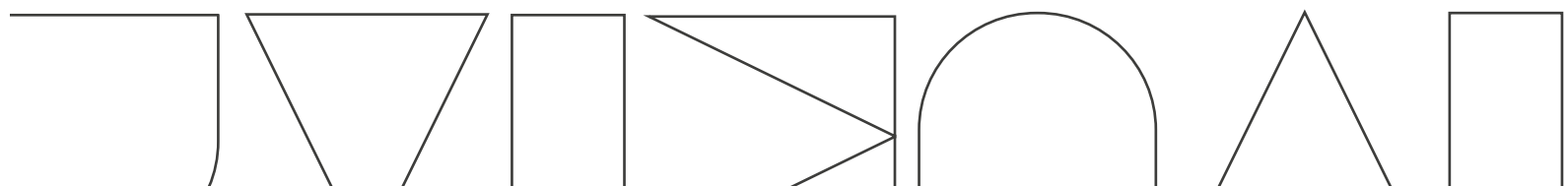
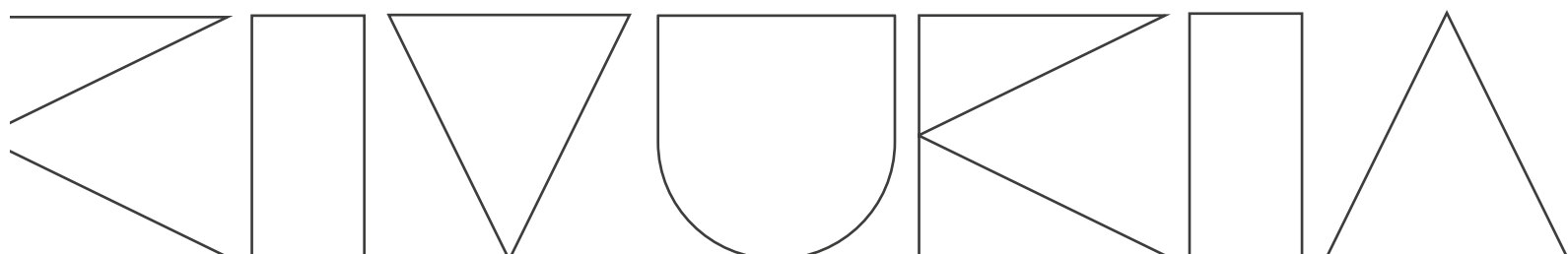
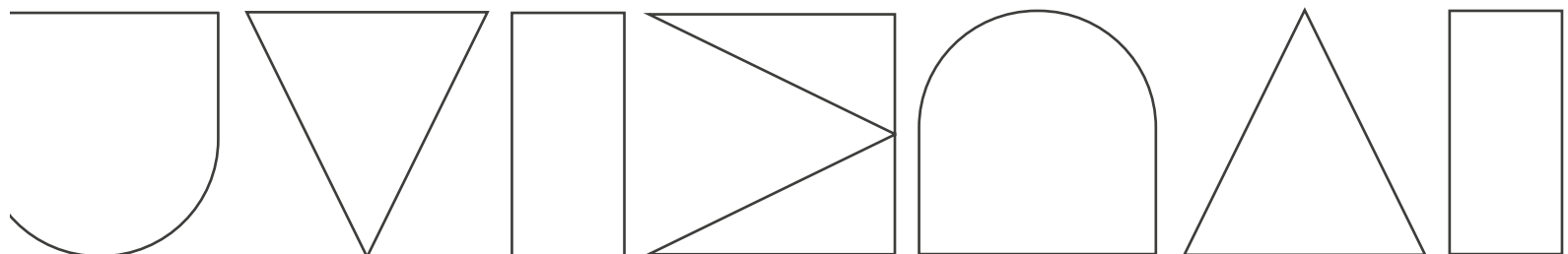
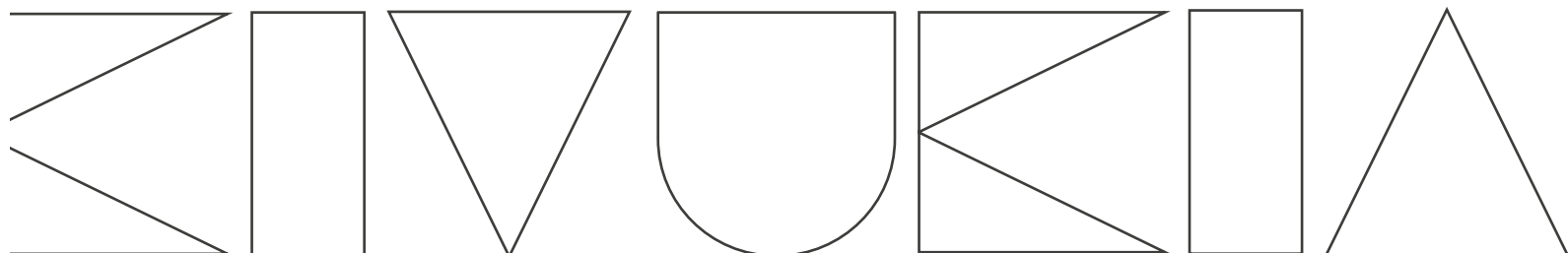
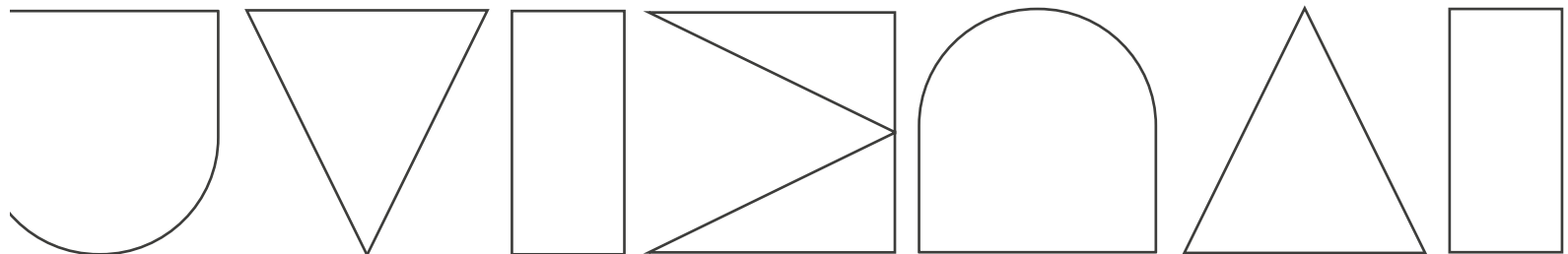
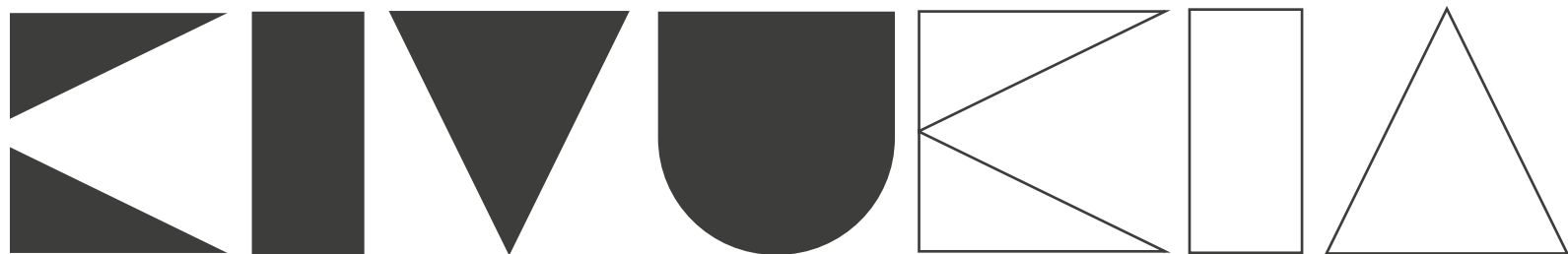
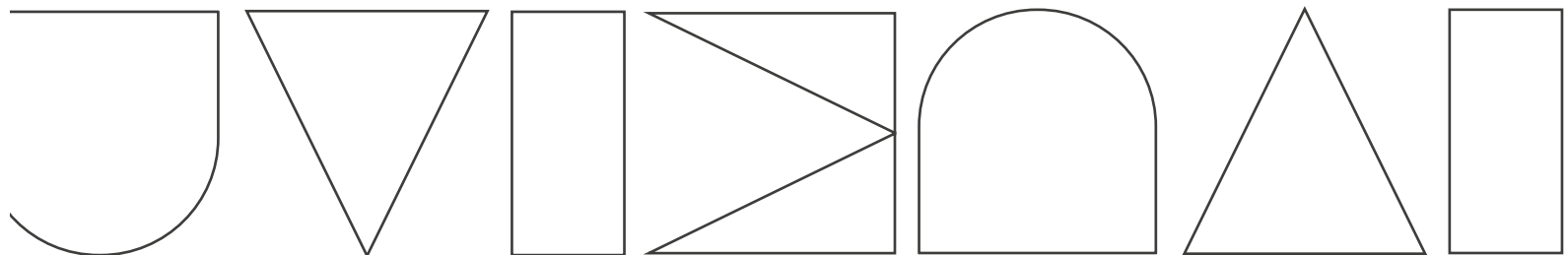
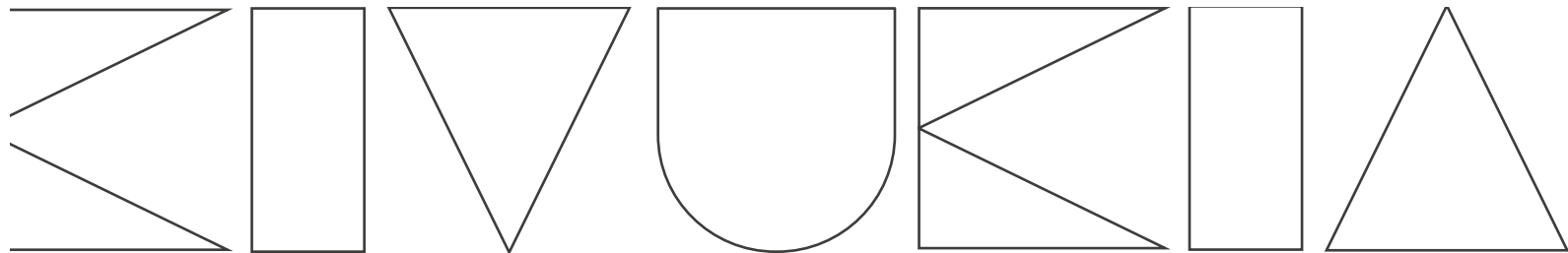
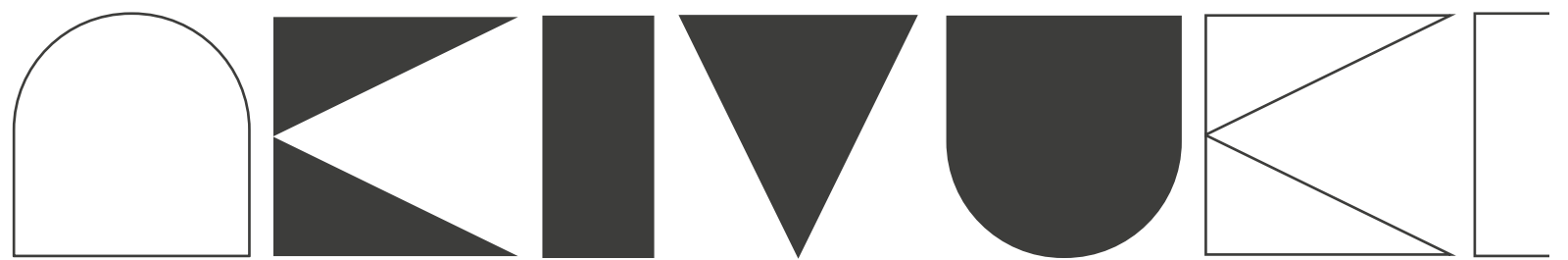
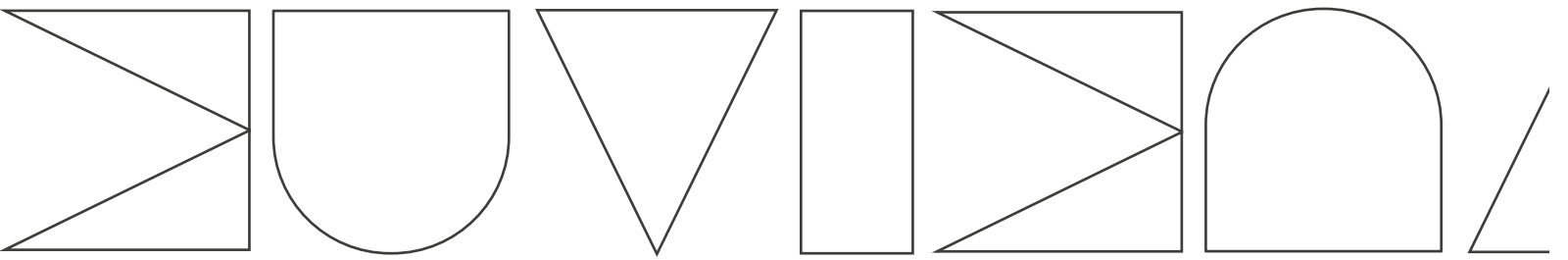
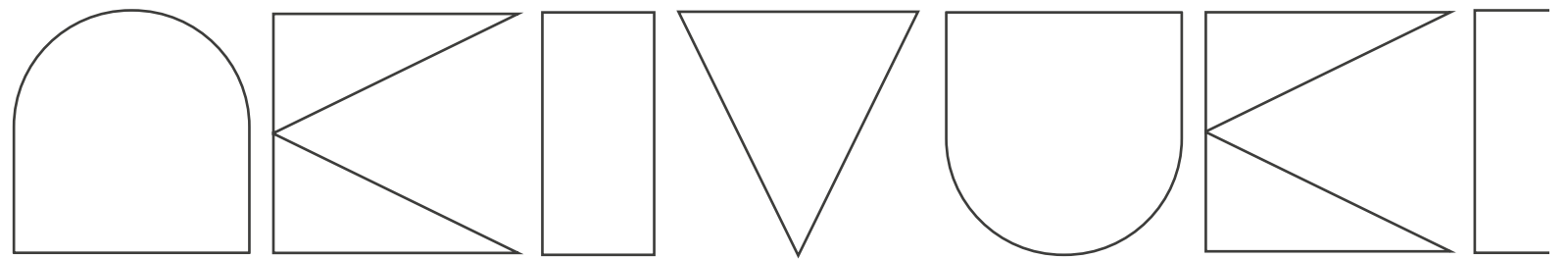
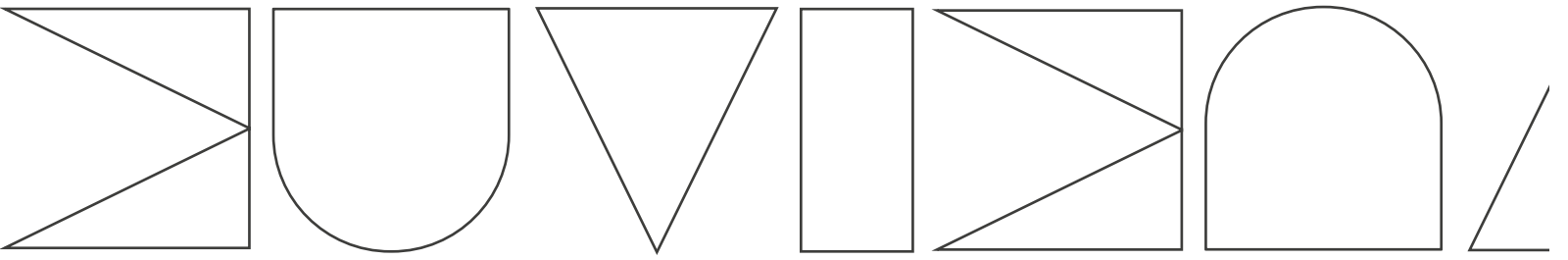
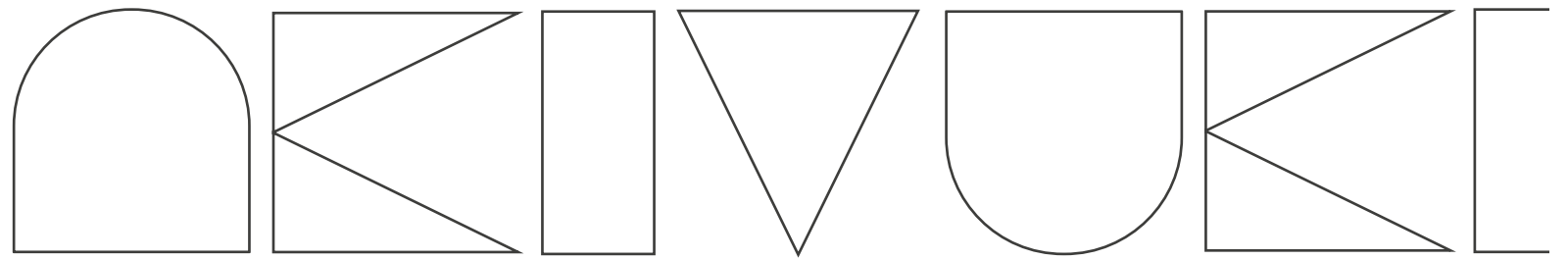
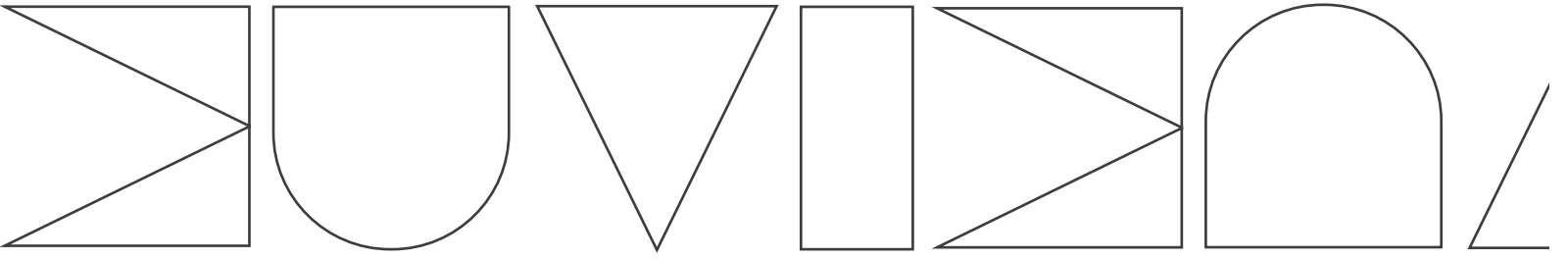
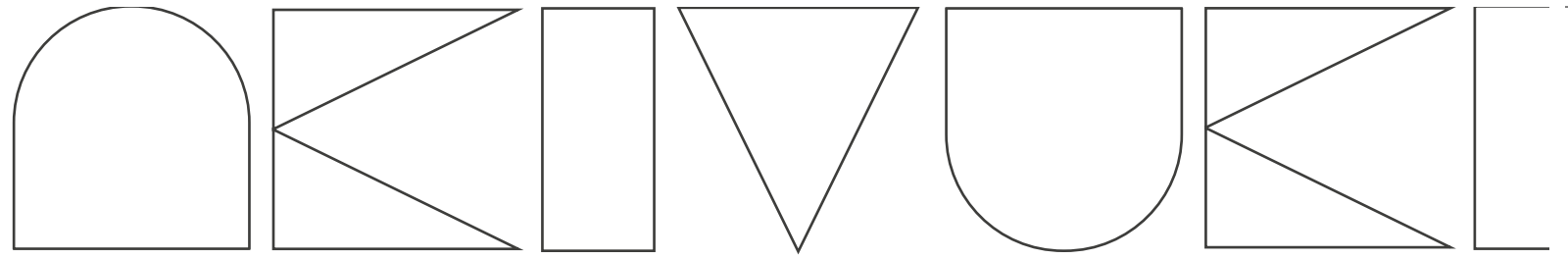


