The Human Right to Safe Drinking Water and Sanitation in the rural Bas-Fleuve region of the Democratic Republic of Congo: Exploring the local conceptions of human rights

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
AS	Aire de santé
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
CBOs	Community-based Organizations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Congo Free State
CLD	Comité Local de Développement
CNAEA	Comité National d'Actions de l'Eau et de l'Assainissement
CRC	Convention on the Rights of the Child
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
FP	Force Publique
HIV-AIDS	Human immunodeficiency virus infection and acquired immune deficiency syndrome
HRBA	Human rights-based approach to development
IAP	Interuniversity Attraction Poles

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
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
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Co-operation and Development
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
RDC	République Démocratique du Congo
REGIDESO	Régie de distribution des eaux
RVF	Régie des Voies Fluviales
RVM	Régie des Voies Maritimes
SDGs	Sustainable Development Goals
SNHR	Service National d'Hydraulique Rurale
SNL	Société Nationale d'Electricité
UDHR	Universal Declaration of Human Rights
UN GA	United Nations General Assembly

UN	United Nations
UNEP	UN Environment Program
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 Organization
ZS	Zone de santé

EXECUTIVE SUMMARY

Access to improved Water, Sanitation and Hygiene (WaSH) services, is a persistent problem throughout the Democratic Republic of Congo (DRC), particularly in the (former) Bas-Fleuve of the Kongo Central (formerly Bas-Congo) Province. Water and sanitation statistics indicate that only 47% of the DRC population has access to clean drinking water (improved water sources), and 14% to adequate sanitation (UNICEF, WaSH Program 2007-2012). The low rate of access to drinking water and the absence of education in the areas of hygiene and sanitation for the majority of Congolese are among the factors contributing to high rates of morbidity and mortality from water related diseases. This is especially true for children under the age of five, with one in seven dying before their fifth birthday (UNICEF website) and malaria, pneumonia and diarrhoea causing cause 42% of those deaths (WHO 2017).

The DRC's national programming strategy to improve access for all to water and sanitation is centered on the *Ecole et Village Assainis* ("Sanitized Schools and Villages") model, launched in 2006 to 2008, and implemented by the Ministry of Public Health and the Ministry of Education with support from UNICEF and other development partners. Importantly, the advent of this program marks a key turning point from an approach centered on emergency and ad hoc rehabilitation interventions towards the systematic development of the rural water sector. The key objective of this integrated concept is to improve the quality of drinking water sources in rural areas by tapping springs and constructing shallow wells through the tools of community mobilization and capacity building.

It is within this context that we chose to conduct research into the local understandings of the right to water and sanitation for rural rights-holders in the DRC, specifically in the Bas-Fleuve region of the Kongo Central Province. This case study contributes to the conceptual and methodological work that forms part of the localizing human rights (LHR) research project of the Human Rights Integration Network[1]. The overall objective of the LHR research project is to test and refine the LHR approach, and in particular the LHR methodology developed by Gaby Oré Aguilar (2011). The case studies in the LHR working paper series contribute to the LHR knowledge base, specifically the literature that explores whether and how global human rights norms resonate with local populations. This case study is embedded within the framework of the LHR research project of the Law and Development Research Group of the University of Antwerp, in Belgium.

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[1] This research is embedded in the localizing human rights research line of the Law and Development Research Group at the University of Antwerp, as well forming part of Work Package 2 of the Interuniversity Attraction Poles Programme "The Global Challenge of Human Rights Integration: Towards a Users' Perspective" (www.hrintegration.be) funded by the Belgian Science Policy Office (BELSPO). Work Package 2 focuses on how human rights 'users' navigate through the complex architecture of human rights law and use it to their benefit. The case studies in the Work Package address how urban and rural poor communities in the 'Global South' use, or do not use, human rights in order to protect themselves from perceived threats to their human dignity, and how international human rights norm-setters accommodate these local concerns.

The LHR research project team conducted two inter-related case studies in the Bas-Fleuve (former district) of the Kongo Central (formerly Bas-Congo) Province, in the Democratic Republic of the Congo (DRC). The first case study, led by Tine Destrooper (2015), examined how UNICEF engaged with the human rights based approach to development in its *Village Assaini* (VA) Program.[2] This study, led by Pascal Sundi, aims to gain insight into the human rights understanding of local village communities in the Bas Fleuve district that are part of the VA Program. It also contributes to the expanding body of non-legal research on LHR thus highlighting the value of interdisciplinary research and analysis and improving understanding of how international human rights frameworks engage, or not, with diverse communities and vice versa.

LHR research takes the human rights needs identified by local rights-holders as the starting point for interpreting and developing human rights norms and for identifying actions, ranging from the local to the global level, to improve human rights realization. The research and analysis in this case study contribute to the knowledge base of local concepts of human rights, focusing on the right to drinking water and sanitation. It is based on fieldwork carried out in villages in the rural Bas-Fleuve. It explores local understanding of human rights, including an investigation of which entities are viewed as duty-bearers. Additionally, it builds on earlier work research into the UNICEF managed *Village Assaini* Program (Working Paper 3) by examining the impact of this initiative on local conceptions of human rights thereby exploring whether and how global human rights discourse and practice inform, or not, actions and perceptions of local actors at grassroots level.

Objectives

The main objective of this research is to explore how local rights-holders, residing in the villages selected for this study (all of which are included in the VA Program) interpret human rights, specifically their right to drinking water and sanitation. As such, the research engages with understanding the extent to which the villages selected for the study have or have not advanced in the localization process, and explore why and why not. In addition it examines how engaging with the actors and factors that influence this process impacts, or not, on the localization process. This study takes the local as the starting point; in addition, as the DRC is a State Party to six key international human rights treaties, the analysis is informed by the international human rights framework. The following sub-objectives frame the study:

1. Identify the local structures, e.g. the *zones de santé*, that engage with the right to drinking water and sanitation within the VA Program;
2. Trace how UNICEF engages with local rights-holders on the right to drinking water and sanitation, as advanced through the VA Program;

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[2] In her report, Destrooper addresses three related questions, namely; (i) what is the evolution and importance of the HRBAD as a guiding paradigm for the UN in general and for UNICEF in particular? (ii) how is the HRBAD implemented on the ground in the 'village assaini' program? And (iii) do human rights-based interventions by UNICEF's WaSH division create the conditions for localization of the HRBAD in particular and of human rights more generally?

3. Ascertain whether or not a right discourse or human rights practices emerge from the VA Program implementation; and
4. Identify how local interpretations of human rights (if any) have been influenced by the VA Program;
5. Highlight how the global/transnational human rights discourse and practice does or does not inform actions and perceptions of local actors at grassroots level, specifically in relation to their right to water and sanitation.

Methodology

Following a review of research methodologies most appropriate for addressing the research questions a qualitative case study approach, with both field and desk research, was selected. In order to gain a deeper and firmer understanding of the topic under investigation, several qualitative data collection methods were used. For the field research, these included semi-structured interviews, focus group discussions and anthropological observation. As Kitzinger notes, a key advantage of these methods is that 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). In addition a documentary analysis of the development context, historical context and legal framework helped to provide a deeper understanding of the local context of the region in which the field researcher conducted fieldwork. Having multiple data sources was crucial for the validity of the analysis as it allowed for the triangulation of data sources.

The research sample was comprised of five villages that were part of the VA Program. The research was conducted between October 2014 and August 2016. During the initial intensive phase the field researcher spent a minimum of one month in each village. Following an analysis of preliminary data follow-up visits were made. A total of 116 interviews and focus groups were conducted during this time. All of the interviews were transcribed and analyzed using an empirically grounded method of critical discourse analysis (Billig 2000; Bloomaert 2001: 143).

To trace the origins of understandings of human rights, researchers compared findings across villages, assessed mechanisms for sharing information, mapped the presence, strategies and discourses of various actors, including international, government and non-governmental actors, that had been active in the village and assessed the evolution of local understandings over time (Destrooper & Sundi Mbambi 2017).

 Results

1. Understanding the role of different local structures, including the *zones de santé* engaged with the VA Program to advance the water and sanitation rights of communities, was vital to understanding the chain of accountability. The complexity of identifying where local accountability for implementation and monitoring of the VA Program resides suggested the challenges villages face should they decide to claim rights. As the research spanned significant administrative changes in the local study area the complexity of identifying the responsible local structures was compounded.

2. The research 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?" Further, if the local actor is hard to identify or ineffectual when it comes to addressing the village's problem, or attempts to shift responsibility to villagers, this undermines accountability and challenges the claim that the VA Program is rights-based. Despite the on-paper commitment to empowering local structures to work with people to prioritize the people's rights 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).

3. Complex, rich, diverse local understandings of human rights were identified during the field research. The most appealing was the concept of *bu-mùutu*, which refers to 'humaneness', justice, solidarity, generosity, etc. This concept summarizes what is at the core of the human dignity, the "humaneness". It emphasizes 'communality and interdependence' (in opposition to the international concept of HR, which basically emphasizes the protection of individual interests). *Bu-mùutu* refers more to a 'moral entitlement' rather than a legal entitlement; in this sense, it does not refer to the state as the entity with the legal responsibility to respect, protect, and fulfill (the right to water and sanitation). On the contrary, villagers (rights-holders) even see the state as the 'God on earth' (l'*Etat Nzambi tsi*), an almighty, almost 'abusive' and too distant state. Within the concept of *bu-mùutu*, duty-bearers are seen as those with a moral responsibility to respect, protect and fulfill (the right to water and sanitation), i.e. private companies, international NGOs, etc.

4. However, despite identifying multiple local understandings of the right to water and sanitation the field research did not find that participation in the VA Program led to a human rights-based discourse emerging, nor did it find that village residents formulated claims using the human rights framework. Despite the fact the interviewed villagers were all residents of VA Program villages they did not use claiming language nor did they intend to turn to local authorities to claim their rights. In LHR terms, they did not advance to track one on the LHR circle, that is integral to the LHR methodology developed by Gaby Oré Aguilar (2011), as they did not use claiming language or claim their rights.

5. None of the local conceptions of human rights, including *bu-mùutu*, make a direct reference to the State as the primary legal duty-bearer. References to the responsibility of government are basically absent in the discourse of local rights-holders as well as in that of VA Program officers. Even where people think they have a right to water, they do not generally mention the idea that the right to water also entailed a dimension of government responsibility, or referred to the possibility to claim it.

6. The concept of *bu-mùutu* suggests that a rights understanding that only identifies the State as a duty-bearer (as traditionally in international Human Rights law) may be counter-productive in this context, and has little or no potential to empower rights-holders. During the fieldwork, rights-holders expressed confidence in corporate actors, international NGOs or various other actors, including foreign governments involved in supporting development projects (as they seem to be more visible and responsive on issues affecting the communities in the areas of health, education, road infrastructure, etc.) – though our study was limited to looking at the right to water and sanitation.

7. The research identified three overlapping explanations for the failure of the international human rights framework to percolate into the VA Program and lead to rights claiming; the design of the VA Program, the historical role of the DRC State and the villagers' pragmatism.

8. **The design of the VA Program**- Destrooper's research highlights how the absence of a human rights based approach to implementing the VA Program meant there was little input from the villagers, the rights holders (2015). The emphasis that UNICEF and the VA Program place on the rights-holders' (villagers) responsibility for the success of the VA Program emerged strongly from the field work. We hypothesize that this makes it difficult for rights-holders to name/identify the State as a primary duty-bearer with regards to their right to water and sanitation. As a result, the potential for rights-holders to hold the government accountable and claim their rights vis-à-vis the Congolese State remains very low.

9. **The historical role of the DRC State** - The historical overview notes that since the 1884-85 Berlin Conference, the emergence of a functioning state that respects and delivers the rights of those residing on the territory now called the DRC, remains a work in progress. During both the rule of King Leopold II and the Belgian State, the DRC was developed as an extractive State to benefit outsiders, not the citizens of the DRC. Since independence, the DRC has been beset by unrest, dictatorship and concomitant political and power struggles all contributing to the continuing weakness of the national State. Assessing the extent to which the institutions, infrastructure and economy of the DRC have developed to deliver dignity and rights to the citizens of the DRC is beyond the scope of this study. However the historical absence of a strong state and institutions that *respect*, *protect* and *fulfill* people's rights has clearly hampered the development of a human rights culture in the DRC; both with respect to the State assuming its role as the duty-bearer and on the part of citizens claiming their rights, including the right to water and sanitation from the State.

10. **The villagers' pragmatism** - Thirdly, the absence of human rights claiming may be 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 the villagers 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 DRC State, their non-engagement with the human rights framework is a logical, pragmatic decision.

Moving forward

Empowering rights holders

For the VA Program to become more effective at advancing the right to water, 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 research in this case study shows that rich local concepts exist but there is a failure to identify the actor 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 that all people are entitled to. 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 emphasizes communal values that speak to and empower the local people. The findings from this study echo those of Destrooper (2015) suggesting the need to rework the social contract by beginning a dialogue between rights holders and duty bearers. However, for this to be successful there is a great need to fully and systematically apply the human rights based approach to development and engage in capacity building on human rights for both right-holders and for duty-bearers. The VA Program offers an opportunity to do this.

Engaging the DRC State

Even if progress is made on claiming rights the challenge will remain as to how to operationalize the right to water and sanitation in a more effective way given the weakness of the DRC State, the duty bearer under international law. For the VA Program to be more effective and efficient if 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, as De Feyter notes "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)." At the end of 2017 the weak democratic legitimacy of the DRC State and its ongoing inability to respect, protect and fulfill the rights of the Congolese 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 recognizing the inherent risks in such an approach, is appealing for those interested in advancing the human rights of people who are vulnerable and marginalized (Destrooper and Sundi Mbambi 2017).

Given the absence of a strong and effective DRC state, the finding that local communities do not claim their rights is less surprising. This is not to say that a strong effective state would lead to people claiming their rights but it is probably a necessary condition for localizing rights. Donor states and international organizations appear either unable or unwilling to engage in more than rhetorical support for human rights in development programs in the DRC. This obstacle helps to explain why there has not been any localization of human rights. Arguably such an approach challenges the local relevance and legitimacy of the interventions, as well as the opportunities for the necessary bi-directional (local-global) communication on these issues.

GENERAL INTRODUCTION

Situating the Localizing Human Rights Research Project within the Interuniversity Attraction Poles - Human Rights Integration Project

This research is embedded in the localizing human rights (LHR) research line of the Law and Development Research Group at the Law Faculty of the University of Antwerp. It also comprises Work Package 2 of the Interuniversity Attraction Poles (IAP) Program "The Global Challenge of Human Rights Integration (HRI): Towards a Users' Perspective" funded by the Belgian Science Policy Office, BELSPO[3]. From 2012 until 2017, the LHR team, based at the University of Antwerp, has coordinated and contributed to 5 localizing human rights studies which focus on how impoverished urban and rural communities in the 'Global South' have, (or have not), used human rights to protect themselves from threats to their human dignity. The studies carried out within the LHR research project framework include:

- The Human Rights Council from Below. A Case Study of the Declaration on the Rights of Peasants;
- An Analysis of the Human Rights-Based Approach to Development. UNICEF's Role in the *Villages Assainis* Program in the Bas-Congo;
- The Right to Education of Rural-Urban Migrant Households in Chongqing, China; and
- The Right to Water and Sanitation for the Urban Poor in Delhi.

The overall objective of the LHR research project is to test and refine the Localizing Human Rights (LHR) approach, and in particular the LHR Methodology developed by Gaby Oré Aguilar (2011), thereby contributing to the LHR knowledge base. Previous theoretical and desk-based research has been conducted to outline the contours of the LHR approach, and published in the volume "The Local Relevance of Human Rights" (De Feyter, Parmentier, Timmerman & Ulrich 2011). The present research aims to fill the gap by carrying out empirical research – in addition to legal analysis – on different experiences related to LHR.

The LHR research project conducted two case studies in the Bas-Fleuve (former district) of the Kongo Central (formerly Bas-Congo) Province, in the Democratic Republic of the Congo (DRC). The studies had two overarching, inter-related goals, each of which is the focus of a case study but also forms part of the context of the other study. The first goal was to assess whether local conceptions of rights find their way to other actors in the human rights network, and in particular to those actors which play an important role in shaping transnational human rights norms. This component has been extensively dealt with by Tine Destrooper in her report examining how UNICEF engaged with the human rights based approach to development in its *Village Assaini* (VA) Program.[4] The second aim of the LHR research project, this study,

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[4] In her report, Destrooper addresses three related questions, namely; (i) what is the evolution and importance of the HRBAD as a guiding paradigm for the UN in general and for UNICEF in particular? (ii) how is the HRBAD implemented on the ground in the 'village assaini' program? And (iii) do human rights-based interventions by

was to gain an insight into the rights' understanding of local communities, i.e. their conceptions of the right to drinking water and sanitation, and to explore how these conceptions shape their actions vis à vis claiming these rights.

The primary objective of this case study was to explore local conceptions of the human right to safe drinking water and sanitation in the rural Bas-Fleuve. As noted above it complements previous conceptual and methodological studies on the relevance of international human rights concepts and law for marginalized communities in Asia and Africa that form part of the localizing human rights case studies led by the University of Antwerp. It also contributes to the expanding body of non-legal research on LHR thus highlighting the value of interdisciplinary research and analysis and improving understanding of how international human rights frameworks engage, or not, with diverse communities.

Chapter 1 outlines the country context, objectives and research questions and then details the methodology employed to answer the research questions. As LHR research requires knowledge and engagement with the local context, chapter 2 provides a brief introduction to the research context, including a history of the DRC, and an overview of the relevant international and legal framework. Chapter 3 introduces the research findings on the VA Program, its relationship to the other key national institutions engaged in water and sanitation rights and the five villages studied, including how the research methodology was applied. Chapter 4 provides a detailed exploration of the local conceptions of human rights. Chapter 5 examines potential obstacles to localizing human rights in the DRC. Chapter 6 returns to the local conceptions of human rights and explores how and why the VA Program has or has not impacted on local understanding. The study concludes with reflections on how the VA Program could be adapted to maximize synergies with local conceptions of rights so as to advance on realizing the right to drinking water and sanitation.

UNICEF's WaSH division create the conditions for localization of the HRBAD in particular and of human rights more generally?

CHAPTER 1. RESEARCH CONTEXT, RESEARCH PROBLEM AND METHODOLOGICAL FRAMEWORK

1.1. COUNTRY CONTEXT

The DRC is a vast country occupying an area of 2,345,409 square kilometers, located at the heart of Africa, and with a total population estimated currently at 77 million inhabitants (World Bank). The DRC is a landlocked country, except for a coastline of 35 km containing the mouth and lower reaches of the Congo River, which connects the country to the Atlantic Ocean. It shares borders with nine other countries, including Angola in the South-West; the Republic of Congo in the West; Burundi, Rwanda, Uganda and Tanzania in the East; the Central Africa Republic in the North; South Sudan in the North-East; and Zambia in the South.

