (or both). The lack of a model thus constitutes an important obstacle "(**Informal conversation, V2, February 2015**).

when he sees and hears what is happening, he is surprised. It's so sad for us black people (**Interview, V2, February 2015**).

Many rights-holders felt the *zones de santé* were receiving a lot of money to build cement-based toilets, but they were taking the money for other hidden purposes. They came with these slabs to impose them on everybody by asking each one of the villagers to adapt them in their own way, using local materials such as wood and so forth.

These suspicions were reinforced by the fact sometimes a good amount of material, initially destined for village X, was deployed to another village (at the request of the *Médecin-chef de zone de santé*). "It is not surprising," one of our interlocutors said, "that during the period of this project some *Médecins-chef de zone de santé* have built villas" (**Interview, V2, February 2015**). Another respondent reported he witnessed (several times) the displacement of building materials from one village to another. For him, "there is nothing happening inadvertently. This practice hides something abnormal "(**Informal Conversations, V2, February 2015**).

All of the actors from the *zone de santé* and the implementing partners were unanimous in their denial of the allegations. For a representative of an implementing partner NGO,

> These allegations of rights-holders were to be taken seriously; because the programme failed to explain its whole philosophy from the outset. We must make them understand that we are here to help you; but the resources are limited. Hence, the need for you to make your contribution. It is important to make clear to each village or community that there are many other villages or communities that expect the same services out there. So you have to have people well trained in sensitisation to make them understand that. Otherwise, you get the feeling that you are getting money but instead of using that money for the services to be rendered, you keep it by having the people work voluntarily (**Interview, V5, July 2016**).

A *Médecin-chef de zone de santé* had the following reaction,

> This type of allegation often comes from the so-called first-generation villages, i.e. communities that saw the VA Programme landing in their villages without any request from their members. It is with these villages that we have had or still have more problems, especially in terms of ownership of the VA Programme, insofar as there has been virtually no interest in joining the VA Programme. Whereas with the second-generation villages, that is to say those villages which have joined the programme at the express request of their members, there are less problems "(**Interview, KiAO01, V2, February 2015**).

In fact, the role of the *Bureaux des zones de santé* is a facilitating one, whereas the eventual responsibility for the execution of the VA Programme lies with rights-holders in the programme.[207] However, it is important to make some nuances regarding the allegations of rights-holders. While they may or not be valid, they do reveal the strength of the imbalance in power relations between

---

[207] Destrooper states, "The *Bureaux des zones de santé* are government actors and are the ones managing the project on the ground, but they are not the ones implementing the project. This is considered to be the task of the rights-holders themselves, with the assistance of implementing actors. Hence the *Bureaux des zones de santé* do not receive material or financial resources in the framework of the *Villages Assainis* project (except for limited contributions towards the purchase of fuel and training materials). The staff of the *Bureaux des zones de santé* visit the village to introduce the project after a request for participation has been made, organize trainings and awareness raising activities, and are responsible for the follow-up of the project, but they do assist on the operational or technical execution of the programme" (p.103).

different actors and its impact on the ownership of the VA Programme. It is therefore important to strengthen the capacities of rights-holders to claim their rights at the local level by making more accountability mechanisms available and effective so that they can hold the programme implementing partners and local leaders, accountable for their day-to-day activities.

Building a culture of accountability by strengthening rights-holders capacities to claim their rights and control their leaders can contribute to a less unbalanced power relationship between different actors, and could have a positive influence on both the impact and the sustainability of the VA Programme. In Chapter 6, we expand on this issue of accountability as we focus on capacity development of both rights-holders and duty-bearers.

CHAP.5.   A PRAXIS-BASED UNDERSTANDING OF NEW DUTY-BEARERS EXAMINING CONTEXTUAL REALITIES IN THE DRC

Summary: The debate about legal accountability for human rights is routinely conducted from a legalistic or institutional point of view, which often leads to the conclusion that there is no legal ground for expanding the notion of duty-bearers. In this article, we ask whether disenfranchised rights-holders themselves are supportive of a broader understanding of duty-bearers. We assess the nature of the local discourse on duty-bearers in several villages in the Kongo Central province of the Democratic Republic of Congo and analyze this understanding in light of the discussion at the international level. In doing so, we supplement the legal conceptual discussion on duty-bearers with new empirical material in an effort to build global norms on local human rights understandings and to render the human rights discourse more relevant for local rights-holders. We argue that there is local support for extending the notion of 'duty bearer' to non-state actors in this case, and that the case underlines the need for an integrated multiple duty-bearer framework. At the same time, we warn of pitfalls in the local understanding, which portrays non-state actors' obligations as an alternative to state obligations and accountability, which risks letting the state off the hook. This risk is exacerbated by the current non-existence of hard law regulating the negative and positive human rights obligations of new duty-bearers.

This co-authored article with Prof Tine Destrooper (Ghent University) has seen my contribution as follow:

- *The theoretical part, which includes the introduction and section 2, was developed by Prof Tine Destrooper;*
- *I developed the case study (sections 3 & 4); while section 5 and the conclusion were contributions from both authors.*

Issue **2**   Issue 1

◯ 66 Download citations

Articles

Article
The 'Gazi Baba' Reception Centre for Foreigners in Macedonia: migrants caught at the crossroad between hypocrisy and complying with the rule of law ›
Charles Veigel, Olga Koshevaliska Gurkova, Borka Tushevska & Ana Nikodinovska Krstevska
Pages: 103-119
Published online: 21 Dec 2016
Abstract | Full Text | PDF (1148 KB)

Crossref citations
1
Altmetric

Article
The dark side of 'Zwarte Piet': A misunderstood tradition or racism in disguise? A legal analysis ›
Koen Lemmens
Pages: 120-141
Published online: 20 Jan 2017
Abstract | Full Text | PDF (1450 KB)

1450
Views
0
CrossRef citations
5
Altmetric

Article
A praxis-based understanding of new duty bearers examining contextual realities in the DRC ›
Tine Destrooper & Pascal Sundi Mbambi
Pages: 142-166
Published online: 03 Feb 2017
Abstract | Full Text | PDF (1608 KB)

238
Views
0

p. 103

Article
The disparity between human rights policy and parliamentary practice in Australia: A Victorian case study ›
Clare Farmer
Pages: 167-188
Published online: 02 Dec 2016
Abstract | Full Text | PDF (1422 KB)

7

p. 120

Article
Long-term adverse outcomes from neonatal circumcision reported in a survey of 1,008 men: an overview of health and human rights implications ›
Tim Hammond & Adrienne Carmack
Pages: 189-218
Published online: 21 Feb 2017
Abstract | Full Text | PDF (2104 KB)

Views
- -

p.142

A praxis-based understanding of new duty bearers examining contextual realities in the DRC

Tine Destrooper[a,b] and Pascal Sundi Mbambi[c,d]

[a]Center for Human Rights and Global Justice, School of Law, New York University School of Law, New York City, USA; [b]Wissenschaftskolleg, Berlin, Germany; [c]Law and Development Research Group, University of Antwerp, Belgium; [d]Centre des Droits de l'Homme, Université Kongo, Mbanza Ngungu, DRC

ABSTRACT

The debate about legal accountability for human rights is routinely conducted from a legalistic or institutional point of view, which often leads to the conclusion that there is no legal ground for expanding the notion of duty bearers. In this article, we ask whether disenfranchised rights holders themselves are supportive of a broader understanding of duty bearers. We assess the nature of the local discourse on duty bearers in several villages in the Kongo Central province of the Democratic Republic of Congo and analyse this understanding in light of the discussion at the international level. In doing so, we supplement the legal-conceptual discussion on duty bearers with new empirical material in an effort to build global norms on local human rights understandings and to render the human rights discourse more relevant for local rights holders. We argue that there is local support for extending the notion of 'duty bearer' to non-state actors in this case, and that the case underlines the need for an integrated multiple duty-bearer framework. At the same time, we warn of pitfalls in the local understanding, which portrays non-state actors' obligations as an alternative to state obligations and accountability, which risks letting the state off the hook. This risk is exacerbated by the current non-existence of hard law regulating the negative and positive human rights obligations of new duty bearers.

1. Introduction

Standard setting in human rights has traditionally been a top-down exercise, with states concluding treaties and international bodies providing General Comments to interpret them. A range of methodologies and approaches has been proposed in the last two decades to redirect attention towards the daily realities of rights holders and the way human rights are received by rights users on the ground. This 'localisation' literature has focused on rights rather than on duties, though, and attention to bottom-up (or reverse) standard setting is still largely lacking when it comes to the question of who is a human rights duty bearer. This article seeks to start bridging that gap between

localisation literature, on the one hand, and literature on duty bearers, on the other hand, through a case study from the Democratic Republic of the Congo (DRC).

A lot has been written in the last two decades about whether the current understanding of states as the only legal duty bearers of human rights is the most appropriate one in the current global order.[1] Functions previously performed by governments have become increasingly privatised; transnational corporations (TNCs) have come to play a major role in domestic and international politics; human rights problems have become transnationalised; and as politics has become deterritorialised, states have been 'displaced'.[2] Meanwhile, the structural nature of poverty and inequality and the global environment in which non-state actors operate can have a profound impact on developing states' capacity to protect human rights. This has sparked a debate about these non-state actors' obligation to protect, respect and fulfil human rights and to be held accountable for failures to do so. Several authors have argued that economic globalisation should be accompanied by a globalisation of accountability for human rights.[3] In these circumstances, an international human rights regime predicated on the Westphalian system of sovereign nation-states is hard to sustain. As Nowak puts it, states' choice to deal with human rights 'in the same anachronistic, unprofessional and insincere manner as 60 years ago: by denying the facts and their responsibility, by attempting to depoliticise the debate and by resorting to the defensive argument of national sovereignty' will soon discredit the Human Rights Council and by extension the human rights architecture and the United Nations (UN) more generally.[4]

In reaction to this risk, there has been a growing tendency at the international level, both in academia and amongst policymakers, to revisit traditional understandings of who has human rights obligations. The Tilburg Guiding Principles on the World Bank, IMF and Human Rights,[5] the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights,[6] the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (the Norms)[7] and the UN Guiding Principles on Business and Human Rights[8] are amongst the most important examples.

What these principles and debates on the legal accountability of corporate actors, nongovernmental organisations (NGOs) or international organisations (IOs) have in common is that they have been conducted primarily from a legalistic or institutional point of view, that is, by referring to the existing legal sources and regimes and to courts, councils and committees, to gauge whether there is scope for drafting new principles for dividing accountability and obligations between the domestic state and other actors.[9] Both opponents and proponents of a broader interpretation of the duty-bearer notion tend to refer exclusively to legal resources, and to a lesser extent to socio-historical elements, when making their argument against or in favour of a wider understanding of duty bearers.[10] Throughout the debate, the voices of rights holders themselves are often markedly absent.[11] Even in the broad consultation process leading to the UN Guiding Principles, which was generally acknowledged as one of the most inclusive processes in this domain, voices from below played only a marginal role.[12]

In fact, some literature suggests that rights holders might be opposed to the idea of imposing additional requirements upon non-state actors active in their region, because these actors may be perceived as motors of social or economic development and the fear might exist that additional requirements would prompt these actors to cease their

activities in the region.[13] In this article, we examine empirically whether there is any support for a broader understanding of duty bearers amongst rights holders themselves. As the article is based on a geographically delimited case study, findings are not generalisable per se. And our goal is limited to illustrating how and which potential duty bearers matter on the ground and how rights holders interact with their localised duty bearer notion. The theoretical and normative concern with rendering this local practice visible aims at allowing global norms to become more reflective of local human rights understandings and, thus, at examining how human rights might become more locally relevant.[14] The question addressed in this article is therefore not so much whether or how we should incorporate local voices, but rather whether and how these local actors support the development of a multiple duty-bearer framework. Because we build on the discourse and practices of local actors, which emphasise the role of corporate actors, this article foregrounds the debate on *corporate* non-state actors, and turns to NGOs and IOs only in the second place.

In the next section, we present a brief overview of how actor-centred approaches can inspire a discussion about expanding the duty-bearer notion. Consequently, we present the fieldwork and method of analysis, and in the empirical section we present several Kikongo understandings of the notions of rights, duty bearers, accountability and entitlements and elaborate upon what these mean for the question of how the duty bearer notion is conceptualised by local rights holders. In the last section, we ask what these findings mean for the discussion that is taking place at the international level, thus closing the circle. We conclude with a proposal for integrating different discourses on duty bearers that exist at different levels and for revisiting hard law on this issue in a manner that is consistent with local concerns of these rights holders, while maintaining international public law's focus on the state as the primary duty bearer of human rights.

2. Actor-centred perspectives on human rights and the evolution of the duty-bearer notion

A. Towards legally binding obligations for non-state actors?

The idea that states can no longer be seen as the only duty bearer for human rights is not new, and a growing body of scholarship engages the idea that the existing duty bearer notion is not true to today's international realities. Overall, the debate has moved from an outright denial of any human rights obligations of non-state actors to a discussion about the potential nature and scope of those obligations, partly in response to rights users' own mobilising efforts. So far, much of the debate has focused on whether transnational human rights obligations exist as *legal obligations*, or whether they are instead *moral responsibilities* that are not legally enforceable through existing *accountability mechanisms*.[15] However, there is little agreement amongst scholars and policymakers about the extent and modalities of expanding the duty-bearer notion to non-state actors. Inspired by a recent commentary by the International Law Commission (ILC), several authors have started to develop a genuine multiple duty-bearer framework that addresses both practical and conceptual challenges to international law that are implicit in such a broader duty-bearer framework. Many of these authors adopt a functional or actor-centred perspective, arguing that effective human rights protection of rights holders

ought to be the first consideration, even if this requires bringing non-state actors within the purview of human rights law. Vandenhole, for example, advances a framework for determining the distributive allocation of human rights obligations amongst duty bearers by referring to principles of shared responsibility, a differentiation of responsibility along a continuum.[16] Černič, in the same vein, argues that different types of responsibility (individual, state, corporate) and different legal levels (national and international) should not be seen as separate silos but as communicating vessels that could apply concurrently or compensate for one another's deficiencies.[17]

The discussion about a broader understanding of who is a duty bearer for human rights is crucial because several developments at the global level have increased the risk that a human rights regime that addresses itself only to states will become increasingly marginalised in the years ahead.[18] In response to this concern, attempts have been made, including in the UN context, to identify and articulate the human rights responsibilities and even obligations of corporations (especially those that are active transnationally), armed groups and international NGOs and IOs.[19] The obligations of transnational corporations have received more attention than those of other groups,[20] including in the Code of Conduct for Transnational Corporations (1983–1992), the Global Compact launched in 1999 by UN Secretary Kofi Annan[21] and the Voluntary Principles on Security and Human Rights (Voluntary Principles).[22] While most authors agree on some form of moral responsibility of non-state actors, challenges in conceptualising the actual human rights *obligations* of non-state actors in a systematic way are manifold, and many human rights practitioners have expressed frustration with the incrementalism and voluntarism of the aforementioned initiatives, arguing that binding legal rules are needed that ensure remedy and reparation to victims and that take into account the inability or failure of host states to hold businesses accountable.[23]

The Norms can be seen as a response to this concern,[24] but have been criticised heavily by several prominent commentators like John Ruggie, who argued that they made 'exaggerated legal claims' and left many 'conceptual ambiguities'.[25] Ruggie, in his capacity as Special Rapporteur on Human Rights and Transnational Corporations, argued that the Norms had taken an existing state-based human rights instrument and simply asserted that many of the provisions now are binding on corporations as well – an assertion that was claimed to have little authoritative basis in international law, hard, soft or otherwise.[26] This assessment led to the drafting of the Guiding Principles on Business and Human Rights (the Guiding Principles).[27] While the drafting process was based on 47 consultations with stakeholders from around the world,[28] it can hardly be called 'actor-centred', because existing legal instruments, rather than human rights practice, remained the touchstone throughout these consultations.[29] The Guiding Principles, which were endorsed by the Human Rights Council, did not create new international law obligations, because they were based on the idea that primary responsibility for human rights (also with regard to corporate conduct) continued to lie with the host state and only mentioned the negative obligation of abstention for corporations.[30] Ruggie also disparaged suggestions that the drafting of a binding international legal instrument should be the next step; he thereby denied the legal ground for corporate human rights obligations.[31]

What we are interested in, in the context of our fieldwork, is whether this legal prudentialism is likely to offer the most protection to rights holders. To study this question, we rely on actor-centred approaches to human rights.

B. Challenging the universalist/relativist dichotomy

Actor-centred perspectives seek to engage with the realities of actors on the ground in order to render the international human rights instruments more locally relevant and to increase their practical relevance for rights users in concrete situations.[32] These perspectives seek to move beyond the universalist vs relativist debate and ask how human rights instruments are interacted with in a world of striking historical and political differences.[33] These perspectives state that for human rights to have a positive impact on the ground, they need to be tailored to the needs of the actors invoking them. Therefore, people's experiences of disempowerment and deprivation are taken as a starting point to study the complex ways in which rights holders (can) contribute to the development and enactment of human rights instruments.[34] Nyamu-Musembi argues that looking for the meaning of rights from the perspective of those claiming them has the potential to transform the existing normative parameters of the human rights debate and to expand the range of claims that are validated as human rights claims.[35] This may expand the possibilities for human rights action and improve its usefulness in preventing human rights violations on the ground.[36]

Ground-breaking work by Merry shows that for human rights norms to be effective, they need to be translated into local terms and situated within local contexts of power and meaning, or, as she expresses it, they need to be *remade in the vernacular*.[37] The implicit assumption here is that human rights norms are more likely to be effective if they are at the same time framed in a way that is locally relevant and have a transformative potential (that is, having the potential to recast the discourse and change the actual human rights situation on a certain issue).[38] While Merry's work focused mainly on 'downstream vernacularization', that is, the adaptation of ideas existing at the international level to local realities, other scholars zoomed in on the potential for 'upstream vernacularization' or, in other words, the openness of the international system to integrating ideas rooted in place-based social struggles.[39] More recently, ethnographic research and process tracing are increasingly insisting on the multi-directional nature of these translation processes, arguing that human rights ideas developed in one locality can find their way to other localities, or to the national, regional or international level in a variety of ways. These authors seek to foreground the agency and practice of rights users across scales and to question the classic upstream/downstream narrative by decentring human rights law.[40]

Scholars like De Feyter[41] and Brems[42] argue that existing human rights norms and instruments stand to be enriched if they take into account input from various localities and scales (see infra). Voices of rights users, it is argued, should be integrated because communities that go through a human rights crisis build up knowledge through a use of human rights linked to concrete living conditions and, in this way, could contribute to increasing the protection that human rights can offer. According to De Feyter,[43] '[i]f one is to learn from the local practice of human rights with a view to increasing their social relevance domestically and globally, what counts as a local human rights claim should not be limited to a claim based on international human rights law'. Referring to the UN Declaration on the Right to Development, Baxi welcomes such an inclusive process of norm creation, arguing that states do not have a monopoly on defining public interest at the international level and that people and communities should be seen as the primary authors of human rights.[44]

As Englund argues, however, even these actor-centred perspectives should pay more attention to the question of who controls translation and which 'transformations' and 'translations' become accepted as appropriate.[45] The translation of human rights concepts, he argues, is determined not only by existing power dynamics between scales (for example, 'the local' and 'the global') and within scales (for example, power relations existing at the (trans-)local level), but also by the fact that, especially in an African context, the vast majority of rights holders depend on national and vernacular languages, which often do not offer clear-cut equivalents for the relatively new language of human rights – a language that arrived with the official languages inherited from the colonial rulers.[46] As our case study shows, the non-existence of certain concepts in vernacular language (and the existence of other notions that are untranslatable) may raise a host of issues about how to interpret 'local understandings'.

Moreover, most research along these lines has dealt mainly with the question of how rights holders perceive their rights, and little empirical work has been done on the notion of duty bearers. In this article we apply this perspective to the development of a new duty-bearer notion. The goal is to ground the discussion of duty bearers that takes place in academia and at the international level in concrete human rights practice, so that it can become more relevant in concrete settings and offer better protection against human rights violations. We first offer a broad overview of current debates about this notion at the international level and then turn to the question of whether a broader interpretation of the duty-bearer notion is supported by rights users in our specific case study. We then reflect on whether a localisation perspective can bridge the gap between the discussions about duty bearers that are currently conducted mostly at the international level, on the one hand, and the understandings of a duty bearer that are proposed by rights users in concrete struggles, on the other hand.

3. Sanitised villages in Kongo Central

The article is based on anthropological fieldwork carried out in the Bas-Fleuve district of the Kongo Central (formerly Bas-Congo) province of the DRC.[47] This region was selected because of the presence of a large number of development actors who adopt a human rights-based approach (HRBA), on the one hand, and corporate actors (especially in the field of hydroelectricity and oil mining and refining), on the other hand. This means that rights holders were exposed both to a discourse on human rights and to the actions of transnational corporations that, in practice, were often a threat to a range of human rights.

Fieldwork took place from April 2014 until May 2015. We carried out ten exploratory visits to villages in the initial stage of the research, in collaboration with the Université Kongo in Mbanza-Ngungu, a local partner. On this basis, we selected five villages where the second author, who is from the region and speaks Kikongo, spent five months doing anthropological fieldwork to learn about rights holders' rights awareness and duty-bearer understanding. Throughout, care was taken to proceed in an inclusive manner, ensuring the participation of women, people of different age groups and people with different ethnic backgrounds in focus groups. In the initial phase of the research, we carried out 18 interviews with village elders and organisers and nine focus groups, in addition to our direct observation. In the second phase of the research, we

relied on anthropological methods and participant observation, combined with individual semi-structured interviews and focus group discussions to deepen our understanding of local dynamics. In addition to this, we carried out 14 expert interviews with members of the United Nations Children's Fund's (UNICEF) Division for Water, Sanitation and Hygiene (WaSH), as well as with bilateral donors and government officials in the provincial and national capitals: Matadi and Kinshasa.[48] Interviews were transcribed and analysed using an empirically grounded method of critical discourse analysis.[49]

All the villages and interviewees in this case study were involved in the *Village et École Assaini* (Sanitised Village and School) programme. This is a DRC government programme that seeks to improve rights holders' access to clean water and sanitary installations through small, cost-efficient changes. It is heavily funded and de facto managed by UNICEF DRC's WaSH Division. The prominent role of UNICEF in this programme is crucial, because UNICEF's Executive Directive 98-04 stipulates that all of UNICEF's own interventions and those of its partners should be grounded in human rights; the programme documents related to this specific project also identify the HRBA as the organising principle.[50] The choice to select only *Village et École Assaini* communities for this case study was also inspired by the fact that people in these villages would have had more exposure to a human rights discourse than their counterparts in other villages.

The methods adopted in this article are inspired by the theoretical perspective discussed in section two. Using methods rooted in anthropology and sociology, we sought to recover and systematise these groups' experiences and understandings of their right to water and sanitation, including who is considered a duty bearer in this regard.[51] To trace the origin of certain understandings, we compared findings across villages, assessed mechanisms for sharing information, mapped the presence, strategies and discourse of all international, governmental and non-governmental actors that had been active in the village and assessed the evolution of local understandings over time.

4. Defining responsibility, defining obligations

This section seeks to shed light on the local understanding of the notion of duty bearers. We do this by zooming in on how rights holders define the (moral-political) responsibilities and (legal) obligations of the state, corporate actors and international organisations, most notably UNICEF. Due to the prominent place corporate actors took in rights holders' discourses, we elaborate on these actors in more detail.

A. Perceived responsibilities and obligations of the state

When discussing with respondents in the village what obligations and responsibilities they considered the state to have, many respondents argued that the state *should* take care of security and conflict arbitration. However, at the same time, it also became clear that this was not something they expected to materialise *in practice*. As a police officer in one of the villages replied when asked how many complaints they file daily, 'for the whole month, you might only register three complaints, if you are lucky. People prefer to resolve their conflicts amongst themselves'.[52] The procedural cost was also cited as a reason why people do not always turn to the state for arbitration in conflicts. In one of the villages, a village leader lamented the disappearance of customary courts, arguing

that these were the only accessible justice mechanisms at the local level: 'Now, when you don't have money, you cannot expect to get justice. Where am I going to find money, for instance, to pay a lawyer? A poor peasant like me … Justice today is for those who have money.'[53] Several villagers mentioned that, when filing a complaint at a police station, the police officer or magistrate requests money (allegedly to buy the stationary needed to record the complaint). Because of this, many people do not file complaints at all.

So, in practice, people do not have high hopes about the extent to which the state will live up to its obligation of guaranteeing their security and serving justice, but there is still a rhetorical engagement with the idea. This is not the case for social obligations, where there is not even a notion that the state has any obligations at all, not even *in abstracto*. Virtually none of our interlocutors saw the state as a duty bearer with regard to human rights in general or with regard to the right to water or sanitation in particular – a remarkable finding, since these were all *Village et École Assaini* communities. When probed, respondents gave several explanations for this. The most straightforward related to the idea that the state is considered a 'failed entity' that is resourceless and virtually absent from the daily lives of people. Even amongst local bureaucrats and officials, the prevailing perception is that the state was a remote entity with little relevance in their own day-to-day activities. As one deputy administrator in charge of development, economic affairs and finance mentioned,

> About two years ago, we used to receive one and a half million Congolese francs (USD 1,630) per month from the Province, to cover administrative and infrastructural expenses. This was quite futile, considering the huge needs on the ground. However, today we don't even receive a cent from them.[54]

One of the local officers (*Chef de Secteur*) in a neighbouring territory also made a similar point when showing the roof of the administrative building, which had been severely damaged by heavy rainfalls.[55] This interviewee argued that the roof had been destroyed months earlier, but that the state was not providing funding or materials to repair it, despite repeated requests. These examples illustrate why the state is often perceived as unresponsive and inconsequential. Moreover, when asked who they turn to, in case of problems with their access to water, most respondents referred to the NGOs or private actors that are implementing water-related initiatives in rural areas (often with the support of bilateral cooperation, international NGOs or international development agencies).

Beyond this straightforward material explanation of why rights holders and lower-level duty bearers do not usually see the state as a duty bearer, the local understanding of the state as 'God on Earth' (*nzambi tsi*) explains why respondents, especially in rural settings, often do not consider it a viable option to make demands or take legal action against the state. Most of our respondents, for example, said that speaking up against or demanding accountability from the *Chef de Secteur* was disrespectful because this person holds a position of authority in the state apparatus. When discussing unjust state interventions, several interviewees indicated that they just accepted these 'because the God has spoken'. With regard to the right to water, in some cases the idea that the state was almighty and could not be held accountable went so far as to grant the state the right to take negative actions against its citizens with regard to access to water. For example, several respondents argued that when villagers did not manage to maintain water

pumps themselves, the state had the right to take these pumps away. This was most clearly illustrated by the reply of one of our respondents in a coastal village. When asked whether he thought it was important to know that water is a right he replied,

> As a matter of fact, it's really important to know, because, if the people of the *Village Assaini* project tell me 'you don't follow my instructions and rules for the maintenance of these facilities, therefore I take them back', they can do that, and I shouldn't complain because if water is a right, they can do this. It is their right. It is the right of the state and the state is *Nzambi tsi*. So I have no right to complain about these facilities even if I am not satisfied with something. The state has the right to sue me if I act contrary to the rules and instructions of the state.[56]

This understanding of 'the right to water' does not entail any obligations of the state and gives no agency to the rights holders.

This is also illustrated when examining the concepts that are used to express the idea of 'rights', *luve* (freely translated as permission, tendency or will) or *s'wa* (freely translated as approbation, permission or power).[57] Neither of these notions implies the existence of a duty bearer (state or otherwise), but the connotation of *power* in the word *s'wa* gives a first insight into how people in this case think about rights as defined by power dynamics. Other notions used by rights holders to refer to 'human rights' during our fieldwork included *luma* (honesty, courtesy), *lukinzu* (respect) and *bu-mùutu* (humanity, justice), which, in practice, are all used to refer to the responsibility one has towards the community and which, like many concepts in customary law, tend to have normative connotations rather than only legal ones. There was a significant degree of consistency in the extent to which rights were discussed as something relational: who was considered *responsible* (in a moral sense) depended on the position and power of that actor in the community. The legal notion of human rights *obligations* did not feature in our discussions regarding the state. The same holds true for the notion of *accountability*. While there is no simple translation of the concept of accountability, the words *mvutu* (petition, request, demand), *mvutukidi* (give back as much as one has received) and *mvutulu* (react to a demand), which are the most closely related to this, were never used when talking about the state.[58] If accountability is conceptualised as the legally binding obligations of the state vis-à-vis its citizens, then this concept is largely absent in the minds of local rights holders who – for both material and customary reasons – do not think of their relationship with the state in terms of a contract.

Interestingly, the perception that the state is not a duty bearer with formal human rights obligations did not change because of these communities' participation in the *Village et École Assaini* programme, which is formally human rights-based. Despite its HRBA, references to the obligations of the state or a discourse on how to hold the Congolese state accountable are largely absent from the *Village et École Assaini* project, which, according to UNICEF officers at the national level, was due to UNICEF's difficult position as a partner of government. Thus, UNICEF's discourse in this programme reinforced our respondents' existing idea (initially inspired by the state's actual and cultural inaccessibility) that the state is not a human rights duty bearer, which also raises the question whether respondents see themselves as rights holders vis-à-vis government. This notion was indeed never uttered in relation to government. There were several references to rights subjectivity in the discussion about corporate actors, however.

B. The responsibilities and obligations of corporate actors

Interestingly, despite the absence of any references to duty bearers on the part of *Village et École Assaini* programme officers, despite not seeing government as a duty bearer and despite local articulations of rights that stressed respect and honesty over legal obligations, community respondents in our case study considered corporations and other business actors active in the region to have concrete responsibilities and obligations in the field of human rights. Several respondents argued during interviews that these corporate actors could, and should, be taken to court when interfering with villagers' right to water or sanitation, for instance, and that they should be monitored to ensure that they respect these rights.[59] This means that respondents are talking about more than mere expectations or aspirations, but that they assume an actual legally enforceable right to be in place.

Exploring Rights Talk

Most interestingly, the notions *luve*, *s'wa*, *lukinzu* and *bu-mùutu* were used differently to talk about corporations than to talk about the state: roles were reversed with regard to the idea of respect, honesty, courtesy and obligation. Whereas respondents saw themselves as having to show respect to the state when they used notions like *luma* or *lukinzu*, they used the same vocabulary to say that corporations should show them respect. Hence, this vernacular rights language did not allow these respondents to define themselves as rights holders vis-à-vis the state, but it did allow them to do so vis-à-vis other, mainly corporate actors. These corporate actors were considered to have a range of positive responsibilities: they were seen as the *responsables* to 'create jobs', 'eradicate poverty', 'maintain educational and health infrastructure and road infrastructure' and 'ensure a sustainable environment'.[60] In addition, some respondents referred to the negative responsibility to avoid violating human rights. This was the case, for example, when talking about the role of oil companies like PERENCO (which engage in extraction activities that cause pollution, environmental degradation and social disturbances that affect the fundamental rights of villagers). In villages where PERENCO was active, the positive responsibilities of the company (providing villages with wells that ensure access to clean drinking water) were stressed over the negative ones (refraining from the pollution of existing sources). This pattern of stressing positive over negative responsibilities was observed in all the villages in our case study. With regard to both issues, respondents used above all a discourse of moral responsibility, but often references to 'taking them to court', 'holding them accountable' or 'obligations' would interlace this discourse.

Thus, while there is no formal relationship of human rights accountability between these respondents and the corporations they discussed, they nevertheless invoked the notions of *mvutu*, *mvutukidi* and *mvutulu* regularly when discussing the responsibilities of corporate actors, meaning that the idea that these corporate actors are accountable is based partly on their use of land. According to customary law and local custom, land belongs to the communities, even if this is not *per se* the case according to the national law; these communities are entitled to share in the benefits that are generated from the use of the land and to hold the actors operating on the land accountable. In addition, corporations also seemed to be perceived as duty bearers in this case for the pragmatic reason that they were considered more visible, more resourceful and more efficient and because

they fall outside of the moral universe that complicates rights claims vis-à-vis the Congolese state. When asked about this, a community leader from Moanda replied,

> when you look at in the city of Moanda, for instance, you find PERENCO pumps everywhere in the city [*pompes-cheval* or *puits pétroliers*]. Do you know how many millions they are making? […] It is obvious that PERENCO has the obligation to guarantee a better access to healthcare for our population and contribute to the development of our communities because our lives are constantly exposed to greater risks by the pollution from its activities […] and the money they earn and management they have in place allows them to do so.[61]

Another respondent argued that

> We believe that with all its huge machinery and all its qualified technical personnel, PERENCO should support our communities to have a better access to electricity and water. As a polluter of our environment, PERENCO has responsibility to respond to our social and practical needs.

It thus seems that these corporations' physical presence on the ground, as well as the fact that they are considered more efficient and resourceful, plays an important role in explaining the idea that corporations have certain responsibilities and even obligations towards rights holders, responsibilities and obligations that are not ascribed to the – remote, resourceless, unresponsive and untouchable – state. As one of the village leaders told us during one of our meetings,

> If the state cannot do anything for us, we need companies that can change our lives. I want to see change today for me, not tomorrow for my children or grandchildren. I myself want to see this change before dying.

Another villager from a coastal village, when showing a bridge built by SOCO remarked that,

> since the colonial era, we've never seen such achievements. For years, many villages in our region were inaccessible by vehicles due to inexistent roads or bridges. Nobody could help us to build the bridges … There is no company here and the state cannot even contribute to maintain those still accessible roads. So, what SOCO did here by building this huge bridge is a historical event in the eyes of our population.[62]

These statements suggest that at least one of the reasons why the state is not actively identified as a duty bearer is an assumption about its incapacity, as opposed to corporate actors' reputation for effectiveness and being in control.[63] Even when we explicitly mentioned the obligations of the state under international law, several interviewees continued to defend the idea that the first responsibility for ensuring access to water and sanitation lies with those actors that are taking the resources from the region and that have a reputation of being more in control of matters on the ground.

Taking action

In this case, the perception that corporate actors have responsibilities and even obligations to protect and even fulfil human rights has proved empowering for local communities, in the sense that several communities acted upon this perception by organising themselves in structures that allow them to make demands more efficiently, mostly on oil companies.[64] At present, most villages in the region where oil companies are active have some community structures that seek to represent the interests of the communities to the corporate

actors in their village. Empowerment workshops have been organised in several localities, mainly by local NGOs that seek to raise local populations' awareness of how they can assert agency vis-à-vis oil companies. In one of the villages where oil extraction started in 2008, the NGO *Actions pour le Développement et la Vie* (ADEV) organised a workshop in January 2009 with funding from the National Endowment for Democracy. The objective of the workshop was to bring together local communities' representatives, local authorities and representatives from oil companies to discuss potential problems emerging from the oil activities. In the recommendations that were issued as a result of this workshop, rights holders demanded stricter adherence to environmental norms and human rights in general, but also the systematic inclusion of rights holders and civil society groups in decision-making structures. Moreover, very specific demands were made, such as an increase in the budget for corporate social responsibility that goes directly to local communities,[65] that information be made public and that compensation be paid in compliance with article 54, para. 2 of the Congolese constitution, which holds that any pollution or destruction resulting from any economic activity should lead to compensation or reparation. While not all of these demands were successful, what is relevant here, is the choice to formulate the demands as rights claims.