**THE RIGHT TO DEFEND
HUMAN RIGHTS,
NOT FOR ALL?**

**A case study of local protection
policies for human right defenders
in North and South Kivu**







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Foreword

It is with great pleasure that Protection International (PI) presents *“The right to defend human rights, not for all? A case study of local protection policies for HRDs in North and South Kivu”*. The aim of this paper is to provide a sound basis for the analysis and improvement of protection policies for human rights defenders in the Democratic Republic of Congo (DRC). This starts with human rights defenders (HRDs) themselves. Based on extensive interviews with HRDs, this paper provides an overview of their social and political context, sheds light on the risks they face and to calls upon authorities to take active steps towards a safe and enabling environment without fear of reprisals or retaliation.

PI works towards the recognition of HRDs as legitimate actors for social change. We aim for a just, safe, and sustainable society in which anyone can exercise their right to defend human rights freely. PI promotes public policies as an important instrument towards this goal, especially because they underline the crucial role of national and local authorities in creating an enabling environment for HRDs. In the DRC, where one of our teams work tirelessly towards this goal, we recognise the proud and resilient people of this nation, their country’s natural beauty, and their profound cultural richness. The DRC has borne the weight of complex and protracted violent conflicts, corruption, and systemic human rights abuses for far too long. In this challenging environment, HRDs have steadfastly continued to protect justice, holding governments and institutions accountable and advocating for the rights of the most vulnerable in Congolese society, often at great personal risk.