In economic terms, the DRC is primarily a mineral-producing and exporting country. In addition, it enjoys an ecological diversity that attests to its richness in non-mineral goods, including forest and water resources. It is estimated that 68 percent of the total land area are made up of forests and woodlands, including the tropical rainforest in the equatorial zone (Bromhead 2012: 18).

There are seven great lakes in the country, four of which are located along the eastern border in the Great Lakes region, and hundreds of rivers and smaller lakes. The whole country is drained by the Congo River and its tributaries. The second longest river in Africa after the Nile, and the fifth longest in the world, the Congo River is the second in the world after the Amazon with respect to hydroelectric potential (Alsdorf 2016). Besides its location next to the Atlantic Ocean, the Kongo Central province retains a high water potential, including the Congo River and its tributaries, such as the Inkisi in the Lukaya region, the Mpozo in the Cataractes. The Shiloango River - also known as the Tshiloango, Chiluango or Louango – upstream forms the border between the Republic of Congo and the Democratic Republic of the Congo in the Bas-Fleuve region, while downstream it becomes the border between Angola (Cabinda) and the DRC. It flows into the Atlantic Ocean north of Lândana (Angola-Cabinda). Its watershed covers ± 5,170 km², and its main tributaries are the Lukula, the Fubu, the Lubuzi – in the Bas-Fleuve region –, and the Luali, in Angola-Cabinda (Wmuini Lunkayilakio, Snoeks and Vreven 2013). The Bas-Fleuve region is also watered by many other small rivers and mountain springs, which are sources of (drinking) water for local communities (CARG 2009).

The focus of this study is the Kongo Central (formerly known as the Bas-Congo) Province, which is one of the more prosperous regions in the country, endowed with natural resources including crude oil, phosphate, bauxite, gold and diamonds. Further, it has a large presence of diverse international actors, most importantly development actors, international organizations and oil companies. In addition to agricultural production, the economic activities of the province revolve mainly around hydroelectricity and oil mining.

Statistics released in April 2013 provide insight into the socio-economic conditions of the then Bas-Congo (now Kongo Central). Approximately 70% of the province's population has an estimated annual income of $138.6 ($11.55 per Month and $ 0.39 per day). The average illiteracy rate for the province is 29.5%, standing at 17% for men and 42% for women. Life expectancy at birth is 50 years for men and 52

for women. On average, the percentage of households without access to drinking water is 68.5% (52% in urban areas and 85% in rural areas). The 2006 to 2011 period saw a small reduction in the incidence of poverty from 69.8% to 68.8% (Mbadu N'situ 2013).

According to the World Bank (2017: 3) the DRC has the third highest poverty rate in the world and concentrates the fifth largest number of poor people within its borders. Further, the number of poor people in the Democratic Republic of Congo has increased by over 7 million since 2005, driven in by the second highest fertility rate in Africa (World Bank 2017: 5).

1.2. BACKGROUND AND RESEARCH RATIONALE

With an estimated 52% 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 per cent (421 km3/year) of the DRC's internal renewable water resources (UNEP 2011: 16). Groundwater generally has an acidic pH requiring an equilibrium treatment. Springs comprise the main source of drinking water, estimated to supply up to 90 per cent of DRC's rural population (UNEP 2011: 16). The 2011 UNEP report on Water Issues in the DRC remarks 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.

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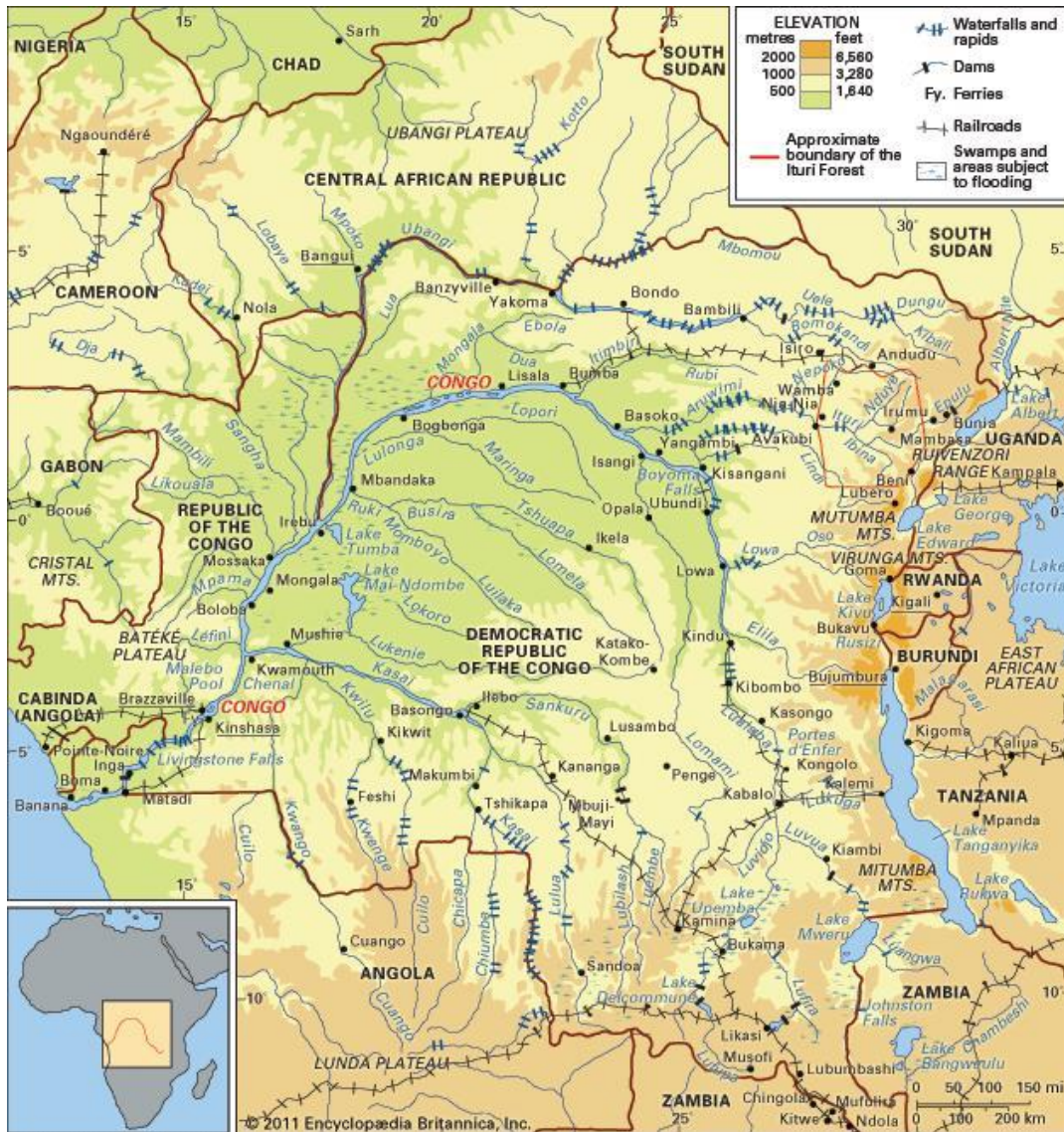
Source: Encyclopaedia Britannica, Inc.

In connection with water and sanitation, statistics indicate that only 47% of the DRC population has access to clean drinking water (improved water sources), and 14% 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% of rural population has access to drinking water, compared to 81% of the urban population (UNICEF and WHO 2015). The disparities are even more striking with respect to sanitation. In rural areas, 4% of households' members use adequate toilets, against 36% in urban areas (MICS[5] report 2010: 15). The same report mentions that less than 60% of the Congolese

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

population wash their hands before eating, while less than 35% do so after the toilet. The poor access to drinking water and the lack of education in the areas of hygiene and sanitation for the majority of Congolese is among the factors of high rates of morbidity and mortality from water related diseases, especially among children of less than five years. One in seven children die before their fifth birthday (UNICEF website) and malaria, pneumonia and diarrhoea causing cause 42% of those deaths (WHO 2017).

The impact of poor WASH access and behaviors is pronounced , and the DRC has the third highest number of childhood deaths from diarrhea each year (USAID 2016: 30). Further, poor WASH access is linked to malnutrition which is increasing in the DRC. A 2017 World Bank report notes, "Malnutrition in the Democratic Republic of Congo is appallingly high for a country well-endowed with natural resources… 49 percent of under five year olds in the Democratic Republic of Congo suffer from some type of anthropometric failure, with a staggering 43 percent chronically malnourished. (World Bank 2017: 43). A increasing body of public health research shows how poor WASH contributes to malnutrition by transmitting pathogens and infections that prevent the absorption of nutrients through, among other factors, diarrhea and parasites (Cumming, Cairncross 2016).

The DRC 2006 Strategic Paper on Growth and Poverty Reduction highlights a few challenges in the area of access to safe drinking water. Inhabitants in various remote areas walk from 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 has acceded to the six core international human rights treaties[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 of the DRC. In addition, to these obligations, the Congolese Constitution proclaims that these are the constitutional entitlement of Congolese citizens. (The legal framework will be discussed in detail in chapter 2.3.) One way in which the DRC government has attempted to fulfil its legal obligation in relation to access to drinking water and sanitation is through the *Villages Assaini* (VA) program, launched in 2006, and implemented by the *Ministère de la santé publique,* with financial and technical support from UNICEF and other development partners.[7]

The EVA Program, emerged 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

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[6] These include the International Covenant on Economic, Social and Cultural Rights (acceded to in1976), the International Covenant on Civil and Political Rights (acceded to in 1976), the International Convention on the Elimination of Racial Discrimination (acceded to in 1978), the Convention on the Elimination of All Forms of Discrimination against Women (acceded to in 1986), the Convention on the Rights of the Child (acceded to in 1990), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (acceded to in 1996).
[7] In 2008 this expanded to become the *Ecole et Village Assainis (EVA) Program*, with the *Ecole Assainie* Program component being implemented by the Ministry of Education. While the current national UNICEF Program is known as *Ecole et Village Assainis (EVA) Program*, this study focused on the *Village Assaini (VA)* Program component.

child and infant mortality.[8] If one looks closer at the origins of the EVA Program, 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 EVA Program has been collected by UNICEF and other actors. In addition, a 2015 case study by Destrooper, that is also part of the Localizing Human Rights series, examined how the VA Program implements the human right-based approach (HRBA) to development, as articulated by UNICEF. Her research shows that UNICEF implements the VA Program using what it terms a HRBA to development in the form of *community participatory approach*. This means the program only emphasizes selected dimensions of the rights-based approach – instead of applying it in full. Destrooper's (2015) report shows the shortcomings of the HRBA to development as applied in this program focusing on the lack of attention given to various human rights dimensions, including the dimensions of participation, equality and non-discrimination, accountability and empowerment. Even though the VA Program has arguably brought some kind of optimism and satisfaction,[9] as well as remarkable change within communities and households,[10] as the results of this research will show, many challenges[11] remain. Evaluation research[12] undertaken at the end of the first phase of the VA Program clearly emphasized that a preliminary socio-political analysis was needed in any village joining the VA Program. Such an analysis had to consider three key dimensions which were left out in the first phase of the VA Program, 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 community participatory approach based on local beliefs and aimed at enhancing local adherence and ownership of the core values of the VA Program. Building on Destrooper's research, this case study aims to explore these local conceptions (or beliefs) with regards to the right to drinking water in select villages that are enrolled in the VA Program in the Kongo Central Province.

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

[9] 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**).

[10] 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 program implementation. They agree that 'before we start this program (VA), our kids regularly suffered from diarrhoea and vomiting; today it's different' (**Focus Group Discussions, V5, August 2016**).

[11] The same WaSH Officer remarked, "As we (the VA Program) 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 program are doing to improve their sanitary conditions and at least boil the water they drink" (**Interview, TAO1, Matadi, October 2014**).

[12] 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.

Of the over the 9000 villages in the Kongo Central Province, almost 1023 villages have joined the VA Program since 2006, with almost 813 of them being certified[13] to date and 216 in process. In the first phase of the VA Program, only 24 *zones de santé*[14] of the total of 31 participated. In the second phase of the VA Program – officially launched on 20 March 2015 in Kinshasa[15] – the number of participating zones de santé increased.[16] Our research focused on the District of Bas-Fleuve and the costal 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 in 9 *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 program since its pilot phase in 2006. The *zone de santé* of Kangu joined the program in its second phase in 2015. Given the active presence of the VA Program in the Kongo Central Province over a period of ten years we believed that a study that employs the LHR framework would provide an interesting and useful contribution to better understanding the nature of the local conceptions of the right to drinking water and sanitation as the second phase of the VA Program launches. Section 1.5 of this chapter, which focuses on the research methodology, provides further justification for choosing this region.

1.3. LOCALIZING HUMAN RIGHTS THEORY

The main theoretical framework underpinning this study flows from the LHR methodology developed by Gaby Oré Aguilar which is intertwined with the larger body of work on LHR undertaken by De Feyter and others (2007; 2011). Localization of human rights is understood as "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). 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 that further development of international human

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[13] The '*pas-à-pas* structure" of the VA Program's community-based approach shows all steps of the program and specifies for each step what the role of the community is; this role goes from making an initial request to join the program to analysing their own situation and needs, and from 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.

[14] The *Bureaux des zones de santé* are government actors managing the program 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 executing the program, 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).

[15] See LeKwango, «'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/

[16] In a June 2017 follow-up conversation with the Focal Point of the VA Program at the Provincial Division of Health in Kongo Central, it was brought to our attention that 7 *zones de santé* are not included in the VA Program in the Kongo Central Province. These include; Nselo, Kibunzi, Mangembo, Nzanza, Matadi, Boma, and Kitona. The last three are situated in urban settings.

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 the local conceptions, the goal of this research.

As noted above, this case study draws on Oré Augilar's work on the conceptualization and operationalization of the localization process which comprises five interrelated tracks for analysis as outlined in the below diagram (Oré Aguilar 2011).

Fig.2. The Localizing Human Rights Process
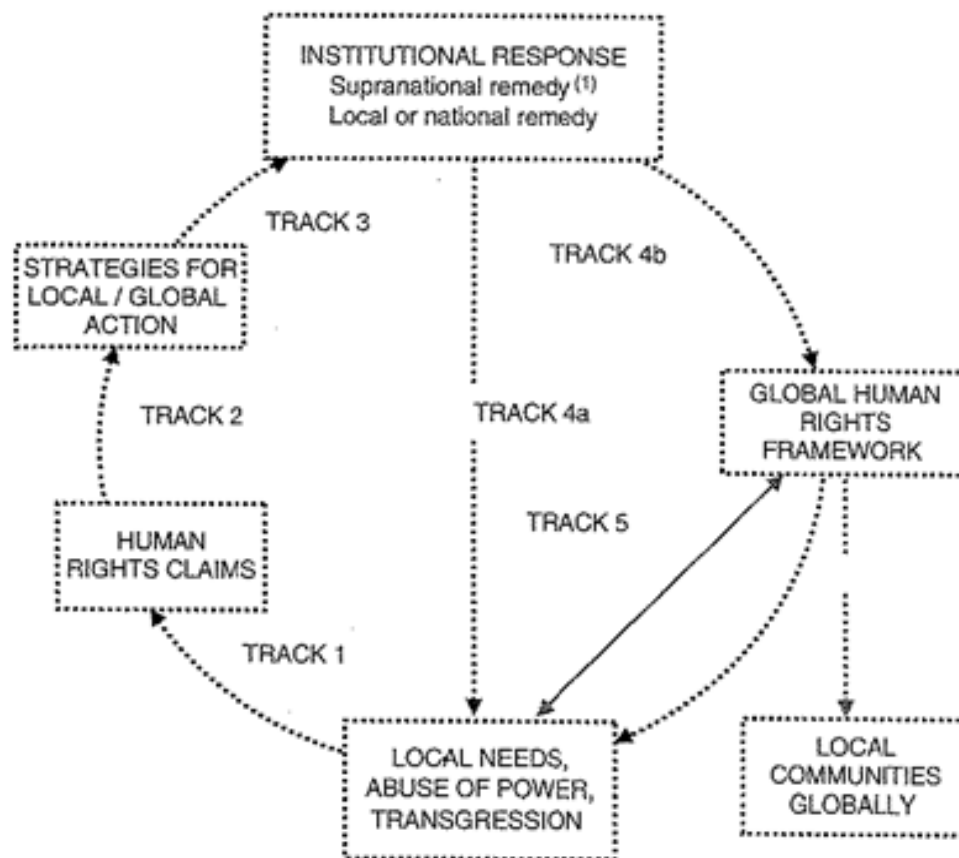
Figure 1   The process of localising human rights
[1] Regional court, UN monitoring body, decisions by international organisations, universal jurisdiction judgments.

Track 1, the focus of this 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 holder (the State or another agent); (iii) it insists on accountability from the duty holder. The main

focus of this study was to identify how and where local conceptions of the right to drinking water and sanitation satisfy these criteria.

Track 2 of the localization process focuses on the translation of these claims into human rights actions. In track 3, strategies are employed aimed at responses from the administrative policy making or judicial actors at local, national and/ or international level. 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. Track 5 finally, analyses "whether and how global human rights norms enhanced by local experiences have the power to transforms similar realities of human rights transgression or deprivation" (Ore Aguilar 2011: 139).

This study focuses on track 1 of the localization process. It does not attempt to engage in a full analysis of the localizing circle.

1.4. RESEARCH OBJECTIVES AND QUESTIONS

The main objective of this research is to explore how local rights-holders, residing in the villages selected for this study (all of which are included in the VA Program) interpret human rights, specifically focused on their right to drinking water and sanitation. As such, it engages with understanding the extent to which the villages selected for the study have or have not advanced in the localization process, and explore why. In addition, it examines how engaging with the actors and factors that influence this process impacts, or not, on the localization process. The study takes the local as the starting point. In addition, as the DRC is a State Party to six key international human rights treaties, the analysis is informed by the international human rights framework.

To achieve the research objective the following sub-objectives were set:

6. Identify the local structures, e.g. the *zones de santé*, that engage with the right to drinking water and sanitation within the VA Program;
7. Trace how UNICEF engages with local rights-holders on the right to drinking water and sanitation, as advanced through the VA Program;
8. Ascertain whether or not a right discourse or human rights practices emerge from the VA Program implementation; and
9. Identify how local interpretations of human rights (if any) have been influenced by the VA Program;
10. Highlight how the global/transnational human rights discourse and practice does or does not inform actions and perceptions of local actors at grassroots level, specifically in relation to their right to water and sanitation.

The central question of this research which guided the entire research process is, ***what are the local conceptions of human rights in the Bas-Fleuve district***[17]***?*** The sub-questions addressed included how

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[17] Although the Bas-Fleuve District, as an administrative entity, ceased to exist as of February 2015, the designation still stands in the context of the VA Program. Within the geographical hierarchy of the administration of the Public

the UNICEF human rights-based VA Program impacts on such conceptions/perceptions and how local rights-holders negotiate between different rights' discourses or understandings. Specifically, the research aimed to gauge the level of right awareness of local rights-holders, as well as to what extent actions taken by communities to secure better human rights services, if any, from duty-bearers were constitutive of such awareness.