The choice to explicitly use rights language during these workshops can be ascribed largely to the prominent role of rights-based NGOs such as ADEV, which often collaborate with community-based organisations such as the *Association des Bakongo de Boma* (ABABO), the *Alliance des Bawoyo* (ALIWOYO) and the *Association des Assolongo* (ASSOL) in the Moanda region. These collaborations are characterised by 'narrative inequality'[66]: these rights-based NGOs and the community-based organisations are not engaged in free-flowing conversations; and specific, already institutionalised forms of discourse (mostly those ignoring the vernacular languages) are preferred. Nevertheless, we observed that even if the NGOs were dominant in proposing lexical items that fit a 'classic' human rights discourse rather neatly, there were constant challenges to the interpretation of these items, whereby community members pushed for a more relational and contextual, rather than an abstract legalist, interpretation, in line with what we discussed above. One of the most remarkable dimensions of this contestation in this context is that several of these community-based organisations embraced the language of duty bearers, but used it to refer to corporate actors rather than to the state. Also, the ADEV facilitators eventually used this discourse of corporate actors as duty bearers, apparently in an attempt to acknowledge local understandings and ensure the contextual relevance of their intervention.[67] The ADEV awareness-raising initiative and report can be cited as an example. This report underlines the importance of organising local communities and enabling them to democratically defend their rights that might be jeopardised by the activities of corporate actors.[68]

This willingness to accept, acknowledge and build on the contestation of existing interpretations has known some success in this case, in the sense that the Congolese state and oil companies active in the region have agreed to social interventions in the interests of the local populations.[69] These interventions are mostly the result of tripartite consultative committees such as the *Comité de Concertation pour le Développement de Moanda* (consisting of the administrator of the territory of Moanda, community leaders, various traditional leaders and representatives of oil companies),[70] cases before court[71] or villagers negotiating directly with corporate actors.[72] An interesting case

illustrating the extent to which this contextualised rights discourse incited people to take action is the case of a village near Mvuangu, which demanded that the British oil company SOCO[73] provide them with electrical pumps when developing oil activities in the village. To do so, they used the discourse of the 'right to equality' to argue that people in SOCO's home country, Britain, would not accept the manual pumps that SOCO had proposed to install, either.[74] Even if no right to equality exists for which a corporate actor could be seen as the duty bearer, it is analytically relevant that community members chose to adopt rights talk here, because it indicates that people considered rights talk a useful tool in their empowerment struggle vis-à-vis this corporate actor. However, it should also be noted that, since they used the discourse in negotiations with corporate actors, there were no enforceable mechanisms for making their claim and villagers were still largely dependent on the goodwill of the corporate actor to ensure their right to water and sanitation.

The emergence of a rights subjectivity

In recent years, as a consequence of this perception that corporate actors are formal human rights duty bearers, a number of individuals and communities have made legal claims against oil companies, including PERENCO, regarding material destruction of their crops or other harmful activities.[75] The decision to initiate a legal procedure means that, on the one hand, the idea of turning to legal instruments as a means to advance one's struggle has appeared on people's radar and that, on the other hand, the people initiating these procedures consider themselves rights holders who are entitled to use these instruments.

Both of these tendencies seem to be inspired by the interplay between the discourse of the aforementioned rights-based NGOs, and corporate actors' own discourse of corporate social responsibility. The latter discourse arguably never had the intention to install a rights awareness or to trigger the emergence of a rights subjectivity, but was significant nevertheless in stressing the obligations of corporations systematically, even if only for pragmatic reasons. During his speech at the ADEV workshop, for example, the SOCO DRC representative mentioned, 'It is in an effort to conform to the DRC law […] that SOCO DRC had to accept the obligation to elaborate an environmental and social strategic plan. […] This plan is also in line with the Safeguard Policies of the World Bank.' In his speech, he further referred to several presidential decrees that played a role in urging SOCO to take social measures in line with people's expectations. This kind of speech exposes people to a rhetoric of legality and invites people to start thinking about 'the law' as something that has (or could have) direct relevance in their own lives.

Our fieldwork showed that these corporate discourses were often explicitly invoked by community-based organisations (CBOs), which had already been exposed to a rights-based discourse through their work with other human rights-based NGOs. These community-based organisations built on these speeches in an attempt to formulate more concrete positive obligations of corporate actors. In January 2008, for example, a CBO in the Bas-Fleuve region, *Dynamique pour le Développement de la Zone Côtière du Bas-Fleuve* (DDZC), addressed a memo to SOCO DRC, pushing the company to act in line with the speech given by its representative. In response to this memo, however, SOCO DRC responded:

The wellbeing of local and indigenous populations is the primary responsibility of the State, which has a responsibility to use the resources collected at the national level to guarantee people's wellbeing ... the tax contribution of our partnership contract with the State serves this purpose.[76]

A follow-up letter by DDZC addressed to the President of the Republic in July 2010 denounced the lack of transparency of deals between the government and corporate actors and the lack of accountability. The letter has remained unanswered to date, but its language illustrates how exposure to human rights discourses and to corporate talk of responsibility and legality inspired CBOs to turn to rights talk themselves. Moreover, what happened here is interesting in the sense that these villagers first came to think of themselves as rights holders vis-à-vis corporate actors, which eventually also led to a claim vis-à-vis the government. This suggests that the perception that corporate actors are formal duty bearers also empowered them to take steps vis-à-vis a formal duty bearer, the state, which was previously unthinkable and which is indicative of a burgeoning rights awareness.

C. The responsibilities of international organisations and NGOs

Local rights holders perceive international organisations and corporate actors as duty bearers that should be held accountable for much the same strategic reasons, namely their proximity, their resources, their alleged efficiency and the fact that they are not the 'inaccessible state'. In the interest of brevity and because the logic of rights holders with regard to IOs' and (I)NGOs' responsibility is largely similar to that regarding corporate actors, this section is more concise and aims to highlight significant differences.

Many villagers argued that it is the responsibility of international organisations and (I)NGOs to provide money for infrastructural projects 'since government doesn't have money for this'.[77] This, clearly, is a pragmatic or moral demand, rather than one that follows international law principles. However, this interpretation was entirely in line with the local understanding of what rights are and what constitutes a duty bearer, that is, a relational, community-based understanding that was rooted in concrete understandings of control, power and authority. Respondents did not *per se* think about duty bearers as those that are bound by international law to respect, protect and fulfil a right, but interpreted the notion of duty bearers as those that have a moral duty or the effective means to guarantee a right. This is of course highly problematic from the point of view of international law, where the very absence of a legal obligation renders accountability impossible in such cases.

Nevertheless, from an anthropological point of view it is relevant that the perception of IOs or NGOs as moral duty bearers had an empowering effect on local actors. In one of the villages, located in a region where several villages had joined UNICEF's *Village et École Assaini*, members of the village committee perceived UNICEF as a duty bearer that has the obligation to ensure quality education for the children *if* the state cannot offer this. Even if this is not formally the case, rights holders' perception that UNICEF is a *de facto* duty bearer made them confident that an intervention would follow if they made a claim that they needed sanitation infrastructure for the school. However, because the village did not yet have a school at that time, villagers took the initiative to establish one, assuming that this would establish a formal obligation for UNICEF to intervene

and foresee sanitation infrastructure for both the school and the village. Eventually, the village joined the *Village et École Assaini* programme in 2010.

This village (like the one negotiating with SOCO cited above) had no legal grounds for its action, and the understanding that UNICEF (or SOCO) is a legal duty bearer is flawed under the current human rights regime, meaning that villagers were still vulnerable and dependent on the goodwill of UNICEF (or SOCO). At the same time, though, their interpretation of what their human rights are and who has the duty to guarantee them empowered these villagers to take action vis-à-vis this alleged duty bearer, in a way that they would not probably have done if they did not consider UNICEF to have a formal obligation to guarantee their right to water. This perception of an international organisation as a duty bearer thus had tangible mobilising effects in this case, even if it did not neatly fit the existing discussion of what constitutes a legal duty bearer. This raises the question whether there is a need to develop a multiple duty-bearer framework that is more representative of the realities and interpretations of these rights holders, so that this mobilisation would also have a legal basis. This case suggests, on the one hand, that a one-sided interpretation of the state as the only duty bearer is disempowering and, because the state is too remote and irrelevant on the ground. On the other hand, it also shows the risk of a multiple duty bearer perspective that allows people to turn to alternative duty bearers whenever the state does not live up to its obligations, as was the case here.

Thus, while a multifaceted understanding of duty bearers can potentially provide people with a degree of agency and can be empowering, this case also warns against a 'duty bearer waterfall' whereby people only turn to one duty bearer if another one is unwilling to take up its obligations. The fieldwork thus hints at the need to discuss the expansion of the duty bearer notion in terms of supplementary, rather than alternative duty bearers.

5. Discussion

As we underlined in section 2B, vernacular languages often do not offer clear-cut equivalents of the relatively new language of human rights. The non-existence of certain concepts (like 'human rights', 'accountability' and 'duty bearer') in Kikongo, and the existence of other notions that are untranslatable, raises a host of issues about how to interpret 'local understandings'. Yet, they also provide valuable insights into how rights subjectivities develop and which actors are seen as duty bearers by concerned rights holders. While villagers' invocations of rights talk did not easily fit the discourse at the global level, their interpretation of what constitutes a duty bearer shows many overlaps with the ideas that can be found, for example, in the Norms or in the work of authors like Salomon et al., who propose to broaden the legal understanding of a duty bearer beyond the current state-centred interpretation.[78]

Our fieldwork suggests that a rights discourse that presents the state as the only duty bearer of human rights is too distant to resonate with people's realities, and can actually keep them from starting to see themselves as rights holders. While local rights holders' functional assessment of who is a duty bearer had no legal foundation, they acted in line with this broader understanding when organising themselves to demand that these alleged duty bearers intervene to ensure the right to water and sanitation. So in practice, their broad understanding of duty bearers empowered rights holders in the sense that it

installed a sense of agency (for example, regarding the construction of a school), motivated them to negotiate with these alleged duty bearers (for example, regarding an electrical pump) or even led to legal action (for example, regarding the destruction of crops by PERENCO).[79] To take this kind of action, Pantazidou argues that people first have to see themselves as rights holders and the other party as a duty bearer.[80] Our fieldwork shows that, in this case, people developed this sense of rights entitlement more easily vis-à-vis corporate actors or international organisations than vis-à-vis government. Interestingly, corporations' discourse of corporate social responsibility also seems to nourish this development of a rights identity. This is partly because these actors are considered to be 'in control', to have more resources and to be more efficient and partly because they are more visible and accessible than the unresponsive state that is seen as 'God on Earth'.

This shows that rights holders seek to interpret the notion of duty bearer in a way that provides them with agency by identifying corporate actors and to a lesser extent NGOs or international organisations, rather than the state, as the primary duty bearer. It can therefore be argued that a vernacularised version of the human rights discourse and of the HRBA proved important in triggering mobilisation in this case, because it exposed villagers to new language about rights and duty bearers.[81] However, there are also risks inherent in the mobilisation of this localised understanding of rights and duty bearers in the sense that there are currently no provisions in hard law to hold corporate actors directly accountable for human rights. This hints at the importance of having a legal framework regarding the different types of accountability of a variety of duty bearers, one that reflects local realities. According to localisation theorists, engaging with these local understandings also holds the potential of rendering universal human rights norms more locally relevant.[82]

Two critical remarks are crucial, however. First, our fieldwork clearly shows that the broad interpretation of the duty bearer notion in these villages is patently inspired by the failure of the state to live up to its obligations under international law. Care should therefore be taken that identifying new duty bearers does not lead to a situation in which these new duty bearers are seen as alternatives to the state and that it does not divert attention from the positive and negative human rights obligations that states continue to have under international law. A coherent multiple duty-bearer framework is therefore needed, and a broader interpretation of duty bearers should be seen as an extension of obligations and accountability, not as a shift that allows the state to disengage further. It is therefore important for development actors who formally adhere to an HRBA, UNICEF in this case, to explicitly engage with the human rights understandings of local actors, in order to ensure a more comprehensive understanding of the obligations owed by various actors. However, while a rigid adherence to the idea that only states are duty bearers does little to foster a rights consciousness or a sense of empowerment,[83] treating the local understanding as a *deus ex machina* also entails significant risks as long as there is no binding legal framework that creates supplementary legal obligations of non-state actors.[84] Our research suggests that such a binding legal framework for non-state duty bearers is welcomed at the local level, but warns against adopting the broader interpretation of duty bearers in the absence of such a framework, as this might let states 'off the hook'.

This touches upon a second concern regarding the idea that local voices should inspire the further development of human rights norms, namely the difficulty these voices have to reach formal human rights norm setters. For local voices to affect the emergence and development of non-binding decisions, they depend on NGOs that have access to Special Mandate Holders or consultative status with the UN human rights bodies. However, rights holders often perceive these NGOs as distant entities. De facto, the human rights architecture is still very much state-centred, and the grass-roots concerns of subalterns are not easily integrated into this architecture.[85] Our field-work suggests that development actors who adopt an HRBA to development can play a key role in this respect as intermediaries between local rights holders and transnational norm setters: because of their in-country presence and their involvement in the implementation of programmes, they have the potential to install mechanisms for upstreaming local voices.

6. Conclusion

As we set out at the start of the article, we seek to revisit the discussion about an expanded duty-bearer notion on the basis of rights holders' own understandings. Human rights are effective if they offer real protection, meaning that people who are confronted with injustices can see themselves as rights holders and accurately identify a claim and a duty bearer. Our fieldwork showed that, in those cases where villagers identified a corporate actor as a formal duty bearer, this empowered them to take action, negotiate with the corporation, make claims and eventually identify themselves as rights holders and that, in some cases, the corporations even encouraged them to act as rights holders also vis-à-vis the state. Identifying a corporate actor as a duty bearer could thus facilitate the emergence of a rights subjectivity in a way that is more accessible and available to rights holders in their current situation than a state-only duty-bearer notion would.

Actor-centred approaches argue that, for human rights to be transformative and empowering, they need to start from where rights holders are, rather than from where the law is. The existing international human rights architecture already offers some opportunities to give locally relevant context to abstract treaty norms.[86] Regarding the notion of duty bearers, however, the discussion continues to be dominated by a prudential approach that asks mainly what is possible within the legal framework narrowly interpreted, rather than what is desired and advocated by local rights holders. To ensure that this part of the human rights architecture evolves in a direction that is relevant for local rights holders, the debate must include the realities and voices of actors on the ground. This article should not be read as a conclusive argument for expanding the duty bearer notion but rather as an attempt to give visibility to these local realities and, thereby, to add an empirical dimension to the legal and conceptual debate on duty bearers.[87]

Moving beyond a strictly legalistic point of view and adopting a more interdisciplinary method of analysis can create epistemic and practice communities, which have the potential to move the debate beyond the question of what is considered legally and technically possible, turning to the real needs and realities of rights holders instead. This would facilitate a more contextual interpretation of human rights and legal practice that sees rights as contingent, dynamic and open to evolution and transformation, rather than as abstract and static ideals.[88]

In this case, such an interdisciplinary approach has underlined the strong support for a broader duty bearer notion amongst rights holders, as well as the risks that this entails, namely of shifting responsibility away from the state to non-state actors that cannot currently be held accountable. The fieldwork demonstrated the need to frame any discussion about non-state actors as legal duty bearers as a discussion about supplementary obligations, which still emphasises the obligations of states under international law. This would mean that we would have to deal with both a plurality and a diversity of duty bearers, which would necessitate the creation of a dynamic matrix of hard law, soft law, governance norms and rules that apply to such a broad spectrum of state and non-state actors. A failure to develop this could let states off the hook and lead to the privatisation of human rights by shifting the responsibility to protect and promote rights to the private sector.[89]

Notes

1. John Ruggie, *Protect, Respect and Remedy – A Framework for Business and Human Rights* (New York: United Nations); Jean d'Aspremont et al., 'Sharing Responsibility between Non-State Actors and States in International Law', *Netherlands International Law Review* 62, no. 1 (2015): 49.
2. Philip Alston, *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005), Chapter 1; Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006).
3. See, for example, Hans-Otto Sano, 'Does Human Rights-Based Development Make a Difference?', in *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, ed. Margot E. Salomon, Arne Tostensen and Wouter Vandenhole (Antwerp: Intersentia, 2007); Chris Jochnick, 'Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights', *Human Rights Quarterly* 1, no. 1 (1999): 56; Steven R. Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility', *Yale Law Journal* 111, no. 3 (2001): 443.
4. Manfred Nowak, 'The Three Pillars of the United Nations: Security, Development and Human Rights', in *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, ed. Salomon, Tostensen and Vandenhole, 38.
5. Willem Van Genugten, *Tilburg Guiding Principles on World Bank, IMF and Human Rights* (Nijmegen: Wolf Legal Publishers, 2002).
6. ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2012).
7. United Nations Sub-Commission on the Promotion and Protection of Human Rights Resolution 2003/16, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* (Geneva: United Nations, 2003).
8. United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights. Implementing the United Nations 'Protect, Respect and Remedy' Framework* (Geneva: United Nations, 2011).
9. Sano, 'Does Human Rights-Based Development Make a Difference?'
10. For an excellent discussion, see Salomon, Tostensen and Vandenhole, *Casting the Net Wider*.
11. See for example Harri Englund, who argues that human rights practitioners and rights holders are engaged in a contest of narratives, but that they have unequal positions in this context. He argues that rights talk can therefore exacerbate existing inequalities (Harri Englund, 'Towards a Critique of Rights Talk in New Democracies: The Case of Legal Aid in Malawi', *Discourse & Society* 15, no. 5 (2004): 527–51. On this topic, see also Tschepo Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims', *Journal of Human Rights Practice* 2, no. 2 (2010): 213.

12. Scott Jerbi, 'Business and Human Rights at the UN: What Might Happen Next?', *Human Rights Quarterly* 31, no. 2 (2009): 299.

13. US Government, *Reaction to Commission on Human Rights Resolution* (2005).

14. Englund, 'Towards a Critique of Rights Talk in New Democracies'.

15. Ruggie, *Protect, Respect and Remedy*; Jerbi, 'Business and Human Rights at the UN'; Jochnick, 'Confronting the Impunity of Non-State Actors', 62. On accountability mechanisms, see Center for Economic and Social Rights, *Who Will be Accountable: Human rights and the Post-2015 Development Agenda* (New York: CESR, 2013), ix, where accountability is distinguished from responsibility, answerability and enforcement: accountability mechanisms are anchored in the human rights framework and have a corrective function (making it possible to address individual or collective grievances and sanction wrongdoing by the individuals and institutions responsible) as well as a preventive function (helping to determine which aspects of policy or service delivery are working, so they can be built on).

16. Vandenhole, 'Obligations and Responsibility in a Plural and Diverse Duty-bearer Human Rights Regime'.

17. Letnar Černič, 'Corporate Responsibility for Human Rights: Towards a Pluralist Approach', in *Challenging Territoriality in Human Rights Law*, ed. Vandenhole.

18. Ratner, 'Corporations and Human Rights'. See also John G. Ruggie, 'Current Developments: Business and Human Rights: The Evolving International Agenda', *American Journal of International Law* 101, no. 4 (2007).

19. The roots for this action lie, at least partly, in General Comment No. 31, adopted by the ICCPR Human Rights Committee in 2004, which addresses the position of non-state actors and the obligation of state parties to take appropriate measures or exercise due diligence to prevent, punish, investigate or redress harm caused by private persons or other entities. ICCPR Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004). The 1948 Genocide Convention, the 1950 Nuremberg Charter and Judgement, the 1949 Geneva Convention, the ICCPR and the ICESCR also allow for an interpretation of duty bearers beyond the state.

20. As a consequence, also in this article, we focus on corporate actors. For an elaboration on regulations in the field of armed opposition groups, see Cedric Ryngaert and Anneleen Van de Meulebroucke, 'Enhancing and Enforcing Compliance with International Humanitarian Law by Non-State Armed Groups: An Inquiry into Some Mechanisms', *Journal of Conflict and Security Law* 16 (2012): 443; Dinah PoKempner, 'The "New" Non-State Actors in International Humanitarian Law', *George Washington International Law Review* 38 (2006): 551; Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (Cambridge: Cambridge University Press, 2002). International organisations, too, have to ensure that they act consistently with international human rights obligations, since they have competencies transferred to them by states as treaty parties (Principle 15 in the Maastricht Principles on Extraterritorial Obligations in the Arena of Economic, Social and Cultural Rights). The primary responsibility to contribute to the realisation continues to lie with the domestic state, but these principles place a supplementary obligation on international organisations. See Wouter Vandenhole, *Emerging Normative Frameworks on Transnational Human Rights Obligations* (EUI Working Paper, 2012).

21. For an elaboration, see Hans Peter Schmitz et al., 'Encouraging Greater Compliance: Local Networks and the United Nations Global Compact', in *The Persistent Power of Human Rights: From Commitment to Compliance*, ed. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (UN Global Compact, 2013). http://www.unglobalcompact.org (accessed 23 November 2015).

22. http://www.voluntaryprinciples.org/wp-content/uploads/2013/03/voluntary_principles_english.pdf (accessed 14 August 2015). However, these Voluntary Principles, too, were criticised for not being transparent and for lacking meaningful forms of accountability and relying on public opinion and corporate altruism. See John G. Ruggie, 'Voluntary Principles

on Security and Human Rights: Remarks at Annual Voluntary Principles on Security and Human Rights Plenary' (Cambridge, MA: Harvard University, 2007).

23. See, for example, Christine Parker and John Howe, 'Ruggie's Diplomatic Project and Its Missing Regulatory Infrastructure', in *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, ed. Radu Mares (Leiden: Martinus Nijhoff Publishers, 2012); Philip Alston and Ryan Goodman, *International Human Rights* (Oxford: Oxford University Press, 2012).

24. According to the Norms, states continue to have the primary responsibility for promoting, securing, respecting and ensuring respect for human rights. Nevertheless, the Norms were perceived as imposing higher obligations on corporations than on states (that is, to respect, protect, fulfil and *contribute* – paras 1 and 2, own emphasis). They were also criticised for undermining efforts to make government more responsible to their own citizens by focusing too heavily on the responsibilities of corporations, which are not democratic, public interest institutions. UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (2003).

25. UN Doc. E/CN.4/2006/97, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises* (2006). http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/110/27/PDF/G0611027.pdf?OpenElement (accessed 22 May 2015).

26. Ibid.

27. The Norms address the direct responsibility of corporate actors more explicitly and identify corporate actors as duty bearers, but remain vague on the duties and enforcement mechanisms. They speak to corporations, but bind states. See also David Kinley and Rachel Chambers, 'The UN Human Rights Norms for Corporations: The Private Implications of Public International Law', *Human Rights Law Review* 6 (2006): 447.

28. John G. Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/17/31 (2011). http://business-humanrights.org/sites/default/files/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf (accessed 22 May 2015).

29. See also Vandenhole, 'Obligations and Responsibility in a Plural and Diverse Duty-bearer Human Rights Regime'.

30. Ruggie, Voluntary Principles on Security and Human Rights: Remarks at Annual Voluntary Principles on Security and Human Rights Plenary, §11.

31. Khalfan and Seiderman endorse the idea that there is no legal ground for establishing corporate human rights obligations, arguing that existing accountability mechanisms would have to be fundamentally revised in order to enable them to deal with multiple duty bearers – or new mechanisms would have to be installed. Both strategies, according to these authors, entail the risk of significantly weakening the very concept of human rights law, since a broader and more diverse range of duty bearers inevitably poses accountability challenges and heightens the risk that human rights law would be diluted. See Ashfaq Khalfan and Ian Seiderman, 'Extraterritorial Human Rights Obligations: Wider Implications of the Maastricht Principles and the Continuing Accountability Challenge', in *Challenging Territoriality in Human Rights Law*, ed. Vandenhole.

32. Actor-centred perspectives are consistent with the principles of legal pluralism (which underline that law can be present in several forms and that different normative orders can exist within one socio-political space) and of legal anthropology – which seeks an in-depth understanding of human rights law in practice. See Maro Pantazidou, 'De-Constructing Marginality with Displaced People: Learning Rights from an Actor-Centered Perspective', *Journal of Human Rights Practice* 5 (2013): 267; F. Gómez Isa, 'Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective: The Approach by the Colombian Constitutional Court and the Inter-American Court of Human Rights', *Human Rights Quarterly*

26 (2014): 722; Koen De Feyter et al., eds, *The Local Relevance of Human Rights* (Cambridge: Cambridge University Press, 2011); Sally E. Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist* 108 (2006): 38; Peggy Levitt and Sally Engle Merry, 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States', *Global Networks* 9 (2009): 441; Mark Goodale and Sally E. Merry, eds, *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge: Cambridge University Press, 2007); Celestine Nyamu-Musembi, 'Towards an Actor-Oriented Perspective of Human Rights' (IDS Working Paper, Brighton: Institute of Development Studies, 2002).

33. Harri Englund, 'Towards a Critique of Rights Talk in New Democracies: The Case of Legal Aid in Malawi', *Discourse & Society* 15, no. 5 (2004): 529.

34. Gaby Oré Aguilar, 'The Local Relevance of Human Rights: A Methodological Approach', in *The Local Relevance of Human Rights*, ed. Koen De Feyter et al., 111.

35. Nyamu-Musembi, 'Towards an Actor-Oriented Perspective of Human Rights'.

36. De Feyter et al., *The Local Relevance of Human Rights*.

37. See Sally Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist* 108, no. 1 (2006): 38–51; Peggy Levitt and Sally Merry, 'Vernacu-larization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States', *Global Networks* 9, no. 4 (2009): 441–61; Goodale and Merry, *The Practice of Human Rights*; Levitt and Merry, 'Making Women's Human Rights in the Vernacular'.

38. Levitt and Merry, 'Vernacularization on the Ground', 94; Goodale and Merry, 'The Practice of Human Rights', 2–3.

39. Bastiaan de Gaay Fortman, *Political Economy of Human Rights. Rights, Realities and Realis-ation* (Abingdon: Routledge, 2012).

40. See, for example, Tine Destrooper and Sally Merry, *Human Rights Transformation in an Unequal World* (Pennsylvania University Press, forthcoming 2017); Arne Vandenbogaerde, 'The Human Rights Council from Below. A Case Study of the Declaration on the Rights of Peasants', in *The Global Challenge of Human Rights Integration. Towards a Users' Perspective*, ed. Koen De Feyter (Antwerp: Antwerp: University of Antwerp Press, 2015). Note that this perspective does not advocate the type of participation criticised by Mohan and Stokke, which places a disproportionate responsibility for ensuring development on the shoulders of rights holders. Nor does it romanticise or essentialise a belief in 'the local' that overlooks power relations and social dynamics that exist at this level, or that proposes decentralisation as a *deus ex machina* that can boost the efficiency of human rights norms. It is, instead, argued that codifying and acknowledging the practices and understandings that exist at the local level are preconditions for social change. See Giles Mohan and Kristian Stokke, 'Par-ticipatory Development and Empowerment: The Dangers of Localism', *Third World Quar-terly* 21 (2000): 247.

41. De Feyter et al., *The Local Relevance of Human Rights*.

42. See Eva Brems, *Human Rights: Universality and Diversity* (The Hague: Martinus Nijhoff, 2001). Brems refers to the bi-directionality of the localisation of human rights as 'inclusive universality', in which society shows a will for political change while, at the same time, the international human rights system shows itself receptive to accommodating particularistic human rights concerns, albeit within the essence of the norms.

43. De Feyter et al., *The Local Relevance of Human Rights*, 18.

44. Upendra Baxi, *The Future of Human Rights* (New Delhi: Oxford University Press, 2002).

45. Harri Englund, *Prisoners of Freedom: Human Rights and the African Poor* (Berkeley: Univer-sity of California Press, 2006), 47.

46. Ibid.; also, see Englund, 'Towards a Critique of Rights Talk'; Ali A. Mazrui and Alamin Mazrui, *The Power of Babel: Language in the African Experience* (Oxford: James Currey, 1998).

47. The Congolese state has ratified six core international human rights conventions, which, because of the monist approach to international law, suffices for the inclusion of the treaty in national law. Moreover, international treaties prevail over domestic law. See Koen De Feyter and Richard Lumbika, 'Skimming the Surface: Human Rights Related Donor

Interventions in the Bas-Congo', in *Human Rights and Development in the New Millennium: Towards a Theory of Change*, ed. Paul Gready and Wouter Vandenhole (New York: Routledge, 2013).

48. These semi-structured interviews lasted between one and two hours and probed for the ways these actors used accountability and human rights language. Unless otherwise specified, the references to the fieldwork in this article refer to the voices of rights holders. Whenever our analysis draws on expert interviews or documents, this is mentioned explicitly.

49. Michael Billig, 'Towards a Critique of the Critical', *Discourse and Society* 11, no. 3 (2000): 1; Jan Blommaert, 'Investigating Narrative Inequality: African Asylum-seekers' Stories in Belgium', *Discourse and Society* 12, no. 4 (2001): 413.

50. UNICEF, *Guidelines for Human Rights-Based Programming. Executive Directive 1998-04* (1998). See also United Nations, *The UN Common Understanding* (2003).

51. Oré Aguilar, 'The Local Relevance of Human Rights', 127. For an elaboration of how inter-disciplinary research has affected the legal discipline itself, see Douglas W. Vick, 'Interdisciplinarity and the Discipline of Law', *Journal of Law and Society* 31, no. 2 (2004): 163. Note that we explicitly refrain from adopting Human Rights Impact Assessments, which adopt a more conservative and unidirectional view of how the transnational human rights discourse and the local level interact, nor do we engage in a study of implementation mechanisms, which are often not well-suited for 'expressive purposes'. See Mark Drumbl, 'The Expressive Value of Prosecuting and Punishing Terrorists: Handman, the Geneva Conventions, and International Criminal Law', *George Washington Law Review* 75 (2006): 1165.

52. Interview, November 2014.

53. Focus Group Discussion, 17 February 2015.

54. Interview, March 2015.

55. To avoid potentially negative repercussions on villagers' participation in our research, we do not provide exact names of the villages.

56. Interview, 10 October 2014.

57. See also Karl Laman, *Dictionnaire Kikongo-Français avec une étude phonétique décrivant les dialectes les plus importants de la langue dite Kikongo* (Brussels: Gregg Press, 1964).

58. Ibid.

59. While water and sanitation featured regularly during interviews, in practice, most claims or court cases so far have been about electricity and infrastructural projects. In Kinzau-Mvuete, early in 2015, civil society organisations lobbied the population to protest against the Société Nationale de l'Electricité (SNE) for poor service delivery and undue bills. Although water and sanitation are perceived as important, in many instances electricity and road infrastructure are considered priorities, as they are perceived as major factors to community development. The focus on electricity and infrastructure might also be explained by the fact that people are less likely to find solutions on these issues on their own – as that would be for water for instance. In semi-urban areas such as Kinzau Mvuete, there is no public service delivery dealing with water, but people nevertheless find their own solutions to dig wells for drinking water.

60. Interview, February 2015; informal conversations with villagers during observations in villages in October and November 2014.

61. Interview in Moanda, May 2015.

62. Informal conversation with a villager in a coastal village near Moanda, September 2016.

63. Several human rights supervisory bodies have developed standards such as 'effective control' or 'overall control' when establishing human rights obligations and corresponding responsibility for human rights violations. (See Van Genugten, 'The World Bank Group, the IMF, and Human Rights: About Direct Obligations and the Attribution of Unlawful Conduct', in *Challenging Territoriality in Human Rights Law*, ed. Vandenhole, 63. According to this logic, the main burden for guaranteeing human rights should be on those actors who hold considerable or asymmetrical power. However, in the case of economic, social and cultural rights, the criterion of exercising a degree of direct or physical control has by and large been interpreted in a more restrictive manner than has been the case for civil and political rights. Yet, rather than

interpreting the issue of 'effective control' in the International Covenant for Economic, Social and Cultural Rights (ICESCR) in line with the jurisdiction clause of the International Covenant on Civil and Political Rights (ICCPR), as is now usual, it could also be interpreted in a more comprehensive way, since there is no jurisdiction clause in the ICESCR that would dismiss this (ibid., 88). The interpretation of rights holders in these villages is in line with such a broader understanding of 'effective control' in the ICESCR that designates those actors who have de facto control over a territory as the ones having human rights obligations and responsibilities. Even when we explicitly mentioned the obligations of the state under international law, several interviewees continued to defend the idea that the first responsibility for ensuring access to water and sanitation lies with those actors that are taking the resources from the region.

64. References to 'the right to respect' were notoriously absent in this context.
65. The budget for this at the outset of the negotiations was US$150,000.
66. Englund, 'Towards a Critique of Rights Talk in New Democracies'.
67. See also Richard A. Wilson, 'Representing Human Rights Violations: Social Contexts and Subjectivities', in *Human Rights, Culture and Context: Anthropological Perspectives*, ed. Wilson (London: Pluto Press, 1997): 134–60; Englund, 'Towards a Critique of Rights Talk in New Democracies'; Englund, *Prisoners of Freedom*.
68. Actions pour le Développement et la Vie (ADEV), rapport d'atelier de formation sur 'la démocratie, l'environnement et le développement durable: pour une exploitation pétrolière et minière responsable dans le territoire de Lukula', compiled by Jean- Marie Muanda (Boma, 2009), 8.
69. See, for instance, Ministère de l'Environnement et Conservation de la Nature, *Arrêté ministériel 043/CAB/MIN/ECN-EF 2006 du 8 Décembre 2006 portant disposition à l'obligation de l'évaluation environnementale des projets en RDC* (2006). PERENCO, which is the most prominent corporate actor in this region, foresees US$60,000 per annum for these social interventions (Nzau-Matuta, *Droit congolais des hydrocarbures: reconnaissance, exploration et production* (Paris: Collection Etudes Juridiques, Editions ICES, 2013): 197. On the nature of these pledges, see Antonio Manganella and Samuel Pommeret, *Pétrole à Muanda: la justice au rabais* (Terre Solidaire, CERN and ADEV, 2013): 23. http://ccfd-terresolidaire. org/IMG/pdf/petrole_muanda_201113.pdf (accessed 26 May 2015).
70. Members of the *Comité de Concertation pour le Développement de Moanda* (COCODEM) are elected by their local communities and represent the three main communities of Moanda and its surroundings: the Woyo, the Assolongo and the Bayombe. It should be noted that these groups have their origin in the communities themselves, whereas several other NGOs come 'from outside'. Decisions made within COCODEM are referred to the communities for approval before being voted on, in order to ensure legitimacy and participation. As a result of this cooperative process, resolutions by the COCODEM are usually supported by rights holders and accepted by the companies. The resolutions, however, are not binding, and the benefit provided by this committee resides in its ability to empower rights holders and raise awareness, rather than in its ability to hold corporate actors accountable (interview with secretary of COCODEM, April 2015).
71. See *Mambwene Mabiala* v. PERENCO; *Philippe Kobe and Malangu Matela* v. *Chevron Texaco*; *Simayoko Luemba and Luemba Binda* v. FINAREP.
72. Rights holders have at times also been known to sabotage oil companies' installations to force them to address social demands made during negotiations and tripartite consultations.
73. In 2006, the company signed a contract to share oil production (*contrat de partage de production pétrolière*) with the DRC government. The company has also carried out oil prospecting missions in the DRC's Virunga National Park – a World Heritage Site. These were criticised for putting a fragile environment at risk and for negatively affecting human rights (see G. Wass, 'Why Business Should Assess Human Rights Impacts from the Outset of Projects. SOCO International Oil Company in Virunga National Park, DRC' (2013). http://ipisresearch.be/publication/ipis-insights-businesses-assess-human-rights-impacts-

outset-projects-soco-international-oil-company-virunga-national-park-drc   (accessed   30 April 2015).