This paper, based on preliminary research done in partnership with the Vrije Universiteit Amsterdam, draws upon the expertise of Protection International. It provides an analysis of public policies for the protection of HRDs in eastern DRC, with the final aim of supporting all defenders worldwide in their advocacy for the adoption of legislation that effectively recognises and protects their work.

The perception and use of the provincial edicts in North and South Kivu by HRDs themselves is at the heart of this study. Our teams in the DRC, Kenya, Belgium and Spain worked hand in hand to conduct interviews with HRDs from North and South Kivu, process the findings and issue a number of recommendations to authorities, defenders and civil society organisations.

We hope this paper serves as a comprehensive and forward-thinking resource, offering a deep understanding of the challenges faced by HRDs in the DRC in using protection policies in North and South Kivu. We also hope that the insights and recommendations included in this report will inspire local, provincial and national authorities to acknowledge and support the work of all HRDs, and take active steps towards their safety and protection.

We extend our heartfelt gratitude to the main author of this publication, to our committed staff in Africa and Europe, and to all courageous defenders who contributed their expertise and insights. Adopting and implementing HRD legislation to protect HRDs and their right to defend human rights can prove essential for building a just, stable and peaceful society in the DRC.

Melinda Mae Ocampo

Executive Director
Protection International

Nora Rehmer

Chairperson, Regional Board
Protection International

September 2023



Acknowledgements

We would like to express our heartfelt gratitude to all those who have supported and encouraged this study. We are sincerely thankful for their contributions.

First and foremost, we want to thank all the brave human rights defenders who took the time to share their expertise and stories for this study. We are humbled and grateful for the incredible amount of information and stories that they were willing to share, and hope to continue working with them on our common goal to ensure the right to defend human rights for everyone.

We owe this work to many people. Luis Enrique Eguren, co-founder of PI and brain behind our public policy work, helped conceive and brainstorm for this study. A special thanks to Deward Bushala as well, for providing essential support in collecting participants and obtaining a nuanced and updated overview of the Congolese context. We thank Mauricio Angel, Daniel Barrera, Francis Ndegwa and Jade Vignial for revising the text of this publication and providing essential feedback and support. We thank Marjorie Unal for providing logistical support and doing the invisible work of launching the idea and obtaining the funds for this study. We also thank the Vrije Universiteit of Amsterdam and professor Kim Baudewijns for their support on the academic version of this study.

Last but not least, we would like to thank our donor MFA Belgium for providing the funds to carry out this study. Their support is crucial to our mission to support human rights defenders worldwide and the right to defend human rights for everyone.

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Executive summary

This publication is the result of a study on the impact of public policies on the work and agency of human rights defenders, starting from the perspective of human rights defenders themselves. It does so through a case study of the edicts in place in the Democratic Republic of the Congo (DRC), in the provinces of North and South Kivu. **23 human rights defenders (HRDs) from North and South Kivu were interviewed over a period of four months**, providing an in-depth overview of the challenges faced during their human rights work and the impact of the edicts on their activities.

The analysis identifies **four main groups** that interact with HRDs in the DRC: authorities, armed groups, the local community, and other HRDs. Despite some instances of cooperation with authorities, a general lack of trust characterises the relationship between authorities and defenders. Armed groups pose a significant threat to HRDs, endangering both the physical safety of HRDs and the social fabric of their communities. The local community, while providing crucial support, also imposes social constraints on defenders through social pressure and stigmatisation. Other defenders contribute positively to the work of many defenders by creating protection networks, although social stigma might seep through in these networks as well.

The edicts central to this study proved to have a limited impact on this context. Although participants in the study exhibit a reasonable level of awareness regarding the edicts in both North and South Kivu, they state that there is **limited awareness** surrounding these edicts, both amongst HRDs and provincial authorities. This is mainly due to the lack of effort by authorities to ensure the dissemination of such policies. As a result, the edicts reach only a certain population of HRDs, and leave more marginalised HRDs in the dark.

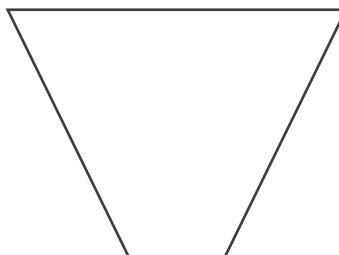
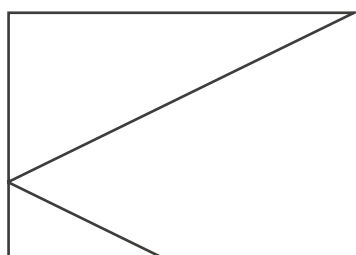
Nevertheless, HRDs refer to the edicts quite positively. Many participants see the edicts as a legal basis for their work and as a source of legitimacy, identifying them as key tools and formal recognition of their work. Defenders use the edicts to raise awareness about their work and shape the definition and interpretation of their role. However, there is a risk that the edicts may narrow defenders' mandates, as the edicts leave room for restrictive interpretations of their work or the exclusion of certain groups of defenders. Moreover, while defenders mainly focus on how the edicts shape their work and rights, they pay less attention to the obligations these edicts impose on the state.

HRDs also make use of the edicts to improve collaboration with authorities and assert their rights in front of authorities. Indeed, some participants describe very successful scenarios, where the edicts enabled a good working relationship between HRDs and authorities. Nevertheless, such scenarios are exceptional and appear inconceivable for most defenders, especially more marginalised ones.

Moreover, this study identified several **structural limitations** to the impact of the edicts on their agency. First of all, issues linked to the DRC's governance

structure and the active efforts of authorities to restrict civic space impede the edicts from being fully implemented. According to participants, conflicts of interest, especially those linked to the mining sector, impose a hard limit to the use of the edicts by defenders (especially **environmental defenders**). Furthermore, our sample suggested that, in the case of certain groups of defenders – especially those defying deeply engrained social norms - communities and other defenders participate in restricting their right to defend human rights (RDHR) through formal attacks and **social stigma**. This was seen particularly in the case of **women HRDs (WHRDs) and LGBTQIA+ defenders**, who face simultaneous formal and informal restrictions on their agency.

Difficulties in overcoming practical (accessibility, literacy, etc.) and cultural barriers causes the edicts of North and South Kivu to be useful only to an already relatively accepted and well-connected group of defenders. If these structural issues are not addressed, the edicts will continue to be used by a select group of defenders, and will prove less useful for defenders who work from a more isolated position. The edicts may therefore lead to slight improvements in the situation of defenders who are relatively well accepted by authorities and other defenders, but will fail to effectively protect defenders who need it the most.



Recommendations

We call upon all authorities to take active steps to create a safe and enabling environment that upholds the right of all human rights defenders to carry out their work without fear of reprisals or retaliations. Although there are many steps to be taken towards this goal, we suggest the following (non-exhaustive) list of recommendations:

Recommendations to provincial authorities in North and South Kivu

1. Take active steps to ensure the effective dissemination of the edicts and understanding of their content amongst all local authorities in North and South Kivu. This means disseminating printed copies, ensuring the translation of documents to local languages, and informing key stakeholders of the meaning and content of the edicts.
2. Revise the articles in the provincial edicts that narrow the definition of HRDs or impose restrictions on their work, and align these articles with the broader interpretation intended by the UN Declaration on Human Rights Defenders and the right to defend human rights. This includes Article 2 (South Kivu) and Article 3 (North Kivu).
3. Take active steps to address the hostile attitude of some local authorities in North and South Kivu towards HRDs (as reported in this study) and improve collaboration between authorities and HRDs in both provinces. This may include conducting capacity strengthening sessions and/or raising awareness about the UN Declaration and the RDHR; and opening spaces for discussion, consultations or mediation and reconciliation sessions. It is important that these spaces are truly inclusive to marginalised or stigmatised HRDs while ensuring their wellbeing, mental health and physical safety.

4. Ensure the freedom of movement of HRDs in North and South Kivu, and provide them with additional protection in areas where this is deemed necessary. This especially applies to conflict-ridden areas and areas under a state of emergency.
5. Adopt additional protection measures for HRDs working on environmental matters and natural resources, especially in cases of corruption and conflicts of interest (see section 5.1).
6. Protect all HRDs equally against social stigma and community violence. Ensure that discrimination by communities and authorities against stigmatised groups is addressed (e.g. through awareness raising and narrative change campaigns) and actively taken into account by local authorities. Take specific steps to include women human rights defenders (WHRDs) and LGBTQIA+ defenders.

Recommendations to national authorities (including national government officials, members of parliament, the judiciary and security forces)

1. Monitor the situation of HRDs and take active steps to ensure their protection in all provinces. Actively address and research any kind of threats (physical or digital) and attacks against HRDs.
2. Address existing attacks against HRDs in which the authorities are involved, such as cases of arbitrary arrest, torture, and degrading treatment of

HRDs, in all provinces. Ensure that such human rights violations do not remain impune.

3. Take active steps to address the hostility of some government officials and other state authorities towards HRDs (as reported in this study) and actively promote the legitimacy of HRDs. Ensure that all authorities, national and provincial, understand their duty to protect the RDHR and their obligations stemming from this duty. Awareness-raising activities (e.g. trainings, workshops, consultation sessions) should take place regularly and should involve HRDs.
4. Tackle underlying, more widespread social stigma by communities against certain groups of HRDs, especially WHRDs and LGBTQIA+ defenders, i.e. through the organisation of gender sensitisation workshops.
5. Promptly adopt a nationwide law protecting HRDs, eliminating ambiguous definitions and articles that risk excluding groups of defenders. Once the national law adopted, establish a country-wide plan for its dissemination, inviting the National Human Rights Commission, local and provincial authorities, and HRDs. Develop implementation policies that pay special attention to the protection needs of vulnerable groups of HRDs, including (but not limited to) women, environmental and LGBTQIA+ defenders. For the national law, consult lessons learned from the provincial edicts and other countries implementing public policies (such as Côte d'Ivoire), especially concerning the dissemination and inclusive implementation of the documents. Where possible, explicitly mention women, environmental and LGBTQIA+ defenders in policies or implementation plans to include them in the definition of HRDs.

Recommendations to civil society and human rights defenders

1. Continue to spread awareness around the HRDs and around the existing legislation to protect HRDs, including the North and South Kivu edicts. Where possible, address these with provincial authorities, discussing rights and duties of each stakeholder.
2. Continue to monitor activities and challenges of HRDs in North and South Kivu, and in all provinces. Where possible, create regular reports of the situation with provincial, national, regional or international networks. Systematise the collection of data and the registration of HR violations.
3. Strengthen HRD networks and ensure the inclusivity of these networks. Actively include women and LGBTQIA+ persons in these networks and in decision-making spaces, addressing prejudices, stereotypes and discrimination amongst HRDs.
4. Step up efforts to include more marginalised and isolated HRDs in activities and networks, diversifying participants and partnerships to include as many different organisations as possible.
5. Actively seize international human rights institutions and mechanisms such as the Universal Periodic Review, the UN Rapporteur for human rights defenders or the UN Rapporteur on environmental defenders to provide updates on the situation of HRDs in the DRC.