With this understanding in mind, the research focused on investigating how the presence of an internationally funded program, such as the VA Program, impacted on individuals' perceptions of their right to water and sanitation. Specifically, the goal was to explore whether or not these conceptions had the potential to change or influence the duty-bearers – rights-holders relationship throughout the day-to-day interactions. In other words, the aim was to understand – as part of this research – how this relationship did, or did not, enhance the capacity of rights-holders to claim their rights and to demand accountability from duty-bearers.

1.5. OVERVIEW OF THE RESEARCH PROCESS

As noted above, this research forms part of the LHR research within the broader IAP-HRI project. Additionally, it complements Destrooper's (2015) earlier study examining UNICEF's role in the VA Program, to which Pascal Sundi (the lead researcher on this study), provided field research assistance. The results and analysis presented in this study are based on anthropological fieldwork carried out in the Bas-Fleuve district[18] of the Kongo Central province[19] of the DRC, between October 2014 and August 2016 by Pascal Sundi.

In September 2014, a draft research plan was prepared, discussed and refined with the LHR research team at the Law and Development Research Group of the University of Antwerp. Between September and October 2014, the lead researcher, Pascal Sundi, conducted 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 Program. Following this initial visit the research plan was slightly modified and finalized. Once the final research plan was adopted in early October 2014, fieldwork started. In each of the five selected villages, the researcher was expected to spend at least one month conducting semi-

Health Ministry, the *Zones de santé* are gathered within 'districts'. For instance, the district of Bas-Fleuve comprises 9 *Zones de santé*, including Lukula, Inga, Seke Banza, Vaku, Tshela, Kangu, Kinkonzi, Kizu and Kuimba. The former administrative district of the Bas-Fleuve used to be constituted by three territories, namely Lukula, Seke Banza and Tshela. Five of these 9 *zones de santé* have been the target of our fieldwork: Lukula, Seke Banza, Kinkonzi, Kangu and Vaku, all spread across the three territories.

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

[19] 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 one 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 inexistent means of transportation.

structured interviews with key informants, organize focus group discussions, as well as engaging in participant observation. According to Burawoyetal (1991) participant observation involves joining respondents for extended periods of time[20] in different places (family settings, work activities, community meetings, etc.). Further details on the data collection process, techniques and strategies will be explored in the next section.

A total of 116 interviews and focus groups were conducted during this time. All of the interviews were transcribed and analyzed using an empirically grounded method of critical discourse analysis (Billig 2000; Bloomaert 2001: 143).

To trace the origins of certain understandings, the findings across villages were compared, assessed mechanisms for sharing information, mapped the presence, strategies and discourses of various actors, including international, government and non-governmental actors, that had been active in the village and assessed the evolution of local understandings over time (Destrooper and Sundi Mbambi 2017).

The initial research findings were discussed at an International Conference hosted by the University of Ghent, in Belgium, from 9 to 12 December 2015. Pascal Sundi, who conducted the fieldwork in this case study, presented a paper on the theme "*The local conceptions of human rights: what relevance for disenfranchised communities within the UNICEF 'Village Assaini' Program in Kongo Central, DRC*?" This presentation led to follow-up fieldwork from July to August 2016 in order to address issues that the above-mentioned International Conference highlighted as requiring 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.

1.6. RESEARCH METHODOLOGY

1.6.1. Justification of the case study: the V*illage Assaini* Program in the DRC

After researching the different methodologies appropriate for answering specific research questions it was clear that the justification for qualitative research advanced by Berg (1995) was the most aligned with the research objectives. Thus the study adopted a qualitative approach. Berg (1995:7) suggests adopting qualitative research techniques and methodology 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. This is because the research objective and related research questions that framed this investigation sought to explore the local interpretation of human rights by the rural poor. This study did not seek answers to simple yes and no questions but aimed at exploring richer questions related to the understanding and perception of village residents.

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

In addition, a case study was selected because it is a well-recognized 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 only 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 to data analysis (Yin 2003). For this research, the researchers opted for a single case study (focused on villages in the VA Program), as opposed to a multiple case study scenario. This approach allows for a more in-depth understanding of the phenomenon under study, though it places limitations on the generalizability of the findings to other contexts. As the research is based on a geographically delimited case study, and a limited number of villages the findings are not generalizable per se. However, as a case study, it provides 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. Here, the goal was three fold. Primarily, the aim was to improve understanding and illustrate what it means for the rural poor in the Bas-Fleuve region of the DRC to speak about human rights; secondly, to explore whether and how the international discourse on human rights come into play in and finally whether this influences the interactions between rights-holders and duty-bearers with regard to the right to drinking water and sanitation.

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 Program, which purports to employ a HRBA to development in its work. Owing to these last two factors, the research hypothesis is grounded in the assumption that people in villages enrolled in the UNICEF VA Program would have had more exposure to human rights discourse than their counterparts in other villages (Destrooper & Sundi Mbambi 2017).

The focus on the right to drinking water and sanitation can then be explained by the fact that the VA Program focuses on improving access to drinking water and sanitary conditions in villages and semi-urban areas.[21] What makes the case more interesting is the fact that UNICEF – as many other UN agencies – officially adheres to a HRBA to development. UNICEF's Executive Directive 98-04 stipulates that all of UNICEF's interventions and those of partners that it supports should be grounded in human rights.[22] In theory ,this would mean that interventions in the context of the VA Program should follow the principles of a HRBA, as set out in the United Nations Common Understanding.[23] According to these

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[21] As noted above, the *Village Assaini* Program 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 Program expanded into the *Ecole Assainie* component in 2008. Today, the Program is known as the *Ecole et Village Assainis* (EVA) Program, under both the *Ministère de la santé publique* and the Ministry of Education.

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

[23] 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).

principles, a HRBA to development includes, inter alia, framing interventions in the language of human rights, seeking rights-holders' input and participation throughout all steps of the process, prioritizing accountability and combining bottom-up and top-down strategies.

1.6.2. Selection of Villages

Confining the field research to VA Program villages, rather than in randomly selected villages, seemed justifiable in the context of this study because of the initial assumption that rights-holders in these villages would have a basic understanding of the rights discourse.[24] However, it soon became clear that – from first contacts with the VA Program's stakeholders – that engagement with a HRBA on the ground was minimal, and that none of the villages or local implementing agents (at the level of the *zone de santé* and UNICEF's partner NGOs) had had any exposure to the rights discourse in the context of this Program (Destrooper 2016). The researchers nevertheless decided to maintain the initial case-selection because of the unexpected added value that the voices of these rights-holders reflect a genuinely local understanding which has developed in relative isolation from transnational discourses on human rights.

Though the VA Program focuses on the right to drinking water and sanitation, earlier research in this field has shown that rights-holders are more concerned about access to drinking water (ECRIS report, 2013). For this reason, both the research and analysis in this case study focus more on the right to drinking water per se, rather than the right to drinking water and sanitation, although both dimensions are interrelated as mentioned above.

The selection of the five villages was made on the basis of the criteria defined in section 3.5. 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 Program and then for this study.

1.6.3. Ethical Clearance

In October 2014, the researchers submitted a request for advice to the University of Antwerp's Ethics Committee for the Social Sciences and Humanities (Ethics Committee) regarding research proposals with possible ethical repercussions. The submission included an application form with a research information sheet, a consent form for participants and an interview guide. In December 2014, the Ethics Committee granted 'ethical clearance' to undertake the research. Throughout the fieldwork, the lead researcher ensured that he 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 for participants. Therefore, all research data were kept only for the purpose of the broader IAP-HRI research project. Access to these data was only available to the researchers involved in the LHR research project with the Law and Development Research Group, University of Antwerp.

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[24] Conducting a similar study in non VA Program villages would provide an interesting basis for comparison.

1.6.4. Data collection methods

In order to gain a deeper and firmer understanding of the topic under investigation, several qualitative data collection methods were employed. For the field research, these included semi-structured interviews, focus group discussions and anthropological observation. As Kitzinger notes, a key advantage of these methods is that 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). In addition, documentary analysis of the development context, historical context and legal framework was conducted to get a deeper understanding of the local context of the region in which the lead researcher conducted fieldwork. Having multiple data sources was crucial for the validity of the analysis as it allowed for the triangulation of data sources thereby enhancing validity. As Berg notes, triangulation allows the researcher to counteract the threats to validity identified in each method (Berg 1995:5).

The limitations encountered during data collection in the case study are addressed below.

(i)   Semi-structured interviews[25]

Weiss (1994) suggests that 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.

Initially, I intended to carry out ten to fifteen 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, I 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).

I 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 a 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.). I also took observational notes related to the context. Information on the observation sheet was completed immediately after conducting the interview to ensure that 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*[26] I identified

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[25] Please note that all of the field research was performed by the lead researcher, Pascal Sundi and for some sections that focus on his field research "I" and "me" are used.

potential genuine informants.[27] 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 my fieldwork was ensuring the participation of women in my interviews.[28] In most of the villages, women were more often reluctant to participate in my interviews. One factor explaining this is the fact they were very busy. My role as an observer of daily life also allows 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.[29] 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.

(ii) Focus group discussions

To partially counter the gender limitations of the interviews, as discussed above, I also organized focus group discussions. Focus group discussions are a form of group interview that capitalizes on communication between research participants in order to generate data (Kitzinger 1995). Group interactions are key in this method; this means that 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 that 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, like with interviews, it helps 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 these method to encourage particularly female participation, in the sense that they would feel supported by each other's presence. Thus, I made sure that the composition of the group was female-dominated. For instance, if

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[26] Gatekeepers are the people who benefit from a kind of 'prestige' in their communities, owing to their social 'position' and the fact they have, at a minimum, a certain amount of secondary education. These include people who, in most cases, have French language skills. In village V1, for instance, two primary school teachers acted as gatekeepers. As teachers, they are connected to both the kids 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 Program Committee in the village.

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

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

[29] 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 also suggests that they might feel like they don't have the authority to provide information.

the group was comprised of seven participants, I would ensure that four women were part of the group; if the group was comprised of nine people, I ensured that five females would be present.

The size of each focus group varied between seven and twelve people, and I organized one focus group in each village. In addition to the gender distribution aspect, the composition of each focus group also took into account the age factor and the familiarity with issues related to the implementation of the VA Program. Thus, amongst the participants in the focus group, we encouraged the presence of at least a member of the VA Program, someone representing the youth, and any marginalized group (if any), i.e. senior persons.[30] Unfortunately, even then, voices of male participants remained dominant and women would spontaneously prefer to sit behind men while trying to make a circle.[31] As a man researching a topic that is largely in the "female" domain – WaSH – I was conscious of the fact that despite my efforts this remained a genuine challenge in the research process.

(iii) Anthropological 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, in this case, the VA Program. This is why this study took an ethnographic approach to gaining a deeper understanding of 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; Neuman 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 ethnography approach adopted was a collaborative enterprise of 'participant' and 'observer' (Burawoyetal 1991). In Angrosino (2007: 6) terms, the position is 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.

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[30] At first glance, senior or older persons are not marginalized; but the fact that 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.

[31] 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.

For this research, I spent a total of 20 weeks in the five selected villages, which means that I spent almost a month in each village. I will concede that this was not sufficient for genuine ethnography. However, using methods rooted in anthropology and sociology I sought to recover and systematize 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 Program; including what were their expectations or their frustrations, and so forth. Participating (actively and passively) in informal conversations, another important ethnographic tool, was also part of this process. Cohen and Crabtree (2006) point out that informal interviewing is typically done as part of the process of observation and it 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 and the researcher will try to remember his or her conversations with informants using jottings or brief notes taken in the field to help in the recall and writing of notes. The benefits of this informal process, for me, were that they 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 a rapport with the respondents and in gaining their trust for future interactions (Cohen and Crabtree 2006).

(iv) Document analysis

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

First, national and provincial economic and other relevant reports from international development agencies (e.g. the World Bank, UNICEF) were consulted, including those related to the implementation of the VA Program.[32] In addition, documents available through the VA Program website, were consulted to inform and complement the analysis of the field data.

Second, documentary analysis was used to develop an 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 on how this informs, or not, practices on the ground.

Finally, texts that provided historical background and analysis of the present day DRC were reviewed. This historical review provided an introduction to the national historical context that has shaped the

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[32] For further details please consult the reference list.

local reality and views of the people that were interviewed for this research. The historical review starts from post-contact with Europeans, around the 1884-85 Berlin Conference. This was selected as the starting point as the integration of the present day DRC into the global economy and international political structures, arguably, dates from this time. The researchers hypothesized that the analysis of the interaction of the villages with the VA Program and their conception of human rights, required a minimal understanding of the recent history of the present day DRC, and the role of various national and international actors in this history. This historical background is explored in chapter two.

CHAPTER 2. HISTORICAL AND LEGAL CONTEXT

The aim of this chapter is to set the stage for the analysis of the local conceptions of human rights. 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.

2.1. A BRIEF HISTORY OF THE DRC

As Jasanoff puts it for many, the Congo has remained what the Polish-British novelist, Joseph Conrad, portrayed as the "Heart of Darkness" (1899). And yet, beyond this portrait there is the beauty of a landscape, there are human faces, there are events; there is a history, 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 fifteen million), however a consensus estimate appears to be ten million people. (Al-Zahran 2013; Hochschild 1998: 233; Ntalaja 2002:22). [33] The following historical discussion outlines how the underlying causes and consequences of this massive loss of life have reverberated through the following century to the present day. An understanding of this history helps to lay the groundwork for analyzing the current challenges to realizing human rights 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)[34], when this piece of land became the private property of the King of the Belgians, Leopold II. Under the terms of the general act of the Berlin Conference, King 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).

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[33] 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).

[34] 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."

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.*"[35] 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 the 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 in 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 analyzing 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 King 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 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 that were unwilling or unable to meet the assigned daily quotas of rubber production were subject to rape, arson, bodily mutilation and murder. This ongoing violence resulted in the estimated death toll of 10 million. Drawing on different sources, historian Adam Hochschild has documented that this death toll was caused by three inter-related causes,

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[35] 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.

including (i) murder; (ii) starvation, exhaustion and exposure; (iii) disease and plummeting birth rates, especially in areas ravaged by the rubber campaign (Hochschild 1998: 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 has 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." (Antsey 1966: 262).

Thus, as a colony, the Belgian Congo was strongly marked by the Leopoldian legacy, a system characterized 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. 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 institutionalized theft, unbridled corruption, and of State decay and collapse (Nzongola Ntalaja 2002: 152). It is within the context of this over 30 year dictatorship and its role in the decay and collapse of the DRC State, accentuated by certain factors including the alienation of the State from ordinary people and its class base, that one should analyze recent political developments. These factors include invasion, civil war and the never-ending insecurity and political instability, both in the country and within the region, all of which followed the 1994 genocide in Rwanda. From 1994, the violence of the Rwandan genocide spilled over the border into Eastern DRC. Two wars subsequently engulfed the whole of the country. The first began in 1996 and ended in 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.[36] Among the worst violations documented by human rights groups and United Nations bodies include killings of civilians, forced recruitment of child soldiers, destruction of villages, internal displacement, cannibalism, sexual violence (including rape) and torture.[37]

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. [38] 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 the Bas Congo.[39] In 2011, the country held what are widely regarded as chaotic and rigged elections and again, Mr. Kabila was returned to power. [40] Constitutionally, Mr. Kabila's second term had 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 these elections has brought the country to the brink of another civil war and continual instability with mass violations of human rights, including freedom of expression. A recent report of Human Rights Watch remarks,[41]

> "… 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

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[36] 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).

[37] Numerous studies document the extent and impact of sexual violence, including rape, in the DRC: Brown C. (2012) Rape as a weapon of war in the Democratic Republic of the Congo. *Torture*. 22(1):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

[38] 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 freest and most 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

[39] 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

[40]See Tangen, Ole Jr. 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

[41] See Sawyer, Ida. "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

elections by the end of 2017, in accordance with a Catholic Church-mediated power 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.[42] 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 Hobsbawm 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)[43] 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 that under King Leopold II the Congolese space was organized 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."[44] He terms this the so-

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[42] Hodal, K. "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

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

[44] "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.

called "gospel of enterprise." During this period, raw materials including copper, tin, gold, diamonds, and rubber from the plantations filled the coffers of King 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 organized so as to ensure that 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 organized 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 mind-set' 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.[45]

The resistance to State violence has taken many forms throughout the history of the DRC. 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 organizations were involved in these actions: Human rights and civic education NGOs; Development NGOs; Humanitarian and relief organizations; Women's organizations; Religious organizations; Youth organizations; Labor unions; Professional organizations; 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 on the political and civil rights,[46] although, arguably, much more is needed to broaden such

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[45] 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 atalela 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).

[46] 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 – 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 programs, or when legislation, policies and programs 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 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 programs or

awareness with respect to economic, social and cultural (ESC) rights. In their article, De Feyter and Lumbika Nlandu (2013) 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, 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.

2.2. THE LEGAL CONTEXT

2.2.1. International and regional legal commitments

The DRC is a State Party to numerous international[47] and regional[48] 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[49], Articles 24 and 27(3) of the Convention on the Rights of the Child (CRC)[50]

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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.

[47] 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).

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

[49] 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."

[50] 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."

and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).[51] 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.[52]

As part of its obligations under the ICESCR, like other States Parties, 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 most recent concluding observations, dating from 2009, noted that the DRC had not submitted a report for twenty one years (thereby failing to fulfill its commitment to 5 yearly reporting cycles). No report has been submitted to the Committee since 2009 so there is limited data to review.

The Concluding Observations did not reference drinking water and sanitation directly, which is in part explained by an absence in statistics in the original report submitted by the DRC. The Committee response to the DRC report highlighted the fact 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." (Committee on Economic, Social and Cultural Rights (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 realizing 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 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

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[51]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;
[52] 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.

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 programs funded by international donors. (CESCR 2009: 7).

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

It is important to emphasize 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 marginalized groups, including women, children and persons with disabilities. Section 2.2.2 below highlights important recent international efforts to advance the right to drinking water and sanitation as an independent right.

2.2.2. 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 forty years. This can be attributed to both political and legal pressure; with international political declarations, like the Millennium Development Goals (MDGs), contributing to specific State commitments (Meier et al, 2015,) and thanks to work by UN treaty bodies; including the United Nations Committee on Economic, Social and Cultural Rights (the Committee). [53]

Meier et al (3, 2015) summarize 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).

Since 2000, significant progress has been made at the international level on, initially, clarifying the scope and legal status of the right to water.[54] 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

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

[54] 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).

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 that access to water was a condition for the enjoyment of the right to an adequate standard of living (Article 11) and that it is inextricably related to the right to the highest attainable standard of health (Article 12) and therefore a human right (UN CESCR 2002). Additionally, the General Comment clearly outlines States Parties' obligations 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 enshrined in the ICESCR,[55] (and from which it derives the right to water) the right to water imposes three overarching obligations on States Parties, like 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 that 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 that 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 that 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, like the DRC, guarantee water for personal and domestic use (UN CESCR 2002).