74. Interview with rights holder, 1 November 2014.
75. During interviews and focus groups, rights holders also mentioned the option of bringing water and sanitation cases to court, but this has not yet happened in practice, for the reasons mentioned in note 59: it is considered important, but not to the same degree as electricity or infrastructural projects. For more information, see Nzau-Matuta, *Droit congolais des hydrocarbures*, 239–54.
76. SOCO, N/réf.: SL/1/028/2008, cited in Daniel Nzuzi, *Fausse note au lancement du forage pétrolier on-shore au Bas-Congo pour constat de négligence de main-d'œuvre locale* (2 February 2010). http://digitalcongo.net/article/68935 (accessed 19 June 2015), own translation.
77. During an interview, a Catholic parish priest in the sector of Maduda described the state as not being concerned about citizens, and argued, 'The state is totally absent.' Interview with priest in Maduda, May 2015.
78. Salomon, Torstensen and Vandenhole, *Casting the Net Wider*.
79. See Nzau-Matuta, *Droit congolais des hydrocarbures*.
80. Pantazidou, 'De-Constructing Marginality with Displaced People', 284.
81. Nevertheless, mechanisms for meaningfully sharing information among actors at different levels are virtually non-existent in this case. There is remarkably little direct interaction between local and transnational understandings of duty bearers, and there are few opportunities for local understandings to be upstreamed to the international level.
82. See De Feyter et al., *The Local Relevance of Human Rights*; Merry, 'Transnational Human Rights and Local Activism'; also see Englund, 'Towards a Critique of Rights Talk in New Democracies'.
83. Pantazidou, De-constructing marginality with displaced people; Merry, Transnational human rights and local activism; Beth Nielsen, *The New Civil Rights Research: A Constitutive Approach* (Aldershot: Ashgate, 2006); Sari Hanafi, 'The Arab Revolutions: The Emergence of a New Political Subjectivity', *Contemporary Arab Affairs* 5, no. 192–213 (2012): 203.
84. See also Mohan and Stokke, 'Participatory Development and Empowerment'.
85. Balakrishnan Rajagopal, *International Law From Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003).
86. De Feyter, 'Sites of Rights Resistance', 37; Vandenbogaerde, 'The Human Rights Council From Below'.
87. Our findings cannot easily be generalised to apply to, say, rights-holders who are not facing a failed state.
88. Gómez Isa, 'Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective'.
89. See Menno T. Kamminga, 'Corporate Responsibility under International Law' (Paper presented at the 71st conference of the International Law Association, Berlin, 2004). The privatisation of state functions should not absolve the state from its responsibility to ensure respect for human rights.

Acknowledgements

Disclosure statement

Funding

Notes on contributors

Tine Destrooper is the Scholar in Residence at the Center for Human Rights and Global Justice at NYU's School of Law, and Research Fellow at the Wissenschaftskolleg zu Berlin. Her research focuses on the local relevance of human rights and on the ways social movements can use human rights discourses as a mobilising tool. She has conducted fieldwork in Central America, the DRC and India and worked on several research projects focusing on interest representation in the EU.

Pascal Sundi Mbambi holds an MA in Political Studies from the University of Witwatersrand in Johannesburg, South Africa. He is currently a PhD candidate in political sciences at the Faculty of Social Sciences at the University of Antwerp, Belgium. He is a member of the Law and Development Research Group of the University of Antwerp (www.uantwerpen.be/en/rg/law-and-development). He specialises in the localisation of the right to water in the rural Bas-Fleuve District in the DRC.

CHAPTER 6. CONCEPTUALISING CAPACITY DEVELOPMENT THROUGH EMPOWERMENT FOR SUSTAINABLE DEVELOPMENT

6.1.   Introduction

After examining the right to water in the previous chapters, we focus here on the interface between capacity development and the rights-based approach to development, extending its application to broader issues of development — poverty[208] and deprivation. Our fieldwork has shown the approach faces the challenge of remaining service delivery-based, unless the focus shifts towards the capacity development of rights' users as a way to empower and make them more rights conscious. Coupled with extending responsibilities amongst alternative duty-bearers, adding a dimension such as capacity development could play a critical role in the implementation of rights-based interventions.

In fact, it appears from our fieldwork there were real limitations in operationalising the rights-based approach to development, making it difficult sometimes to really establish a clear difference with other development approaches such as the needs-based approach. How, then, can we make capacity development a decisive characteristic or component of the rights-based approach to development, for a genuine paradigm shift from meeting 'vital needs' to claiming and protecting the rights of the poor? How can a focus on capacity development in the rights-based approach really be a tool for social change or, in more concrete terms, for poverty eradication? How can a capacity development approach that is sensitive to rights-holders' rights consciousness, duty-bearers' responsiveness, and donors' sensitivity to local contexts play a critical role in closing the huge gap in wealth redistribution in a state where functioning has been captured by a small elite's culture of corruption and 'gangsterism,' a context where not only has the state failed (especially in terms of services delivery), but most importantly, where the social order has to be negotiated on a day-to-day basis?[209]

This chapter questions the way capacity development has been or is still being applied in the HRBAD. We attempt to explore how the strategy can best be an effective tool to support the HRBAD as an approach that can lead towards social change, especially for the disempowered, the millions affected by poverty, deprivation, and lack of access to opportunities. This is an attempt to conceptualise capacity development from the context of a 'broken' society, whereby social ties seem to lack support from the state which has become dysfunctional and even nonexistent, a state to

---

[208]   Salomon (2007: 47), who sees poverty as a human rights issue, understands it in terms of deprivation from an adequate standard of living, including housing, food, health, education, etc. or, in one word, from 'lack of income'. She goes on by stressing that poverty can also be looked at from the perspective of 'qualitative deprivation', such as lack of power, choice and capability (in the sense of Amartya Sen). Flaherty et al (2004: 2) remark that "poverty is not about basic needs and material deprivation but also about engagement and participation in society."

[209]   Kristof Titeca and Tom De Herdt (2019), *Negotiating Public Services in the Congo*, explore how public services and state institutions function on a day-to-day basis in the DRC through negotiations.

reinvent — the Democratic Republic of the Congo. Broberg and Sano (2018) warn that the HRBAD may not be suitable for countries or territories where the state is weak or nonexistent.[210]

If the argument is true operationally, we contend the very same HRBAD could help challenge the state to rebuild and take responsibility where it has failed. Again, as Broberg and Sano (2018) acknowledge, a human rights-based approach to development entails the promotion of legal rights and legal capacity building within the context of (international) development activities. In other words, with the introduction of HRBAD, law has come to play a more prominent role in development (Broberg & Sano: 664-665) and society. However, if the focus of HRBAD has mostly been on enabling duty-bearers (especially in developing countries) to respond to claims from the ultimate recipients of development assistance (Broberg & Sano, 2018: 673), our argument is donors should ensure sufficient attention is also given to the capacity development of rights-holders (their development 'assistance' recipients). In this way, they contribute to shifting from a foreign aid-supported development perspective to building a self-enforcing exchange development paradigm, whereby citizens (rights-holders) and the state (as the principal duty-bearer) can live up to their respective duties, including demanding services and supplying the resources necessary to fund public services (Chowdhury, 2018).

Thus, conceptualising capacity development is not about defining a new meaning of the concept; it is rather about thinking about how it can best work in the specific context of the DRC, or other developing countries. We are interested in knowing who the core actors are to involve in the process, and what to focus on for results purposes. Looking at SEN's capability approach, reconceptualised by Nussbaum (2000), we explore how a possible junction between Sen's capability approach and a HRBAD could effectively address issues of poverty and deprivation within a context where the state's legitimacy is constantly questioned. Since human rights are concerned primarily with challenging the abuse of power at all levels, preventing it, ensuring a system of accountability, and remedying the violations brought about by its occurrence,[211] we contend that this is a genuine conceptual framework to effectively think about development issues. It is a way to re-politicize development (Gready, 2008;Cornwall& Nyamu-Musembi, 2004) by taking the development debate to the core of decision-making structures,[212] although some development actors might see this as a real threat to pursuing tangible outcomes in a context of political resistance (Broberg & Sano, 2018).

---

[210] Morten Broberg & Hans-Otto Sano, "Strengths and Weaknesses in Human Rights-Based to International Development: An Analysis of Rights-Based to Development Assistance based on Practical Experience," in *The International Journal of Human Rights*, Vol. 22, No. 5,, 2018, p.664-680.

[211] Margot E. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law*, New York: Oxford University Press, 2007, p. 49.

[212] On the basis of the analyses in the work, *Human rights-based Approaches to Development: Exploring the Potential and Pitfalls*, the two editors, Hickey and Mitlin, point out in their concluding remarks that a human rights-based approach to development tends to make development debates and action more political, but also that this approach strengthens law and legal arguments in development action (2009).

6.2.   Capacity development: Who are the targets?

There is consistent scholarship that agrees on the effectiveness of human rights in general and human rights-based approaches in addressing many contemporary issues of social justice (Alexander, 2004; Cornwall& Nyamu-Musembi, 2004; Anderson, 2008; Broberg & Sano, 2018). Although there is not yet much evidence in terms of quantitative studies to ascertain to what extent this is true (Gready& Vandenhole, 2014; Miller& Redhead, 2019), scholars and commentators agree on the optimism and potential the rights-based approach may have to lead to social change. Speaking from the general perspective of human rights, Alexander (2004) acknowledges how human rights principles have empowered marginalised groups and minorities worldwide, including Blacks in America, Dalits and tribal groups in India, indigenous groups in Australia and Latin America, as well as ethnic groups in many African countries, to gain space in the social and political mainstream. Likewise, the provisions and mechanisms of the human rights approach have enabled women suffering from domestic violence, social exclusion and economic deprivation to unequivocally articulate their aspirations for equal dignity and respect at home and in society (Alexander, 2004). Our contention is that, if the principles of non-discrimination, participation, inclusion, and empowerment are at the core of human rights theory, the very same principles nourish the rights-based approach, and therefore should have the same potential for effectiveness. Of course, a number of development actors are still skeptical about using the HRBAD in their work, especially at the grassroots level (Miller& Redhead, 2019). For instance, Peter Manning points out there is a tendency to legalistic solutions which are decontextualising and de-historicising.[213] Despite such skepticism, we would rather focus on what makes the HRBAD a success story, and how an emphasis on capacity development could contribute to consolidating the approach. The next section focuses on the key actors of the HRBAD.

As far as the application of the HRBAD is concerned, three different groups of stakeholders can be identified: rights-holders, duty-bearers, and supporting actors, i.e. NGOs and/or donors (Broberg and Sano, 2018: 665). In a more anthropological analysis of human rights from the "users' perspective,"[214] Desmet (2014: 129-131) suggests four different empirical categories: among direct users, there are 'rights claimants' {those who (may) invoke human rights}, and 'rights realisers' (those who give effect to human rights); among indirect users of human rights, there are 'supportive users' (e.g. NGOs, national human rights institutions, UN treaty-based bodies), and 'judicial users' (who impose the implementation of human rights, e.g. courts and tribunals). Desmet explains the adoption of a "users' perspective" on human rights entails a shift in analytical focus, a different point of departure for human rights analysis through which one adopts the viewpoint of one or more users of human rights, instead of focusing on a particular topic or legal instrument. It allows researchers to explore why people who could invoke human rights have not taken this step, and to

---

[213] Peter Manning, "Recognising Rights and Wrongs in Practice and Politics: Human Rights Organisations and Cambodia's 'Law Against the Non-Recognition of Khmer Rouge Crimes", in *The International Journal of Human Rights*, 23:5, 2019.

[214] Desmet (2014: 125) understands a user of human rights as "any individual or composite entity who engages with (uses) human rights." One can be identified as a human rights' user from the moment there is an explicit interaction or engagement with human rights.

extend their field of enquiry towards potential users of human rights. This is an interesting perspective which allows us to focus our analysis on the first two categories, namely 'rights claimants' and 'rights realisers,' and to suggest how to further explore ways to integrate the last two categories ('supportive users' and 'judicial users') into the second category of 'rights-realisers,' as they contribute to the strengthening of responses to rights claims.

Gauri and Gloppen (2012) put those two major categories face-to-face, one on the demand side and the other on the supply side. These are the rights-holders (in Desmet's categorisation we call them 'rights claimants'), and the duty-bearers (or 'rights realisers'). This binary relationship established in human rights law exists not only to protect people from the abuse of power (initially foreseen at the hands of the state), but to secure a normative framework within which the individual (or the collective) is understood to have a claim on the conduct of the state.[215] We will first focus on the rights-holders before we examine the concept of duty-bearers.

6.2.1. Rights-holders in the HRBAD: Approach for capacity development

Simpson (2015) understands human rights as *moral* principles that set out certain standards of human behavior, regularly protected as legal rights in national and international law, and commonly qualified as inalienable fundamental rights to which a person is inherently entitled simply by virtue of being a human being.[216] Other scholars, such as Zwart (2012), have argued the obligations of states in the area of human rights are *legal* commitments resulting from the treaties they have ratified, rather than moral ones. Thus, human rights law provides legal guarantees which protect individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity (OHCHR, 2001:1). No matter the school of thought one belongs to, what is at stake here is the notion of 'entitlement' which implies a legal 'contractual' relationship between the state (by virtue of ratifying treaties) and individual (or group) rights-holders, committing each party to full respect of its obligations (for the state), and full capacity to enjoy the core minimum thresholds of their entitlements (rights-holders). Therefore, rights-holders are individuals or a group of individuals who enjoy specific legally protected entitlements or, to use Sepulveda's words, rights-holders are individuals with inherent dignity and entitlements.[217] Rights-holders are thus individuals or diverse groups of citizens who experience violations of their rights or have grievances, and who are entitled to seek redress. OHCHR (2006: 28) pinpoints that, in a rights-based approach to development,

---

[215] Margot E. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law*, (Oxford University Press: New York), 2007, p.132.

[216] Hillary Simpson, *International Human Rights in Context: Law and Politics*, London: Koros Press Limited, 2015.

[217] Magdalena Sepulveda, *From Underserving Poor to Right-holder: A Human Rights Perspective on Social Protection System*s, 2014.

priority attention should be given to poorest of the poor and groups suffering discrimination. Even if not all can be reached at once, efforts should be made to identify these groups at the outset and include them immediately in planning.

This is to say, a HRBAD process should give priority to excluded and marginalised people and those that are at most risk of having their rights violated (Miller& Redhead, 2019). This is what Broberg and Sano term as the *human rights anti-discrimination* perspective. This perspective is at the core of the classification of the rights-holders we suggest below.

Figure 6. A rights-based approach model
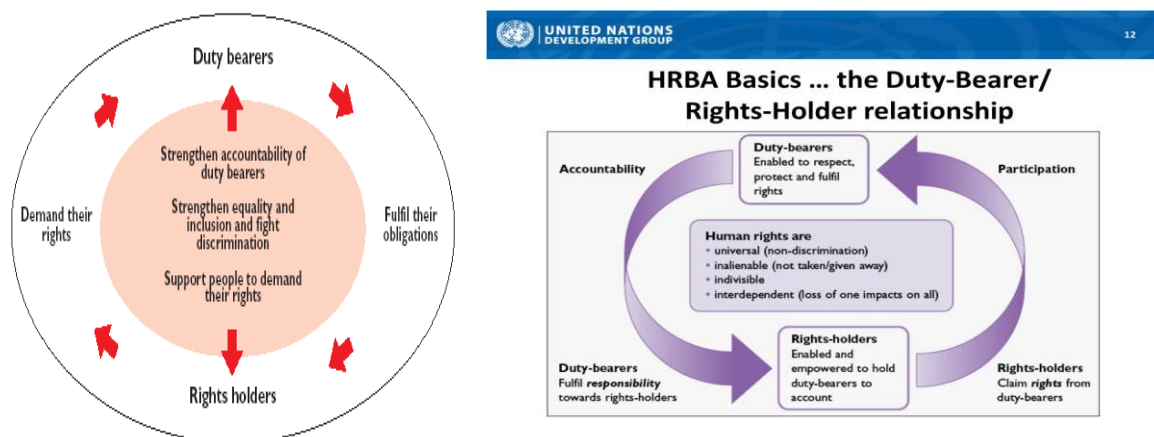
Stemming from this understanding of the HRBAD, legal standards are used to identify the core *minimum threshold of entitlements*, and to highlight the *key areas* that should be addressed by any rights-based approach. Consequently, outcomes are frequently framed through the idea that a full realisation of a right (or set of rights) will necessitate a *behavioural change* in the duty-bearer to protect, respect and fulfill such rights. Likewise, the outcomes rest heavily on the idea that rights-holders will be able to (i) identify and exercise, (ii) demand their right (or set of rights) by formulating claims and holding duty-bearers accountable; and (iii) seek redress.[218] On this basis, rights-based approaches aim to bring positive and sustained changes in the lives of people, precisely because their intended outcomes rest heavily on the full realisation of human rights as defined in international law.

6.2.1.1.   Rights-holders' capacity to identify their right (or set of rights)

Nobody can exercise his/her right without knowing it. In the context of the VA Programme, if villagers consider water an essential need for living, a first and important step would be to take them to another level of knowledge, moving from a simple recognition of water as a need to the consciousness of it as a right, which then becomes a precondition to exercise that right. *Rights*

---

[218] DANIDA, *A Human Rights Based Approach to Denmark's Development Cooperation: Guidance and Inspiration for Policy Dialogue and Programming*, Ministry of Foreign Affairs, 2013.

consciousness is first and foremost a precondition to exercise one's rights. In terms of the rights talk approach, there is no sense (or at least only a limited sense) of agency from someone who is not aware of his/her rights. At this level, capacity development, as an informative process of empowerment, becomes very useful. It means empowering the villagers with new knowledge to advance their rights consciousness, which instills in them a sense of agency to be able to use their rights to improve their living conditions. This is a learning process that should not exclude anybody (from the community) when it comes to programming interventions or project implementations.

There is nothing new in what we suggest here. The VA Programme, however, has revealed some limitations in its implementation. Its strategy of capacity development has remained very selective, focusing basically on 'strategic stakeholders' such as community leaders, actors of the *zones de santé*, partner NGOs, etc., who it is assumed will take the knowledge acquired during training sessions back to the community. Unfortunately, the strategy has been far from being effective. Elsewhere, different methods of capacity development have been tested to ensure successful results. These include, peer mentoring, the 'Freireian' action-reflection methodology,[219] and the capacity development course based on available knowledge and information.[220] Focusing on capacity development in interventions gives people a sense of ownership, which is different from participation, a term often used by international agencies or NGOs (Robeyns, 2010). With the human rights-based approach to development, capacity development rearranges the roles of the key players in a development context. This is first clear with regard to the resource-poor citizen who is transformed from being a (*passive*) recipient of assistance to being an (*active*) rights-holder who can put forward demands (Broberg & Sano, 2018: 671). Indeed, providing knowledge of what poor people are entitled to, and demanding the strengthening of the channels by which they can assert these rights, often play key roles.[221]

6.2.1.2. Rights-holders' capacity to formulate claims and to hold duty-bearers accountable

A right-holder is a person capable of formulating a claim and holding duty-bearers accountable. Accountability requires effective monitoring of compliance with human rights standards, the achievement of human rights goals, as well as effective remedies for human rights breaches. For accountability to be efficient and effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights. Interestingly, in the perspective of the localizing human rights conceptual framework, De Feyter (2017) argues that a local claim qualifies as a *human rights claim* when it satisfies three criteria: (i) the claim uses human rights language (although there could be a fusion of local concepts of justice for example); (ii)

---

[219] In reference to the Brazilian scholar Paulo Freire, with his *Pedagogy of the Oppressed*.

[220] Ingrid Robeyns, « How can the capability approach be used to serve marginalised communities at the grassroots level?", in Frédérique Apfel-Marglin et al (eds.), *Interrogating Development: Insights from the Margins*, (New Delhi: Oxford University), 2010, p. 249.

[221] Duni et al. 'Exploring a Political Approach to Rights-Based Development in North West Cameroon', in Hickey and Mitlin (eds.) *Human rights-based Approaches to Development: Exploring the Potential and Pitfalls*, 2009.

it identifies a duty-bearer (the state or another agent); and (iii) it insists on accountability from the duty-bearer.

This becomes a more complicated exercise or process, even for an educated person, if applied in the context of the VA Programme. It means for someone to understand what a claim means per se, what a local claim entails and how to formulate it, the person has to enhance, what SEN calls their capabilities, through capacity development. Felstiner et al (1980) have provided a framework for understanding how a claim is constructed from unperceived injurious experiences to disputes. The process is known as the 'naming-blaming-claiming' process. They argue that problems derive from the fact that a perceived injurious experience can only be bounded by choosing someone's definition of what is injurious, and such feelings are never universal. The first transformation from unperceived injurious experience to perceived experience is called *naming*. *Naming* is saying to oneself that a particular experience has been injurious. The next step is termed *blaming*, when a person attributes the injury to the fault of another individual or social entity (grievance). The third transformation, which is called *claiming*, occurs when someone with a grievance voices it to the person or entity believed to be responsible and asks for remedy. Felstiner et al acknowledge that the early stages of *naming*, *blaming*, and *claiming* are significant because the range of behavior they encompass is great and can be used to identify the social structure of disputing.

From a HRBAD implementation perspective, interventions should have a specific designed programme on capacity development with a focus on topics such as what is a right, what does human rights mean, what is a claim, how do you formulate a claim, who is a duty-bearer, how do you identify a duty-bearer, how do you demand accountability from a duty-bearer, and so forth. While, for instance, we have identified a rich repertoire of rights from our fieldwork, there is a failure to identify the actor(s) against whom these rights may be claimed. UNICEF would have benefited from better understanding and engaging with the culturally available repertoires that could help to frame, for instance, water and sanitation as rights that people are all entitled to. The donor's sensitivity to local context is so important to make the HRBAD contextually relevant and operational under capacity development.

Uvin points out, "The very move from charity to claims brings about a focus on mechanisms of accountability. If claims exist, methods for holding those who violate claims accountable must exist as well. If not, the claims lose meaning."[222] This is why capacity development for rights-holders is crucial. Where, for instance, access to formal legal instruments or institutions is difficult and burdensome, or where people do not trust the formal system (what we experienced in our fieldwork), capacity development should focus on how to define a wide range of strategies, tactics and institutions through which locals can frame and make rights claims outside the formal system. Through capacity development, emphasis could be put on participation[223] as a way to genuinely enhance popular involvement (of the marginalised) in both social/political inclusion and decision making processes over resources and institutions that affect people's lives. In order to turn 'participation' and 'inclusion' into reality, it is important to strengthen the capacity for autonomous

---

[222] Quoted by Cornwall and Nyamu-Musembi (2004), "Putting the 'Rights-Based Approach' to Development into Perspective," in *Third World Quarterly*, Vol. 25 No. 8.

[223] As a principle of HRBAD, participation has also been defined as a right: the right to participation. "*Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free and meaningful, and give attention to issues of accessibility, including access to information in a form and a language which can be understood.*"

action; in this way, *activism* and *advocacy*[224] become important elements in the capacity development of rights-holders, as they constitute alternative ways to claim their rights and hold duty-bearers accountable.

Seen from this perspective, capacity development can work to sharpen the political edges of participation, and to make critical linkages between participation, inclusion, accountability and citizenship (Cornwall and Nyamu-Musembi, 2004: 1418). This means, through capacity development, the rights-holders — who are the target groups of governmental efforts and of development cooperation — have to become empowered to claim their rights against the duty-bearers. Such empowerment implies that each individual or group acquires the ability to think and to act freely, to take decisions, and to fulfill his or her own potential as a full and equal member of society (Broberg & Sano, 2018: 668). This re-politicization of development brings some potential for social change in the sense that there is a greater chance no one will be excluded or left behind in the development process. As Gready and Ensor (2005) put it, the overriding goal of rights-based approaches is that rights become embedded in everyday political and social expectations, so that the collective vision of how one should be treated and what one deserves, simply by being human, is transformed and steadily co-created to improve human potential for self-realisation. It follows that a key objective of such an approach is to give both individuals and groups political, social and/or economic power so they are better able to take care of their own (rights-related) interests, i.e. access to basic resources and services such as education, justice, health, or water and sanitation. This change in power relations is particularly critical when dealing with challenging governance issues, including corruption, nepotism and clientelism in the context of the DRC.

6.2.1.3. Rights-holders' capacity to seek redress

In the event of a violation or denial of rights, a HRBAD emphasises the need to have available and appropriate means to seek and support redress, including invoking the right to remedy and due process, as well as the right to information (Gabel, 2016). In analysing how capacity development enhances rights-holders' capacity to seek redress, there are several important questions to explore. What mechanisms and processes for redress exist? We have probably tackled this issue above, but it is important to understand the accessibility, availability and affordability of these mechanisms — what structures and processes are in place for locals (in the context of localising HR) to seek redress for rights violations? Are the processes, if any, trustworthy and transparent and if not, in what respect do they impede redress? If rights-holders do not trust the judiciary, for instance, this raises a serious question about how to ensure accountability when seeking redress. A capacity development strategy must enable rights-holders to map out, from their available resources, formal mechanisms, as well as alternatives, to ensure they have access to redress and that such mechanisms guarantee accountability. Accountability is closely linked to access and transparency; transparency is a critical safeguard against corruption, exclusion, political favoritism, and an important means of facilitating access to and participation in rights realisation (Gabel, 2016). Poor functioning of state mechanisms

---

[224] In the context of HRBAD, 'advocacy' refers to targeted measures in respect of fundamental human rights which influence decision-makers and citizens at local, regional, national and international levels, and which seek to form and guide political, economic, cultural and social processes and decisions with a view to improving the living conditions of relevant groups of the population (Broberg & Sano, 2018).

and the lack of accountability and transparency in government contribute to a situation where people's guaranteed rights fail to get translated into real opportunities. By not knowing the means/resources available or useful information about the issue, the ability to claim one's rights and to seek redress is impeded.

As a way of concluding this section, we have focused on one of the HRBAD's strengths (see Broberg & Sano, 2018), which consists of empowering the poorest and most marginalised by developing their capacity to *know*, *claim* and *seek* redress for their rights. This focus aims to make the approach work in reality by enhancing the rights consciousness of these rights-holders and developing their potential to fight for social transformation, especially in rights realisation (i.e. access to basic resources and services such as education, justice, health, or water and sanitation). In this sense, capacity development acts as a 'glue' that connects to the core principles of the rights-based approach, and enables development to be advanced by strengthening the capacity of rights-holders to recognise and demand their rights, by supporting campaigns to promote human rights and raise the visibility of their violation, as well as pressing for governmental or, to some extent, intergovernmental action to respect and act in accordance with the human rights legal framework. From a policy perspective, this requires a donor's context sensitivity so as to give more relevance to this rights-holders' capacity development process.

6.2.1.4. Attempt of a rights-holders' categorisation

In this section, we explore the possibility of a sub-categorisation within the category of rights-holders (rights claimants), building on Desmet's human rights users' perspective, but also borrowing inspiration both from our fieldwork in a context of localising human rights and from stakeholder theory.[225] If the theory, or probably the practice, of the HRBAD wants to focus first on the most vulnerable or those at high risk of rights violations or abuse in interventions, it becomes clear there is a kind of prioritisation in approaching 'recipients' of development cooperation. This prioritisation allows us to suggest a sub-categorisation of the rights-holders, premised on the redistribution of resources and opportunities as a way to guarantee the principles of equality and non-discrimination.[226] Our argument is that, if human rights realisation within a local community should leave nobody out, then there is a need to focus priority on the most vulnerable, those at high risk of violation or abuse of their rights. In other words, the realisation of human rights (i.e. right to water and sanitation) should be beneficial to all individuals, structures, and so forth within a given community, provided a discriminating priority focus is put on the most vulnerable. This can only be done on the basis of what Vandenhole (2020) terms the "equality norm" in order to ensure the efficiency and effectiveness of the HRBAD.

---

[225] The stakeholder theory, mostly used in organizational management and business ethics, argues that a business should create value for all stakeholders (not just for shareholders). See Andrew L. Friedman and Samantha Miles, "Developing Stakeholder Theory," in *Journal of Management Studies*, vol.39, Issue 1, Jan 2002, pp. 1-21.

[226] Vandenhole (2020) notes equality and non-discrimination are principles that sit at the heart of every international human rights treaty and provide normative grounding and guidance for the idea that redistribution policies must aim rigorously at substantive equality and combatting direct and indirect discrimination.

Vandenhole (2020) writes,

> Given its social effects, socio-economic inequality is or should be a prominent issue on the human rights agenda. Part of the human right community has shown a renewed interest in socio-economic inequality. (…) The equality norm should become a major vector of new conceptual developments to address socio-economic inequality.

The intrinsic value of equality should be understood in relation to dignity and fairness. The equality norm is applied in terms of distributive equality, needed to uphold social protection under circumstances of socio-economic imbalances.

The intersectionality[227] framework can be another entry point of analysis to support this sub-categorisation. However, as Vandenhole (2020) notes, "intersectionality theory claims potential as a 'generalizable theory about power and marginalisation,' but it has so far only been applied to gender, ethnicity, disability and sexual orientation."

Like any categorisation, there are advantages as well as drawbacks. One of the advantages is to be able to set criteria which would allow strict adherence to the principle of prioritisation of the most vulnerable in interventions, and would help to establish social patterns to recognize, for instance, who the most vulnerable are. Although this might be useful to address issues of inequality, it should be said that context matters and generalisation should be avoided. In this way, there is no predefined definition of the 'most vulnerable,' as it can be understood differently in each and every context.

We do not have a specific example from our fieldwork to illustrate this, but we can imagine that the elderly or persons with disabilities living alone or in isolation might face particular challenges to access water in contexts where people have to walk long distances with heavy loads. In the broader Congolese society, a focus on vulnerability might zoom in on youth, most specifically the so-called 'street kids' who have been denied or deprived of any assistance and opportunity from society to have an acceptable living standard. This is a category of people whose lives are at high risk, but who also put others' lives at risk. From an emergency perspective, such as the COVID19 pandemic currently sweeping across the world, I wonder what it means to be homeless (houseless) in India or Europe in situation of lockdown, or a person without health insurance in America.[228] Or more fundamentally, what it means to speak of citizenship as a means of inclusion or exclusion?[229] In such

---

[227] Intersectionality takes into account peoples overlapping identities and experiences in order to understand the complexity of prejudices they face. Intersectional theory asserts that people are often disadvantaged by multiple sources of oppression: their race, class, gender identity, sexual orientation, religion, and other identity markers. Understanding intersectionality is essential to combatting the interwoven prejudices people face in their daily lives.

[228] See also Matt Novak, Teen who died of COVID-19 was denied treatment because he didn't have health insurance, in *Gizmodo* (27 March 2020) https://gizmodo.com/teen-who-died-of-covid-19-was-denied-treatment-because-1842520539?fbclid=IwAR2egwE_EKPQ71VqAEWz1FkJwU5Zvtjf9e71t1JFt7zcRXT_q42MFGmvahw;

[229] In an online Newspaper's article, Jo Vearey from the African Centre for Migration and Society of the University of the Witswatersrand in South Africa stresses the need for an inclusive public health response to the COVID-19, stating: "South Africa mustn't forget the public… To successfully address COVID-19, our public health programming must engage with everyone in South Africa, including refugees, asylum seekers, and migrants from elsewhere on the continent and beyond. We must use inclusive language in our messaging, and avoid the

situations, how would prisoners, refugees, IDPs or 'illegal migrants' be treated from a public health perspective? These are a few examples to illustrate how vulnerability might need a more contextualised analysis and understanding. This leads us to the following sub-categories:

6.2.1.4.1. First sub-category: the most vulnerable

This sub-category refers to the *most vulnerable* or *disadvantaged* individuals or groups in the most vulnerable situations in society or in a community. One of the hallmarks of the human rights-based approach is the commitment to protecting the rights of vulnerable and disadvantaged individuals and groups, as human rights law is predicated on the fundamental principle of the inherent dignity and equal worth of every human being (Chapman and Carbonetti, 2011). However, despite this commitment, human rights lack a framework to achieve such a protection.[230] As we have indicated above, there are no established criteria for identifying vulnerable or disadvantaged populations, neither an accepted definition of vulnerability, nor a standard list of such groups. There have been some efforts to suggest groups that can be considered as vulnerable in a given society, often based on their 'fragility' or the discrimination they face. The Icelandic Human Rights Center suggests an non-exhaustive list of 13 vulnerable groups, including: 1) women and girls; 2) children; 3) refugees; 4) internally displaced persons; 5) stateless persons; 6) national minorities; 7) indigenous peoples; 8) migrant workers; 9) disabled persons; 10) elderly persons; 11) HIV positive persons and AIDS victims; 12) Roma/Gypsies/Sinti;[231] and 13) lesbian, gay and transgender people.[232] While in the Indian context, vulnerable groups have been divided into five categories, including: (i) vulnerable groups facing structural discrimination (women, scheduled castes, Dalits, scheduled tribes); (ii) children and elderly persons; (iii) people with disability; (iv) migrants; and (v) those with disability due to stigma and discrimination (people living with HIV/AIDS and sexual minorities).[233] Again, from an intersectionality approach, vulnerability is context-based. For example, while women are more vulnerable to abuse than men in some contexts, they are not necessarily vulnerable in all contexts. Conversely, in some situations women from marginalised groups may be doubly vulnerable, because they are marginalised and because they are women. There has been a growing awareness in recent

---

tendency of the state to refer to South African "citizens"—rather than to "all in South Africa"—in their COVID-19 communication." (Jo Vearey, "Why xenophobia is bad for the health of all in South Africa?", 2 April 2020, https://africasacountry.com/2020/04/why-xenophobia-is-bad-for-the-health-of-all-in-south-africa?fbclid=IwAR2hsy9oDoowfvQog6PdBzEBbkIf0PfIcddG-hVCe_CWz48hB7JB1PInHzs). Also, Victoria Waldersee & Andrew Cawthorne, Portugal to treat migrants as residents during coronavirus crisis, Reuters, 28 March 2020 (https://in.reuters.com/article/health-coronavirus-portugal/portugal-to-treat-migrants-as-residents-during-coronavirus-crisis-idINKBN21F0M2)

[230] Analysing CESCR's general comments, namely General Comment 10 the role of national human rights institutions to protect economic, social and cultural rights, General Comment 5 on persons with disabilities, General Comment 6 on older persons, General Comment 16 on the equal rights of men and women, and other General Comments, Chapman and Carbonetti (2011: 691) remark that, despite the emphasis, none of them provides a coherent rationale or framework for conceptualising vulnerability. They acknowledge human rights bodies typically deal with vulnerable and disadvantaged groups on an *ad hoc* basis.