This study and PI's experience show that advances in legislation, mechanisms and topics to protect the RDHR are of utmost importance for HRDs' protection, but they lack efficacy when implemented in contexts with weak governance dynamics like generalised corruption or impunity.

Introduction

Human rights defenders (HRDs or defenders) play an essential role in creating a better and more just society. In many countries worldwide, however, defending human rights is extremely perilous. HRDs often fall victim to attacks in the form of smear campaigns, arbitrary arrest, threats or killings. Protecting them against these attacks is complicated. An important reason is that many of these attacks are perpetrated by State authorities, despite their responsibility to protect them, because of economic interests, social stigma or a lack of regulations for their protection.

PI has been delivering important work on public policies for the protection of human rights defenders and their right to defend human rights (RDHR). Over the past few years, PI has been analysing strengths and weaknesses of public policies and has been advocating for their important role in the protection of HRDs. In *The Time is Now* (2017), PI has provided an analysis of public policies worldwide and in August 2022, PI provided an overview of public policy processes over the past 25 years in *The Worldwide Growth of National Policies for the Protection of Human Rights Defenders (2022)*. PI has also been directly involved in the development and implementation of numerous protection policies (e.g. Mexico, DRC). On our *FOCUS Observatory*, we centralised our publications on public policies and continuously keep track of public policy updates and analyses by other actors. If you want to contribute to this project, please write to: focus@protectioninternational.org.

Although public policies are developed worldwide, regions show different trends. In Latin America, policies have been developed in the form of protection mechanisms, whereas countries in Africa are mainly focused on adopting laws for the protection of defenders. Such laws are currently already in place in Burkina Faso, Côte d'Ivoire, the Democratic Republic

of the Congo (DRC), Mali and Niger¹ and show many similarities in content, structure and implementation. In many neighbouring countries, similar laws are being discussed and developed. Therefore, a careful analysis of the impact of such existing laws is timely and necessary.

Protection International (PI) promotes public policies as an important instrument for the protection of HRDs and their RDHR. Public policies are especially important because they underline the crucial role of national and local authorities in ensuring the RDHR and creating an enabling environment for a vibrant civil society. In practice, however, public policies have had limited impact when it comes to threats and aggressions against HRDs. Instead, States continue to fail their responsibility to protect HRDs and even remain major instigators of insecurity in some countries.

There have been few in-depth studies on specific policies, nor on HRDs' perspectives of such policies. PI promotes the importance of including grassroots defenders in the development and implementation of policies that concern their work². This study therefore focuses on the impact of these policies on the work and agency of HRDs, starting from the perspective of HRDs themselves. It will do so through a case study of the edicts in place in the DRC, in the provinces of North and South Kivu.

¹ In Burkina Faso, Mali and Niger, military coups d'état and subsequent military rule have rendered these policies ineffective.

² Please refer to our *2014 FOCUS report* (p. 11) and *The Time is Now* (2017) (p. 46) for more information on the role of civil society in policy-making.

Aim of this study

This study is one of the **first in-depth studies on protection policies from the perspective of HRDs**. It contributes to both academic and policy discussions and discusses the role played by public policies for the protection of HRDs in the work of HRDs in the context of local, national and global social rights movements³.

This report is born from, and contributes to, the expertise of PI on the subject of public policies. Protection International has contributed to the development of many public policies for the RDHR, including the two edicts at the centre of this study. The aim of this document is to provide an updated overview of the use of public policies by HRDs and to identify points for improvement and recommendations for public policy processes.

Research questions & Structure

This study will concentrate on the following research question:

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

In order to answer this question, this reports includes an analysis of (1) the awareness of HRDs and authorities of the edicts in North and South Kivu, (2) the views and interpretations of human rights defenders with respect to the edicts, (3) the use and impact of these edicts in HRDs' work, (4) the structural limitations to the implementation of these edicts.

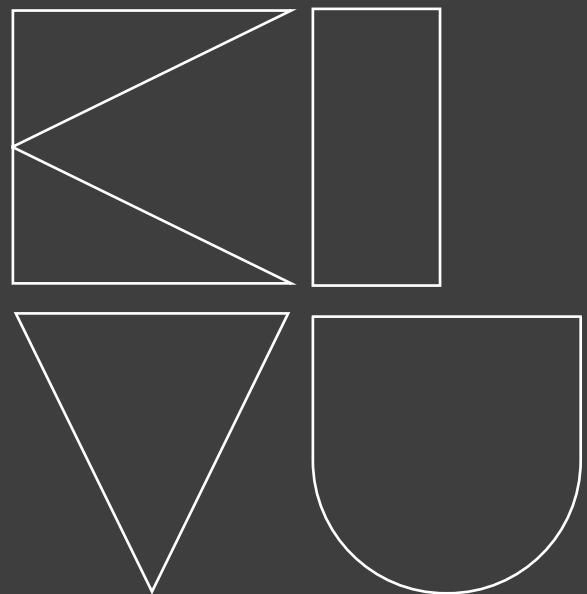
Methodology

For this study, we interviewed 23 HRDs from the Democratic Republic of the Congo (DRC) over a period of 4 months. We interviewed HRDs working on many different topics including environmental matters, women's rights, peacebuilding, LGBTQIA+ rights, minority rights and the protection of human rights defenders. Interviews were carried out online, which means that HRDs without strong internet connection could not be included in this study. Although participants of non-urban areas were also reached, as well as some participants from marginalised groups, this is an important bias to take into account when interpreting the results of this study. The aim of the interviews was to reflect the unique experience of each participant – although many participants also spoke on behalf of other HRDs in their environment – either in the form of concrete examples or more generally.

³ For more details on the concepts and theories used to frame this study, please refer to the *academic publication* of this work.

01

**CONTEXT:
THE HISTORICAL AND
POLITICAL CONTEXT IN
NORTH AND SOUTH KIVU**



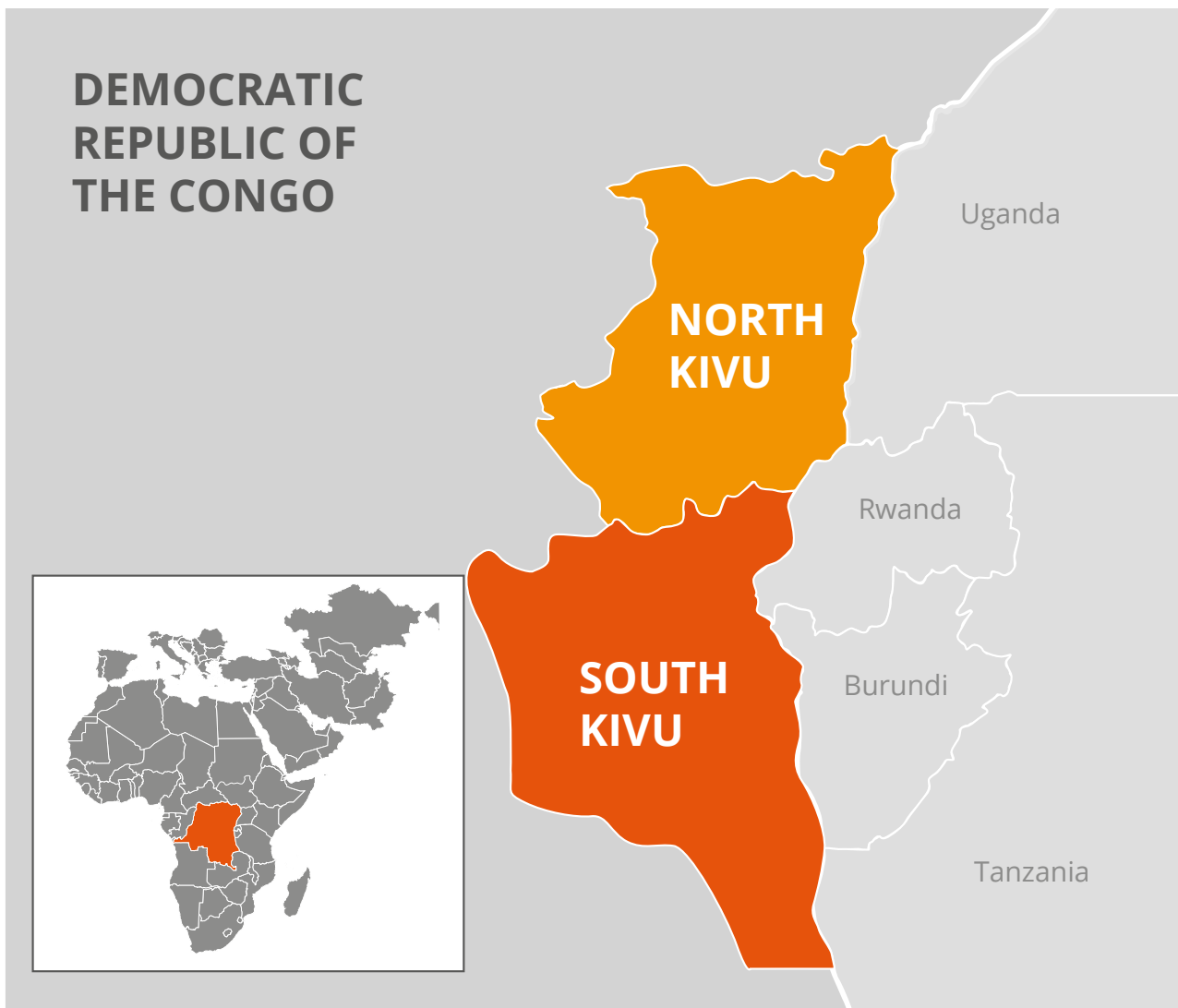


Figure 1. North and South Kivu and neighbouring countries

The war⁴ has officially been considered to be over since the peace agreement in December 2002. More than 20 years later, however, the eastern provinces of the Democratic Republic of Congo (DRC) continue to be affected by violent armed conflict. In the Kivu region especially, armed groups remain very active and foreign influence persists (from Rwanda in particular) (Bentrovato, 2014; Human Rights Watch, 2023). In many ways, the provinces of North and South Kivu (the Kivus) are considered to be exceptionally dangerous territory: it is the region where the highest number of armed groups are located (Human Rights Watch, 2020), where the destruction of land and villages by extractive industries is extreme

(Cirhigiri, 2023), where most natural resources are to be found (Vlassenroot et al., 2013) and where tensions with Rwanda and other neighbouring countries have the most direct impact on stability and the political situation.

⁴ Although the DRC has been involved in numerous conflicts in the region, the principal and most deadly conflicts affecting the country are the First Congo War (1996-1997) and the Second Congo War (1998-2002). For more information, see [here](#).