It is worth recalling that the ICESCR provides for progressive realization of rights, and acknowledges the existence of constraints due to limited available resources, including financial and technical. However, it also imposes on States Parties, like the DRC, core obligations (UN CESCR 2002: paragraph 37) which are of immediate effect. In relation to realizing the right to water, these include the obligation to take steps (article 2.1 of the ICESCR) towards the full realization of articles 11 and 12. Further, such steps must be deliberate, concrete and targeted towards achieving the full realization of the right to water. State Parties, like the DRC 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 2.1) stating that "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 fulfil their core

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[55] Recall that the right to water is not enshrined in the ICESCR.

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 realizing 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 realization of the right to water (UN CESCR 2002: paragraph 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 emphasized that the right to water indicators should be designed to monitor, at the national and international levels, the State party's obligations … [and] should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), 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 on from this significant achievement, the United National Human Rights Council (HRC) engaged with the dynamism surrounding the 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 that "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)[56]. 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[57] which,

(i) Recognizes 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]
(ii) Calls upon States and international organizations 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 (UN GA 2010).

Meier et al. (2013) argue that this 2010 UNGA Resolution solidified political support for the legal reasoning of General Comment 15, memorializing 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

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[56] 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 rights to safe drinking water and sanitation (UN HRC 2011).
[57] UN GA Resolution 64/292 was adopted by a vote of122–0, with 41 abstentions.

significance of the UN process that led to 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**,[58] 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 (UN GA 2015b).

2.2.3. National legislation

With respect to social, economic and environmental rights, the DRC Constitution of February 2006[59] entrenches the right of access to drinking water, the right to health and food security, as well as the right to clean environment. Article 48 states: "*The right 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.*"[60] Articles 47 and 53 read respectively: "*right to health and food security is guaranteed,*"[61] and "*All persons have the right to a healthy environment that is favourable to their development. They have the duty to defend it. The State ensures the protection of the environment and the health of the population.*"[62] Further, article 42 of the Constitution emphasizes the obligation of public authorities to protect the youth against any attack on their health, education or integral development.[63]

More recently, the DRC has enacted legislation on water resources.[64] 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[65] and 48 of the Constitution, and also includes the provisions 203, § 16 and 204, § 26 of the Constitution

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[58] Emphasis is ours.

[59] 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.

[60] « 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."

[61] Le droit à la santé et à la sécurité alimentaire est garanti.

[62] 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.

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

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

[65] 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."

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 decentralization of water supply services.

The current legislation on water sets out the principle of Integrated Water Resources Management (IWRM);[66] it also ensures the decentralization of the decision-making process by transferring water supply services to the provincial and local governments. It also removes the State's monopoly over the water supply sub-sector and allows the engagement of community-based organizations 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). [67]

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, adapted to the requirements of the Constitution and the current Water Act, on the distribution of sectoral capabilities, 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

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[66] 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 transboundary cooperation as appropriate."
For more information, see: http://www.un.org/waterforlifedecade/iwrm.shtml
[67] 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

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 the 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 whom to approach, complain to or address his/her claim. That is REGIDESO. But in the village, one does not know whom to go to. Fortunately, since the *zone de santé* is involved in this *village assaini* project, we can at least now say to 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 a key obstacle to 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 dearth 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 that "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 these 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 actual 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; given that the *Service National d'Hydraulique Rurale* (SNHR), operating under the Ministry of Rural Development and which is supposed to ensure the supply of drinking water in rural areas, is today in a precarious situation, without the necessary human capacity, material and financial resources, capable to ensure its operational activities (UNEP Report 2011: 22).

Even though, there have been some efforts at least on paper – 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) of the Ministry ensures an oversight over the REGIDESO, a parastatal providing urban water supply services. Other key ministries include the Ministry of Rural Development, which operates the SNHR which 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 mobilization 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 disorganized 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.

2.3. WATER AND SANITATION RIGHTS, THE VA PROGRAM AND THE INTERNATIONAL AGENDA

The UNICEF administered VA Program in the DRC links the rights to drinking water and sanitation. Above, it was noted that global policies 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 both underpinned by the right to water and sanitation, and depend on water and sanitation for their achievement. Reflecting this, and numerous

efforts around the world to improve public health through hygiene and disease prevention, the water related targets found in the MDGs[68] 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 (UN GA 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 report, references to the right to water should be understood as the broader right to water and sanitation. The emphasis on the right to water in the report stems from this study's focus on the local rights-holders' perspective - they have a more immediate interest in water, rather than sanitation. The discussion in chapter 6 references the limited data collected that related to sanitation rights.

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[68] 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

CHAPTER 3. RESULTS

This section presents the results of the research that addresses the first sub-objective; identifying the local structures that engage with the right to drinking water and sanitation in the Bas-Fleuve district of Kongo Central, including the provincial and territorial administrative entities, the *zones de santé* and the UNICEF supported VA Program.

3.1. KEY ADMINISTRATIVE FEATURES OF THE RESEARCH ENVIRONMENT: PUBLIC INSTITUTIONS ENGAGED WITH ENSURING ACCESS TO DRINKING WATER AND SANITATION IN THE KONGO CENTRAL

As noted above, Kongo Central is one of the more prosperous regions in the country. It is worth recalling that in Kongo Central the percentage of households without access to drinking water is on average 68.5% of which 52% in urban areas and 85% in rural areas, which are the focus of the case study.[69] 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 enrolled in the VA Program, UNICEF. Outlined below are the key features of the administrative territories and the *zones de santé* of the five villages studied.

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

The fieldwork was carried out within the former administrative district of the Bas-Fleuve which comprised the territories of Tshela, Lukula and Seke Banza. Until recently, the province was divided into 3 districts and 10 territories (see Fig. 3). In the recent legislation on decentralization, districts are no longer legal administrative entities, the implications of which are expanded on below.

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[69] 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.

Figure 3. Kongo Central Province administrative map

The villages in which the fieldwork was conducted were spread throughout five *zones de santé*, including Kangu, Kinkonzi, Lukula, Seke Banza and Vaku. A *zone de santé* is defined 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, in order to meet the geographical accessibility requirements of health services, in some *zone de santé* there are also the *centres de santé de référence* (CSR) and the *aires de santé* (AS).[70] Below is a short description of each of the five *zones de santé,* including a map, in which the fieldwork was carried out.

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

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[70] 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.

legislation on decentralization,[71] the sectors have become decentralized administrative entities. The law No. 13/001 of 23 February 2013 accords them the power to levy a certain number of taxes. These taxes should be an integral part of their operating budgets. Unfortunately, up to and including the conclusion of the fieldwork in August 2016, the relevant provisions of this law had not yet being implemented. As a result, the sectors, as the closest government unit to the rights-holders, do not seem to have the material or financial means or the capacity to meet their obligations vis-à-vis rights-holders. If the administrative structure functioned as provided by under the 2013 law, the sectors would be the local unit with the 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.

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[71] 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.

Fig. 4. DRC territorial administration division chart[72]
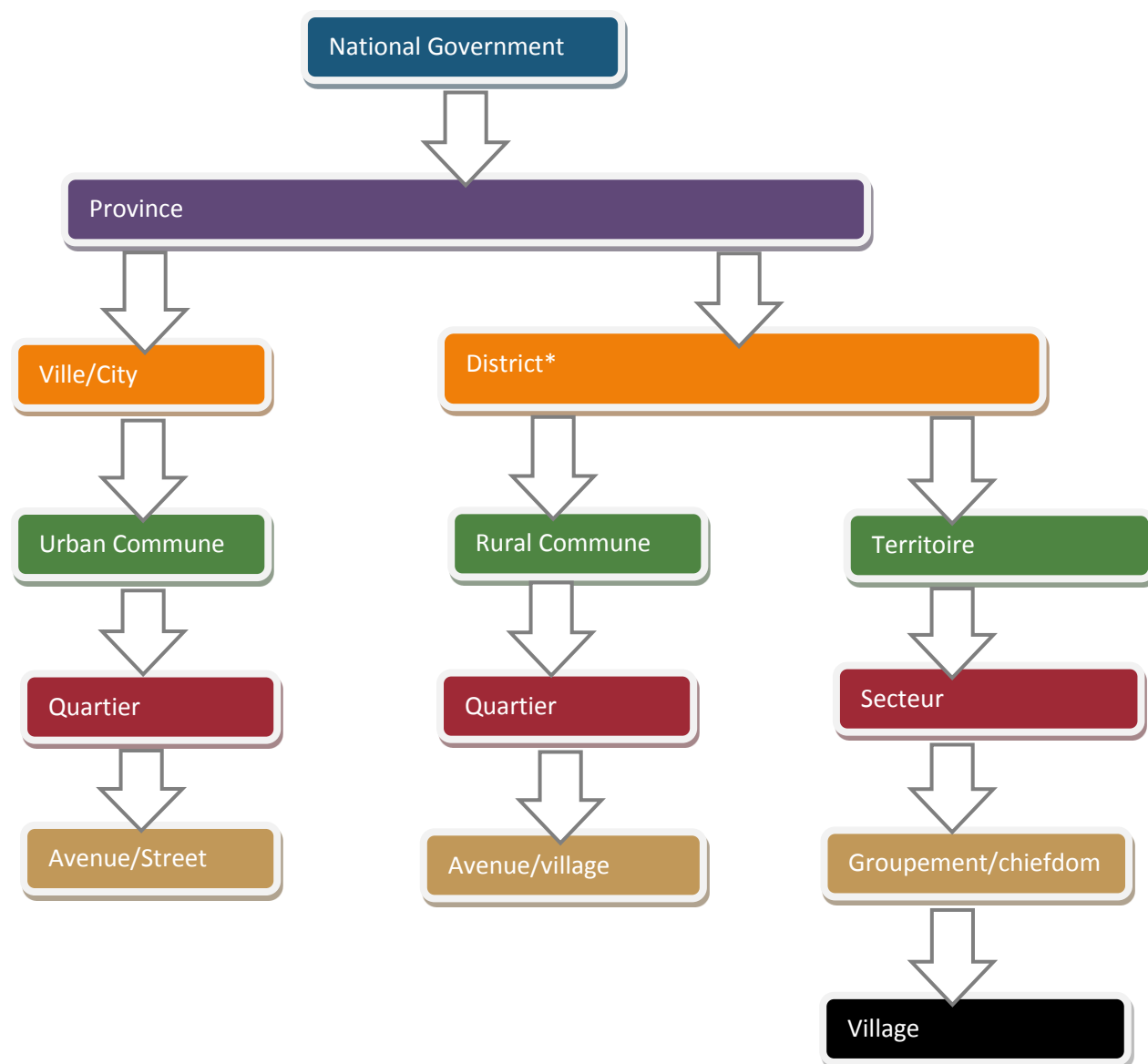
[72] Adapted from : RDC-Ministère du Plan & Révolution de la Modernité, *Annuaire statistique 2014*, Institut National de la Statistique, 2015, p.30. The VA Program spreads across the three levels of the government (central/national level, provincial level and local level). Here, the local level is basically constituted by the *secteur/cité*, the *groupement/quartier* and the *village/avenue*. These are the entities where authorities should get involved in concrete manner in the VA Program. 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 recognized by public authorities. A law enacted, in 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 Program 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 therefore rather 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 here that a *zone de santé rurale* can be geographically spread across different *secteurs*. However, under the VA Program, there has been no real collaborative relationship between the *zone de santé* and the *secteur* in general (or its hygiene department in particular). The fieldwork has shown that the relations between *zones de santé* and the *secteurs* have remained at the rhetorical level. For instance, most *chefs de secteurs* interviewed know about the existence of the VA Program within their entity because they have been invited to participate in village certification ceremonies on several occassions. While they also convey a message on their role in rights-holders' awareness raising about the VA Program, in actual fact this role remains very marginal and rhetorical because they do not have the necessary financial means to do so.

Another important issue to highlight here is the role that had been 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 structructure, which can regroup 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 Program, the IT was almost ignored. Due to his/her proximity to the villages, the IT has been assigned a more active role in the second phase of the VA Program ensuring continuous follow-ups in villages with the assistance of the *relais communautaires*, who are community members with a direct mission to inform the community and to report back on any health issue. It is also important to indicate that in some *zones de santé*, there is a *centre de santé de référence* or a *hôpital général de référence*. The role of actors in such health units seems very marginal to the VA Program.

Fig.5. Map of the 'zones de santé rurale' in Kongo Central Province
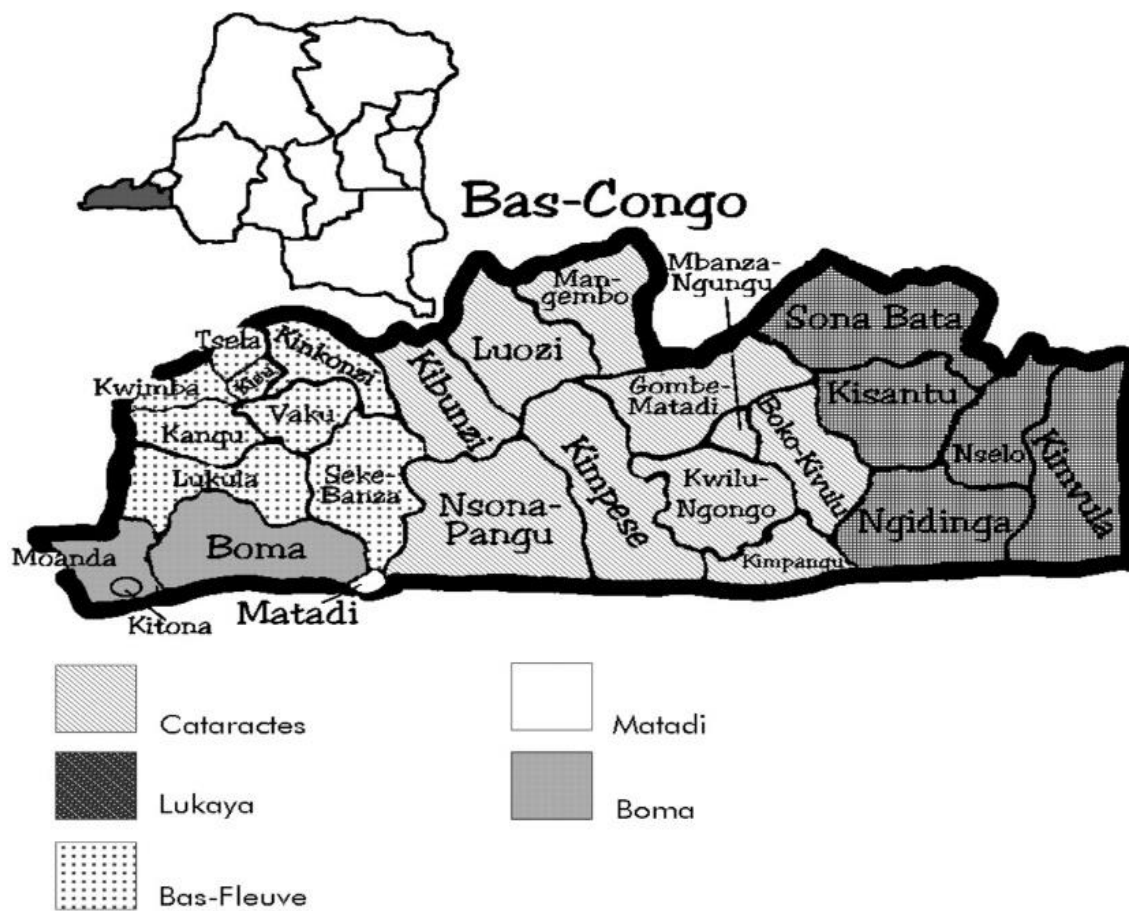
3.2. SOCIO-POLITICAL STRUCTURE OF THE YOMBE ETHNIC GROUP

It is important to briefly introduce the socio-political structure that operates in the villages studied as it impacted upon both on the conduct of the research and the research results. The socio-political organization of the dominant *bayombe* ethnic group of 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, which 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 the *Bapfumu* (descendants)[73] 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 the 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 leader is *pfumu makanda*, (Muila-Mavinga, 1985: 30) group lineages' leader. The *Groupement* is the set of "several villages rarely exceeding the number of ten, and strictly asserting their parental ties by their belonging to a known common origin, with a few exceptions. The

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

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 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-Mavinga (1985) asserts 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).

3.3. KEY FEATURES OF THE TERRITORIES AND THE *ZONES DE SANTÉ*

3.3.1. The Territory of Tshela

The territory of Tshela was established under the ordinance No. 21430 of 23 October 1937 as amended by No. 21384 of 10 December 1953. It is bordered in the north by the Republic of Congo and the enclave of Cabinda (Angola) with the Tshiloango River as the natural boundary; 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.

Fig.6. 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*
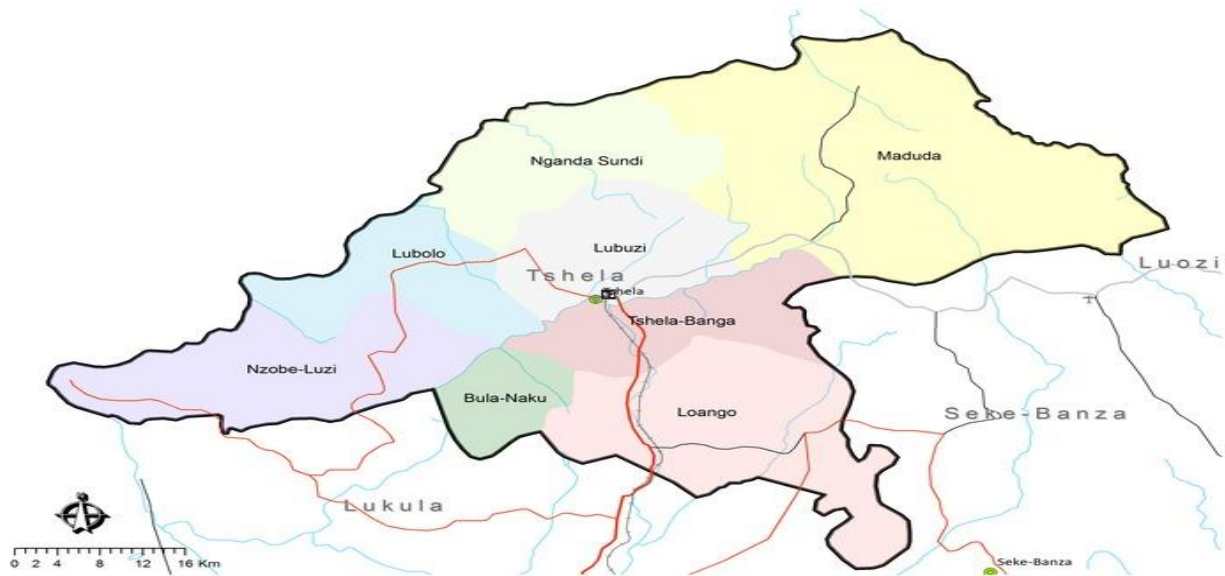
The territory of Tshela consists of a single tribe, the Yombe. The main lineages (clans) of this tribe are the *Makaba*, the *Makhuku*, the *Manianga*, the *Mbenza*, the *Nanga-Kongo*, the *Ngimbi*, the *Phudi Nzinga* and the *Tsundi*. Their dominant activity is agriculture, which is often coupled with 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 separates the territory of Tshela with the Republic of Congo and the enclave of Cabinda (Angola).