[231] The Sinti and Roma are nomadic peoples found throughout Europe and the United States. Often both groups are referred to as Roma, collectively, they are popularly referred to as Gypsies.

[232] See http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups

[233] Chatterjee, C. and Sheoran, G. (2007) *Vulnerable Groups in India*. The Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai.

years that poverty or extreme poverty is an important source of vulnerability (SEN, 1999). Thus, landless peasants, marginalised rural peasants, rural and urban unemployed, urban poor, indigenous people, etc. are some of the individuals or groups who are relevant to consider under this sub-category.

We refer to them as the most exposed to risk of violation or deprivation of their rights (Miller and Redhead, 2019). Vulnerable or disadvantaged individuals or groups are those that face a particular risk of being exposed to discrimination and other adverse human rights impact, and who need particular attention in terms of protection.

Human rights instruments set out additional guarantees for persons or groups belonging to this sub-category. For instance, the Committee on Economic, Social and Cultural Rights has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints (Chapman and Carbonetti, 2011).

At this level, interventions in the rights-based approach to development will need a balance between both service delivery and capacity development. Although there is a need to respond to specific urgent concerns, capacity development interventions should focus on raising awareness of how these marginalised individuals or groups can assert agency vis-à-vis duty-bearers, and therefore create a rights consciousness.

6.2.1.4.2. Second sub-category: society at large

Here is where we find the community or society at large (ordinary citizens) and, in Desmet's terms, the 'supportive users' (NGOs, community-based organisations, etc.), seeking full enjoyment of their entitlements. A focus on capacity development for them is also needed, as it creates more awareness and a sense of ownership. Empowering workshops on the rights-based approach with community members, local NGOs, or other interested entities, would help raise broad awareness on entitlements and rights. As a result, it is expected a culture of agency and accountability would arise, leading to changing power relations between rights-holders and duty-bearers or, in more simple terms, between citizens and local state authorities.

Looking at our case study, some of the actors in this sub-category (the 'supportive users') have played or play an intermediary role in the implementation of the VA Programme by providing technical and capacity support. Raising rights consciousness amongst them, and training them in the HRBAD would help engage them as human rights translators (in the sense of Merry), contributing to the creation of a real culture of human rights and embed the rights-based approach within the community.

6.2.1.4.3. Third sub-category: the lower-level duty-bearers

In Chapter 5 of this thesis, we refer to this category as the *lower-level duty-bearers* (i.e. the local authorities). In practice, these lower-level duty-bearers are the most concerned when it comes to responding to rights-holders' demands or claims. They are on the front line to receive them.

Unfortunately, as we have seen it in our fieldwork,[234] in a resourceless state they are likely to act more as rights-holders as they remain dependent on the central state or provincial authorities for the resources needed to respond to their community's demands. Developing the capacity of this specific group would mean helping to guide them strategically how they can manage both the 'roles' of rights-holders vis-à-vis the national or provincial governments, and of duty-bearers vis-à-vis their 'constituencies.' As these local actors mostly face challenges relating to the lack of financial resources or constrained budgets, as well as limited technical capacity, a capacity development programme for this sub-category should focus on building their capacity to both collaborate and communicate with state duty-bearers to negotiate for resources, with 'supportive users' of human rights for technical and financial support (resources mobilization), and with other rights-holders at large to ensure more participation in decision-making and more accountability in resources management.

6.3. Duty-bearers in the HRBAD: expanding the notion to non-state actors

One of the important characteristics of a HRBAD is that it only makes sense to talk of a *right* if there is a corresponding *obligation* (Broberg & Sano, 2018). In other words, the HRBAD allows a party who has a right to be able to assert this *right* against another party who holds a *duty* echoing that right. These are, as we have named them previously, the *rights-holder* and the *duty-bearer*. A human rights-based approach to development therefore presupposes it is possible to invoke a right against a duty-bearer, which best fits a sufficiently well-functioning state (BERG & Sano, 2018:667) in the human rights legal frameworks. This relationship between rights-holders and duty-bearers, as we have also previously indicated, stems from the principle of *accountability*, which Munro (2009: 190) describes as follows,

> The principle of accountability asserts that people are *active* subjects or *claim* holders. To have a *right* is to have a *claim* against others, whether against other individuals or against organized social units like the family or the state (emphasis is ours).

This legal accountability is seen as the most obvious distinctive contribution to the rights-based approach (GREADY, 2008: 737), although it is not viewed as the principal or even dominant form of accountability for human rights in development, nor is it presented as covering the extent of the possible contribution of human rights to development. Human rights accountability may be properly viewed as a spectrum, which can take a variety of forms depending on the context, country, sector, actor or institution (McInerney-Lankford, 2013). Indeed, it is possible that human rights accountability in development may be achieved through *political* mobilisation and grassroots movements that rely on the direct participation of groups; it may also be effectively advanced through *social* accountability and efforts to support the demand side of governance. Nevertheless,

---

[234] Even amongst local officials, the prevailing perception was that the state was a remote entity with little relevance in their day-to-day activities; the central state was perceived as unresponsive and inconsequential by local officers (see chapter 5).
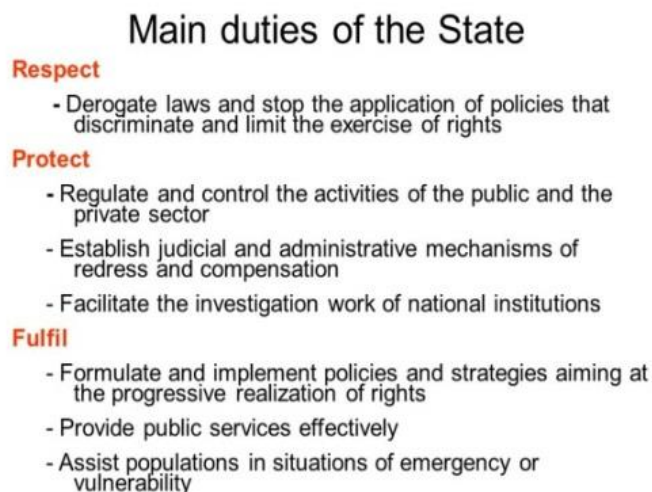
legal accountability and other forms of accountability are not mutually exclusive, and may even be mutually reinforcing in the context of development, and used simultaneously to advance the attainment of development (McInerney-Lankford, 2013).

In the next sections we will address two important issues with regard to: (i) the state's human rights obligations to respect, protect and fulfill; and (i) the need to extend the notion of duty-bearer to non-state actors, whereby we will explore the perceived responsibilities and obligations of non-state actors to rights-holders from the perspective of our fieldwork.

6.3.1.   State legal obligations to respect, protect and fulfill

Even though some classifications of the legal obligations pertaining to human rights have been developed over time to address specific dimensions of substantive rights (Eide, 2000: 111; Sepulvada, 2002), Shue's seminal three-tier model of state obligations to *respect* (negative duty to avoid depriving), *protect* (positive duty to protect from depriving), and *fulfill* (positive duty to aid the deprived)[235] human rights, has gained greater support, especially in the interpretative framework arising from the ICESCR. This section focuses on the three levels of state legal obligations under human rights treaties, drawing particularly on the ICESCR because of its substantive relevance to development cooperation. It will trace, in a preliminary way, what these obligations might mean in the context of development, and analyse them as a means to better understand human rights accountability in development, as well as the implications to extend responsibilities to non-state actors.

Figure 7. Main duties of the state 'duty-bearer'

Main duties of the State
Respect
- Derogate laws and stop the application of policies that discriminate and limit the exercise of rights

Protect
- Regulate and control the activities of the public and the private sector
- Establish judicial and administrative mechanisms of redress and compensation
- Facilitate the investigation work of national institutions

Fulfil
- Formulate and implement policies and strategies aiming at the progressive realization of rights
- Provide public services effectively
- Assist populations in situations of emergency or vulnerability

Source: UN Development Group

---

[235] See Henry Shue, Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy, Princeton University Press, New Jersey, 1980, p.52–53, 60.

(i)   Obligation to respect

The obligation to respect is essentially a negative obligation that prohibits direct or indirect state interference; it places limits on the exercise of state power that might threaten people's existing access to rights. It establishes a legally binding baseline against which to uphold a certain minimum acceptable level of human rights protection[236] and a duty to 'do no harm' (UN OHCHR, 2008: 13). Applied to the development context, recognition of the obligation to respect would require that states take measures to ensure the actions they pursue or influence in development cooperation neither directly nor indirectly undermine the level of enjoyment of human rights that prevails in a given development context. It would require that states refrain from supporting decisions or measures that would be likely to have a negative impact on human rights (McInerney-Lankford). At a policy level, it might entail that state agencies accept and incorporate a general duty to 'do no harm' based on the obligation to respect human rights.

Figure 8. Types of State duties imposed by human rights treaties
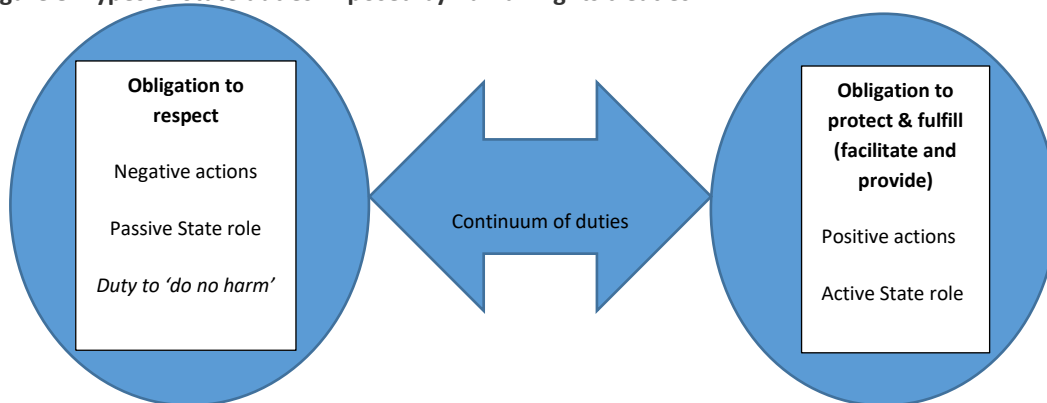
Source: Adapted from Sepulveda (2002)

(ii)   Obligation to Protect

The obligation to protect is more affirmative; it requires States Parties to take measures to protect against human rights violations. It entails a variety of more positive state actions (ICISS, 2001) to *prevent*, *investigate*, *punish*, and *ensure redress* for violations caused by abuses of human rights by third parties (e.g., private individuals, commercial enterprises, or other non-state actors) when they do occur (Satterthwaite, 2005: 12). The obligation to protect may be argued to apply both within a

---

[236] The Committee on Economic, Social, and Cultural Rights has regularly invoked the obligation to respect as an obligation of non-interference applicable to particular substantive rights such as the rights to health, food, and water. See Committee on Economic, Social and Cultural Rights, *General Comment No. 14, The right to the highest attainable standard of health* (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000), Para. 41; *General Comment No. 12, The right to adequate food* (Twentieth session, 1999), U.N. Doc. E.C/12/1999/5 (1999), Para. 37; *General Comment No. 15, The right to water* (Twenty-ninth, 2002), U.N. Doc. E/C.12/2002/11 (2003), Para 31.

state's territory and extra-territorially to persons subject to a state's jurisdiction or effective control.[237]

In the context of development cooperation, some commentators interpret this obligation to have potential reach beyond the actions of the state and its instrumentalities to include the actions of non-state actors that are active in development, particularly the private sector. In terms of legal accountability, this implies three mutually dependent elements: the justification and assessment of the States Parties' acts or omissions vis-à-vis the actions of third parties, and the consequences which are stipulated when such standards are not upheld (McInerney-Lankford, 2013). In this regard, a state would neither direct, support, nor tolerate any third party violations of human rights in the context of development activities, nor fail to regulate sufficiently to protect against them. However, where the state seems to be a failed state, without any means (or with limited means) to ensure protection from third parties (i.e. corporations), there is a need for the sake of effective human rights protection to think of alternatives such as extending the notion of duty-bearer. We discuss this in detail in the next section.

In addition to covering the actions of non-state actors active within a state, this obligation could cover a host of state's responsibilities with respect to development activities of third parties from abroad, or conversely the actions and omissions of states in supporting development projects, policies, and activities of third parties under their jurisdiction or control, but physically in another state's territory (Skogly, 2006: 70). Following from this, development policy would recognise the complementary functioning of the state *obligation to protect* and the corporate *responsibility to respect*.[238]

(iii)   **Obligation to Fulfill**

The obligation to fulfill is arguably more onerous than either the obligation to respect or the obligation to protect (Alston and Quinn, 1987: 185, 186) because it may require states to create enabling conditions for all individuals to fully enjoy their rights (Satterthwaite, 2005: 12), and to take action to secure the existence of human beings in situations of deprivation, for instance in an emergency situation when conditions for survival are temporarily disrupted, in severe drought or flood, armed conflict, etc. The Committee General Comment 12, para.15 interprets the tertiary level of the obligation *to fulfill* in two sub-levels: the obligation *to facilitate* (increase access to resources and means of attaining rights); and the obligation *to provide* (ensure that an individual or group may enjoy his/their rights whenever they are unable to do so themselves, for reasons beyond their control). To those two sub-levels, a third is often added, that is the obligation to *promote* (provide both information and opportunities for the enjoyment of human rights by rights-holders).

---

[237] See General Comment No. 31 of the Human Rights Committee, Paragraph 10.

[238] From the UN Guiding Principles on Business and Human Rights, the *responsibility to respect* human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts (see OHCHR, *The Corporate Responsibility to respect human rights: An interpretative Guide*, 2012, https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).

General Comment 3[239] asserts that while the full realisation of the relevant rights may be achieved progressively (principle of progressive realisation), steps toward that goal must be taken within a reasonably short time after the ICESCR enters into force for the States Parties. If, therefore, a state fails to take steps, a violation will have occurred. In other words, although the principle of progressive realisation accommodates the necessarily incremental process of realising economic and social rights, as well as resource constraints, States Parties must still take "deliberate, concrete and targeted steps" towards the full realisation of human rights under this obligation (McInerney-Lankford, 2013). The Committee on Economic, Social, and Cultural Rights has stipulated that governments must give priority to meeting the minimum essential levels of each right, especially for the most vulnerable (Eide, 1989). This suggests there is broad potential for the obligation to fulfill to achieve development goals, especially when they are framed in terms of fighting poverty or enhancing capabilities (Sen, 1999; 2000: 102; Nussbaum, 2000). From Chowdhury's perspective, there is an opportunity to build capacities conducive to a self-enforcing state capable of sustaining its development from within.

6.3.2. Extending the notion of duty-bearers to non-state actors: What potential for development?

The state-centric approach to human rights duty-bearers has been called into criticism (Besson, 2015); more and more scholars have called to expand the scope of duty-bearers to include other institutions beyond the state, namely international organisations and private corporations. As Besson (2015) notes most of those accounts about expanding human rights duty-bearers are often evasive about why duties can or should be extended beyond the state and how this should work.

In Chapter 5 of this thesis, we extensively engaged in discussion on whether or not there is room in the existing academic or policy literature to extend the notion of duty-bearers to non-state actors. We choose to contribute to the debate on the legal accountability of non-state actors from an empirical perspective, using perceptions of rights-holders on the ground. Pursuing the same direction here, we want to turn the focus on international agencies and NGOs, rather than on the corporate sector referred to in the previous chapter.

6.3.2.1. The responsibilities of international organisations and NGOs

Our case study shows international organizations are perceived as duty-bearers who should be held accountable for much the same pragmatic and strategic reasons as corporate actors, namely their presence, their resources, their alleged efficiency, and the fact they are not the 'untouchable state' (see Chapter 5). In our fieldwork, many villagers argued it is the responsibility of international organisations and (international) NGOs to provide money for infrastructural projects 'since

---

[239] Committee on Economic, Social, and Cultural Rights, *General Comment No. 3, Nature of States parties obligations* (Fifth session, 1990), U.N. Doc. E/1991/23 at Para. 9 (1990).

government doesn't have money for this.' This, clearly, is a pragmatic or moral demand, rather than one that follows international principles of law. The interpretation, however, was entirely in line with the local understanding of what constitutes a right and what constitutes a duty-bearer, i.e. a relational, community-based understanding rooted in concrete understandings of control, power and authority (see Chapters 4 & 5). Respondents did not think per se about duty-bearers as being bound by international law to guarantee, protect and fulfill a right, but interpreted the notion of duty-bearers as those that have a moral duty or the effective means to guarantee a right. This is, of course, highly problematic from the point of view of international law, where the very absence of a legal obligation renders accountability impossible in such cases.

During our fieldwork it became clear the idea of international organisations or NGOs as moral duty-bearers could be seen as empowering for local actors. In one of the villages, located in a region where several villages had joined the *Ecole etVillage Assainis* Programme of UNICEF, members of the Village Committee perceived UNICEF as a duty-bearer with a duty to ensure quality education to the children when the state cannot offer this. They were confident that an intervention would follow if they made a claim, but also reckoned the claim would be more convincing if they could refer to the need for sanitation in both the village and the school. In 2009, this village did not yet have a school, however. The assumption that UNICEF had an obligation to provide assistance with the sanitation of schools where these exist inspired the Village Committee to construct a primary school and to collect money to pay four teachers to teach the 80 pupils who would attend. The idea was that, if the village managed to establish a school, this would create an obligation for UNICEF to include them in the *Ecole et Village Assainis Programme*. The village joined the programme in 2010. The belief that UNICEF had a formal obligation to intervene to guarantee their right to satisfactory sanitary infrastructure in schools inspired people to take action in this regard. This perception of an international organisation as a duty-bearer has thus had very tangible and empowering effects in this case.

Pictures of V1

6.3.2.2. How does this support our claim to extend the notion of duty-bearer?

This case neatly illustrates how nuanced the local understanding of responsibility is, and how important it is to think about duty-bearers as a multi-facetted notion. In this village, villagers referred to the responsibility of international organisations such as UNICEF, and throughout, mentioned how they also saw this as their own responsibility. The state was mostly absent in the discourse on responsibilities. On one hand, it opened up a multi-faceted understanding of duty-bearers and provided people with a degree of agency which can be empowering. People began to think strategically and pragmatically about which duty-bearer to turn to and engaged in a course of action that had the biggest chance at success. This case shows that a state-centric interpretation of duty-bearer is simply too remote to be relevant in this village (see Chapter 5). On the other hand, this case also warns us about the risk of what we term above as a 'duty-bearer waterfall,' whereby rights-holders' interpretation of duty-bearers is not rooted in an inherent local understanding, but inspired by the failure of other actors to live up to their responsibilities (see Chapter 5). It is problematic, for example, if rights-holders who ideally want to turn to the state as the duty-bearer, have to turn to NGOs when the state is not responsive, and to international organisations if the NGOs are not responsive, and in the end they find themselves in a discourse of individual responsibility when the international actor is also not responsive. As we have previously argued, this case shows any thinking about expanding the notion of duty-bearers should be framed against the background of *complementary duty-bearers*, and not as a matter of presenting non-state actors as *alternatives* to the state as a duty-bearer.

The case also shows how important it might be for UNICEF and other implementing agents to explore, with local people, how connecting with the local interpretation of rights and duty-bearers might make for more consistency and effectiveness in applying the HRBAD. For instance, a notion of duty-bearers which embraces human rights language that emphasises communal values that speak to and empower local people might be more relevant than any other be it defined in the international human rights framework. Indeed, our case study has shown that, even though progress is made on claiming rights, the challenge still remains how to operationalise the right to water and sanitation in a more effective way, given the weakness of the DRC state, the duty-bearer under international law. When the state for lack or excess of control is not in a position to formulate an appropriate response, no domestic policy can emerge that can authentically represent local human rights voices that could enrich the global human rights language (De Feyter, 2017: 415). The weak democratic legitimacy of the DRC state and its ongoing inability to respect, protect, and fulfill the rights of the people, raises serious questions about the limits of the international human rights framework to respond effectively. This suggests the relevance of exploring the potential of multiple duty-bearer frameworks, while recognising the inherent risks in such an approach is appealing to those interested in advancing the human rights of vulnerable and disadvantaged people (see Chapter 5). A multi-faceted understanding of duty-bearers, coupled with the rights-holders' degree of agency, therefore, has huge potential for capacity development to lead to effective social change. In practical terms, we suggest that as an HRBAD develops the capacity of state actors to live up to their obligations to respect, protect and fulfill rights-holders' human rights, it should also develop the capacity of non-state actors who have a moral or social responsibility to promote and guarantee human rights. However, a question arises: To what extent and under what conditions do perceptions correspond to obligations of the 'complementary duty-bearers'? What would be the institutionalised

procedures to identify these non-state duty-bearers? To answer these questions, there is a need to clarify the concepts of 'duty' and 'responsibility.'

6.3.2.3. Linking duties and responsibilities: a way to respond to capacity gaps

To answer the questions raised in the previous section, I borrow from Besson (2015) who distinguishes between human rights duty-bearers and the bearers of human rights responsibilities. To identify a duty-bearer, Besson poses two conditions: first, it has to be an institution, and secondly, an institution that exercises jurisdiction over the rights-holders. Two key words emerge here: *institution* and *jurisdiction*. For Besson, *institutions* are the only ones to have the sustainable capacity to respect and uphold human rights duties (Besson, 2015: 252). *Jurisdiction* refers to *de facto* authority, that is to say, the practical political and legal authority that is not yet legitimate or justified authority, but claims to be, or at least is held to be, legitimate by its subjects. This amounts to more than the mere exercise of coercion or power, it also includes a normative dimension by reference to the imposition of reasons for action on its subjects and the corresponding appeal for compliance (Besson, 2015: 254). Jurisdiction applies to both the domestic territory and extraterritorially.

From the institutional model of duty-bearers, Besson distinguishes between *primary institutions* and *subsidiary individual bearers* of human rights duties. By primary institutions, Besson means institutions that have jurisdiction over the rights-holders. They are mostly states, but this may also arguably be the case of international institutions such as the European Union.

Besson sees individual bearers of human rights duties, also described as *back-up duties*, as *subsidiary*, and not *concurrent* with the human rights duties of the primary institutions. These individuals' duties only arise, according to Besson, when the primary institutions have failed or before they have set up their institutions (Besson, 2015: 257). The failure of institutions in this sense corresponds to the loss of effective normative control, and hence of jurisdiction in the polity. Individuals' duties to *back up* human rights when abuses arise are held collectively as shared duties. The question arises whether or not transnational corporations or non-governmental organisations should be regarded as bearers of duties under this category. Besson argues that the political and egalitarian dimensions of human rights tend to deny this possibility and to favour only inclusive groups, groups that endeavour to politically represent all individuals in the community, such as liberation movements or transitional governments (Besson, 2015: 258).

Besson acknowledges that responsibilities for human rights coexist closely with human rights duties to the extent that they help prevent human rights violations by human rights duty-bearers, or remedy those violations when human rights duty-bearers are unable or unwilling to fulfill their duties (Besson, 2015: 262). The differences between human rights responsibilities and human rights duties are: first, the lack of ways to specify their content and who the bearers should be, as well as how to allocate the former to the latter; secondly, even when specified and allocated, responsibilities for human rights are not directed to a rights-holder and are not correlative to a right. Besson notes that responsibilities for human rights are part and parcel of the international responsibilities for global justice that arose slowly between the 1940s and the 1970s with the adoption of international laws and institutions active in the monitoring and protection of human

rights. While states and other international or regional institutions have remained the addressees of human rights duties, since then other individuals and domestic or international institutions have been increasingly considered as concurrent bearers of responsibilities for the protection of human rights by the primary duty-bearers of those rights. Besson captures this broad concept of a responsibility for human rights as follows: (i) to hold accountable (monitor, ensure compliance); (ii) to assist or aid (promote, train; mostly through cooperation); and (iii) to intervene (as an *ultima ratio* only). Responsibilities to protect and remedy, and to respect are also included (Besson, 2015: 261).[240]

Speaking of a state's responsibility to global justice, an interesting debate would be on the right to development. However, this is out of the scope of this thesis. I would rather mention, after looking at the human rights duty-bearers and responsibility-bearers, that the debate on legal accountability of non-state actors' duties or responsibilities has been mainly conducted from a legalistic and institutional perspective (Chapter 5, p.144), referring to legal arguments and resources. Our approach in this thesis has been to make the voices of rights-holders heard. In fact, rights-holders perceive these actors as engines of social and economic development, making the former fear that additional requirements on the latter would prompt these actors to cease their activities in the region (see p. 144). Thus, the question: To what extent and under what conditions do perceptions correspond to the obligations or responsibilities of what we have termed 'complementary duty-bearers'?

Borrowing from Besson's conceptualisation of subsidiary individual bearers of duties, I would like to use the framework to articulate my understanding of complementary duty-bearers. While Besson does not see corporations or NGOs as subsidiary individual bearers of duties because of their lack of political legitimacy vis-à-vis the rights-holders, my argument stems from the fact that a link between these duty-bearers and rights-holders should be framed on both the moral and anthropological grounds of 'shared values' and 'shared interests,' as well as from a pragmatic and strategic base.

The concerned non-state actors are entities with which rights-holders share the same space (be it geographically or 'ideologically' in the sense of international NGOs or multilateral agencies, searching for solutions to the eradication of poverty, for instance), proximity or closeness, openness, responsiveness and efficiency. This privileged non-institutional social 'neighbourhood' creates a

---

[240] See, for instance, the "*responsibility to protect*" (R2P) of all states in the international community that was endorsed by the United Nations (UN) through a General Assembly Resolution in 2009 (see UNGA Resolution 63/308, The Responsibility to Protect, A/RES/63/308, 14 September 2009). Another example is the "*corporate responsibilities to respect* human rights" developed in the context of the United Nations' effort to curtail the negative impact of multinational corporations on human rights' protection, and that bear on corporations but also, concurrently albeit differently, on their states of origin (see United Nations, Guiding Principles on Business and Human Rights , 2011 & the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, 2003). Finally, the 2011 Maastricht Principles on Extra-territorial Obligations (ETO) of States refer to the "responsibilities" for human rights of other states besides the states of jurisdiction's (territorial and extraterritorial) human rights "duties", e.g. Article 29 ETO (see the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights, 2011). They echo the so-called "supporting" responsibilities of "international cooperation and assistance" under the International Covenant on Economic, Social and Cultural Rights (Article 2(1) ICESCR) that bear on all states parties to the Covenant.

moral obligation[241] of reciprocal solidarity (see the concept of 'bumuùtu' in our fieldwork): rights-holders commit to preserve the interests and the business of non-state actors; while the latter commit themselves to support rights-holders' actions that contribute to their social and economic upliftment. In other words, what legitimates rights-holders' perceptions toward non-state actors as duty-bearers is the fact that rights-holders identify in these actors an affirmed or tacit willingness to support and promote their vital interests, while in return rights-holders make a tacit or implicit pledge to preserve and work for the attainment of the non-state actors' business objectives. In this sense, a "duty well performed creates a corresponding right" (Mahatma Gandhi).

6.4. Concluding remarks

Speaking about poverty in Africa in a recent interview on Belgian online media, La Libre Afrique.be, the former Belgian Minister of Foreign Affairs and European Commissioner for Development and Humanitarian Aid, Louis Michel, made this comment,

> … On a versé des milliards sur l'Afrique, on s'est occupé d'enseignement, de santé. Très bien. Mais on n'a jamais mené des politiques pour consolider les États et les institutions. Quel est leur problème ? Ce sont des nations, des peuples, mais ce ne sont pas des États. Dans nos pays, même quand le politique est déficitaire, l'administration et les corps institutionnels continuent à faire fonctionner l'État. Il n'y a pas de vide, d'espace pour le chaos. En Afrique, oui. L'État, c'est le droit, la garantie de la liberté. Sans un État de droit, démocratique, institutionnalisé, les libertés fondamentales ne sont pas garanties. Nous devons les aider à accéder à cela. Or toute notre politique de coopération, jusqu'il y a quelques années, était purement caritative. À aucun moment, on n'a mis le paquet sur la Justice, sur la formation des juges, de la police, des enseignants. Au Congo, la moyenne d'âge des enseignants du secondaire est de 61 ans ! Au Togo, il manquera bientôt 40 000 enseignants...[242]

Indeed, development policy has been, and perhaps is still charity-based, even among donors who have allegedly adopted a rights-based approach to development. Billions of US dollars in development cooperation have been invested in health, education or infrastructure projects, with unfortunately very mixed outcomes.[243] The need for a radical shift in approach and thinking has brought us to rethink capacity development within the broad perspective of the human rights-based approach to development.

---

[241] Moral obligation to understand in the sense of Kant's categorical imperative: « *Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end*." (See Kant, *Grounding for the Metaphysics of Morals*, 1993).

[242] See Francis Van De Woestyne, « Louis Michel : "Il faut créer l'Eurafrique, une grande zone de libre-échange" », *La Libre Afrique*, 23 février 2020.

[243] While economists, such as Sachs et al (2009) , hold the view of aid as the driver for development, others argue that aid has rather led to increase poverty of the poor countries (Dambisa Moyo, 2009), and it creates problems, including corruption, dependency, limitations on exports (Moyo, 2015). It is also interesting to refer to a more old publication of Brecher and Bhagwati (1982), demonstrating what they labeled as a 'transfer paradox', meaning that an international transfer may paradoxically immiserize the recipient country or enrich the donor country.

From a human rights point de view, individuals are rights-holders that can make legitimate claims, and states and other non-state actors are duty-bearers that are responsible and can be held accountable for their acts or omissions. Therefore, a focus on rights and obligations helps to identify who is entitled to make claims and who has a duty to take action, empowering those who have legitimate claims to rights, but also those who have duties to deliver. This regulates the exercise of power and ensures that those who wield power are answerable to those who do not. In this regard, accountability, the essential principle of human rights, has the potential to empower people living in poverty and facilitate their visibility, ensuring that they are at the centre of state interventions and act not as passive beneficiaries, but as agents that can exercise their entitlements by holding accountable and responsible those who have a duty to respond to their needs.

Focusing on the capacity development of rights-holders means committing to empowering marginalised individuals and groups to become more rights conscious, and to instil in them a sense of agency that makes them organise in structures that allow them to make demands more efficiently. Capacity development could also include empowering local authorities to act as both rights-holders vis-à-vis their hierarchy and responsive duty-bearers vis-à-vis their direct rights claimants. Extending response or redress mechanisms to non-state actors, even on moral grounds, could further enhance the potential of the human rights approach to improve the effectiveness of poverty reduction efforts, and to ensure that progress is equitable and sustainable.

Developing the capacity of both rights-holders and duty-bearers means engaging each actor to commit to the task of supplying the resources necessary to fund public services and support the institution that would deliver them (for citizens/rights-holders), and to respond to popular demand for protection and public goods (for the state). This is the only way to engage in genuine sustainable development from within. Development is not possible with poor and disempowered citizens and weak state institutions. The HRBAD enables the building of a strong citizenry and strong institutions that can work together towards achieving common goals.

GENERAL CONCLUSION

Can an HRBAD, which is nurtured by capacity development, be consistent enough to support a self-enforcing state-building model? How can the HRBAD initiate and support a development model that emerges from within and that is sustainable and equitable? In trying to conclude this thesis, these questions emerge, not because we intend to develop new ideas, but keeping them in mind allows us to focus on critical issues we touched upon in this thesis, including the eradication of poverty and the fair redistribution of wealth in developing countries still facing the dire challenges of inequality and deprivation.

In most countries, local governments bear primary responsibility for ensuring rights-holders' access to water and sanitation services. For the human right to water and sanitation to move from recognition to realisation, it needs to become part of the everyday practice of local authorities (Carrad et al, 2020). Through the UNICEF *Village Assaini* Programme, the DRC has taken the option to realise its obligation to fulfill the right to water and sanitation.

Investigating how rights-holders interpret their right to water and sanitation, as well as how duty-bearers (especially local authorities) understand their obligation to fulfill that right, it becomes evident that both rights-holders and duty-bearers face challenges of 'making rights real' (Carrad et al, 2020). These challenges range from the capacity to claim rights to constraints to fulfill the obligation of local government to ensure access to water and sanitation for all.

From the original thesis hypothesis, we assumed villages that were part of the VA Programme would have become familiar, and potentially empowered, by their participation in the programme. We expected — in localising human rights terms — to find that villagers were familiar with and used the claiming and accountability language of human rights (Oré-Aguilar, 2011: 131). However, despite identifying multiple local understandings of the right to water and sanitation, our field research did not find that participation in the VA Programme led to the emergence of a human rights-based discourse, nor did we find that village residents formulated claims using the human rights framework. Despite the fact the interviewed villagers were all residents of villages in VA Programme, they did not use claiming language, nor did they tend to turn to local authorities to claim their rights.

We hypothesise one explanation for this may be that the VA Programme was designed and implemented without significant input from the villagers who were expected to play a key role in its implementation. All of the villages in which interviews were conducted were selected to be part of the VA Programme. The interviews showed that village residents were not consulted about the obstacles they faced with regards to realising their right to water and sanitation. Thus, the interventions and implementation of the VA Programme were not designed to address their specific problems. In contrast, they were expected to adapt to the VA Programme requirements. This finding confirms DESTROOPER's statement that "many interviewees see this participation in the program as a decision by the implementing partners to cut costs rather than as an empowering element" (2015: 168).

In a first analysis of local conceptions of human rights, it appeared that through the VA Programme UNICEF was far from bringing out a 'rights discourse' or creating a 'rights consciousness' which could have been the necessary ingredients to successfully engage the main development actors, namely

'rights-holders' and 'duty-bearers,' in a culture of accountability, important for a society which strives for social transformation.

Understanding the role of different local structures, including the *zones de santé* engaged with the VA Programme to advance the water and sanitation rights of communities, was vital to interpret the chain of accountability. The complexity of identifying where local accountability for implementation and monitoring of the VA Programme resides suggested the challenges villages face, should they decide to claim rights. As our research spanned significant administrative changes in the local study area, the complexity of identifying the responsible local structures was compounded.

Our analysis reveals a complex web of overlapping authorities. It was not easy to answer the question — to whom should villagers turn when they encounter problems accessing water, e.g. a broken pump? If the local actor is hard to identify or ineffectual when it comes to addressing the village's problem, or the actor attempts to shift responsibility to villagers, this undermines accountability and challenges the claim that the VA Programme is rights-based. Despite its on-paper commitment to empowering local structures to work with people to prioritise the people's needs, the field interviews make clear that this has not yet occurred. This echoes Destrooper's finding that "rights-holders often do not know precisely what the duties of the *Bureau de la Zone de Santé* or implementing partners are, and what they can do in case this is not lived up to" (2015: 147).

Looking at the local conceptions of human rights, complex, rich, diverse local understandings of human rights were identified during the field research. Our original hypothesis had been that local understandings of the right to water would have been influenced by the VA Programme, which is arguably grounded in the international human rights framework. In localising human rights terms, we expected to see villagers shift from viewing the absence of potable water sources and sanitation facilities as transgressions, to start seeing them as human rights violations and think about claims. We anticipated that local rights-holders would identify VA Programme implementers as acting for the duty-bearer, the DRC State, and thus include concepts of accountability in their rights discourse. We did not find this. What might explain this failure of the international human rights framework to penetrate? Why has the VA Programme not led to changes in local conceptions of rights or behavior change (i.e. rights claiming)? We tried to point out three explanatory factors, including the design of the VA Programme, the historical role of the DRC state, and the villagers' pragmatism, before focusing on the role of capacity development within the HRBAD.