Unfortunately, the situation in the DRC has not fundamentally improved since President Tshisekedi was elected in late 2019. Violence, oppression, impunity, human rights violations and the destruction of nature due to the extraction of natural resources persist (Amnesty International, 2020; Cirhigiri, 2023). Action by the international community has not only failed to produce results, but has also fueled tensions, especially through its major influence on (and profits from) DRC's natural resources (Cirhighiri, 2023) and through foreign political and military intervention (Schmidt, 2018).

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

In May 2021, the government declared a state of emergency in the provinces of Ituri and North Kivu under which the military and police preside over political, administrative and judicial functions. Although the president's avowed aim with the state of emergency is to control insecurity caused by armed groups in the regions, reports indicate that the national army and police have been using their extended powers to suppress criticism and protests (Amnesty, 2022). Many participants in our study⁵ reported increased restrictions to their human

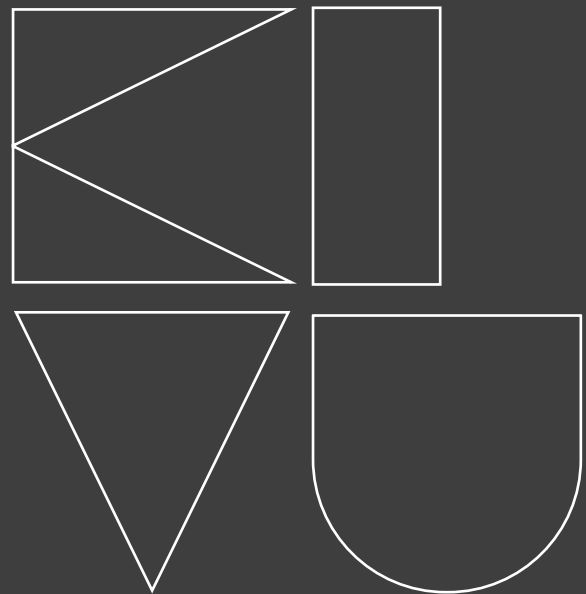
rights work under the state of emergency and misuse of power by the army, the police and by illegal armed groups. Since November 2022, M23 has been advancing towards Goma. In March 2023, M23 rebels were situated some ten kilometres away from Goma and declared their intention to take over the city. Other armed groups involved in attacks in 2023 include the Mai-Mai, which is a "generic label for armed groups drawing on discourses of (community) self-defense and autochtony" (Hoffman & Verweijen, 2018), and other groups such as the CODECO-URDPC, the ADF, UPDF, RDF.

Many international organisations and foreign governments have urged the Congolese government to adopt a national law for the protection of HRDs. For now, the actions taken by State authorities to ensure the right to defend human rights are limited to the adoption of the two local edicts in South Kivu (2016) and North Kivu (2019). In addition to the local edicts, there are ongoing discussions in Parliament to adopt a national law: a draft law has been approved by the National Assembly and is pending at the Senate. Although this study focuses exclusively on the already adopted legislation at the provincial level, the recommendations of this study should also be taken into consideration for the process at the national level.

⁵ For this study, we only selected participants from the North and South Kivu regions.

02

THE NORTH AND SOUTH KIVU EDICTS



HRDs refer to several different **legal frameworks**. Firstly, the international legal framework, consisting of the UN Declaration on HRDs and the UN Charter. Then, the Congolese Constitution on a national level, which includes a large number of fundamental rights and freedoms: the right to equality before the law, freedom of expression and thought, the right to protest, freedom of association, and others. Finally, the provincial edicts for the protection of HRDs on a provincial level in South and North Kivu. These edicts are the only legal documents that explicitly mention the protection of HRDs. The provinces of Sud-Ubangi⁶, Ituri and Maniema are discussing the adoption of such policies.

The governance structure in the DRC is decentralised: the territory of the DRC consists of 25 provinces. Although provincial actions and laws cannot contradict national laws, provincial authorities have significant liberty and responsibility for the governance of their own territories (Gaynor, 2013; World Bank & European Commission, 2008). The provinces of North and South Kivu are a good example of such autonomous governance. Of the 25 provinces in the DRC, these are the only provinces to date⁷ that have adopted specific provincial legislation (edicts) for the protection of defenders.

2.1 Edict No. 001/2016 on the Protection of HRDs and Journalists in the Province of South Kivu

The South Kivu edict was the result of a long process initiated by many civil society actors (including PI) since 2007. At first, the initiative was blocked by provincial authorities, claiming that such a topic did not fall under their responsibility, and that it would provide excessive immunity to HRDs and journalists. PI actively participated in pushing for reopening discussions, which happened in 2014. The edict was then finalised and adopted in 2016.

The South Kivu edict recognises many fundamental rights, including the freedom of assembly, freedom of expression, freedom of information and the right to peaceful protest. Article 6 recognises the right to speak up about the political positions of public authorities that risk violating the promotion and protection of human rights. The provisions include the right to appeal to legal officials, to denounce the actions of political authorities, to communicate freely with provincial authorities and to receive resources (Articles 7-10). The edict recognises the provincial government as the body with prime responsibility in this area, and it also acknowledges the State's obligation to undertake the necessary measures to protect journalists and HRDs against any form of violence, threat, retaliation, discrimination or pressure during their work (Article 14). Nonetheless, the edict contains an important limitation on the definition of HRDs: according to Article 2, an HRD must be a member of a legally formed organisation. This excludes individual defenders, and risks excluding HRDs whose organisation is not

⁶ Read the draft law of Sud Ubangi here: https://www.focus-obs.org/?jet_download=7500. The other provinces have not yet published any draft law.

⁷ Last updated on 28 June 2023

recognised by the authorities. Another risk is that the State may select and exclude specific organisations. Given the hostile attitude of the certain authorities towards many HRDs, this represents a serious concern in South Kivu.

2.2 Edict No. 001 2019 in North Kivu on the Protection of Human Rights Defenders in North Kivu

The North Kivu edict is the result of a long advocacy process initiated by civil society organisations (including PI) since 2016. The process took after the South Kivu process, and was adopted faster: after three years of negotiations, the edict was finalised and adopted in 2019.

The North Kivu edict differs from its South Kivu counterpart in several ways. First, the definition of HRDs is broader and includes persons who act individually for the promotion of human rights. The rights in the edict are, however, more specific and more limited. The section on the obligations of HRDs is more extensive, and includes ambiguous provisions such as the obligation to act impartially, independently, neutrally, on a voluntary basis, with respect for the rights of others, public order and of public morality (Article 7⁸). Nevertheless, the obligations incumbent on the State are also extensive and they require local authorities to safeguard the respect of fundamental rights and freedoms stipulated in national and international statutory instruments ratified by the DRC.

The provincial authorities responsible for implementing these edicts are appointed by the National Assembly. Their responsibility includes receiving complaints and handling court cases at the provincial level. It appears that there are few, if any, mechanisms in place at the national level to ensure that local authorities fulfil their duties under the edicts. In practice, cases handled by the provinces do not seem to reach national authorities. As a result, although there is a stated intent to protect HRDs, the edicts include several elements that actually risk undermining this goal.

⁸ *“Le défenseur des droits exerce ses activités en toutes impartialité, indépendance, neutralité et d’une manière bénévole, dans le respect du droit d’autrui, de l’ordre public et des bonnes mœurs.”*
(Article 7, North Kivu edict)

SOUTH KIVU EDICT (2016)	NORTH KIVU EDICT (2019)
Definition	
Definition with several restrictive elements.	Definition conform to the Declaration on HRDs.
Positive elements	
<p>Many concrete rights are listed in the document and form the major part of the document. Article 6 explicitly defends the right of HRDs to denounce HR violations by public officials.</p> <p>Article 13 and 14 appoint provincial authorities as the primary duty bearers for protecting HR and installing social economic and political conditions for the respect of HR, as well as protecting HRDs against all attacks and restrictions.</p>	<p>This edict includes specific rights such as the right to access prisons, and the right to special protection for WHRDs.</p> <p>Article 10 describes the responsibility of provincial authorities to protect HRDs and their family.</p>
Elements for improvement	
Does not include an explicit mention of women human rights defenders (WHRDs).	The edict is less specific when it comes to criticising public officials and includes more obligations for HRDs. Article 3 holds HRDs to “proper values” and “public order”, which risks to strongly restrict the scope of this edict.

Figure 2. Non-exhaustive comparative table of the North and South Kivu edicts

03

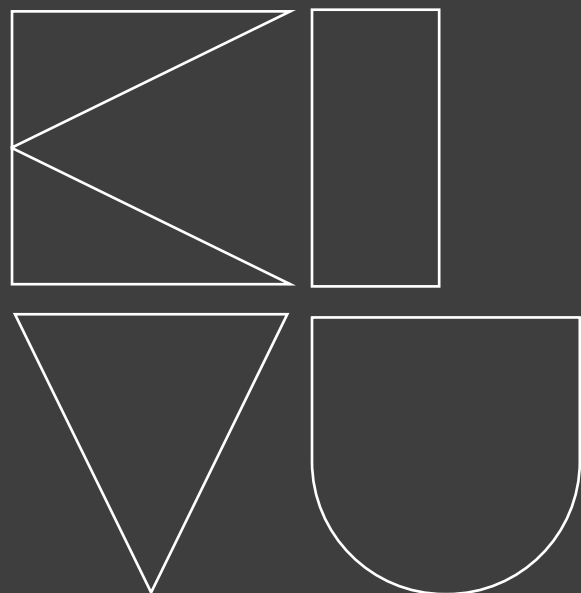
HUMAN RIGHTS DEFENDERS AND THEIR SOCIAL CONTEXT: FIGHTING FOR AGENCY

Key points

This chapter demonstrates the key influence of authorities, armed groups, community members and civil society on the work and safety of HRDs.

- Authorities and armed groups limit the agency of HRDs through physical attacks, threats and labelling, resulting in a relationship with HRDs marked by mistrust and hostility.
- Communities play an essential role in supporting HRDs, but also define the limits of HRDs' work by imposing HRDs and South Kivu and tolerating only certain forms of activism.
- Networks with other HRDs generally contribute very positively to their agency, although social stigma might seep through in these networks as well.

Overall, this means that HRDs have to navigate many challenges, and that certain groups of well-connected, less stigmatised HRDs have a head start.




This chapter will, from the perspective of HRDs, examine the social context and the main actors that impact their work and agency. When asked what groups most impact their work and agency, the HRDs interviewed for this study identified the authorities, armed groups, local communities and civil society.


3.1 Authorities

The authorities include many different actors from the Congolese governance structure: local authorities which include administrative and judicial authorities (local judicial authorities were mentioned most by our respondents), police, and military authorities (especially in North Kivu due to the state of emergency).

Most authorities play a direct role in the protection of HRDs, both in the formal implementation of the edicts and in their broader work and mission. Testimonies of HRDs appear to demonstrate little trust in authorities, however. HRDs refer to the UN Declaration for HRDs, which assigns authorities the primary duty to uphold and protect the RDHR. In practice, however, participants state that authorities participate in attacks:

 **HRDs really are targets, of the administrative authorities, and of armed groups and military authorities, and police authorities, and why not also security authorities.**

Participants refer to the ANR (*Agence Nationale de Renseignement*, the national intelligence agency) as a particularly potentially hostile actor. Several participants shared instances of ANR officials participating in a number of arbitrary arrests and detaining HRDs for long interrogations.