With an estimate of population of 426 310 inhabitants, the territory comprises of 1226 villages, 76 chiefdoms (*groupements*), and eight *secteurs*.

From the economic perspective, the *Société d'industries et des cultures agronomiques au Mayombe* (S.C.A.M), 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 kernel-based oil. The oil palm 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 of Tshela 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, even though the infrastructure of the hospital of Panji (City of Tshela) and the hospital in Kinkonzi requires to be rehabilitated.

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 twelve km, but owing to poor quality of the roads and infrastructure accessing hospitals and health centers is often difficult and time consuming. 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 treating recurrent diseases of 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 transmssibles* (PNLS), the Global Fund to Fight AIDS, Tuberculosis and Malaria via the *Bureau Diocésain des Oeuvres Médicales* (BDOM) supplies medical centers with antimalarials, antiretrovirals and medicines to treat opportunistic diseases with HIV.

3.3.1.1. The *zone de santé* of Kinkonzi

With an estimated population of 73 089 inhabitants, 362 villages and 10 *aires de santé*, with eight of them which have already joined the VA Program, the *zone de santé* of Kinkonzi counts 57 villages in the VA Program among which 30 are certified, eight are in post-certification and others still in the process.[74]

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

Fig.7. 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 Program 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 have 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**).

3.3.1.2. The *zone de santé* of Vaku

The *zone de santé* of Vaku covers an area of 2 265 Km², with a density of 33 inhabitants per Km². In 2017, the total population was estimated at 78 513 inhabitants, spread across 342 villages and ten *aires de santé*, including Khesa, Kikadulu, Kikuembo, Kiolo, Khele, Khami, Loango Bendo, Loango Centre, Mbala and Bula Naku.[75] The central office of the *zone de santé* is located in the city of Loango, and works on

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

several programs, including the VA Program. Up to February 2017, 27 villages were in the process of certification and/or post-certification while 35 villages were certified, making it à total of 62 villages in the VA Program.

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

Fig.8. Map of the *zone de santé* of Vaku
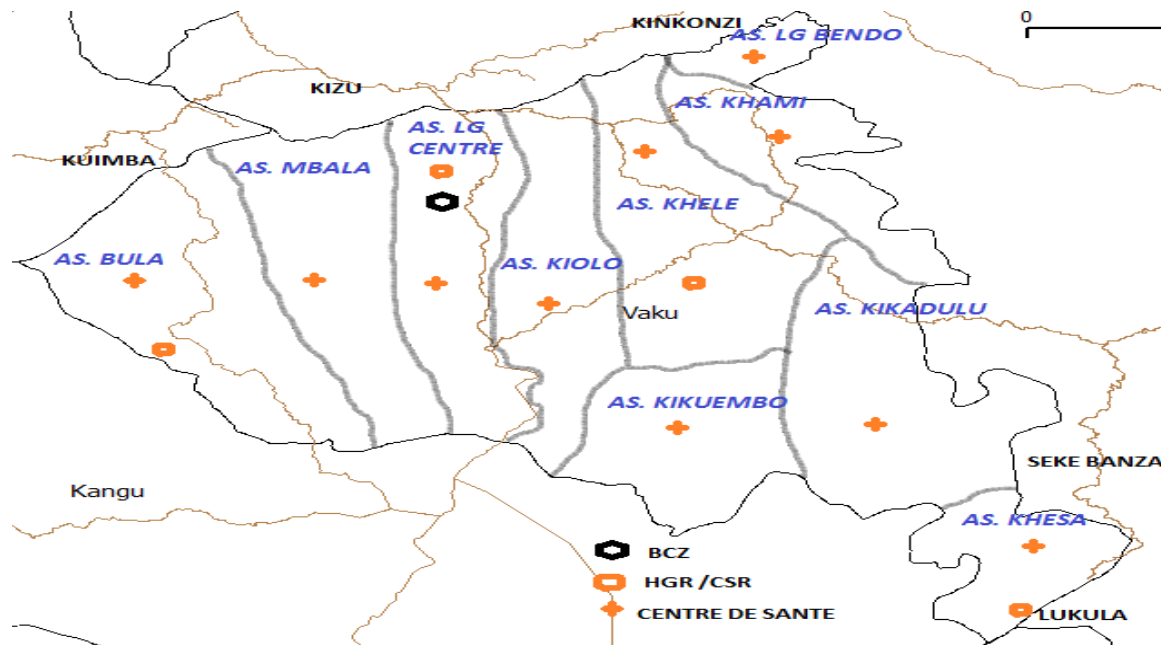
Source : Bureau de la zone de santé rurale

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

3.3.2. 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 and disused Mayumbe railway line between Boma, to the south, and Tshela, to the north, on the southern bank of the Lakula river. With an estimated population of 253 646 inhabitants spread across three cities and 899 villages, the territory of Lukula comprises of five *secteurs* (Fubu, Kakongo, Patu, Tsanga-Sud and Tsundi-Sud) and 60 chiefdoms or *groupements*. Economic activity evolves around agribusiness, small trade and public transportation and commercial logging. Important rivers of this territory include Lukula, Mbavu and Fubu.

Fig.9. 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
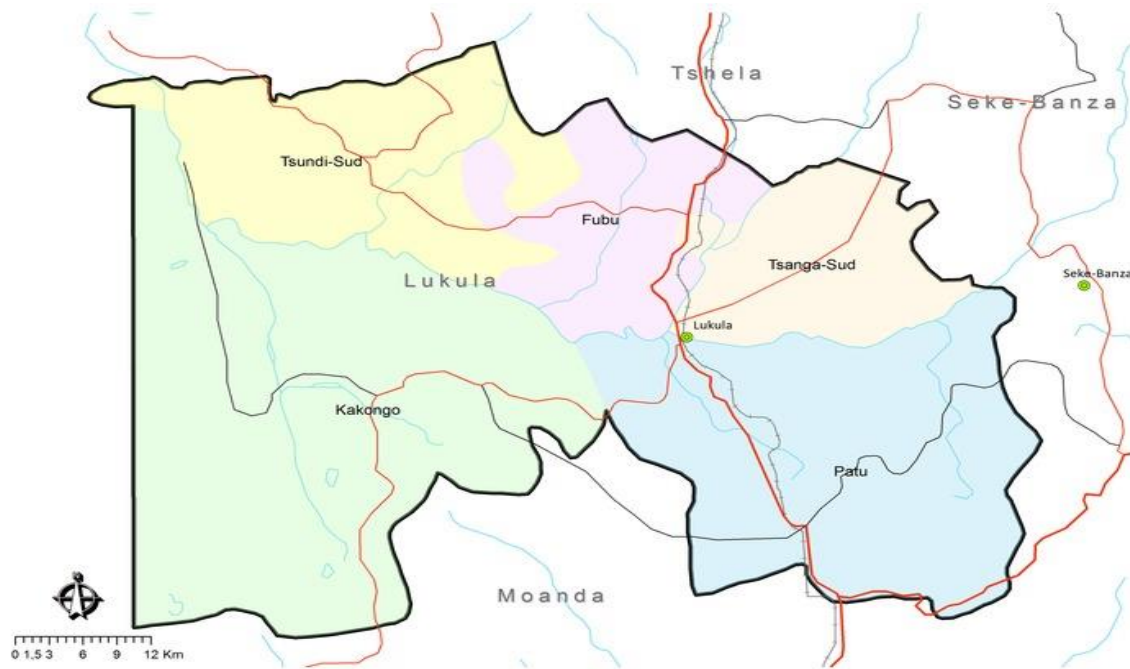
The territory of LUKULA has two *zones de santé*: Lukula and Kangu. Each *zone de santé* has a *Hôpital général de référence*. In addition, the territory of LUKULA has 21 public *centres de santé de reference*, 31 private medical centers and *64 aires de santé*, 27 of which are public and 37 belong to the private sector. Medications are available both in hospitals and pharmacies. The average distance between households and health facilities is five Km.

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

3.3.2.1. The *zone de santé* of Lukula

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

Fig. 10. Map of the zone de santé of Lukula

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

Information collected from the *zone de santé* reveals that almost 40% of the population have access to potable water, given that a great number of this population lives in urban settings. For instance, two thirds of the almost 25 000 inhabitants of the city of Lukala have access to potable water, supplied by Regideso. However, the city of Lemba faces enormous problems with its almost 30 000 inhabitants to access potable water – though efforts have been made to improve the situation – because Regideso is not present there. Patu, another city of this ZS, has a serious water problem. Major works that have been carried out in Patu, unfortunately that could not 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 Program.

3.3.2.2. 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 Program, joining in early 2013, in the second phase of the VA Program. Before joining the VA Program 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 organized.

The *zone de santé* of Kangu has about 465 villages. From the outset, 29 villages joined the VA Program 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 Program.

Fig. 11. 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 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*.

3.3.3. 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 of Seke-Banza has two *zones de santé*: Seke-Banza and Inga. The *zone de santé* of Seke Banza consists of sixteen *aires de santé*, five *centres de santé de*
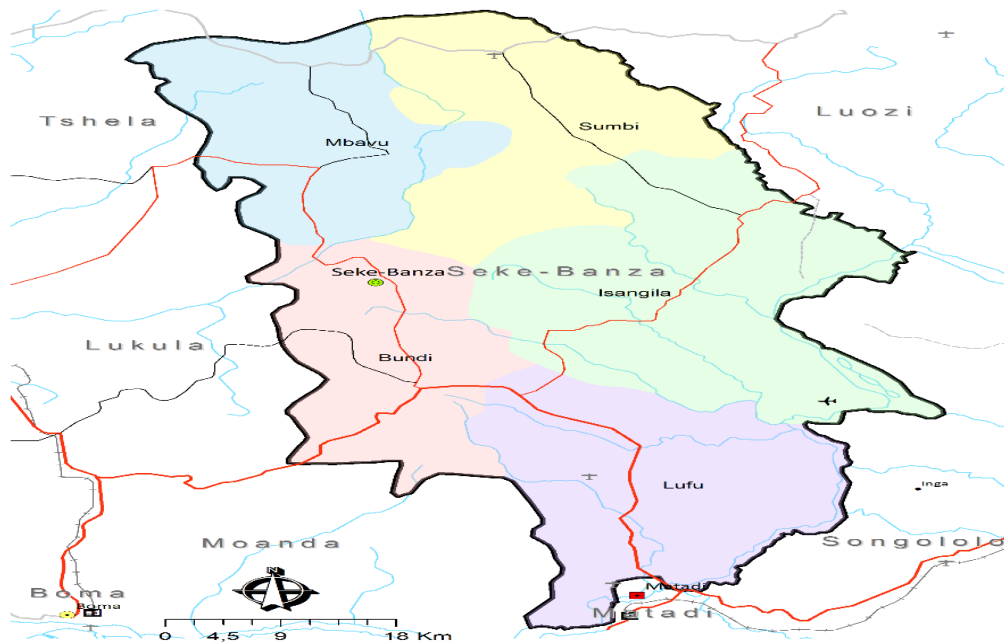
référence and one *hôpital général de référence*. The *zone de santé* of Inga has 9 *aires de santé* and 4 *centres de santé de référence*. Sanitary conditions seem very poor due to poor living conditions of the populations.

Fig. 12. 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 rivers. The common characteristic of these rivers is that they are not navigable because of several falls. 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.

3.3.3.1. 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* of 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 sixteen *centres de santé*, five *centres de santé de référence*, twenty medical doctors and 144 nurses.

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

Fig. 13. 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 that the World Fund has provided Seke-Banza with medicines. 53 villages are now part of the VA Program in this *zone de santé*.

3.4. KEY FEATURES OF THE DRC UNICEF VILLAGE ASSAINI PROGRAM

The DRC-UNICEF VA Program is a DRC government program that seeks to improve rural and semi-urban rights-holders' access to clean water and sanitary installations through small, cost-efficient changes, with the aim of reducing the high rate of morbidity and mortality due to water-related diseases, especially among children of less than five years. The VA Program is heavily funded by UNICEF mostly through contributions from international bilateral agencies (USAID, DFID, JICA, and UNICEF),[76] and de facto managed by UNICEF DRC's WaSH Division in partnership with the *Ministère de la santé publique* (for the *village assaini* – VA – component) and the *Ministère de l'enseignement primaire, secondaire et professionnel* (for the *Ecole assainie* component).

Launched in 2006, the VA Program component is implemented by the *Bureau de zone de santé rurale*, which is the local unit of the *Ministère de la santé publique* (see Fig.14). In 2008, the VA Program was extended to primary schools, known as the *Ecole assainie* Program, with the purpose of preparing children to be actors of change, and to educate them on hygiene and sanitation. The *Ecole assainie* Program component is under the oversight of the Ministry of Primary, Secondary and Professional Education. Since 2013, wherever there is a sanitized village there is a sanitized school (of course if the village has a school).[77]

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

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

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

(iii) the *zone de santé rurale*, as the operational unit of the VA Program.[78]

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

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

[78] 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 closest units 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) - responsible for the *aires de santé* - are more directly involved in the facilitation teams; but so far this integration does not seem to take a 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.

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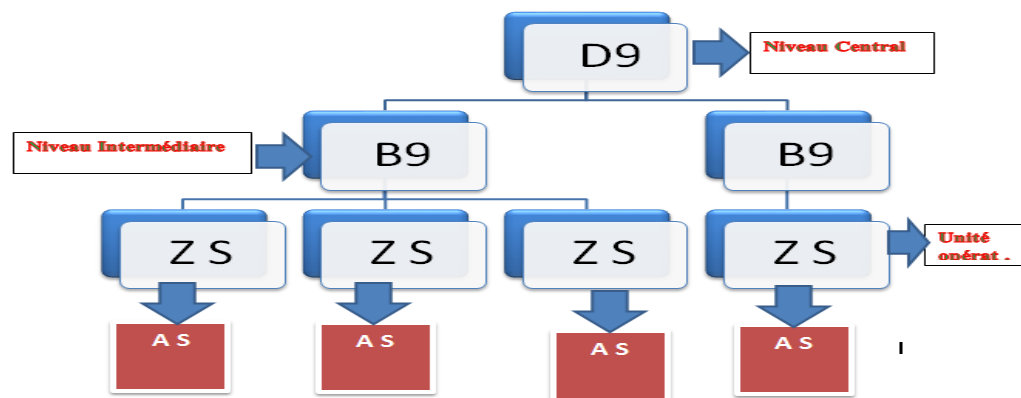
Source: Presentation at the 'Localizing Human Rights' conference with students of the Université Kongo, Mbanza Ngungu, 14 January 2015

The prominent role of UNICEF in this VA Program 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 program documents related to this specific VA Program also systematically mention the HRBA as the organizing principle.

As noted above, the decision to include only villages in the VA Program 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 & Sundi Mbambi 2017) Recall that the VA Program aims to prioritize 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 sanitized villages and schools in 2013. In 2014, however, 98% of 'Sanitation Villages' had lost their status, thus leading the WaSH section of UNICEF to question the methodologies to be used in terms of community mobilization, taking 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 current phase of the VA Program, the DRC government is committed to reaching 8633 villages and 2250 schools all over the country by end of 2017. If this goal is achieved the VA Program would reach almost 5 827 275 beneficiaries in sanitized villages and 850 000 school children in sanitized schools.

The project is of particular significance as it intended to show the DRC government commitment, in partnership with development agencies – including UNICEF through its WaSH (Water, Sanitation and Hygiene) Program – to deliver in terms of the Millennium Development Goals (MDGs). For example, the

DRC government committed to achieving target 7C which addressed the proportion of the population without sustainable access safe drinking water and sanitation[79] .

Fig.15. Poster of the VA Program
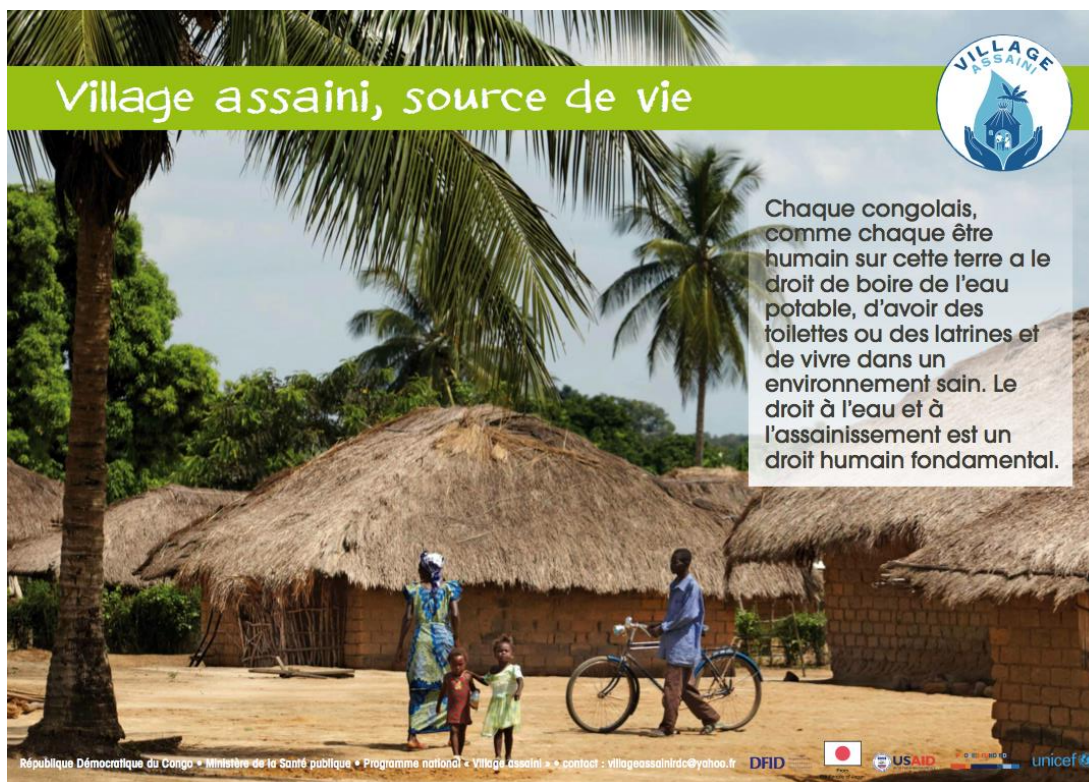
Source: UNICEF poster in a sanitized village (with the following message: "All Congolese, like all human beings in this world, have a right to drinking water and to adequate toilets and to live in a clean environment. The right to water and sanitation is a fundamental human right").