The initial explanation relates to the VA Programme itself. The absence of a truly participatory approach in the design and implementation of the VA Programme and the lack of accountability mechanisms within the programme both likely contributed to the non-use of the human rights framework and the absence of emerging rights-based claims. Since the VA Programme does not probe local understandings of the right to water, and does not undertake any efforts to translate abstract human rights concepts to people's daily realities, it is unlikely that any localisation can take place. Local rights-holders cannot, in these circumstances, provide any input which could serve the goal of making transnational human rights norms more locally relevant; nor are their understandings of rights percolating up to inform the global discourse. This represents a missed opportunity to include the voices of the marginalised in global norm creation.

The second explanation is largely historical. Throughout the history of the DRC, the state has rarely fulfilled its role as duty-bearer. For the villagers we interviewed the idea of holding the DRC state accountable for the non-fulfillment of their right to water and sanitation has no historical precedent. De Feyter and Lumbika (2014) note that in the Kongo Central province of the DRC, the delivery of social and economic rights, such as health and education, has been the role of donors. Local schools and health centres trumpet the support of donors, which serves to reinforce the idea that these are not the responsibility of the state. With respect to water and sanitation, the launch of the VA Programme is, arguably, a positive first step towards the DRC assuming its obligations towards its citizens. However, for the village residents who were interviewed, this first step does not yet inspire them to move beyond self-reliance and towards claiming rights from the state. Historically, the state has not had the power to deliver rights, and this absence of power likely affects the non-linkage of rights and the state by the villagers interviewed.

Thirdly, the absence of human rights claiming is pragmatic. The villagers' concepts of rights reflect the recognition of power and, in the current context, claiming rights is not a logical step. Villagers have made (non-legal) claims against actors they understood were powerful and in a position to deliver what they demanded. In contrast, the practicalities (given the complexities of the local structures against whom would they launch an initial claim), cost and chance of success related to engaging in a legal claim are off-putting. When this is coupled with what they have historically received from the state, their non-engagement with the human rights framework is a logical, pragmatic decision.

This shows clearly that, despite the rhetorical commitment of UNICEF and local actors to the human right-based approach, and the international human rights framework, the global/transnational human rights discourse and practice does not yet inform the actions and perceptions of local people at the grassroots level, specifically in relation to their right to water and sanitation.

More importantly, the major argument developed in this thesis sees the missing link within the overall HRBAD implementation architecture is what we have termed capacity development. In fact, our case study has shown real limitations in operationalising the rights-based approach to development, making it difficult sometimes to really establish a clear difference with other previous development approaches. Then, we tried to address the question of how we can make capacity development a decisive characteristic or component of the rights-based approach to development for a more genuine paradigm shift from meeting 'vital needs' to claiming and protecting the rights of the poor? How can the rights-based approach to development, focusing on capacity development, really be a tool for social change or, in more concrete terms, for poverty eradication?

In committing to the concept of capacity development, this thesis suggests to carry out this enterprise by focusing on both rights-holders and duty-bearers. For the VA Programme to become more effective in advancing the right to water and sanitation, and more transformative of local rights-holders' experience of disempowerment, there is a need for it to resonate more with local reality and concepts. The analysis from our fieldwork shows that rich local concepts exist, but there is a failure to identify the actor(s) against whom this right may be claimed. This suggests the need to better understand and engage with the culturally available repertoires that can help to frame water and sanitation as rights to which all people are entitled. Exploring, with local people, how this connection might be made would be important for UNICEF and/or other implementers. For instance,

the notion of duty-bearer needs to embrace a human rights language that emphasises communal values that speak to the locals. However, for this to be successful there is a great need to fully, systematically apply the HRBAD, i.e. by ensuring capacity development on human rights for both right-holders and for duty-bearers. As Destrooper (2015) argues,

> Ideally, the central focus of a human rights approach should be on improving the dialogue between both parties, who then jointly decide on the human rights policy. It is therefore important to rethink a social contract that has to be experienced between the rights-holders (citizens) and the duty-bearers (state or non-state actors) in an empowering, inclusive, transparent and accountable manner.

Even if progress is made on claiming rights, the challenge will remain how to operationalise the right to water and sanitation in a more effective way, given the weakness of the DRC, the duty-bearer under international law. For the VA Programme to be more effective and efficient, it also needs to engage with the state's obligations vis-à-vis rights-holders, rather than focusing on the responsibility of rights-holders, as it does now. However, the weak democratic legitimacy of the DRC and its ongoing inability to respect, protect and fulfill the rights of the people, raise serious questions about the limits of the international human rights framework to respond effectively. This suggests the importance of exploring the potential of multiple duty-bearer frameworks, while recognising the inherent risks in such an approach, is appealing to those interested in advancing the human rights of people who are vulnerable and marginalised.

These changes are critical if we are to move away from the donor-sponsored development paradigm, as De Feyter and Lumbika (2014) characterise the context of the DRC, to building resilient communities, and a self-enforcing state ready to achieve development objectives with internal resources in a sustainable and equitable manner. In this way, capacity development is essential to operationalize the HRBAD, though this remains a challenging process given the resources, time and expertise it might involve.

BIBLIOGRAPHY

Accra Agenda for Action, 2008.

ACHBERGER Jessica. "Belgian Colonial Education Policy: A Poor Foundation for Stability"http://ultimatehistoryproject.com/belgian-congo.html

ALEXANDER, John M.(2004). "Capabilities, Human Rights and Moral Pluralism", in *The International Journal of Human Rights*, Volume 8/3.

ALLUTIS, C.A. et al (2013). *Review of public health capacity in the EU*. (Luxembourg: European Commission Directorate-General for Health and Consumers).

ALSDORF, D. et al. (2016). "Opportunities for hydrologic research in the Congo Basin", in *Reviews of Geophysics*, 54, pp.378-409.

ALSTON, P. & QUINN, G. (1987). "The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights", in *Human Rights Quarterly*, vol.9, no.2, pp.156-229.

AL-ZAHRAN, S. (2013). *CONGO: Between Conflicts and Human rights*, retrieved on 22 March 2017 retrieved from http://www.culturaldiplomacy.org/academy/content/pdf/participant-papers/2013-03-biec/Salam_Al_Zahran.pdf

ANGROSINO, M. (2007). *Doing ethnographic and observational research*. (London:SAGE Publications).

AN-NA'IM, Abdullahi A. (2012). "The interdisciplinarity of human rights", in Gearty, Conor & Douzinas, Costas (eds.) *The Cambridge Companion to Human Rights Law*. (Cambridge University Press), pp. 97-113

ANSTEY, R. (1966). *King Leopold's Legacy: The Congo under Belgian Rule 1908-1960*. (Oxford University Press).

ARTS, K. (Feb 2017). "Inclusive Sustainable Development: a Human Rights Perspective", in *ScienceDirect*.

BABBIE, E. (2001). *The Practice of Social Research*, 9th Edition. (Canada: Wadsworth)

BADIE, Bertrand (2000). *The Imported State: The Westernisation of the Political Order*.(Stanford, Calif: Stanford University Press), Translated by Claudi Royal.

BADIE, Bertrand (1992). *L'Etat importé: essai sur l'occidentalisation de l'ordre politique.* (Paris: Fayard).

BAKRANIA, S. & HAIDER, H. (2016).*Safety, Security and Justice: Topic Guide*. (Birmingham: GSDRC, University of Birmingham).

BANQUE MONDIALE-RDC, (2006). *Rapport sur la situation économique récente dans la province du Kongo Central: Enjeux de la modernisation d'une province à fort potentiel énergétique face à la qualité de vie de sa population*.

BAPTISTE, I. (2001). "Qualitative Data Analysis: Common Phases, Strategic Differences*,"* in *Forum of Qualitative Social Research*, vol.2, no. 3.

BARBIER, E.B. (1987). 'The concept of sustainable economic development', in *Environmental Conservation*, 14,2, pp. 101–110.

BARNETT, T. (1988). *Sociology and Development*. (London: HUTCHINSON).

BAXI, U. (2002). *The Future of Human Rights.* (New Delhi: Oxford University Press).

BAXTER, P., & JACK, S. (2008). "Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers", in *The Qualitative Report*, 13(4), 544-556.

BAYART, Jean-Francois et al (1992). *La politique par le bas en Afrique noire: contributions à une problématique de la démocratie.* (Paris: Karthala).

BECKMAN, B. (1988). "The Post-Colonial State: Crisis and Reconstruction", in *IDS Bulletin*, vol. 19, Issue 4, pp.26-34.

BELÉN, M. et al. (2015). "The Implementation of the Human Right to Water in Argentina and Colombia", in *Anuario Mexicano de Derecho Internacional*, Volume 15, Issue 1: pp. 323-352

BENEDEK, W. et al. (eds.) (2007). *Economic Globalisation and Human Rights*. (Cambridge: Cambridge University Press).

BERG, B.L. (1995). *Qualitative Research Methods for the Social Sciences*. (Boston: Allyn and Bacon).

BESSON, Samantha (2015). "The bearers of human rights' duties andresponsibilities for human rights: a quiet (r)evolution?", in *Social Philosophy & Policy Foundation*, pp. 244-268

BIGIRIMANA, S. (2016) "Sustainable Human Development: A Conceptual Model for Transdisciplinary Analysis," in *EnviroInfo2016: Environmental Informatics-Stability, Continuity, Innovation: Current Trends and Future Trends Based on 30 Years of History, Adjunct Proceedings of the 30th Edition of the EnviroInfo*, Berlin, September, 14th-16th, pp.219-223.

BILLIG, Michael (2000). 'Towards a Critique of the Critical', in *Discourse and Society* 11, no.3

BLOMMAERT, Jan (2001). 'Investigating Narrative Inequality: African Asylum-seekers' stories in Belgium', in *Discourse and Society* 12, no. 4.

BÖRZEL, Tanja A. & RISSE, Thomas (2010). "Governance without a state: can it work?", in *Regulation & Governance* 4, pp. 113–134

BRECHER, R. & BHAGWATI, J.M. (1982). "Immiserizing transfers from abroad", in *Journal of International Economics* 13, pp. 353-364

BROBERG, M. & SANO, H.-O. (2018). "Strengths and Weaknesses in Human Rights-Based Approach to International Development: An Analysis of Rights-Based Approach to Development Assistance Based on Practical Experience", in *The International Journal of Human Rights*, vol.22, no.5, p.664-680.

BROMHEAD, M.A. (2012). *Forest, trees, and woodlands in Africa: an action plan for World Bank engagement*. (Washington, DC: World Bank)

http://documents.worldbank.org/curated/en/616631468004826427/Forest-trees-and-woodlands-in-Africa-an-action-plan-for-World-Bank-engagement

BROWN, C. (2012). "Rape as a weapon of war in the Democratic Republic of the Congo", in *Torture*, 22 (1): 24-37.

BUEYA, E. (2017). *Stability in Postcolonial African State*. (Lexington Books.)

BURAWOY. M. et al. (1991). *Ethnography Unbound: Power and Resistance in the Modern Metropolis*. (California: University of California Press).

BURNS, D. et al. (1994). *The politics of decentralisation.Revitalizing local democracy*.(Houndsmill: Macmillan).

CARG, (2009). *Un regard sur la province du Bas-Congo*, Rapport du CARG. https://webgate.ec.europa.eu/.../index.cfm

CARRARD, Naomi et al (2020). "Designing Human Rights for Duty-bearers: Makingthe Human Rights to Water and Sanitation Part ofEveryday Practice at the Local Government Level", in *Water* 12, 378.

CESCR

- (2002). *General Comment No. 15, The right to water* (Twenty-ninth, 2002), U.N. Doc. E/C.12/2002/11, Para.22 &31.
- (2000). *General Comment No. 14, The right to the highest attainable standard of health* (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4, Para. 41.
- (1999). *General Comment No. 12, The right to adequate food* (Twentieth session, 1999), U.N. Doc. E.C/12/1999/5, Para. 15 &37.
- (1990). *General Comment No. 3, Nature of States parties obligations* (Fifth session, 1990), U.N. Doc. E/1991/23, Para. 9.

CHAMBERS, R. (1993). *Challenging the Professions: frontiers for rural development*. (London: Intermediate Technology Publications).

CHAPMAN, Audrey R. & CARBONETTI, Benjamin (2011). "Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights", in *Human Rights Quarterly*, Vol. 33, No. 3, pp. 682-732

CHAPMAN, J. et al, (2009). "Rights-based Development: The Challenge of Change and Power for Development NGOs", in Hickey, Samuel & Mitlin, Diana (eds.), *Rights-based Approaches to Development: Exploring the Potential and Pitfalls*. (Kumarian Press).

CHATTERJEE, C. & SHEORAN, G. (2007).*Vulnerable Groups in India*. (Mumbai: CEHAT).

CHEN, J. et al. (2016). *The Right to Education of Rural-Urban Migrant Households in Chongqing*. (University of Antwerp: Localizing Human Rights series).

CHOWDHURY, A. (2018). *The Myth of International Order: Why Weak States Persist and Alternatives to the State Fade Away*. (Oxford: Oxford University Press).

CLEP (2008). *Report of the Commission on Legal Empowerment of the Poor: Making the law work for everyone*. (New York: UNDP), vol.1 http://der.oas.org/Institutional_relations/Final%20Report_English.pdf

COBBAH, J. (1987). "African values and Human Rights Debate: An African Perspective", in *Human Rights Quarterly*, no.9, 309 - 331.

COHEN, D. & CRABTREE, B. (2006). *Qualitative Research Guidelines Project*. http://www.qualres.org/HomeInfo-3631.html

COICAUD et al. (eds.), (2003). *The Globalisation of human rights*.(New York: United Nations University Press).

COOMANS, F. et al. (2010). "Methods of Human Rights Research: A Primer", in *Human Rights Quarterly*, Vol. 32, No. 1, pp. 179-186

CORBRIDGE, S. (1987). 'Development and underdevelopment', in *Geography Review*, September, pp. 20–22.

CORNELL, Drucilla & VAN MARLE, Karin (2005). "Exploring 'ubuntu': tentative reflections", in *African Human Rights Law Journal*, 5, 195-219.

CORNWALL, A. & NYAMU-MUSEMBI, C. (2004). "Putting the 'Rights-Based Approach' to Development into Perspective", in *Third World Quarterly*, Vol. 25, No. 8, pp. 1415-1437

CRAIG, G. and MAYO, M. (eds.), (1995).*Community Empowerment* (London: Zed Books).

CRAIG, G. et al (2005). *A 21st century Voluntary and Community Sector for the Yorkshire and Humber region* (Yorkshire Futures: Leeds).

CRANSTON, M. (1973). *What are Human Right? (*New York: Taplinger).

DANIDA, (2013). *A Human Rights-Based Approach to Denmark's Development Cooperation: Guidance and Inspiration for Policy Dialogue and Programming*. (Ministry of Foreign Affairs).

De ALBUQUERQUE, C. (2014). *Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur*.http://unhabitat.org/series/realizing-the-human-rights-to-water-and-sanitation/

DE FEYTER, K. et al. (2017). *The right to water and sanitation for the urban poor in Delhi*. (University of Antwerp: Localizing Human Rights Series).

De FEYTER, K. (2017). "On the Local Relevance of Human Rights". in Chase, Anthony Tirado (ed.) *Routledge Handbook on Human Rights and the Middle East and North Africa*. (London: Routledge), pp. 406-418.

De FEYTER, K. & LUMBIKA NLANDU, R. (2014). "Skimming the Surface: Human Rights-related donor interventions in the Bas-Congo", in GREADY, P. & VANDENHOLE, W. (eds.), *Human Rights and Development in the new Millennium: Towards a Theory of Change*. (Routledge).

De FEYTER K. (2011). "Sites of rights resistance", in De Feyer K. et al. (eds.), *The Local relevance of Human Rights*. (Cambridge: Cambridge University Press), pp. 11-39.

De FEYTER, K (2007). "Localising Human Rights", in BENEDEK, W. et al. (eds.) *Economic Globalisation and Human Rights*. (Cambridge: Cambridge University Press).

De GRAAF, L. (2013). "Examining Citizen Participation: Theory and Practice." Official Bog of the Institute of Local Government Studies, University of Birmingham. https://inlogov.com/2013/07/22/citizen-theory-practice/

DEMBOUR, Marie-Bénédicte (2010). "What are human rights? Four Schools of Thought", in *Human Rights Quarterly*, vol.32, no.1, pp.1-20

De VAUS, D.A. (2001). *Research Design in Social Research*. (London: SAGE).

DESMET, E. (2014). "Analysing user's trajectories in human rights (law): a conceptual exploration", in *Human Rights & International Legal Discourse* (2), pp. 121-142.

De SOUSA SANTOS, B. (1987). "Law: A Map of Misreading. Toward a Postmodern Conception of Law", in *Journal of Law and Society* 14(3).

DESTROOPER, T. & SUNDI MBAMBI, P. (2017). "A Praxis-based understanding of new duty-bearers: Examining contextual realities in the DRC", in *The International Journal of Human Rights,* vol. 21, Issue 2, pp. 142-166.

DESTROOPER, T. (2016)."Linking discourse and practice: The HRBA in the *Village Assaini* program in the Bas-Congo", in *Human Rights Quarterly*, 38:3, pp. 787-813.

DESTROOPER, T. (2014).Presentation at the HRI Seminar (UAntwerpen), unpublished.

DESTROOPER, Tine (2015). *An Analysis of the Human Rights-Based Approach to Development: UNICEF's Role in the Villages Assainis Program in the Bas-Congo*. (University of Antwerp: Localizing Human Rights Series).

DOMINELLI, L. (2007). "Human Rights in Social Work Practice: An Invisible Part of the Social Work Curriculum?", in REICHERT, E. (ed). *Challenges in Human Rights: A Social Work Perspective*. (New York: Columbia University Press), pp. 16-43.

DOMINGO, P. & O'NEIL, T. (2014).*The Politics of Legal Empowerment: Legal mobilisation strategies and implications for development*, ODI report.

DONNELLY, J. (2013). *Universal human rights in theory and practice.* (Ithaca : Cornell University Press), 3rd ed.

DUNI et al. (2009). "Exploring a Political Approach to Rights-Based Development in North West Cameroon", in HICKEY and MITLIN (eds.) *Human rights-based Approaches to Development: Exploring the Potential and Pitfalls*. (Kumarian Press).

EDIGHEJI, O., (2005). *A democratic developmental state in Africa? A concept paper.* (Centre for Policy studies, Research report 105).

EIDE, Asbjørn (1989). "Realization of Social and Economic Rights and the Minimum Threshold Approach", in *Human Rights Law Journal*, 10(1–2), 35–51.

EIDE, Asbjørn (2000). "Universalisation of Human Rights versus Globalisation of Economic Power", in COOMANS, F. et al (eds.), *Rendering Justice to the Vulnerable: Liber Amicorum in Honor of Theo van BOVEN* (The Hague: Kluwer Law International), pp. 99–119.

ELLIOTT, J.A. (2006). *An Introduction to Sustainable Development*. (Routledge: London & New York), 3rd Ed.

ENGLEHART, Neil A. (2009). "State Capacity, State Failure, and Human Rights", in *Journal of Peace Research*, vol. 46, no. 2, 2009, pp. 163–180.

European Parliament Brief, (2017).*Understanding capacity-building/capacity development: A core concept of development policy*.

EVANS, P. (2007). "Expanding human capabilities as a strategy of economic transformation: a 21st century agenda for the developmental state", in EDIGHEJI O. (ed.), *Rethinking South Africa's Development Path: Reflections on the ANC's Policy Conference Discussion Documents*, (Special edition of Policy: issues and actors, Centre for Policy Studies, vol. 20, no. 10, p.56-61).

EWANS, M. (2002). *European Atrocity, African Catastrophe: Leopold II, the Congo Free State and its Aftermath. (N*ew York: Routledge Curzon).

EWICK, Patricia, & SILBEY, Susan,(1998).*The Common Place of Law: Stories from Everyday Life*. (Chicago: University of Chicago)

FAO, (2010), *Enhancing FAO's Practices For Supporting Capacity Development Of Member Countries*: Learning Module 1.

FELSTINER, W.L.F. et al (1980), "The Emergence and transformation of disputes: Naming, Blaming, Claiming…", in *Law & Society Review* Vol. 15, No. 3/4, Special Issue on Dispute Processing and Civil Litigation (1980 - 1981), pp. 631-654

FEMDAL, I. & SOLBJØR, M. (2018) "Equality and differences: group interaction in mixed focus groups of users and professionals discussing power", in *Society, Health & Vulnerability*, 9:1.

FLAHERTY, J. et al (2004) *Poverty: The Facts*.(London :CPAG),Fifthedition.

FORSYTHE, D.P. (2009). "Human Rights Studies: On the dangers of legalistic assumptions", in COOMANS, F. et al. (eds.), *Methods of Human Rights Research*. (Antwerp: Intersentia).

FOX, J. (2004). "Empowerment and Institutional Change: Mapping 'virtuous circles' of State-Society Interaction", in ALSOP, Ruth (ed.). *Power, Rights, and Poverty: Concepts and Connections*, A working meeting sponsored by DFID and the World Bank, March 23–24, pp.68-92.

FRANK, A.G., (1967). *Capitalism and Underdevelopment in Latin America*. (New York).

FRANK, A.G., (1978). *Development Accumulation and Underdevelopment*. (New York).

FRANKOVITS, A. (1996). "Rejoinder: The Rights Way to Development", in *Food Policy*, 21 (1): pp. 123 - 128.

FREEMAN, M. (2014). *Human rights: an interdisciplinary approach*, 2nd edition (Cambridge: Polity Press).

FREIRE, P. (1970). *Pedagogy of the Oppressed*. (London: Continuum Publishing).

FREY, F. (1970). "Cross-Cultural Survey Research in Political Science", in Holt, R. and TURNER, J. (eds.) *The methodology of comparative research*. (New York: The Free Press).

FRIEDMAN, A.L. and Miles, S. (2002). "Developing Stakeholder Theory", in *Journal of Management Studies*, vol.39, Issue 1, pp. 1-21.

FRITSVOLD, Erik D. (Fall 2009). "Legal Consciousness and Radical Environmental Activism", in *Law & Social Inquiry*, Vol. 34, No. 4, pp. 799-824

FUKUDA-PARR, S. et al (eds.)(2002). *Capacity for Development: New Solutions to Old Problems*. (London: Earthscan).

GABEL, S.G. (2016). *A Rights-Based Approach to Social Policy Analysis,* (New York: Springer).

GALIÈ, A. & FARNWORTH, C.R. (2019). "Power through: A new concept in the empowerment discourse", in *Global Food Security* 21, pp.13-17.

GARAVITO, C. A.R. & De S. SANTOS, B. (2005). *Law and Globalization from Below: Towards a Cosmopolitan Legality*. (Cambridge: Cambridge University Press).

GAURI, V. & GLOPPEN, S. (2012). "Human Rights Based Approaches to Development: Concepts, Evidence, and Policy", in *Polity*, vol.44, no.4, pp.485-503.

GAVENTA, J. (2002). *Legal and Policy Frameworks for Citizen Participation in Local Governance in East Africa: a regional report*, LogoLink.

http://siteresources.worldbank.org/INTPCENG/Resources/regional_report.pdf

GHAI, Y. (1998/9), "The critics of the Universal Declaration", in 12 *Interights Bulletin* 45, 45.

GIBSON, James L. et al. (1992). "Democratic Values and the Transformation of the Soviet Union", in *Journal of Politics*, Vol. 54, No. 2

GLEICK, P. H. (1998). "The Human Right to Water", in *Water Policy* 1(5): pp. 487–503.

GOODALE, M. & MERRY, S.E. (eds.), (2007). *The Practice of Human Rights: Tracking Law between the Global and the Local.* (Cambridge: Cambridge University Press).

GOODALE, M. (2007). 'Locating Rights, Envisioning Law between the Global and the Local', in Goodale, M. & MERRY, S.E. (eds.). *The Practice of Human Rights: Tracking Law between the Global and the Local*. (Cambridge: Cambridge University Press).

GOODALE, M. (2002). "Legal Ethnography in an Era of Globalization: The Arrival of Western Human Rights Discourse to Rural Bolivia", in Starr, J. & Goodale, M. (eds.) *Practicing Ethnography in Law: New Dialogues, Enduring Methods*. (Palgrave Macmillan).

GOODHART, M (2011) "Democratic Accountability in Global Politics: Norms, not Agents", in *The Journal of Politics*, Vol. 73, No. 1, pp. 45-60.

GRANT, Ruth W. & KEOHANE, Robert O. (2005). ''Accountability and Abuses of Power in World Politics'', in *American Political Science Review* 99 (1): pp. 29 - 43.

GREADY, P. & VANDENHOLE, W. (2014), *Human Rights and Development in the New Millennium: Towards a Theory of Change*. (Routledge: London & New York).

GREADY, P. & ENSOR, J. (eds.), (2005). *Reinventing development? Translating rights-based approaches from theory into practice*. (London: Zed Books).

GREADY, P., (2008). "Rights-based approaches to Development: what is the value-added?", in *Development in Practice*, vol. 18, no. 6, pp. 735-747.

GUSTAFSSON, Johanna (2017). *Single case studies vs. multiple case studies: A comparative study*. http://www.diva-portal.org/smash/get/diva2:1064378/FULLTEXT01.pdf

HAFNER-BURTON, E.M. et al (2008). *International Human Rights Law and the Politics of Cultural Rights.G.A. Res. 2200A (XXI).* (New York: United Nations).

HAFNER-BURTON, E.M. & KIYOTERU, T. (2007). "Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most", in *Journal of Peace Research* 44(4): pp. 407–425.

HALLE, Mark et al. (2012). *Locating Accountability: Conceptual and Categorical challenges in the literature*. (Stockholm:ENTWINED), Policy report.

HAMM, B. (2001). "A Human rights approach to development", in *Human Rights Quarterly* 1005, vol. 23: pp. 1005-1031.

HETTNE, B. (2002). 'Current trends and future options in development studies', in DESAI, V. & POTTER, R.B. (eds.), *The Companion to Development Studies*. (London: Arnold), pp. 7–11.

HICKEY & MITLIN, (2009). *Human rights-based Approaches to Development: Exploring the Potential and Pitfalls*.(Kumarian Press)

HIRSCHMAN, Albert O. (1970). *Exit, voice and loyalty: Responses to decline in firms, organizations and states*. (Cambridge: Harvard University Press).

HIRST, Paul. (1994). *Associative democracy: New forms of economic and social governance*. (Cambridge: Polity Press).

HOCHSCHILD, A. (1999). *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa*. (New York: Houghton Mifflin Company).

HODAL, K. (2017). "Congo crisis on a par with Iraq, Syria and Yemen – and getting worse by the day: UN warns that conflict, cholera and internal tumult have forced 4 million people and counting from their homes, with aid increasingly hard to deliver." https://www.theguardian.com/global-development/2017/nov/16/congo-crisis-iraq-syria-yemen-cholera-aid

HORTON, D. et al (2003). *Evaluating Capacity Development: Experiences from Research and Development Organizations around the World. The Netherlands: International Service for National Agricultural Research (ISNAR); Canada: International Development Research Centre (IDRC); the Netherlands: ACP-EU Technical Centre for Agricultural and Rural Cooperation (CETA).* (Ottawa: ISNAR, CTA, IDRC).

HOSBAWM, E. (1989). *The Age of the Empire: 1875-1914*. (New York: Vintage).

HULME, D. & TURNER, M. (1990). *Sociology and development: theories, policies and practices*. (New York: Harvester Wheatsheaf).

HUMAN RIGHTS FIRST, *The Democratic Republic of the Congo: Ravaged by conflict, human rights atrocities and impunity*. https://www.humanrightsfirst.org/wp-content/uploads/pdf/DCR_Bckgrnd(3).pdf

HUMAN RIGHTS WATCH, (2005). *Seeking Justice: The Prosecution of Sexual Violence in the Congo War*.(New York). http://www.hrw.org/en/reports/2005/03/06/seeking-justice-0

IBRAHIM, S. & ALKIRE, S. (2007). *Agency and Empowerment: A Proposal for Internationally Comparable Indicators*. (OPHI: University of Oxford), Working Paper n°4.

JACOBSEN, D. M. (2002). *Building Different Bridges Two: A Case Study of Transformative Professional Development for Student Learning With Technology*. Paper presented at AERA 2002: Validity and Value in Educational Research, the 83rd Annual Meeting of the American Educational Research Association, New Orleans, LA: April 1 - 5.

JASANOFF, Maya (2017). "With Conrad on the Congo River: What Counts as Progress? I travelled to Africa to see what has, and hasn't, changed since the author's visit over a century ago", in *The New York Times*, 18 Aug. retrieved from: https://www.nytimes.com/2017/08/18/opinion/joseph-conrad-congo-river.html

JESSICA, A. *Belgian Colonial Education Policy: A Poor Foundation for Stability*. Retrieved at http://ultimatehistoryproject.com/belgian-congo.html

KABAMBA, P. (2015). "Une nation congolaise à venir", in *Congo-Afrique*, no.492, Kinshasa.

KANT, Emmanuel (1993). *Grounding for the Metaphysics of Morals: With on a Supposed Right to Lie because of Philantropic Concerns*, translated by James W. ELLINGTON (Hackett Publishing Company, Inc.).

KAVWAHIREHI, Kasereka (2018). *Y'en a marre! Philosophie et espoir social en Afrique*. (Paris: Editions Karthala).

KENT, G. (1993/4). "Children's right to adequate nutrition", in *United Nations University Press' food and nutrition bulletin* 15: 4.

KENT, G. (2005). *Freedom from want: the human right to adequate food*. (Washington D.C.: Georgetown University Press).

KEOHANE, Robert O. (2003). ''Global Governance and Democratic Accountability'', in HELD, David & KOENIG-ARCHIBUGI, Mathias (eds.) *Taming Globalization: Frontiers of Governance*. (Cambridge: Polity), pp. 130–159.

KEOHANE, Robert O. (2006). ''Accountability in World Politics'', in *Scandinavian Political Studies* 29 (2): pp. 75–87.

KEOHANE, Robert O. & NYE, Joseph S. (2003). ''Redefining Accountability for Global Governance'', in KAHLER, Miles and LAKE, David (eds.) *Governance in a Global Economy: Political Authority in Transition*. (Princeton,NJ: Princeton University Press), pp. 386–411.

KERSSCHOT, M., KERREMANS, B. & DE BIÈVRE, D. (2020)."Principals and transceivers: regional authorities in EU trade negotiations", in*Political Research Exchange*, 2:1, pp. 1-20.

KINDORNAY, S. et al (2012). "Rights-based approaches to Development: Implications for NGOs", in *Human Rights Quarterly* (Johns Hopkins University), vol.34, no. 2, pp. 472-506.

KITZINGER, J. (1994). "The methodology of focus groups: the importance of interactions between research participants", in *Sociology of Health and Illness* 16, pp. 103–21.

KITZINGER, J. (1995). "Qualitative Research: Introducing focus groups", in*British Medical Journal*, 311, pp. 299-302.

KISER, Edgar & SACKS, Audrey (2011). "African Patrimonialism in Historical Perspective: Assessing Decentralized and Privatized Tax Administration", in *The Annals of the American Academy of Political and Social Science*, vol.636, pp.129-149

KHOSLA, Rajat (2014). Human Rights and Development: Opportunities and challenges in the area of women's and children's health. Lecture at the Human Rights for Development Course, (Gent University, July-August, (unpublished).

LAFOND, A. and BROWN, L. (2003). *A Guide to Monitoring and Evaluation of Capacity building: Interventions in the Health Sector in Developing Countries*. MEASURE Evaluation Manual Series. (Chapel Hill: Carolina Population Center).

LEBIGRE, A. (1973). "Le juge, la famille et le village: quelques exemples de droit coutumier en République Populaire du Congo", in *Journal of African Law*, 17, pp. 241-246.

LeKwango, (2015). "'village assaini' : un concept d'espoir mais sans impact réel dans le Kwango", in *LEKWANGO*. Retrieved at http://www.lekwango.com/2015/03/22/village-assaini-un-concept-despoir-mais-sans-impact-reel-dans-le-kwango/

LEVITT, P. & MERRY, S. (2009). "Vernacularization on the ground: local uses of global women's rights in Peru, China and the United States", in *Global Networks* 9, 4: pp. 441-461.

LEYS, C. (1996). *The rise and fall of development theory*. (London: J. Currey).

LI, Lianjiang (2010), "Rights consciousness and rules consciousness in contemporary China", in *The China Journal*, No. 64, pp. 47-68

LOUIS, W.R.,& STENGERS, J. (1968)*. E. D. Morel's History of the Congo Reform Movement.* (London: Clarendon).

LUNDBERG, G.A., et al. (1934). *Leisure: A Suburban Study.* (New York: Columbia University Press).

LUSTHAUS, Ch. et al. (1999). "Capacity Development: Definitions, Issues and Implications for Planning, Monitoring and Evaluation", in *Universalia Occasional Paper*, no.35, pp. 1-21.

MACK, N. et al. (2005). *Qualitative research methods: A data collector's field guide*. (Research Triangle Park, NC: Family Health International).

MAcNAUGHTON, G. and McGILL, M. (2019). "The challenge of interdisciplinarity in operationalizing the right to health", in *Health and Human Rights Journal*, vol.21, no.2

MANNING, P. (2019). "Recognising Rights and Wrongs in Practice and Politics: Human Rights Organisations and Cambodia's 'Law against the Non-Recognition of Khmer Rouge Crimes'", in *International Journal of Human Rights*, 23:25.

MARU, V. (2010). "Allies unknown: Social accountability and legal empowerment", in *Health and Human Rights in Practice*, 12(1), pp. 83-93.

http://namati.wpengine.netdna-cdn.com/wpcontent/uploads/2012/01/Allies-Unknown.pdf

MARU, V. (2010b). *Between law and society: Paralegals and the provision of primary justice services in Sierra Leone and worldwide*. (New York: Open Society Institute).

https://www.opensocietyfoundations.org/sites/default/files/between-law-and-society20100310.pdf

MASLOW, A. (1943). "A Theory of Human Motivation", in *Psychological Review* 50, pp.370-396.

MBADU N'SITU, J. (2013). *Discours de politique générale devant l'Assemblée provinciale en vue de l'investiture des ministres du gouvernement provincial*, Matadi.

McINERNEY-LANKFORD, S. (2013). "International Development Actors and Human Rights", in LANGFORD, M. et al. (eds.), *Millennium Development Goals and Human Rights: Past, Present and Future*. (Cambridge University Press: New York), pp. 160-206

McLEAN, L. & MODI, A.T. (2016) "'Empowerment of adolescent girls and young women in Kinshasa: research about girls, by girls", in *Gender & Development*, 24, pp.475-491

MEIER, B. M. et al.(2013). "Implementing an Evolving Human Right through Water and Sanitation Policy", in *Water Policy* 15: pp. 116–133.