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


Participants described the lengths to which some authorities sometimes go to sabotage their work as HRDs. According to participants' stories, some authorities attempt to limit HRDs agency by attacking their reputation or their feeling of security. Methods adopted by some authorities include threats (to silence defenders), or different forms of **labelling** (Buyse, 2018).

Labelling


Labelling refers to the practice of giving an organisation a stamp of forbidden or unpermissible activity in the public eye (Buyse, 2018). Labelling is generally done by government authorities to civil society actors with the aim to "deter criticism, discourage free expression, increase negative public opinion of civil society actors and distract attention from the issues at stake" (UNGA, 2016).

This tactic is seen in more public contexts, where some authorities use their platform and reach to spread misinformation about defenders.

 **Now they had started to corrupt even the members of our organisation, of our community, so that people could really hate me and say that I'm anti-development, that they want to bring us development and that I'm getting in the way.**

 **They call us criminal associations. They say we're preparing rebellions. It's all nonsense really.**

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


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

Although attacks through labelling do not necessarily include concrete restrictions or physical violence, they have an important impact on the agency of HRDs by attacking their support network and reputation. Such attacks also have an important impact on the mental health of HRDs. In other more serious cases, authorities also issue threats. This often happens when authorities are personally implicated in the issue raised by HRDs. Such threats can be very direct, and often involve intimidating phone calls or personal visits, pressuring them to cancel reports or stop protests.


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

At the same time, there are HRDs who, despite acknowledging such limitations, value collaboration with the authorities. They organise joint discussions and roundtables, reconciliation initiatives and

awareness raising. These activities are framed as an essential tool for obtaining results:

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


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


 **It’s the authorities, for example, who give us these documents, because all documents are secret. [...] By the way, it’s true that society is rotten, but there will always be people somewhere who have some sense that things should work.**

Nearly all participants said they experienced difficulties with, or suffered attacks from, some authorities. Interactions between authorities and HRDs are often marked by hostility. Furthermore, participants express very little confidence in the authorities or their willingness to provide protection. According to reports published by local human rights organisations, this lack of trust appears mutual (CVPD, 2021; CVPD, 2022): some authorities do not trust HRDs as allies either and rather conceive them as enemies or ‘troublemakers’.


3.2 Armed groups

Armed groups are active in the provinces of North and South Kivu, and particularly in places where the state is more absent, mostly in rural areas. Armed groups act as the local government, especially in South Kivu: several participants describe how armed groups have taken over.

 **These armed groups commit serious human rights violations. Since there is almost no state presence where they operate, they are the ones who make the law over there. They can do whatever they like.**

 **The risks are very high here, especially with the M23 war here, the armed groups who have also become partners of the government, in the past years it has been terrible.**

As HRDs are the first to resist or speak up against armed groups, they are directly exposed to a high risk of losing their freedom or their life. Armed groups may also interfere with human rights work by censuring journalists reporting on human rights abuses (CPJ, 2023). In late 2022, M23 published a list with the names of HRDs on social media, raising concern that the HRDs would face execution if the rebel group found them:


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


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

According to participants, HRDs stand alone in facing violence at the hands of armed groups: none of them have mentioned the State as an actor that intervenes to protect HRDs. Although this could be explained in part by the remoteness of areas where armed groups operate, this does not explain the absence of any response in well-connected areas: even in Goma, the State did not mount any effective response to the M23 attack on HRDs. Some of the participants expressed concerns about some authorities being permissive with armed groups. This claim, however, has yet to be explored further. Meanwhile, the armed groups continue to pose a serious threat to human rights work and social movements.

3.3 Local community

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

 **The first thing is support from friends [...]. Because in fact, friends, families, especially the community, also support us in everything we do.**

 **The community advocacy group is about getting women not only to go together in certain advocacy actions, but at the same time how they can rely on each other to protect themselves.**

However, this community support is limited by **social norms**. The work of HRDs is not appreciated everywhere, and there is opposition from many actors, ranging from the family level to the community culture. This opposition is strongest when the traditional values of HRDs communities are challenged, creating a form of social boundaries within which HRDs are forced to operate. Opposition by community members takes the form of censure, daily stigmatisation or even formal opposition by going to the police.

There are also allies, however. The following account demonstrates how local actors without any formal authority or involvement in human rights work can make or break an organisation of HRDs, just through alternative individual norms:



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

This confirms the key role of local communities in defining the limits of human rights work. Restrictions to human rights work are most strongly felt by stigmatised groups or HRDs working on topics that defy cultural norms. Questions relating to gender and queerness generate particularly strong opposition from the local community. This goes hand in hand with the daily stigmatisation of the queer community. By resisting change on certain topics, the community has a crucial impact on HRDs' agency, imposing social boundaries that are not formally established but actioned through social pressure and stigmatisation (McClellan, 1999). When boundaries are crossed (for example by challenging gender norms or religion), the community may resort to **labelling tactics** such as those used by the authorities.

3.4 Civil society and networks

In both North and South Kivu, many defenders establish close connections and **networks** with other human rights organisations. Several participants in this study are members of networks of HRDs or human rights organisations in which the other members work together to support HRDs in need. Many organisations also organise regular meetings with others to monitor the situation of HRDs in their province.

HRDs have developed **alert systems** that are activated when a member of a network needs assistance. In such cases, these systems allow to inform large numbers of organisations by phone. HRDs who receive these alerts then take collective action, either by directly contacting and pressuring the relevant authorities or by working out a security plan together for the HRD.



The X system where they can alert us either by SMS or WhatsApp and as soon as we get that alert there, we have to immediately call an emergency meeting. At a network office level we call an emergency meeting which we call the protection case handling meeting.

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



They wanted to take me to the prison, but others were reluctant because they were already receiving phone calls, but I was taken to a place where I would say I was alone. They wanted to ask me to take off my shoes, others said “no, it’s a lady and people are calling, be careful, they’re calling right now”. But I understood that their intention was to take me far away.

Such networks are therefore an important opportunity for HRDs to increase their agency, their collective identity and their personal safety. However, networks continue to exclude certain HRDs, either for lack of funds or limited accessibility, or through the reproduction of discriminatory social norms. This means that some HRDs have access to stronger networks than others, creating a certain hierarchy amongst HRDs. Nevertheless, all the defenders in our study had some kind of network: there are networks of women organisations, and groups of LGBTQIA+ organisations that continuously work together and keep the other members informed about each other’s work.

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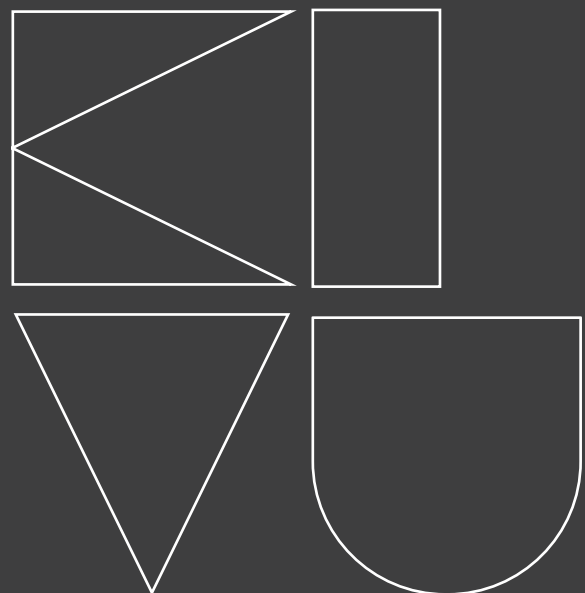
HUMAN RIGHTS DEFENDERS AND THE EDICTS

Key points

Overall, the edicts seem to have a potential to increase the agency of many HRDs who participated in this study.

- The edicts are used by HRDs to raise awareness around their work.
- The edicts play an important role in defining and shaping human rights work. However, ambiguous articles may be used to exclude certain HRDs from its scope.
- Some participants use the edicts as a starting point for collaborating with authorities.
- Participants use the edicts in cases of arbitrary arrest and asserting specific rights.

Despite these successes, however, the implementation of the edicts continues to depend on HRDs' efforts instead of on authorities' initiative. Moreover, many participants are not able to use the edicts in this way. This especially concerns marginalised HRDs, such as LGBTQIA+ defenders and environmental defenders.



This chapter will describe the interaction between HRDs and the edicts, looking at their interpretation and use of these edicts from their own perspective.

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

All the participants of our sample were aware of the existence of the edicts in their respective provinces. Some participants in this study were even involved in the drafting of the edicts, which was a process led by civil society and government authorities. Nevertheless, many claim that there is a lack of awareness about the edicts - both amongst HRDs and the authorities.

There are even human rights defenders who do not know that the edicts on the protection of human rights defenders exist. So there have been shortcomings in awareness raising and popularisation.

First of all, we established a year ago, more than a year ago, that authorities were not even aware of this edict. [...] Authorities were often worrying the defenders, because they weren't aware.

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

And the head of the public prosecutor's office ... himself said at a meeting that if I knew there was such a legal framework protecting human rights defenders, I wouldn't do the stupid thing of transferring XX activists to Goma.

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

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

Such behaviour by some authorities would appear to indicate an active avoidance of their responsibility to (1) protect HRDs, and (2) to disseminate the edicts. As a result, this activity is usually taken on by HRDs themselves. The large majority of HRDs interviewed for this study engage in awareness raising and the dissemination of the edicts, informing both actors in civil society and the authorities about these edicts, their meaning, and their implementation. The impact of the edicts on HRDs therefore appears to depend on efforts made by HRDs themselves.

In more remote areas, however, dissemination encounters several obstacles, especially for HRDs with less resources. Many HRDs in remote areas do not have access to the internet and therefore have to rely on printed materials. Some human rights organisations working on the dissemination of the edicts distribute

printed copies but their ability to reach remote areas is limited because of a lack of resources and restricted circulation.

Furthermore, not everyone is able to read the edicts, either because they do not speak French (the language in which the edicts are written) or because they are illiterate. Although many participants referred to this limitation for HRDs, one participant also said that this limitation applies to the authorities as well:

Sometimes there are police officers who have never been to school. They don't know how to read or write, so they've never really had access to this edict. So they don't know anything about it.

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

We try to popularise the law, but it's a bit difficult because we only popularise it in French and our members are mostly people who haven't studied.

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

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


All in all, the authorities appear to make only limited efforts to disseminate the edicts actively and evenly to all HRDs and authorities, despite their responsibility to do so. Despite efforts made by HRDs, this results in the uneven implementation of the edicts, most strongly affecting marginalised HRDs or those working in more remote areas.

4.2 HRDs' views and expectations with regard to the local edicts

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

... the promulgation of the edict, it at least gave a value of respect towards HRDs. We're saying that the HRDs are there, that they must be respected as such because there is a text that recognises them as such.