The preamble of the agreement between a village joining the VA Program and the DRC government lists a series of underlying rationales that motivated the Congolese State to set up the VA Program. 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 Assain*is'. »[80]

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[79] 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'.

[80] Translation: "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 Program."

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[81] not only addresses issues relating to water, sanitation and hygiene, but also the quality and the sustainability of water. 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 Program. However as Destrooper's 2015 report makes clear, the inclusion of local communities is not yet systematically integrated into the VA Program

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

3.5. SELECTION AND DESCRIPTION OF THE VILLAGES IN WHICH THE FIELDWORK WAS CONDUCTED

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, the lead researcher carried out exploratory visits to villages in the initial stage of the research (September 2014). During these initial visits, he carried out stakeholder interviews with members of UNICEF Division for Water, Sanitation and Hygiene (WaSH) in the provincial capital, Matadi, as well as with the provincial Office (Bureau 9) in charge of Water, Sanitation and Public Hygiene of the *Ministère de la santé publique*. Following these interviews and visits he and the Antwerp team selected five villages – from the 'Bureau 9' database – where he spent five months conducting fieldwork, with an additional follow-up month, doing anthropological fieldwork to learn about, among other things, rights-holders' rights understanding and awareness on 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 Program 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 will be labelled as Village 2 (V2);

° A village in which a private actor is present but not actively engaged with the community Village 3 (V3);

° A village starting phase 2 of the VA Program (as from early 2015, V4); and for comparative reasons of dynamics on the ground, data was also collected from a village near the coastal city of Moanda where an oil company (PERENCO) is actively engaged in community projects.

It should be acknowledged that despite the existence of specific criteria and procedures[82] to qualify for the VA Program, some villages made an exception to this. According to the general procedures to qualify for the VA Program, 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 Program at its pilot stage in 2006, did not follow these procedures. Village 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*' have made some 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 V1.

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[82] Destrooper (2015: 102) describes these procedures as depicted in the *pas-à-pas* process (step to step process), from the explicit request of a community to join the program 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.

Even though water and sanitation needs were real in this village, however they failed to go through the official procedures because they had the back-up of the *Gouverneur*, a son of the village. This might had undermined, according to a responded from the *zone de santé*, the whole community's motivation, participation and commitment towards the program, and as well as the local ownership from the start. The assumption is that going through the whole procedures will create a sense of entitlement and responsibility for rights-holders, with the objective to develop 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.1. 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 Program	Village selected	Ethnic group	Number of households	Starting year in the VA Program	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 Program, however, UNICEF has established a threshold of a minimum number of 50 households for a village to join the VA Program.

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

> 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.

Village 1 (V1)

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

Situated in the *secteur* of Kai Vemba and 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). However, the Kwakongo people are different from the Bayombe (who constitute the majority of the population in the Bas-Fleuve District) and the Bawoyo (an ethnic group nearing the Atlantic coast and Angola).

Many Bayombe families have settled in this village, some recently and others for many years, for various reasons (employment, access to land for agriculture, marriage, etc.). It is a big village with only one village leader; for operational reasons, it has been divided into two as part of the VA Program, without deconstructing its 'socio-political' organization (see discussion in 3.2). This division was motivated by the number of households, which were estimated roughly at 178 households.

During the VA Program implementation process, the rules require that when a village goes beyond 100 households, it has to be divided into two or more "groups". This had the advantage, for this village, to benefit of 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.

The main activity for its inhabitants remains agriculture. This is often supplemented by other activities such as livestock (pigs, goats, poultry, etc.) and small trade.

Picture of Village 1 – V1

Before becoming part of the VA Program, the village faced a very serious problem of access to drinking water. Villagers had to either walk miles to find some kind of drinking water or wait for long hours to collect water from a small source nearing the village. During this period, children were more often exposed to water-related infections, including diarrhea.[83]

V1 Water source before the VA Program;

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

V1 - A well installed by the VA Program

Village 2 (V2)

This village is located in the territory of Seke Banza, some 30 minutes away from the city of Kinzau-Mvuete where is based the *zone de santé rurale* of Seke Banza, and in the *aire de santé* of Kizulu Sanzi.

The village is nearly 50m away from the N1 (Nationale No.1) between Kinzau Mvuete and the City of Boma. The small village is made of 13 households, with a total population ranging between 75 and 80 inhabitants, divided into two main tribes 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. The village chief is from the *Makhuku*, while his deputy from the *Nanga*. However, in real life, these kinships explain all the connections and even the small cleavages that can be observed especially among young people. Young people of the same *m'vila* tend to unite in order to 'compete' with the others.

The villages lacks electricity and the population is dependent on the city of Kinzau Mvuete for all its electricity needs. The population of this village, as well as its surroundings (including the city of Kinzau Mvuete) lives mainly on agricultural activities. Its proximity to the City of Kinzau Mvuete means that many inhabitants of this city come to solicit land for their agricultural activities. Other inhabitants of the village, who have immigrated to the city, come back every day for rural activities. This means that, despite the size of the village and its small population, there are strong interactions between the village and its neighborhood throughout the day.
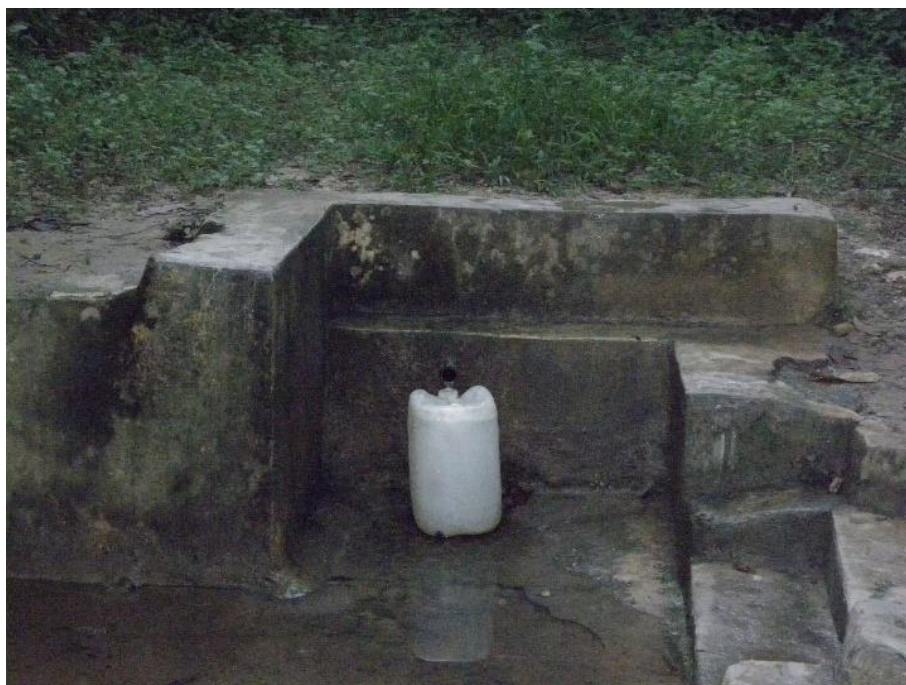

Village 2 – V2: View of the village

V2: villagers extracting palm oil

V2 – A hand washing stand

V2: An improved water source.

This networking between villages is also reinforced by the existence of certain development projects in the region, supported by certain NGOs or international programs. This is the case, for example, with the EU-funded project to protect the Luki biosphere reserve (located a few kilometers from the village), supported by and jointly implemented with the WWF (World Wildlife Fund), an international NGO working on environmental protection. Activities in this project include reforestation of green spaces in the vicinity of villages (REDD Programme).

As part of its activities in the region, WWF has helped create - in several villages involved in its projects - Local Development Committees (LDCs), where different local development initiatives and problems are addressed. These committees (which preceded the existence of the VA committees) coexist today with the VA committee.

A facilitator (contracted by WWF) spends one month in each CLD (there are eight in the region) to sensitize and train their members on a specific environment/development-related topic, for that month. The different themes revolve around the impact of deforestation on the environment, the socio-economic importance of forests, the importance of protecting forests and the environment, and so on.

It should be noted that the village does not have a church (chapel) or shop (shop) or any other facility for the supply of basic services. Most of the time, the inhabitants of the village are dependent on Kinzau Mvuete for their basic needs. At times, itinerant traders (often from Kinzau Mvuete) go sell their products in the village. This is the case of this itinerant vender who passes every morning to sell bread. It is perhaps because of this proximity that this village is now annexed in the Rural Commune of Kinzau Mvuete since the implementation of the new legislation on decentralization, in February 2015.

Village 3 (V3)

Village 3 consists of about ninety households, with an average population of 350 inhabitants; it is located on the national road no.12, 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.

Village 3 (V3): A view of the village

The village currently suffers from a 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 very affordable in recent years by the Chinese. What made my interlocutor say,

> In the past, we needed 2500 to USD 3000 to have a Japanese motorcycle; but currently with USD 800 you can have a good Chinese brand motorcycle. Some even buy second hand motorcycles at USD 100. 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**).

V3: An access road.

It is important to acknowledge the emergence of a sort of collective consciousness at the village level, which holds villagers together to carry out certain community initiatives. Such initiatives vary from agricultural or farming projects[84] to the production of electricity.

In terms of water, the region is very rich in streams but it is often water that is not fit for consumption because it contains various types of pollution.

A private company, SCAM, also runs cocoa and rubber operations in the region; but its activities have significantly decreased over the last ten years and its impact in terms of support for local initiatives seems very insignificant.

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[84] 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 that they seem very disproportionate to the efforts made to produce them.

V3: A view of the village landscape.

V3: A water source.

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 Program at its second phase. The village is actually a combination of two villages, whose leadership is assumed by one village.

The story goes back to the 1980s when the inhabitants of this village, living away from the main road 'Nsioni - Mbata Mbengi', expressed their desire to settle along the road by buying 300 hectares of land from a neighboring village. According to one of my interviewees, a teacher and a resident of the village, the decision to move to this new location was motivated by an order from President Mobutu, who demanded in the 1980s that all villages that were far from the main roads be relocated along principal road infrastructure in order to deal with banditry or crime (**Informal conversation, V4, July 2015).** Another interviewee noted, however, that this decision was motivated notably by the fact that the inhabitants of the village at that time had serious difficulties in transferring their agricultural products to the centres of consumption. People were forced to go out along the road and wait for hours or even days for trucks that could take them to Nsioni or Mbata Mbengi to sell their products. To avoid these long waiting hours, villagers agreed to buy 300 sq meters of land where the village is currently located (**Interview conversation, V4, July 2015).**

Village 4 (V4):The village landscape

V4: The old water source.

V4: An improved water source

Due to the fear of seeing the village going beyond its limits, some inhabitants of the neighboring village (the seller of the land) chose to come to build near the village. Currently, both communities seem to merge and live as one village, as they share basic decision-making structures especially on issues affecting directly the community, such as water and sanitation. Although in terms of leadership, the inhabitants of the second village have agreed to depend on – for certain administrative issues – the social organization of the first village. For instance, members of the VA committee in this village all come from the first village.

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,[85] and an average of one hundred households, these two villages have undoubtedly been grouped to meet the requirements of the VA Program, namely to divide the village only when it reaches more than 100 households. The position of these villages means they are not close to the main road, making them somewhat isolated; however villagers can access the surrounding markets of N'sioni, Loango or even Vaku Kadulu by motorcycle to sell their agricultural products. These villages are situated in the *aire de santé* de Kikuembo; they enrolled in the VA Program in 2009 and became certified in 2013.

Village 5 – V5: A view of the village

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

V5: A SanPlat slab toilet

V5: An improved water source.

V5: An improved water source.

Near the two villages the river Mbavu flows, which makes it difficult sometimes for school children, especially in times of floods, since children have to cross the river every day to join their school. It should also be noted that in this village there is a health post that is part of the *aire de santé* of Kikuembi, located some nine km away. This health post supports an average of 978 inhabitants of four villages in total. According to the nurse in charge of this health post "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. "

3.6. FIELD RESEARCH RESULTS

3.6.1. Characteristics of the research participants

Two main stakeholder groups were involved in the research. First, community members from selected villages; and second, local authorities. The term local authorities includes local political and administrative leaders such as the *chef du village*, the *chef de groupement*, *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-Flevue 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 the lead researcher, Pascal Sundi, explains the challenges this posed for the research below.

3.6.2. 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 most often under what conditions one will be accommodated, how one will be fed, under what hygienic conditions one will be hosted; in short, questions about the smallest detail of everyday life are raised because the change of environment implies adaptation.

Initially, as discussed with the research team, I planned to carry out this study throughout the province of Kongo Central, through its three districts (Bas-Fleuve, Cataractes and Lukaya). Then, very quickly, I realized that 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 Cataracts and the Lukaya (the case of Kindibu or Kintandu) were not always 100% understandable to me. Even though I could understand them at 60 or 70%, communication would still remain limited. Probably, I 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 make an absolute limit in a study which sought to be ethnographic in its essence.

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

At first glance, I had in mind that 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. I had sufficient knowledge of each of its three territories. Tshela, this is my home territory; I was born there and did a lot of my primary education there. The territory of Lukula was home to my high school. As for Seke Banza, not only did I do another part of my primary school there, but I had to visit the territory regularly for one reason or another (notably for internships during my training at the Major Seminary of Boma).

My first shock came during my first visit to one of these villages. In fact, I was familiar with none of these villages. When I arrived in the first village in the territory of Lukula, my first challenge was my inability to properly communicate with my interlocutors who spoke to me in a language that I could only understand about 50% of what was said. I 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 by the fact that the majority of the inhabitants of this village could speak both their local language, the Tsikwakongo (a variant of the Kiwoyo) and the Kiyombe (which is my mother tongue and which I have retained as a language of exchange with my potential interlocutors in this district of the Bas-Fleuve, 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 my bag. It is in this simple and ascetic setting that we were able to start my research fieldwork, by becoming part of this host family, thus sharing their meals on a daily basis during the more or less 30 days of my research stay.

When I arrived in the village, my attitude was that of someone who wants to learn from the community, from each of my interlocutors. I 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, I was viewed as someone with a "certain education", who came from an 'important milieu', the city. So at first glance, I was not considered one of them. Two attitudes prevailed: for some, I had to be treated with a little 'reverence', while for others 'I was 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). I could explain to them that I was not a government or State agent, let alone a UNICEF agent, but as soon as I started a conversation about the VA Program, one would assume that I was the best interlocutor through whom they may convey or canalize their aspirations and expectations to other institutions bodies capable of "assisting" them.

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

Overall, two principles guided my approach to my research: flexibility and adaptability. By flexibility, I mean the ability to revisit my assumptions in order to immediately immerge into the reality in presence. Adaptability means the ability to adapt to change and to difference in each and every single context.

3.6.3. The interview process: challenges and ethical considerations

(i)   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). Transcriptions of 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 that the transcriptions remained embedded in the context of the interview. Data analysis was carried out in English by the researcher from French transcriptions.

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

Van Nes et al (2010) discuss 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 lead 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 *l'Etat, Dieu sur terre* and in English *the State, God on earth* may not cover the full meaning if we miss to link it to another similar expression '*bambuta, ba nzambi zi tsi*' ('*parents as gods on earth*'). In this last expression, parents are those beings who have, on the one hand, to provide for their kids and, on the one hand, deserve respect and obedience. In order to get a better understanding of the expression in the context of my fieldwork, it is important to have in mind this 'positive' aspect of the *God on earth* and what might be considered as the negative aspect of this *God on earth*, including its virtual distance from the people.

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

Finally, vernacular languages often do not offer clear-cut equivalents of 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 the notions that are untranslatable raises a host of issues about how to interpret local understandings (Destrooper and Sundi Mbambi, 2017: 16). To deal with this aspect, the analysis paid attention on 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.

(ii) 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 the fieldwork. In October 2014, a request for advice was submitted to the University of Antwerp's Ethics Committee for the Social Sciences and Humanities (Ethics Committee) regarding research proposals with possible ethical repercussions. The submission included an application form with a research information sheet, a consent form for participants and an interview guide. In designing the research protocol included in this application, the researchers strove to ensure that the study would not bring any harm to participants involved in interviews or in ethnography 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.

During the fieldwork, the lead researcher strove to ensure that the research did not raise false expectations of assistance, for instance, from the interviewees and that confidentiality throughout the research process was to be guaranteed to all participants through the use of pseudonyms or codes (if necessary). Names of villages where fieldwork was to be carried out had also to be altered to avoid any traceability of interviewees.

In December 2014, the Ethics Committee issued 'ethical clearance' to undertake the research. Throughout the fieldwork the principles of the Ethics Committee were adhered to including to guarantee the confidentiality of the data and the privacy of the participants, as well as to avoid any psychological or physical harm for participants. Therefore, all research data were kept only for the purpose of the broader IAP-HRI research project. Access to these data was only available to the researchers involved in the LHR research project with the Law and Development Research Group, University of Antwerp.

CHAPTER 4. PRESENTATION OF FINDINGS: THE LOCAL CONCEPTIONS OF HUMAN RIGHTS

This chapter focuses on the presentation of the research findings with regard to the local understanding of human rights in the Bas-Fleuve district in DRC. The findings are structured around six sets of values that were 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, there will be from time to time 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.

This research falls under the theoretical framework of the "Localizing Human Rights" approach which is rooted in the *Human Rights Integration (HRI)* network aiming to study human rights law as an integrated whole from a users' perspective. 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. However, Desmet (2014: 137) also suggests the possibility to explore why people who could invoke human rights have not taken this step in order to extend, for instance, the field of enquiry towards potential users of human rights. She (Desmet 2014: 129-131) distinguishes four empirical categories of users of human rights. Amongst direct users, there are 'rights claimants' as those who (may) invoke human rights, and 'rights realizers' as those who give effect to 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 (e.g. courts and tribunals).

To assess the users' perspective this case study focused on villagers in the five selected villages, in the District of Bas-Fleuve of the Kongo Central province, as (potential) 'rights claimants' on one hand; on another hand, it also zooms in on local government leaders or authorities as 'rights realisers' or duty-bearers. These are the substantive potential guarantors of the international law of human rights, because they stand closer to citizens than other public institutions (Papiscazo 2011: 85). However, it should be acknowledged – as Destrooper remarks – that local authorities can also be seen as 'claimants' vis-à-vis the national authorities and even vis-à-vis the international organizations and human rights bodies, e.g. claiming resources to be able to realize their own human rights obligations (Destrooper 2015: 44). 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 organizations (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 Program. NGOs are services providers contracted by UNICEF for specific assignments in the framework of the VA Program. 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. HUMAN RIGHTS AS AN INSTITUTION

The majority of the interviewees in the different villages have already been exposed to the concept of human rights through a variety of ways.[86] 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 is an NGO… Human rights, 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**), concerned to defend the weakest, the most vulnerable against all kind of injustices. They are an institution that plays the role of watchdog to ensure social justice, an instrument of counter-power which gets its notoriety by its work of guaranteeing the social balance and the protection of the most disadvantaged.