MEIER, B.M. et al.(2018). "Monitoring the Progressive Realization of the Human Rights to Water and Sanitation: Frontier Analysis as a Basis to Enhance Human Rights Accountability", in CONCA, K. & WEINTHAL, E. (eds.) *The Oxford Handbook of Water Politics and Policy*. (Oxford: Oxford University Press), pp. 100-119

MERRY, S.E. (2006). *Human Rights and Gender Violence: Translating International Law into Local Justice.*(Chicago: University of Chicago Press).

MERRY, S.E. (2001). "Women, Violence, and the Human Rights System", in Agosin, M. (ed.) *Women, Gender, and Human Rights: A Global Perspective*. (Piscataway: Rutgers University Press), p. 83-97.

MERRY, Sally (1990). *Getting Justice and Getting Even: Legal Consciousness Among working-Class Amencans*. (Chicago: University of Chicago Press).

METZ, Th. (2011). "Ubuntu as a moral theory and human rights in South Africa", in *African Human Rights Law Journal* 11, no.2: pp. 532-559.

MICHELS, A. & DE GRAAF, L. (2017). "Examining citizen participation: localparticipatory policymaking and democracy revisited", in *Local Government Studies*, 43:6, pp. 875-881

MIHR, A. and GIBNEY, M. (eds.) (2014). *The Sage Handbook of Human Rights*. (London: Sage Publications), vol. I.

MILLER, Hannah & REDHEAD, Robin (2019). "Beyond 'rights-based approaches'? Employing a process and outcomes framework", in*The International Journal of Human Rights*, 23:5,pp. 699-718.

MILLER, H. (2010). "From 'rights-based' to 'rights-framed' approaches: a social constructionist view of human rights practice", in*The International Journal of Human Rights*, 14:6, pp. 915-931

MORGAN, P. (2006). *The concept of capacity: capacity, change and performance*. (Masstricht: European Centre for Development Policy Management).

MOTALA, Z. (1989). "Human rights in Africa: A cultural, ideological, and legal examination", in *International and Comparative Law Review*, vol. 12, pp. 373-410

MOYN, Samuel (2018). *Not Enough Human Rights in an Unequal World*. (Cambridge, Massachusetts: Harvard University Press).

MOYO, D. (2011). "Why Foreign Aid is Hurting Africa", in *The Wall Street Journal*. https://pols306.files.wordpress.com/2011/08/moyo-on-aid-in-africa-wsj.pdf

MOYO, D. (2009), *Dead Aid: Why Aid is not Working and How there is a Better way for Africa*. (Macmillan)

MUILA-MAVINGA, M. (1985). *Développement technique et société yombe (Zaïre)*, Thèse de Maîtrise, Université Laval (inédit)

MUNRO, Lauchlan (2009). "'The Human Rights-Based Approach to Programming': A Contradiction in Terms?", in HICKEY, S. and MITLIN, D. (eds.), *Rights, Wrongs andRealities: Exploring the Potential*

and Pitfalls of Rights-Based Approaches to Development (Sterling, VA: Kumarian Press), pp. 187–205.

MUTUA, M. (1995). "The Banjul Charter and the African cultural Fingerprint: An Evaluation of the language of duties", in *Virginia Journal of International Law*, 35.

NARAYAN, D. (2002). *Empowerment and Poverty Reduction*. (Washington, DC: World Bank)

NARAYAN, D. (2005). *Measuring Empowerment: Cross-Displinary Perspectives*. (Washington: The World Bank)

NDONDO, Shepherd (2014). "Human Rights: Perceptions and making the discourse functional. A case of Gokwe Central Communities", in *International Journal of Scientific and Research Publications*, vol.4, Issue 4.

NEPAD, *AU Capacity Development Framework*, https://www.nepad.org/publication/africas-capacity-development-strategic-framework

NEUMAN, W.L. (1994). *Social research methods: qualitative and quantitative approaches*. (Boston: Allyn and Bacon).

NOLAN, Aoife & DUTSCHKE, Mira, (2010)."Article 2(1) ICESCR and States Parties' Obligations: Whither the Budget?", in *European Human Rights Law Review*, Vol. 3.

NUSSBAUM, Martha C. (2000).*Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press).

NZONGOLA-NTALAJA, G. (2002). *The Congo From Leopold to Kabila: A People History.*(London: Zed Books).

NZUZI BIBAKI, (1999). *Culture noire-africaine et reflexes unculturateurs*. (Kinshasa : Baobab).

OECD, (2016). "Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All", in *Issues Brief*.

OECD DAC, (2006). *The Challenge of Capacity Development – WorkingTowards Good Practice*. (Paris: OECD).

OECD, (1996). Shaping the 21st Century: The Contribution of Development Co-operation.

OHCHR (2008).*Claiming the MDGs: A Human Rights Approach* (New York and Geneva: OHCHR).

OESTREICH, J.E. (2007). *Power and Principle. Human Rights Programming in International Organizations*. (Georgetown University Press: Washington, DC).

OHCHR (2012).*The Corporate Responsibility to respect human rights: An interpretative Guide*, https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

OLAFSEN, Monica et al (2018). "Examination of the roles and capacities of duty-bearers responsible for protecting thehuman rights to adequate food, nutritional health and wellbeing in Ugandan children's homes", in *BMC International Health and Human Rights* 18:17.

OLOKA-ONYANGO, Joseph (2000). "Africa: A New Dawn, or Retreating Horizons?", in *Buffalo Human Rights Law Review* 6, pp.39-50.

OLSEN, J.P. (2013)."The Institutional Basis of Democratic Accountability", in*West European Politics*, 36:3, pp. 447-473

OLSEN, W. (2004). "Triangulation in Social Research: Qualitative and Quantitative Methods can really be mixed", in Holborn, M. (ed.) *Developments in Sociology*. (Ormskirk: Causeway Press).

ONAZI, O. (2015). "What does citizenship require of Africans, or what do Africans require of citizenship?", in CUNHA, T. &De SOUSA SANTOS, B. (eds*.) International Colloquium Epistemologies of the South: South-South, South-North and North-South Global Learnings-Proceedings.* Centro de Estudos Sociais, pp.267-283

ONIS, Z. (1991). "The logic of the developmental state", in *Comparative Politics,* vol. 24, no. 1, pp. 109-126.

ORÉ-AGUILAR, G. (2011). "The Local relevance of Human Rights: a methodological approach", in De FEYTER, K. et al (eds.), *The Local relevance of Human Rights*. (Cambridge: Cambridge University Press), pp. 109-146

PANTAZIDOU, M. (2011).*De-constructing Marginality: Learning and Enacting a Rights Consciouness with Disabled People in London. A Study on Actor-Oriented Rights Practices and Implications for Understanding, Learning and Claiming Rights*, MA thesis, (UK: University of Sussex).

Paris Declaration on Aid Effectiveness, (2005).

PAULUS, P. B., & NIJSTAD, B. A. (2003). "Group creativity: Common themes and future directions", in PAULUS, P.B. & NIJSTAD, B.A. (eds.), *Group creativity: Innovation through collaboration*. (New York: Oxford University Press)

PERUZZOTTI, E. & SMULOVITZ, C. (2006).*Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*. (Pittsburgh, PA: University of Pittsburgh Press).

PITCHER, A. et al (2009). "Rethinking Patrimonialism and neopatrimonialism in Africa", in *African Studies Review*, vol.52, no.1, pp.125-156

POTTER, R.B. et al. (2004). *Geographies of Development*. (Harlow: Addison Wesley Longman), Second edition.

Power, M. (2018)."Modernization Theories of Development", in Callan, H. (ed.) *International Encyclopedia of Anthropology*.(Wiley Blackwell).

PRESTON, P.W. (1996). *Development theory: an introduction*. (Oxford: Blackwell).

PRIA (2013). *Institutionalizing citizen participation in urban governance*. (Policy brief).

QUICK, K.S. & BRYSON, J. (2016). "Public Participation", in ANSELL, Christopher & TORBING, Jacob (eds.), *Handbook in Theories of Governance*. (Edward Elgar Press), pp. 158-169

QUICK, Kathryn S. and FELDMAN, Martha S. (2011), "Distinguishing participation and inclusion", in *Journal of Planning Education and Research*, 31 (3), pp. 272–290.

RAO, Arati (1995). "The Politics of Gender and Culture in International Human Rights Discourse", in PETERS, J. & WOLPER, A. (eds.), *Women's rights, Human rights: International Feminist Perspectives*.(Routledge: New York/London), pp.167-175

RAGHUNATHAN, N. et al (2013). *Gestion participative des ressources naturelles dans les réserves de biosphère: l'expérience du WWF dans les réserves de Luki, Yangambi (RDC) et Dimoneka (République du Congo)*, WWF, Guide Technique.

RDC,

- (2015). *Annuaire statistique 2014*. (Kinshasa :Institut National de la Statistique, Ministère du Plan & Révolution de la Modernité.
- (2015). *Loi de programmation n° 15/04 du 28 février 2015 déterminant les modalités d'installation de nouvelles provinces.* Kinshasa.
- (2015). *Loi n° 15/015 du 25 août 2015 fixant le statut des chefs coutumiers*. Kinshasa.
- (2015). *Loi n° 15/026 du 31 décembre 2015 relative à l'eau.* Kinshasa.
- (2011). Minstère de la santé. *Programme national "Ecole et Village assainis": Atlas 2011.*
- (2010). *Enquête par Grappes à Indicateurs Multiples (MICS).*(Kinshasa :Ministère du Plan).
- (2008). *Préparation de la décentralisation dans le secteur de la santé*. Rapport final de l'atelier sur l'élaboration des Mesures transitoires. (Kinshasa : Ministère de la Santé Publique)
- (2008).*Loi n° 08/012 du 31 juillet 2008 portant principes fondamentaux relatifs à la libre administration des provinces*. Kinshasa.
- (2006). *Document de la Stratégie de croissance et de la réduction de la pauvreté* (DSCRP-RDC). Kinshasa.
- (2006).*Constitution de la République Démocratique du Congo*, du 18 Février, telle que modifiée par la loi no. 11/002 du 20 janvier 2011 portant révision de certains articles, Kinshasa.

REYNTJENS, F. (1988). "The Growing Role of Human Rights in Development Cooperation", in Van Den BULCKE, D. (ed.), *Recent Trends in International Development*. (Antwerp: College for Developing Countries), pp. 143–63

RICHARDSON, L. (2000). "Writing a method of enquiry", in DENZIN, N.K. & LINCOLN, Y.S. (eds.), *Handbook of qualitative research*. (Sage: Thousand Oaks), 2nd Ed.

ROBEYNS, I. (2010). "How can the capability approach be used to serve marginalized communities at grassroots level?", in APFFEL-MARGLIN et al. (eds.), *Interrogating Development: Insights from the Margins*.(New Delhi:Oxford University Press), pp.234-261.

ROSEVEARE, C. (2013). Rule of law and international development. (London: DFID). http://r4d.dfid.gov.uk/pdf/outputs/misc_gov/Literature_Review_RoL_DFID-GSDCHPEAKS_FINAL.pdf

ROSTOW, W. (1960).*The Stages of Economic Growth: A Non-Communist Manifesto*. (Cambridge: University Press, Cambridge).

ROTBERG, R. (2004). "The Failure and Collapse of Nation-States: Breakdown, Prevention, and Repair", in ROTBERG, R.I. (ed.) When States Fail: Causes and Consequences. (Princeton, NJ: Princeton University Press), pp. 1-50.

ROUSSOPOULOS, D. (2013). *The Ecology of the Commons: Urbanization and Participatory Demoracy*, online course, Programa Latinoamericano de Educacion a Distancia en Ciencias Sociales & Centro de Assessoria e Estudos Urbanos

ROWLANDS, J. (1997). *Questioning Empowerment*. (Oxford: Oxfam).

RUBENSTEIN, Jennifer (2007). ''Accountability in an Unequal World'', in *Journal of Politics* 69 (3): pp. 616–632.

SACHS, Jeffery et al. (2001). "The Geography of Poverty and Weather ", in *The Scientific American* 284 (3): pp.70-75

SALOMON, M.E. (2007). *Global Responsibility for Human Rights: World Poverty and the Development of International Law*. (Oxford University Press: New York).

SANO, O. et al. (2009). *The Capacity Development Results Framework: A strategic and results-oriented approach to learning for capacity development*.(World Bank).

SARAT, Austin (1977). "Studying American Legal Culture: An Assessment of Survey Evidence", in *Law and Society Review*, Vol. 11, No. 3

SATTERTHWAITE, Margaret L. (2005). "Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers", *Yale Human Rights & Development Law*, 8, 1–66.

SAWYER, I. (2017). "New D.R. Congo Electoral Calendar Faces Skepticism amid More Protests, Repression", on *Human Rights Watch*. https://www.hrw.org/blog-feed/democratic-republic-congo-crisis

SEN, Amartya (1999). *Development as Freedom*. (Oxford: Oxford University Press).

SEN, Amartya (2000). "Capacity and Well-Being", in CORBRIDGE, Stuart (ed.), *Development: Critical Conception in Social Sciences*.(New York: Routledge), pp. 3–28.

SEN, Rukmini (2020). "Securing Gender Justice amidst Cultural and Religious Pluralism: Indian Experience" (Lecture, Winter School on Law, Justice and Sustainable Development, National Law University, Delhi, January 2020), unpublished.

SEPULVADA, M. Magdalena (2002). *The Nature of the obligations under the International Covenant on Economic, Social and Cultural Rights*, (Intersentia: Antwerp).

SEPULVEDA, M. (2014). "From Underserving Poor to Right-holder: A Human Rights Perspective on Social Protection Systems", in *Development Pathways*, Working Paper.

SHUE, Henry (1980), *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton: Princeton University Press).

SILBEY, Susan. (2005). "After Legal Consciousness", in *Annual Review of Law and Social Science* 1:323-68.

SIMMONS, B. A. & NIELSEN, R.A. (2014). "Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?", in *International Studies Quarterly* 1: 12.

SIMMONS, B.A. (2009). *Mobilizing for Human Rights: International Law in Domestic Politics*. (New York: Cambridge University Press).

SIMPSON, H. (2015). *International Human Rights in Context: Law and Politics*. (London: Koros Press Limited).

SKOGLY, Sigrun (2006).*Beyond International Borders: States' Human Rights Obligations in International Cooperation*. (Antwerp: Intersentia).

SØRENSEN, E. (1997). "Democracy and Empowerment", in *Public Administration*, vol.75, pp.553-567

STOHR, W.B. & TAYLOR, D.R.F. (1981).*Development from Above or Below?The Dialectics of Regional Planning Developing Countries*.(Chichester: Wiley).

SUNDI MBAMBI, P. (2017). "Le droit à l'eau potable en milieu rural : le cas du programme 'village assaini' dans le Bas-Fleuve", in *Congo-Afrique*, n°. 515.

SDGs, (2019). *Sustainable Development Goals Report* (https://unstats.un.org/sdgs/report/2019/)

TAMAUAHA, B.Z. et al (eds.). (2012). *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*. (Cambridge: Cambridge University Press).

TANGEN, Ole Jr. (2016).*Where is the DR Congo after a decade of democracy?* http://www.dw.com/en/where-is-the-dr-congo-after-a-decade-of-democracy/a-36529716

THAMEEMUL ANSARI, S.A. (2014). "Freedom and Postcolonial Reality: A Critical Reading of the Writings of H.B. Stowe and Toni Morrison", in *International Journal of English Language and Humanities* (IJELLH), vol. II, Issue I.

The Carter Center, (2001). *Presidential and Legislative Elections in the DRC*, Final report. https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/drc-112811-elections-final-rpt.pdf

THOMAS, A. (2000). 'Meanings and views of development', in ALLEN, T. & THOMAS, A. (eds.) *Poverty and Development into the Twenty-First Century*. (Oxford:Oxford University Press).

TITECA, K. & De Herdt, T. (2019).*Negotiating Public Services in the Congo: State, Society and Governance. (*London: Zed Books).

TOPAL, Julien (2013).*Conceptualisation Corporate Responsabilities: Agency, Reciprocity and the Constitutive Role of Law*. (Florence: European Universty Institute), PhD Thesis.

UBELS, J. et al (2010). *Capacity Development in Practice*. (London: Earthscan).

ULLEBERG, I. (2009). *The role and impact of NGOs in capacity development: from replacing the State to reinvigorating education* (Paris: International Institute for Educational Planning).

UN HRC (UN Human Rights Council),

- (2015). *Situation of human rights and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo*, Annual report of the United Nations High Commissioner", Thirtieth session. Agenda items 2 and 10, UNDOC A/HRC/30/32
- (2014). *The Human Right to Safe Drinking Water and Sanitation*. A/HR/RES/27/7,(Geneva: United Nations).
- (2013). *The Human Right to Safe Drinking Water and Sanitation*. A/HR/RES/24/18, (Geneva: United Nations).
- (2011). *Human Rights and Access to Safe Drinking Water and Sanitation*. A/HRC/RES/16/2, (Geneva: United Nations).
- (2010). *Human Rights and Access to Safe Drinking Water and Sanitation*. A/HRC/RES/15/9, (Geneva: United Nations).
- (2008). *Human Rights and Access to Safe Drinking Water and Sanitation*. A/HRC/RES/7/22, (Geneva: United Nations).
- (2006). *Human Rights and Access to Water*. Decision 2/104.

UN OHCHR (UN Office of the High Commissioner for Human Rights),

- (2009).*Human Rights Council Annual report on the situation of human rights and the activities of her Office in the DRC*, April. Geneva.

- (2007).*Report of the United Nations High Commissioner for Human Rights on the Scope and Content of the Relevant Human Rights Obligations Related to Equitable Access to Safe Drinking Water and Sanitation under International Human Rights Instruments*.(Geneva/ New York: United Nations).

UN

- (2003). *The Human Rights–Based Approach to Development Cooperation. Towards a Common Understanding among UN Agencies*. (Interagency Workshop on a Human Rights–Based Approach).
- (2011a). *Progress of the world's women 2011-2012: In pursuit of justice*. (New York: UN Women). http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf

UN-DESA, (2019).*Monthly Briefing on the World Economic Situation and Prospects*, no.131

UNDP,

- (2009). *Capacity Development: A UNDP Primer*.
- (2008). *Capacity Development: Empowering People and Institutions*, Annual Report.
- (2006). Applying a human rights-based approach to development cooperation and programming: A UNDP capacity development resource. (Geneva: Capacity Development Group, Bureau for Development Policy).

- (1998). *Capacity Assessment and Development in a Systems and Strategic Management Context.*
- (1995). *Gender and Human Development.*(New York: Oxford University Press)
- (1993). *Human Development Report* (Oxford: Oxford University Press).
- (1993). *Rethinking Technical Cooperation: Reforms for Capacity-Building in Africa.*

UNEP, (2011).*Water Issues in the Democratic Republic of Congo: Challenges and Opportunities.*Technical report, Nairobi.

UNGA,

- (2015a).*The Human Rights to Safe Drinking Water and Sanitation.*Resolution.A/70/169.(New York: United Nations).

- (2015b).*UN Agenda on Sustainable Development Goals.*(New York: Sustainable Development) http://www.un.org/sustainabledevelopment/

- (2015c).*Transforming our world: the 2030 Agenda for Sustainable Development.*(New York: United Nations).

- (2013).*The Human Right to Safe Drinking Water and Sanitation.*Resolution.A/68/157.(New York:United Nations).

- (2010). *Resolution on Human Right to Water and Sanitation.*Resolution.A/64/292." (New York: United Nations).

- (1989). *Convention on the Rights of the Child*. 1577 U.N.T.S. 3. (New York: United Nations).

- (1986). *Declaration on the Right to Development*. GA Res. 41/128. (New York: United Nations).

- (1979).*Convention on the Elimination of All Forms of Discrimination against Women.*1249 U.N.T.S. 13. (New York: United Nations).

- (1966). *International Covenant on Economic, Social and Cultural Rights*. G.A. Res. 2200A (XXI). (New York: United Nations).

UNICEF,

- (2012). *Global Evaluation of the Application of the Human Rights-based approach to UNICEF Programming* (New York), Final report, vol. I.
- (1998). *Guidelines for the Human Rights-Based Programming Approach. Executive Directive*, CF/EXD 1998-04.

United Nations Security Council, (2003). *Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, Doc. S/2003/1027.

USAID, (2010). *Human and Institutional Capacity Development Handbook: A USAID Model for Sustainable Performance Improvement*.

UVIN, P. (2004). *Human Rights and Development*. (Bloomfield: Kumarian).

Van De WOESTYNE, Francis (2020). « Louis Michel : "Il faut créer l'Eurafrique, une grande zone de libre-échange"», *La Libre Afrique*, (23 février).

Van NES, Fenna et al (2010). "Language differences in qualitative research: is meaning lost in translation?", in *European Journal of Ageing*, 7 (4): 313-316.

VANDENBOGAERDE, A. (2015). *The Human Rights Council from Below.A Case Study of the Declaration on the Rights of Peasants.*(University of AntwerpLocalising: Human Rights Series).

VANDENHOLE, Wouter (2020). "Planet and People: Making Human Rights Distributive by Design", in (Forthcoming) EGAN, S. et al. (eds.), *Human Rights, Poverty and Social Justice*. (Cheltenham: Elgar).

VANDENHOLE, W. & GREADY, P. (2014). "Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective", in *Nordic Journal of Human Rights*, Vol. 32, No. 4, 291–311

VANDENHOLE, W. (2008). "Editorial Introduction: The interplay between human rights law and development law; potential, ambiguities and tensions", in *Human Rights and International Legal Discourse*, 3, pp. 3-16.

VANSINA, J. (2010). *Being Colonized: The Kuba Experience in Rural Congo, 1880-1960*. (Madison, Wisconsin: University of Wisconsin Press).

VANSINA, J. (1994). *Living With Africa*. (Madison, Wisconsin: The University of Wisconsin Press).

VENNER, Mary (2015). "The concept of 'capacity' in development assistance: new paradigm or more of the same?", in*Global Change, Peace & Security*, 27:1, pp. 85-96

VENNER, M. (2014). "Capacity Development: old wine in new bottles?", Paper presented to the Sixth Oceanic Conference on International Studies, University of Melbourne, 9-11 July.

VERMA, Sh. (2005). "Justiciability of Economic Social and Cultural Rights: Relevant Case Law", in*The International Council on Human Rights Policy*. (Review Meeting, Geneva 15 March). http://www.ichrp.org/files/papers/96/108

VERSCHRAEGEN, Gert (2011). "Hybrid Constitutionalism, Fundamental Rights and the State: A Response to Gunther Teubner", in *Rechtsfilosofie & Rechtstheorie* 40: 3, pp. 216-229.

WASBY, Stephen L. (1992). "History of the Court: Rights Consciousness in Contemporary Society", in Hall, Kermit L. et al (eds.), *The Oxford Companion to the Supreme Court of the United States* (Oxford: Oxford University Press)

WaSH-UNICEF's Division for Water, Sanitation and Hygiene in the DRC,

- (2013a) *Le processus pas-à-pas du village assaini*, Kinshasa-RDC.
- (2013b) *Le comité de village: un comité dynamique et à l'écoute, la clé de la réussite*, Kinshasa-RDC.

- (2013c) *Protéger la source, transporter et conserver l'eau pour rester en bonne santé : une responsabilité pour tous*, Kinshasa-RDC
- (2013d) *Entretenir la pompe: un engagement de toute la communauté*, Kinshasa-RDC.
- (2013e) *Chacun ses moyens, chacun sa latrine*, Kinshasa-RDC
- (2013f) *Recherche-action: revision de l'approche participative du programme village assaini*, Kinshasa-RDC
- (2013g) Rapport final de lEnquête par grappes à indicateurs multiples (ECRIS) réalisée dans le cadre du programme national Ecole et Village assainis en République Démocratique du Congo, Kinshasa-RDC
- (2013h) *Les acteurs du programme village assaini*, Kinshasa-RDC
- (2014a) *Certification 'village assini': normes à atteindre et indicateurs des résultats*, Kinshasa-RDC
- (2014b) *Guide du Facilitateur: Méthodes participatives pour la mise en oeuvre du processus pas-à-pas 'village assini'*, Part.I & II, Kinshasa-RDC

WEBER, Max (1968). *Economy and Society*. (Berkeley: University of California Press).

WEBSTER, A. (1984). *Introduction to the sociology of development*. (Houndmills, Basingstoke: Macmillan Education).

WEISS.R. (1994). *Learning from strangers: the Art and Method of Qualitative Interview Studies*. (New York: Free Press).

WINKS, B.E. (2011). "A covenant of compassion: African humanism and the rights of solidarity in the African Charter on Human and Peoples' Rights", in *African Human Rights Law Journal*, 2.

WMUINI LUNKAYILAKIO, S., SNOEKS, J. and VREVEN, E. (2013).*Towards a better knowledge of the Shiloango Basin (Lower Guinea)*.Fifth International Conference of the Pan African Fish and Fisheries Association (PAFFA5).

World Bank,

- (2019). *Ending Poverty: Investing in Opportunity*. Annual Report
- (2017). *Wash poor in a water-rich country: a diagnostic of water, sanitation, hygiene, and poverty in the Democratic Republic of Congo*. WASH Poverty Diagnostic. Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/311481501660417432/Wash-poor-in-a-water-rich-country-a-diagnostic-of-water-sanitation-hygiene-and-poverty-in-the-Democratic-Republic-of-Congo
- (2001). *New pathways to social development* (Washington DC: International Bank for Reconstruction and Development).
- *The World Bank in DRC, Country Overview*. http://www.worldbank.org/en/country/drc

World Development Report (2000/2001). *Attacking Poverty.* (World Bank: Oxford University Press)

ZWART, T. (2012) "Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach", in *Human Rights Quarterly* 34: 2, pp. 546-569

TABLE OF ANNEXES

ANNEX 1: LE DROIT A L'EAU POTABLE EN MILIEU RURAL: LE CAS DU PROGRAMME 'VILLAGE ASSAINI' DANS LE BAS-FLEUVE

Résumé : L'émergence, ces dernières décennies, du droit à l'eau à l'échelle globale, l'imposition du langage des droits dans le domaine du développement et, plus particulièrement, l'intérêt grandissant pour l'approche par les droits de l'homme ('human rights-based approach) dans les programmes de développement suscitent un regain d'intérêt à explorer comment ces nouvelles approches ainsi que les dynamiques qu'elles génèrent sont susceptibles d'améliorer la qualité et la durabilité des projets et programmes de développement, surtout dans les milieux marqués par de fortes fractures socio-économiques, en l'occurrence les milieux ruraux dans les pays en développement.

Le processus de localisation des droits de l'homme est un mouvement à double sens, qui va de bas en haut et de haut en bas, dans l'objectif d'autofécondation du discours des droits de l'homme. Même s'il n'y a eu aucun effort du côté de l'UNICEF de comprendre les conceptions locales des droits de l'homme dans le contexte du programme 'village assaini', notre fieldwork a révélé qu'il y a des éléments pertinents dans la compréhension locale du droit à l'eau qui auraient pu permettre à l'UNICEF de planifier ses interventions avec plus de pertinence en intégrant ces réalités dans sa programmation. Ceci donnerait plus de chance d'appropriation du programme par les détenteurs des droits et répondrait avec plus d'acuité aux attentes locales.

CONGO-AFRIQUE

ECONOMIE-POLITIQUE-VIE SOCIALE-CULTURE

L'emploi en RD Congo et en Afrique, un défi cauchemardesque pour les jeunes

Une éthique du travail : critique de la précarisation et culte de l'excellence comme condition du progrès africain

Alternatives pour des cultures africaines de développement

Le droit à l'eau potable en milieu rural
Le cas du programme « village assaini » dans le Bas-fleuve (RDC)

Le travail informel en milieu universitaire congolais (Kinshasa)
Quel modèle pour les futurs dirigeants ?

La place de la diversité culturelle dans une organisation et son impact sur les pratiques managériales
Cas de la cité d'Idiofa en RD Congo

Basic Needs Basket (BNB)
Avril 2017

Afrique-Actualités
Avril 2017

NUMÉRO **515** ● MAI 2017

LE DROIT À L'EAU POTABLE EN MILIEU RURAL :
LE CAS DU PROGRAMME 'VILLAGE ASSAINI'
DANS LE BAS-FLEUVE*

Introduction

Pascal SUNDI
Mbambi, Doctorant
- Faculté des sciences
sociales
Université d'Anvers
Centre des droits
de l'homme de
l'Université Kongo
Pascal.Sundi@
uantwerpen.be ;
pascalsundy@gmail.
com

* Ce texte est une ver-
sion révisée d'un expo-
sé que nous avons fait
lors d'une conférence
internationale sur les
droits de l'homme à
l'université de Gand, en
décembre 2015, sous le
titre « Local conceptions
of human rights: what
relevance for disenfran-
chised communities wit-
hin the UNICEF 'Village
Assaini' Programme in
Kongo Central, DRC? »

L'émergence, ces dernières décennies, du droit à l'eau à l'échelle globale, l'imposition du langage des droits dans le domaine du développement et, plus particulièrement, l'intérêt grandissant pour l'approche par les droits de l'homme (*human rights-based approach*) dans les programmes de développement[1] suscitent un regain d'intérêt à explorer comment ces nouvelles approches ainsi que les dynamiques qu'elles génèrent sont susceptibles d'améliorer la qualité et la durabilité des projets et programmes de développement, surtout dans les milieux marqués par de fortes fractures socio-économiques, en l'occurrence les milieux ruraux dans les pays en développement.

C'est dans ce contexte qu'il faut circonscrire l'étude que nous menons, depuis deux ans déjà, sur la « localisation des droits de l'homme » en RDC, en collaboration avec le 'Groupe de Recherche Droit et Développement' (*Law and Development Research Group*) de l'Université d'Anvers.[2] Cette étude qui s'appuie davantage sur des recherches

---

1 C. NYAMU-MUSEMBI & A. CORNWALL, *What is the Rights Based Approach All About ? Perspectives from International Development Agencies*. Brighton : Institute of development studies, 2004 ; M. DARROW & A. TOMAS, " Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation", in *Human Rights Quarterly*, 27, 471-538, 2005; Sano, "Does human rights-based development make a difference ?" in SALOMON, TOSTENSEN and VANDENHOLE (eds), *Casting the net wider. Human Rights, Development and New Duty-Bearers*, 2007.

2 Ce projet interuniversitaire sur la 'localisation des droits de l'homme' se passe aussi bien en Chine, en Inde qu'en RDC, en partenariat avec certaines institutions universitaires notamment l'université Kongo (Province du Kongo Central, RDC), le 'National Law University (Delhi, Inde) et le 'Chongqing University' (Chine). L'objectif principal de ce projet est d'investiguer si les droits de l'homme définis au niveau global offrent une réelle protection aux groupes ou communautés marginalisées et vulnérables qui y recourent dans l'espoir d'améliorer leurs conditions de vie.

anthropologiques et sociologiques, entend se focaliser sur les perceptions locales des droits de l'homme, dans le Bas-Fleuve, notamment le droit à l'eau et à l'assainissement, à travers le Programme gouvernemental « village assaini » (VA),[3] qui bénéficie de l'appui technique et financier de l'UNICEF.

Toute la théorie sur la localisation des droits de l'homme se fonde sur, d'une part, la relation entre les normes universelles des droits de l'homme et leurs conceptions locales; et, d'autre part, l'idée que les interactions entre ces instances, c'est-à-dire le 'global' et le 'local', devraient avoir un impact dans le changement social au niveau des communautés marginalisées.[4]

Il est important, d'entrée, d'établir une nette distinction entre la localisation des droits et la domestication des droits. Alors que la domestication[5] renvoie à l'exigence pour un État signataire d'une convention internationale des droits de l'homme[6] de le voir intégrer ou incorporer les dispositions pertinentes de cette convention dans sa législation interne (son arsenal juridique interne), la localisation des droits humains va au-delà de cette simple 'internalisation' de ces normes internationales pour davantage examiner comment ces dernières sont adaptées, contextualisées - c'est-à-dire comment elles servent les besoins locaux en répondant aux attentes locales des communautés qui y recourent.

Il s'agit dans ce processus d'explorer comment les règles universelles des droits de l'homme deviennent utiles et pertinentes aux communautés locales (*grassroots*) qui s'en servent pour transformer les situations d'injustice, d'inégalité, de discrimination, de marginalisation ou d'oppression dans lesquelles elles se trouvent. Plus précisément, il s'agit d'analyser comment le droit ou les droits de l'homme permettent de poser la question de justice sociale et deviennent ou peuvent devenir une 'modalité de l'action collective',[7] un instrument d'émancipation ou d'autonomisation (*empowerment*) pour les populations les plus marginalisées, vulnérables et défavorisées de la société qui y recourent.

Deux courants font école sur la localisation des droits de l'homme. Le premier, représenté par Sally Merry, est enraciné dans les recherches

---

3 Pour répondre aux défis d'accès à l'eau potable, l'hygiène et l'assainissement et améliorer les conditions sanitaires des zones les plus vulnérables, le gouvernement de la RDC a mis en place depuis 2006 le Programme « Village Assaini», avec le soutien de ses partenaires (en particulier l'UNICEF et ses équipes WaSH, Water - Sanitation and Hygien). Une extension aux écoles, via le Programme « Ecole Assainie », est intervenue en 2008.

4 Tine DESTROOPER, *An Analysis of Human Rights-Based Approach to Development: UNICEF's role in the Villages Assainis Program in the Bas-Congo*, Localizing Human Rights Working Paper Series no. 2 ed. (Antwerp 2015).

5 On peut lire, sur cette question, l'article de Bonita MEYERSFELD, « Domesticating International Standards : The Direction of International Human Rights Law in South Africa », texte disponible online : http://www.constitutionalcourtreview.co.za/wp-content/uploads/2015/08/Domesticating-international-standards.pdf

6 Par exemple la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (1979) ou celle relative aux droits de l'enfant (1989).

7 Julie AUBRIOT, *Usages militants du droit à l'eau en Afrique du Sud: du projet Gcin'Amanzi à l'affaire Mazibuko*, thèse de doctorat, université Paris-Est, 2012.

en anthropologie du droit. Son principal intérêt, c'est de voir comment les normes transnationales des droits de l'homme sont comprises par les populations locales. De ce point de vue, pour que les normes des droits de l'homme soient efficaces, elles doivent être traduites en termes locaux et situées dans les contextes locaux de pouvoir et de sens (*local context of power and meaning*). Ceci signifie que les droits de l'homme doivent être formulés en termes *vernaculaires* parce que c'est seulement dans ces conditions-là que ces normes ont la chance d'être porteuses de transformation d'une manière qui soit localement pertinente. Sally Merry qualifie ce processus de 'vernacularisation',[8] c'est-à-dire *contextualisation*, *adaptation* ou *indigénisation* des droits de l'homme. Dans cette vernacularisation, les groupes ou communautés marginalisées, défavorisées ou vulnérables ont la possibilité d'utiliser les idées, les valeurs ou les normes des droits de l'homme pour les adapter à leur contexte local.