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

 **Even if the justice operators may not take it into account [...] we already know that it is a document that protects us.**

The interviews in this study support the idea that the recognition provided by the edicts is more than just legal and, instead, represents a formal recognition of the work of HRDs. This positive role of the edicts in the personal recognition of HRDs might be attributable to the fact that the edicts do not simply recognise the RDHR, but also the collective identity of HRDs. The simple existence of the edicts therefore appears to be a source of hope and energy for some HRDs.

In the last part of the interviews, participants were asked to select words that they associated with the edicts in their respective provinces. The words that were selected most were **essential, important, advocacy, security and protection**. More negative words like 'limited' or 'inefficient' were not selected, despite many limitations being flagged during the interviews - including some participants who stated that the edicts had little impact on their work and safety. These results appear to reflect a tendency to view the edicts, or at least their existence as legal documents, in a relatively positive way.

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

According to the participants, the use and implementation of edicts for HRDs mostly depend on HRDs themselves and their efforts to disseminate and implement them. Although the edicts give the State the primary responsibility for


the introduction of measures to protect HRDs and their RDHR, not one participant mentioned an initiative by a state authority to either raise awareness of the edicts or ensure their implementation.

Instead of considering the edicts as purely legal documents, many interviewed HRDs demonstrated exceptional resourcefulness in their use of the edicts. Their use concerned many aspects of their work, and demonstrated a highly creative approach to protection.


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

4.3.1 Awareness raising

Awareness raising includes all activities to inform actors (including HRDs, authorities and other stakeholders) about the fundamental rights of HRDs. HRDs use the edicts to raise the visibility of their activities and rights, mostly in dealings with the authorities. They invoke the edicts during roundtables, meetings, or other group activities to explain their work and the rights related to their work as HRDs in general, and draw the attention of the authorities to their responsibility to protect these rights:

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

In this sense, the edicts provide a clear starting point for **advocacy and raising awareness** in dealings with the authorities. Instead of referring to international frameworks or human rights standards, HRDs can now refer directly to their rights as covered by the edicts. The edicts therefore contribute to neutralising doubts about, and restrictions on, HRDs' rights. This appropriation of the edicts by participants is notable in the sense that it does not depend on actions by authorities or on whether the edicts are directly respected or not:


 **“With the edict, it’s true that at a certain level for us, an organisation promoting human rights in civil society, it’s changed our approach a bit. Because in almost all our activities, whether awareness-raising, advocacy or mobilisation, we always say that there’s an edict protecting our rights. Even in training and capacity-building activities, we cite this as a source of rights that we have at provincial level.**

This element confirms that the edicts play an important role in defining their work and raising awareness about their activities, even to fellow HRDs. The edicts play an important role in shaping their work and interpretation of the RDHR. This is also useful to create a common discourse throughout their interaction with different stakeholders and a common understanding between different HRDs, authorities and other stakeholders.


4.3.2 Setting standards


HRDs also use the edicts to set standards and shape these standards to their understanding of human rights work. The participants used the definitions in the edicts both in dealings with the authorities and for themselves: for the former, they use the definitions for the purposes

of raising awareness and advocacy, as demonstrated above; for themselves, they draw on the edicts as a **guideline**.


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

Participants refer to the third chapter of the edicts, which sets out the ‘duties’ of HRDs. This chapter of the edicts is often criticised by the international community because it opens the door to the criminalisation of HRDs by restricting their RDHR. Article 7 of the North Kivu edict, for example, imposes the duty of HRDs to act in an impartial, neutral and independent manner, respecting public order and “proper values”. Such duties risk being applied in a subjective manner, excluding some HRDs and including others. This chapter was not the target of much criticism from participants, however. Some even referred to it as a positive aspect of the edicts:

 **In the hundred actions that we take, we try to recognise that there is an edict that HRDs must work according to this line of conduct of the edict that protects us.**

 **Secondly, because it’s not just rights, it also includes obligations and sometimes obligations are important.**

However, such discussions do not always lead to the equal inclusion of all HRDs. Participants report that certain duties are being used against HRDs. One participant stated that authorities already deliberately use the edicts to this end:


 **When it also talks about the obligations of defenders, it tries to limit [...] the work of defenders. And it's always articles like this that authorities mention to tell you that you are not above the law, and here you are even if you are protecting, but here you are yourself, you can't cross here.**

Such instances often take place despite HRDs acting peacefully and according to their mandate. Indeed, it rather appears that such restrictions are applied selectively to certain groups. For example, LGBTQIA+ defenders report that they are often accused of attacking “proper values” under Article 7, whereas such restrictions are not mentioned by other HRDs. Overall, testimonies of participants demonstrate the important role of edicts in shaping the definition and work of HRDs. They allow for different interpretations of their rights and mandate, however, which means that the edicts can be used to restrict the agency of certain HRDs. Moreover, discussions surrounding duties hardly mention the obligations incumbent on the State. In this sense, a **double standard** appears to exist when it comes to the obligations of HRDs and authorities.

4.3.3 Improving collaboration


A consensus definition and understanding of who can be recognised as an HRD and which responsibilities are incumbent on the State could result in greater clarity and awareness. Although section 4.3.2 demonstrates the limitations of the edicts in this regard, the edicts do provide a common starting point for authorities and HRDs. In our sample, some participants

indeed resorted to the edicts to facilitate discussion and collaboration between HRDs and authorities:

 **So the tool has become a tool not only for advocacy in favour of the protection of human rights defenders, but also a support for us to be able to defend this collaboration [between HRDs and authorities] that must prevail and also to be able to spread awareness on the duties that the authorities have.**

Such collaboration is considered key by some participants, and helps enhance their personal protection and the protection of HRDs in general. Human rights organisations use the edicts to bring stakeholders together and facilitate communication. During such sessions, the edicts are often discussed and a space is created for HRDs to share their concerns with respect to their implementation (Amir, 2013; Eguren, 2017; Neto, 2018).

Certain participants even report that the edicts allow them to interact with local authorities. One participant said that using the edicts resulted in enduring professional alliances and effective partnership between authorities and HRDs:


 **Oh yes, and especially with these authorities from the state of siege, and the military authorities of course, they came to disturb us, and wanted to show us that our rights were limited during the state of siege, and that they shouldn't receive us, given that we don't really have the freedom to defend people. The military authorities even wanted to take away our phones and we showed them the edict (which we also had in our bag) and that helped us [...] from then on, he was our collaborator. He always calls us**

when he has women coming from the bush, hostages who have been rescued by the army, he always calls us so that we can go and document their stories because the person, the military authority has understood that we are partners.


These scenarios are ideal, and excellent examples of how edicts can establish political will and collaboration. Moreover, such cases confirm that common definitions and terms presented by the edicts lead to improved communication and collaboration between authorities and HRDs. However, such stories are far from representative of the experiences of other HRDs. For certain groups of HRDs, collaboration of this kind is inconceivable. Although the participants who collaborate successfully with authorities attribute this success to the edicts, other participants' attempts to establish similar relationships using the edicts failed. This mainly concerns more marginalised groups of HRDs, such as LGBTQIA+ defenders and environmental HRDs.

4.3.4 Seeking protection & asserting rights

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

 **I've always said to my colleagues, never forget to put an example of this edict in your bag, because you never know when you're going to refer to it.**

The HRDs we interviewed said that they invoked the edicts at different stages when threatened. For example, edicts can be a key tool to obtain the release of HRDs from arbitrary arrest. For instance, one participant described how she directly cited the edicts herself, and how this helped her to put pressure on the authorities who arrested her:

 **I used that. In fact, it was thanks to my own intervention that they didn't want to put me in prison twice because they understood that I was equipped. And even though they had just deprived me of communication, they understood that I was equipped. What's more, I had cited several articles, saying that we were partners and that I hadn't committed any offence.**

In this case, using the edicts served as a direct defence. HRDs and lawyers may also use the edicts in court cases, or to claim more specific rights included in them. The participants say they have used the edicts to access certain pieces of information, to access detention facilities, and to protect their sources.

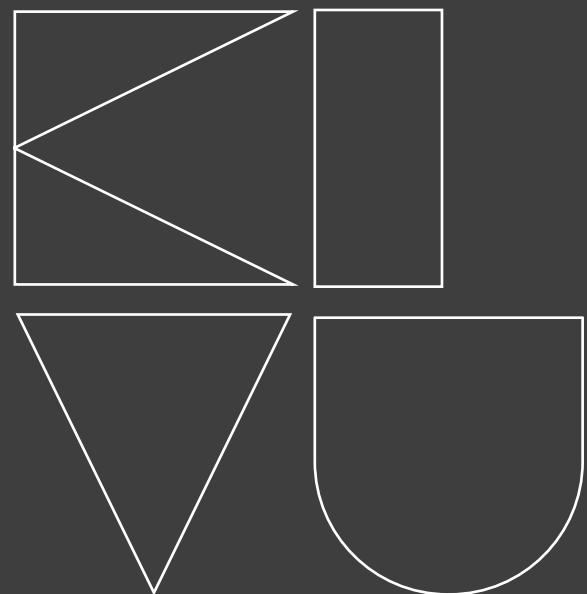
05

STRUCTURAL LIMITATIONS ON THE USE OF THE EDICTS

Key points

To conclude, this final part of the analysis demonstrates that several elements systematically restrict the impact of the edicts on the agency of HRDs.

- Participants flag **governance issues**, including a lack of political will and active efforts by some authorities to restrict the agency of HRDs. Conflicts of interest and financial motives strongly affect the protection of HRDs, especially environmental HRDs.
- **Social norms** restrict the agency of certain groups, especially WHRDs and LGBTQIA+ defenders. In such cases, communities and even other HRDs may contribute to the decrease of HRDs' agency.




Underlying these uses are many structural limitations that impede the impact of the edicts. When attempting to exercise their RDHR, HRDs are often blocked, in spite of the existence of the edicts. This chapter will discuss these structural limitations that lead to the uneven implementation of the edicts depending on the context, actors and topics involved.


5.1 Governance: structural attempts to limit civil society and civic space

Many participants describe limitations that are related to governance. Participants state that structural shortcomings in governance in the DRC contribute to the uneven implementation of the edicts by authorities. Moreover, they link the uneven implementation to the (lack of) efforts and attitudes of individual authorities.


Participants flagged many instances of **corruption**. The majority of participants said they had been asked to pay for their protection or the liberation of fellow HRDs. An LGBTQIA+ defender facing unfounded charges described how the authorities were aware of his innocence but still asked for money in exchange for dropping the charges:

 **The lawyer pleaded, pleaded, but the magistrate was firm. The magistrate said “If they also give me money, I’ll close the case with no further action. [...] So he will give me \$5,000.” “5,000 dollars, why? What did he do?”**
“I know he didn’t do anything, but a whole neighbourhood came to make a complaint, so he has to pay a lot of money.