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 actions and commitment for others' cause – as a way to explain human rights. This is how 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**).

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[86] 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).

4.2. 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.[87] 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 the national legislations or in international instruments, but they are able to assume that 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 the national legislation necessitates creativity in enforcing the right through the courts. In many such countries, cases have been brought under environmental or 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.[88]

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 Program:

> 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

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[87] 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*').

[88] 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.

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 sanitation, there is the question of washing of hands ... This is the key element that we must insist on in relation to access to drinking water. 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 Program has been thought, and how the VA Program is being implemented namely emphasizing behavioral and attitude change towards hygiene and sanitation. And yet, what the research showed in the different villages is that the first priority for rights-holders is access to drinking water.

4.3. HUMAN RIGHT AS FREEDOM AND DEMOCRACY

The most prevailing perception of human rights found 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.[89] 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.[90]

The local expression associated with this perception is *kiphuanza.*[91] What is important to highlight here is, on the one hand, 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 that the modern discourses on human rights in the country were transmitted 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 Mobutu regime) and civil war,[92] where these rights have been violated on a large scale. The tendency to equate human rights to political and civil rights has not, however, changed significantly even if the discourse today seems to be more inclusive, by integrating the economic, social and cultural rights in the rights discourse, especially of civil society.

From this perspective, it can be argued that this conception of human rights as 'freedom' arises from the experience of oppression, negation of liberty. When the experience of the 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.[93] This has been well analyzed in the *Wretched of the Earth* (*Les Damnés de la Terre*) by Frantz Fanon (1961), by stressing the dehumanizing effects of colonization upon the individual, and the nation, from which derive the broader social, cultural, and political implications inherent to establishing a social movement for the decolonization 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 a human dignity) as long as he or she

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[89] 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).

[90] Interview, October 2014, V1, T01.

[91] 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.*

[92] Almost all recent reports of the United Nations High Commissioner for Human Rights, particularly the July 2015 report, emphasize 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.

[93] 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.

can affirm his/her liberty, that nobody - be it the State or especially abusive authority - can oppose, infringe or deny. Thus, it becomes pretty easy to relate human rights with freedom, as human rights are seen as an 'ideology of resistance or of struggle' (Shivji, 1989) of the large masses of Africa to free themselves from the long and painful frustrations of colonialism and neo-colonialism, under its current forms of globalization and armed conflicts.

In fact, the fieldwork showed that in each village visited there was always a portion of people who resisted the VA Program based on their will to enjoy their freedom of choice. For instance, when trying 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 the fieldwork found that some local authorities' interpretations[94] on human rights seem to challenge this conception of human rights as freedom. To the question of what was his understanding of human rights, 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'[95], 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**).

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**).

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, [96] suggesting thus the newness of the reality of human rights – in this context – as more or less defined in international treaties.

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[94] Another Deputy Administrator was of the opinion that 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.
[95] A sort of compulsory public work during the Mobutu regime.
[96]*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 kuandidiambu* (every person has a right to express his or her a thought).

4.4. HUMAN RIGHT AS A NEED (*'M'FUNU'*, *'N'KINZA'*)

During the observational and interview phases of the field work a few local expressions of the concept of right, especially in relation to the right to water were captured. These included concepts such as *luve*[97], *n'swa*[98] or *n'siku*.[99] 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.[100]

Another respondent replied,

> I need water every time for bathing, washing up, cooking, drinking; it's a necessity.[101]

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. Right here is perceived more as something of a 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 when it runs out.

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[97] 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 that 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).
[98] Meaning 'approbation, permission, sanction, right, power' (Ibid.).
[99] Meaning, according to Kotanyi (2015), 'prohibition, taboo'.
[100] Interview, V2, February 2015, Ki01.
[101] Interview, V3, June, 2015, Kai02.

4.5. HUMAN RIGHTS AS *RESPECT* OF HUMAN DIGNITY (*LUVALU, LUKINZU, LUMA*)

Even though the concept of human rights seems new – from the perceptions of the local rights-holders as they emerged in the conversations – yet the reality of respect for others is something embedded in their cultural and social practices. Thus, one finds among the local culture idioms that refer to this very same respect for others and respect for others' property. [102]

Other notions are used to refer to the very same respect for human dignity included *luma*,[103] *luvalu*,[104] and *lukinzu*,[105] which all speak of integrity and communal responsibility. These notions call for more interconnectedness among members sharing the same humanity, and do not explicitly refer to a right as an *entitlement* (Destrooper & Sundi Mbambi 2017). 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.

As Destrooper and Sundi Mbambi (2017) point out "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. The legal notion of human rights *obligations* did not feature in the 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. If accountability is conceptualized 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."

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[102] 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.

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

[104] 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 **'**polish, refine' (Ibid.).

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

4.6. HUMAN RIGHTS AS *BU-MÙUTU*[106]

Bu-muùtu is a very generic word that can be found with variations in many bantu languages, including in Lingala (*bomoto*) – spoken in the North-Western part of the DRC, as well 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.[107]

The word bears individual and collective attributes. In fact, 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 humanness if he/she abuses or mistreats fellow community members. A human being is to affirm one's humanity by recognizing the humanity of others and on that basis 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 that 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[108] but also in terms of obligations, both "embedded in a

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

[107] 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*).

[108] In his comments on a question raised by Professor Obiora C. Okafor of York University, Toronto, Canada during the Localizing Human Rights Conference held in Antwerp, from 19 to 20 September 2017– a question in relation to the moral Vs legal entitlement of *bu-mùutu* – Dr Sam Adelman of Warwick University emphasized the fact that *bu-*

framework of interconnected rights and duties" (Zwart 2012: 555). As Cobbah (1987) points out, in the African[109] 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, thus, 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 emphasizes 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 being 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 a 'we', as well as for them to engage in joint projects, coordinating their behavior to realize 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 that 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*,[110] which emphasizes communality and 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 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 effect, this co-existence means that 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

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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 that 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), is always been shaped in our interactions with each other.

[109] 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).

[110] 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.

individual. In this sense, the concept suggests a different way of not only approaching human rights but also rethinking the approach to the interpretation of accountability or duty-bearers within the broad framework of human rights.

CHAPTER 5. OVERCOMING CHALLENGES TO LOCALIZING HUMAN RIGHTS IN THE DRC

The research presented in this case study contributes to the growing body of LHR research. This chapter draws on the findings and analysis presented in Chapters 3 and 4 providing an analysis of progress in LHR in the DRC, focused on the right to drinking water in the Bas-Fleuve District. The following analysis is grounded in international human rights obligations. As such, it delves into sub-objective 5 and explores how the global/transnational human rights discourse and practice does or does not inform actions and perceptions of local actors at grassroots level, specifically in relation to their right to water and sanitation. It also makes a preliminary attempt at answering the question as to why the findings suggest that the international human rights discourse does or does not inform the local level. not .

This chapter first situates the LHR approach in the universalist versus cultural relativism debate, and suggests the importance of a local infusion into the global human rights framework to enhance the local relevance of the universalist-anchored global system. Second, it examines the research findings through the lens of the LHR methodology developed by Gaby Oré Aguilar focusing on what this study contributes to the life cycle of human rights interventions she identifies. Finally, it engages in a preliminary exploration about the constraints to engaging in the full cycle of the LHR circle , i.e. connecting the local to the global and vice versa, in the current context in the DRC.

5.1. PATHS TO UNIVERSALIZING RIGHTS

Since 1948, when the nations of the world agreed the Universal Declaration of Human Rights, the work of ensuring that human rights are truly universal remains a global challenge. The DRC's development indicators, including those on access to water and sanitation, highlight this challenge. As the world embarks 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 so-called cultural relativism continue to figure in academia to the present day. Proponents of the universality 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 every person, by virtue of being a human being, should be able to enjoy them, regardless of time and place, and whether or not those rights have been recognized by existing law" (Zwart 2012: 551).

These kinds of generalizations regarding human nature, however, have been criticized by different fields of academia including lawyers and social scientists. For example, with respect to international relations, the realist school argues against considerations of rights and principles, instead asserting that an analysis of the facts and science of government is needed to explain how governments and people actually behave (Bozeman 1980; Motala 1989). In short, supporters of cultural relativism assert that 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 account of the local cultural situation that prevails in distinct regions of the world (Yash Ghai 1998/9; Oloka-Onyango 2000).

As Yash 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); and on the other hand, the relativists erect culture as a barrier to criticism or 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 on which ground a truly universalist human: inclusion and dialogue. While, in the meantime relativists, mostly represented by politicians in the south whose human rights practices are at a minimum questionable, often remain rigid in the face of changing cultural practices (see Arati Rao 1995).

Berger 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" (1977: 62); however, importantly, the manner in which these values are conceptualized 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 LHR theory as a cross-fertilization framework which calls both universalists and relativists to engage in a dialogue. It is about creating and promoting a "third way" that escapes from the 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 Engle 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 vernacularization of 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/ cultural relativism debate recognize that 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 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 characterized as State centric, international law driven and an essentially unidirectional conversation; with the global speaking, or dictating, to the local. However, much less attention 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 mobilizing

social forces on that score can respect for universal standards be forged" (Mutua 2002: 81), then this deficit clearly needs to be redressed. This case study aims to contribute to this discussion.

Based on their research and experience, academics, including Merry (2006), Levitt and Merry (2009) and De Feyter (2007; 2012) have increasingly come to understand the importance of switching the focus to the local level. For De Feyter, localizing of human rights requires   "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 experience 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 localizing approach was the lacunae in human rights-based analysis and responses to the impact of economic globalization on the human rights of people. Increasingly, the usefulness of this approach for addressing failures to respect, protect and fulfil human rights arising from issues and processes that extend beyond economic globalization has become apparent. As such, the approach is now recognized 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 localizing human rights approach takes the local as the starting point of the enquiry, while acknowledging the importance of international human rights framework. As discussed above, the framework adopted for this case study and the other case studies in the localizing human rights case study series (Series), is inspired by the localizing human rights methodology developed by Gaby Oré Aguilar. We now turn to exploring this dimension of the findings.

5.2. THE LOCALIZING HUMAN RIGHTS FRAMEWORK

The localizing human rights methodology offers a framework for analyzing the full life cycle of human rights interventions, from the emergence of the human rights claim to an assessment of the results that were achieved. It allows researchers seek to understand the relevance and accessibility of the international dimension for local communities. As such, it engages with the perspective of the rights-holders, recognizing their importance as the primary authors of human rights claims. It requires the study of the process of rights realization at the ground level 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 localizing human rights cycle.

This case study is the second case study in this Series that focuses on the Kongo Central (formerly Bas-Congo) Province of the DRC, so that when read together a clearer picture of the local to global situation

emerges. Yet, as explored, 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 *Villages Assainis* program.   The study identified the disconnect between the HBRAD and the reality of the VA Program. With respect to the impact of the VA Program on localizing 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 a further understanding of where gaps lie in the realization of the right to drinking water and sanitation, through largely ethnographic field research into the first part of the localizing human rights Circle (the Circle) focused on exploring local conceptions of human rights.

5.3. LOCATING THE RESULTS ON THE LHR CIRCLE

It is worth briefly revisiting Oré Augilar's (2011) work on the conceptualization and operationalization of the localization process. Her methodology comprises five interrelated tracks for analysis (see Fig.2. above).

As with the other case studies in this series this case study did not analyze all of the different tracks on the Circle. Instead, it focuses the research on exploring tracks 1 and 2. Track 1 explores both why and how local communities articulate claims on the basis of the international human rights framework. Track 2 examines the translation of these claims into human rights actions. These 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 the Bas-Fleuve region. As noted in the presentation of findings, chapter 4, the research identified six sets of understandings that are found in local expressions of human rights. Below each is reviewed to see whether or not it can be considered a human rights claim. For the purposes of this 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);

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

These three criteria are used to guide the below analysis.

a. Human rights as an institution:

This understanding springs from exposure to non-governmental organizations 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 removed from the people; they are something for human rights institutions.

b. 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 that also resonates at the international level. However, the idea that this right can be claimed was not expressed by respondents.

c. 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.

d. 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.

e. 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.

f. Human rights as bu-mùutu

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

Table 2. Review of local claims of human rights

CONCEPT	INSTANCES OF EXPRESSION				
		The claim uses human rights language	It includes the Right to drinking water and sanitation	The claim identifies a duty-bearer	There is a notion of accountability
	Human rights as an institution	Yes	Maybe	Maybe	Maybe
	Human rights as a right to life	Yes	Yes	Maybe	No
	Human rights as democracy and freedom	Yes	No	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, the research identified multiple instances in which local communities human rights concepts 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. However despite the existence of multiple local conceptions of rights relating to the right to drinking water, 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 that 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 into human rights claimants. This raises the question as to why, after several years of participation in the UNICEF VA Program, that the human rights based sense of entitlement was not expressed by those interviewed. Chapter 6 examines this disconnect.

CHAPTER 6. DISCUSSION

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 DRC; however the extent to which such an awareness has emerged from the VA Program and has contributed to more widespread culture or practices of human rights seems marginal. Destrooper's assessment of the HRBAD in the VA Program suggests that the explicit use of or reference to human rights discourse is virtually absent, making it difficult to assert that the prevailing local awareness of human rights is the result of the VA Program. It should be also acknowledged that the impact or the effectiveness of human rights in terms of social transformation – community members empowerment through the VA Program – in the region is another aspect that is difficult to confirm due to the fact that neither the VA Program's implementing partners, nor the rights-holders, have been systematically exposed to the rights-based approach across the VA Program.[111]

This discussion focuses on two points, first it unpacks the relevance of the findings from the LHR perspective, and secondly it discuss three issues that are directly related to the VA Program in order to improve and strengthen its procedures and mechanisms for much better results. These issues include, ownership and sustainability of the Program, 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. The objective here is to explore the relevance of LHR theory in the context of the VA Program.

6.1. THE RELEVANCE OF LOCAL CONCEPTIONS OF HUMAN RIGHTS WITHIN THE LHR PERSPECTIVE.

The fieldwork has revealed that, in many instances, local populations do not expect much from the State in terms of the respect, protection and fulfilment of social rights obligations. Although some of the respondents still identify the State or the government as a duty-bearer[112] with regards to human rights in general, or with regards to the right to water and sanitation in specific, there is a widespread perception of the same State as a 'failed one'[113] or a fragile one that is resource-less and virtually absent from the daily lives of communities.[114]

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

[112] 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 that there are widespread perceptions that 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**).

[113] In village V2, during a community meeting with the *secteur*'s *animateur agricole*, most of the community members shared the view according to which 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

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 village V2 expressed his dissatisfaction with the modern justice system,[115] as well as his concern about the elimination of traditional/customary courts, at local level. According to him, the modern justice system seems expensive and makes it, therefore, difficult for the impoverished rural population to seek for justice or to claim their rights. He went on advocating for the restoration of the traditional courts, which tend to play a more reconciling role between parties[116] and which are closer to people's perceptions of justice[117] and people's accessibility. A UNICEF staff member interviewed corroborated this view in 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.[118]

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,

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limited. Because of these limitations, community members expressed their 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.

[114] In a remote area I found a police station, I was interested to know how many complaints the police files 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.

[115] Which is, according to him, more evidence-oriented and more costly, but less efficient.

[116] In an interesting piece, Arlette Lebigre evokes both the role, composition and functioning of the 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 proper 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 d'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 arbitrate the palaver (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).

[117] The word 'justice' is well understood in the expression *taba n'kanu* (*taba* meaning 'to cut off, to judge, to decide; and *n'kanu* as 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 tissue social et de thérapie sociale*" (Nzuzi Bibaki, *Culture noire-africaine et reflexes unculturateurs*, Baobab, Kinshasa, 1999, p.13-15).

[118] Interview in Matadi, October 2015.

About two years ago, we used to receive from the Province one and a half million Congolese francs (almost USD 1 630) 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.[119]

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 incentives payment, and so forth. We will have to maybe develop more advocacy strategies to ensure that the government consider to provide us with budgets that can deal with water provision in rural areas.[120]

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).[121] 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.[122] 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).[123] 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 very same views. A development and human rights' activist in village V3 thinks that 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 of government there is an attitude or (what he calls) a social belief that is constructed by habits (custom) and which sees in the State or the authority a person to avoid or to be away from in order to

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[119] Interview March 2015, quoted from Destrooper and Sundi Mbambi, 2017.
[120] Cf. interview, V1, TAO06, October 2014.
[121] In village 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 that the priest was more in contact with external donors.
[122] Below we are referring to the sense of agency we witnessed in one of the villages we visited, with regards to access to water.
[123] In terms of water provision in villages, the VA Program 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 Program 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.

avoid any mistreatment, be it in terms of arrest or punishment. This is what he summarizes as 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.

A more in-depth explanation rooted in the local understanding of the State as the 'God on Earth' (*l'Etat, nzambi tsi*)[124] can provide insights into 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 the 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 the future. This was most clearly illustrated by the reply of one of the respondents in village 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 Sanitized Village 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.[125]

This view is strongly supported across all the villages in which fieldwork was conducted for this study. In village 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 (Destrooper & Sundi Mbambi, 2017). This suggests that 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 Program the villagers interviewed had not been empowered to claim rights. This may be attributable to the fact that with respect the VA Program 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

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[124] This can be literally translated in French as "l'Etat, Dieu de la terre"
[125] Interview October 10, 2014, quoted from Destrooper and Sundi Mbambi, 2017.

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 program, the UNICEF-WaSH Division has the responsibility for designing and implementing the VA Program, in consultation with all stakeholders. If the VA Program were to be truly rights based it would need to pay attention to people's perceptions of human rights at the local level. From both the field observations and interviews, it appeared that UNICEF never took any initiative to probe the local conceptions of human rights.[126] This suggests that the UNICEF-DRC office is not only lacking information about whether and 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 VA Program for 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 program (**Interview, November 2014, TAO11, V1**).

Another interviewee from a UNICEF partner NGO stressed the fact that UNICEF provides trainings on a broad range of issues, but these training programs do not specifically focus on human rights issues. He said,

> Training programs that are provided are manifold, especially training on the technical implementation of the project; other trainings focus on the sensitization 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 Program has been limited to transfer of knowledge and fostering of practical skills. While attention was rightly directed to some structural or technical issues if it were grounded in human rights, it 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 the community members emphasize the duties and responsibilities of villagers rather than their rights and entitlements, and none of them explicitly mention the obligations of the government under national or international law. As one local health officer remarked,

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[126] This view is also shared by Destrooper (2015: 192) who asserts that even her interviews at the UNICEF country office confirm that this is the case.