Le second courant, représenté principalement par De Feyter,[9] conçoit la localisation des droits de l'homme dans le contexte de la 'mondialisation économique'[10] comme une approche *bottom-up* (de bas en haut), où les perceptions et les actions des citoyens ordinaires à revendiquer leurs droits commencent à 'informer' les normes universelles des droits de l'homme, en termes à la fois d'interprétation et d'élaboration des normes des droits de l'homme.[11] La localisation est donc, pour De Feyter, un processus à travers lequel les besoins locaux des droits de l'homme 'informent' tout aussi bien l'interprétation, l'élaboration des normes des droits de l'homme que leur développement à tous les niveaux, depuis le niveau local jusqu'au niveau global.[12]

La différence entre les deux courants est que le dernier insiste sur la bidirectionnalité[13] de ce processus ; d'abord, du *global* vers le *local* et, ensuite, du *local* vers le *global*.[14] Dans le premier mouvement (*top-down approach*), ce qui est en jeu c'est à la fois cette *domestication* et cette *contextualisation* ou *appropriation*. Il s'agit ici de rendre les normes

---

8   P. LEVITT & S. MERRY, "Vernacularization on the ground: local uses of global women's rights in Peru, China and the United States", *Global Networks* 9, 441, 2000.
9   Voir Koen De FEYTER, 'Localising Human Rights', in W. BENEDEK, K. De FEYTER and F. MARRELLA (eds.), *Economic Globalisation and Human Rights* (Cambridge: Cambridge University Press, 2007); K. De FEYTER, "Sites of rights resistance", in K. De FEYTER, S. PARMENTER, C. TIMMERMAN & G. ULRICH (eds.), *The Local relevance of Human Rights*, Cambridge University Press, pp. 11-39.
10   Koen De FEYTER, 'Localising Human Rights'; voir aussi Mark GOODALE, 'Legal Ethnography in an Era of Globalization: The Arrival of Western Human Rights Discourse to Rural Bolivia', in June STARR and Mark GOODALE (eds.), *Practicing Ethnography in Law: New Dialogues, Enduring Methods.* New York and Basingstoke: Palgrave Macmillan, 2002.
11   Koen De Feyter, "Localizing Human Rights", p. 76-7.
12   Id.
13   Eva BREMS présente cette 'bidirectionalité' de la localisation des droit de l'homme en termes d''universalité inclusive' (*inclusive universality*). Cf. E. Brems, *Human Rights : Universality and Diversity*, Martinus Nijhoff, 2001.
14   Gaby ORÉ AGUILAR, "The Local relevance of Human Rights: a methodological approach", in K. De FEYTER, S. PARMENTER, C. TIMMERMAN & G. ULRICH (eds.), *op. cit.*, p. 112.

universelles des droits de l'homme accessibles aux populations locales, dans le langage qu'elles comprennent ; il s'agit aussi de traduire le droit international des droits de l'homme et les normes abstraites des traités dans les expressions (réalités) locales concrètes.

Dans le second mouvement (*bottom-up approach*), on recherche à développer davantage le droit et la pratique des droits de l'homme en prenant en compte les contributions locales et dans le sens qui améliore leur efficacité au niveau local.[15]

Fig. 1. Le processus de localisation des droits de l'homme[16]
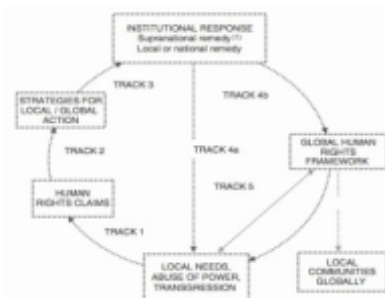
Source : Gaby Oré Aguilar, The local relevance of human rights: a methodological approach pp. 109-146 (p. 131).

(i)Regional court, UN monitoring body, decisions by international organisations, universal juridiction judgments.

La théorie de la localisation des droits de l'homme veut donc, dans un sens, répondre à un souci fondamental : combler le 'gap' dans le débat qui a opposé ce qu'on a appelé d'une part *l'universalisme* des droits de l'homme et, d'autre part, le *relativisme* culturel. Le premier courant affirme l'universalité des droits de l'homme, dans le sens que les droits de l'homme doivent s'appliquer en tout lieu et à tout moment de la même manière sans attention aux particularités culturelles. Le relativisme culturel, par contre, invite à prendre en compte les différences culturelles lorsqu'on parle des droits de l'homme. L'homme dont on parle n'est pas un être abstrait, mais un être situé dans un contexte social et culturel bien déterminé.

Ainsi, à travers la théorie de la localisation des droits humains, on veut réaffirmer que ces droits sont bel et bien universels, mais que cet universalisme ne peut être le reflet hégémonique d'une culture dominante (en

---

15 K. De FEYTER, 'Sites of rights resistance'.

16 Oré Aguilar, art. cit., p. 131, propose un schéma (Fig. 1) qui permet de mieux appréhender le processus de localisation des droits de l'homme en partant des expériences locales de fragilité et de pauvreté au sein d'une communauté (track/volet 1). A partir de ces expériences, on peut formuler, grâce à un réseau d'acteurs (y compris la communauté locale elle-même) qui utilisent le cadre universel des droits humains, des revendications en termes des droits de l'homme et à déployer des actions à différents niveaux et espaces politiques (volet 2). Ces actions visent ou ciblent une réponse institutionnelle à travers laquelle sont testées l'efficacité et la pertinence des droits de l'homme à répondre à ces revendications locales (volet 3). Les réponses institutionnelles (par exemple, jugements de tribunal) à ces revendications locales sont en passe de devenir désormais des références pour l'interprétation et l'élaboration futures des normes des droits de l'homme (volet 4). Ainsi, les communautés locales deviennent une ressource dans l'amélioration de l'efficacité et de la justesse de la protection des droits de l'homme dans ces communautés et d'autres communautés locales (volet 5).

l'occurrence la culture occidentale), mais un universalisme qui se nourrit des apports et des expériences de toutes les cultures humaines – parce que justement tout peuple a des valeurs qui peuvent devenir des contributions essentielles à la civilisation humaine universelle.[17]

I. Comment la localisation des droits de l'homme peut-elle servir de théorie explicative au droit à l'eau potable dans le contexte du Bas-Fleuve ?

a. Le contexte

Pour tester cette théorie de la localisation des droits de l'homme, nous avons choisi de nous pencher sur le droit à l'eau potable en milieu rural, dans le district sanitaire du Bas-Fleuve - dans le contexte du Programme 'village assaini' - qui comprend les zones de santé d'Inga, Kangu, Kinkonzi, Kizu, Kuimba, Lukula, Seke Banza, Tshela et Vaku.

Figure 2 : Carte de la Province du Kongo Central (ex-province du Bas-Congo)
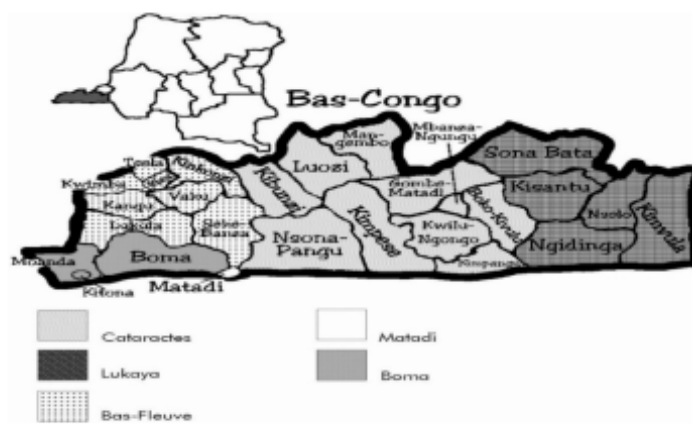
Le choix de ce cadre a été motivé notamment par le fait que l'UNICEF, partenaire technique et financier du gouvernement congolais dans le cadre de ce programme, a depuis 2003[18] – comme d'autres agences onusiennes – souscrit à mettre en œuvre ses projets et programmes de développement sous le paradigme de l'approche par les droits humains.[19] La Directive 98-04 de l'UNICEF stipule que toutes les interventions directes de l'UNICEF ainsi que celles des partenaires qu'elle appuie devraient être guidées par l'approche par les droits humains (*approche basée sur les droits*).[20]

---

17 Voir John DONNELLY, *Universal Human Rights in Theory and Practice*, Ithaca: Cornell University Press, 2003.

18 United Nations, *The Human Rights–Based Approach to Development Cooperation. Towards a Common Understanding among UN Agencies. Interagency Workshop on a Human Rights–Based Approach* (2003), communément appelé 'The UN Common Understanding'.

19 The UN Common Understanding.

20 UNICEF, *Guidelines for Human Rights-Based Programming. Executive Directive 1998-04* (1998).

En théorie, ceci voudrait dire que les interventions dans le contexte du Programme EVA devraient suivre les principes de l'approche par les droits humains, tels que définis dans les directives des Nations Unies de 2003 (UN *Common Understanding Guidelines*). Ce qui signifie que toutes les interventions devraient être structurées dans le langage des droits de l'homme, en exigeant la contribution et la *participation* des 'détenteurs des droits' (*rights-holders*) à toutes les étapes du processus, en insistant sur la *redevabilité* et la *responsabilité* des 'débiteurs d'obligations' (*duty-bearers*) tout en combinant les stratégies *bottom-up* et *top-down*.[21]

En choisissant ainsi ce cadre, notre attente était de rencontrer dans ce programme le contexte idéal qui nous permettrait d'analyser avec pertinence le processus de localisation du droit à l'eau potable dans ce milieu, à la lumière de l'approche par les droits de l'homme.

b. Contre toute attente

Dès les premiers instants de nos contacts avec différentes parties prenantes dans ce programme, il devenait évident que le programme était loin d'être mis en œuvre selon l'approche par les droits humains. A la place, l'UNICEF a plutôt privilégié ce que Destrooper[22] appelle 'une variante allégée' de l'approche par les droits humains, sous la forme de *l'approche décisionnelle participative et communautaire*, définie comme une stratégie permettant aux membres de la communauté de poser des choix pour le changement et les traduire dans les actions concrètes.[23] L'objectif de cette approche est de soutenir le droit de tous, en particulier des plus vulnérables, à accéder à une eau potable et à l'assainissement, tout en insistant sur la responsabilité de la communauté dans sa planification, sa mise en œuvre, son suivi et son évaluation.[24] L'approche vise également à renforcer les capacités des acteurs-clés des niveaux national et provincial en vue de consolider les structures locales et d'augmenter leurs capacités de réponse à la demande des communautés.

A l'analyse, cette *approche décisionnelle participative et communautaire* semble, dans la pratique, perpétuer une conception du développement compris comme une sorte d'assistance aux communautés dans les besoins en réduisant ses bénéficiaires à des 'récipiendaires passifs' des 'biens' (*commodities*) et des services.[25] Pourtant, l'approche par les droits, quant à elle, place les populations comme les acteurs-clés de leur propre développement. C'est donc un cadre conceptuel de développement dont la base normative est constituée par les règles internationales définies dans ce domaine, et qui vise concrètement à promouvoir et à protéger ces mêmes

---

21 T. DESTROOPER, *op.cit.*
22 T. DESTROOPER, conférence à l'université d'Anvers, Juin 2014.
23 Voir site web: http://www.ecole-village-assainis.cd/
24 Id.
25 DESTROOPER, *op.cit.*

droits. Elle s'emploie à analyser les inégalités au cœur des problèmes de développement et à corriger les pratiques discriminatoires et les répartitions injustes de pouvoir qui entravent le processus de développement. Dans ce sens, les projets, les programmes, les politiques et les stratégies de développement sont ainsi voués à s'enraciner dans un système de droits et d'obligations correspondantes établis par le droit international. Cet état de choses contribue à promouvoir la durabilité des initiatives de développement, à rendre les populations plus autonomes – en particulier les plus marginalisées – de façon qu'elles *participent* à la formulation des politiques et tiennent pour *responsables* ceux dont le devoir est d'agir. Cette approche vise ainsi, d'une part, la concrétisation des droits de l'homme comme objectif essentiel au stade de la formulation des politiques et des programmes de développement et, de l'autre, l'identification des détenteurs de droits, des droits en question et les débiteurs d'obligations correspondants.[26] Ainsi, une approche par les droits de l'homme permettrait une analyse plus globale du développement, des obligations de l'État (en tant que débiteur d'obligations) et des besoins pratiques et stratégiques des détenteurs des droits.[27] Une telle approche a le potentiel d'encourager des interventions qui adresseraient les causes structurelles profondes des problèmes de développement, telles que les inégalités profondes dans les rapports des forces, plutôt que de s'arrêter aux symptômes. Avec une attention particulière sur les populations marginalisées et exclues et une vue holistique des contextes locaux (communautés, autorités locales, organisations communautaires, cadre légal, etc.), l'approche par les droits pourrait conduire à plus de résultats pour un développement plus durable[28] dès lors qu'elle s'emploie à renforcer les capacités des détenteurs de droits de faire valoir leurs revendications et de faire en sorte que les débiteurs d'obligations s'acquittent de leurs devoirs.

En intégrant le développement et les droits de l'homme, le développement devrait être vu d'abord comme une obligation de l'État et non plus comme de la charité ou de la bonne volonté d'une partie tierce. Ainsi, renforcer les capacités de l'État et la cohésion sociale, enraciner le changement dans un cadre légal et au sein des institutions sont à voir comme des éléments essentiels, capables d'encourager des résultats soutenus et durables pour une gouvernance démocratique.

Si l'approche décisionnelle participative et communautaire a ses mérites, elle s'avère pourtant une version incomplète de l'approche par les droits qui, elle, insiste sur d'autres paramètres ou principes – en plus de la participation – tels que la *redevabilité*, l'égalité, la *non-discrimination*,

---

26 Haut-Commissariat des Nations-Unies aux Droits de l'Homme, *Questions fréquentes au sujet d'une approche de la coopération pour le développement fondée sur les droits de l'homme*, New York & Genève, 2006, disponible online: http://www.ohchr.org/Documents/Publications/FAQfr.pdf
27 Ibid.
28 OHCHR, *Frequently asked questions on a human rights-based approach to development cooperation*, New York and Geneva: Office of the High Commissioner for Human Rights, 2006.

la *transparence* et l'*autonomisation* (*empowerment*) des détenteurs des droits. Cette insistance sur ces principes vise à assurer que tous les acteurs en présence sont tous des participants actifs dans le processus de leur développement.[29]

Guidé par cet éclairage, nous avons ainsi poursuivi nos investigations – plutôt que de nous arrêter à mi-chemin – en nous intéressant principalement à la question de savoir quelles étaient les conceptions locales des droits de l'homme dans cette contrée de la province du Kongo Central, en RD Congo, et comment l'UNICEF les prenait ou devrait les prendre en compte à travers ses interventions pour des changements plus tangibles.

Pour être complet dans notre démarche, nous avons préféré commencer par comprendre comment le droit à l'eau est défini dans les instruments juridiques internationaux, régionaux et nationaux.

II. Le droit à l'eau potable, quid ?

Le droit à l'eau et à l'assainissement est un droit humain fondamental, reconnu implicitement ou explicitement dans plusieurs traités internationaux et régionaux et dans le droit interne congolais.

Les responsables politiques ont de plus en plus intégré l'eau et l'assainissement - tous deux essentiels à la réalisation d'un large éventail de droits de l'homme – comme droits humains interdépendants en vertu du droit international, élaborant des normes juridiques explicites dans la poursuite de la responsabilité internationale des obligations des États.[30]

Le droit à l'eau et à l'assainissement a été reconnu implicitement dans la Déclaration Universelle des Droits de l'Homme (DUDH) de 1948, en son article 25, §1, et dans le Pacte international relatif aux droits économiques, sociaux et culturels (PIDESC) de 1966, en son article 11, à travers le droit de toute personne à un niveau de vie suffisant et le droit à la santé. Il est également reconnu implicitement à l'article 6 du Pacte international relatif aux droits civils et politiques (PIDCP), qui consacre le droit à la vie.[31]

La première reconnaissance explicite du droit à l'eau au niveau international date de 1977, lors de la Conférence des Nations Unies sur l'eau, à Mar del Plata, en Argentine. Au cours de cette conférence, les États ont déclaré que « *tous les peuples, quels que soient leur stade de développement et leur situation économique et sociale, ont le droit d'avoir accès à une eau potable dont la quantité et la qualité soient égales à leurs besoins essentiels.* »[32]

29 DESTROOPER, *op.cit.*, p. 65

30 Benjamin Mason Meier et al., *Monitoring the Progressive Realization of the Human Rights to Water and Sanitation: Frontier Analysis as a Basis to Enhance Human Rights Accountability*, The Oxford Handbook of Water Politics and Policy, 2017

31 Haut-Commissariat des Nations Unies aux Droits de l'homme, Le droit à l'eau, Fiche d'information no.35, Genève & New York, 2011.

32 Plan d'action de la Conférence des Nations unies sur l'eau, Mar del Plata, Argentine, 1977.

Le droit à l'eau et à l'assainissement a ensuite été reconnu dans la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (1979) et la Convention relative aux droits de l'enfant de 1989. La première prévoit que tous les États parties doivent assurer aux femmes vivant en milieu rural le droit de « *bénéficier des conditions de vie convenables, notamment en ce qui concerne le logement, l'assainissement, l'approvisionnement en électricité et en eau* » (art. 14) ; la seconde prévoit que les États parties doivent lutter contre la maladie, la malnutrition grâce « à la fourniture d'aliments nutritifs et d'eau potable, compte tenu des dangers et des risques de pollution du milieu naturel » (art. 24, paragr. 2).

Dans son Observation générale no. 15 de novembre 2002 sur le droit à l'eau, le Comité des droits économiques, sociaux et culturels (CODESC), interprétant les articles 11 et 12 du Pacte international relatif aux droits économiques, sociaux et culturels (PIDESC) de 1966, soulignait que le droit à l'eau relève du droit à un niveau de vie suffisant au même titre que les droits à une nourriture, un logement et un vêtement suffisants (art.11). Il faisait également valoir que le droit à l'eau est inextricablement lié au droit à la santé, ainsi qu'aux droits à une nourriture et à un logement convenables (art. 12). Dans la même Observation générale, le Comité estimait que « *le droit à l'eau est indispensable pour mener une vie digne. Il est une condition préalable à la réalisation des autres droits de l'homme* » ; le Comité estimait que « *l'eau devrait être considérée comme un bien social et culturel et non essentiellement comme un bien économique. Le droit à l'eau doit aussi être exercé dans des conditions de durabilité, afin que les générations actuelles et futures puissent en bénéficier.* »[33]

En définitive, le Comité fournit dans la même Observation une définition du droit à l'eau, qui fait aujourd'hui école et qu'il faut lire comme étant « *le droit à un approvisionnement suffisant, physiquement accessible et à un coût abordable, d'une eau salubre et de qualité acceptable pour les usages personnels et domestiques de chacun.* »[34]

Le Comité revient sur les obligations des États parties qui sont de *respecter*, *protéger* et *donner effet* (prendre des mesures positives pour faciliter le droit à l'eau de leur population et distribuer de l'eau en cas de catastrophes).

D'après le Manuel pratique des Nations Unies pour la réalisation du droit à l'eau et à l'assainissement,[35] publié sous la direction de la rapporteuse spéciale des Nations Unies, Catarina De Albuquerque, le contenu juridique du droit à l'eau et à l'assainissement englobe les critères suivants : *disponibilité, accessibilité physique et économique, acceptabilité, et qualité.*

---

33 CODESC, Observation Générale no.15 de novembre, 2002.
34 CODESC, Observation Générale no.15 de novembre, 2002.
35 Catarina De ALBUQUERQUE (sous la direction), Manuel pratique des Nations Unies pour la réalisation du droit à l'eau et à l'assainissement, 2014.

À l'échelle régionale, la Charte africaine des droits et du bien-être de l'enfant (1990), en son article 14, paragraphe 2, et le Protocole à la Charte africaine des droits de l'homme et des peuples, relatif aux droits de la femme (2003), en son article 15, renferment des obligations précises en rapport avec le droit à l'eau et à l'assainissement.

Sur le plan de la législation interne, en RD Congo, le droit à l'eau et à l'assainissement peut être interprété à travers les articles 48,[36] 47,[37] 53[38] et 42[39] de la Constitution du 18 Février 2006.

Dans les lignes qui suivent, nous présentons l'essentiel de nos investigations sur les conceptions locales des droits de l'homme dans le contexte du Bas-Fleuve.

III. Les perceptions locales du droit à l'eau

Pour arriver à déterminer la compréhension des droits de l'homme à travers les villages qui ont fait l'objet de nos investigations, nous sommes parti de deux questions principales, à savoir (a) c'est quoi les droits de l'homme pour vous, plus spécifiquement le droit à l'eau potable et (b) quelle expression locale rend le mieux cette idée des droits de l'homme, telle que vous la comprenez ou définissez ?

Bien que le 'parler' local n'offre pas toujours des équivalences claires du langage des droits de l'homme, quatre principales conceptions locales ont pu émerger des informations recueillies.

1. Droits de l'homme comme liberté

Lorsqu'on échange avec les populations sur terrain, l'une des conceptions des droits de l'homme la plus partagée c'est celle des droits de l'homme comme *liberté*, avec un accent sur la liberté d'expression, la liberté de choix et la liberté de mouvement. L'une des personnes interviewées l'articule de cette manière :

« Pour moi, ça [les droits de l'homme] signifie que toute personne est libre d'exprimer ce dont il a envie de parler ; toute personne est libre d'entreprendre une activité de son choix. Nous ne sommes plus des esclaves qui doivent vivre dans la peur… je me sens libre d'aller à Boma sans craindre quoi que ce soit… c'est ça les droits de l'homme pour moi. Cette liberté a plusieurs facettes : liberté d'expression, liberté d'action, liberté de mouvement…»[40]

---

36 « Le droit à un logement décent, le droit d'accès à l'eau potable et à l'énergie électrique sont garantis. La loi fixe les modalités d'exercice de ces droits. »

37 « Le droit à la santé et à la sécurité alimentaire est garanti. »

38 « Toute personne a droit à un environnement sain et propice à son épanouissement intégral. L'État garantit la protection de l'environnement et la santé de ses citoyens. »

39 « Les pouvoirs publics ont l'obligation de protéger la jeunesse contre toute atteinte à sa santé, à son éducation et à son développement. »

40 Interview, Octobre 2014, V1, T01. **N.B.** Pour préserver le caractère confidentiel de nos interviews, nous utilisons ici des codes pour désigner les villages visités ainsi que les personnes interviewées.

L'expression locale associée à cette perception, c'est *kiphuanza*.⁴¹ Ce qui est important à souligner ici, c'est la prédominance d'un discours assez moderne et assez récent des droits de l'homme dans cet univers, où ces droits sont définis avant tout comme **libertés**. Ceci est d'autant vrai que le plus souvent les expressions locales qu'on propose pour exprimer 'droits de l'homme' ne sont qu'une traduction littérale du concept en langues locales.⁴² Une telle perception peut se comprendre par le fait que les premiers discours sur les droits de l'homme dans notre pays ont été relayés principalement par des Organisations de défense des droits de l'homme, qui étaient plus préoccupées des droits civils et politiques, dans un contexte de dictature (dans les années 1990) sous le régime Mobutu ou de guerre (les deux Kabila) qui ont vu souvent ces droits être violés à grande échelle.⁴³ La tendance n'a pas, du reste, beaucoup évolué même si le discours aujourd'hui semble devenir plus inclusif (en intégrant les droits économiques et socio-culturels dans le registre des droits de l'homme à défendre).

De ce point de vue, on peut affirmer que cette conception des droits de l'homme comme 'liberté' émerge d'une expérience d'oppression, de négation de liberté. En effet, lorsque l'expérience d'oppression est commune, ainsi en est-il de la détermination pour la liberté ; le sens de liberté demeure certain dès lors que celle-ci est pensée comme la réparation de l'oppression, comme l'élimination de telle ou telle contrainte spécifique.⁴⁴ Frantz Fanon l'a si bien analysé dans '*Les Damnés de la Terre*' (1961) en soulignant les effets déshumanisants de la colonisation sur l'individu et la nation d'où dérivent toutes les implications sociales, culturelles et politiques inhérentes à l'établissement d'un mouvement social pour la décolonisation d'une personne et d'un peuple.

Ainsi en définissant les droits de l'homme comme 'liberté', l'accent est à placer avant tout sur la résistance, l'affirmation de soi contre l'oppression de l'État, sa domination, son exploitation ou sa manipulation. Le sujet des droits se découvre lui-même comme un véritable être humain (avec une dignité humaine) aussi longtemps qu'il peut affirmer sa liberté et que personne – fut-il l'État ou toute autorité abusive – ne peut opposer, enfreindre ou nier. Il devient ainsi assez aisé d'associer les droits de

---

La lettre V ainsi que le chiffre qui l'accompagne indique le village visité et son rang par rapport à la chronologie de notre 'fieldwork'. Tandis que le T01 renvoie au code attribué à la personne que nous avons interviewée en premier dans ce village.

41 Ce concept est absent du dictionnaire de Karl LAMAN. Cependant, on peut encore trouver chez Laman le mot *mpwanza*, qui signifie *liberté*, état d'indépendance (Karl LAMAN, *Dictionnaire kikongo-français avec une étude phonétique décrivant les dialectes les plus importants de la langue dite kikongo* [1964]).

42 *Zi tsatu zi mutu* (les besoins de l'homme) ; *Luve lu mutu lusadila mo kazodidi* (le droit d'une personne de faire tout ce qu'il ou qu'elle veut) ; *Mutu nsua kuandi kadi mu tuba dioso kuandidiambu* (chaque personne a le droit d'exprimer sa pensée).

43 Presque tous les récents rapports de la Commission des droits de l'homme des Nations Unies, particulièrement celui de Juillet 2015, insistent sur les restrictions de l'espace politique et les violations des droits à la liberté d'expression, d'association , etc. ainsi qu'aux violations et abus croissants des droits humains à l'est du pays affecté par les conflits armés.

44 S.A. THAMEEMUL ANSARI, "Freedom and Postcolonial Reality: A Critical Reading of the Writings of H.B. Stowe and Toni Morrison", in *International Journal of English Language and Humanities* (IJELLH), vol. II, Issue I, April 2014.

l'homme à la liberté, d'autant plus qu'ils sont perçus comme une 'idéologie de résistance ou de lutte' (Shivji, 1989) pour les grandes masses des peuples qui aspirent à se libérer eux-mêmes de longues et pénibles frustrations du colonialisme et du néocolonialisme, sous leurs formes actuelles de mondialisation économique et de conflits armés.

C'est probablement la raison pour laquelle nous avons rencontré, durant notre collecte d'informations, des interprétations des autorités locales sur les droits de l'homme qui semblent challenger cette conception des droits de l'homme comme 'liberté'. A la question de savoir quelle était sa compréhension des droits de l'homme, un chef de secteur réagit en ce sens:

> "Cette affaire... des droits de l'homme est ce qui aliène le moral de notre population, de notre société aujourd'hui. Aujourd'hui quand vous dites à quelqu'un qu'il doit aller faire le 'salongo'[45], il vous répond : 'je ne pars pas, c'est la démocratie ; je suis libre, etc.' Finalement, que signifient ces droits de l'homme? Droits de l'homme... c'est aussi la connaissance des limites de votre pouvoir parce qu'au-dessus de tout, il y a quelqu'un d'autre, l'État..." (**Interview, V1, November 2014, TAO12**).

2. Droits de l'homme comme besoin

Durant notre enquête (*fieldwork*), nous avons pu saisir certains autres concepts qui renvoient tous au concept de droit de manière générale ; il s'agit notamment de *luve*,[46] *n'swa*[47] ou *n'siku*.[48] Toutes ces variantes sont le plus souvent associées au concept de '*nkinza*' (besoin). Ainsi le droit à l'eau est compris comme la nécessité d'accéder à un besoin fondamental qu'est l'eau. « L'eau, c'est la vie », entend-on souvent dire dans les conversations. Sans eau, il n'y a pas de vie. Parlant de l'eau comme un droit, une des personnes interviewées répond :

> "cela signifie que l'eau est un besoin fondamental, essentiel à la vie quotidienne d'un être humain; vous ne pouvez pas survivre sans eau."[49]

Un autre répond en ces termes :

> "J'ai besoin d'eau à tout moment pour me laver, pour la vaisselle, pour la cuisine, pour boire ; c'est un besoin important, on ne peut pas s'en passer. Je peux rester affamé pendant deux jours, je peux encore vivre mais c'est pas le cas si je manque d'eau."[50]

---

45 Travaux publics obligatoires sous le régime Mobutu. Pratique en vigueur aujourd'hui,chaque samedi.

46 Laman le traduit par 'permission, droit, tendence, envie ou volonté.' La traduction en Kikongo de la Déclaration Universelle des droits de l'homme que nous avons rencontré dans cette contrée utilise le plus souvent cette expression, mais parfois aussi 'n'swa' pour renvoyer au droit: "zi luve zi batu mu nza yi mvimba" ou "minswa mi batu mu nza yi mvimba" (droits des hommes dans le monde entier).

47 'approbation, permission, sanction, droit, pouvoir' (Laman).

48 'interdit, tabou ou loi' selon Kotanyi (Sophie Kotanyi, *Basic paradigms in Mozambican and Congolese Bantu life-worlds*, unpublished thesis manuscript) .

49 Interview, V2, February 2015, Ki01.

50 Interview, V3, June, 2015, Kai02.

Le droit à l'eau devient ainsi un aspect fondamental qu'on pourrait situer dans les besoins de base dans la pyramide des besoins chez Abraham Maslow.[51]

Cependant, à ce niveau encore, il n'y a aucune articulation explicite qui affirme ce droit comme une **prérogative** (*intitlement*) légale, quand bien même on voit déjà émerger dans le concept *n'swa* le sens de *pouvoir*. Ce qui donne une indication sur la façon dont les gens pensent leurs droits en termes de dynamiques de pouvoir.

3. Droits de l'homme comme respect pour l'autre

Il est vrai que lorsqu'on parle des droits de l'homme dans le milieu qui a fait l'objet de nos investigations, on semble avoir affaire à des notions modernes. Cependant, la réalité du *respect* qu'on doit à autrui est ancienne et elle jalonne toute la culture kongo, yombe et woyo dans le cas d'espèce. Ainsi trouve-t-on chez les Bakongo des adages, des idiomes qui renvoient à ce respect envers autrui et envers ce qui appartient à autrui.[52] Dans cette logique, des expressions telles que *luma*,[53] *luvalu*[54] ou *lukinzu*,[55] forment d'autres traductions possibles de l'idée des droits de l'homme. En dépit des variations dans l'articulation, cette compréhension était similaire à travers les villages.

4. Droits de l'homme comme 'bu-mùutu'

Je voudrais, enfin, m'atteler davantage sur la dimension de la **solidarité** comme droits de l'homme, plus précisément sur la notion de *bu-mùutu*.[56] Voici comment mon informateur définit ce concept :

> « chez nous, on dit ceci : *bumutu* et *kimutu*… Vous voyez, vous êtes un homme, vous marchez, vous parlez comme moi… nous pouvons nous présenter quelque part mais les gens vont vous apprécier pour dire 'voilà, ça c'est un homme' alors que moi aussi je suis un homme. Mais pourquoi on vous apprécie ? Là, c'est ce qu'on dit : *bumutu*… et à moi, ils peuvent dire : ah… *kimutu* ee. Donc, je fais ce que je fais mais qui n'est pas semblable à ce

---

51 Dans sa hiérarchisation des besoins, Maslow considère les besoins physiologiques – c'est-à-dire les besoins directement liés à la survie de l'individu ou de l'espèce (ex. manger, boire, se vêtir, se reproduire, dormir,…) comme étant à la base de la pyramide.

52 L'expression 'kiaku kiaku, ki ngana ki ngana' (ce qui est tien vous appartient, ce qui est à autrui appartient à autrui) montre l'existence d'une culture de respect vis-à-vis de l'autre au sein des communautés que nous avons visitées.

53 'honnêteté, courtoisie' (Laman).

54 Ce concept est absent du dictionnaire de Laman, mais il signifie 'valeur, dignité'. Il dérive probablement du verbe 'vala' qu'on retrouve chez Laman et qui signifier 'policer, raffiner.'

55 'respect' (Ibid.).

56 'humanité, justice, gentillesse/générosité/bonté, bonne foi/indulgence' (Ibid.). Des variantes de ce concept peuvent être trouvées dans d'autres langues bantu, telles que 'bomoto' en Lingala (parlé au Nord-Ouest de la RDC et dans la capitale, Kinshasa) et 'Ubuntu' en Nguni ou Zulu sud-africain (lire Thaddeus METZ, "Ubuntu as a moral theory and human rights in South Africa", in *African Human Rights Law Journal* 2, 2011 ; Benjamin Elias WINKS, "A covenant of compassion: African humanism and the rights of solidarity in the African Charter on Human and Peoples' Rights", in *African Human Rights Law Journal* 2, 2011).

que vous faites, vous, qui êtes apprécié. C'est sur base de ces appréciations, selon moi, que ceux qui ont réfléchi en profondeur ont pu monter ce qu'on appelle les droits de l'homme. »

Par *bu-mùutu*, on indique l'attention, le soin, la préoccupation qu'un être humain porte – non seulement à sa propre humanité ou dignité – mais tout d'abord à la dignité et l'humanité de l'autre. Le concept révèle donc l'interconnexion (*interconnedness*) de tous les êtres humains et postule le principe d'égal traitement pour tout le genre humain. Ce qui signifie que, par la vertu d'être un être humain, nous méritons tous une égale attention, un égal traitement quant à notre humanité et notre dignité. Ainsi donc, on est un vrai être humain par la manière dont on traite autrui (cfr. la règle d'or[57] ou le principe kantien de la morale pratique[58]). Nous sommes tous interconnectés et mon humanité ou ma dignité n'a de sens qu'à travers l'humanité ou la dignité de l'autre.

Le concept, comme les autres que nous avons identifiés plus haut, porte essentiellement un poids normatif plutôt que juridique; il déplace la perception des droits de l'homme d'un point de vue individualiste (dont est teintée la Déclaration Universelle des Droits de l'Homme[59]) à une perception beaucoup plus communautaire qu'on pourrait résumer en ces termes : nous sommes la même humanité et si un membre de la communauté souffre dans son humanité ou sa dignité, c'est toute la communauté – comme un corps – qui souffre.

Il y a donc une prépondérance, dans cet univers, d'un discours normatif capable d'influencer le discours traditionnel sur les droits de l'homme, essentiellement axé sur la protection de l'*individu*.

Le concept de 'bu-mùutu' comme droit à la solidarité renvoie à la nécessité de replacer l'individu à protéger dans son contexte communautaire. Il est aléatoire de prétendre protéger l'individu en contexte yombe (et par extrapolation en contexte africain) si les fondements communautaires de la société dans laquelle vit cet individu sont érodés. De même, l'individu se retrouve ragaillardi et sa protection davantage assurée et garantie dès lors que la société dans laquelle il vit se retrouve consolidée, soudée et solidaire.

La notion de 'bu-mùutu' comme droit de l'homme voudrait ainsi assurer l'équilibre entre le respect de l'individu et la nécessité de l'équilibre au sein de la société, appelant ainsi à moins d'écarts entre les riches et les moins nantis. Cette notion peut donc ainsi servir comme corollaire d'équité élaborée sur la base du principe de solidarité et d'assistance mutuelle. En développement, un tel fondement idéologique pourrait contribuer à réduire les inégalités et donc réduire la pauvreté surtout parmi les populations les plus défavorisées et vulnérables.