In some cases, monetary gain even seems to be the main motivation: many participants describe mass arbitrary arrests by some authorities, followed by demands for money in exchange for their release. As a result, HRDs conclude that access to protection by authorities depends on resources. The participants say that people with no money to offer are unlikely to be protected:

 **If he is friendly with you and if you have something in your pocket, he can use the edict to help you. And if you have nothing in your pocket, he can’t use it to help you. And that’s what happens with the law in general in the Congo.**


Although these instances of corruption may indicate issues linked to the DRC’s governance structure, they also point to a psychological barrier for HRDs created by such cases. The prevalence of corruption means that HRDs with fewer resources will not seek help with authorities because they risk losing too much money in the process. Instead, they resort to individual protection measures:

 **We already know that in our country, if you get involved in a legal system, you don’t know when it starts and when it’s going to end. And you don’t know what resources you’re going to have to use. So we really prefer to develop more strategies at a personal level, at a community level that make attempts within a system that is so locked down, in a system that is so corrupt.**

Moreover, accounts from several interviewees indicate that some authorities make **structural attempts to limit civil society and civic space**. Participants describe active efforts by some authorities to not only avoid, but act contrary to their responsibility. Some authorities refuse to help certain HRDs by excluding them from their definition of HRDs; others say that the local edicts have no real legislative power. Authorities sometimes simply refuse to provide assistance without any clear reason.

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


In North Kivu, the **state of emergency** introduced by authorities with the ostensible aim of controlling armed groups is a case in point. Although the state of emergency should, in theory, continue to protect fundamental rights like freedom of expression (Cabinet du Président de la République, 2021), the authorities frequently invoke the “exceptional situation” to justify a crackdown on HRDs and journalists:

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

Several international organisations have unsuccessfully called upon the Congolese government to lift the state of emergency in North Kivu because of the impact on citizens in general and HRDs in particular (Amnesty International, 2022). **This fits in with the global tendency towards the criminalisation of social movements** and the restriction of civic space (Buyse, 2018).

Furthermore, participants often find that their rights under the edicts are restricted when their goals conflict with those of authorities. **Conflicts of interest** frequently intervene with the effective protection of HRDs, especially when HRDs work on natural resources and environmental protection. Participants suggest that many politicians might have financial interests in mining projects and therefore support projects and ignore human rights violations linked to these projects. Such human rights violations in the mining sector of the DRC are often followed by impunity and a lack of accountability of authorities (Cirhighiri, 2023).

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

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

In such cases, edicts and the rights of HRDs are simply ignored. The edicts therefore have a very limited impact on the agency of HRDs working on topics linked to the environment or natural resources, as these are areas in which many authorities have financial interests.

Overall, the pattern that emerges from the stories of the participants is one

of selective implementation. Our data demonstrate that not only practical governance issues limit the impact of public policies, but that some authorities also actively restrict the agency of social movements, especially when their financial interests are at stake. This especially affects environmental HRDs.

5.2 Exclusion, stigmatisation & marginalisation


In addition to the limitations listed above, there are also **limitations on specific groups**, who are excluded from protection as a result of power dynamics and stigmatisation. This means that groups working on certain topics experience more severe limitations to their rights under the edicts than others. This generally results from social norms, to which both authorities and HRDs' communities contribute. In the sample for this study, the main groups affected by social norms are women HRDs (WHRDs) and HRDs working on LGBTQIA+ rights⁹ (LGBTQIA+ defenders).

5.2.1 Women human rights defenders

Women human rights defenders (WHRDs) participating in this study told important success stories about effective collaboration with authorities. However, they did confirm that more limits were imposed on WHRDs in their daily lives and in their work. These impediments to their work were mostly community-based, resulting from peer pressure and normalised gender roles. For example, participants said that WHRDs are regularly seen as "troublemakers" and shamed for not conforming to

⁹ LGBTQIA+ stands for Lesbian, Gay, Bi, Trans, Queer, Intersex and Asexual. This term also includes other identities that do not correspond to a binary heteronormative gender structure. For more info on terminology, see [here](#).


communities' expectations. Social pressure caused the expectations on WHRDs as women in their community to trump their role as HRDs. As a result, many WHRDs abandon their activities when their work becomes too dangerous:

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


In such cases, the edicts have a very limited impact on the agency of WHRDs: the limitations they face are not caused by formal restrictions or attacks by authorities, but by social pressure. Although some women succeed to resist to this pressure, many are discouraged to take up human rights work because of it.

5.2.2 LGBTQIA+ defenders


LGBTQIA+ defenders face strong stigmatisation and violence, which goes hand-in-hand with the severe stigmatisation of the entire queer community. LGBTQIA+ persons are often rejected by their community and family, and perceived as wrongdoers:

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


LGBTQIA+ defenders in this study told us that they were insulted on a daily basis, that they were targets of regular physical violence and regular rape¹⁰ attacks, including collective rape and corrective rape. This violence is instigated by the entire community, including their family, their neighbours, religious institutions and the authorities.

 **I've already been the victim of corrective rapes and also threats over the phone. It's a daily occurrence. Public insults, insults in the street. It's a daily occurrence. Personally, I'm often the victim of these acts. So it's really something that happens all the time.**

Although this stigmatisation affects the queer community as a whole, LGBTQIA+ defenders are the main victims of these attacks as they are publicly associated with their cause. The social stigma they face from both the authorities and their communities has an important impact on their work and strongly restricts their agency as HRDs. LGBTQIA+ defenders are targeted by the authorities through labelling and criminalisation (Buyse, 2018): the most frequently mentioned tactic used by authorities against them is to blame them for “attacking morality”¹¹ or “promoting homosexuality”. Provisions like **Article 7 of the North Kivu edict** are used directly against LGBTQIA+ defenders in such cases, which can see them be arbitrarily arrested when they go outside. Several participants have reported that such labelling is also enacted by neighbours filing complaints against them. In such cases, a direct use of the edicts becomes impossible:

 **So when you tell a policeman that you're defending LGBTQ rights, he immediately accuses you of promoting homosexuality.**


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

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


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

¹⁰ Corrective rape, or *viols correctifs*, are a type of rape where perpetrators aim to punish victims. LGBTQIA+ defenders report that many young people in their community engage in this type of rape, and that it is a particular form of violence to which the queer persons are regularly exposed.


¹¹ In French, *attaque aux bonnes moeurs*.

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


Even in our small sample of participants, this homophobic attitude was expressed by other (non-LGBTQIA+) HRDs. An environmental defender stated his indignation about being refused help when LGBTQIA+ people were helped:

 **And what's worse [...] I remember, they even helped homosexuals, but we were rejected!**


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

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

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

 **Sincerely, in our mandate, in our charter, it's not really mentioned explicitly that we offer assistance to homosexuals. But if this case happens to us, what we do is refer to other colleagues who have this package of care.**

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

 **There may be other organisations working on LGBTQ rights - we are working on it, but we can't even put it on our website, we can't even put it on public platforms. We'll never say it, although those who know me know that I do that, but other organisations like that obviously work informally.**

These different forms of exclusion demonstrate that social norms result in the stigmatisation of certain groups of HRDs not only by authorities, but by other HRDs and community members.

Conclusion

The social context of HRDs and their interaction with different actors is an essential part of the analysis of their organisation (Rucht, 2023).

Participants identified four main groups: authorities, armed groups, the local community and civil society (other HRDs). Although the participants mentioned some instances of successful cooperation with the authorities, the latter can be hostile towards HRDs and their relationship with HRDs was marked by a strong lack of trust. Armed groups are an important threat and challenge to the work and agency of HRDs, in particular threatening their physical safety and attacking the social structure of their community. The local community also has an important impact on the agency of HRDs: although they are important support systems for HRDs, they also impose social limits on the agency of HRDs through social pressure and stigmatisation (McClellan, 1999). Finally, other HRDs have an important positive impact on the agency of many HRDs through the creation of networks.

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

HRDs are quite positive about the edicts, especially as legal documents: many participants see them as a legal basis for their work and as a **source of legitimacy**, both for themselves and for all HRDs.

The edicts are used to shape the definition and interpretation of their work, improve collaboration with authorities and defend their rights. What is clear, however, is that such uses of the edicts exclusively depend on the efforts of HRDs themselves.

Furthermore, **the edicts do not benefit all HRDs equally**. Within their standard-setting role, they risk being used to support the narrow interpretations of defenders' mandate, with the associated potential to restrict their agency. When it comes to their role in the effective and immediate protection of HRDs, they only appear to benefit a small group.

This study identified several **structural limitations** to the impact of the edicts. Firstly, governance issues (corruption) and the active efforts of some authorities to restrict civic space. Conflicts of interest, especially those linked to the mining sector, impose a hard limit to the use of the edicts by HRDs, especially environmental defenders. Finally, in the case of some **social norms**, communities and other HRDs participate in labelling and restricting the agency of HRDs. This was seen particularly in the case of women and LGBTQIA+ defenders.

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

This mechanism mostly impacts groups of HRDs who have already have limited agency: **marginalised groups remain excluded** because social stigma causes

the edicts to be used against them, or to simply not be adapted to them. This applies to **WHRDs** to some degree, particularly because the edicts do not effectively address the social pressure that interferes with their work. However, most impact is seen in severely stigmatised groups, in the case of our sample **LGBTQIA+ defenders**.

A comparative study of similar protection laws in surrounding countries may enable us to identify additional patterns and confirm common elements in the limitations on implementation and political will. Indeed, parallels may serve to confirm the hypothesis that the challenges to the implementation of the edicts extend beyond the DRC, giving rise to the question of why such laws continue to be developed, and what the aims of the authorities are. If results are not monitored, there is a risk that authorities may be encouraged to indulge in what one may call *edictwashing*, without feeling the need to actually implement legislation or make any active and lasting efforts to improve human rights.

A top-down approach, as exemplified by the edicts we have considered here, therefore runs the risk of resulting in public policies that fail to address the fundamental issues underpinning the restrictions faced by HRDs. The case of LGBTQIA+ defenders in this study demonstrates that the edicts have not been effective in tackling grassroots discrimination. Policies must be accompanied by a thorough review process and an analysis of human rights movements on the ground. However, that process is unlikely to be successful if political will to change is lacking. In that context, public policies alone cannot change the status quo in any fundamental way.

This means that, although an impact of the edicts on the agency of HRDs can be identified, the lack of efforts to overcome practical and cultural barriers cause them to be useful only to an already relatively accepted and well-connected group of HRDs. **If these structural issues are not addressed, the edicts will continue to be used by a select group of HRDs, and will prove less useful for HRDs who work from a more isolated position. The edicts may therefore lead to slight improvements in the situation of HRDs who are relatively well accepted by authorities and other HRDs, but will fail to effectively protect the right to defend rights for everyone, particularly those who need it the most.**

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THE RIGHT TO DEFEND HUMAN RIGHTS, NOT FOR ALL?

A case study of local protection policies for human rights defenders in North and South Kivu