> 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.[127]

This shows, first of all, that among implementers, there is an understanding that 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 Program 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 Program, and which most implementing agents easily assimilate with the rights-based approach, in concrete terms, the approach is described as a 'mechanical participation', limited to material contribution/input of the community in the construction of water pumps and toilet facilities.[128] 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 the respondents mentioned that they expressed concerns about their resistance or hesitation to use the SanPlat[129] latrine slabs (see village V5), but unfortunately their voices were ignored. This example suggests that the local population appears to be simply implementers of processes and strategies already defined elsewhere and not people engaged in claiming their rights or capable of engaging with other actors involved in the VA Program. Participation, as it is implemented in the VA Program, seems to be a kind of top-down process, whereby rights-holders are not engaged in discussions around issues affecting them, and whereby they are given 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 organization, (Chambers, 1995) is less empowering for local rights-holders.

Destrooper's (2015) report mentions the lack of interest on UNICEF's side to listen to voices from below (p. 193), as well as a purposive omission of any references to State responsibility. It is suggested that 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 Program officers and in the VA Program villages. As noted above, the interviews conducted for this case study confirm this absence. Even where people think they have a right to water, they do not generally mention the idea that the right to water also entailed a dimension of government responsibility, or referred to the possibility to claim it if it was not realized to their satisfaction (Destrooper, 2015: 191). Destrooper suggests that this is the consequence of a program which does not clearly engage with the idea that someone should guarantee the right to water for rights-holders

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[127] Interview, October, 2014, quoted from Destrooper and Sundi Mbambi, 2017.
[128] 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".
[129] Sanitation Platform

(Destrooper 2015: 192). There is thus an overlap, for instance, 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, contextualization and adaption to local realities and upstreaming are two crucial components that should have be taken into consideration when designing a program 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 efforts to systemically contextualize 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 analyzing the local perceptions of rights amongst my target populations in the 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'[130] and as referring to the State. Local rights-holders emphasized 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).

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[130] 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 fulfil individuals' human rights that are fundamental to human dignity.

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 where 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 from this is the example of initiatives taken by parents in two of the villages in which the fieldwork was conducted. 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 schools 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.).[131]

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.[132] One cannot separate rights from duties; everything is intertwined and balanced. In contrast, in the context of the VA Program, 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 localization of human rights. In this case, it would be interesting to imagine how to 'contextualize' the notion of 'duty-bearer' beyond the State realm. This would imply engaging key actors within the community, including churches, private businesses and other organized 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 Program) 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. Destrooper and Sundi Mbambi (2017) argue that 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. Further, if one takes this approach it makes it more

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[131] 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 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).

[132] 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."

likely that rights-holders view new duty-bearers as alternatives to the State, rather than as complements to State responsibility (Destrooper & Sundi Mbambi, 2017).

In exploring this approach Destrooper and Sundi Mbambi (2017) suggest that the VA Program 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 organized entity – can come to the rescue of its members. This gives an opportunity, as Gready (2008) suggests, to re-imagine or re-invent new human rights, such as the right to solidarity[133], which takes 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 village V4 from the fieldwork is illustrative of this approach. Before the inauguration of the VA Program, 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 officials*, 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 a role of duty-bearers if they are sufficiently equipped and empowered to play such a role. Thus, from a localizing 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 localizing process.

As indicated above, interpretations of duty-bearers for villagers are not based on the legal duty to respect/guarantee, protect or fulfill a right, but on the local discourse on rights, which results in a more grounded assessment of responsibility and accountability (Destrooper and Sundi, 2017). 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 again an opportunity for the VA Program implementing agents and UNICEF to rethink of 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*', more precisely by taking this moral understanding and transforming it into a discussion about legal obligations (Destrooper & Sundi Mbambi, 2017).

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[133] 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.

In addition, in terms of localizing human rights, UNICEF would benefit from integrating a consolidated civic education program on human rights into the VA Program so as to integrate aspects of *bu-mùutu* and *African humanism* as building blocks that help to 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 Program thus enhancing the sustainability of the VA Program.

Finally, had a genuine localizing process been implemented by UNICEF it would have had the potential to lay some of the ground stones 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 the course of conducting fieldwork for this case study, the lead researcher came to realize 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 will feel genuinely involved in local politics - when they realize that their voices are being heard and taken into consideration – the more chance there will be to foster a culture of accountability and of citizen engagement. As a result, this might improve governance mechanisms at the local level, starting within the VA Program 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'.

6.2. STRENGTHENING HUMAN RIGHTS IN THE VA PROGRAM

This section focuses on three dimensions of the HRBAD which could, in concrete terms, help to improve the VA Program by responding appropriately to the setbacks observed on the ground during the course of the fieldwork (conducted by Pascal Sundi).

6.2.1. Ownership and Sustainability

Destrooper's report (2015: 151-156) critically assesses how the VA Program aimed to facilitate local ownership through locally-owned processes. She points out that ownership was first designed through the eight stages (*processus pas-à-pas*) of the first VA Program. Whereas in the second phase of the VA Program the focus aimed to guarantee that 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 the follow-up fieldwork in village V1 supports and reinforces this observation.[134] Indeed, when the lead researcher 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 the fieldwork ended, this pump was also out of service. When trying to understand what solutions the population had employed before hands to deal with the pre-pump 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 me to question 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 Program.

Indeed, one of the strategies used in the VA Program to ensure ownership was the creation of a fund that was to be financed by contributions from community members. Yet, in all the villages in which fieldwork was conducted, this fund was almost non-existent, or when it existed there was no money available. Rights-holders had various explanations for this, including the fact that this was not seen as their duty and they had other priorities.[135]

Even though the rights-holders were prepared to contribute for possible repairs of the pumps (in the event of a breakdown, for example), an interlocutor from village 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,

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[134] As this section relates to fieldwork the terms "I" and "me" are used to refer to the personal experience of Pascal Sundi, the lead researcher.

[135] 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 that the money was used to host their visitors, including UNICEF-WaSH staff visiting the villages.

Ki02, V2, Feb 2015). Even where the situation may seem more optimistic as in Village V3, in reality the real impact of this fund is simply very insignificant.

This clearly shows that this fundamental pillar of the ownership strategy does not work and does not serve to shift the ownership or responsibility for the success of the VA Program to the villagers. It can be argued that the inability of the VA Program to generate a sense of ownership, serves to, in Destrooper's terms, 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, like a temporary pump breakage, and fail to respond to such situations in a way that shows they have internalized the VA Program teaching.

We would suggest that this is largely the result of a Program 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 Program that has put so much pressure on rights-holders by overemphasizing their responsibility, while paying less attention on the role of the State and local authorities.

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) and is 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 Program, neither the *zone de santé* nor the *Bureau* 9 can find ways to meet the needs of the population. Again, it is interesting to notice how the thinking of implementing agents, as expressed in the quote above, meet very opposed views on the side of rights-holders, as a consequence of not taking into account the strategic concerns of rights-holders.

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 did 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 of inability to respond to the demands of the rights-holders if the VA Program were to end. It must be recognized that the *zone de santé* plays an *ad hoc* role on the issue of water and sanitation. This means that at the end of VA Program, the *zone de santé* will end up being the interface between the government and the villagers in this matter. The concrete involvement of these recognized local WaSH services in local governance of water and sanitation would contribute to increasing the level of ownership of the VA Program 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-bears and to allow everyone to stay in and fully play his role. The current legal framework which allows the decentralization 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 Program.

In addition, sanitized village 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 Program. Yet, in most cases, these committees were often effective at the beginning. Then, as the project progresses people lose enthusiasm and commitment, especially as the work is done on a voluntary basis. Ultimately, these committees become very inefficient, limited to a few routine activities (but without any overall vision for the long term, since meetings are either rare or non-existent for most villages).

In fact, the VA Program is based on the assumption of voluntary and unpaid participation on the part of the rights-holders, i.e. the different community members. However, in many cases, the 2012 Action Research found that this voluntary participation in the VA Program 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 that the assumption of voluntary participation is one of the most important reasons for low efficiency and appropriation (Destrooper, 137), and therefore participation in the VA Program 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 hand to seek payment for access to potable water for more efficiency. 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 Program and their own needs, and also they have very little interaction with the *zone de santé*.

Yet the functioning of certain other committees that we have identified in some villages, such as the *Comité Local de Développement* (CLD), 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 Program. 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, the findings and analysis suggest that if the VA Program were to be based on a human rights-based approach, would require the strengthening of the capacity of the local WaSH structures and services in order 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 and training or information sharing sessions on HRBAD.

6.2.2. 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 program ownership and sustainability. The UN Common Understanding (UN 2003) emphasizes 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.

One of the best ways to make "power accountable" is to empower rights-holders to become more able to demand accountability from their leaders. This starts by educating rights-holders to become more aware of their rights and being empowered to claim them. This is a transformative process in which the HRBAD engages rights-holders by rendering the law real in their own political and social conditions, and thus re-forging less power unbalanced 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)-politicization of development, which means "taking sides, challenging vested interests and asymmetries of power" (Gready 2008: 773). Re-politicizing participation in development stresses the linkage between agency and empowerment, leading to transformation through accountability.

Destrooper (2015) distinguishes internal accountability from external accountability in the context of the VA Program. Internal accountability refers to adherence to internal procedures and mechanisms set for the implementation of the VA Program, i.e. how the HRBAD is implemented, what are the mechanisms for complaining in the event of problems, what is the obligation for UNICEF to follow up on this complaint, and what is the willingness to compensate if a complaint is justified. External accountability, on the other hand, basically refers to government accountability, i.e. how does UNICEF contribute to building a culture of accountability within government structures, how does UNICEF help improve leadership and prepare government interlocutors for taking up their responsibility (Destrooper 2015: 144).

Destrooper expands on three different types of external accountability which she identifies as 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 that the works have been carried out (Destrooper). Finally, mutual accountability refers to the idea of balanced power structures between the village, the government and implementing partner so that, in case of break-down, 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 for the an exploration of 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 politicize development in the VA Program, and its failure to help rights-holders of becoming capable of holding the government accountable (Destrooper 2015: 131-136) is one of the key factors that both impedes program ownership and prevents rights-holders from playing a more active role in demanding more efficient services in local governance.

Unfortunately, not only rights-holders' awareness of government responsibility is markedly low (Destrooper 2015) in the VA Program – with most interviews showing no understanding of the notion of duty-bearer and some identifying other actors such 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 emphasize government responsibility as well as the clear willingness to shift the 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 recognize that they also have responsibility. As part of the program, 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 Village 3 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. None can control him (**Interview, V3, Kai10, July 2015**).[136]

These quotes from interviewees show on the one side how rights-holders are not empowered or ill-equipped to not only claim their rights but also to 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 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 .

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[136] 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**).

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 or water points.[137]

This issue was highlighted in particular with regard to toilet facilities. Some rights-holders even consider that 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, when he sees and hears what is happening, he is surprised. It's so sad for us, black people (**Interview, V2, February 2015**).

A great number of rights-holders felt that the *zones de santé* were receiving a lot of money to build cement-based toilets; but that as 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 it in his own way, by the use of local material, such wood and so forth.

These suspicions were even reinforced by the fact that sometimes a good amount of material, initially destined for village X, was deployed in another village (at the request of the *Médecin-chef de zone de santé*). "It is not surprising," one of the 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 that he himself 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 program 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 sensitization to make them understand

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[137] One of our interlocutors point out that SAnPlat slabs seem to be one of the great innovations of the VA Program. Paradoxically, they also seem to be the biggest failure of this programme. 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**).

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* has the following reaction,

> This type of allegations often comes from the so-called first-generation villages, i.e. communities that saw the VA Program 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 Program, insofar as there has been virtually no interest in joining the VA Program. Whereas with the second-generation villages, that is to say those villages which have joined the VA Program at the express request of their members, there are less problems "(**Interview, KiAO01, V2, February 2015**).

In her report, Destrooper notes that in the current project structure, the role of the *Bureaux des zones de santé* is a facilitating one, whereas the eventual responsibility for execution of the VA Program project lies with rights-holders in the VA Program.[138] However, it is important to make some nuances regarding these allegations by rights holders. While, they may or not be valid they do reveal the strength of the imbalance in power relations between different actors and its impact on the ownership of the VA Program. 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 VA Program 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 Program.

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[138] 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 excluding 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 fuels 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 program" (p.103).

MAIN FINDINGS

This case study is the second in the series that examines the UNICEF managed VA Program in the Bas Fleuve district of Kongo Central. Broadly speaking, both studies examine the local relevance of this program for advancing water and sanitation rights in the same region. However, each studies a different piece of this puzzle. The first study focused on the implementation of a human rights-based approach to advancing these rights by UNICEF, a leading global actor, and its work with the DRC government. (Destrooper 2015). This study is very much based at the local level, focusing on the rights holders. It puts them at the center of the research by first identifying and then analyzing the local conceptions of human rights in villages that are part of the VA Program. Below we review the main research findings and then use these as a basis for very general recommendations.

The main objective of the study was to explore the local conceptions of human rights in selected VA Program villages. The findings draw from the five sub-objectives, which arereviewd below:

1. Identifying the local structures, e.g. the *zones de santé*, that engage with the right to drinking water and sanitation within the VA Program;
2. Tracing how UNICEF engages with local rights-holders on the right to drinking water and sanitation, as advanced through the VA Program;
3. Ascertaining whether or not a human rights discourse or human rights based practices emerge from implementation of the VA program;
4. Identifying how local interpretations of human rights (if any) have been influenced by the VA program;
5. Exploring how the global/transnational human rights discourse and practice does or does not inform actions and perceptions of local actors at grassroots level, specifically in relation to their right to water and sanitation.

Local Structures and UNICEF

Understanding the role of different local structures including the *zones de santé* engaged with the VA Program to advance the water and sanitation rights of communities was vital to understanding the chain of accountability. The complexity of identifying where local accountability for implementation and monitoring of the VA Program resides suggested the challenges villages face should they decide to claim rights. As the research spanned significant administrative changes in the local study area the complexity of identifying the responsible local structures was compounded.

The research 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 attempts to shift responsibility to villagers, this undermines accountability and challenges the claim that the VA Program is rights-based. Despite the on-paper commitment to empowering local structures to work with people to prioritize the people's 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).

Implementation of the VA Program and Human Rights

The original research hypothesis had assumed that villages that were part of the VA Program would have become familiar, and potentially empowered, by their participation in the VA Program. In localizing human rights terms, this meant and expectation that villagers were familiar with and used the claiming and accountability language of human rights (Oré-Aguillar 2011: 131). However, despite identifying multiple local understandings of the right to water and sanitation the field research did not find that participation in the VA Program led to a human rights-based discourse emerging, nor did it find that village residents formulated claims using the human rights framework. Despite the fact the interviewed villagers were all residents of VA Program villages they did not use claiming language nor did they intend to turn to local authorities to claim their rights.

We hypothesize that one explanation for this may be that the VA Program was designed and implemented without significant input from the villages. The villagers are expected to play a key role in implementing the VA Program but did not play a part in the design of the VA Program. All of the villages in which interviews were conducted had applied and were selected to be part of the VA Program.[139] The interviews showed that village residents were not consulted about the obstacles they face with regards to realizing their right to water and sanitation. Thus the interventions and implementation of the VA Program were not designed to address their specific problems. In contrast, they were expected to adapt to the VA Program 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).

Local Interpretations of Human Rights and the international human rights framework

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 Program, which is arguably grounded in the international human rights framework. In localizing human rights terms the expectation was that villagers would shift from viewing the absence of potable water sources and sanitation facilities as simple transgressions and start to see them as human rights violations and think of claiming their rights. The hypothesis that local rights holders would identify VA Program implementers as acting for the duty bearer, the DRC State, and thus include concepts of accountability in their rights discourse. Our research did not find this.

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[139] The manner in which villages became aware of and applied for participation in the VA Program is an issue that deserves greater study.

What might explain this failure of the international human rights framework to penetrate? Why has the VA Program not led to changes in local conceptions of rights or behavior change (i.e. rights claiming)?

Our research identified three overlapping explanations; the design of the VA Program, the historical role of the DRC State and the villagers' pragmatism. The first explanation relates to the VA Program itself. As discussed above, the absence of a truly participatory approach to the design and implementation of the VA Program and the lack of accountability mechanisms within the VA Program likely both contribute to the non-use of the human rights framework and the absence of rights based claims emerging. Since the VA Program does not probe for the local understanding 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 localization 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 (Destrooper 2015:193). Nor are their understandings of rights percolating up to inform the global discourse. This represents a missed opportunity to include the voices of the marginalized in global norm creation.

The second reason is largely historical. Throughout the history of the DRC the State has rarely fulfilled its role as duty bearer. For the villagers that were interviewed, the idea of holding the DRC State accountable for the non-fulfillment of their right to water and sanitation has no historical precedent. Lumbika and De Feyter note that in the Kongo Centrale region of the DRC the delivery of social and economic rights, like health and education, has become perceived to be the role of donors. They argue, "The substitution of the state by donor agencies is such that locals put all their aspirations for a better life in the hands of the donor community" (2014: 213). Local schools and health centers trumpet the support of donors, which serves to reinforce the ideas that these are not the responsibility of the DRC State. With respect to water and sanitation the launch of the VA Program is, arguably, a positive, first step towards the DRC State assuming its obligations towards its citizens. However, for the village residents that 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 the villagers 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 DRC State their non-engagement with the human rights framework is a logical, pragmatic decision.

Despite the rhetorical commitment by 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.

Recommendations for Advancing rights

Improving human rights awareness

For the VA Program to become more effective at advancing the right to water, 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 research in this case study shows that rich local concepts exist but there is a failure to identify the actor 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 that all people are entitled to. 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 emphasizes communal values that speak to and empowers the local people. The findings from our study suggest the need to rework the social contract by beginning a dialogue between rights holders and duty bearers. However, for this to be successful there is a great need to fully and systematically apply the human rights based approach to development and engage in capacity building on human rights for both right-holders and for duty-bearers. The VA Program offers an opportunity to do this.

Engaging with the DRC State

Even if progress is made on claiming rights the challenge will remain as to how to operationalize the right to water and sanitation in a more effective way given the weakness of the DRC State, the duty bearer under international law. For the VA Program to be more effective and efficient if 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, as De Feyter notes "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)." At the end of 2017 the weak democratic legitimacy of the DRC State 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 recognizing the inherent risks in such an approach, is appealing for those interested in advancing the human rights of people who are vulnerable and marginalized (Destrooper and Sundi Mbambi 2017).

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Localizing human rights research takes the human rights needs identified by local rights-holders as the starting point for interpreting and developing human rights norms and for identifying actions, ranging from the local to the global level, to improve human rights realization. The research and analysis in this book contributes to the knowledge base of local concepts of human rights, focusing on the right to drinking water and sanitation. It is based on fieldwork carried out in villages in the rural Bas-Fleuve district of the Democratic Republic of the Congo (DRC). It explores local understanding of human rights, including an investigation of which entities are viewed as duty-bearers. Additionally, it builds on earlier work research into the UNICEF managed Village Assaini Programme (Working Paper 3) by examining the impact of this initiative on local conceptions of human rights thereby exploring whether and how global human rights discourse and practice inform, or not, actions and perceptions of local actors at grassroots level.

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