---

57 Ne fais pas à autrui ce que tu n'aimerais pas qu'on te fasse!
58 Toujours considérer l'autre comme une fin en soi et non comme un moyen seulement.
59 Voir R. PANIKKAR, « Is the notion of human rights a western concept? », in *Human Rights Law*, 1992.

Le bu-mùutu suggère qu'en toute situation de déliquescence sociale, on a besoin de l'autre ; l'autre au sens néotestamentaire du 'bon samaritain' mais aussi l'autre comme 'société organisée en État' à qui incombe des responsabilités et des obligations légales dont elle ne peut déroger.

IV. Quelles leçons utiles dans le contexte de la localisation des droits de l'homme à travers le programme 'village assaini' ?

Lorsqu'on jette un regard sur toutes les conceptions locales des droits de l'homme identifiées ci-haut, une chose paraît évidente : toutes ne semblent pas renvoyer explicitement à la notion de 'droit' comme 'prérogative légale' (*legal intitlement*) ou à celle de l'État comme 'débiteur d'obligations'.[60] Comme le fait remarquer Destrooper,[61] en général même là où les gens pensent qu'ils ont droit à l'eau, ils ne mentionnent pas généralement le fait que le droit à l'eau implique aussi une dimension de la responsabilité de l'État ou que ce droit renvoie à la possibilité de le revendiquer.

En effet, dans ce contexte, la notion de 'droit' est plus une 'prérogative' morale plutôt qu'une prérogative légale. Ainsi, lorsqu'il revient à identifier le 'débiteur d'obligations' pour un droit quelconque, généralement ceci est perçu non sous la perspective de l'entité qui a l'obligation légale de *protéger*, *respecter* ou *garantir* ce droit mais bien plutôt de celle qui en a l'obligation morale. Ceci signifie que, du point de vue de la localisation des droits de l'homme, une conception des droits de l'homme qui identifie seulement l'État comme 'débiteur d'obligations' (*duty-bearer*) serait contre-productive dans le contexte du Programme 'village assaini' et n'aurait aucun potentiel d'émanciper (*empower*) les détenteurs des droits (*rights-holders*).[62]

Concrètement il devient important d'envisager, dans ce contexte, la possibilité d'étendre la notion de 'débiteur d'obligations' à d'autres acteurs, au-delà de l'État pour plus de pertinence pour les détenteurs des droits (les populations). Envisager cette possibilité signifie établir la liste d'acteurs que les détenteurs des droits identifient comme des 'débiteurs d'obligations' actuels ou potentiels ; c'est le cas des ONGs, des compagnies privées, des agences des nations unies telles que l'UNICEF et même les villageois eux-mêmes. Les 'débiteurs d'obligations' sont ainsi ceux qui ont la responsabilité morale de *respecter*, *protéger* et *garantir* les droits, dans le cas d'espèce le droit à l'eau.

---

60 Tine DESTROOPER & Pascal SUNDI MBAMBI, "A Praxis-Based Understanding of New Duty-Bearers: Examining Contextual Realities in the DRC", in *The International Journal of Human Rights*, Février 2017.

61 DESTROOPER, *op.cit.*, p. 191.

62 DESTROOPER et SUNDI MBAMBI (art.cit.) suggèrent qu'un cadre de 'multi-débiteurs d'obligations' (*multi-duty-bearers framework*) soit possible pour rendre les réalités vécues plus formelles, où on a des populations qui se tournent plus facilement vers d'autres acteurs (comme les compagnies privées, les ONG ou des acteurs comme l'UNICEF) – plutôt qu'à l'État seul – pour leurs besoins en eau.

En effet, notre *fieldwork* a révélé, dans plusieurs cas, que les populations locales n'attendent pas beaucoup de l'État en termes d'obligations sociales. Bien que certaines personnes interviewées continuent à identifier l'État ou le gouvernement comme 'débiteur d'obligations'[63] en ce qui concerne les droits de l'homme en général ou le droit à l'eau et à l'assainissement en particulier, il y a une perception générale du même État comme un État en faillite (*failed state*)[64] ou un État fragile sans ressources et virtuellement absent de la vie quotidienne des communautés.[65]

Même là où la présence de l'État pourrait encore être perçue comme utile, notamment dans l'arbitrage des conflits, beaucoup ont exprimé leurs profondes frustrations. Parlant du système judiciaire, par exemple, le chef du village V2 n'a pas hésité à exprimer son insatisfaction du système judiciaire moderne,[66] ainsi que sa désapprobation de la suppression des tribunaux coutumiers au niveau local. Pour lui, le système de justice moderne semble être très couteux et loin à la portée de la bourse des pauvres gens qu'ils sont au niveau du village, au point qu'ils leur est difficile de revendiquer leurs droits. Pour lui, la restauration des tribunaux coutumiers, qui ont eu souvent à jouer un rôle réconciliateur entre parties et qui étaient plus proches des traditions et des cultures locales[67] donnait plus de chance d'accessibilité à la justice pour un pauvre villageois. Un membre du personnel de l'UNICEF interviewé a corroboré ce point de vue en affirmant que le peuple n'a pas confiance dans le système judiciaire et, de ce fait, toute la dimension de revendication de leurs droits est compromise.[68]

Même au niveau des autorités locales, la perception dominante est que l'État est une entité isolée avec peu d'impact sur leurs propres activités quotidiennes. Ainsi que l'a déclaré un *Administrateur chef de Territoire Adjoint* en charge de Finances, Développement et questions économiques,

---

63 Quand bien même il y aurait une reconnaissance des obligations de l'État (particulièrement dans la fourniture d'eau potable) parce que l'État aurait plus des moyens à le faire (**cf. interview, V2, Ki02, Février 2015**), de facto cette reconnaissance ne semble pas émerger partout à cause du fait qu'il y a des perceptions très généralisées selon lesquelles l'État n'a pas les ressources nécessaires pour répondre aux problèmes des gens et en même temps est ressenti trop distant des préoccupations des gens, une entité trop puissante qu'on ne sait où la prendre ou comment la challenger (**cf. interview avec le président du comité 'village assaini', V4, Juillet 2015**).

64 Au village V2, durant une rencontre communautaire avec l'animateur agricole du secteur, la plupart des membres du village partageaient le point de vue selon lequel le rôle de l'État a été légué aux ONGs, qui sont considérées dans cette communauté comme des 'créations' des officiels de l'État et comme moyens de leur propre enrichissement et dont les capacités à répondre aux préoccupations fondamentales des communautés sont pourtant très limitées.

65 Dans un des milieux que j'ai visités, j'ai trouvé un commissariat de police. J'étais intéressé à connaitre combien de plaintes la police pouvait enregistrer par moyenne mensuelle. La réaction du policier était : « si vous avez de la chance, vous pouvez recevoir deux plaintes le mois; autrement, les gens préfèrent régler leurs différends à l'amiable, en partie, à cause du fait qu'ils ne font pas confiance en la police et le processus semble être très bureaucratique et coûteux. » (Conversation informelle, V1).

66 Qui est, selon lui, plus orienté vers les évidences (preuves), plus coûteux et moins efficaces.

67 Le mot 'justice' se traduit par 'nkanu' dans le parler local et est compris comme un mécanisme de réintégration à la fois de la victime et du 'coupable', plutôt que comme un mécanisme de sanction/punition essentiellement.

68 Interview à Matadi, Octobre 2015.

> "Nous n'avons pas de budget. Il y a deux ans, nous recevions de la province plus ou moins 1 million et cinq cents mille Francs congolais par mois pour couvrir nos dépenses courantes en termes de rémunérations, du fonctionnement (administration) et des investissements dans les infrastructures. Avec ça, nous essayons d'arranger nos bureaux, de faire de petits entretiens des routes… mais le montant était tellement inconsistant qu'on ne pouvait rien faire de visible. D'ailleurs, à l'heure qu'il est cela fait plus d'une année que nous ne recevons plus rien de la province, même pas un centime."[69]

Lorsqu'interrogé s'il se sentait concerné comme un représentant du gouvernement par rapport au droit à l'eau potable de sa population, un Médecin chef de Zone de santé a eu cette réaction :

> "Comme gouvernement, nous sommes interpellés parce que… Aujourd'hui le gouvernement intervient dans un programme d'assainissement… oui. Mais c'est essentiellement dans le paiement des salaires et primes, tout ça. Il faudrait peut-être que nous fassions des plaidoyers pour qu'on inscrive, par exemple, dans le budget de la santé… des fonds pour l'approvisionnement en eau potable, surtout en milieu rural. C'est là qu'il faut arriver. Aujourd'hui, le gouvernement comme gouvernement est presque absent; le gouvernement agit à travers les partenaires. Dans ma zone de santé, il n'y a aucune source aménagée qu'on peut prétendre avoir été financée à 100% par le gouvernement… Aucune !"[70]

Ceci explique pourquoi les détenteurs des droits et, dans plusieurs cas, les officiels eux-mêmes ne se tournent pas vers le gouvernement pour chercher un appui ; au contraire, ils préfèrent se tourner vers d'autres acteurs, plus accessibles à eux, telles que les ONGs locales ou internationales, les églises, voire les membres du village eux-mêmes.[71] Dans la plupart des villages, il y avait un sentiment partagé selon lequel l'État a été remplacé par les ONGs, voire par les compagnies privées quant à ses obligations à fournir de l'eau potable aux communautés.[72] Dans le domaine d'accès à l'eau potable, par exemple, différentes initiatives sont généralement mises en œuvre par des ONGs locales, avec l'appui de la coopération bilatérale, des ONGs internationales ou des agences de développement, voire parfois avec l'appui des politiciens (généralement des parlementaires en pré-campagne électorale) ou des hommes d'affaires issus de ces milieux.[73]

---

69 Interview, V2, KiA007, Mars 2015.
70 Interview, V1, TAO06, Octobre 2014.
71 Au village V3, il avait été porté à notre attention que l'autorité locale (le chef de secteur) faisait pression sur le curé de la paroisse de son entité pour entretenir les routes parce qu'il assumait que le prêtre était plus ouvert à accéder les bailleurs des fonds.
72 En effet, très peu de gens perçoivent ce projet comme un projet du gouvernement; le plus souvent, les villageois l'identifient à un projet de l'UNICEF.
73 En termes d'approvisionnement en eau potable dans les villages, le programme 'village assaini' n'est pas la première expérience dans la région. Différentes initiatives ont été ou sont mises en œuvre soit par des acteurs locaux (tels que le Bureau Diocésain de Développement, BDD) avec des financements venant des agences bilatérales, soit par des ONGIs, telles que Oxfam. La spécificité du programme 'village assaini' est qu'il est plus englobant couvrant plusieurs aspects à la fois (particulièrement l'eau et l'assainissement) avec l'ambition de couvrir tout le pays.

En conséquence, notre constat durant notre fieldwork était que la notion de 'débiteur d'obligations' est généralement et facilement appliquée à des acteurs variés, selon qu'ils semblent être plus visibles et facilement accessibles.

Par ailleurs, pour mieux comprendre pourquoi les populations en milieu rural ne considèrent pas souvent l'État comme un 'débiteur d'obligations' et donc les laissant ainsi dans une position qui les empêche à revendiquer leurs droits ou à engager une action légale à son encontre, il faut revenir sur cette explication qui semble enracinée dans une perception locale et culturelle de l'État comme 'nzambi tsi',[74] le 'Dieu sur la terre', le tout-puissant et le tout distant !

Ainsi, par exemple, pour bon nombre de personnes interviewées, lorsque l'État établit des principes, donne des instructions dans le cadre du programme assaini, personne n'a le droit de les contester ou de les remettre en question. Il faut tout simplement y adhérer parce que le 'Dieu a parlé'. Par rapport au droit à l'eau, l'idée que l'État était le 'tout-puissant' et ne pouvait pas être tenu redevable cas est allée dans certains aussi loin en accordant à l'État d'initier des actions négatives contre ses citoyens. Dans le contexte de notre étude de cas, par exemple, si les villageois n'arrivaient pas à entretenir les installations d'eau fournies par l'État, ceci donnait à l'État – d'après certaines personnes interviewées – le droit de reprendre ses pompes. Ceci était clairement illustré par la réponse d'un de mes informateurs au V1. Interrogé sur l'importance de savoir que l'eau était un droit, il répondit :

> "Selon moi, c'est important de le savoir parce que si le projet VA vient me dire vous n'arrivez pas à respecter mes instructions/mes normes je retire mes pompes, je n'ai nulle part où me plaindre parce que c'est son droit. C'est le droit de l'État et l'État, c'est le 'nzambi tsi' (Dieu sur terre). Donc, moi je ne peux pas me permettre d'aller arracher la pompe parce que je ne suis pas satisfait de quelque chose. Si je le fais, l'État va me poursuivre parce que c'est son droit.."[75]

Cette perception est fortement partagée à travers les villages de notre fieldwork. Au village V4, une personne interviewée a indiqué que l'État est trop fort et trop puissant pour qu'un simple individu comme un villageois ou même une communauté puisse le défier, en engageant une action judiciaire par exemple contre lui.

Cette compréhension du droit à l'eau et à l'assainissement ne suscite, de ce point de vue, aucune attente vis-à-vis de l'État ; Au contraire, elle entretient une vision dans le chef des détenteurs des droits selon laquelle l'État a plus de chance de les poursuivre en justice s'ils ne parviennent pas à assurer proprement la maintenance des infrastructures d'eau et d'assainissement. Ceci signifie qu'une compréhension des droits qui identifie

---

74 Littéralement, on peut le traduire par "l'État, Dieu sur terre" ou « l'État, Dieu de la terre ».
75 Interview, V1, T03, October 10, 2014.

seulement l'État comme 'débiteur d'obligations' est indéniablement contre-productive dans ce cas et n'a aucun ou moins de potentiel à autonomiser (*empower*) les détenteurs des droits, surtout dans un contexte où il n'y a aucune attention du tout à un discours sur les droits dans la narration de l'UNICEF ou d'autres agents de mise en œuvre du programme. En d'autres termes, la compréhension traditionnelle de 'débiteur d'obligations' ne sert pas beaucoup le processus de localisation des droits de l'homme dans ce contexte. Pour que cette notion ait une résonnance locale pour les différents acteurs, il y a nécessité de prêter attention aux perceptions des populations sur les droits de l'homme au niveau local. Une telle attention pourrait permettre d'envisager un élargissement de la notion de 'débiteurs d'obligations'.[76] Il s'agit ici *d'élargissement des obligations* (**extension of obligations**), plutôt que de *déplacement de responsabilité* (**shift in responsibility**) qui pourrait entrainer dans le contexte qui est le nôtre plus de désengagement de l'État. Dans ce cas, les 'détenteurs des droits' (*rights-holders*) perçoivent dans les nouveaux 'débiteurs d'obligations' comme des *alternatives* à l'État, plutôt que des *compléments* à la responsabilité de l'État.[77]

Ces conclusions auraient été utiles dans le cadre du programme 'village assaini' si l'UNICEF avait au départ organisé une enquête pour comprendre les perceptions locales des droits de l'homme. Une telle démarche aurait eu l'avantage d'assurer un processus de localisation des droits plus authentique qui permettrait d'adapter le discours universel des droits de l'homme à partir de ces nuances locales, avec plus de pertinence pour les détenteurs des droits.

En conclusion

Le processus de localisation des droits de l'homme est un mouvement à double sens, qui va de haut en bas (top-down) et de bas en haut (bottom-up) dans l'objectif d'autofécondation du discours sur les droits de l'homme, à chaque niveau où on se trouve. Même s'il n'y a eu aucun effort du côté de l'UNICEF de comprendre les conceptions locales des droits de l'homme – plus particulièrement le droit à l'eau potable et à l'assainissement –, dans le contexte du programme 'village assaini', notre *fieldwork* a révélé qu'il y a des éléments pertinents dans la compréhension locale des droits de l'homme qui auraient pu permettre à l'UNICEF de planifier ses interventions avec plus de pertinence en intégrant ces réalités locales dans sa programmation. Ceci donnerait plus de chance d'appropriation du programme par les détenteurs des droits et répondrait avec plus d'acuité aux attentes locales.

---

76 DESTROOPER & SUNDI MBAMBI, art.cit.
77 Id.

Pascal SUNDI Mbambi

Dans la perspective de la localisation des droits de l'homme, il ne serait pas déplacé de conclure que le concept de 'bu-mùutu' chez les Yombe, entendu comme inter-connectivité, solidarité, justice, humanité, générosité, respect pour la vie et la dignité humaine, … et qui pourrait mieux traduire la notion universelle des droits de l'homme, porte en lui des valeurs capables d'inspirer et de nourrir la théorie et la pratique des droits de l'homme au niveau global. Il pourrait, par exemple, permettre non seulement d'enrichir le débat sur la notion de 'débiteur d'obligations' mais également orienter la pratique de l'approche par les droits sur la base des perceptions que les communautés se font sur les vrais 'débiteurs d'obligations' pour elles.

En ce sens, une réflexion plus approfondie pourrait bien inspirer un cadre théorique à même de mieux éclairer la possibilité de s'en approprier en contexte de localisation des droits de l'homme à travers le programme 'village assaini'. ■

ANNEX2: INTERVIEW GUIDEFOR COMMUNITY MEMBERS

<table>
<tr>
<td colspan="3">IAP HUMAN RIGHTS INTEGRATION – WP2 LOCALISING HUMAN RIGHTS
DRC-UNICEF SANITISED VILLAGES IN BAS-CONGO
INTERVIEW GUIDE FOR COMMUNITY MEMBERS
Université Kongo, DRC</td>
</tr>
<tr>
<td>Structure</td>
<td>Questions</td>
<td>Remarks</td>
</tr>
<tr>
<td>
- Introduction of research
- Permission to interview
- Build Rapport
- Your opinion is Important
- Duration
- Taping and confidentiality
- Oral informed consent
</td>
<td>
Hello,

My name is … from the Université Kongo, based in Mbanza Ngungu. I want to ask you some questions about the 'Village assaini' project in your community/village. This is a research project of the Université Kongo and University of Antwerp. We have no ties with Unicef or the government, and do not have an influence on the programme, and I will very much appreciate your participation in this research. The information from this research will be published and could be used by decision-makers for policy development purposes. The interview will take between 1 hour and 1h½.

We will record the interview, and take some notes, if this is ok for you. If you feel uncomfortable about this, or want us to stop recording at any point, you should feel free to say this, and we will do so. This is no problem. Whatever information you provide will be strictly anonymous and will not record any of your names or contact details, only your village (and function). The recording will be stored very carefully, only the members of the research team will have access to them. After completing the research, all recorded information will be destroyed. Participation in this interview is voluntary, and if we should come to any question you don't want to answer, just let me know and I will go on to the next question; or you can stop the interview at any time. However, we hope you will participate in the interview since your views are very important for this study. If you have questions with regard to this study, please feel free to ask me. (<i>Respond to any queries about the study adequately).</i> Do you agree to talk with me and that our conversation will be recorded?
</td>
<td>
Sit in an informal way (next to each other, not opposite), at the same eye level
Start with informal chatting
Cf. also project information sheet
Possible: let the person hear her/his voice on the tape if she/he wishes
</td>
</tr>
<tr>
<td>
Record name of the village, date of the interview, starting time/end time, and total minutes spent on the interview (at the end of the interview)
</td>
<td></td>
<td></td>
</tr>
</table>

<table>
<tr><td colspan="3">IAP HUMAN RIGHTS INTEGRATION – WP2 LOCALISING HUMAN RIGHTS
DRC-UNICEF SANITISED VILLAGES IN BAS-CONGO
INTERVIEW GUIDE FOR COMMUNITY MEMBERS
Université Kongo, DRC</td></tr>
<tr><td>Structure</td><td>Questions</td><td>Remarks</td></tr>
<tr>
<td>Demographic information of the respondent</td>
<td>

1. Full Name:

2. Age/Sex:

3. Position in household and in the community:

4. Language spoken:

5. Main activity:

6. Monthly income of the person
   Below $10:
   10-20:
   20-50:
   above 50:

7. Level of Education
   - no formal education:
   - Primary school:
   - Secondary school:
   - Tertiary Education:

8. Familiarity with the VA Project (what do you know about the project):

</td>
<td></td>
</tr>
<tr>
<td>Information on community/village</td>
<td>

1. No. of households
2. Total number of people in the village (approximately)
3. Main activities of community members
4. No. of reported cases of death for children under 5 years in the last six months (related to water or sanition):
5. When did the project start in this village/community:

</td>
<td></td>
</tr>
<tr>
<td>Gender roles</td>
<td>

1. Who is part of the decision-making process? How many women, girls are part of this process?

2. What is the allocation of tasks for women and for men?

</td>
<td>Gender roles are society's concepts of how men and women are expected to act, and are shaped by cultural norms. Gender roles are based on norms, or standards, created by society. In many societies, masculine roles are usually associated with strength, aggression, and dominance, while feminine roles are usually associated with passivity, nurturing, and subordination.</td>
</tr>
</table>

<table>
<tr>
<td colspan="3" align="center">**PART I**
ACCESS TO DRINKING WATER & SANITATION</td>
</tr>
<tr>
<th>Structure</th>
<th>Questions</th>
<th>Remarks</th>
</tr>
<tr>
<td>**General information on the VA project**</td>
<td>
1. How the VA project started in this village?

2. Who initiated the project? And how the village decided to participate in the project ?

3. Describe how this happened.

4. What has been done so far through this project? What are the main changes that have been caused by the VA project? What is the strongest point of the VA project? What is its weakest?

5. What have you learnt from the project?

6. Are you satisfied with your current drinking water supply? Why?

7. What needs to be improved from the current situation?
</td>
<td></td>
</tr>
<tr>
<td colspan="3" align="center">**ACCESS TO WATER INFORMATION AND PROBLEMS FACED**</td>
</tr>
<tr>
<td>**A. Accessibility**</td>
<td>
8. Where do you obtain WATER for domestic use? Natural source, communal tap, Borehole, River/stream, Shallow well, Dam/pool/stagnant water, Water tank, other (please specify)
   (i) before the VA project?
   (ii) now

9. How far is the water source from your house?
   Less than 1km (less than 30minutes walk)
   Between 1km and 2km(30minutes to 1 hour walk)
   Between 2km and 5km (1 to 2 hours walk)
   More than 5 km (more than 2 hours walk)

10. Do you feel safe when going to get water? Yes or no.

11. Do you feel the water is safe for drinking? Yes or no.

12. Are you happy with your current situation of access to drinking water? If no, why?

13. What do you do when you can't access clean drinking water?
   R/Make a complaint; continue with the existing situation; make some other arrangement (explain).

14. Do you incur any cost in your effort of accessing clean drinking water?
   - Before the VA project?
   - Now?
   If Yes- How much (on a monthly basis)?
   1-5 ($)
   5-10
</td>
<td>If the response is that they continue with the situation or make some arrangements of their own, the interviewer should ask the reasons for doing so.</td>
</tr>
</table>

ACCESS TO WATER INFORMATION AND PROBLEMS FACED		
B. Availability	15. In the last 3 months has this village had any interruption in water supply? If yes, what happened? 16. Do you get clean quality drinking water? 17. What, if any, steps do you have to take to make the water potable?	

C. Quality/Acceptability	18. Since the project was introduced in your community, has there been any water related disease in your household? If yes, which one?
	
	19. How many child deaths (under 5 years old) have you registered the last three month? How many do you think were due to water related disease in the community?
	
	20. What is the main type of toilet this household uses?
	    Flush toilet
	    Bucket system
	    Dry toilet
	    Bush
	    Other (please specify)	

D. Sanitation	21. How far is the toilet your household uses most often from your house?
	    In the house
	    In the yard of this house
	    Less than 200m (less than 5minutes walk)
	    Between 200m and 500m(5 to 10 minutes walk)
	    Between 500m and 1km (10 to 15 minutes walk)
	    More than 1 km (more than 15 minutes walk)
	
	22. Do you feel safe enough to use the toilet at night? Yes or no.
	23. Does each household have a toilet in this community? If no, why?
	24. Does each household have a washbasin in this community?
	25. Have you ever taken any action to improve the situation of sanitation in your village? If yes, how? Did it have any impact?
	26. Have you ever made any complaint to regarding the sanitation situation in your village/community? To whom? If yes, what was the response?
	27. How do you deal with your garbage?
	28. How do you maintain your house/community clean?
	29. Do you have any suggestions that could improve the situation? Any model that is followed elsewhere? What can be done?
	30. Are there any local or traditional practices that hinder your efforts to keep your environment clean and neat? If yes, which ones?
	31. Is there any indigenous knowledge that can help improve the project?
		If it's free, ask if it is sufficient and if not ask from where and for how much you buy this extra water and for what purpose (Extra water is needed for drinking or washing).

	1. Who is, according to you, responsible for providing potable water and clean sanitation to the people? Why? Who else? Is this actor doing enough to ensure your access to potable water and clean environment? 2. Is there any hope in approaching the authorities? If no, why? (Is it because of a failed attempt? Not aware of whom to approach? Or you believe that it will work itself out and there is no need to do something or you don't have the time?) 3. If you were the chief of this village, and you could make a decision to improve access to water in this village, what would that be? 4. Is there any place/village you know about which has a better system for access to water or a better sanitation system (toilets, washing hands facilities, etc.)? Why do you think so? Would you recommend a system like that for your village?	Let the respondent give their own perception to the field investigator; their perceptions should also include the suggestions as to what the government should do to improve the water and sanitation facilities.

PART III - HUMAN RIGHTS

	1. What do you understand by the term 'right' or 'justice'? What does the 'right of access to drinking water' mean to you? What do you understand by 'human rights' or HRBA? 2. Is there any local word to translate the same 'concept'? If yes, which one? What does it mean in your context? Do you think you have a right to clean drinking water? If yes, why do you think so? 3. Do you see any difference between a right, a favor, and a donation? What is the difference? 4. Has anybody talked to you about the right to water and the right to adequate sanitation in your village the three years? If yes, whom? Who do you approach when you face any problems (i) as an individual/family; (ii) collectively as a community? A government official, NGO, nobody. 5. Do you think these rights are important for your wellbeing or that of your community?	Derive the respondent's understanding of rights by raising questions in such a way that they give us a sense of their understanding of the concept of rights?
Prioritization	• Of all the things that we discussed, what is for you the most important problem? Why?	

ANNEX 3: INTERVIEW GUIDE FOR LOCAL AUTHORITIES AND NGOS' LEADERS

<table>
<tr>
<td colspan="3" align="center">

IAP HUMAN RIGHTS INTEGRATION – WP2 LOCALISING HUMAN RIGHTS
DRC-UNICEF SANITISED VILLAGES IN BAS-CONGO
INTERVIEW GUIDE FOR LOCAL AUTHORITIES & NGOs' LEADERS
Université Kongo, DRC

</td>
</tr>
<tr>
<th align="center">Structure</th>
<th align="center">Questions</th>
<th align="center">Remarks</th>
</tr>
<tr>
<td>

- **Introduction of research**
- **Permission to interview**
- **Build Rapport**
- **Your opinion is Important**
- **Duration**
- **Taping and confidentiality**
- **Informed consent**

</td>
<td>

Hello,

My name is … from the Université Kongo, based in Mbanza Ngungu. I want to ask you some questions about the 'Village assaini' project in your community/village. This is a research project of the Université Kongo, and I will very much appreciate your participation in this research. The information from this research will help government and other potential stakeholders to develop policies and respond to the needs of the community more efficiently. The interview will take between 1 hour and 1h½.

We will record the interview, and take some notes. Whatever information you provide will be strictly anonymous and will not record any of your names or contact details. The recording will be stored very carefully, only the members of the research team will have access to them. After completing the research, all recorded information will be destroyed. Participation in this interview is voluntary, and if we should come to any question you don't want to answer, just let me know and I will go on to the next question; or you can stop the interview at any time. However, we hope you will participate in the interview since your views are very important for this study. If you have questions with regard to this study, please feel free to ask me. (*Respond to any queries about the study adequately*). Do you agree to talk with me and that our conversation will be recorded?

</td>
<td>

Sit in an informal way (next to each other, not opposite), at the same eye level

Start with informal chatting

Cf. also project information sheet

Possible: let the person hear her/his voice on the tape if she/he wishes

</td>
</tr>
<tr>
<td>

Record name of the entity (public administration, NGO, etc.), date of the interview, starting time/end time, and total minutes spent on the interview (at the end of the interview)

</td>
<td></td>
<td></td>
</tr>
</table>

IAP HUMAN RIGHTS INTEGRATION – WP2 LOCALISING HUMAN RIGHTS DRC-UNICEF SANITISED VILLAGES IN BAS-CONGO INTERVIEW GUIDE FOR LOCAL AUTHORITIES & NGOs' LEADERS Université Kongo, DRC		
Structure	**Questions**	**Remarks**
Demographic information of the respondent	1. Full Name: 2. Age/Sex: 3. Position: 4. Language spoken: 5. Main activity: 7. Level of Education - no formal education: - Primary school: - Secondary school: - Tertiary Education: 8. Familiarity with the VA Project (for how long have you been involved in or/and have you known the project):	
Information on the entity	1. Main activities 2. Kind of participation in the project 3. Main activities of community members 4. No. of reported cases of death for children under 5 years in the last six months: 5. When did the project start in this village/community?	
PART I - HUMAN RIGHTS		
	1. What do you think have been the improvements through this project? 2. Is there any focus on the issue of human rights? 1. How do you understand 'human rights'? 2. Do you think this is an important aspect to be considered in this project? Please, explain. 3. What, according to you, is the impact of human right in the implementation of this project? 4. Are you familiar with the (UNICEF) rights-based approach? 5. What does it mean for you? 6. Why water/sanitation is important to you and your community?	

IAP HUMAN RIGHTS INTEGRATION – WP2 LOCALISING HUMAN RIGHTS **DRC-UNICEF SANITISED VILLAGES IN BAS-CONGO** **INTERVIEW GUIDE FOR LOCAL AUTHORITIES & NGOs' LEADERS** **Université Kongo, DRC**		
Structure	**Questions**	**Remarks**
	PART II - POLICY	
	1. Is it the responsibility of the government to provide potable water and clean sanitation to the people? Yes /No If yes, is the government doing enough to ensure your access to potable water and clean environment? 2. If you had to make a policy decision to improve access to water in this village, what would that be? 3. Is there any place/village you know about which has a better system for access to water or a better sanitation system (toilets, washing hands facilities, etc.)? Why do you think so? Would you recommend a system like that for your village?	Let the respondent give their own perception to the field investigator; their perceptions should also include the suggestions as to what the government should do to improve the water and sanitation facilities.
Prioritization	• Of all the things that we discussed, what is for you the most important problem? Why?	
	PART III- ADAPTABILITY (EVALUATION)	
	• How do you think your entity can contribute to enhance a culture of human rights in this village (through this project)?	

ANNEX 4: GENERAL OBSERVATIONS

Category	includes	Researcher should note
Appearance	Clothing, age, gender, physical appearance	Anything of interest for the study: occupation, social status, religion, etc.
Verbal behavior and interactions	Who speaks to whom and for how long; who initiates interaction; language spoken, tone of voice, etc.	Gender, age, ethnicity, occupation, etc.
Physical behavior and gestures	What people do, who does what, who interacts with who; who is not interacting, etc.	How people use their bodies and voices to communicate different emotions; what people's behaviors indicate about their feelings toward one another, their social rank or their occupation.
Personal space	How close people stand to one another?	What people's preferences concerning personal space suggest about their relationships.
Human traffic	How and how many people enter, leave, and spend time at the observation site?	Where people enter and exit, how long they stay; who are they (ethnicity, age, gender), whether they are alone or accompanied.
People who stand out	Identification of people who receive a lot of attention from others…	These people's characteristics, what differentiates them from others; whether people consult them or they approach other people; whether they seem to be strangers or well-known by others present. Note that these individuals could be good people to approach for an informal interview or to serve as key informants.
Village assessment		

Date:

Geographic information:

Province:District:Territory:Village:

GPS coordinates:

Notes/comments:

Demography

Est. Population:

Est. no. of houses:

Avg. family size:

Ethnic group:

Tribes present:

Notes/Comments:

Village assessment

Infrasctructure and services

Education:

Health:

Water sources:

Electricity:

Communication:

Transportation:

Infrastructure and services shared with other villages (schools, wells, clinics, etc.):

Notes/comments:

Landscape

General description of the terrain:

Transportation access to village:

Connections to other villages (roads, etc.):

Travel time to nearest city:

Travel time to nearest clinic:

Notes/comments:

Economy

Shops:

Main sources of income:

Industry:

Crops:

Livestock:

Threats to local economy:

Notes/comments:

Government & Leadership

Decision-making process:

Influential people:

Elders:

Religious leaders:

Notes/comments:

Other Important aspects to observe:

- **Gender roles and differences**
- **Discrimination/exclusion – Non-discrimination/Equality**

Sources: adapted from N. MACK et al. (2005: 20)

ANNEX 5: ETHICAL CLEARANCE

Universiteit
Antwerpen

Prof. Koen De Feyter
Faculteit Rechten
Stadscampus
Venusstraat 23 (S.V.122)
2000 Antwerpen

Prof. Steven Gillis
Voorzitter Ethische Adviescommissie
Sociale en Humane Wetenschappen
Stadscampus (S.L.306)
Lange Winkelstraat 40
2000 Antwerpen

UW KENMERK

ONS KENMERK
SHW_14_27_02

DATUM 12-12-2014

Betreft: beslissing Ethische Adviescommissie Sociale en Humane Wetenschappen, dossier SHW_14_27_02

DEFINITIEF POSITIEF ADVIES (FINAL POSITIVE CLEARANCE)

Geachte Prof. De Feyter

De onafhankelijke Ethische Adviescommissie voor het onderzoek in de Sociale en Humane Wetenschappen (EA SHW) opgericht door het Bestuurscollege van de UA (d.d. 03.07.2012), geeft een 'definitief positief advies' aan uw project **"The DRC-UNICEF Sanitised Villages Programme in the Bas-Fleuve District: Human rights discourse from below"** (eigen middelen en BELSPO nr 42/FA050000/11/6003, PS ID 27930).

In zijn besluitvorming laat de EA SHW zich leiden door de Wet van 8 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, de Wet van 7 mei 2004 inzake experimenten op de menselijke persoon, de EU-"Guidance Note for Researchers and Evaluators of Social Sciences and Humanities Research", de deontologische code van de onderzoeker (bijlage bij het ZAP-statuut UA), en door het vademecum dat de Commissie voor de bescherming van de persoonlijke levenssfeer opstelde over wetenschappelijk onderzoek en privacy.

De commissie heeft de volgende documenten geëvalueerd:

- Begeleidend schrijven (versie 1, indiendatum 02/12/2014)
- Aanvraagformulier ethisch advies van de Ethische Adviescommissie Sociale en Humane Wetenschappen van de Universiteit Antwerpen (versie 1, indiendatum 02/12/2014)

De commissie formuleerde geen verdere opmerkingen en besluit derhalve tot een definitief positief advies.

Hoogachtend,

Prof dr Steven Gillis
Voorzitter Ethische Adviescommissie
Sociale en Humane Wetenschappen